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LEGISLATIVE STRENGTHENING PROGRAMS IN UGANDA AND NIGERIA

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ACRONYMS

ACBF	African Capacity Building Foundation
ACN	Action Congress Nigeria
ALP	African Legislative Project
ANPP	All Nigerian People's Party
APC	All Progressive Congress
BPE	Bureau for Public Enterprises
CBN	Central Bank of Nigeria
CIRI	Cingranelli & Richards (CIRI) Human Rights Data Project
CPC	Congress for Progress Change
CSO	Civil-society Organization
D&G	Democracy & Governance
DFID	Department for International Development
DO	Development Objective
DRG	Democracy, Human Rights, and Governance
DRG-LER	Democracy, Human Rights, and Governance Learning, Evaluation, and Research
ECOWAS	Economic Organization of West African States
EFCC	Economic & Financial Crimes Commission
FDC	Forum for Democratic Change
GPPS	Global Programme on Parliamentary Strengthening
IPU	Inter-Parliamentary Union
ISIL	Islamic State in the Levant
LSA	Legislative Support Activity
LSP	Legislative Strengthening Program
MENA	Middle-East and North Africa
MP	Member of Parliament
NAL	Nigeria Airways Ltd.
NDI	National Democratic Institute for International Affairs
NEPA	National Electric Power Authority
NGO	Non-governmental Organization
NHRI	National Human Rights Institution
NILS	National Institute for Legislative Studies
NNPC	Nigeria National Petroleum Corporation
NORC	NORC at the University of Chicago
NRC	National Resistance Council
NRM	National Resistance Movement
NRM/A	National Resistance Movement/Army
PAFO	Parliamentary Advice Forum
PARP	Policy Analysis and Research Project
PDP	People's Democratic Party
POMA	Public Order Management Act
PVO	Private Volunteer Organization
RTI	RTI International
SIG	Special Interest Group
SUNY	State University of New York
TMG	Transition Monitoring Group
TNA	Training Needs Assessment
UHRC	Uganda Human Rights Commission
ULS	Uganda Law Society

UN	United Nations
UNDP	United Nations Development Program
UPDF	Uganda People's Defence Forces
UPTAP	Uganda Technical Assistance Program
US	United States
USG	United States Government
USh	Ugandan Shilling
AWS	Solidarity Electoral Action
EU	European Union
IMF	International Monetary Fund
LSPs	Legislative Strengthening Programs
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
NDI	National Democratic Institute
NED	National Endowment for Democracy
PAC	Public Account Committee
UW	Freedom Union
SLD	Democratic Left Alliance
USAID	U.S. Agency for International Development

I. INTRODUCTION

United Nations Secretary General Ban Ki-moon recently called parliament a “beacon of democracy” that plays a critical role in the establishment and enforcement of human rights. Without respect for human rights, he said, peace, development and security are not possible.¹ Commitments to these connected, or perhaps overlapping goals, are visible in US policy. As one of its four principle development objectives, the United States Agency for International Development’s (USAID) says it will “protect and promote universally recognized human rights” as part of its efforts to enhance institutions that provide checks and balances. In the 2012 White House Africa Strategy, the US pledges to “strengthen checks on executive power” and promote human rights. But how are human rights, democracy, and legislative strength connected? Though the relationship seems obvious, clear causal paths or sequences remain unclear. “Human rights and fundamental freedoms should not only be seen as one of the foundations of democracy,” says one legal scholar. “They also have to be, and are indeed being, interpreted in such a manner that they reinforce democracy, emphasizing democratic principles and values.”²

The impact of legislatures on human rights and democracy is an important topic because donors often incorporate legislative strengthening programs (LSPs) in their aid repertoires, embracing the pursuit of democratization and protection of human rights as complementary – if not redundant – objectives. At the same time, there is little agreement on how to strengthen legislatures to pursue these goals, leading to the adoption of different LSP strategies, with mixed results.³ While such experimentation may allow for creative programming in response to different contexts or challenges, it also makes it difficult to identify replicable approaches. One study of Africa praises the “democracy enhancing potential” of legislatures but identifies a stark disconnect between this donor support for LSPs on the one hand, and theory and evidence concerning legislative strengthening, on the other.⁴ It is beyond any doubt that there is an urgent need for parliamentarians to enhance their human rights capacity,” concludes another study, before noting that the Inter-Parliamentary Union only published its first global comparative data about how parliaments might be able to do so in 2012.⁵

There is new evidence linking legislative strength to robust democracy,⁶ which would seem to provide an empirical basis for LSPs as a targeted tool for democracy promotion. But the compelling (if colloquial) logic that “all good things go together,” has also coincided with illiberal

¹ United Nations. “In Kyrgyzstan, UN chief celebrates parliaments as beacons of human rights efforts.” UN News Centre, June 11, 2015. <http://www.un.org/apps/news/story.asp?NewsID=51121#.VZwOKOfsLaN>, accessed July 7, 2015.

² Koch, Ida Elisabeth and Jens Vedsted-Hansen. “International Human Rights and National Legislatures – Conflict or Balance?” *Nordic Journal of International Law* 75 (2006), p. 9.

³ Kiyondo, Abel and Riccardo Pelizzo. “Strengthening Legislatures: Some Lessons from the Pacific Region.” *Politics & Policy* 41, no. 3 (2013): 420-446.

⁴ Nijzink, Lia, Shaheen Mozaffar, and Elisabete Azevedo. “Parliaments and the Enhancement of Democracy on the African Continent: An Analysis of Institutional Capacity and Public Perceptions.” *Journal of Legislative Studies* 12, no. 3-4 (2006): 311-355.

⁵ Schwarz, I. 2015. ‘The World of the Inter-Parliamentary Union’, in: Hunt, M., Hooper, H. J. & Yowell, P. (eds.). *Parliaments and Human Rights: Redressing the Democratic Deficit*. Oxford: Hart Publishing, p. 337.

⁶ Fish, M. S. 2006. ‘Stronger Legislatures, Stronger Democracies’, *Journal of Democracy* 17, 1: 5-20; Barkan, J. D. (ed.) 2009. *Legislative Power in Emerging African Democracies*. Boulder and London: Lynne Rienner.

trends in global politics, including functional legislatures in surprisingly persistent authoritarian regimes, as well as “hybrid” regimes that formally embrace democratic principles while routinely undermining them. If the above policy rhetoric about checks and balances is sincere, the slide toward hybrid regimes will be difficult to reverse without a more robust commitment to LSPs. Unfortunately LSPs have “long been regarded [as] one of the weakest parts of international governance work.” For example only £22.5 million out of DFID’s £10 billion aid budget is spent on LSPs.⁷

This paper explores connections among legislative capacity, democracy and human rights with the goal of untangling their complex interdependence and their potential for divergence. The larger goal is to inform future USAID legislative strengthening programs. Like the other papers associated with the larger project on legislative strengthening, we do not evaluate the success or monitor the specific impact of USAID’s programs. Instead, the analysis provides intellectual context by situating programmatic work within academic research. To this end we seek to clarify conceptual connections, hypothesize potential causal links and identify some of the confounding factors that are likely to interfere with such links. While this means we do not test our hypotheses, we do probe our insights through interviews and primary research on Uganda and Nigeria, two important recipients of LSPs. The result is an analytical overview of probable direct and indirect effects of LSPs, as well as some pragmatic recommendations.

Overview

The core of this paper is a review of the literature on legislatures, human rights and democracy, broken down into two stages. First, to examine connections between legislatures and democracy, we briefly summarize research reflecting on legislatures’ roles in oversight, legislation, representation, and constituent service. We then contrast this functional approach to legislatures, which has been accentuated by recent behavioral research on elite attitudes, with an institutional approach. While each has its advantages, institutionalism offers an important implicit critique to “issue-based” democracy promotion that seeks to enhance capacity through thematic competence rather than institutional strength, and we suggest that it provides a more reliable guide to contextual characteristics of aid recipients. Broadly speaking, legislative strength impacts democracy by reducing the discretionary power of executives, shaping the viability of parties, reducing the risk of coups, and improving accountability across governments. Perceptions of legislatures are negative in many parts of the world, even where people show strong preferences for democracy and/or limited executive power; this complicates efforts by LSPs to obtain public buy-in.

The second stage of the literature review examines connections between legislatures and human rights. It starts by explaining how the effective performance of legislatures’ different functions does not impact human rights and democracy in entirely congruent ways. This is important since LSPs variously promote capacity building for each of these functions. Legislators’ motivations for accountability with other parts of the government are different from their motivations for accountability driven by citizens “from below.” These incentives appear to be more likely to converge in post-conflict contexts. They diverge in instances where political rights are democratically exercised to promote violations of civil rights. This is increasingly a concern with the spread of counter-terrorism laws, legislation against sexual

⁷ Power, Greg. “The Politics of Parliamentary Strengthening.” *The Political Quarterly*. Global Partners Governance. Oxford: John Wiley and Sons Ltd. 2015.

minorities, and in other areas. For purposes of LSPs, this makes “issue-based” approaches arguably less effective than “institutional” approaches that seek to enhance institutional capacity overall. Following a brief discussion about principles for assessing legislatures’ human rights capacities, and the role of human rights committees, the paper discusses “judicial substitution,” whereby courts fill weak legislative voids in order to protect human rights. This emphasizes the importance of a holistic donor approach to democracy and governance (D&G) assistance.

A brief discussion about the ways in which policy guidance for D&G links human rights and democracy then integrates key insights from the literature review with selected evaluation material. While many studies raise concerns about executive bias in donor programs (thus undermining legislative capacity building), this appears to be less common in the Middle East and North Africa, where D&G programming has grown the most over the last decade. This could be promising for human rights capacity building. Another lesson relates to programs’ time horizons: most studies conclude that for LSPs to work, they need to be longer. This likely means that assistance must be committed to continue beyond the next election cycle in order to demonstrate a commitment to the legislature as an institution rather than a commitment to the incumbent party. Recent lessons from civil-military endeavors in several West African countries emphasize the further need for legislative oversight capacities in order to deter coups, defend democracy, and promote human rights. Overall, this section serves to synthesize programmatic goals with scholarly research in order to identify complications with studying human rights and democracy either separately or as intertwined outcomes. We reference examples from different LSPs beyond our case studies, and we attempt to identify intervening variables shaping both desirable and adverse outcomes.

Finally, the paper turns to two case studies in order to probe the issues raised by the literature review and the D&G. We implement a desk study of Nigeria alongside field work in Uganda. As case studies, these countries share some similarities in their continental experience, their import to US foreign policy, and their recurring legislative capacity support from USAID programs. They differ in a few important ways too, including civil-military relations, foreign aid dependence, and history of party development. This research design differs from typical comparative approaches that seek to isolate causal variables by either maximizing or minimizing similarities between cases; our goals here are more modest than explicit causal conclusions. Still, the research does highlight links between legislative capacity and both outcomes of interest: research on human rights suggests that Uganda’s ruling party’s agenda control on budgets and legislation limits the scope of commissions and parliamentary committees; in Nigeria, the National Assembly faces weak oversight incentives and a fragmented committee system. The cases differ in their record of limiting executive tenure, with Uganda’s president modifying the constitution in order to run for a successful re-election in 2010, while in Nigeria the legislature prevented the president from doing so. In neither case did LSPs appear to have had a notable impact on tenure extension outcomes.

The conclusion moves from some of these challenges to recommendations, including observations related to duration and potentially hidden sources of donor bias. We also list emerging challenges to legislatures, including experiments in direct participation, legislative failures to equitably allocate resources, under-representation of constituencies who otherwise have rights-based claims to political voice, and the sometimes surprising relevance of legislatures within regimes with poor human rights records.

Limits on research design

This research project faced resource and time constraints. Unlike other thematic areas of the broader project for USAID, this particular paper examines two outcomes – democratization and human rights – that can (and perhaps should) be measured separately. This means that a full analysis attempting to identify the causal effects of legislative strengthening would require a large number of cases and most likely a quantitative analysis, taking into consideration a broad range of control variables regressed against parallel hypotheses on the dependent variable, and then perhaps additional tests interacting key variables. A classic paired analysis from comparative politics utilizing “most different” or “least different” systems design would analyze cases based on either (a) similarity of most features yielding different outcomes, or (b) key differences on some features resulting in similar outcomes, respectively. This, however, is not feasible, at least in a straightforward way that serves the purpose of the consultation, with two dependent variables.

Another strategy would be to establish some basic trend data on the two outcomes in all of the countries that have received USAID legislative strengthening programs (LSPs). This generates a universe of 39 countries between 1985 and 2015. Ideally, the next step would be to employ a measure of legislative capacity, such as Fish and Kroenig (2009). Their data, however, suffer from a number of flaws that make it unworkable for time series.

Our approach affords us some limited ability to generalize about potential impacts of legislative engagement programs without more formal statistical models. More importantly, it will help us identify important secondary cases worthy of additional analysis as well as the necessary components of more fully elaborated causal processes that will hopefully be empirically explored in future research.

II. LITERATURE REVIEW ON LEGISLATURES AND DEMOCRACY

One classic portrayal of legislatures that remains influential begins with functional descriptions. For example, Barkan’s path breaking analysis of African legislatures begins by explaining that legislatures engage in representation, lawmaking, constituent relations, and oversight.⁸ The premise throughout the book is that these core functions are often in tension with one another, and this shapes the efficacy and power of legislatures. Survey data from the World Bank’s African Legislature’s Project embraces this functional approach, uncovering important conflicts of how legislators might see lawmaking as most important, but they enjoy constituent relations more (and spend more time doing the latter). In few countries covered by the survey do legislators feel rewarded by oversight. Fish’s equally influential study attempts to objectively measure legislative strength itself, rather than elite attitudes. Despite different theoretical orientations and methods, both studies decisively conclude that strong legislatures are good for democracy, with Fish concluding that “the presence of a powerful legislature is an unmixed blessing for democratization.”⁹

⁸ Barkan, Joel D., ed. 2009. *Legislative Power in Emerging African Democracies*. Boulder: Lynne Rienner.

⁹ Fish, M. S. 2006. 'Stronger Legislatures, Stronger Democracies', *Journal of Democracy* 17, 1 (2006), p. 5.

A little noticed implication of this apparent agreement is the departure it marks from research on the so-called Third Wave of democratization in the 1990s that very often emphasized the centrality of popular pressures for liberalization. In the former Soviet Union, Africa, and among late democratizers in Latin America, popular pressure seemed to be especially important.¹⁰ The pivot to legislatures meant that institutions mattered for outcomes, processes, and for modalities of participation – claims articulated by a distinct research field of “institutionalism.”¹¹ By empirically linking legislative strength to the level of democracy, Fish and Barkan’s findings carried important implications for democracy promotion: they suggested that broader democratic conditions rose and fell to a large extent, based on the capacity of a specific institution that could be targeted for assistance.

If Fish and Barkan’s conclusions raise the question of *why* legislative strength would improve democracy though, the literature provides at least four broad answers. First, as Sing puts it, strong legislatures counter-balance discretionary powers of presidents. This raises the costs executives face if they seek to weaken democracy or maximize their institutional authority. Strong legislatures therefore make it harder to undermine democracy, and a number of examples from post-communist countries, including Russia, highlight the hazards of democratic reversals due to powerful presidents.¹² Evidence from Africa arrives at similar conclusions. Nijzink et al. argue that strong executives mean weak legislatures. They make a critical point for democracy assistance programs: legislative weakness is largely a result of misaligned institutional incentives, rather than simply capacity. For example, legislators may face high barriers for censuring the president or removing cabinet ministers, executive may have the ability to dissolve parliament, and in many countries members of the legislature can simultaneously serve as cabinet members, “fusing” executive and legislative power. They find that “pure presidential” regimes – those without parliamentary features such as a confidence relationship or indirect election of the executive – have lower levels of democracy than parliamentary regimes; hybrid regimes mixing features of executive selection are not associated with any outcome.¹³

In general, executives in Africa have a significant amount of power despite *de jure* power of legislatures, and the fusion of power in hybrid regimes especially undermines democracy. Cranenburgh argues that fusion “ensures that the government has an almost ‘automatic’ base of support in parliament, which in turns strengthens executive dominance.”¹⁴ Other factors that increase presidential power include concurrent presidential and legislative elections, limited

¹⁰ Bunce, V. & Wolchik, S. L. 2011 *Defeating Authoritarian Leaders in Postcommunist Countries*. Cambridge and New York: Cambridge University Press; Bratton, M. & Van de Walle, N. 1997 *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. Cambridge and New York: Cambridge University Press; Wood, E. J. 2000. *Forging Democracy from Below: Insurgent Transitions in South Africa and El Salvador*. Cambridge: Cambridge University Press.

¹¹ March, J. G. & Olsen, J. P. 1996. 'Institutional Perspectives on Political Institutions', *Governance* 9, 3: 247-64.

¹² Frye, Timothy. 2002. “Presidents, Parliaments, and Democracy: Insights from the Post-Communist World.” In *The Architecture of Democracy: Constitutional Design, Conflict, Management, and Democracy*, ed. A. Reynolds. Oxford: Oxford University Press, 81–103.

¹³ Nijzink, Lia, Shaheen Mozaffar, and Elisabete Azevedo. “Parliaments and the Enhancement of Democracy on the African Continent: An Analysis of Institutional Capacity and Public Perceptions.” *The Journal of Legislative Studies* 12, no. 3-4 (2006): 311-355.

¹⁴ Van Cranenburgh, Oda. “Restraining Executive Power in Africa: Horizontal Accountability in Africa’s Hybrid Regimes.” *South African Journal of International Affairs* 16, no. 1 (2009), p. 55.

constitutional authority to amend budget proposals, high thresholds to override a veto or impeach a president, and procedures for making judicial appointments or bureaucratic changes.

Party research forms a second important link in the institutional chain connecting legislatures to democracy. As Cranenburgh point out, presidential systems favor large parties; at least some large parties are necessary in order for executives to win in a direct election (i.e, not chosen by the legislature). However, parties then have reduced power over the executive post election, according to Samuels and Shugart, because of the president's survival is "separate" from that of the legislature.¹⁵ In effect, weak legislatures and strong presidents lead to weak parties. In Eastern Europe, party building and lively interparty competition co-varied with the power of the legislature.¹⁶ In Morocco, Sing notes that a relatively powerful legislature generated incentives for political parties to monitor executive behavior and cultivate leadership. Without strong parties, the link between citizens and politicians is weaker because citizens lack a key mechanism for interest aggregation and interest articulation (though some research questions the applicability of this classic characterization of parties in the developing world¹⁷).

Third, strong and effective legislatures enhance democracy by improving civilian control over the military, thus reducing the risk of coups. Fully democratic regimes are about 7.5 times less likely to be subjected to attempted military interventions than illiberal regimes that hold elections, and, as a result, they are almost 18 times less likely to be victims of actual regime breakdown.¹⁸ Such positive effects take time and repeated iterations, however, leaving a lingering uncertainty surrounding institutions. Legislative control over security services is important for democracy, but such oversight presents a complex set of risks for donors and domestic human rights advocates (Crawshaw et al. 2007; Baker 2004). Sing analyzes case studies from Asia, Latin America, and Eastern Europe providing evidence that legislatures deterred coups or increased the likelihood of their failure. He then statistically supports this research, attributing coups to "the failure for a strong and popularly elected legislature to exercise civilian oversight over military."¹⁹ In the post-Soviet states, communism arguably contributed to effective civilian control over the military. It was thus a small leap for the expertise and the ethic of military professionalism and the experience of competent civilian monitoring to transcend the transition from communism to democracy.²⁰ Legislatures in this region quickly implemented "first generation institutional reforms" in the 1990s. These reforms codified defense policy-making procedures and parliamentary oversight powers and set up institutions to carry out such duties. A second generation of reforms, centered on state capacity, has since stalled: "there has been a relative lack of parliamentary interest in defense and security issues, limited access to information, and a reluctance on the part of the executive, the bureaucracy, and/or the armed forces to provide that information, a lack of resources to

¹⁵ Samuels, D. J. & Shugart, M. S. 2010 *Presidents, Parties, and Prime Ministers: How the Separation of Powers Affects Party Organization and Behavior*. Cambridge: Cambridge University Press.

¹⁶ Fish 2006.

¹⁷ Erdmann, G. 2007. 'Party Research: Western European Bias and the 'Africa Labyrinth'', in: Basedau, M., Erdmann, G. & Mehler, A. (eds.). *Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa*. Sweden: Nordiska Afrikainstitutet, 34-64.

¹⁸ Lindberg, Staffan, and John F. Clark. 2008. "Does Democratization Reduce the Risk of Military Interventions in Politics in Africa?" *Democratization* 15, 1: 86-105.

¹⁹ Sing, M. 2010. "Explaining democratic survival globally (1946–2002)," *The Journal of Politics* 72, 02 (2010), p. 450.

²⁰ Bunce, V. 2003. 'Rethinking Recent Democratization: Lessons from the Post-Communist Experience', *World Politics* 55: 167-192.

support the oversight function of legislatures and a lack of expertise among parliamentarians,” argue Cottey and Forster.²¹ Thus despite the institutional basis for oversight, parliamentary scrutiny of defense policy remains limited in most of post-communist Europe; while this does not appear to present coup risks, they point out it does undermine the democratic legitimacy of defense policy.

Africa unfortunately faces a more fragile predicament compared to these other regions, as “first generation” reforms either never took hold or were never really implemented in the first place. The risk of coups remains endemic: including Egypt, there have been at least seven military coups in Africa since 2008; suspension the legislature is often a junta’s first step after taking power.²² The 15 countries in the Economic Organization of West African States (ECOWAS) have experienced three waves of large scale insecurity, according to a recent study funded by the Ford Foundation arguing for “an intimate link between security, public welfare, democracy, and development.” Yet existing strategies have focused on stopping violence rather than strengthening accountability and a civilian control of security services. In both post-conflict and democratizing countries, “democratic control of the security sector is a sine quo non for future progress; it is an issue that can no longer be safely ignored” the report claims. Liberia’s legislature did not pass laws for civilian control of the security services until 2010, creating a vacuum often filled by ad hoc committees that undermine the development of expertise or worse, special presidential committees. Mali has had parliamentary oversight committees since 1991, but they are weak, focused heavily on counter-terrorism, and they oversee an organizationally fragmented security sector. Niger’s parliamentary committees operate in a more coherent legal framework for oversight, but they oversee a similarly fragmented security sector, and none of the members has military experience. Oversight since Niger’s 2010 coup has often meant cutting defense spending – precisely the opposite strategy pursued in neighboring Nigeria, which also has a history of coups.²³ Statistical tests using a new global dataset covering all coups between 1961 and 2000 suggests that neither military cuts (risking anger) nor spoiling the military (arguably increasing its capacity) significantly influences the risk of coups.²⁴ Nigeria’s restoration of democracy in 1999 included civilian constitutional control over the military and de-politicization of the officer corps, but it also left room for conflicting institutional responsibilities and embraced the militarization of routine public safety. Democratization there has thus coincided with a rise of violence through informal groups.²⁵

Like the research on presidentialism mentioned earlier, these various studies on civilian control of the military helpfully redirect some of the casual associations between executive

²¹ Cottey, A., Edmunds, T. & Forster, A. 2002. 'The Second Generation Problematic: Rethinking Democracy and Civil-Military Relations', *Armed Forces & Society* 29, 1 (2002), p. 35.

²² The others were in Mauritania (2008), Guinea (2008), Niger (2010), Mali (2012), Central African Republic (2013), and Burkina Faso (2015).

²³ Mustapha, A. R. 2014. *Waging Peace in West Africa: A Good Practices Guide to Democratic Governance of the Security Sector*. ALTUS & Ford Foundation Project on Conflict and Security Sector Governance in West Africa. Lagos: CLEEN Foundation.

²⁴ Powell, J. 2012. 'Determinants of the Attempting and Outcome of Coups d'état', *Journal of Conflict Resolution* 56, 6: 1017-1040.

²⁵ Though regional organizations are beyond the scope of this study, it is worth mentioning that there is evidence that organizations such as ECOWAS have generally helped deter coups in Africa. See for example, Cowell, Frederick. “Preventing Coups in Africa: attempts at the Protection of Human Rights and Constitutions,” *The International Journal of Human Rights*, 15, 5 (June 2011): 749–764.

regime type and democratic instability. Whereas classic work in the early 1990s argued that presidential regimes were inherently more prone to coups,²⁶ research since then has generated compelling alternative explanations. Cheibub finds a robust statistical relationship between previous legacies of military rule and coups, thus accounting for Latin America's democratic failures. Historical context, including choice of parliamentary executives that might have provided different incentives for civilian control of the military, is what matters. This trumps economic context as a driver of regime instability, and in his view it also rebuts modernization theory's claims about the impracticality of democracy in low-income countries.²⁷ One recent cross-national study challenging Cheibub's argument about historical institutional legacies is that of Sing. He statistically tests 1,425 parliamentary regime years and 849 presidential years and finds a less effective legislature and (interestingly) an unfavorable US foreign policy toward the country increase the probabilities of a coup more than previous military legacy. Another challenge comes from a recent cross-national test of Samuels and Shugart's intuitions linking parties and executives – but then turns their theory on its head by *only* examining these institutions in authoritarian regimes. Between 1975 and 2012, legislatures had a significant and systematic impact on the likelihood of coups depending on the type of executive selection process for the dictatorship (and accounting for differences with monarchies): Parliamentary regimes, where the legislature picks the executive, have more constraints on the executive because party members in the legislature have more power and stronger incentives to cooperate with each other. This not only results in more effective legislatures, it also reduces the frequency of major cabinet changes, contributes to higher economic growth, and lowers the risk of military coups, compared to presidential (undemocratic) regimes.²⁸

Fourth, legislative capacity enhances what O'Donnell calls “horizontal accountability,” referring to the ability of state agencies to monitor other state agencies along the lines of the oversight functions described above, and in contrast to “vertical accountability” between voters and elected politicians.²⁹ Efforts to strengthen the legislature, by increasing oversight skills or resources, quickly become sensitive since more robust checks and balances places limits on executive power. Thus, even more than the other functions of representation, including constituent services or legislating, which entail interaction and agreement with the executive, oversight interventions are especially sensitive for their potential to recalibrate the balance of power. Impeachment is one dramatic forms of oversight in presidential regimes. Though there is little comparative research in this area, Kim finds that legislators in developing democracies tend to advance impeachment charges against presidents when they are implicated in a major political scandal, when their powers are strong, and when they face a hostile civil society, which may mean that the president is the target of popular protest. Presidents are more likely to survive impeachment attempts when their party commands a large share of seats.³⁰ Term limits are a second, ultimate form of oversight, which are “an almost universal and enduring part of

²⁶ Linz, J. J. & Valenzuela, A. (eds). 1994. *The Failure of Presidential Democracy: Comparative Perspectives*. Baltimore: Johns Hopkins University.

²⁷ Cheibub, A. J. 2007. 'What Makes Presidential Democracies Fragile?', in: Cheibub, A. J. (ed.) *Presidentialism, Parliamentarism, and Democracy*. New York and Cambridge: Cambridge University Press, 116-135.

²⁸ Roberts, T. L. 2015. 'The Durability of Presidential and Parliament-Based Dictatorships', *Comparative Political Studies* 48, 7 (2015), p. 920.

²⁹ Mendez, J., O'Donnell, G. & Pinheiro, P. S. (eds). 1999. *The Self-Restraining State: Power and Accountability in New Democracies*. Boulder: Lynne Rienner.

³⁰ Kim, Y. H. 2013. 'Impeachment and presidential politics in new democracies', *Democratization* 21, 3: 519-553.

presidential democracy,” according to Ginsburg and Elkins’ analysis of all constitutions since 1789. Terms are almost always limited to two, and executives in developed democracies almost always obey them. Recent efforts by presidents to stay in office in cases such as Uganda, Honduras, and the Philippines therefore stand in contrast to older democracies.³¹

Impeachment and tenure extension struggles, as the ultimate tests of horizontal accountability, may appear to bring democracy to the brink, making donors risk averse to programs that educate legislators about them. But both procedures signal an important domestic shift in developing democracies derived from new international norms for intra-governmental conflict resolution through existing legal channels rather than blatant extra-constitutional means. Term limits do have their skeptics, who argue that presidents can simply turn to “informal institutions” to defy the formal rules.³² But there is increasing normative and empirical support for them, especially in Africa where presidents have been particularly defiant.³³

Perceptions of Parliaments

Even though such legislative assertiveness advances democracy in the long run, citizens in countries transitioning to democracy typically have little patience for clashing branches of government. “The temptation to concentrate power in the executive is immense,” argues Sing. As a result “the public frequently mixes up concentrated power with effective power, and the president usually benefits as a result.”³⁴ Survey data bear this out in several ways. Citizens in Africa, Asia and Latin America are strongly committed to choosing their leaders through free and fair elections but are often frustrated once those politicians clash through their different institutions. For example, in East Asia citizens show little confidence in government institutions, especially compared to other parts of Asia; this holds true across a range of 12 democratic and less-democratic regimes.³⁵ In Africa, legislatures face weak institutional capacity, little autonomy from the executive, and low public confidence. Extensive cross-national survey data reports that Africans support independent legislatures but presidents enjoy higher approval ratings. African legislatures also have little capacity to promote democratization due to resource limitations and the small number of legislators per capita negatively impacts interaction with constituents.³⁶ Another study of Africa similarly highlights the coexistence of strong support for democracy alongside a divergence in confidence levels for different branches: citizens tend to support the president over the parliament and to express cynicism about legislative-executive relations. Survey data from 18 African countries claims that parliaments are institutionalized yet they often lack independence. In 15 out of 18 countries the president enjoys higher levels of

³¹ Ginsburg, Melton and Zachary Elkins. 2011. “On the Evasion of Executive Term Limits,” *William and Mary Law Review* 52 (6): 1807-72.

³² Akech, M. 2011. ‘Constraining Government Power in Africa’, *Journal of Democracy* 22, 1: 96-106.

³³ Maltz, Gideon. 2007. “The Case for Presidential Term Limits,” *Journal of Democracy* 18, (1): 128-42; Dionne, Kim Yi, and Boniface Dulani. 2013. “Constitutional provisions and executive succession: Malawi’s 2012 transition in comparative perspective,” *African Affairs* 112 (446): 111-37.

³⁴ Sing, M. 2010. “Explaining democratic survival globally (1946–2002),” *The Journal of Politics* 72, 02 (2010), p. 450.

³⁵ Carlson, M. & Turner, M. 2009. “Popular perceptions of political regimes in East and Southeast Asia,” *Democratization* 16, 2: 377-398.

³⁶ Nijzink, Lia, Shaheen Mozaffar, and Elisabete Azevedo. “Parliaments and the Enhancement of Democracy on the African Continent: An Analysis of Institutional Capacity and Public Perceptions.” *The Journal of Legislative Studies* 12, no. 3-4 (2006): 311-355.

trust compared to parliament. In short, respondents tend to trust the executive more than parliament, yet they see the importance of legislatures. While public opinion may thus be shifting against “big man” rule by valuing legislatures’ role, the authors argue that donors subvert legislatures when they go through the executive for implementer agreements.³⁷

A second type of challenge shaped by public perceptions arises from legislative-executive relations. *Latin American Public Opinion Project* surveys for example report that people do not really believe legislatures “obstruct” or “hinder” the power of the executive; this is especially true among younger and more educated individuals, who are more likely to believe that legislatures do not limit the power of the president. However, perceptions of the legislature do vary based on other citizen evaluations of institutional performance: “the greater the satisfaction with the performance of the current president, the lower the belief that the legislature hinders his/her power. In the same vein, as satisfaction with the performance of legislators increases, agreement with the idea that they hinder the president decreases.”³⁸ Citizens who believe the economy is doing well are similarly less likely to see the legislature as “hindering” the president. The author concludes that Latin America has entered a new political era, “where parliaments are seen as necessary to democracy and not as obstructionist and inefficient institutions as they were viewed in the past.” But if sympathies for authoritarianism return or economic performance declines, behavioral support for legislatures’ assertiveness could also decline.³⁹

Rolef’s meta-study finds that trust in legislatures is low across 21 Western democracies too. Legislators tend to attribute their institutions’ unpopularity to problems related to information, education, and a negative media. As of 2006, institutional trust was the highest in East Asia, followed by Africa, the European Union, Latin America, and then Eastern Europe. In general, efforts to improve trust in different contexts have resulted in marginal improvements, at best. Low levels of trust in legislatures are important because they impede public buy in for the work of LSPs. Why train legislators who are corrupt, or lazy? Such charges can easily seem validated when legislators’ training entails extensive travel overseas or similar perks. At the same time, one could consider low trust as a proxy for healthy democratic skepticism, a conclusion suggested by some survey research in Africa. Rolef’s conclusions conform to this possibility: “the lack of trust in government institutions does not necessarily prove that the status of democracy has been undermined,” since many countries with high levels of cynicism also have high levels of satisfaction with democracy.⁴⁰

³⁷ Azevedo-Harman, Elisabete. “Parliaments in Africa: Representative Institutions in the Land of the ‘Big Man’.” *The Journal of Legislative Studies* 17, no. 1 (2011): 65-85.

³⁸ Corral, Margarita. “Not Happy? Blame your Legislature.” *AmericasBarometer Insights*, no. 26 (2009), p. 3.

³⁹ *Ibid.*

⁴⁰ Rolef, Susan Hattis. 2006. “Public Trust in Parliament – A Comparative Study.” The Knesset Information Division, p. 31. < <https://www.knesset.gov.il/mmm/data/pdf/me01417.pdf>>

III. LITERATURE REVIEW ON LEGISLATURES AND HUMAN RIGHTS

Do strong legislatures deepen democracy? The second stage of this literature review explores this question first from a logical and conceptual perspective, identifying contemporary examples where democratic demands and human rights commitments conflict. Importantly, in contrast to the functional perspective mentioned at the outset of the literature review, the tensions here originate in incentives rather than in the inherent roles of legislatures. Second, we summarize relevant research on the capacity of legislatures and emerging tools for measuring it. Third, we discuss the relationship between legislatures and human rights commissions. Notable, there are international standards for commissions and how they relate to legislatures, but as far as we know, there are essentially no comparable international standards for gauging legislatures' obligations to such commissions. Finally, we discuss "judicial substitution," whereby the courts in developing worlds step in to compensate for weak legislative capacity or an unwillingness to protect civil or political rights.

Majoritarianism and Human Rights

If human rights are an integral part of democracy as Ki-moon argues, and strong legislatures mean strong democracy, as Fish claims, then do strong legislatures mean greater respect for human rights? It is very tempting to apply a logical law of transitivity here: if $A \rightarrow B$ and if $B \rightarrow C$, then also $A \rightarrow C$. But there is little empirical evidence so far suggesting such a clear causal path, and there are several reasons why such a simple causal two step relationship could be led astray. The institutional relationship between the legislature and the executive differs from the legislature's relationship to the public. In the case of horizontal interactions across government branches, legislators may enjoy rewards from the party, possibilities for career advancement, or (certainly in the American case) fundraising opportunities based on vigorous oversight. The vertical connections to the public entails are different though. Citizens delegate authority to legislators, presenting various opportunities for "agency loss" as good intentions are diluted, progress on an issue is misrepresented, or citizen monitoring is inadequate due to inadequate information. These different axes of accountability can align or misalign in a variety of circumstances.

Post-conflict settings, where many LSPs operate, seem to align interests along these different axes similarly. These situations tend to reinforce legislatures' positive human rights roles due to a demand for crisis prevention and peacebuilding. According to the United Nations Development Programme (UNDP), legislatures in these contexts enable diverse societal groups to share their views and have them formally incorporated into dialogue, reconstruction and conflict resolution processes such as truth commissions. One in four legislatures in the world receives legislative strengthening assistance from UNDP. This includes security sector reform training and educating legislators on international treaties, the arms trade, and how legislatures can contribute to small arms control through negotiations, legislation and oversight.⁴¹

⁴¹ United Nations Development Programme. 2012. *Concept Note towards Strengthening the Role of Parliaments in Crisis Prevention*, p 2.

Outside of post-conflict contexts, some countries have a strong electoral constituency for human rights, which we take as an indication that vertical connections between citizens and government are strong, giving politicians incentives to respond. Recent evidence from Mexico suggests that voters actually evaluate incumbents based on their commitment to human rights – not simply traditional issues like economic conditions. Survey data from 2003 and 2010 suggest that citizens are more likely to support their president, their government and democratization in general when they believe that human rights are respected.⁴² Mexico’s Chamber of Deputies is one of the few legislatures in the world where politicians have been limited to a single term, but reforms taking effect in 2018 will end that and deputies will be elected during presidential mid-term elections. This will increase the incentives for politicians to be responsive on human rights demands or other issues if they seek re-election (and it will also give the opposition party a chance to make gains against the president’s party.)

However, politicians’ motivations for strong vertical ties can differ from those conducive to horizontal accountability. This means that legislators could seek to protect human rights along one axis of accountability and to weaken them on the other. James Madison feared the public’s “passions” were a poor guide to reasoned policy, and Thomas Jefferson worried that minority rights would get trampled by the majority. If transgressions on minorities are popular, then the democratic constituency for human rights may shrink, and elected politicians – especially in newer democracies – may follow the flow of public opinion. Sexual minority rights offer one salient example.⁴³ Support for gay rights is unpopular in Africa, so one could say that “good” representation fails human rights if there are constituencies for legislating against these minorities.⁴⁴ If human rights commissions defend sexual minority rights as human rights, they risk clashing with legislators (and influential religious leaders). There can thus be a disconnect between governments’ professed generalized obligations to human rights and effective interest aggregation. The effective democratic exercise of political rights undermines civil rights.

Counter-terrorism laws offer another example. Following the passage of sweeping counter-terrorism legislation in the United States after 9/11, countries such as Kenya, Uganda and Mauritania followed suit, shrinking space for political opposition or civil society.⁴⁵ Governments around the world have argued that “restricting human rights is a necessary if unfortunate cost of preventing terrorism.” However one of the few studies to empirically test whether respect for human rights deters terrorism or enables it finds that such tradeoffs miss the point: abuses by the state aggravate political grievances that motivate terrorists; they also impede security strategy by reducing the government’s access to useful intelligence about terrorists.⁴⁶ For elected legislators, this is a difficult argument to make in the face of popular demands to fight

⁴² Hillebrecht, C., Mitchell, D.-G. & Wals, S. C. 2014. “Perceived human rights and support for new democracies: lessons from Mexico,” *Democratization* 22, 7: 1230-1249.

⁴³ Encarnación, Omar. 2014. “Gay Rights: Why Democracy Matters,” *Journal of Democracy* 25, 3 (July 2014): 90-104.

⁴⁴ Ebobrah, Solomon. “Africanising Human Rights in the 21st Century: Gay Rights, African Values and the Dilemma of the African Legislator.” *International Human Rights Law Review* 1 (2012): 110-136.

⁴⁵ Howell, J. & Lind, J. 2010. *Civil Society under Strain: Counter-terrorism Policy, Civil Society, and Aid Post-9/11*. Sterling, VA: Kumarian Press; Whitaker, B. E. 2007. ‘Exporting the Patriot Act? Democracy and the ‘War on Terror’ in the Third World’, *Third World Quarterly* 28, 5: 1017-1032.

⁴⁶ Walsh, J. I. & Piazza, J. A. 2010. “Why Respecting Physical Integrity Reduces Terrorism,” *Comparative Political Studies* 43, 5: 551-577.

terrorism. As security declines, so too may public and political support for human rights.⁴⁷ Various laws around the world also limit civil society space by playing a nationalist card and suggesting that dissidence in general has foreign rather than domestic sources. A bill in Uganda to limit freedom of association by regulating NGOs (discussed in greater detail in the case study) sailed through Parliament. Ethiopia passed a similar law in 2009, one that prohibited NGOs who received more than 10 percent of their funding from outside of the country from engaging in political issues, such as democracy and human rights.⁴⁸

It is important to emphasize that gay rights in Africa and the instrumentalization of counter-terrorism law for domestic political gain are not isolated examples. When 12 out of Nigeria's 36 states adopted Sharia Law in 1999-2000, governors, state assemblies, and many citizens in the country's predominantly Islamic north argued that democracy is about the will of the majority. Nigeria already permitted Sharia law in civil matters, if both parties consented to that option.⁴⁹ But the secular nature of criminal law ultimately prevailed. Had it not, this critical and enduring compromise, enshrined in every constitution since the 1950s, popular preference would have jeopardized the civil rights of millions of Christians and ethnic minorities living in the North. Another example arises from an emerging "ethno-populism" in Africa, whereby opposition parties bring together traditional ethnic mobilization and economic grievances through populist mechanisms.⁵⁰ In short, there are many contemporary examples where the incentives of electoral politics can conflict with liberal components of democratization.

Legislative Capacity for Promoting Human Rights

To help legislators face any apparent (and possibly false) dilemmas between obligations generated by representation and legal commitments to fundamental rights, donors first need to assess the human rights capacities of legislatures. The most common approaches include expert evaluations, quantitative indicators, self-assessments, and qualitative measures. Evans and Evans argue that expert evaluations, such as those of Freedom House, that use a country ranking system built on the average scores of experts miss nuance that more in-depth and small-N approaches capture. Qualitative approaches are difficult to compare over time and across cases. Also, there are often gaps between what indicators capture and the actual protection of a right. Self-assessments refer to questionnaires, noting that the ability of the general public to assess the institutional efficacy of legislatures and human rights may be imperfect. Given the pros and cons of the aforementioned approaches, Evans and Evans propose starting by mapping out all the legislative processes that pertain to human rights, aided by a desk and a field study. Then researchers should analyze the impact of the processes on the human rights legislation, using

⁴⁷ Hashimshony, Nurit-Yaffe and Meydani, Assaf Meydani. "The Political Economy of Human Rights: The Struggle Over the Establishment of a Human Rights Commission in Israel." *Israel Affairs* 20, no. 4 (2014): 484-502.

⁴⁸ Alon Mwesigwa, "Uganda: NGO Bill Aims to Muzzle Civil Society, Say Activists," *The Guardian*, June 24, 2015, <http://www.theguardian.com/global-development/2015/jun/24/uganda-ngo-bill-aims-muzzle-civil-society-say-activists>.

⁴⁹ Afrobarometer. 2009. "Popular Perceptions of Shari'a Law in Nigeria." Afrobarometer Briefing Paper no. 58. <http://Afrobarometer.org>.

⁵⁰ Cheeseman, Nic, and Miles Larmer. 2013. "Ethnopolitism in Africa: Opposition Mobilization in Diverse and Unequal societies." *Democratization*:1-29.

both quantitative and qualitative metrics. Finally, researchers should utilize case studies of legislation that capture diversity in the efficacy of legislatures.⁵¹

Following a successful assessment, Dias and Taylor suggest there are two different donor approaches to empowering legislatures to promote and protect human rights. Increasingly common “issue-based” approaches train and educate legislators on a thematic basis. In response to our examples above, donors could highlight minority rights as human rights and therefore deflect popular causes that undermine liberal freedoms. However this could also limit programming to less controversial topics: not only would gay rights be quickly ruled out, so too would impeachment. The preferred approach remains an “institutional” one. This involves strengthening staff capacity or providing resources. In this approach, they argue support for a human rights committee is a critical avenue for enhancing capacity.⁵²

One important area in this regard relates to whether legislatures should have dedicated human rights committees as a component of this capacity. Somewhat surprisingly, there is no consensus among human rights scholars on this question, which is debated in several chapters in *Parliaments and Human Rights: Redressing the Democratic Deficit* (Hart Publishing, 2015). A dedicated committee does help coordinate the work of other committees with related jurisdictions, and it can give legislators a stake in human rights protections. Perhaps equally surprising, few legislatures appear to adopt this structure. In its legislative strengthening activities, the Westminster Foundation for Democracy found that only Georgia’s parliament had a dedicated committee. Ukraine, where the committee had other significant duties, and Uganda, where jurisdiction over human rights is fragmented across multiple committees, are more common models. Since the state and non-state actors alike can be culpable for human rights violations, civil society organizations (CSOs) are critical for bringing relevant information to light and providing “political cover” for interested legislators. Still, the Foundation found high levels of mutual distrust between CSOs and legislators in its programs; in some countries, for example, politicians used such stereotypes to discredit critical information brought to light by CSOs.⁵³ It also seems important for any committee with a focused human rights jurisdiction to be more than merely advisory. For example, the Northern Ireland Human Rights Commission arose out of the impotency of its predecessor, the Standing Advisory Commission on Human Rights. Not only did the Standing Commission lack meaningful investigative powers, but unionists saw its composition as slanted, giving critical NGOs disproportionate attention, a charge capitalized on by more conservative political parties.⁵⁴

Legislatures and Human Rights Commissions

The work of legislatures is also closely tied to the responsibilities and powers of human rights commissions. The Paris Principles, established in 1993 by the United Nations, serve as the guiding principles for human rights commissions and their institutional links to legislatures. The

⁵¹ Evans, Carolyn and Simon Evans. “Evaluating the Human Rights Performance of Legislatures.” *Human Rights Law Review* 6, no. 3 (2006): 545-569.

⁵² Dias and Taylor 2008. *Primer on Parliament and Human Rights*. United Nations Development Programme.

⁵³ Kunnath, G. & Patrick, A. 2015. ‘The World of the Westminster Foundation for Democracy’, in: Hunt, M., Hooper, H. J. & Yowell, P. (eds.). *Parliaments and Human Rights: Redressing the Democratic Deficit*. Oxford: Hart Publishing, 339-362.

⁵⁴ Munce, Peter. “Unionism and the Northern Ireland Human Rights Commission 1999-2005: Hostility, Hubris and Hesitancy.” *Irish Political Studies* 29, no. 2 (2014): 194-214.

Principles raise an array of issues including commissions' mandates, independence, pluralism and quasi-judicial status. Under the Principles, National Human Rights Institutions (NHRI) are required to protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities. In addition, they must promote human rights, through education, outreach, the media, publications, training and capacity-building, as well as by advising and assisting Governments. A UN accreditation body assesses the functionality of NHRI according to six criteria: (1) general competence and a broad mandate based on universal human rights and competence, (2) autonomy from government, (3) independence guaranteed by statute or constitution; (4) pluralism, including through membership and/or effective cooperation, in order to avoid the types of problems encountered in the Northern Ireland case, (5) adequate resources; and (6) adequate powers of investigation.⁵⁵ The Paris Principles gauge the autonomy of NHRIs based on the independence of the appointees, adequate funding and resources, and commissioners' protection from arbitrary removal.⁵⁶

The Principles also guide institutions' relations with legislatures, as elaborated in a 2004 summit known as The Abuja Guidelines. NHRIs are expected to provide parliamentarians with regular expert, independent advice on national, regional and international human rights issues, provide ongoing training for legislators, advise the legislatures on the human rights implications of laws, propose legislation and constitutional amendments, and advise parliaments on the creation of parliamentary human rights committees.⁵⁷ Arguably neither the Principles nor the Abuja Guidelines provide adequate guidance for what legislatures themselves are supposed to do. The Principles note that the process of receiving human rights information "should be transparent, visible and consultative," and if it isn't this "may lead the general public and, where appropriate, international treaty bodies to question their willingness to promote human rights nationally."⁵⁸ Even though over one hundred NHRIs have been accredited by the UN according to Principles' criteria, there is tremendous variation in the commissions' impact on human rights conditions, especially where legislatures themselves suffer from limited capacity or autonomy. Many of the commissions, in fact, operate in regimes otherwise classified as authoritarian.

Judicial Substitution

In the face of a weak legislature, or one reluctant to proactively protect minority rights, judiciaries sometimes step in. We call this "judicial substitution," because competent courts can remedy failures of representation – oppressive majoritarian views – that undermine human rights. This is important because it demonstrates the interdependence of Democracy and Governance programming. When designing an LSP, implementers need to take into

⁵⁵ Office of the United Nations High Commissioner for Human Rights. 2010. *National Human Rights Institutions History, Principles, Roles and Responsibilities*. New York and Geneva: United Nations.
<www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>

⁵⁶ Hatchard, John. A New Breed of Institution: The Development of Human Rights Commissions in Commonwealth Africa with Particular Reference to the Uganda Human Rights Commission." *The Comparative and International Law Journal of Southern Africa* 32, no. 1 (1999): 28-53.

⁵⁷ United Nations Development Programme. *Primer on Parliaments and Human Rights*. Available from <http://hrbportal.org/>

⁵⁸ *National Human Rights Institutions History, Principles, Roles and Responsibilities*, p. 104.

consideration a variety of institutional considerations, including sectors where training may not be possible or where other donors are active.

Several cases illustrate the interdependence of legislatures and the judiciary in human rights enforcement. One study from Nigeria argues that judicial systems are better positioned to protect minority rights under international human rights law, especially on matters relating to the protection of sexual minorities. When faced with a dilemma between their constituents' views and minority rights, electoral politics prevail. This makes the process of judicial review an essential tool for checking legislative excesses, including "momentary interests" such as the current anti-homosexuality fervor. Judicial independence and general public education about human rights are both important.⁵⁹ Hashimonshony and Meydani call this turn to the courts the "judicialization of politics" because citizens turn to the courts to influence politics more so than normal. This happens, they say, amidst cynicism about democracy such as the sort mentioned earlier in Latin America.⁶⁰

When courts embrace a counter-majoritarian role, legislatures respond to this sort of judicial activism in two possible ways, says Veneziani. The legislature either pursues "detachment," meaning legislators recognize they cannot compete with the courts in the protection of human rights and the institution adopts a reactive stance, or "engagement," whereby the legislature embraces human rights and positions itself to complement the courts' role. The principal sign of an engaged legislature is a permanent committee with a dedicated human rights focus. While the committee can become a "lightning rod" for controversy, this arrangement facilitates specialization by members. Older democracies with "a liberal-democratic culture" are actually less likely to have such a committee; only about half of Europe's legislatures, for example, have one. By contrast, new democracies are twice as likely to have one. They see human rights committees as an institutional path to demonstrate their place in the international community, burnish their credentials as democracies, and improve their chances of gaining membership to international organizations such as the European Union.⁶¹ Membership in such bodies creates international obligations to human rights with which legislatures and courts have to grapple. Membership creates expectations that international law will be domestically implemented, potentially reducing the latitude of national governments and legislators. Recent controversies around the International Criminal Court's investigations in Africa are one such example of such tensions, but they have been longstanding issues for the European Court of Human Rights as well.⁶² While this literature review has not focused extensively on institutional ties between domestic institutions and international bodies, it is important to acknowledge these issues and the breadth of this research.⁶³

⁵⁹ Ebobrah, Solomon. "Africanising Human Rights in the 21st Century: Gay Rights, African Values and the Dilemma of the African Legislator." *International Human Rights Law Review* 1 (2012): 110-136.

⁶⁰ Hashimonshony, Nurit-Yaffe and Meydani, Assaf Meydani. "The Political Economy of Human Rights: The Struggle over the Establishment of a Human Rights Commission in Israel." *Israel Affairs* 20, 4 (2014): 484-502.

⁶¹ Veneziani, Bruno. "Parliaments and Human Rights," *Managerial Law* 47, 6 (2005), pp. 18-30.

⁶² Bosco, David L. 2014. *Rough Justice: the International Criminal Court in a World of Power Politics*. Oxford ; New York, NY: Oxford University Press; Koch, Ida Elisabeth and Jens Vedsted-Hansen. "International Human Rights and National Legislatures – Conflict or Balance?" *Nordic Journal of International Law* 75 (2006): 3-28.

⁶³ See for example, Murray, Rachel. 2005. *Human Rights in Africa: From the OAU to the AU*. Cambridge: Cambridge University Press; Hunt, Murray, Hayley Jane Hooper, and Paul Yowell. 2015. *Parliaments and Human Rights: Redressing the Democratic Deficit*. Oxford ; Portland, Oregon: Hart Publishing.

IV. HUMAN RIGHTS AND DEMOCRACY IN USAID'S MISSION

Democracy and human rights are core principles of USAID's mission, so tracing the evolution of its legislative programming with regard to these principles would be a significant undertaking, especially in light of some information from implementers' work that has gone missing over the years. Nor was the mandate of this project to evaluate the efficacy of such programming. This section instead reflects on current USAID policy and practice with regard to these principles. It then integrates this analysis with key insights from the literature reviews above in order to identify thematic areas of opportunity as well as emerging challenges for LSPs. It concludes by outlining three plausible causal effects of LSPs on human rights, keeping in mind the complex interdependent relationship with democracy mentioned earlier.

The USAID Strategy on Democracy, Human Rights, and Governance (DRG) currently guides its policies to advance democratization and development through foreign assistance. DRG's main goal "is to support the establishment and consolidation of inclusive and accountable democracies." The Strategy highlights human rights as an objective integral to its broader development agenda, emphasizing more country-specific approaches and timelines for support and post-support plans. It notes that this new approach is a response to emerging challenges such as increased globalization and communications, barriers to democratization such as conflict and hybrid political systems, pervasive corruption, and barriers to participation and inclusion. By explicitly linking human rights to its development mission, USAID's objectives reflect a broader trend among donors, known as Human Rights Based Approaches that treat human rights improvements as a primary goal of development.⁶⁴

To achieve these broader goals, USAID commits to four development objectives (DOs) and attendant sub-objectives: First, "promote participatory, representative, and inclusive political process and government institutions." This entails assisting development partners in promoting freedom of expression, promoting a "politically engaged and informed citizenry," and supporting "participatory political processes." Second, foster greater accountability of institutions and leaders to citizens and to the law. This DO entails a range of issues ranging from electoral assistance enhancing institutions' ability to strengthen checks and balances. Third, "protect and promote universally recognized human rights," including supporting mechanisms and institutions that promote this critical right. Fourth, "improve development outcomes through the integration of DRG principles and practices across USAID" by improving marginalized groups' access to public service delivery. Legislatures play a significant role in each of these areas and in terms of USAID's understanding of the context in which assistance takes place. The transition to more country-tailored DRG approaches shows a momentous change in thinking.⁶⁵

Legislative training programs have certain advantages over other types of capacity building. There are a finite number of legislators, meaning that it is possible (and cost effective) to interact with a large share of the institution overall rather than merely a small but

⁶⁴ World Bank and Organization for Economic Cooperation and Development. 2013. *Integrating Human Rights into Development: Donor Approaches, Experiences, and Challenges*. 2nd ed. Washington, DC.

⁶⁵ US Agency for International Development. *Strategy on Democracy, Human Rights, and Governance* http://www.usaid.gov/sites/default/files/documents/1866/USAID%20DRG_%20final%20final%206-24%203%20%281%29.pdf <accessed 6 July 2015>.

representative sample. This means that selection decisions are simplified *ex ante*, as opposed to development assistance or civil society training, where donors typically must choose from among hundreds, or even thousands, of potential recipients and partners. Barkan, in his study of African cases, suggested that legislatures contribute the most to democratization where there is a “coalition of reformers” within the legislature. This may submit donors to suggestions of bias by implicitly excluding some legislators, but the existence of such subsets clearly simplifies the tasks of targeting and assessing D&G work, and if Barkan’s hunch is right, advances democracy as well.

Lessons Learned

Prior to a seminal academic study in 2007, hardly any empirical research attempted to disaggregate international assistance by discrete sectors; rather, broad categories such as health or education were analyzed. Finkel *et al.*’s research, using unique data from USAID, focused on D&G, determining that narrowly targeted assistance at the “micro level” such as organizing an election or training parliament is more effective. A shortcoming of the study is its use of Freedom House data to measure democracy, as well as its limited use of variables to control for intervening factors that could impact such targeted aid, which as noted earlier is typically small. More controversially, the study identified an *inverse* relationship between D&G assistance and human rights protections – a surprising finding that the authors reasonably speculate could be the result of increases in human rights reporting in recipient countries.⁶⁶ Since the Finkel *et al.* study, a burgeoning literature has considered the international drivers of democratization, more fully situating aid within broader diffusion effects such as cultural exchange, communication density, and trade ties. Most prominently, Levitsky and Way conclude that these “linkages” are more likely to contribute to democratization than “leverage” exercised through sanctions or military force. Their study focuses only on illiberal hybrid regimes in the post-Cold War era, and legislatures are scarcely mentioned.⁶⁷ But the study has constructively challenged previous analyses focused on either domestic elite splits or protest movements as sources of democratization, and it offers an empirical approach to studying the sort of international diffusion effects that captured the world’s imagination after Tunisia’s liberalization. A recent study of the Arab Spring concludes that thus far that this diffusion “has yielded a depressingly modest harvest.”⁶⁸

In this sense, the limited success of diffusion effects during Arab Spring should moderate hopes that targeted D&G assistance can drive further democratization. Some accounts of the Arab Spring argue that the elite impetus for reform – even in the midst of popular uprisings such as Tunisia’s – remains relevant.⁶⁹ For USAID the issue is that an LSP could miss the mark by improperly assessing where the locus, and the momentum, for reform resides.

⁶⁶ Finkel, Steven, Anibal Perez-Linan, and Mitchell Seligson. 2007. “The Effects of U.S. Foreign Assistance on Democracy Building, 1990 - 2003.” *World Politics* 59 (3):404-39.

⁶⁷ Levitsky, Steven, and Lucan Way. 2010. *Competitive Authoritarianism: Hybrid Regimes After the Cold War*. Cambridge and New York: Cambridge University Press.

⁶⁸ Brownlee, Jason, Tarek Masoud, and Andrew Reynolds. 2015. *The Arab Spring: Pathways of Repression and Reform*. New York: Oxford University Press, p. 5.

⁶⁹ Kamrava, Mehran. 2014. “The Rise and Fall of Ruling Bargains in the Middle East.” In *Beyond the Arab Spring: the Evolving Ruling Bargain in the Middle East*, ed. M. Kamrava. London: Hurst & Company, pp. 17-45

Several other important critiques and debates emerge from the literature on LSPs and D&G assistance. Is aid better directed toward institutions or education on issues? Burnell argues for issue-based support, suggesting that it is less politically sensitive than institutional support aiding political parties. Issue-based support may make legislators competent on the issues, enabling them to hold the government accountable while “subverting” their clientelistic dependency on the executive. Civil society linkages can also play a constructive role for legislators with this task.⁷⁰ Dias and Taylor argue that such approaches are especially appropriate for enhancing human rights capacity.

Dias and Taylor also identify the duration of assistance as a second important concern impacting the efficacy of LSPs. Australia’s state legislatures, which formally partner with Pacific island nations, suggests a step in the right direction by building sustainable institutional ties. The UNDP, which spends about 40 percent of its budget on D&G work, including 60 LSPs, also takes a long-term approach by assisting both legislators and staff development.⁷¹ To support this work, it created the Parliamentary Development Team and the Global Programme on Parliamentary Strengthening (GPPS), which receives about 8 percent of the budget for Global Programmes in Democratic Governance, or \$2.4 million.⁷² In an analysis of American D&G, Schulz argues that to be effective, LSPs must entail a long-term commitment and be explicitly situated within other aid programs and activities.⁷³ Much like the above discussion about judicial substitution, LSPs need to be tailored not just to the political history but to the particular institutional arrangement. Sustained engagement is important if aid is to have meaningful impacts and build relationships of trust between donors and program participants. A good rule of thumb would be a commitment to programming and training that extends at least beyond the next election cycle in the recipient country.

A third critical observation concerns executive bias in programs. Because donors typically approach incumbent officials in the executive branch, LSP assistance could be seen as an effort to weaken the executive.⁷⁴ Donors therefore become risk averse, avoiding issues such as impeachment procedures or comparative constitutional considerations on term limits, issues discussed earlier. Based on case studies from Rwanda and elsewhere, Rugumamu argues that when D&G goes around the legislature, it unintentionally strengthens already strong presidents.⁷⁵ Power agrees, arguing that longevity is important to address high turnover in many legislatures as well, which undermines the development of expertise.⁷⁶ Interestingly though, democracy assistance programs in the Middle East and North Africa show very few signs of executive bias. “Beyond support for elections and democratic institutions, such as legislatures,” writes a new study of democracy assistance, “such aid typically bypasses the more official top-

⁷⁰ Burnell, Peter. “Legislative Strengthening Meets Party Support in International Assistance: A Close Relationship?” *The Journal of Legislative Studies* 15, no. 4 (2009):460-480.

⁷¹ Deveaux, Kevin. International Support to Parliament: A UN Perspective. *Canadian Parliamentary Review* 33, no. 1 (2010): 9-11.

⁷² UNDP. Democratic Governance. Fast Facts: United Nations Development Programme. October 2011. <http://www.undp.org/content/dam/undp/library/corporate/fast-facts/english/FF-Democratic-Governance-2011.pdf>

⁷³ Schulz, Keith. “How the United States Supports Democratic Development Overseas.” *Canadian Parliamentary Review* 31, no. 1 (2008): 23-27.

⁷⁴ Azevedo-Harman, op cit.

⁷⁵ Rugumamu, Severine M. “Capacity Development in Fragile Environments: Insights from Parliaments in Africa.” *World Journal of Entrepreneurship, Management and Sustainable Development* 7, no. 2-4 (2011): 114-175.

⁷⁶ Power, op cit.

down aid channels to assist groups and implement projects directly or through third parties, including an increasingly broad and active set of international private voluntary organizations (PVOs).” This is notable given the increase in the region’s share of overall aid since 1989 and especially since 2001. By 2010, about 25 percent of US aid to MENA states was devoted to democracy assistance, compared to less than 20 percent for the rest of the world. This means that democracy assistance specifically constitutes a larger proportion of aid to the region compared to other regions.⁷⁷ So while executive bias is a valid concern, once again the Arab Spring points to strong countervailing trends.

Despite this important research, much of which utilizes primary sources from D&G studies, additional empirical research on legislatures and human rights is needed in developed and developing countries alike. In Europe, Hunt points out, little is known about the role of parliaments in fulfilling the positive obligations generated by human rights instruments. In global terms, no systematic comparative research has emerged from the Inter-Parliamentary Union (IPU) survey bringing together legislator attitudes on human rights with measures of parliamentary effectiveness.⁷⁸

Based on the literature review and the above analytical studies of D&G, legislative strengthening could have a systematic impact on democratization and human rights in at least three ways. First, LSPs could simultaneously strengthen both democracy and human rights. We would expect to identify parallel effects, meaning that all good things truly do go together. Such results here could be highly contingent upon the type of measure used for democracy in any statistical examination. For example Freedom House’s civil and political rights are often equated with democracy, which could confirm the hypothesis. Alternative measures of democracy, primarily the Varieties of Democracy project, whose full data will be released in late 2015, aim to address such shortcomings. This would justify and reinforce the current USAID approach, as well as the UN Secretary General’s rhetoric at the outset.

Second, LSPs could improve human rights or democracy, but not necessarily at the same time. We can think of this in terms of two possible divergences. In (a) democratic stagnation could occur, for example, in an authoritarian regime undergoing a period of liberalization in order to deter deeper discontent. The early democratization literature argued that dictators struggle to control the pace or depth of liberalization once they make modest concessions. But a key point of Levitsky and Way and the current generation of research is to highlight the adaptability of autocrats, enabling openings to serve as “pressure valves” for frustration.⁷⁹ In the other divergence, (b), an LSP improves democracy but not necessarily human rights. This is plausible for the reasons offered by Finkel et al., as well as the scenarios mentioned in relation to majoritarianism and minority rights: by seeming to validate majority will automatically, minorities of various stripes are outnumbered and outvoted – advancing collective participatory components of democracy but undermining liberal ones.

⁷⁷ Scott, James M., and Ralph G. Carter. 2015. “From Cold War to Arab Spring: Mapping the Effects of Paradigm Shifts on the Nature and Dynamics of US Democracy Assistance to the Middle East and North Africa,” *Democratization* 22, 4 (2015), pp. 738-63.

⁷⁸ Hunt, Murray. 2015. “Enhancing Parliaments’ Role in the Protection of Human Rights.” In *Parliaments and Human Rights: Redressing the Democratic Deficit*, ed. M. Hunt, H. J. Hooper and P. Yowell. Oxford and Portland, Oregon: Hart Publishing, pp. 469-83.

⁷⁹ Brownlee, Jason. 2011. “Executive Elections in the Arab World: When and How do they Matter?” *Comparative Political Studies* 44:807-28.

Third, LSPs could initiate or accelerate a chain of causal effects. For example, legislative strengthening enhances democracy, as Barkan (2009) argues, which then deepens the commitment to human rights. But this happens only because of some intervening phenomena, such as the growth of middle class business alliances that alter the basis for electoral politics. Arriola, for example, suggests that multi-ethnic private sector coalitions are prevailing over old ethnic parochialism that drove wedges through African politics for decades.⁸⁰

A fourth broad possibility is a complicated feedback effect. In this scenario, legislative strengthening could enable conditions for improved human rights monitoring that then contributes to democratization but which is essentially only possible under particular initial conditions of democracy.

In a fully specified study, each one of these potential relationships would also have to take into consideration a broad array of contextual or intervening factors, such as those identified in large literatures. Hopefully such research will be undertaken in the future. However, since this project is the first general attempt to assess LSPs by USAID, it is more important at this stage to explore how different USAID goals interact with the theoretically possible relationships and to provide some suggestions for programmatic purposes and for future empirical testing. The case studies in the next section add some depth to the above generalizations, making the case for democracy promotion with prudence and participation.

V. CASE STUDIES: NIGERIA AND UGANDA

Research Design and Selection Criteria

The time and funding constraints noted earlier limited our ability to pursue empirical cross-national analyses that could test some of the intuitions developed above or observations from the secondary literature. In this section we therefore probe some of our key insights through a comparative analysis of two cases: Nigeria, drawing on a desk study with remote interviews, and Uganda, drawing on original research in the field. Research was conducted from April to September, 2015. An immediate objective of this analysis is to provide a preliminary empirical basis for assessing causal relationships between legislatures and human rights, and secondarily for considering the possibilities that external technical assistance can amplify such relationships. In addition, we sought to clarify the complexities of intervening factors mentioned above, as well as identifying any additional ones. Such factors would need to be considered in a more comprehensive or quantitative analysis of LSPs.

With these objectives and limitations in mind, our case selection strategy considered six criteria, three centered on baseline similarities between cases, and three that identified dichotomously oriented differences between the cases. First, we selected a pair of African countries. Focusing on Uganda and Nigeria has some disadvantages, because America's ties are historically more recent and arguably shallower compared to other parts of the world in terms of density of bilateral ties. But it also balances the regional focus apparent in other parts of the project, providing a more holistic picture of legislative strengthening. Moreover, it helps control for geographical or cultural factors, thus reducing risks associated with omitted variable bias while enabling us to control for considerations such as colonial legacies. Nigeria and Uganda

⁸⁰ Arriola, Leonardo. 2013. *Multi-ethnic Coalitions in Africa: Business Financing of Opposition Election Campaigns*. New York: Cambridge University Press.

both experienced indirect rule under the British, creating a distinct institutional heritage characteristic of other Anglophone countries' experience with interest groups, electoral systems, media, state-building bureaucracy, and constitutionalism (Widner 1994).

Second, our case studies have both received sustained legislative strengthening at meaningful levels. Ideally the aid would be continuous. But since the project data illustrates this is rarely the case, multiple programs over a period of time is sufficient. This engagement is important if aid is to have an institutional impact deeper than any specific government in power. The "meaningful levels" threshold is important in order to reduce "crowding out effects" of different aid objectives, including those of other donors. This also better positions implementers to situate their programmatic work within broader multinational donor coordination efforts. USAID spent about \$10.4 million across four programs in Nigeria between 1999 and 2008, and \$9.8 million across three programs in Uganda between 1998 and 2007.

As a third criterion, we focused on cases that are important strategic allies of the United States. This increases the likelihood that the USG values the legislative strengthening within its overall country strategy. But "strategic" also means that it is important to look for lessons learned about how donor and recipient alike managed competing policy priorities.⁸¹ Did recipients actually prioritize human rights or democratic practices such as transparency or public participation over national security? Both cases are important USG allies on different fronts of counter-terrorism: Nigeria's Islamic insurgents aligned with the Islamic State in the Levant (ISIL) and exported conflict to neighboring Cameroon – raising broader concerns for West Africa. Uganda has been a secular and military bulwark against al Shabaab's threat to East Africa. Both cases have seen expanded military ties too – directly in Uganda's case as US advisors have collaborated closely with troops pursuing the warlord Joseph Kony. Such activities constitute an important test for domestic human rights institutions and democratic constituencies.

While the first three criteria establish that the two cases are comparable, worthy of attention, and can be effectively studied side-by-side, the remaining criteria refer to salient differences. Despite these differences, representing highly plausible causal forces common in the literature, we present data illustrating a decline in physical integrity-based human rights and to some extent, in democracy, too. Like the other teams involved in the broader LSP project, our analysis is not a technical programmatic assessment that follows standards of foreign aid monitoring and evaluation. Our analysis focuses on macro-level outcomes and the potential intervention of broad historical or contextual factors that could impact assistance.

Thus our fourth criterion for selection was different histories of party formation. Parties provide an institutional basis for cooperation between legislatures and executives, or in the relatively rare case of divided government in the developing world, the organizational basis for competing leadership recruitment streams. They also provide the basis for internal coordination for the exercise of checks and balances, or alternatively, for one branch (typically the executive) to dominate through control of campaign resources, ballot access, or leadership appointment. Here we focus on an important historical distinction across African experiences: endogenous social movement legacies with roots in nationalist movements or in economic liberalization protests during the 1980s⁸² compared to national liberation movements, which

⁸¹ Francis, David J., ed. 2012. *Policing in Africa*. New York: Palgrave MacMillan.

⁸² Boafo-Arthur, Kwame, ed. 2007. *Ghana—one Decade of the Liberal State*. New York: Zed Books.

struggle to shed secrecy and coercion and are slow to embrace political competition.⁸³ Nigeria's parties fit the former mold, with elite political links to broad-based social movements for decolonization and later for democratization. By contrast, Uganda has experimented with one-party and "no party" politics and the ruling party has been in power since it emerged victorious from the bush in 1986. One could therefore expect Nigerian parties, and perhaps legislators, to have access to constituent counter-forces to balance executive power. But are there incentives for legislators to do so? In Nigeria, as in Uganda, a single party has dominated legislative and executive branches. We aim to distinguish the effects of this common experience from the divergent paths to party development.

A fifth criterion relates to executive tenure and legislative authority to reallocate regime power. Our cases sharply diverge on this point: Uganda's president successfully modified the constitution to to maintain his eligibility for office, essentially in exchange for an opening up in the party system (Tangri and Mwenda 2010). However in Nigeria, when President Olusegun Obasanjo orchestrated a campaign to modify the constitution, the Senate decisively voted down the proposal, arguably deepening legislative institutional development.⁸⁴ This is important for our purposes because tenure extension offers a critical test for legislative power.

Sixth, we sought cases with contrasting histories of civil-military relations. Coups have a lasting impact on democratic behavior long after a successful transition back to civilian rule. They discourage legislatures from reining in security services, and retired soldiers often enter civilian politics, forming a powerful political interest group. Nevertheless, robust political liberalization seems to "inoculate" democracies from coups, as discussed in the literature review above. Nigeria has had at least six coups since 1966, and two coup "scares" since the 1999 transition – one in 2004 and another in 2010 during a succession crisis following the natural death of the president while in office. Uganda has never had a coup, unless one counts the current president's victory as a bush rebel in 1986.

In addition to an extensive review of the secondary literature, we carried out semi-structured interviews with politicians, former politicians, civil society activists, and bureaucrats. Questions fell into several categories. From civil society, we sought a general characterization about space for associational life, information about the kind of work and type of groups engaged in advocacy or issue development with the legislature, and an assessment of how legislators handle "major incidents" concerning "public safety." From members of parliament, we asked about the general effects of foreign donor training on the legislature, as well as questions pertaining to the committee structures for oversight in general and for security services in particular, whether members have relevant experience for their assigned committees, agenda control for such committees, and frequent interaction with civil society. We also sought information about members' relations to their parties, in order to understand whether there are any advantages of developing an expertise in domestic human rights concerns. Another set of questions asked subjects to characterize human rights over time in their country, and about the kind of people (academics, activists, ordinary police officials, victims, etc.) who provide information to legislative committees. We also inquired about any

⁸³ Lebas, Adrienne. 2011. *From Protest to Parties: Party-building and Democratization in Africa*. Oxford: Oxford University Press.

⁸⁴ LeVan, A. Carl. 2015. *Dictators and Democracy in African Development: the Political Economy of Good Governance in Nigeria*. New York, NY: Cambridge University Press.

shifts over time in legislators' willingness to investigate problems with police or the military. Even with prodding, many respondents interpreted this question to only apply to criminals or insurgents and not state violence. We also asked about the general perception of donors interested in enhancing democracy, and willingness to receiving training specifically on human rights protections.

Case Study: Nigeria

We begin by situating the development of Nigeria's legislature in historical and political contexts, drawing upon secondary sources and a desk study that includes telephone interviews. It proceeds first with a summary of Nigeria's democratic opening, noting previous failed attempts at democracy and enduring legacies of colonialism and military rule as well as other factors that research associates with adverse democratic development, such as an oil economy and ethnic politics that undermine public goods. Second, it describes the state of the National Assembly since the 1999 transition to democracy, summarizing significant developments related to legislative institution building, relations with non-governmental organizations (NGOs) and the media, the party system, and elections. Third, it outlines legislative strengthening programs since 1999, noting an unusually significant capacity for in-house training. Little information is available to assess the impact of these programs. Fourth and finally, the case study summarizes the legislature's oversight functions, including its role in fighting corruption – and sometimes participating in it. This discussion also includes examples of successful assertion of legislative authority over the executive, suggesting a capacity for checks and balances within a presidential system and a bicameral legislature. These features of democratic development have been undermined by frequent turnover of Assembly members, concentration of the economy in the oil sector that raises the stakes for federal control of power, and arguably shifts within civil society's disposition and strategic incentives. A violent Islamic insurgency that has killed upwards of 13,000 people since 2009 has complicated the institutional oversight of human rights, as there has been little domestic criticism of the government's role in abuses, which include the deaths of thousands of terrorism suspects while in custody.

Introduction: Nigeria's Democratic Opening

Nigeria's election of Olusegun Obasanjo as president in 1999, following the unexpected death of the brutal dictator Sani Abacha, ushered in the longest stretch of democracy since independence from Britain in 1960. This upward trajectory in democratic development followed a path of modest but meaningful successes and reforms, culminating with the country's first party turnover in April, 2015, with the defeat of the ruling People's Democratic Party (PDP) for the presidency, control of the National Assembly, and most of the 36 governorships. Previous elections had been either procedurally flawed, violent, or both. The elections in 2003 were the first organized by a civilian regime that were not followed by significant violence, but they were considered barely acceptable by international and domestic observers.⁸⁵ The 2007 elections constituted the first time one civilian government handed over power to another but were deeply flawed and widely condemned.⁸⁶ The 2011 elections were praised as free and fair

⁸⁵ Kew, Darren. 2004. "The 2003 Elections: Hardly Credible but Acceptable." In *Crafting the New Nigeria: Confronting the Challenges*, ed. R. I. Rotberg. Boulder: Lynne Rienner Publishers.

⁸⁶ Omotola, J. Shola. 2010. "Elections and Democratic Transition in Nigeria under the Fourth Republic." *African Affairs* 109 (437):535-53.

but were immediately followed by violence that killed over 800 people.⁸⁷ Thus the 2015 victory for the All Progressive Congress (APC) turned a new page entirely with the defeat of an incumbent party in the freest and fairest election since 1959 as well as a geographical distribution of support that transcended ethno-regional cleavages rooted in historic and cultural differences between the predominantly Muslim North and the largely Christian South. This progress toward democratic consolidation in Nigeria is especially notable given the failures of previous attempts at democratic governance in the First Republic (1960-1966) and the Second Republic (1979-1983). This section provides a brief historical background to the country's political opening in 1999 and outlines how colonial legacies, military coups, ethnic divisiveness, and competition over oil rents all presented barriers to democracy.

The democratic cards seemed to be stacked against a successful transition in 1999, with a history of institutionalized ethnic politics, recurring military disruptions of civilian rule, and the onset of the "oil curse" that accompanied a rise in corruption. Obasanjo's selection by the PDP as its presidential candidate was a double-edged sword: as a war hero in the Civil War (1967-70) and later as a dictator who oversaw the 1979 transition, he had the military's respect. But he also brought familiar heavy handed habits to the presidency, for example, by providing few details about federal spending proposals, surrounding the Senate President's house with federal security forces during a legislative dispute over a bill, and bombing villages in the Niger Delta (notably Odi, in Bayelsa) that had lashed out against military operations there. Human rights organizations spoke out against the military's abuses, but a truth commission known as the "Oputa Panel" formed by the government during the transition to investigate past abuses had a limited mandate, and its full report has never been made public.

During the transition, civil society organizations pulled together into a large umbrella coalition, the Transition Monitoring Group. The TMG has monitored elections ever since the transition in 1998-1999. Many of its members underwent a period of adjustment from more adversarial work during the dictatorship to policy advocacy and public education; this often colored its contacts with the National Assembly, whose members were typically reluctant to engage civil society. Nigeria has experienced ongoing, serious human rights violations since the early post-transition years. This is graphically illustrated by data on physical integrity from the Cingranelli and Richards dataset (2010).⁸⁸ One activist argued that donors have provided little support for any human rights work critical of the government, meaning for example, that whistleblowers have little protection. National Assembly members have few incentives to investigate human rights problems, particularly around the time of elections.⁸⁹ One large private foundation commented, in a recent meeting in Washington, DC, that assertive organizations such as Constitutional Rights Project and Civil Liberties Organization are gone, and that civil society is doing little to hold the government accountable on security issues, adding that many CSOs operate more like think tanks rather than the constituency-oriented organizations they were during pro-democracy struggles in the 1980s and 1990s.

Another, separate shift in civil society relates to the prominence of cultural organizations grounded in each of the three major regions with ties to parties and politicians. For example,

⁸⁷ Human Rights Watch. 2011. "Nigeria: Post-Election Violence Killed 800." New York: Human Rights Watch.

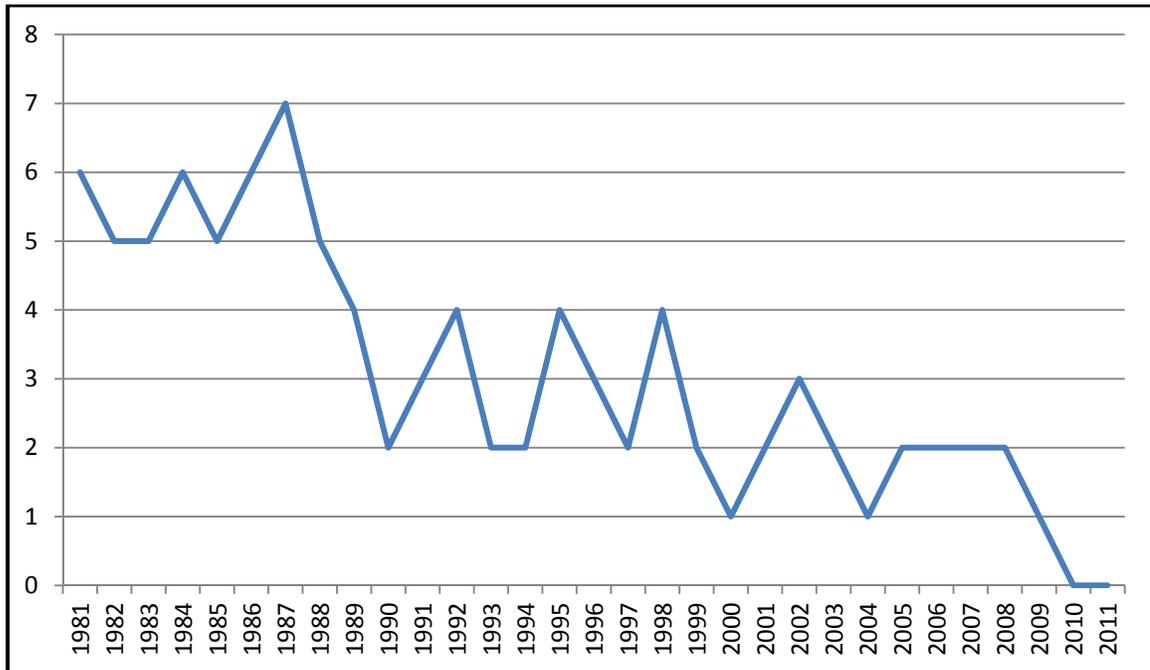
⁸⁸ Cingranelli, David L., and David L. Richards. 2010. "The Cingranelli and Richards (CIRI) Human Rights Data Project." *Human Rights Quarterly* 32:395-418.

⁸⁹ Telephone Interview, Kemi Okenyodo, CLEEN Legal Foundation. 24 July 2015.

Afenifer formed as a socio-cultural organization among Yoruba and maintains close links to Southwestern politicians, while the Arewa Consultative Forum plays a similar role in the North, linking traditional elites with contemporary politics and politicians.⁹⁰ Endorsement or criticism from these organizations is weighed heavily for candidates or policy questions. Their public statements on presidential powers, negotiating with militant groups, constitutional revision and other issues sometimes accent ethnic or regional interests rather than the issue-based organizations that have proliferated since the transition.

The 1999 Constitution, hastily promulgated before the inauguration, was substantially based on the 1979 version that set up a presidential system with a bicameral legislature. But unlike the vast majority of constitutions promulgated in the post-Cold War wave of democratization, it was not subject to any kind of public referendum. The reality of a decreed constitution legitimized arguments by minorities and ethnic nationalists agitating for a Sovereign National Conference styled after Francophone African countries where constitutions were re-written through direct citizen involvement.⁹¹

Figure 1: Physical Integrity Rights, 1981 - 2011



⁹⁰ Adebani, Wale. 2014. *Yoruba Elites and Ethnic Politics in Nigeria: Obafele Awolowo and Corporate Agency*. New York, NY: Cambridge University Press.

⁹¹ Onwudiwe, Ebere. 1999. "On the Sovereign National Conference." *Issue: A Journal of Opinion* 27 (1):66-8.

The Functioning of Nigeria's National Assembly since 1999

Elections for the National Assembly are held concurrently with presidential election, though the precise timing has been a recurring point of contention during at least two previous cycles of electoral reform. As noted, national elections were held in 1999, 2003, 2007, 2011, and most recently in April 2015. Among the freshmen elected in 1999, more than 80 percent had never held elected office, amplifying a weak institutional bargaining position vis-à-vis the executive. The Assembly has continued to have surprisingly high rates of turnover, notably in 2007 and 2015. This has undermined institutional memory and the application of legislative experience to recurring questions such as the legislative authority to modify the president's federal budget. One former member estimates that 300 out of the 360 members of the House elected in 2015 were freshmen; high attrition, in that member's view, weakens the institution.

While up to 30 parties have competed in the presidential elections, and small regional parties have managed to secure some governorships and National Assembly seats, competition since 1999 has repeatedly played out among about three parties. Until the 2015 elections the PDP was clearly dominant at all levels of government, while the other two larger parties underwent several name changes and efforts to consolidate or form coalitions. The APC formed from such a merger of parties, including the All Nigeria Peoples' Party (ANPP), the Action Congress Nigeria (ACN), the Congress for Progress Change (CPC) and a few small parties. The persistence of smaller parties, despite a Single Member District – plurality electoral system that tends to consolidate around two large parties, was attributed to their strong regional appeals. For example, ACN dominated the Yoruba Southwest and ANPP was strongest in the Northeast and Northwest. The APC's presidential victory in 2015 is all the more remarkable since the party is less than two years old. Since many of its members are disgruntled PDP defectors, it now faces challenges for internal democracy. While members may be able to win election or re-election when they are unpopular with the executive branch, it is very difficult to do so against the wishes of the party. Local and regional "godfathers" often interfere in such disputes, throwing resources behind their preferred candidates and undermining the transparent selection of candidates.⁹²

Like the early years of President Obasanjo's tenure, the National Assembly under APC leadership is already clashing with the party leadership. This happened shortly after the 2015 election when APC Senators elected a leadership opposed by the party organization. Acute tensions between the legislative and executive branches are common, even though Nigeria has yet to experience "divided" government, with different parties controlling different branches (or "arms" as Nigerians typically refer to them). Ordinary citizens often see this as petty, while politicians often lament such behavior as a case for more disciplined parties.⁹³ The African Legislatures Project (ALP) examination of the "role orientations" of legislators ranked partisanship in Nigeria's National Assembly the lowest in eleven African countries.⁹⁴ However this can also be interpreted as a sign of institutional development, as the Assembly asserts its

⁹² Ayoade, John A. A., and Adeoye A. Akinsanya, eds. 2013. *Nigeria's Critical Election, 2011*. Lanham: Lexington Books.

⁹³ Dan-Musa, Iro Abubakar. 2004. *Party Politics and Power Struggle in Nigeria*. Edited by A. Ubani. Abuja: Regent Publishing.

⁹⁴ Kimberly Smiddy. "MP Role Orientation: Key Findings from the African Legislatures Project." <http://www.awepa.org/wp-content/uploads/2013/12/Institute-for-Parliamentary-Support-in-Africa-IPSA-MP-Role-Orientation-and-Legislative-Performance-in-Africa-Key-Findings-from-the-African-Legislatures-Project.pdf>

independence by choosing its leadership or setting the legislative agenda as the case may be. There have only been a handful of presidential veto overrides, but they were on high profile legislative issues such the Niger Delta Development Commission.⁹⁵

The National Assembly's efforts to limit executive discretion offer examples of this institutional development. For example, the Senate voted down President Obasanjo's attempt to modify the constitution in 2006 in order to run for a third term. Legislators played a constructive role in resolving the constitutional crisis that began in November, 2009, when Obasanjo's successor, Umaru Musa Yar'Adua, fell ill and completely disappeared from public view for nearly six months. It has also contributed to broad institutional reforms with the creation of the Economic and Financial Crimes Commission (EFCC) as well as a commission to coordinate development efforts in the polluted and disgruntled Niger Delta region. The Assembly has also at various times contributed to democratic control over government spending through its role debating and overseeing the federal budget. This has been especially important over the last decade, as Nigeria's economy grew at about 7 percent annually, emerging as the largest economy in Africa in 2014. After nearly half a century depending on oil revenues for almost all foreign export earnings, the economy showed signs of diversification over the last decade, primarily due to expansion of the service sector, which accounts for 57 percent of recent Gross Domestic Product growth.⁹⁶ But if the National Assembly's support for debt relief in 2006 – agreeing to pay off virtually all of the country's foreign debts – was a shining moment of fiscal prudence, numerous corruption scandals resulting in the removal of its leadership were low points.⁹⁷ Its spending on itself appeared to reach profligate levels in 2014 (by some estimates nearly a quarter of the federal budget). Afrobarometer surveys show an increase in percentages of Nigerians since 2001 who say that “most” or “all” of the National Assembly is involved in corruption.

Surveys released shortly before the 2015 election suggest while large minorities favor strong executive power, citizens appreciate the importance of separate and sovereign legislative institutions. Two-thirds (68%) of Nigerians say law-making power should rest with the National Assembly, “even if the president does not agree,” but a significant minority (25%) say the president should “pass laws without worrying about what the National Assembly thinks.” More pointedly, a clear majority of Nigerians (58%) say the National Assembly “should ensure that the president explains to it on a regular basis” how public funds are spent, while 40% say the president should be allowed to govern freely without “wasting time” to justify expenses.⁹⁸

Civil society played constructive roles on specific issues, such as the passage of a Freedom of Information bill, after a long public campaign to pass it.⁹⁹ The 2010 electoral reforms passed by the National Assembly similarly benefitted from detailed input from a broad electoral reform

⁹⁵ LeVan, A. Carl. 2015. *Dictators and Democracy in African Development: the Political Economy of Good Governance in Nigeria*. New York, NY: Cambridge University Press.

⁹⁶ African Development Bank. *Africa Economic Outlook, 2015*. <http://www.afdb.org/en/countries/west-africa/nigeria/nigeria-economic-outlook/>

⁹⁷ Lewis, Peter M. 2009. "Rules and Rents in Nigeria's National Assembly." In *Legislative Power in Emerging African Democracies*, ed. J. D. Barkan. Boulder: Lynne Rienner.

⁹⁸ Nengak Daniel Gondyi, Raphael Mbaegbu, and Peter Lewis. “Nigeria’s pre-election pulse: Mixed views on democracy and accountability.” Afrobarometer Dispatch No. 18. 23 March 2015.

⁹⁹ Telephone interview, Emmanuel Anyaegbunam, African Centre for Parliamentary and Constitutional Studies. 25 June 2015.

coalition. However on many other issues it has been less engaged. Several years ago the Assembly established a civil society liaison office, but its impact is unclear. Some organizations questioned why one particular CSO runs the office and raised questions about coordination or favoritism, complaining about the difficulty of even physically entering the Assembly now, compared to a few years ago. Other CSOs portrayed a more cooperative relationship with the National Assembly, pointing to the constructive role of lawyers' groups in passage of the Violence against Persons Act and the Tobacco Control Act, where groups submitted a memo and were invited to testify.¹⁰⁰ The electoral reform bill was not passed in 2014, despite pressure from civil society. Politicians consulted for this project argued that CSO involvement with the National Assembly has declined.

After the 1999 transition, legislators often viewed the media suspiciously – a legacy of journalists' role in exposing the crimes of military governments. Systematic outreach to the media has improved significantly, but this has also given journalists privileged access that discourages them from uncovering corruption or political disputes, rather than reporting on those that have already spilled out into view. The Committee to Protect Journalists reports that journalists faced increased threats to their personal safety leading up to the 2015 election, mostly due to the environments in which they work. Another alarming trend is the foreign media's declining access to the country.

History of Legislative Strengthening Programs in Nigeria

From 1999-2003, the Mississippi Consortium for International Development provided technical assistance and training to state legislators and other local elected officials. The \$1 million grant from USAID funded work developing and strengthening legislature process and procedures, developing constituency relations and improving the relationship between the legislative and executive branches. From 2000 to 2001, USAID provided \$1.1 million to the National Democratic Institute for International Affairs (NDI) to provide technical assistance to the National Assembly to improve legislative-executive relations and information technologies.¹⁰¹ In 2001, an additional \$2.2 million grant included an expanded mission to build skills of constituency staff; conduct seminars on economic growth, trade, poverty alleviation, and HIV/AIDS issues; develop a legislative internship program; and strengthen the public hearing process. Then, from 2003 – 2008, CEPPS partners implemented a \$6 million grant to strengthen the capacity of National Assembly committees in areas of legal drafting, budget preparation, oversight, civil society outreach and constituent relations. At the time of this writing, no monitoring and evaluation information was available to empirically assess the specific impact of these programs. But nearly all of the sources contacted for the desk study were aware of either USAID's or NDI's work.

Unlike many countries, the National Assembly allocates a significant amount of money for in-house training. It established a Policy Analysis and Research Project (PARP) in 2003 with assistance from African Capacity Building Foundation (ACBF). Then in 2011 President Goodluck Jonathan signed into law a bill expanding these services with the establishment of the National Institute for Legislative Studies (NILS). Its mission statement describes it as “a world class multi-disciplinary institution capable of providing training, capacity building, research, policy analysis

¹⁰⁰ Telephone interview, Abubakar Jimoh, Civil Society Legislative Advocacy Centre. 24 June 2015.

¹⁰¹ The author led this program for NDI.

and extension services for the legislature at the Federal, State and Local government levels.” NILS offers research assistance to committees, including evaluating and monitoring implementation of annual budgets. Each of Nigeria’s 36 state governments allocates a share of its budget for training as well. Foreign trips consumed such a large share of the legislative training that several federal budgets have attempted to freeze spending on them.¹⁰² Foreign travel contributed to public perceptions that legislators are disengaged. In addition, interviews with several former members of the House suggest that the in-house services are underutilized or perhaps mismatched with their needs. According to one former member, the in-house training is “sometimes less comparative,” arguing that training for newly elected members would be better implemented by the parties.¹⁰³

It is clear from the research that the high rates of turnover mean that the skills and comparative knowledge acquired through training has a brief shelf life. Implementers need to consider intensive, extended orientations for freshmen with the election of each new Assembly.

The National Assembly’s Policy Roles and Oversight Functions

Despite the apparent consolidation of democracy in institutional terms, economic performance, and electoral administration, human rights violations by state and non-state actors have generally increased in recent years. This section discusses the National Assembly’s response to human rights concerns and other signs of its policy and oversight functions. Though the committee system suggests a high degree of specialization conducive to oversight, over half of the 109 members are committee chairs. According to the IPU, the average number of committees per legislature is 17 and 70 percent of the world’s legislatures have fewer than 20; astonishingly, Nigeria has 84 committees. Many members see little value in rank and file membership since chairs control significant resources for travel and other perks. The large number of committees contributes to fragmentation, and the high turnover rate (due in large part to party control over candidates and the Assembly leadership’s frequent rotation of committee assignments) undermines the development of expertise. Most interviewees commented that civil servants in the Assembly and in-house institutions with expertise are inadequate and under-utilized.

Human rights challenges since the transition have centered on several different kinds of issues, and the National Assembly’s willingness and capacity to oversee them has varied. One ongoing issue concerns “settler-indigene” conflicts, in which migrants to new states suffer discrimination; when they are from a different ethnic group or religion the sources of tension are amplified.¹⁰⁴ The Assembly discusses these issues, but has yet to address the citizenship laws and other legal reforms related to the Land Use Act (decreed under military rule) that might address some of the underlying causes. It has also discussed Islamic law after twelve states extended Sharia from civil code (a constitutional arrangement in effect since the 1950s) to criminal code. But like the courts, it has been reluctant to assert secular supremacy or otherwise decisively resolve the issue given the sensitivities between predominantly Muslim north and largely Christian south. The National Assembly has arguably been the most engaged with human rights issues in the Niger Delta, where militant groups launched a series of

¹⁰² See for example, Adebolu Arowolo, “2009 budget: Dead on arrival?” *PUNCH*, 8 December 2008.

¹⁰³ Telephone interview, Honorable Habeeb Fasinro. 23 July 2015.

¹⁰⁴ Keller, Edmond J. 2014. *Identity, citizenship, and political conflict in Africa*. Bloomington: Indiana University Press.

rebellions starting around 2004. By 2006, hundreds of foreigners had been held for ransom, and the oil sector, which at that time typically pumped about 1.5 million barrels a day, was losing up to a third of its capacity to “bunkering” or direct theft of oil from pipelines.¹⁰⁵ As noted above, the National Assembly created a commission to coordinate development in the region and generally supported an amnesty program launched in 2009-2010 to demobilize militants in the Niger Delta. It has been less reluctant to assess the overall success of the amnesty program or to investigate large government contracts that have made former militants wealthy.

The Islamic insurgency popularly known as Boko Haram, which has killed thousands of civilians since 2009, has consumed security concerns since at least 2013. President Jonathan was initially reluctant to treat the violence as a threat with national scope. In July 2014, a Gallup poll reported that 95 percent of Nigerians see the Islamic insurgency led by Boko Haram as a “major threat” to the country’s future, but also noted the fourth consecutive annual decline in confidence in the police, the military, and political leadership’s ability to handle the threat.¹⁰⁶ International human rights organizations have documented that the government’s security services are also responsible for thousands of suspects captured in broad counter-terrorism sweeps who then died in custody, some after being tortured.

The National Assembly’s roles in policy formulation and oversight have been limited. “Legislators have not done a good job,” commented one former member. “Much money has been allocated to fight the insurgency but there has not been necessary follow-up about how it has been used.”¹⁰⁷ Various advocacy organizations noted that national security oversight is impeded by secrecy. For example, the findings of a recent investigation into police mismanagement were never released. The National Human Rights Commission is engaged and public hearings take place but politics, but “politics interfere” and members have few incentives to report out disagreeable findings.¹⁰⁸ One organization focused on police reform in particular noted that the committee structure for oversight of human rights is adequate, but they “are not very accessible to citizens” and parties often do not choose members with relevant experience.¹⁰⁹ One former member of the House said that state abuses deserve scrutiny, but that there must be a balance with the victims of non-state groups as well. On such issues, he said the Human Rights Commission is “playing a good role” but expressed concerns that it needs to be more independent and its views may not carry sufficient weight for the National Assembly.

The National Assembly has successfully demanded additional details from executive branch spending proposals. Importantly, when President Goodluck Jonathan in 2014 sought to extend a federal State of Emergency that had been in effect in three northeastern states for a year and a half, the Senate imposed conditions on the extension, and declined his request for borrowing money for military operations.¹¹⁰ However the budget has become less transparent in other ways. For example, federal revenue allocations from the central government to the states are no longer published online. High rates of turnover impede the development of specialized

¹⁰⁵ Asuni, Judy Burdin. 2009. “Blood Oil in the Niger Delta.” Washington: U.S. Institute of Peace.

¹⁰⁶ Jay Loschky, “Nearly All Nigerians See Boko Haram as a Major Threat,” Gallup Poll, 9 July 2014.

¹⁰⁷ Telephone interview, Alex Nwofe. 23 July 2015.

¹⁰⁸ Telephone interview, Abubakar Jimoh, Civil Society Legislative Advocacy Centre. 24 June 2015.

¹⁰⁹ Telephone interview, Kemi Okenyodo, CLEEN Foundation. 24 July 2015.

¹¹⁰ Ogunmade, Omololu. 2014. “Senate Approves Extension of Emergency Rule with Full Military Operation.” *This Day*, May 21.

knowledge for budget oversight, and, according to one former member involved in budget process reform, staff expertise and institutional support for budget formulation and oversight remains inadequate.¹¹¹

Interviewees noted that when the party controls both the legislative and executive branches of government, members have few incentives to conduct oversight because the party influences committee assignments and typically controls primaries during election cycles. Still, the National Assembly successfully exposed corruption and waste on several occasions through its oversight work. A 2001 Senate Public Account Committee investigation into the Nigerian National Petroleum Corporation (NNPC) in 2001, Central Bank of Nigeria (CBN) and National Electric Power Authority (NEPA) revealed 2.3 billion naira that could not be properly accounted for. The Committee on Privatisation called the former Aviation Minister, Kema Chikwe, and the Director General Bureau for Public Enterprises (BPE) to testify on the mishandling of the privatisation of Nigeria Airways Limited (NAL) and establishment of a new National Airline.¹¹² It is difficult to assess the extent to which such efforts complemented the work of anti-corruption agencies such as the Economic and Financial Crimes Commission (EFCC), since they too have been doubted for casting nets so broad as to be less useful, or accused of being tools of the executive.¹¹³

Case Study: Uganda

Emerging in 1986 out of decades of conflict, Uganda resumed the path of democratization that began with independence in 1962 and was aborted with Idi Amin's coup d'état in 1970. Since 1986, Uganda has made great strides in the consolidation of democracy, but it has also faced many challenges. With the new constitution of 1995, The Parliament of Uganda has begun to emerge as an important player in the political milieu through its promotion of democratization, human rights, and checks on executive power. At the same time, Parliament faces a number of countervailing forces from other bases of power, particularly the executive branch. It is within this context that USAID spent approximately \$9.8 million between 1998 and 2010 on legislative strengthening programs (LSPs) to enhance the institutional capacity and democratic credentials of Parliament. Uganda's recent path of democratization and the corresponding international support it has received provide an opportunity to assess the role of Parliament in promoting democratic ideals and the alignment of LSPs to the needs of Uganda's legislature. In this case, the study particularly focuses on Parliament's impact on human rights.

This case study begins by providing an overview of Uganda's political landscape, examining its experience with democratization and legislative-executive relations. The study then analyzes the legislative milieu, describing the political party and electoral systems, the process of making policy, challenges faced by member of parliaments (MPs), independence from the executive, and MPs' relationship with constituents, civil society, and the media. This is followed by an analysis of the role of Parliament in promoting human rights. Next, this study explores LSPs

¹¹¹ Telephone interview, Honorable Habeeb Fasinro. 23 July 2015.

¹¹² Gado, Muddassir Ahmad, and Sanusi Abdulwasii. 2012. "An Assessment of the Legislative Inputs in Nigeria's Democratic Governance for Sustainable Democracy." In *50 Years of Nigeria's Nationhood: Issues and Challenges for Sustainable Development*, ed. D. A. Abdulrahman, I. S. Ogundiya, T. T. Garba and I. M. Dankani. Ibadan: Crown Publishers.

¹¹³ LeVan, A. Carl, and Patrick Ukata. 2012. "Nigeria." In *Countries at the Crossroads: A Survey of Democratic Governance 2012*, ed. S. Kelly, C. Walker and J. Dizard. New York: Freedom House.

implemented in Uganda, analyzing their impact and their alignment with the challenges and needs of Parliament. Following this assessment, the study compares the findings from some of the literature on legislatures and human rights to those of this study. The study closes with a summary of the main findings and their implications. To inform the writing of this case study, I conducted field research in Uganda in May 2015 with MPs, civil society, and government officials.

History of Democratic Opening

Uganda became independent in 1962 after 80 years of combined Imperial British East African Trading Company and Protectorate rule.¹¹⁴ Since then, strongmen, dictators, government repression, internal revolts, and more recently, democratization have characterized Uganda's post-colonial experience. In 1986 the National Resistance Movement/Army (NRM/A) led by the current President of Uganda Yoweri Museveni, overthrew this military regime. This experience set the current tensions between democracy and "strong man" rule in place, resting legislative powers with the National Resistance Council (NRC) and the President.¹¹⁵ Since then, Museveni and the National Resistance Movement (NRM) have controlled the executive and legislative branches of government. In 1989, 1991, and 1993 the NRC – the precursor to Parliament – held elections to include popularly elected officials.¹¹⁶ Work and consultations commenced on the current constitution in 1988 and was completed in 1995, followed by the direct election of the President – a new electoral rule – and the sixth parliament in 1996.¹¹⁷ Since 1996, Museveni has won re-election in 2001, 2006, and 2011. Ahead of the 2006 and 2011 elections, the opposition leader from the Forum for Democratic Change (FDC) was arrested. The 2006 and 2011 elections were disputed, while an EU election observer noted that in the 2011 elections "the level playing field had been severely compromised by Museveni's [sic] overusing his powers of incumbency, while bribery – mostly from the ruling party – had been widely observed and the voting procedure had been poor or very poor in 30 percent of cases."¹¹⁸

According to Polity IV, autocracy declined from 1986 to 2005, but a measurable level has become embedded in the socio-political milieu and it remains a challenge to democratization.¹¹⁹ Additionally, Uganda's democracy is given a poor score of 1 (scale is from 0 to 7), which has not changed since the reelection of Museveni and the introduction of multiparty democracy in 2006.¹²⁰ Along these lines, Nijzink et al. classify Uganda as an "electoral autocracy."¹²¹

¹¹⁴ Parliament of the Republic of Uganda, www.parliament.go.ug.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

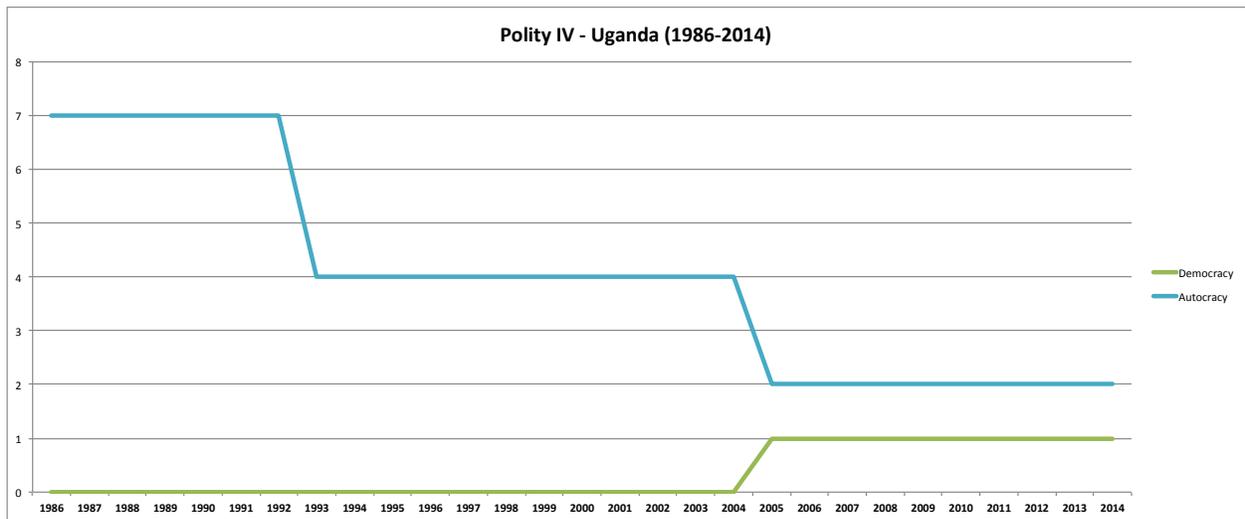
¹¹⁸ Max Delany, "Yoweri Museveni Wins another Disputed Uganda Election," *The Christian Science Monitor*, February 20, 2011, <http://www.csmonitor.com/World/Africa/2011/0220/Yoweri-Museveni-wins-another-disputed-Uganda-election>, accessed July 22, 2015.

¹¹⁹ Polity IV, "Project IV Project: Political Regime Characteristics and Transitions, 1800-2013," <http://systemicpeace.org/polity/polity4.htm>.

¹²⁰ Ibid.

¹²¹ Lia Nijzink, Shaheen Mozaffar, and Elisabete Azevedo, "Parliaments and the Enhancement of Democracy on the African Continent: An Analysis of Institutional Capacity and Public Perceptions," *The Journal of Legislative Studies* 12, no. 3-4 (2006): 331.

Figure 2: Polity IV – Uganda (1986 – 2014)



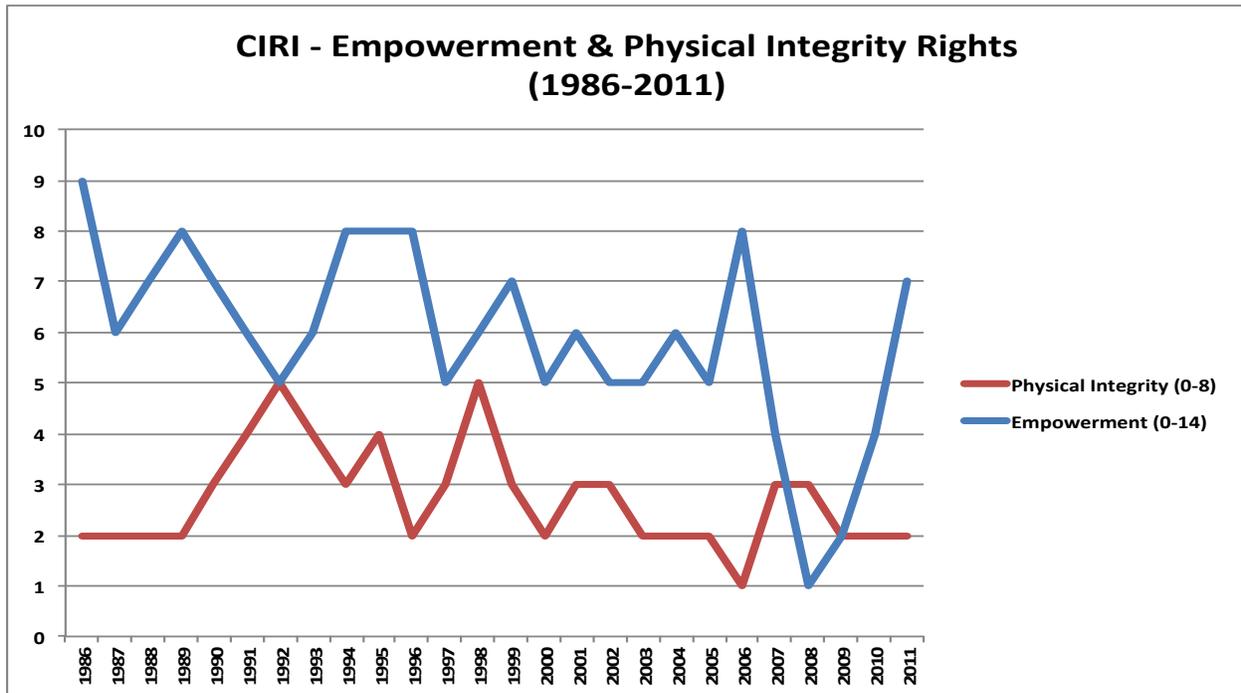
Source: Polity IV.

In terms of the effects of the levels of democracy and autocracy, the most recent data from CIRI shows low levels of physical integrity and empowerment rights.¹²² Physical integrity rights, such as political imprisonment and torture, oscillated between 1988 and 2009, finally settling at their 1986-1988 levels. Empowerment rights have also oscillated, and as of 2011 they are below 1986 levels.¹²³ While Uganda’s levels of autocracy have declined, democratization has marginally progressed since 1986, but it stalled out in recent years. At the same time, physical integrity and empowerment rights have oscillated immensely and remain low, around their 1986 levels.

¹²² CIRI. “Human Rights Data Project.” <http://www.humanrightsdata.com/>. Physical Integrity rights are ranked on a scale of 0 (low government respect) to 8 (high government respect) and it is comprised of: torture, extrajudicial killing, political imprisonment, and disappearance. Empowerment rights are ranked on a scale of 0 to 14 and are comprised of: foreign and domestic movement, freedom of assembly and association, workers’ rights, electoral self-determination, and freedom of religion.

¹²³ Ibid.

Figure 3: Empowerment & Physical Integrity Rights (1986-2011)



Parliamentary and Executive Relations

Uganda’s parliamentary and executive relations are best understood within the context of its tumultuous post-colonial history of authoritarianism and conflict. Moreover, this experience has shaped current parliamentary-executive relations. After the NRM came to power in 1986, it established the National Resistance Council (NRC), which vested 38 members of the NRM/A President Museveni with legislative authority.¹²⁴ Over the next ten years, the NRC expanded to approximately 300 mostly elected members, including: county representatives, city/municipal council members, nominated members, and district women representatives.¹²⁵ The 1996 constitution, considered progressive for Africa, vested considerable power in Parliament, even detailing legislative powers before those of the executive.¹²⁶ With the legal devolution of power to the legislature and thus a potentially new autonomous center of power in government, the executive took a keen interest in the sixth parliament’s (1996-2001) work by “always stepping on its toes.”¹²⁷ The seventh parliament (2001-2006) was dominated by discussions of the executive running for re-election, and tensions became increasingly evident with Parliament’s creation of the Parliamentary Advocacy Forum (PAFO) and the Popular Resistance Against Life Presidency, both of which were seen as anti-NRM.¹²⁸ In 2006 Uganda saw the ushering in of multi-party elections and the eighth parliament (2006-2011). With the inclusion of multiple

¹²⁴ Parliament of the Republic of Uganda

¹²⁵ Ibid.

¹²⁶ Interview with the author, Kampala, Uganda, May 2015.

¹²⁷ Ibid.

¹²⁸ Ibid.

parties, the NRM caucus became an important mechanism to promote consensus around government/NRM policy in the eighth parliament.¹²⁹

The ninth and current parliament has seen the NRM caucus become even more assertive, characterized by discipline and coherence with the NRM/government's policies.¹³⁰ The NRM has a super majority or 70.1% of the seats,¹³¹ which is above the two-thirds margin for passing votes. This means that if and when MPs vote along party lines, the NRM receives the requisite votes to promote its agenda. Independents, the opposition, and other parties' votes cannot sway the outcome. Facilitating such a scenario is the NRM's caucus, which promotes party policy that is set or approved by the government, including the executive. According to NRM and non-NRM members alike, the NRM caucus is extremely efficient in getting party members to rally behind party policy.¹³² One MP noted that without a larger opposition, the government can effectively do as it pleases.¹³³ Regardless of party support for a bill, the effect of parliamentary votes on policy outcomes has its limits since according to one MP, 'Parliament can only provide recommendations, and then these go through other government entities. These recommendations are selectively implemented and largely determined by the executive.'¹³⁴

Conversely, the relationship between Parliament and the executive can be characterized as acrimonious for those in the opposition, other parties, and independents. The government regularly arrests and places under house arrest those vocal critics, particularly from the opposition, the FDC. Multiple opposition MPs noted that there is a general fear of being arrested, that they are regularly harassed, and that the opposition can be placed under effective house arrest, precluding them from attending Parliament.¹³⁵ One MP noted that the executive refers to the opposition as "enemies."¹³⁶ This MP went on to note that the government was simply not ready for the installation of multi-party elections in 2006, thus the unhealthy relationship between the government and the opposition.

The Functionality of the Ugandan Legislature

The 2006 constitution ushered in multi-party democracy for the first time since the early 1980s. Today, the 9th parliament has 375 members of whom 263 (70.1%) are NRM, 44 (11.7%) independents, the formal opposition, 34 (9.1%) FDC, 12 (3.2%) Democratic Party, 10 (2.7%) Uganda People's Defense Forces (UPDF), 10 (2.7%) UPC, 1 (<1%) Conservative Party, and 1 (<1%) Justice Forum of Uganda.¹³⁷ The composition of the 9th parliament highlights the NRM's

¹²⁹ Interviews with the author, Kampala, May 2015.

¹³⁰ Interview with author, Kampala, Uganda, May 2015.

¹³¹ There are an additional 13 non-voting ex-officio members; Inter-Parliamentary Union (IPU), Uganda Parliament, http://www.ipu.org/parline/reports/2329_E.htm, accessed July 15, 2015.

¹³² Interviews with the author, Kampala, Uganda, May 2015.

¹³³ Interview with the author, Kampala, Uganda, May 2015.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Inter-Parliamentary Union (IPU).

political dominance in Parliament and the non-ruling parties' fragmentation. Many believe this boosts the NRM's influence in the legislature.¹³⁸

The election of these 375 members is complex. In fact, 238 are "directly elected to represent each electoral constituency; 112 women MPs directly elected to represent each administrative district; and 25 MPs are elected by four different kinds of electoral colleges, in accordance with the systems devised for each of the Special Interest groups (SIG), namely youth, workers and persons with disabilities, each of whom elect five MPs, and the Ugandan People's Defence Force, which elects 10 MPs." As is evident in their presence in Parliament, it is important to note that post-National Revolutionary Council, the army still officially plays an important role in Uganda's legislature and in national policy. As to the true amount of power the UPDF actually possesses in this milieu, considering the executive's past as the head of the NRA and present connections to the institution, it may be even be higher.

The various parties have power bases that are regional in nature. The NRM's power base is the West and Southwest of the country, where President Museveni is from.¹³⁹ During the 2006 elections, the opposition party, the FDC's, base of power was "the north of the country, around Kampala, and in pockets of the east and west..."¹⁴⁰ The DP's main area of support is Buganda, in the center of the country.¹⁴¹

Although parties have regional power bases, they are not particularly associated with certain ethnic groups.¹⁴² This means that in Uganda, politicians cannot rely on ethnicity alone to be re-elected, but they must deliver programmatic results. Results, in this case, often relate to Ugandan MPs clientelistic relationships with constituents, where cash and public goods are supplied in exchange for political support.

Policy Process

In Uganda, MPs or the government may propose bills. After a bill is read for a first time, it is referred to the relevant committee, which then seeks outside consultations on the bill,¹⁴³ such as from the ULS – the equivalent of the American Bar Association – or government bodies like the UHRC. For example, the ULS can be asked by Parliament to provide its opinion on a bill via testifying, while the Parliament reviews the bill for human rights compliance.¹⁴⁴ The bill is then debated and voted on during a plenary session and passed or not passed during a subsequent reading.¹⁴⁵ Passing requires a two-thirds vote.¹⁴⁶ The bill is then presented to the executive for approval. This entire process is time intensive. In 2012, Parliament passed only 13 bills, while it increased to 25 in 2013.¹⁴⁷ Productivity is low despite the potential to pass legislation rapidly

¹³⁸ European Union, Electoral Observation Mission. "Uganda, Final Report, General Election 18 February 2011." March 10, 2011, page 11.

¹³⁹ Ibid., 11.

¹⁴⁰ Ibid., 11.

¹⁴¹ Ibid., 11.

¹⁴² Elizabeth Carlson, "Ethnic Voting and Accountability in Africa: A Choice Experiment in Uganda," *World Politics* 67 (2015): 353-354.

¹⁴³ Parliament of the Republic of Uganda.

¹⁴⁴ Interviews with the author, Kampala, Uganda, May 2015.

¹⁴⁵ Parliament of the Republic of Uganda.

¹⁴⁶ Ibid.

¹⁴⁷ Olive Naktudde, "Parliament in 2013; 25 Bill Passed into Law," Uganda Radio Network, December 31, 2013, <http://ugandaradionetwork.com/a/story.php?s=59534>, accessed July 23, 2015.

with the NRM's super majority in Parliament and the government's proactivity in legislative affairs. Regarding this proactivity, members of civil society, the opposition, independents, and the NRM each emphasized that the government takes a keen interest in legislative affairs by setting the parameters of policy discussions both formally through bills and informally through its influence over party members.¹⁴⁸

Relative to Parliament, the balance of power is on the side of the executive and government. One manifestation of this control is that Parliament cannot meaningfully impact issues that "touch the nerve center of the government," such as executive power, corruption of senior officials, the military and police, land, and oil and gas, among others.¹⁴⁹ For example, high profile corruption cases, such as that of the recent Principal Secretary for Local Government Affairs, rarely lead to parliamentary discussions and then sackings by the government.¹⁵⁰ In this light, a staff member who worked on an LSP noted that parliamentary committees addressing military and police issues, e.g., the Defence and Internal Affairs Committee, are not very effective. As one NRM MP said, "You can only make noise" when combatting government human rights abuses.¹⁵¹ The inability to address issues at the "nerve center of government" may partially explain why ministers answered only approximately half of the questions asked of them on the floor of Parliament. While the content of the issues raised is becoming more substantive, the written responses by ministers remain low and often lack much substance.¹⁵² Furthermore, the main body charged with promoting human rights in Parliament, the Committee on Human Rights Affairs, is not an accountability committee. Accountability committees are one of the principal mechanisms that Parliament has to hold the executive accountable, because they are chaired by the opposition,¹⁵³ which may be more likely to challenge the executive than members from his party.

The balance of power in favor of the executive is also seen in Parliament's inability to significantly impact government budgets and bills. In fact, during interviews in May, 2015, MPs struggled to highlight examples of their legislative victories over the government. Two such examples provided were Parliament's ability to get an increase in funding to maternal health and to increase funding to local governments for environmental issues.¹⁵⁴ The government also sets Parliament's legislative agenda by proposing the annual budget. MPs can refuse to pass the budget and demand changes, but because of NRM caucus influence and a system of patronage, their victories in negotiations are marginal relative to the entire budget. Kasfir and Twebaze find that parliamentary committees were regularly able to see their recommendations on government bills adopted by Parliament and that these recommendations were more often "substantive" – implying that they changed the meaning of a bill – as opposed to being "minor" in nature.¹⁵⁵

¹⁴⁸ Interviews with the author, Kampala, May 2015.

¹⁴⁹ Ibid.

¹⁵⁰ Interview with the author, Kampala, May 2015.

¹⁵¹ Ibid.

¹⁵² Nelson Kasfir and Stephen Hipo Twebaze, "Performance & Effectiveness of Lawmaking and Oversight: The 6th-8th Ugandan Parliaments," Working Paper, March 2013, p. 27

¹⁵³ Kasfir and Twebaze, "Performance & Effectiveness of Lawmaking and Oversight", p. 20.

¹⁵⁴ Interview with author, Kampala, May 2015.

¹⁵⁵ Ibid., p. 3 and 18.

Major legislation that has the potential to restrict key constitutional rights, such as the Public Order Management Act (2013), is seen by many to infringe the freedom of assembly and speech, as would the forthcoming NGO bill that seeks to significantly increase government's control over civil society. It appears that MPs have a limited ability to effect change on such major bills. In reference to the POM bill, a NRM MP noted that it was able to change the government-proposed requirement of informing the police if more than two people are meeting to discuss political issues to simply providing an estimate of the number of people who will meet.¹⁵⁶ The NGO bill has yet to be voted on in Parliament. It appears that the government sets the parameters of critical national policy through its drafting of the budget and major legislation, over which Parliament's influence is marginal. The government's influence over the legislature can be summed up by the remarks of one independent MP, who claimed to be told by the Speaker of Parliament that their job is 'to pass resolutions, as to whether the executive passes them or does not, does not matter.'¹⁵⁷ Although the power of Parliament is small relative to the government and Parliament "has no teeth" according to many observers in Uganda, the government still has to figure out how to get legislation past the legislative branch.¹⁵⁸ One staff member who worked on a LSP went on to note that 'regardless of how weak Parliament is, it is still a check.'¹⁵⁹

Parliament's Internal Struggles

Many MPs, and as a result Parliament as an institution, struggle with a number of internal issues that diminish their ability to serve as a more effective legislative body. First, repeated interviews with MPs, government institutions, and civil society groups highlighted that the advocacy or activism of parliamentarians revolves around elections.¹⁶⁰ Elections for MPs and the President take place every five years, with the executive being elected by popular vote. When a new session of Parliament begins, MPs are more independent of the government and vocal against it. As elections approach, however, MPs follow the party line a lot more closely.¹⁶¹ This cyclical advocacy is an attempt by MPs to not lose the favor, support, or funding from the government as elections approach. Second, rampant absenteeism and tardiness in Parliament negatively affect its business. As a result, its Deputy Speaker raised the issue on the floor and introduced electronic attendance registration in 2015.¹⁶² There is even discussion of deducting money from MPs salaries for not showing up to work.¹⁶³ Alabi highlights that absentee MPs is a common issue throughout Africa, and it decreases parliaments' productivity as institutions.¹⁶⁴ However, in the case of Uganda, absenteeism can also be attributed to electoral competition in their

¹⁵⁶ Email communication with author. July 2015.

¹⁵⁷ Interview with the author, Kampala, May 2015.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Interviews with author, Kampala, May 2015.

¹⁶¹ Interview with the author, Kampala, May 2015.

¹⁶² Solomon Arinaitwe, "Ministers Cautioned against Absenteeism in Parliament," *Daily Monitor*, March 13, 2015, <http://www.monitor.co.ug/News/National/Ministers-cautioned-absenteeism-Parliament/-/688334/2651380/-/hy59bu/-/index.html>; and Moses Mulondo, "MPs' Absenteeism Crippling Parliament Committees." *New Vision*, April 28, 2015, <http://www.newvision.co.ug/news/667589-mps-absenteeism-crippling-parliament-committees.html>.

¹⁶³ Ibid; and Nakatudde, "Anti-Corruption Activists Push for Deduction of MPs Pay over Absenteeism."

¹⁶⁴ Mojeed Olujinmi A. Alabi, "The Legislatures in Africa: A Trajectory of Weakness," *African Journal of Political Science and International Relations* 3, no. 5 (2009), p. 239.

constituencies and the 65% turnover rate for MPs from the previous Parliament, which results in MPs choosing to campaign ahead of the 2016 elections rather than being present in Parliament.¹⁶⁵ Third, Uganda's Parliament, as noted earlier, is unproductive. Finally, there are insufficient researchers, clerical officers, and budget officers for all committees to be more productive in their respective areas.¹⁶⁶ For example, with more researchers, the human rights committee could expand their investigations into human rights abuses. Exacerbating this issue of insufficient staffers, many of them moonlight, so productivity is also low.¹⁶⁷

Degree of MPs Independence from Executive

Patronage politics manifests itself in a number of ways, limiting MPs' independence from the executive. First, campaign finance and constituency service debt contribute to a system of patronage.¹⁶⁸ To win election campaigns, MPs must spend a significant amount of money traveling to their constituencies, campaigning, handouts, and other expenses.¹⁶⁹ Additionally, MPs accrue debt from providing handouts to constituents in exchange for electoral support.¹⁷⁰ A January, 2015, survey by the Alliance for Campaign Finance Monitoring found that 'Personal financial assistance,' or handouts by Ugandan MPs to constituents, average about US\$ 4.68 million (\approx \$1,410) per trip.¹⁷¹ To afford these expenses, MPs from all parties borrow from commercial banks, accruing debts that they cannot repay.¹⁷² The government recently rescheduled these debts and is presently repaying them, while deducting some of this money from MPs salaries.¹⁷³ Although this debt-restructuring service was recently provided to MPs regardless of party affiliation, this process is believed by those within the NRM and experts alike to form a system of patronage whereby ruling party members are then expected to adhere to the party line in exchange for debt assistance.¹⁷⁴ Second, MP independence from the executive is undermined by the strong link between the Speaker of Parliament and the executive. It is a well-known secret in Kampala that the current Speaker, who used to be more of an outspoken critic of the government on human rights issues, toned down her criticisms after a meeting with the President.¹⁷⁵ As the Speaker of Parliament is heavily influenced by the executive and ruling party, the NRM caucus will be heavily in line with the government. Finally, there were also reports of MP intimidation by the executive branch and a desire of MPs to appease the executive, both of which strengthen the link between MPs and the executive office. As one MP put it, "one of the biggest challenges is parliamentarians who stand up for society, they don't want to be counted, they want to show loyalty" to the government.¹⁷⁶ In summary, opposition

¹⁶⁵ Mulondo, "MPs' Absenteeism Crippling Parliament Committees."

¹⁶⁶ Interview with the author, Kampala, Uganda, May 2015.

¹⁶⁷ Ibid.

¹⁶⁸ Interviews with the author, Kampala, Uganda, May 2015.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Alliance for Campaign Finance Monitoring (ACFIM), "Who Pays the Piper...Calls the Tune," MP Survey on Commercialization of Politics, January 2015; Exchange rate on July 15, 2015 was \$1 to US\$ 3,320.04 on www.xe.com

¹⁷² Interviews with the author, Kampala, May 2015.

¹⁷³ Interview with the author, Kampala, May 2015.

¹⁷⁴ Interviews with the author, Kampala, May 2015.

¹⁷⁵ This point was brought up by multiple members from civil society and government organizations during May 2015 interviews in Kampala.

¹⁷⁶ Interview with the author, Kampala, May 2015.

MPs noted that Parliament as an institution is becoming weaker because it is fused with the executive.¹⁷⁷

MPs and Constituents

Ugandan MPs interact with their constituents through constituent services, parliamentary office visits, and electronic channels. Constituent services entail visits to their home districts for consultations and discussions with community members, typically during weekends. Theoretically, these interactions channel citizens' voice in Parliament and enable MPs to gauge the pulse of the community. In practice, however, constituent services are plagued by a number of issues that complicate this principal-agent mechanism, thus interrupting the relationship between citizens and their MPs. First, the resources provided by the government are insufficient to cover the cost of transport, as despite rising petrol prices and inflation, the money allocated has not changed since 2001.¹⁷⁸ Additionally, members are provided only a portion of the costs of a vehicle, obligating MPs to spend their own resources to buy a reliable car.¹⁷⁹ The minimal resources for constituent services is particularly an issue for MPs who live in remote areas of the country and who require an off-road vehicle for the dirt roads, which is more expensive in terms of the cost of the vehicle, maintenance, and fuel. Second, because of financial constraints, some MPs lack of interest, and the distance from Kampala to remote parts of the country, the frequency of trips to districts are infrequent.¹⁸⁰ One MP noted that these trips are a cumbersome process and one must be patient with constituents.¹⁸¹ As a result, they went onto to note that some members pay lip service to constituent services.¹⁸² Third, whom MPs meet with during constituent services matters in terms of the efficacy of this mechanism of government.¹⁸³ A MP remarked that the average community members are passive and do not attend constituent service because they are illiterate and poor.¹⁸⁴ Consequently, the typical attendees are local councils, teachers, and civil servants.¹⁸⁵ Regardless of why certain groups attend or do not attend such meetings, it is clear that their absence diminishes their voice and thus influence on MPs. Fourth, the content and purpose of meetings determine whether the voice of the people is channeled from constituents to MPs to Parliament. As highlighted earlier, handouts plague constituent services. Handouts are a manifestation of patronage politics and disrupt the principal-agent relationship, as instead of MPs channeling citizens' demands in Parliament, an MP noted that constituents demand money.¹⁸⁶

Civil Society and Media's Role in the Promotion of Human Rights and Democratization

Civil society and the media play a critical and active role in the promotion of human rights and democratization in Uganda. As a result, they sometimes face an element of government interference and repression. Freedom House categorizes the state of political rights and civil

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Interviews with the author, Kampala, May 2015.

¹⁸¹ Interview with the author, Kampala, May 2015.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

liberties as “not free,” and they deem the press as only “partly free.”¹⁸⁷ As one opposition MP succinctly put it, Ugandans have the constitutional rights of ‘freedom of assembly and speech, but they cannot enjoy them.’¹⁸⁸ Along these lines, one civil society member noted that the application of the laws that protect such freedoms is selective, depending on whether one is a government supporter or opponent.¹⁸⁹

Many civil society organizations have a healthy working relationship with Parliament, but a more acrimonious one with the government and state institutions like the police. For example, the Human Rights Centre – Uganda has jointly authored reports with the Uganda Human Rights Commission (UHRC), and they have helped train Parliament’s Human Rights Committee. As one civil society group noted, the key to having a healthy, but also honest and productive relationship with the government is to sit down with the government in private.¹⁹⁰ The government prefers this approach as it is extremely sensitive to criticism in the media, and CSOs argue their recommendations less likely to be ignored. The government has attempted to intimidate the more confrontational groups through several legislative initiatives. The Public Order Management Act (POMA) requires advance notice for mass assemblies and makes media coverage of assemblies deemed illegal to also be against the law.¹⁹¹ Human rights organizations believe it has had a chilling effect on political space. A recent NGO bill similarly would curtail civil society activities related to politics. It provides the government NGO Board authority to register NGOs and permit who can work for them, including foreigners.¹⁹² One member of civil society said “the government sees civil society as a risk, and it is extremely sensitive to criticism.”¹⁹³ No fewer than 15 NGOs had their offices broken into in 2014, which is believed by some critics of the government and outside observers to be government orchestrated.¹⁹⁴ Bills that infringe on human rights often receive broad parliamentary support. Many CSOs and opposition MPs oppose this bill, as it is seen by many to be aimed at restricting the ability of civil society due to the government’s suspicion of international NGOs.¹⁹⁵

Other civil society groups face less harassment from the government, including those campaigning against homosexuality. The Anti-Homosexuality Bill would make it illegal to promote homosexuality as an organization, while also prohibiting media coverage of gay rights issues, such as of a person being denied medical treatment because of their sexual orientation.¹⁹⁶ President Museveni ultimately vetoed the related legislation, using a parliamentary technicality as an apparent pretext, out of fear that that government, NGOs and businesses would lose significant donor money.

¹⁸⁷Freedom House, “Freedom in the World 2015 – Discarding Democracy: Return to the Iron Fist,” <https://freedomhouse.org/report/freedom-world/freedom-world-2015#.VeTczHvTHaM>, accessed August 31, 2015; and Freedom House. “Uganda.” <https://freedomhouse.org/report/freedom-world/2015/uganda#.VeTeQHvTHaO>, accessed August 31, 2015.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² International Center for Not-for-Profit Law, “NGO Law Monitor: Uganda,” April 23, 2015, <http://www.icnl.org/research/monitor/uganda.html>.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Interviews with the author. May 2015.

¹⁹⁶ Ibid.

The media has a similarly mixed rapport with the government. On one extreme there is the Vision Group, which is widely seen as pro-government (which is the majority shareholder). Their media empire includes the widely disseminated New Vision newspaper, Radio West, and Bukedde TV (the only Lugandan language TV station).¹⁹⁷ Nation Media Group is an independent Kenyan company that owns NTV along with the Daily Monitor and the East African newspapers.¹⁹⁸ In 2013, the Daily Monitor and another private newspaper, *Red Pepper*, had their offices raided, and two Daily Monitor radio stations were shut down by the police on a court order.¹⁹⁹ In these incidences police were searching for a purported letter from an army general that discussed an inquiry into a plot to kill people opposed to the President's son becoming the next President of Uganda.²⁰⁰ In 2014, NTV was forbidden to cover presidential events after it purportedly aired footage of the president asleep in Parliament.²⁰¹ Additionally, journalists are regularly arrested and can be even charged with treason for failing to disclose their sources.²⁰²

The creation of space for interaction among Parliament, CSOs and media shows promise for improving relations, but the impact is so far limited. Through POMA and other legislation, the Parliament continues to show interest in containing civil society and restricting the media. POMA was an initiative by the government, and the NRM caucus was used to rally ruling party support while opposition MPs and civil society were against this law. As one MP noted, this law was “pushed down our throats,” as it directly serves the interest of government quelling dissent and contradicts constitutional rights.²⁰³ They went on to declare that POMA was based on the South African system of apartheid.²⁰⁴

The Committee on Human Rights Affairs of the Ugandan Parliament

Established in 2012, the main body of the Ugandan Parliament charged with promoting human rights is the Committee on Human Rights Affairs. The Committee is comprised of 21 members – 13 from the ruling party – all of whom have been trained by numerous human rights groups, including the Uganda Human Rights Commission (UHRC).²⁰⁵ The Committee reviews annual human rights reports by the UHRC and ensures that these recommendations have been implemented.²⁰⁶ The Committee is not an accountability committee, meaning the opposition does not chair it.

Established with the new constitution in 1995, the UHRC is charged with monitoring “the human rights situation in the country,” including: investigating human rights abuses, promoting research, education, and information on human rights, making recommendations to Parliament, including an annual report, and monitoring “the Government’s compliance with international

¹⁹⁷ Vision Group, <http://visiongroup.co.ug/index.php>, accessed July 21, 2015.

¹⁹⁸ Nation Media Group, www.nationmedia.com, accessed July 21, 2015.

¹⁹⁹ Red Pepper, <http://www.redpepper.co.ug/>, accessed July 21, 2015.

²⁰⁰ BBC, “Uganda’s Daily Monitor Raided over Museveni ‘Plot.’” *BBC*, May 20, 2013. <http://www.bbc.com/news/world-africa-22599347>, accessed July 21, 2015.

²⁰¹ David Smith, “Uganda TV Station Banned for Showing President Asleep in Parliament,” *The Guardian*, June 19, 2014, <http://www.theguardian.com/world/2014/jun/19/uganda-museveni-tv-ban-asleep>, accessed July 21, 2015.

²⁰² Interview with the author, Kampala, May 2015.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ Interviews with the author, Kampala, May 2015.

²⁰⁶ *Ibid.*

treaty and convention obligations on human rights.”²⁰⁷ The UHRC has the constitutional power to summon people and order people released from custody and/or to receive compensation.²⁰⁸ Prior to laws being passed, the UHRC reviews them to ensure they are compliant with human rights.²⁰⁹ Based on the Committee’s review of the annual UHRC report, the former undertakes weeklong fact-finding missions to investigate specific issues highlighted therein on a quarterly basis.²¹⁰

In its three years of existence, the Committee has promoted some important outcomes in the field. The establishment of the Committee is in and of itself is an important development in the promotion of human rights in the country. As to whether the establishment of this institution improves human rights conditions in the country is another issue. In assessing the impact of the Committee, it is important to keep in mind that it has only existed for approximately three years, which may not be long enough to gauge its impact and the potential impact on human rights in a comprehensive manner. That said, this conversation focuses on its accomplishments to date and the current challenges it faces.

Most observers note that the Committee has had a small impact on human rights in Uganda in its short existence. That said, what are the measurable or observed impacts of the Committee? First, the Committee requires institutions named in the UHRC reports to testify and account for their actions in front of Parliament.²¹¹ Although testifying may not inherently change the behavior of institutions or persons accused of human rights abuses, it may change it for some, especially, if they are threatened with legal action. Second, the Committee’s fact-finding missions to investigate human rights abuses provide MPs with a greater sense of the related issues in the country. Third, the Committee now certifies that all bills do not privilege any social groups.²¹² This is a new innovation, so its impact is difficult to assess. Finally, the Committee has developed a human rights checklist, one that it hopes to pass as an amendment to Parliament’s procedural rules that would require all committees to use this guide in their legislative work.²¹³ One Committee MP cautioned, however, that Parliament still requires further sensitization on human rights in order for such a list to be effective.²¹⁴

Despite its potential, there are a series of key factors that diminish the efficacy of the Committee’s ability to address human rights abuses in the country. First, the Committee primarily investigates human rights abuses that are highlighted in the UHRC’s reports, and to a much less extent, some abuses highlighted by the media and civil society.²¹⁵ Inevitably, the UHRC is able to investigate and report on only so many issues based on resource constraints and the information available to it; however, this is not the larger issue diminishing its potential in relationship to the Committee. As highlighted by numerous interviewees, the risk with the Committee’s dependence on the UHRC for information is that the government, which is guilty

²⁰⁷ Uganda Human Rights Commission. <http://www.uhrc.ug/>, accessed July 20, 2015.

²⁰⁸ Ibid.

²⁰⁹ Interview with the author, Kampala, May 2015.

²¹⁰ Interviews with the author, Kampala, May 2015.

²¹¹ Interview with the author, Kampala, May 2015.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

of numerous human rights abuses, appoints the UHRC officials.²¹⁶ As a result, the government is theoretically less likely to appoint UHRC officials who are too vocal against government human rights abuses. One member of a media-related CSO stated that the UHRC is not an independent institution.²¹⁷ As a result, the UHRC reports that the Committee uses as their guide to promoting human rights in the country may not address issues that placate key or senior government officials.

Second, independent and opposition MPs alike noted that the committee should be an “accountability committee,” which could theoretically hold the government and various state institutions more accountable.²¹⁸ According to these MPs, the opposition must chair such a committee so that the institution is more independent of the government.²¹⁹ At present, the Committee is chaired by the NRM, who has a super majority in parliament and who also controls the executive office. Third, the Committee’s field inquiries are also plagued by a number of issues: (a) these fact finding missions are insufficient in scope and time considering the size of the country and the extent of human rights abuses. It would be more efficient for the Committee to have staffers and researchers conducting the majority of human rights research; (b) the incentive of some of the Committee members is the per diem (US\$ 140,000) that they receive for each day that they are in the field.²²⁰ Fourth, the committee has not been very productive as far as reviewing UHRC reports and then tabling and debating their own reports based on the UHRC’s and their own fieldwork.²²¹ There are conflicting reports on whether any Committee reports have actually been tabled for discussion in Parliament, but it is clear that they have not been debated.²²² As one NRM staffer noted, the Committee is merely posturing and critiquing human rights abuses, but they have yet to provide any serious outcomes.²²³ On top of this, the government has not responded to any of the Committee’s reports. Finally, multiple MPs noted that capacity building and sensitization on human rights is needed not just for the Committee, but also for all of Parliament.²²⁴ In effect, it is difficult for the Committee to push an issue or an agenda if more MPs are not more sensitized on human rights issues.

Legislative Strengthening Programs in Uganda

There have been three rounds of USAID Legislative Strengthening Programs (LSPs) in Uganda. In the first round, from 1998 to 2002, Uganda Technical Assistance Program (UPTAP), was managed by the State University of New York (SUNY) and received just over \$3.8 million in funding.²²⁵ UPTAP sought to enhance the Parliamentary Commission’s capacity, which is in charge of building Parliament’s institutional capacity, improve constituent services, and increase professional staff capacity.²²⁶ Hirschmann and Nyago’s evaluation of UPTAP found that it was

²¹⁶ Interviews with the author, Kampala, May 2015.

²¹⁷ Interview with the author, Kampala, May 2015.

²¹⁸ Interviews with the author, Kampala, May 2015.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Interview with the author, Kampala, May 2015.

²²² Interviews with the author, Kampala, May 2015.

²²³ Interview with the author, Kampala, May 2015.

²²⁴ Interview with the author, Kampala, May 2015.

²²⁵ Country Totals – v2(2). excel sheet from Tom Bridle

²²⁶ Country Totals – v2(2). excel sheet from Tom Bridle

largely successful in promoting “the legislative, budgeting, and oversight role of Parliament.”²²⁷ They reported that UPTAP positively impacted activities and inputs through trainings and exchanges, and it promoted “institution building,” for example with the successes of the Budget Office and Act, promoting civil society-Parliament relations. Programs also improved services for MPs, including internet and research materials.²²⁸ Mozaffar et al.’s evaluation largely agreed with this assessment. Reflecting back on UPTAP in 2015, one member of the Linkages program noted that there were two key outcomes of the program: (1) funding helped set up technology systems for a few key offices, including the budget office, the research department, and the IT office, and (2) the funding supported getting basic amenities like chairs and desks where needed in Parliament.²²⁹

Hirschmann and Nyago note that although UPTAP had a positive impact on achieving the variety of observed impacts, other factors contributed to these outcomes as well.²³⁰ These include: “a conducive and supportive environment for change in Parliament” and a total of eight donors supporting Parliament as of July 2003.²³¹ They also point out that one year after UPTAP, many of the project’s outcomes could still be observed.²³² SUNY received a generally positive report card for its work from local stakeholders.²³³ Criticisms of SUNY included a lack of consultations with MPs on project goals, design, and selection of implementers, failure to inform Parliament’s Procurement Office about purchases, and a mismatch between UPTAP’s objectives and Parliament’s ability to promote these changes.²³⁴ Based on these findings, the report makes a number of recommendations, including improving the process of consultations. This includes “transparency, and information sharing”; enhancing the representative nature of MPs; and recognizing the high turnover of MPs and thus direct more LSP support to the training of staffers.²³⁵

The second LSP (2002-2006), Legislative Support Activity (LSA), was managed by Development Alternatives Incorporated (DAI) and received \$3.1 million in assistance.²³⁶ Its six main areas aimed to improve the: (a) capacity of MPs and staff, (b) constituent services, (c) interactions with civil society, (d) drafting of legislation, (e) ethics and anti-corruption, and (f) system for legislative elections.²³⁷ A key impact of the LSA was its promotion of legislative drafting with MPs and staffers, the latter group helped draft the Disabled Rights Law.²³⁸ This training was supplemented by a series of workshops with the persons with disabilities

²²⁷ David Hirschmann and Kintu Nyago, “Evaluation of the Uganda Parliament Technical Assistance Project,” Management Systems International, Monitoring and Evaluation Management Services, December 2003, p. vii.

²²⁸ *Ibid.*, p. vii-viii.

²²⁹ Interview with the author, Kampala, May 2015.

²³⁰ Hirschmann and Nyago, “Evaluation of the Uganda Parliament Technical Assistance Project,” p. viii.

²³¹ *Ibid.*, p. viii.

²³² *Ibid.*, p. viii.

²³³ *Ibid.*, p. ix.

²³⁴ *Ibid.*, p. ix and 14-15.

²³⁵ *Ibid.*, p. 23-25.

²³⁶ Country Totals – v2(2). excel sheet from Tom Bridle

²³⁷ Country Totals – v2(2). excel sheet from Tom Bridle

²³⁸ Shaheen Mozaffar, Kimberly Smiddy, and John Kazooru, “Evaluation of USAID Legislative Strengthening Programs in Uganda: 1998-2006,” Working Paper, African Legislatures Project Study Report, September 20, 2010, p. 14.

community that helped inform the bill.²³⁹ Another key institutional outcome was that it started field visits for parliamentary committees, a practice which continues today without LSP support.²⁴⁰ In one case, soon after this program was implemented, LSA supported a fact-finding mission for the Committee on Security and Humanitarian Situation to learn more about the state of the war-torn North, as many MPs had never visited the area.²⁴¹ The next day the committee declared the North a “disaster area,” but the executive overrode their declaration.²⁴²

The third Uganda LSP, Linkages (2007-2010), was implemented by SUNY and RTI International and received \$2.9 million in funding.²⁴³ Set within the context of the reinstatement of multi-party democracy in 2006, this LSP aimed to enhance: (a) the capacity of Parliament and local government to “identify local development and national policy issues so they may carry out their representational functions...”, (b) “democratic participation in political processes,” (c) “institutional transparency and accountability,” and (d) service delivery.²⁴⁴ One member of the Linkages staff emphasized that a key limitation of this program was that the scope of the program was ambitious, while the resources and time were insufficient.²⁴⁵

In November of 2010, The Consulting House (Kenya) and Centre for Justice Studies and Innovations (Uganda) published an extensive review of the Linkages program, finding that the program had a significant impact in some areas and less so in others, and that it should be continued.²⁴⁶ Their review is based on 380 interviews and approximately 100 secondary sources and focuses on the outcomes because the programs are too new to assess their impact.²⁴⁷ The overall finding of the report is that the LSPs impact on Parliament were “modest,” and “apart from the oversight function, investment in Parliament had limited returns.”²⁴⁸ The study found that Linkages enhanced: (a) the demand and supply side of governance, but these effects were less profound in Parliament than they were at the district level, (b) opposition institutions, (c) “policy expertise and decision making,” (d) increased oversight over the executive, and (e) promoted legislative activism and “field visits” by parliamentarians.²⁴⁹

One critical institutional outcome of the program, according to a Linkages staff member,²⁵⁰ is that it increased the interactions between local district governments and MPs.²⁵¹ They noted that the program enabled parliamentary committees to visit and conduct meetings in districts, which has now been institutionalized by the government.²⁵² Another key outcome is that the district chairman and chief administrative officer are held more accountable to Parliament for

²³⁹ Ibid., p. 14.

²⁴⁰ Ibid. p. 15; Interview with the author, Kampala, May 2015.

²⁴¹ Ibid.

²⁴² Ibid; Mozaffar, Smiddy, and Kazoora, “Evaluation of USAID Legislative Strengthening Programs in Uganda,” p. 15.

²⁴³ Country Totals – v2(2). excel sheet from Tom Bridle

²⁴⁴ Country Totals – v2(2). excel sheet from Tom Bridle

²⁴⁵ Interview with the author, Kampala, May 2015.

²⁴⁶ Consulting House and Centre for Justice Studies and Innovations, “Strengthening Democratic Linkages: Program Evaluation,” Final Report, USAID, November 2010.

²⁴⁷ Ibid., p. 6-7.

²⁴⁸ Ibid., p. 6.

²⁴⁹ Ibid., p. 6-9.

²⁵⁰ Interview with the author, Kampala, May 2015.

²⁵¹ Ibid.

²⁵² Ibid.

their actions. However, not all the linkages created are effective.²⁵³ Moreover, during the program, the parliamentary auditor general committee that reviews local government accounts did not have their recommendations enacted.²⁵⁴ According to Linkages evaluation the lessons learned include: (a) “conceptual disconnect” between USAID’s and implementers’ proposal, (b) the necessity of mapping out the spectrum of linkages beforehand, which did not occur during this program, (c) ability to respond to challenges on the ground in a timely manner inhibited by the bureaucratic web between implementer’s field office, implementer’s headquarters, and USAID, (d) monitoring and evaluation was too quantitative in nature and missed nuances of governance that require qualitative assessment, (e) implementer was not very open to learning from local partners, and (f) timeline between legislation and service delivery was too long and there was no link between quality legislation and the quality of its implementation.²⁵⁵

Assessing Uganda’s LSPs

Given the context of Uganda’s political landscape, with a particular focus on its Parliament, it is important to consider whether some of the areas of USAID LSP support are improving or not. First, a key area of LSP support in all three programs relates to constituent services. Field research in Uganda highlighted that constituent services, for a variety of reasons ranging from the focus on handouts to the nature of those who attend meetings with MPs, remain an ineffective mechanism for channeling the voice of the people into Parliament. Further funding for constituent services will continue to assist those MPs who are interested in enhancing their principal-agent relationship with constituents, while also being a misallocation for those MPs who don’t utilize these visits as they were intended. It will also curtail the goal of LSPs to enhance service delivery to constituents and their ability to identify local and national needs. Further funding needs to consider first how to promote the effective use of constituent services in the name of democratization.

Second, LSPs helped promote parliamentary committees’ field visits, a practice that has built Parliament’s capacity to make informed decisions on their committee’s respective foci. This has also strengthened the links between local government and Parliament.

Third, LSP funding has supported capacity-building efforts for parliament’s professional staff. Unless, Parliament can motivate its staff to be more productive and not have other jobs outside of Parliament, LSP funding will continue to have marginal effects in this area.

Fourth, ethics, anti-corruption, transparency, and accountability are a critical theme of LSPs. LSPs have helped parliamentary oversight over local government and promoted transparency and helped address corruption. In terms of oversight over individual MPs’ corruption and parliamentary oversight over the executive, there is no evidence of such an impact.

Finally, the Consulting House and Centre for Justice Studies and Innovations report on Linkages claimed that the program enhanced legislative activism, but, as field research indicated, activism is cyclical, revolving around elections. Moreover, many MPs, particularly from the ruling party are heavily influenced by the NRM caucus and executive. Similarly, Mozaffar et al. note “the reassertion of Executive authority through strict party discipline in POU reinforced

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ The Consulting House and Centre for Justice Studies and Innovations. “Strengthening Democratic Linkages,” p. 7-8.

by patronage and the attendant threat of withdrawing resources for constituency service from recalcitrant MPs.”²⁵⁶ Unless LSPs can address the underlying causes of the lack of activism, support therein will only be temporary or will be lost with the high rate of turnover in Parliament.

In sum, it appears that LSPs have achieved mixed results in the pursuit of their objectives. While there are some notable successes, such as beginning field visits, this is an outcome and it does not necessarily translate into a more informed and stronger Parliament (e.g., the impact). Additionally, donor funding cannot significantly alter the context (e.g., neo-patrimonialism) and the array of factors (e.g., political will) that preclude a strong legislature in the first place. Moving forward, donors need to be more considerate of what their support can and cannot achieve while also keeping in mind that many such things such as institution building take many years. One curious observation is that each subsequent LSP received less funding.

Ten key insights relating to Uganda’s politics, its parliament, and human rights emerge from this study: (1) Democratization in Uganda appears to have stagnated in recent years. While there are elections for Parliament and the executive, physical security and empowerment rights are around post-revolution (1986) levels, with the opposition, media, and civil society under increasing pressure from the government.²⁵⁷ (2) The NRM caucus has become an extremely effective mechanism in forging consent among ruling party MPs. (3) The balance of power between the executive and Parliament remains tipped towards the former, as the latter cannot address issues that touch the nerve of the government. (4) The government sets the national policy agenda by proposing the budget and major legislation, which Parliament can only impact on the margins. (5) Parliament is plagued with an array of internal struggles, which diminish its efficacy as an institution. These struggles include: absenteeism and tardiness, election cycle advocacy, productivity, and insufficient and unproductive professional staff. (6) The system of patronage politics between the executive and Parliament is reinforced by MPs’ campaign and handout debt being paid off with assistance from the government. (7) Constituent services are ineffective at enhancing the principal-agent relationship between MPs and constituents due to: insufficient resources, a lack of some MPs interest in this dimension of their work, certain segments of the population dominating meetings with MPs, and the emphasis on handouts versus strengthening the principal-agent relationship. (8) Formal channels of cooperation, between Parliament and civil society/media (such as testifying) have increased, yet they have produced limited results. At the same time, Parliament has also passed legislation that restricts the space for civil society and the media by clamping down on government dissent and political active groups. (9) The Committee on Human Rights Affairs has registered some critical success in promoting human rights, such as conducting fact-finding missions based on UHRC reports and certifying that legislation does not favor or disfavor any socio-economic group. The Committee’s potential impact on human rights, however, is diminished by a series of factors: it primarily analyzes UHRC reports, conducts insufficient field inquiries, has low productivity in terms of the production and debate of reports and the failure to get government to follow up on them, and insufficient parliamentary sensitization on human rights. (10) Reviewing the LSP evaluations shows that these programs achieved many outcomes, such as promoting constituent services and committee field visits, but the impact of these outcomes is marginal or

²⁵⁶ Mozaffar, Smiddy, and Kazoora, “Evaluation of USAID Legislative Strengthening Programs in Uganda,” p. 32.

²⁵⁷ CIRI. “Human Rights Data Project.”

negligible in the face of the immense challenges that Parliament faces in becoming a stronger institution.

Summary of Observations from Uganda

This case study of Uganda's Parliament aimed to better understand the democratic strides the country has made in recent years. At the same time, this study sought to analyze the challenges that the Parliament of Uganda faces in effectively carrying out its legislative role, with particular attention being paid to the protection and promotion of human rights. Ultimately, the idea was to compare the efficacy of Parliament to the goals and purported impact of USAID LSPs. Uganda's Parliament has helped promote democratization. At the same time an array of challenges diminish its ability to effectively undertake its role as a legislature and oversight mechanism. With recognition of the shortcomings of previous LSPs and the challenges that Parliament faces, some critical analysis must be done before any new donor programs are implemented to support this institution. As there is no consensus on how to best strengthen parliaments, models tailored to specific contexts will need to be devised to reflect the particular challenges that the Parliament of Uganda faces in effectively doing its job.²⁵⁸ Such approaches will enable donors to better target areas of Parliament's work that they have the potential to impact positively while also highlighting that some changes need to come from within society for which no amount of aid money can address on its own or at all. Additionally, donors will have to continue to address the issue of political will, because if there is no political buy-in with LSPs and the implications of their design, their impact on the strengthening of Parliament will continue to be marginal. That said, LSPs must reconsider the timeframe and money that they allocate, as the ability to strengthen legislative branches and institutions take time and possibly a significant amount of money due to the array of challenges that they encounter.

VI. CONCLUSION AND RECOMMENDATIONS

Legislatures are critical institutions for democratic development and promoting human rights. But LSPs are not likely to have a meaningful impact unless donors consider important conditions as well as the indirect and possibly multi-directional relations among legislatures, human rights and democracy. Until further empirical research is conducted, we have little basis to presume that legislative capacity necessarily leads to better human rights protections or that human rights co-develop with democratization. This conclusion highlights six critical observations, summing up key points from the earlier analysis with the goal of formulating tough but practical questions for future USAID programming.

First and most importantly, building legislative capacity is not likely to make much of a difference if institutional incentives are misaligned. In other words, LSPs could increase the knowledge and resources available to legislators. But if there is a fusion of legislative and executive functions through the cabinet, the balance of power won't shift much, as van Cranenburgh points out.²⁵⁹ Similarly, the legislature will be unable to provide oversight of

²⁵⁸ Kiyondo and Pelizzo, "Strengthening Legislatures, p. 420.

²⁵⁹ *Ibid.*, 55.

executive if it cannot or does not censure cabinet ministers or impeach the executive despite having the constitutional power to do so. The Uganda case study clearly fits this mold. Several scholars in the literature highlighted concerns about donor bias towards executives. Though this did not seem to be the case in the Middle East and North Africa – the region with the most growth in D&G programming over the last decade – executive bias could misread the institutional context and undermine the very purpose of LSPs.

Second, according to Kiyondo and Pelizzo, unless political will accompanies LSPs, the program's impact will be diminished.²⁶⁰ In particular, a key aspect of LSPs has been funding for constituent services and creating space for civil society to interact with parliament, but on average the latter has not taken advantage of these institutional developments. An important manifestation of political will that diminishes legislative efficacy is absenteeism, as Alabi notes.²⁶¹ This is a serious problem in both case studies here. During the 2014 legislative calendar in Nigeria, the legislature actually met fewer days than is required under the constitution. The National Assembly rammed through dozens of bills at the last minute before the fateful 2015 elections once the ruling party realized that voters had noted their historically abysmal productivity. Such apathy, according to Dias and Taylor, can be addressed by members who signal their activity by working for the various interests of society and staying involved in issues through constituent services.²⁶² Thus, a lack of political will, manifested in sub-par constituent services and absenteeism, stunts democratization and human rights in Uganda, as MPs are neither accountable nor promoting inclusive participation in the political process.²⁶³

Third, LSPs should be tailored to the local context. This is important given the current donor discourse on “best practices.” According to Kiyondo and Pelizzo's study of LSPs in the Pacific, this was a key source of programs' not delivering their promised results.²⁶⁴ In order to do this properly, they found that each country requires a training needs assessment (TNA) to design more effective LSPs but also to see what improvement to the legislative milieu are possible given the context. The 2013 “USAID Strategy on Democracy, Human Rights, and Governance” reflects this emphasis on country-specific approaches,²⁶⁵ which may have been ahead of the time of the three original Uganda LSPs (1998-2010). Moreover, context must mean more than simply culture, political will, or the state of democracy overall. Context must also relate to the institutional environment and the origins of those institutions; Nigeria's party history and recent paths to party formation point to more potential for parties to serve as counter-forces to presidential powers, while Uganda's reforms face inertia due to its liberation movement history. In addition, the Ugandan case study exemplifies the need for tailored LSPs because of the constraints facing civil society and the parliament.

²⁶⁰ Abel Kiyondo and Riccardo Pelizzo, “Strengthening Legislatures: Some Lessons from the Pacific Region,” *Politics & Policy* 41, no. 3 (2013), p. 420.

²⁶¹ Alabi, “The Legislatures in Africa,” p. 239.

²⁶² Clarence Dias and Nancy Taylor, “Primer on Parliament and Human Rights,” United Nations Development Programme, 2008.

²⁶³ *Ibid.*

²⁶⁴ Kiyondo and Pelizzo, “Strengthening Legislatures,” p. 437-438.

²⁶⁵ USAID, “USAID Strategy on Democracy, Human Rights, and Governance,” USAID, June 2013. http://www.usaid.gov/sites/default/files/documents/1866/USAID%20DRG_%20final%20final%206-24%203%20%281%29.pdf, accessed July 6th, 2015.

In addition, part of assessing a legislative context should include perceptions of legislators and legislatures. If public opinion of the institution and its individuals is low, then this will affect “buy in.” However, perceptions on legislative-executive relations do not necessarily correspond with such unfavorable opinions, and legislatures are often held in low esteem even if support for democracy is high. Such contexts point to an opening for LSPs, but one that must make sure that legislators are educating the public alongside their own learning. Low trust in parliament, as documented by Rolof and others, is thus a common reality for LSPs, but it can also be a sign of healthy democratic skepticism – individual citizens demonstrating their capacity for critical thinking about public institutions. Either way, the emergence of reliable and scientific opinion data in most of the developing world could usefully inform initial assessments and baseline estimates for LSPs.

Fourth, LSPs will not be effective without complementary efforts to support their goals. Schulz argues “additional long-term technical assistance in the form of a broader mix of activities, including training for members and staff, expert advice on legislative practice and procedures, policy reform, and linkages to other development programs and activities, among others, are necessary to sustain long-term democratic reforms and legislative effectiveness.”²⁶⁶ The need for complementarity is also illustrated through the discussion about “judicial substitution.” If legislatures are unable or unwilling to promote human rights, it is especially important to bolster the capacity of the judiciary. Similarly, though this study did not cover federalism, such elements of the broader institutional context may help remedy defects of the democratic process in the legislature – or populist tensions with human rights. A less understood feature of this holistic institutional reading, until recently, is the relationship between executive type and parties. For reasons explained by Samuels and Shugart and others, a weak legislature and a strong president leads to weak parties; party strengthening activities may need to more systematically consider differences among executives and not just the electoral system and the legislature.

A fifth set of critiques point to the potentially limited focus of many LSPs, including ones that are more effective. There is good evidence that legislative oversight of security services deters coups and civilian control of the military advances democracy. But parliamentary scrutiny of defense policy remains a weak spot for most LSPs. The former Soviet States present a different context, since they arguably inherited strong civilian control of the military from the communist legacy. But the consequence of poor parliamentary oversight of defense policy is that it gives legislatures little insight and even less leverage over crises such as the one currently unfolding in Ukraine. In short, civilian control of the military may need to be more prominent in USAID programming for legislatures. Much the same can be said for the “ultimate institutional tests” such as term limits or impeachment. If we take them to be important empirical indicators of legislative capacity, then legislators need to be educated on how they work and the risks that legislative assertiveness may present. This conversation needs to take place in the abstract, ideally in the absence of a potential disagreement with the executive. While the discussion of human rights emphasized how issue-based programming can easily to overlook how democratic majoritarianism can threaten minority rights, here there is a good case for issue-based donor

²⁶⁶ Keith Schulz, “How the United States Supports Democratic Development Overseas,” *Canadian Parliamentary Review* 31, no. 1 (2008), p. 26.

assistance: a comparative discussion of sensitive topics, before they come up, highlighting the disadvantages and advantages from different cases.

Lastly, USAID should ideally be in for the long haul in any LSP. While a transition to democracy in a post-conflict environment may generate excitement and high-level short-term commitments, legislatures would be better served globally if permanent staff had enduring ties and if capacity building at least transcended the next electoral cycle. Human rights, democracy, and legislatures will all be better off in the long run.

APPENDIX I: REFERENCES

- Baker, Bruce. 2004. "Popular Justice and Policing from Bush War to Democracy: Uganda 1981-2004." *International journal of the Sociology of Law* 32:333-48.
- Crawshaw, Ralph, Stuart Cullen, and Tom Williamson, eds. 2007. *Human Rights and Policing*. Leiden, Netherlands: Koninklijke Brill NV.
- Fish, M. Steven, and Matthew Kroenig. 2009. *The handbook of national legislatures : a global survey*. Cambridge ; New York: Cambridge University Press.
- Tangri, Roger, and Andrew M. Mwenda. 2010. "President Museveni and the politics of presidential tenure in Uganda." *Journal of Contemporary African Studies* 28 (1):31-49.
- Widner, Jennifer A, ed. 1994. *Economic change and political liberalization in Sub-Saharan Africa*. Baltimore: Johns Hopkins University Press.

APPENDIX II: LIST OF INTERVIEWS FOR NIGERIA

1. Alex Nwofe – Ambassador, former Member of National Assembly, Member of Special Investigative Committee into Plateau State Violence.
2. Kemi Okenyodo, Executive Director, CLEEN Foundation
3. Habeeb Fasinro – former member of National Assembly
4. Emmanuel Anyaegbunam – Executive Director, Centre for Parliamentary and Constitutional Studies
5. Abubakar Jimoh – Communications Officer, Civil Society Legislative Advocacy Centre

APPENDIX III: LIST OF INTERVIEWS FOR UGANDA

1. Margaret Sekaggya – Executive Director, Uganda Human Rights Centre, Former Chairperson The Uganda Human Rights Commission and UN Special Rapporteur on the situation of human rights defenders
2. Okuonzi Sam Agatre, MP - Member Human Rights Committee
3. Gordon Mwesigye, Secretary to the Commission, Uganda Human Rights Commission
4. Wadri Kassiano Ezati, MP
5. Bintu Jalia Lukumu N Abwooli, MP, Member Human Rights Committee
6. Robert Ssempala, Human Rights Network for Journalists – Uganda
7. Angelina Allen-Mpyisi, Xavier Ejoyi, Lyvia Kakonge, USAID – Democracy and Governance
8. Jovah K. Kamateeka, MP, Chairperson Human Rights Committee
9. Lubogo Kenneth, MP, Member Human Rights Committee
10. Nils Mueller, USAID
11. Bwambale Bihande Yokasi, MP
12. Irene Kwaga and Samuel Olumo, Uganda Law Society
13. Eva Mulima, RTI Worked on LSPs, Implementing USAID GAAP
14. Simon Osborn, NDI
15. Hipo Twebaze, NRM Researcher and Policy Analyst