

DEMOCRACY AND HUMAN RIGHTS

WHO »REALLY« LEGISLATES?

The Political Economy of Parliaments
in Sub-Saharan Africa

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May 2019



Parliaments in Africa are currently often not the ones really legislating. Generally, the executive dominates African political systems. Legislating and governing blend and become the domain of the executive.



However, parliaments have the potential to become a decisive element in African political systems and society. Changes are underway pointing to a (slow) increase of confidence and power of parliaments.



The success of these ongoing developments largely depends on the specific context and more specifically on the respective state of the democratic development and of changes within society.

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1

INTRODUCTION

This paper investigates the role of parliaments and the legislative process in Sub-Saharan Africa by applying a Political Economy Analysis (PEA) framework. The aim is to identify formal as well as informal power relations and structures, mechanisms of power distribution and networks of influence, (political) interests of stakeholders, (economic) incentives of stakeholders to answer the question of who really legislates in Sub-Saharan Africa. Thus, the aim is to make visible what is often invisible regarding parliaments.

The paper is part of the work of the project group »From Subject to Citizen« of the Friedrich-Ebert-Stiftung (FES). This project group aims to contribute to a strengthening of active citizen engagement in the public sphere and within existing public and political institutions. Its objective is to create citizen's access to processes of formation of political will and opinion within political and societal areas. The project focuses on the opening of institutions for active citizen engagement and specifically to enhance the understanding of citizens of the role of their parliaments.

So far, PEA frameworks have rarely been used for the analysis of parliaments in Sub-Saharan Africa – neither in academic discourses nor by international actors. While difficulties regarding support of, or work with, parliaments persist, and legislative dysfunctions have been widely covered in academic discussions, there are even fewer examples of PEA-based parliamentary development projects. It seems very difficult to match project activities to the analysis of organizational issues, power structures, interests, and patterns that hamper the development of effective parliaments (Democracy Reporting International 2015: 4). A PEA framework, however, is a suitable approach to gain a better understanding of the functioning of parliaments in Africa.¹ As the subject is vast, this paper can only be considered as an introduction to the topic, including an overview of the existing literature. Despite excellent research in some areas, academic literature is scarce regarding the process of candidate selection, the question of representation other than regarding women, and the issue of lobbying. Furthermore, most of the literature focuses on anglophone countries.

One must keep in mind the different types of political regimes which exist in Africa. Except for Mauritius, The Econ-

omist's Democracy Index 2017 finds no »full democracies«. Rather, most African countries are considered either »Flawed Democracies«, »Hybrid Regimes« or even »Authoritarian«.² However, even in hybrid as well as in authoritarian regimes parliaments do exist. The scope of their influence certainly varies as well as the way deputies are elected. Yet, all governments have some sort of power-sharing arrangement, regardless of their regime type (Bueno de Mesquita et al. 2003 quoted in: World Bank 2017: 197).

Most African legislatures have historically been weak institutions, mostly because of a combination of disincentives for members of parliament to perform the functions of the legislature. These include representation, legislating, oversight or monitoring of the executive branch and constituency service. The two major reasons are, first, Africa's demographics. Many African societies are poor, unevenly developed and agrarian as well as ethnically, linguistically and religiously pluralistic. Second, the colonial legacy has a large impact. Especially the formal rules (e. g. constitutions, standing orders) that established the basis for today's legislatures. This legacy includes the minimal role of legislatures in the budgetary process; poorly resourced legislatures; limited physical infrastructure as well as few professional staff; limited provisions for a system of parliamentary committees that do not enable legislators to exercise their function of oversight over the executive branch; the tradition of drawing the members of government completely from the ranks of legislatures (in Westminster systems) and the election of deputies from single-member districts (SMDs) rather than by proportional representation (PR) (African Legislature Project 2010: 3f).

In addition to these factors, the actual operational capacity of parliaments can be explained by several political-economic factors. These include: the political system, financial resources, the electoral system and the role of political parties.

Political systems shape the balance between the executive and legislative branches of governments. In Westminster-oriented systems, where the government is represented by deputies in the parliament (and vice versa) and thus controls the majority, power asymmetries are the rule. The institutional »power of the purse« of parliament is diminished as governmental decisions are simply confirmed by

¹ The term *Africa* is used in this paper in reference to Sub-Saharan Africa.

² <https://infographics.economist.com/2018/DemocracyIndex/>, 13.2.2018

its majority. In most cases, legislation is drafted and submitted to parliament almost exclusively by the executive due to (semi-)presidential systems. Despite some positive trends implicating parliaments in the process of drafting legislation, in general deputies do not yet play a significant role. In fact, the institutional capacity of almost all African parliaments to hold strong presidents accountable is limited. Power asymmetries between the executive and legislative branches of government, in favor of strong executives, are evident.

Financial resources are a prerequisite of even running for office. Costs for electoral campaigns vary highly among different countries but have often reached excessive amounts. These high costs represent a significant barrier for everyone without resources or access to them, but especially for female candidates as well as for candidates under the age of 35. In order to finance campaigns, mostly aspiring candidates either profit from personal wealth or are able to borrow enough money. They may also receive support from business and political leaders. In some African countries, the electoral process has been manipulated by political power merchants known as »godfathers« or »rentiers« who have established a neopatrimonial network.

The respective electoral system determines largely the relationship between MPs and their constituencies. Most deputies elected from SMDs or small multi-member districts rather see themselves as »constituency servants«. In contrast, where a PR system is in place, with party lists of candidates, constituency relations become largely irrelevant in terms of members' self-interests and rational choice calculations. Office holders thus become more accountable to their party's leadership than to their voters.

Political parties often provide legislators with the main route to election and the means to a political career. Thus, MPs look primarily to their political party for advice and guidance in parliament. Political parties and their respective parliamentary groups play an essential role in the intra-legislature electoral game regarding the distribution of offices; their powers may, however, vary greatly and depend on the respective context. Their leadership structures are a clear expression of power – which may be used to reward individual members or to apply pressure on them.

Yet, weak parliaments in Africa are no global exception. Neither overpowering presidential systems nor neopatrimonialism only exist in Africa. Moreover, even countries who do not share these characteristics often experience similar challenges e.g. when it comes to the monetization of politics.

Parliaments have many shortcomings, yet they still remain the best instrument available to citizen to control an elected president and the government. Thus, they are an integral part of the separation of powers. As the example of Senegal shows, a constitutional reform also aims at strengthening the opposition in parliament by special recognition of the leader of the opposition.

Parliaments in Africa have the potential to become a decisive element in African political systems and society. Changes are underway. In some cases, members of parliaments are expanding their role in the budgetary process, and often are working to create a proper system of committees in order to exercise oversight over the executive branch.

After a brief introduction to the PEA frameworks, this analysis is divided into two main parts: The first part addresses the question of *how* to become a member of parliament, with a focus on the role of political parties in the process of selecting candidates, on the costs of becoming a member of parliament and on the role of electoral systems. In the second part, light is shed on who and what determines the work of MPs in parliament. Here, political parties and parliamentary groups play an essential role. Furthermore, the balance of power between the executive and legislative branches of governments is analyzed with a focus on the 'power of the purse', on the actual drafting of legislation and on the role of the opposition. We will then evaluate the representation by female deputies and the relationship between MPs and their constituencies. Finally, we will see that as legislating and governing blend and become the domain of the executive, parliaments in Africa are currently often not the ones really legislating. Yet, they do have the potential to become a decisive element in African political systems and society.

A word of thanks is in order to all the FES colleagues who provided insights und input, gave critical feedback and were open to exchanges on the subject. The large network of the Friedrich-Ebert-Stiftung has allowed me to incorporate empirical evidence and observations in this analysis.

POLITICAL ECONOMIC ANALYSIS OF PARLIAMENTS: POWER, INTERESTS AND INCENTIVES

There is no universal all-encompassing definition or understanding of the term »political economy«. Political economy is an area of study of the interrelationship between economics and politics as well as a methodological approach. Moreover, political economy as a methodology can emphasize individual rationality (the economic approach often called *rational* or *public choice*) or institutions (the sociological approach). As Weingast and Wittman argue (2006: 3), political economy is rather a »family of approaches« incorporating political behavior and institutions as subject matters of the investigation. For more than fifteen years, Political Economic Analysis (PEA) approaches have been applied by actors in the field of international cooperation. Most of the major international donor agencies have developed their own tools trying to shed light on »blind spots« which often hinder them in their work. PEA has been used to better understand economic, political and social processes that drive or block reform. This has led to discussions within the donor community regarding the question of power and of political processes through which policy is formulated and implemented, which have served to counter rather simplistic explanations of policy failure such as »lack of political will« (ibid. 138).

This paper seeks to find answers to the questions of power relations and distributions, interests and incentives of stakeholders by applying a PEA framework approach to the analysis of parliaments in Africa. Due to the dominance of *rational* or *public choice* approaches, critics argue that PEA frameworks focus too narrowly on an economic interpretation of politics that casts agents as rational, utility-maximizing individuals, neglecting the role of prevailing ideas or ideologies, and issues of power, agency, and coalitions as well as institutions and history. Thus, this paper focuses on the political aspects of PEA, analyzing parliaments from the point of view of social or political science. Furthermore, as Browne demonstrates, most PEA frameworks fail to incorporate the impact of gender on power relations (cf. Browne 2014). Thus, special attention is given to gender in the following analysis.

2

HOW TO BECOME A MEMBER OF PARLIAMENT?

POLITICAL PARTIES – ROUTE TO ELECTIONS AND HIGH OFFICE

Running for office as future MP begins with an inner-party selection process which encompasses several stages. Before even being able to compete during the electoral campaign, an aspiring candidate must successfully complete the selection process which includes vetting, nomination and certification by the respective party followed then by the campaign and finally the election. Sartori (quoted in: Daddieh/Bob-Miller 2012: 206) observes that the selection of candidates is the core activity that distinguishes political parties from other organizations. Schattschneider (quoted in: *ibid.* 206f) considers the nominating process as the crucial process of the party. He recognizes the winner of the nominations as the »owner of the party«. Candidate selection has become an important test of the strength of a political party's internal democracy. However, the process of candidate selection in sub-Saharan Africa has so far attracted only little academic research (*ibid.*).

A party has different options to select their candidates for a legislative election. Inner-party primaries are one way of selecting candidates. Not all political parties apply this rather democratic method of candidate selection. Rather, a career via the classical party structures – the »party machine« – often remains the most viable way to be selected. Furthermore, informal mechanisms and co-option are also often applied. The degree of transparency may vary in all different approaches as well as the degree of inclusivity.

A substantial empirical literature surveying international evidence finds that political parties with a weaker past or expected electoral performance are more likely to use primary elections to select their candidates (Ichino/Nathan 2012: 772ff). Also, parties need to have the capacities to conduct primaries. Furthermore, by adopting primary elections, party leaders give up some control over the selection of the candidate. So, the question arises why primaries are still considered as a mechanism of candidate selection by party leaders.

Drawing upon the case of the Ghanaian primaries, Ichino and Nathan propose that party leaders allow for primaries in order to avoid the negative reaction of local party members, which results from being denied the opportunity to collect rents from aspiring candidates. Although party leaders could maintain control over the nomination and extract

these rents for themselves, they need to keep the local party members satisfied in order not to lose their future support for the chosen candidate as well as for themselves. Furthermore, there are many ways for party leaders to still interfere with the selection of a candidate such as inducing an aspiring candidate to voluntarily withdraw by using a side payment. This, however, may become expensive for the party leaders in the case of valuable nominations (e.g. a race that is likely to be won by the party's candidate) that attract many aspiring candidates. In this case, party leaders may prefer to use a vetting process to influence the selection process of candidates (Ichino/Nathan 2012: 771). The vetting of potential candidates by party executives allows them to prevent contested primaries (without having to suspend formal procedures) by exercising their veto power. This may even include inventing phantom or »non-existent« clauses to push candidates out of the race or to apply the rules unfairly to the benefit of the preferred candidate as is frequently the case in Ghana (Daddieh/Bob-Miller 2012: 214). In Ghana and Ivory Coast, the losers of the internal selection process of political parties often run as independent candidates and may join the old party again later.

One problem facing the organizers of primaries is the question of how to prevent fraud when opening the primary up to all party members instead of keeping it confined to delegates. As party membership cards are often lacking, a problem of proper identification occurs and gives room to manipulation. In Ghana, for example, parties specifically try to influence the primaries of the opposition. They do so by strategically inscribing on the electoral roll to infiltrate the primaries of the opposing party.

In Tanzania, the Central Committee of the ruling party Chama Cha Mapinduzi (CCM) since early 2018 intervenes in the outcome of its primaries by having the final say over the choice of party candidates in a constituency. According to the CCM's internal rules and regulations, the party members in a given constituency are to decide over the party's candidate for an election. Yet, in the course of 2018, many opposition MPs defected to CCM under the presumption or promise of becoming CCM's candidate in the ensuing necessary by-elections. The final confirmation of a candidate by the central committee serves to push through certain candidates in the primaries.

Furthermore, again drawing on the Ghanaian example, a candidate is expected to »nurture the constituency« by pro-

viding social amenities and services such as toilets, roofing sheets, street lights etc. as well as financially covering social events. Sometimes the candidate also provides funds for party activities. Thus, »nurturing the constituency« not only establishes a closer relationship with the potential voters but it also demonstrates a commitment to the respective political party (Daddieh/Bob-Miller 2012: 215). This commitment must be demonstrated by providing the party executive with money and having the capacity to mobilize followers and voters. Only those with the necessary resources at their disposal to provide both can hope to be nominated by the party, as the Kenyan example shows (Mailhack 2018: 5). Thus, clientelistic links between candidates, parties and voters prevail. Party leaders and candidates thus need to channel resources to voters in order to succeed at the polls and require local party members to establish or maintain the connection with potential voters because programmatic linkages are ineffective (Ichino / Nathan 2012: 775).

The traditional clientelistic links between parties and voters have created traditional patterns of neopatrimonial behavior, however, they are in the process of changing due to the continuing trend of urbanization. This trend is beginning to interfere with traditional patronage structures and strategies as well as with the »rules of the game« of staying in power as loyalties and relations in urban settings are beginning to be shaped differently. An urban-rural divide is appearing. While rural areas in many African countries tend to continue to function in the clientelistic way, urban settings have become politically more volatile and difficult to »control« for political parties. »Nurturing the constituency« has also become much more expensive in the cities than in rural areas. Therefore, MPs must »apply« different logics when dealing with an urban or a rural constituency.

An additional mechanism of determining the final candidate selection shows the recent Senegalese example of the »par-rainage« (»sponsorship«). The process intends to limit the (excessive) number of candidates of insignificant parties. The new law from April 2018 demands significantly more signatures than before (52.000 instead of 10.000) in order to be accepted on the ballot for independent candidates as well as for the first-time candidates of political parties. This measure is supposed to curb the participation of rather insignificant candidates and parties. Another approach to curb the inflation of insignificant parties is state-funded financial support for parties based on the size of membership and representation in parliament as it is e.g. the case in Tanzania. Yet these kinds of laws may also give one-sided preferences to the ruling party, as the Namibian example shows.

In some African countries, religious actors also exercise influence upon the selection of candidates and their campaigns. While secular constitutions prohibit the formation of political parties based on religious beliefs, religious actors may still exercise a high influence on the selection process of candidates as well as on politics in general. For example, Senegal, despite its adoption of the French tradition of a secular state, ranked second worldwide in a survey conducted by the Pew Research Center in 2015 regarding the impor-

tance of religion in people's lives, with 97 % responding accordingly (cf. Theodorou 2015). Sufi brotherhoods exercise great informal influence in the Senegalese political system, including on the *Assemblée Nationale*, by voicing support for specific candidates running for office. This support is highly needed in a country as religious as Senegal, but it has created a system of interdependency. Beginning in the 1990s, religious actors themselves became political actors running for office. Furthermore, especially in the rural areas of Senegal, the direct influence of religious leaders, the so-called *Marabouts* (a holy person in Sufi Islam), is discernible: Local office-holders such as mayors or municipal councilors are frequently chosen personally by the local *Marabout*. He then lets them know what decisions he expects from them. This informal dual power structure is not even hidden or disguised in any way – everyone is aware of who really is in power.

THE COSTS OF BECOMING A MEMBER OF PARLIAMENT IN AFRICA

As holds true for all elected office-holders, financial resources are a prerequisite of candidacy. Long before a campaign begins, a selection takes place to decide whose campaign is feasible. The process of »monetization of politics« starts from the very beginning.

Already at the pre-campaign stage, the aspiring MP needs to be able to cover several costs in order to put his or her name on the ballot. These may include the official deposit and fees to be paid to the authorities, payments to the respective party, as is the case in Nigeria for example (Centre for Social Justice 2018: 11), rents to be paid to local party members e.g. in Ghana, payments in cash to delegates e.g. in Ghana and Nigeria, as well as to important party figures who can help secure the nomination. A study commissioned by the Westminster Foundation for Democracy found that on average candidates needed to raise 85,000 USD to secure their party's primary nomination and to compete in the Ghanaian parliamentary election in 2016 (Westminster Foundation for Democracy 2018b: 14).³ In Uganda, estimated costs of a successful parliamentary campaign in 2015 were between 43,000 and 143,000 USD (Wardle 2017: 5).

In Nigeria, the legal limits on election expenses were raised to 40 million Naira for the Senate, and to 20 million Naira for the House of Representatives with the Electoral Act of 2010 – doubling the amounts specified by the Electoral Act of 2006.⁴ Based on the 2015 general election, in which the President as well as members of the Senate and the House of Representatives were elected, however, the current limits

³ In 2012, the average costs for a parliamentary campaign in Ghana were estimated to be as high as 129,000 USD. The drop of the costs – in USD – can be explained by a drop of value of the Ghana Cedi between 2012 and 2016 (Westminster Foundation for Democracy 2018b: 14).

⁴ After 2010, Nigeria experienced a drop of value of its currency, the Naira, of more than 140 %. 20 million Naira today (10.12.2018) are about 55,000 USD.

are considered »totally unrealistic« when compared to the actual costs (Olorunmola 2017: 18).⁵ In Nigeria, the estimated cost of a successful parliamentary campaign in 2015 was about 700,000 USD (Wardle 2017: 5). This includes the cost of the campaign itself, payment of party workers as well as media and advertisement.

In order to finance these costs, aspiring candidates either rely on personal wealth or are able to borrow enough money. They may also receive support from businesses and political leaders especially if their campaign is promising and their party is in government. In Ghana and Uganda, the governing parties are more able to provide their candidates with 'in kind' support than the opposition parties (Wardle 2017: 8). One of the striking findings in Ghana is that the most common source of revenue is personal income (Westminster Foundation for Democracy 2018b: 5). In Nigeria, the electoral process has been manipulated by political power merchants known as »godfathers« who have established a neopatrimonial network. They are a key asset in mobilizing financial resources for candidates (Omotuyi 2016: 7f). The same holds true for Ghana. In Madagascar, a party's president is a key contributor to campaigns which leads to a situation where he treats the party as a »political enterprise« with no inner-party democracy. Furthermore, local as well as foreign »rentiers« are contributors in order to protect their business interests, often they wisely contribute to different campaigns to be on the safe side.

These high costs represent a significant barrier especially for female candidates as well as candidates under the age of 35 in Ghana and Nigeria if they do not dispose of enough personal wealth (Westminster Foundation for Democracy 2018a).⁶ Also, female candidates are less likely to receive financial support from donors (Wardle 2017: 10). Thus, women in Ghana for example, often choose not to run for parliamentary elections (Westminster Foundation for Democracy 2018a). Introducing quotas is not sufficient to promote female candidates.

Women face an additional challenge, because in many traditional African societies the husband holds the power over the expenses of the household. Women who would like to engage politically have to obtain not only the general support of their husbands but also their financial consent. Women are excluded from equal participation in the political process from the beginning. Thus, inequality and power asymmetries between the sexes persist and may even be reinforced by this continuing economic dependency.

As for younger candidates, there is a growing demand to enhance their chances to be elected as they also experi-

ence exclusion. Out of the 165 current Senegalese deputies, only four are under the age of 35. In Namibia, out of 102 deputies currently only two are under the age of 35.⁷ In May 2018, the Nigerian government passed a law to lower the minimum age for election candidates. Presidential election candidates can now stand for office at 35 years instead of 40, state government aspirants at 30 rather than 35, and 25-year-olds can now enter the House of Representatives, a five-year age reduction. This law was accompanied by the campaign #NotTooYoungToRun.

After having been successfully elected, the MP is confronted with the expectation of repayment. This may be expected immediately after the election has taken place or in the case of wealthy supporters this repayment may come in other forms such as support for a certain policy initiative, favorable political treatment and protection, the awarding of lucrative contracts etc. (Wardle 2017: 1).

The control of campaign finance poses great difficulties in many countries. This leads to a huge lack of transparency. Very few African countries have introduced laws to regulate the raising of campaign revenues such as the prohibition of foreign and/or corporate donations, the disclosure of sources or the curbing of expenditures. Even if such laws have been introduced, hardly any measures have been taken to assure their implementation. As the Nigerian example shows, limits on election expenses are very unlikely to be respected. This is mostly due to the high self-interest of the respective ruling party which is generally more likely to attract financial support and can count on receiving donations from staunch supporters (Babeiya 2011: 98). There are, however, propositions on the table of reforming campaign finances, for example in Nigeria (cf. Centre for Social Justice 2018).

THE ELECTORAL SYSTEM

Electoral systems vary based on criteria such as district magnitude, open vs. closed lists and electoral formulae. The two most predominant systems are: The plurality or majority system (also referred to as »single-member districts« (SMDs)) and the proportional representations (PR) system. It is through these electoral systems that states aim to maximize both accountability/responsibility and representation (Simms 2012: 3).

The idea of SMDs is to create a »stable one-party government« with a majority of parliamentary seats (Blaise, 1991: 240-1, quoted in: Simms 2012: 3).⁸ Thus, supporters argue with an increase not only in stability but also regarding the ability of the government to make and enforce decisions.

⁵ One explanation for the huge gap between the limits of electoral expenses and the real amount spent, is that expenditures made by potential candidates before the official notification of the date of the election are not taken into account (Centre for Social Justice 2018: 10).

⁶ High costs to run for office obviously pose a barrier for everyone who does not dispose of enough funds or access to them. However, research focusing on social, class and ethnic cleavages with regard to representation is lacking.

⁷ Among the 102 MPs, 96 are elected and six are nominated by the president.

⁸ Within each of the single-member district voters cast a single vote for one candidate, with the parliamentary seat going to the candidate in each constituency with the largest numbers of votes (Simms 2012: 4).

The argument against this form of electoral system is its limitation in representing minorities. The increase in accountability is to the detriment of representation which decreases (ibid. 3f). The oldest and most known example of a plurality system is Great Britain thus the system is often referred to as the »Westminster model«.

Proportional Representation (PR) systems focus on the inclusion of a broader spectrum of ideas and interests in the decision-making process to ensure effective governance. Thus, it is argued that proportional representation systems are inherently fair, since the goal of proportional representation is to provide seats to parties equal to their share of votes (Blaise, 1991: 243, quoted in: ibid. 4). Put differently, PR systems do not punish small parties at the expense of front-runners (cf. Giollabhui 2011: 578). They achieve higher degrees of representation by encouraging greater involvement in the electoral process. Compared to majority systems, PR systems tend to increase the number of participating parties in elections. Yet given the inflation of political parties in many African countries, this can be a rather undesirable development. Furthermore, it is questionable if parties formed on religious beliefs (in countries with a secular constitution forbidden) or based on ethnicity are desirable in an African political context.

Holding representatives responsible or accountable is one of the core aims when designing an electoral system. However, elected officials are often divided in their loyalties, splitting their interests between the constituents they are to represent, and their own personal or party interests, which affects their accountability. The degree of accountability varies in each electoral system (Simms 2012: 1f). Findings of the African Legislature Project (2010) as well as of Afrobarometer (2016, 2018) indicate that deputies in Africa elected from SMDs more often see themselves as »constituency servants« than office-holders elected by PR systems (Mattes/Mozaffar 2016: 209; African Legislatures Project 2010: 3). SMDs create greater incentives than PR systems to cultivate personal linkages between voters and MPs (Mattes/Mozaffar 2016: 210; Afrobarometer 2018). They encourage elected representatives to prioritize constituency work as this will largely impact on their chances to be reelected.

MPs, however, misinterpret the demand for material goods and development and underappreciate the demand for representation in the form of regular visits to their districts, in order to listen to constituency demands (Mattes/Mozaffar 2016: 210f.). While MPs do focus on constituency service and delivering collective goods, the demand of the constituencies for more representation – including that MPs simply listen to their voters – is often not properly met.

Those elected in PR systems, on the other hand, often depend much more on the decision of their respective party leadership for their re-election (Afrobarometer 2018). This finding is confirmed by research from the North-South Institute which points out that if legislators are elected as part of a list whose placements and rank order is controlled by the ruling's party national executive (and thus the head

of state) – as is the case in South Africa and Namibia, their freedom to act independently and to respond to the expectations of their electorates is reduced and they must rather pay attention to the preference of the party executive (Rotberg/Salahub 2013: 5f). South Africa, for example, operates according to a PR list system that renders constituency affiliations irrelevant in terms of a member's self-interest and rational choice calculations. Office holders thus become more accountable to their party hierarchy than to their voters (ibid. 14).

3

WHO AND WHAT DETERMINES THE WORK OF MPS?

INSIDE PARLIAMENT: PARTIES, PARLIAMENTARY GROUPS AND MPS

Political parties often provide legislators with the main route to election and the means to a political career. Thus, MPs look primarily to their political party for advice and guidance on how they should operate and vote in parliament. Political parties also provide the basis for the organization of MPs in parliament. Moreover, while the standing orders or parliamentary rules organize the work of parliament, the parties determine the content of the discussions in parliament. As political parties are traditionally the only viable route to high office, parliamentary groups can play an essential role in the intra-legislature electoral game regarding the distribution of offices. Parliamentary groups are no monolithic blocks. Their leadership structures are a clear expression of power – which may be used to reward individual members or to apply pressure on them. The leadership of parliamentary groups determines which member gets a position such as a committee seat and also determines the distribution of staff allocations which are often made directly to parliamentary groups, thus creating a dependency of individual members. As access to resources is unevenly distributed, »regular« MPs – when compared to office-holders (such as the President of the respective parliament, the Vice-President(s), the Speaker, the Whips, the Heads of committees etc.) – are often confronted with a lack of offices, (research) assistants etc. This impacts on the often already low capacity level of deputies due to a lack of qualification. Thus, the influence of the respective parliamentary group can be decisive in securing an office. This is very difficult without a (strong) party affiliation, which makes it even more difficult for independent MPs to gain power. Also, typically a threshold is established to define the minimum of members necessary for recognition as a parliamentary group (Cox 2006: 147ff). Role and strength of a parliamentary group can vary largely depending on the respective context.

Political parties relate very differently to their parliamentary group in Africa and vice versa. As the Ghanaian example shows, the National Democratic Congress (NDC) had a difficult relationship with its caucus (parliamentary group) up until the general elections of 2016. After having lost both presidential and parliamentary elections, the NDC worked against the sidelining of party structures by the president. In Madagascar, neither the parties nor the parliamentary

groups play a role as all power hinges on the president. Thus, party discipline is hardly developed. Furthermore, there are parliamentary groups which carry the name of their respective party, yet they are completely separate from the party and even support the political opponent of their (former) party. In Tanzania, the »driving force« in the relationship between the government and the governing party CCM on the one hand and its parliamentary group and MPs and the other hand, is the prime minister. He acts as the chief whip of the ruling party in parliament, is a member of government as well as of the highest leadership and decision-making bodies within the party itself. While some ministers and MPs are also part of these bodies within the party, the prime minister is the »binding glue« between party and parliamentary group. He makes sure that party discipline is exerted by MPs and that the parliamentary group is toeing the party line. As the Zambian case shows, the influence from the respective political party can be quite pervasive. As the parliamentary group lacks cohesive organization and leadership, the party is responsible for providing leadership including disciplinary actions (Simutanyi 2005: 9). MPs are often induced or pressured into supporting bills and motions. This may be rewarded by appointments or political favors by the party or sanctioned by not adopting MPs as candidates in the next election, their suspension or even expulsion from the party (ibid. 2).

Due to high turnover rates in some African countries, MPs do not always focus on political work with a long-term perspective but rather attempt to maximize short-term benefits for themselves and their supporters. MPs often feel less accountable to their constituencies than to their most important supporters who pressure them to »get something out of their term«. MPs in Africa are more and more becoming »political entrepreneurs« who attempt to maximize their own benefits and serve their own economic interest, and to whom their political career is an end in itself because of the gains it entails. In Tanzania, the high amount of defections from opposition MPs to the CCM in 2018 is an example for MPs as political and economic entrepreneurs.

According to interviews with MPs from the Democratic Republic of Congo conducted by the African Investigative Publishing Collective, they all admitted that they were there »for the salary but also to network and make business deals (...)« (African Investigative Publishing Collective 2017: 16). Due to

the immunity of MPs this may go as far as fostering corruption as well as furthering (open) corruption.

The excessive rise of the number of political parties in many African countries and the frequent absence of programmatic political parties point to a decline – or a continuing absence – of relevant (programmatic) party affiliations and lead to a further fragmentation of party systems. Instead, in these countries, we see (short-term) ad-hoc coalition-formation beyond party affiliations for electoral lists as well as parliamentary groups which are no longer formed according to party affiliation. This was the case during the last parliamentary elections in Senegal in 2017 due to opportunistic, often short-lived motives. Party affiliations thus sometimes become arbitrary and are subject to change at any moment for opportunistic reasons – including *after* having been elected to the parliament on a party ticket.⁹ The electoral system plays a decisive role here – single-member districts favor party switching as the deputies are directly elected and do not depend on their party. This opportunism can be further accelerated as politicians often do not have a professional »all back option« and economically rely exclusively on the goodwill of a certain individual within the party as politics are highly personalized. This practice sparked a debate about measures to be taken such as provisions that sanction party switching (cf. Goeke/Hartmann 2011). Such sanctions have been introduced e.g. in Zambia, Malawi and Senegal where party switching during a legislative period leads to the loss of the mandate of the deputy.

THE BALANCE OF POWER BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES

Concerning the balance of power between the executive and legislative branches of government in Africa, different forms of presidential power and their extent have to be considered: First, the power of presidents with regard to appointing and dismissing ministers; second, their power in the case of censure by, and dissolution of, the legislature (which ranges from a) unrestricted power to dissolve the parliament to b) various types of restrictions to c) no constitutional provision for dissolution) and finally, where applicable, the executive power-sharing arrangement between the president and the premier (Nijzink et al. 2006: 321ff). In Namibia, Zambia and Zimbabwe, the president even has the right to fill a certain number of parliamentary seats as well as the power to dismiss MPs. Nijzink et al. conclude that, in general, weak parliaments in Africa are faced with strong presidents. Combined with the general low levels of parliamentary resources, the institutional capacity of African parliaments to hold strong presidents accountable is limited (ibid. 326). Significant power asymmetries between the executive and the legislative are evident.

To determine the balance of power between the executive and the legislative in Africa, a closer look at parliaments'

power to authorize public expenditure, the so-called 'power of the purse' is helpful. In an extreme example in Ghana, the executive allocates the budget for the parliament itself (Rotberg/Salahub 2013: 11). Brierley, however, points out that the introduction of individual committee budgets in Ghana in 2004 also began to enable MPs to oversee the implementation of legislation, and MPs scheduled an increasing number of hearings for ministers to hold them accountable. This introduction of individual budgets signaled to MPs that committee work was taken seriously by the executive and created an incentive to spend more time in committee meetings (Brierley 2012: 420ff). In most African countries, however, the deputies simply rubber stamp the budget proposal by the government. The government fosters this by often just buying the votes of the deputies. In addition, sometimes the monitoring of the public expenses proves to be very difficult for the MPs as different committees are involved and do not receive the necessary information in a timely manner as it is the case in Namibia.

Several African countries have introduced provisions to strengthen the status of the opposition or the recognition of the leader of the opposition in parliament in their current constitutions. Strengthening the opposition, however, is often not functioning in (semi-)presidential systems and political cultures where either the government tries to form an almost all-encompassing coalition in the parliament, leaving out only very few parties and deputies of a fragmented opposition (Senegal, Ivory Coast), or where deputies prefer to keep the largest possible flexibility in terms of their support for the government or the opposition (Madagascar). Deputies of the opposition are very unlikely to submit bills to parliament. Often, the opposition prefers to criticize the government rather than challenge it with its own proposals.

In Africa, legislation is drafted and submitted to parliaments almost exclusively by the executive. Even amendments to proposed legislation by the executive rarely occur. The voting then follows on party lines ensuring that the government's proposal is passed, as in most (semi-)presidential systems the government has a majority in parliament (either via a strong governing party or the formation of large coalitions). In Ghana, for example, a private member's bill has never been introduced in parliament due to a provision that requires that private member's bills do not have a financial implication for the state.¹⁰

In several countries such as Namibia and the Ivory Coast we find extreme examples of the almost complete outsourcing of the drafting of legislation. In Namibia, for historic reasons, there is a lack of competence regarding the drafting of legislation due to the change from Afrikaans to English in politics. Thus, the government is required to hire foreign experts for practically every law. The Namibian parliament – although it has the *de jure* power of drafting of legislation – is

⁹ In francophone western Africa, this is known as *transhumance*.

¹⁰ A private member's bill is a bill introduced by a deputy who is not acting on behalf of the executive. The designation »private member's bill« is used in most Westminster Systems, in which a »private member« is any deputy who is not a member of government.

in reality completely shut out of the drafting process. The same is true for the Ivory Coast which also relies sometimes on foreigners to draft legislation due to a lack of expertise and the dependency on the international community since the civil war. These experts may come from different background including the United Nations (UN) and German political foundations. In Ghana, on the other hand, the expertise for drafting legislation lies with the executive.

There are, however, some trends pointing in the opposite direction: As research by the African Legislatures Project demonstrates, more functioning committee systems have evolved in some parliaments: In some African countries, bills introduced by the executive are no longer »rubber stamped« by the parliaments but increasingly scrutinized and often amended before being passed into law (African Legislature Project 2010: 4).¹¹ Brierley shows that in the Ghanaian case parliamentary committees have become increasingly adept at handling legislation (Brierley 2012: 420).

Lobby groups thus focus their attention on the government rather than on parliaments even though more and more parliaments have introduced mechanism for hearings, petitions etc. Sometimes informal African lobby groups representing different forms of economic interests (including those with criminal intent) may have a larger influence than official groups such as trade unions, industry representations etc.

The separation of offices is another important indicator regarding the relations between the executive and legislative branches: While in some African countries the constitution explicitly prohibits the combination of a seat in parliament with a ministerial position, the opposite also exists: In some countries, a combination is even required (Nijzink 2006 et al.: 319f). For example, in Ghana, the president is obligated to appoint the majority of cabinet members from the elected members of parliament (Rotberg/Salahub 2013: 11).¹² In other countries, a combination is allowed (Nijzink 2006 et al.: 320). The separation of offices creates distance between the executive and the legislative and might give parliaments greater autonomy (ibid. 319f). In contrast, Namibia and Zambia are extreme examples of the contrary where the constitutions demand that every member of government must be a member of parliament. This helps the government to determine the outcomes of votes in parliament and reduces their autonomy and any possibility to exercise oversight.

In sum, the balance of power between the executive and the legislative branches is largely determined by the respective political system, including the »power of the purse«. Power asymmetries persists especially in Westminster-ori-

ented systems where the government is represented by deputies in the parliament and holds the majority. This diminishes the »power of the purse« authority of parliament as governmental decisions are simply confirmed by the government's majority in parliament. The only time that parliaments are able to position themselves in opposition to the government is when the president of the parliament uses his (or her) power to block the government's proposals.

WHO IS »IN« – AND WHO IS NOT? FEMALE REPRESENTATION IN AFRICAN PARLIAMENTS

The share of female MPs in African legislative almost tripled between 1990 and 2015 with a rise from 7.78 % (1990) to 22.2 % in 2015 (Tripp 2016: 382). On the one hand, this is a significant rise, yet it still demonstrates the overall low representation of women in African legislatures. According to Tripp, the adoption of quotas is the most important factor influencing women's legislative representation. Over 65 % of African countries have adopted some form of quota to increase the participation of women in parliament which gives them an average female representation of 25 % in contrast to only 14 % in countries without a quota (ibid. 383). Women's movements were essential for the adoption of quotas, in the form of coalitions which cut across ethnicity, religious identity, party affiliation etc. (ibid. 383f).

The higher representation of women resulting from the introduction of quotas is undoubtedly a success. However, male resistance can become stronger as quotas threaten the established power structure. This has been the case in Senegal after the *Loi de la Parité* in 2010 was introduced due to the efforts of a coalition between the women's movement with other actors. Unsuccessful male candidates claimed afterwards that »their« seat has wrongly been taken by a woman who »certainly« is less qualified than him (even if the male candidate is an analphabet).

In Namibia, the ruling *South West Africa People's Organisation* (SWAPO) party introduced the so-called »zebra« list in 2014 to fill half of their seats in parliament with women and also extend the »zebra system« to the ministries (if a minister is a woman, the deputy minister will be a man, and vice versa). Yet, in order to soften male resistance, the number of members of parliament was raised in 2015 from 72 to 96 elected members of parliament.

In Tanzania, a quota exists only regarding the final composition of parliament (40 %). All parties above the 5 % threshold are required to nominate women for so-called special seats to fulfill the requirement. This rule has led to less women being promoted for the constituency elections due to the assumption that they will receive a nomination to special seats anyway. Less than ten percent of female parliamentarians have been directly elected to parliament.

Traditional power structures not only persist but may even be reinforced and quotas can trigger a backlash against an

¹¹ Kenya, Malawi, Mozambique, Zambia, Namibia and South Africa

¹² Brierley points out that this only plays in favor of the president and the government as long as their own party is not in the minority in parliament. Under divided government, the constitutional provision of appointing a majority of cabinet members from the parliament might oblige the president to include opposition politicians in his cabinet. This, in turn, would most likely increase parliamentary leverage over the legislative agenda, and contain presidential dominance (Brierley 2012: 432).

increase in female representation. Refkin et al. (2017: 58) confirm that quotas may reinforce the employment of obstructionist strategies as they propagate the common misconception that women have entered into the legislature based on gender and not on merit.

Furthermore, descriptive representation, a match of the elected official's personal characteristics (i.e. gender, race, age, ability) with the majority of those represented, may not automatically lead to substantive representation (ibid. 56f). Substantive representation occurs when the elected official truly advances the interests of those represented. Women's class, age, ethnic background and party affiliation may hinder the formulation of a collective agenda. Gender consciousness (of women and men) is decisive, not just being female (ibid. 56f). Thus, it is imperative to refrain from equating a simple rise in the number of female representatives with the automatic advance of »women's interests« and respective agenda-setting.

In order to foster the necessary gender consciousness, parliaments need to set gender-sensitive agendas, to promote gender-sensitive budget planning in order to advance equality between women and men, and to revise constitutions regarding gender equality and laws. Family Laws which are often very conservative, also have to become a subject of discussion.

4

OUTLOOK

This paper investigated the role of parliaments and the legislative process in Sub-Saharan Africa by applying a PEA framework. The aim was to make visible what often remains invisible – informal power relations and structures, mechanisms of power distribution and networks of influence, (political) interests of stakeholders, (economic) incentives of stakeholders etc., in order to answer the main question of who really legislates in Sub-Saharan Africa. MPs are facing significant obstacles in fulfilling their different roles. This begins long before their election to parliament during their party's selection process. Besides primaries, informal mechanisms and co-option by the party leadership often apply for the selection of candidates. Only those with the necessary resources at their disposal to provide both money and the capacity to mobilize followers and voters can hope to be nominated by the party. The process of »monetization of politics« starts at the very beginning. Those who have the means to engage in this political process, which begins with the selection of candidates – let it be directly as candidates or indirectly as financiers of electoral campaigns, gaining influence »behind the scenes« and expecting repayment – are the real power brokers.

Thus, clientelistic links between candidates, parties and voters prevail. These links create the traditional patterns of nepotrimonial behavior, however, they are in the process of changing due to the continuing trend of urbanization in Africa. This trend is beginning to interfere with traditional patronage structures and strategies as well as with the »rules of the game« of staying in power as loyalties and relations in urban settings are beginning to be shaped differently. An urban-rural divide is appearing. While rural areas in many African countries tend to continue to function in the clientelistic way, urban settings have become politically more volatile and difficult to »control« for political parties.

So, who *really* does legislate? In sum, parliaments in Africa are currently often not the ones really legislating. Exceptions do exist, such as the rather strong South African parliament, but generally the executive dominates African political systems. Legislating and governing blend and become the domain of the executive.

However, parliaments have the potential to become a decisive element in African political systems and society. Changes are underway pointing to a (slow) increase of confidence

and power of parliaments. Members of parliaments have expanded their role in the budgetary process, proper system of committees have been created in order to exercise oversight over the executive branch, and the number of hearings have increased. The success of these ongoing developments largely depends on the specific context and more specifically on the respective state of the democratic development and of changes within society. In some African countries, bills introduced by the executive are no longer simply »rubber stamped« by the parliament but increasingly scrutinized and often amended before being passed into law. Furthermore, the growing influence of female MPs is undeniable. Questions remain, however, concerning the extent and type of their representation. In other words, it remains to be seen whether a growing number of female MPs have in fact gained enough power and political will to force a change of legislative agendas. We are facing developments in Africa that take place at different speeds at the same time.

As Basedau points out, public perception regarding Africa has been dominated by negative developments such as wars, crises and diseases. The perception turns attention away from positive developments such as the peaceful transitions of power and the increase in female representation in parliaments (cp. Basedau 2019). For example, on the one hand, the often-criticized high turnover of MPs is certainly a challenge with regards to a constant establishment of competencies which leads to frictional losses. Yet, on the other hand, high turnover rates can also be interpreted as an expression and even consolidation of democratic procedures.

A PEA framework is not only a suitable approach to gain a better understanding of the functioning of parliaments in Africa, but it is even a prerequisite when trying to analyze power relations and the distributions of power as well as interests and incentives of stakeholders – especially when it comes to parliaments. A profound analysis applying a PEA approach helps to determine possible points of entry for cooperation programs. For example, when in a given context the parliament is de facto not part of the process of drafting legislation, as this rests with the executive, a training program on how to draft legislation for deputies can simply not be successful because the underlying power relation between the executive and the legislative is neglected. Afterwards, members of parliament may have the capacity to draft legislation, yet, they do not benefit from this as they do not have a chance to ap-

ply it. Rather, members of parliament have to first focus on how to determine their place within the institutional and societal setting. Parliaments in Africa stand a good chance to perform their functions of representation, legislating, oversight and constituency service – but they have to claim their place.

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LIST OF ABBREVIATIONS

CCM	Chama Cha Mapinduzi
DFID	Department for International Development
FES	Friedrich-Ebert-Stiftung
MP	Members of Parliament
NDC	National Democratic Congress
PEA	Political Economy Analysis
PR	Proportional Representation
PYPA	Program for Young Politicians in Africa
SMD	Single-member Districts
SWAPO	South West Africa People's Organisation
UN	United Nations

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IMPRINT

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WHO »REALLY« LEGISLATES?

The Political Economy of Parliaments in Sub-Saharan Africa



This paper investigates the role of parliaments in Sub-Saharan Africa by applying a Political Economy Analysis framework to make visible what often remains invisible – informal power relations and structures, mechanisms of power distribution and networks of influence, (political) interests of stakeholders and (economic) incentives of stakeholders. MPs are facing significant obstacles in fulfilling their different roles. This includes their party's selection process. Only those with the necessary resources at their disposal to provide both money and the capacity to mobilize can hope to be nominated. The process of »monetization of politics« starts early.



Clientelistic links between candidates, parties and voters are in the process of changing due to the continuing trend of urbanization in Africa. This trend is beginning to interfere with traditional patronage structures and strategies as well as with the »rules of the game« of staying in power as loyalties and relations in urban settings are beginning to be shaped differently. While rural areas in many African countries tend to continue to function in the clientelistic way, urban settings have become politically more volatile and difficult to »control« for political parties.



Parliaments in Africa are currently often not the ones really legislating. Generally, the executive dominates African political systems. Legislating and governing blend and become the domain of the executive. Parliaments have the potential to become a decisive element in African political systems and society. Changes are underway pointing to a (slow) increase of confidence and power of parliaments. Members of parliaments have expanded their role in the budgetary process, proper system of committees have been created in order to exercise oversight over the executive branch, and the number of hearings have increased. The success of these ongoing developments largely depends on the specific context and more specifically on the respective state of the democratic development and of changes within society.

Further information on the topic can be found here:
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