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**KENYA**

# Kenya Parliamentary Strengthening Program

Creating and Implementing a Kenya Model of  
Parliamentary Development

- A Case Study

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## **Parliamentary Strengthening Program**

### **Case Study**

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## EXECUTIVE SUMMARY

From 2000 to 2015 Kenya completed its' move from a neo-patrimonial system controlled by a "big man" president, to one that is more competitive, and in which power is exercised through formal institutions including an independent, powerful and well supported parliament. This paper examines the role played by the USAID-DFID SUNY Parliamentary Support Program (PSP), in facilitating that transition.

PSP incrementally developed a "Kenya Model" that proved successful in using donor money to develop capacities and facilitating their use by MPs to transform the Kenya National Assembly. Two critical elements of that model were PSP's success in presenting itself as an agent for parliament, and the acceptance of a core of reformers as the surrogates for parliament.

In Section III, we examine how the SUNY and reformer roles were created, sustained and legitimated by tactics developed during the various stages of implementation: (1) Getting in the Door; (2) Creating and Sustaining Working Partnerships; (3) Creating Capacity and Orchestrating Utilization; (4) Shaping the agenda by "saying yes" to demands consistent with program purposes and "saying no" to those that would have damaged the program by dissipating finite resources or diverting efforts.

Section IV deals with the question of "so what," what if anything has the KNA produced as a consequence of its enhanced capacities in lawmaking and oversight. We explore these questions using a variety of measures including a performance matrix designed to measure the quality of legislation coming out of recent parliaments.

Section V takes stock of what has been achieved and examines the generic challenges of identifying and working with an industrious minority, a common problem for all legislative capacity building programs. We unpack the more general aspects of "orchestration" as a set of implementation tactics or skills that are necessary in all programs that are expected to co-produce coordinated results in the absence of a hierarchy with the power to compel. *We note the evidence that successful capacity development was clearly one of the necessary conditions behind specific instances of actions that transformed the system.* Finally, we examine the lessons and benefits of the program for those that depend on an uncommonly long program (amortizing start up costs, pyramiding successes) and those that also would apply in more common shorter programs (program design, strategy and tactics).

Section VI briefly discusses the current situation as being shaped by living in the past through continuation of old often dysfunctional practices, living with the past through the difficulty of adopting outmoded practices to new circumstances, and

devising the means for living in the future shaped by the challenges of the new political environment created by past successes.

Kenya's current institutional problems flow from replacing a system of concentrated, informal power by one characterized by dispersed formal power. The representation of new constituencies, the shift from a parliamentary system, and devolution have produced a system better at representing differences than coming to decisions to advance common goals.

## **GLOSSARY**

- CAF County Assemblies Forum
- CGD Center for Governance and Development
- CDF Constituency Development Fund
- CIC Commission for the Implementation of the Constitution
- CID Center for International Development
- CIOC Constitutional Implementation Oversight Committee
- CSO Civil society organization
- DFID United Kingdom Department for International Development
- IEA Institute for Economic Affairs
- IAE Institute for Economic Affairs
- KNA Kenya National Assembly
- PSP Parliamentary Strengthening Project supported by USAID and DFID and administered By SUNY (
- PIN Parliamentary Initiatives Network
- PSG Parliamentary Study Group
- SUNY State University of New York Center for International Development
- USAID United States Agency for International Development

## “The Kenya Model of Parliamentary Development: Co-Producing Institutional Change”

The Kenyan National Assembly is “neither independent nor effective.”  
Joel Barkan, *Strengthening the Kenya National Assembly*, May 15, 1999.

“Who are you and what are you doing here?” Ole Kaparo, Speaker of the 8<sup>th</sup> Parliament to the SUNY Parliamentary Support Program Chief of Party in 2000

Speakers of both the 9<sup>th</sup> and 10<sup>th</sup> Parliament “would consistently refer to the Parliamentary Support Program as “Parliament’s program”. *World Bank Report 2009*

“The Kenyan National Assembly... is arguably one of the two most significant legislatures on the African continent. It is the most independent in the degree of formal and real autonomy that it enjoys from the Executive Branch.”  
Joel Barkan and Fred Matiangi, *Legislative Power in Emerging African Democracies*. 2009

“Success has many fathers, failure is an orphan”  
*attributed to both Count Galeazzo Ciano and John F. Kennedy*

### I. Introduction

This is an analysis of the role of parliamentary development in Kenya’s transition from its historic norm of “big man” rule to one that is characterized by a more open, more competitive and still imperfect system.<sup>1</sup> It focuses on the Kenyan National Assembly’s (KNA) part in that transition, and the role played by an unusually long, sustained, and successful US Agency for International Development (USAID) and UK Department For International Development (DFID) program of capacity development. It was implemented over a fifteen year period by the State University of New York’s Center for International Development (SUNY CID). Successful capacity building depended on an implementation strategy that integrated political support from Kenyans, external resources from donors, and an appropriate program of activities managed through an in-country team of implementers. The next crucial step, the actual utilization of created capacity depended on Kenyans who had to act in ways that produced a parliament that did things to represent the public, make laws with popular participation and technical support, and exercise oversight. Making that crucial connection—between capacity built with program assistance and utilization by elected politicians—depended on implementers identifying, orchestrating, utilizing or nudging into place the opportunities to connect the motivations of MPs with the necessary capacities to produce changes in behavior. The strategy that emerged from the successful implementation of



efforts—distilled here into a Kenya Model-- will be examined for the lessons useful for future efforts. Greg Power's companion piece discusses of the programming options presented by this new environment .<sup>2</sup>

### **From Neo-Patrimonialism to Shared Power**

In 2000, Kenya was in the last days of a long history of neo-patrimonial rule in which a “big man” president exercised personal power through a vast patronage network fed by rents collected by a subordinated bureaucracy and corrupt parastatals, operating in a system largely unchecked by law as interpreted by weak courts or by flawed elections sending representatives to a weak parliament. <sup>3</sup>

By 2015, neo-patrimonialism no longer characterizes Kenya. While there are continuing problems of corruption as well as tribal tensions energized by greater electoral competition, the political system is now vastly different. It is more open and democratic insofar as competitive elections and visible and accessible decision making in representative institutions are now important determinants of who gets what. (See Appendix 1 “Then and Now, A Summary of Changes from 1997 to 2015.”)

Kenya remains, however, a society deeply divided by tribal, regional, religious and economic cleavages. The problems of one-man rule have been replaced by those of a more open and competitive political system. The challenges of reconciling better representation with the needs of collective decision making are faced in a context shaped by greater permeability to popular participation, the persistence of clientelism in political relationships, the legacy of corrupt practices bred in the earlier system, and a thirst for discrete material benefits coming from still largely poor constituents. In short, Kenya faces in incipient form many of the problems of deadlock that face more institutionalized modern democracies.<sup>4</sup>

## II. Parliamentary Development as Pushing on a String

As we shall see, parliamentary development supported by USAID and DFID was an important part of this transition from neo-patrimonial rule. We will parse the contribution made by that assistance by examining SUNY's implementation of what developed into an unusually long and well-funded program. We are interested in lessons of use in more usual efforts. *This case stands alone among donor evaluations of legislative programs because others focus primarily on shorter efforts or on segments of longer histories.*<sup>5</sup> *This is a serious omission because scholars have found that length of time and focus of efforts to be important explanations for implementation success. Neglecting them would leave a possibly decisive variable unexplored.*<sup>6</sup>

### Top Down and Bottom Up Perspectives

This evaluation differs in another way, donor supported program evaluations usually have a top down focus starting with sponsor plans and proceeding to assess the degree of fidelity to them achieved by implementers.<sup>7</sup> We will take a “bottom up” rather than “top down” view of the implementation process.<sup>8</sup> This is increasingly the perspective of those seeking to reform program design by recognizing the motivations, interests, and incentives of those whose behavior policies seek to influence.<sup>9</sup> Many of the lessons of this program derived over the past decade and a half of practice mirror and reinforce those currently being advocated by analysts seeking to reorient development efforts and examine them from the perspective of the target populations rather than exclusively in terms of donors predetermined goals. The poor record of efforts to reform financial management systems, for example, have been attributed to a failure to change practices after mandating changes through statutory change.<sup>10</sup> In the legislative context, Greg Power has argued for “politically agile programming” that reflects the needs and circumstances of those being assisted and recognizes that “self-sustaining political change can only be implemented by the people who are directly affected by it.”<sup>11</sup> Booth and Unsworth advocate programs that are politically informed and astute, locally owned, negotiated and delivered.<sup>12</sup> While such advice is sound, its lessons are usually focused on “taking context as the starting point” by designing programs at the outset that account for political circumstances rather than providing implementers with discretion to adapt once programs are underway and the quality of information is better.<sup>13</sup> *Our goal in this paper is to examine closely how a more “bottom up” generic strategy was actually implemented in a world in which discretion to respond was limited by still current bureaucratic constraints and the ability to determine and deal with parliamentary preferences was limited by the multiple and changing goals of MPs and the effects of election driven turnover.*

### **A unique program with transferable lessons?**

This case study focuses on a successful fifteen-year program of legislative assistance. As an evaluation it is unusual and even unique in several regards: (1) it focuses on what is widely regarded—by donors, by parliament, and by many independent analysts—as a success while most programs have been more problematic;<sup>14</sup> (2) PSP is probably the longest, best resourced and most sustained legislative development program to date;<sup>15</sup> (3) Finally, as we shall see, much of what was done can be replicated under specified circumstances in shorter term and less well funded efforts. Indeed, much of the success depended less on time and resources than it did on SUNY’s successful presentation of the program to the Kenya National Assembly and the orchestration of their cooperative efforts to co-produce results.

Thus the Kenya program provides an unusual opportunity to examine how and under what conditions and using what tactics a successful program was started, developed, and results produced. It is a chance to abstract from experience a Kenya Model that, in turn, can provide both hypotheses for further testing and useful suggestions about how programs should be run in the future.

### **Getting from “Money with Strings” to Building and Using Capacity**

*Nearly all external assistance programs to sovereign governments start at the same place and hope to get from there to big results: they have money but lack the legitimacy to compel target population behavior. Donor programs have broad goals that include the development of functional democratic institutions but their means are largely confined to spending “money with strings”: funds with specified purposes and conditions spent through designated intermediaries.*

The problem of indirectly influencing outcomes is encountered in both domestic and international politics where reformers seek to achieve reform by “remote control”.<sup>16</sup> Money does nothing by itself and depends on the activities that it buys for effect. Typically this has meant dedicating money to capacity development in the expectation or hope that the target population will be motivated to use that capacity in behalf of donor supported institutional or policy goals.

### **Contracting Connections**

The political masters of donor agencies are now interested less in capacity than in results from utilizing capacity like greater democracy, more effective institutions, less corruption, diminishing poverty. While the terminology differs, they are less interested in inputs and their immediate outputs than they are in outcomes or impacts.<sup>17</sup> USAID, for example, emphasizes results under the rubric of its’ “aid effectiveness agenda.”

Showing utilization is hard to do but increasingly important. *Donor agencies are now being evaluated by their political masters on the changes in target population behavior that they can only indirectly affect.* They can help to create capacity, itself a contingent process, which then is appropriately used or not.

*Because bi-lateral donors typically lack the staff to manage larger effort themselves they choose to deliver capacity building efforts through contracted agents. This creates possibilities for “agency-loss,” a term for agents acting on their own preferences.<sup>18</sup>*

*Thus donors formulate detailed plans (often at the outset when information is scarcest) to be implemented by their agents that are heavy on delivery schedules, measurement, and accountability for process and results.* How the “aid results agenda” affects how plans are formulated has been termed by Power and Carothers as “projectization” because work is fitted into the bureaucratic requirements of donors.<sup>19</sup> So when donor agencies are held to account to produce such significant outcomes, that obligation is sometimes shifted downward from them to their implementing agents. In any case, the general problem remains: program plans inevitably become less able to control developments as one moves from spending the money for approved purposes over which donors and implementers have greatest control, to how the resulting capacities are used by the target population of often sovereign actors like elected officials over whom external control is weakest.<sup>20</sup>

### **Institutional Development as Co-Production Without Hierarchy**

Since the essential parts of parliamentary development—creating capacity and utilizing it—are contributed by independent actors, successful development depends on co-production to achieve the desired result. Neither set of actors is in a position to compel the behavior of the others they need to achieve results.<sup>21</sup>

In parliamentary development, taking that last crucial step depends on identifying and working with the right parliamentary interlocutors who are expected to use the capacities being built. The risk is that parliamentary target populations are diverse, have multiple and conflicting goals, and are massively influenced by short-term political circumstances. So there is always going to be competition over the use of limited donor funds. Spending to achieve too many goals risks dissipation. Funds can also be diverted through inefficiency, ineffective activities, and corruption.

How then are these partnerships created and sustained between (1) the right parliamentary interlocutors who initially provide access and are ultimately responsible for whatever is used, (2) donors who control the flow money by determining how it must be used, and (3) implementers who manage the content, timing and focus of capacity building activities? And how can these relationships be sustained and expanded in a changing environment? Actual implementation is often

left to agents contracted for that purpose and it is they who must spend the money with strings in ways that contribute to the results sought.

### Implementation Assistance and SUNY's Presentation of Self—Articulating a Kenya Model Through Action

Implementation is a critical stage in the policy process. It is where policies, plans or ideas are translated into actions that are supposed to affect the world. Many scholars have argued that the quality of implementation is an important independent determinant of success. The effectiveness of implementers, rather than the robustness of given policy ideas, has been credited for the success of many programs.<sup>22</sup> And in the Kenyan case, donors expected implementers to make critical connections given that their monitoring and evaluation plans held implementers responsible for connecting capacity and utilization.

In the Kenya case, then, for implementer's capacity building efforts to actually result in political development, other critical actors had to respond by cooperating and ultimately using what is built. How those critical actors respond is determined in part by how implementers and their efforts are perceived. The successful presentation of self is a means for influencing how others respond to you.<sup>23</sup> *SUNY had technical expertise but not power, MPs had power but lacked expertise, so SUNY's task was to encourage a relationship of beneficial mutual exchange which they did by shaping how they were perceived.*

### *Own Us, Please*

What you believe about a person or organization shapes how you behave towards them.<sup>24</sup> From the outset, *SUNY presented itself as a technically competent and non-political agent at the service of parliament.* An early project manager said: "the SUNY self-presentation (was) that we were non-partisan and that our role was to support parliament (to) develop as an institution -- we were 'for' parliament, not for any particular legislative or political position."<sup>25</sup> Having this presentation accepted was their means of getting the cooperation from MPs, staff and parliamentary work groups necessary to fulfill their obligations initially to USAID and then later DFID and to advance their own sense of mission.<sup>26</sup>

Presentations are sustained by consistent and reinforcing messages contained in what presenters say about themselves and how they behave.<sup>27</sup> Because audiences may be at risk if they accept false premises and be duped in shaping their own behavior, they are often suspicious.<sup>28</sup> SUNY was, after all, working for a foreign power though one generally sympathetic to parliamentary development goals.<sup>29</sup>

This problem is often discussed in the development literature as one of establishing "ownership" on the part of the target population. Naming the problem, and identifying a few prescriptions, is not the same as appreciating its dimensions and

meeting its conditions. Ownership must confront suspicions arising out of the principal-agent problem and in dynamic circumstances it must be sustained, renewed, and continuously maintained.<sup>30</sup> *As we shall see, parliamentary ownership over this program was fed both by acceptance of the message presented by SUNY as subservient to parliamentary goals, and by the utility of accepting what the program had to offer to advance evolving MP goals.*

### **One Program Two Owners?**

SUNY had two masters and obligations to two “owners.” SUNY worked for donors who paid for the program while they were responsible for working through the Kenyan National Assembly. Donors had their own needs to claim public credit through “branding” and other means for what was accomplished with their money. Moreover, donors were sensitive to the possibility that the program could be captured by MPs for their own ends,<sup>31</sup> and MPs were suspicious that the program would advance the interest of a foreign power.<sup>32</sup> To keep money flowing and access available, SUNY had to keep both satisfied. This situation was more complicated than the typical principal agent relationship because SUNY had to present itself as the agent of two sets of principals, each with its own goals, competing claims for credit, and fears of agency-loss.<sup>33</sup> We will focus primarily on how SUNY maintained its relationship with the KNA while noting both relationships were critical: MPs for access/action and donors for financial support.

The goals of implementer agents and parliamentary principals are not identical and some may even be in partial conflict. Because presenters may have incentives to mislead and the means to do so in what they say about themselves, critical audiences typically check how they behave to test authenticity before assuming the risks of cooperation.<sup>34</sup> Throughout the implementation process, SUNY therefore took pains to repeatedly present the message of being of service and to do things that were consistent with that message including: constant references to sometimes vague parliamentary development plans, extensive consultation with selected interlocutors, a readiness to provide technical help when requested, and deferring credit to political and administrative principals.<sup>35</sup> And, in some instances, SUNY did things that were contrary to their immediate interest—such as conflicting with some donor preferences—that further authenticated their message to MPs. In return, SUNY got the cooperation of essential interlocutors, the opportunity to develop capacity in target populations, and the access and information necessary to target efforts at times and in places with the best chances for the actual utilization of capacities once built.

### **The Implementation Environment**

Now that we have described the starting positions of donors, and the presentation strategy of the implementer, we now turn to the situation in the National Assembly at the outset of SUNY efforts.

## Means of Executive Domination

From Independence to the turn of the 21<sup>st</sup> Century, Kenya's legislature had been largely subordinated to the two chief executives—Kenyatta and Moi-- who had monopolized the office.<sup>36</sup> The means for exercising that control had varied over time often changing according to the needs of whoever was President.<sup>37</sup>

Presidential control in 2000, for example, drew on a variety of formal and informal powers.<sup>38</sup> While Parliament could propose laws, the capacity to draft legislation was primarily in the Executive Branch and MPs had no independent access to that official expertise. Parliamentary staffs were employees of the government and not parliament. Parliaments own budget was determined by the executive. In the words of the Hon. Aringo "we became just another government department" attached to the President by an 'umbilical cord' of money under his control."<sup>39</sup>

These and other powers were actually used to exercise control. The President could dissolve parliament, as he did when parliament was on the verge of passing legislation that would allow it to determine its own calendar.<sup>40</sup> He also dissolved parliament in 2002 when it was on the verge of proposing a new constitution. The President controlled the bureaucracy, and he used that power to transfer auditors on the eve of an audit of executive expenditures.<sup>41</sup> One staff member of the period said, "we were living in fear" because their employer was government and not Parliament.<sup>42</sup> And while Parliament had the power to approve the President's budget, their power to change it was limited to a symbolic amount of 20 Pounds and they lacked the time for deliberation and the staff to give serious attention to the process.

The President also had political means to influence legislators once elected. Their basic salaries in 2000 were insufficient \$154 USD per month.<sup>43</sup> Thus, the appeals of being appointed to the Cabinet as a minister, or receiving benefits as a deputy minister, were significant as they brought monetary gain as well as political visibility. So the President could increase his support by increasing the number of such appointments. In the 7<sup>th</sup> Parliament (elected in 1992), "roughly 70 percent of KANU MPs and one third of the entire House were appointed to positions of Minister or Assistant Minister."<sup>44</sup>

## An Opening for Parliamentary Development

By the turn of this century, national events and internal developments were weakening presidential domination.<sup>45</sup> The 1990s saw increasing economic problems, major corruption scandals, and more international pressure for changes in Kenyan government. These led in the 1990s to an end of official one party rule and the coming of a multi-party system. Competition for the presidency sharpened, and manipulation of the laws and other means were used to keep Moi in power.

KANU, the ruling party, was coming apart as internal competition to succeed Moi was increasing and the opposition was unifying.

Opponents of President Moi gained an institutional venue when they did well in parliamentary elections for the 8<sup>th</sup> Parliament. A small but energetic group of legislators pressed for change and an increasingly divided ruling party was focused on other priorities.<sup>46</sup> In 1999, Parliament passed the Constitutional Amendment making possible the Parliamentary Service Commission (the PSC) and the Parliamentary Service Act. Together, these gave Parliament the formal power to set its own budget and hire its own staff.

### *Problems*

These acts would provide the formal basis for governing and planning parliamentary development. But important problems remained: uncertainties about the extent and durability of political support for change; the practical problems of designing and implementing plans for development; and getting the technical and financial support necessary to implement those plans.<sup>47</sup>

### *Generic Implementation Challenges*

In our interviews, we observed at least four distinctive sets of implementation challenges or clusters of problems that had to be dealt with. Some occurred once, while others were recurring or continuous. Each set, however, provides an opportunity to examine the strategies and tactics supporting them and are thus chances to glean lessons on how they may be replicated in other contexts.

1. Getting in the Door at Start up. Outside implementers require access and inside partners. Getting in the door and establishing relationships with parliamentary interlocutors is often a problem not solved by the existence of formal agreements.
2. Getting Underway. Establishing and Sustaining Working Partnerships. Included are establishing and legitimating an agenda, division of labor, conducting activities and transitioning interlocutors with turnover and political changes.
3. Bringing it all together. Dealing with the problems of co-production through orchestration.<sup>48</sup> Development programs can contribute capacity building help, but they and the donors are primarily interested in improved performance and this is under the control of MPs. Thus success on the big goals depends on orchestration or bringing together capacity, with the power to act, with the motivation to act.
4. Shaping the Agenda by Saying Yes and No. To succeed, implementers and their partners have to be able to focus efforts on a few goals, and spend their finite material and political capital (money, time, attention, and access) efficiently. Programs can fail if necessary resources are dissipated across too many goals, or



by inefficient/wasteful spending.<sup>49</sup> So the discretion to say yes to demands that are consistent with program purposes and no to those that are not is essential.

### III. Implementation

We now turn to the ways SUNY met the implementation challenges described previously. How it used these as opportunities to construct its presentation of self as technical helpers to parliament and as the agents of donors. And how that construction elicited the required cooperation of parliamentary actors and while sustaining the support of donors by whom they were employed.

The overall evaluation of the USAID and DFID programs—in terms of the broad areas developed, program activities, and measured effects—are dealt with in the formative and summative evaluations conducted for those purposes.<sup>50</sup> *In this work, we are primarily focused on the hitherto undocumented implementation strategies and tactics that shaped and produced the results in those reports.* Appendix 2 Chronology of Parliaments and Institutional Developments contains a synoptic picture of the broader program areas and the specific activities that helped to produce changes in the different parliaments.

#### 1. Getting in the Door

Although by 2015, PSP was held in high regard by parliamentary leaders as “their” program that was far from the case in 2000 when the Speaker of the 8<sup>th</sup> Parliament posed the rhetorical questions: who are you and what are you doing here? So in 2001, getting in the door—establishing initial relationships, building a degree of trust, and laying the foundation for more extensive cooperation—was the task that faced the program.<sup>51</sup>

By 2001 many of steps for initiating parliamentary assistance efforts had been taken: (1) essential legislation established parliamentary control over its budget and staff as well as creating the Parliamentary Service Commission to oversee the process; (2) donors had achieved results from specific earlier support and USAID committed itself to a dedicated, longer term program of capacity building; (3) in August of 2000 the State University of New York was chosen as the implementation partner for managing the effort and began its operations in Kenya following the signing of a Memorandum Of Understanding (MOU) the following year.

Still there were substantial obstacles encountered at the program’s outset. (1) The Executive, first under President Moi and after 2002 under President Kibaki and his successors had an institutional interest in not seeing executive power diminished to increase the parliamentary role.<sup>52</sup> (2) Speaker Francis ole Kaparo, who was speaker in both the 8<sup>th</sup> and 9<sup>th</sup> parliaments, was largely opposed to an enhanced parliamentary role and despite earlier acquiescence to the strengthening measures passed he remained unsympathetic.<sup>53</sup> (3) There was no precedent in Kenyan colonial history or after independence for an assertive parliament.<sup>54</sup> (4) MPs as a

whole were not united in their desire for reform, the core of reform MPs under the leadership of Peter Oloo Aringo had proven adept at using member self-interest (opportunists) rather than appeals to institutional patriotism as their means for achieving the majorities necessary to advance their pioneering legislation;<sup>55</sup> (5) In addition to those specific problems, there was the on-going suspicion of the motives of the donors themselves who were often portrayed as seeking to undermine Kenyan autonomy, or in Speaker Kaparo's words "meddling in Kenyan affairs."<sup>56</sup>

Not surprisingly, the process of getting underway was a relatively slow one because of the initial resistance of the Speaker and an election that occurred in 2002 creating a new parliament (we will deal with these transition problems in the next section).

The initial internal problems were getting around the Speaker, overcoming suspicion of many members that the program was an agent of a foreign power, and initiating working relationships with key actors. And there was also an important external problem, maintaining the support of USAID<sup>57</sup>, who could have grown impatient with the slow start and discontinued support.

### Internal Tactics

The first SUNY project manager, John Johnson, used a variety of devices to get the project in the door, PSP: (1) started with small non-controversial projects such as publishing a handbook on parliament for schoolchildren, creating an internship program in collaboration with the United States International University (USIU) that provided needed staff assistance; (2) distributed benefits to establish initial relationships such as arranging study tours which included those who would have to work together; (3) kept a low profile while making the project useful establishing relationships with key actors—Hon. Aringo and his allies who shared the goal of parliamentary development, those in the Clerk's office such as deputies Omolo and Gichohi who would benefit from greater support and were anxious to play a larger role—whose roles would expand later as the project's substantive work got underway.

### External Relations

Not surprisingly, visible achievements were few in this initial stage. And this created a potential problem with USAID. Parliamentary assistance within USAID worldwide, and in Kenya, had always been one of several competing areas of programmatic support, civil society being its main competitor in this period.<sup>58</sup> Many in the agency preferred to support civil society whom they saw as forceful advocates with clear missions and were suspicious of parliaments whose members were often drawn from a political class perceived as corrupt. So an underperforming parliamentary program was particularly vulnerable. In this, the SUNY project was fortunate in having the support of an energetic, savvy and well connected USAID

program officer—Ms. Nancy Gitau—who had supported earlier more limited parliamentary assistance efforts and understood the significant problems involved in implementing the program.<sup>59</sup> In this, and subsequent periods of project vulnerability, she and her successors were critical actors in maintaining USAID funding and guarding the discretion of the project to build slowly at the outset. With time and experience, others including a USAID Mission Director, an Ambassador, and succeeding program officers at USAID and later DFID came to see their program as working and granted it more leeway.

## 2. “Energizing the Political Ecology” By Creating and Sustaining Working Partnerships

While parliamentary development programs are often described in terms of institutions and broad goals, implementing them is about “energizing the political ecology” by getting the right combination of people to work together on well selected tasks at the opportune times.<sup>60</sup> In this case, “energizing” meant getting participants to act on their latent potential to achieve common goals by contributing their resources of legitimacy, money, energy, access and expertise to co-produce results.

### An industrious minority as a surrogate for parliament

Throughout this and following sections we will focus on a small number of MPs who performed as interlocutors between the SUNY program and parliament. Recall that parliament itself is an ever-changing body and cannot be said to collectively support its own development. Rather development and goals consistent with it and the willingness and ability to advance them motivates only a minority of members.<sup>61</sup> So the initial task of SUNY was to ally with that “coalition for change” and to work with and through them as if they were the parliament itself. *SUNY’s presentation of self as an agent of parliament entailed a corresponding acceptance of interlocutors as the surrogates of the parliament to which SUNY was deferring.*

### Necessary Resources

What resources were needed and how were people who controlled them brought together? The following problems had to be dealt with: putting together the right combination of people with critical resources (political skill, authority, knowledge, administrative talent, money), creating enough trust among them to sustain cooperation, meet challenges, and decide upon and implement a division of labor. And, in political bodies subject to turnover, they had to sustain these relationships as personnel, tasks and circumstances changed.

Some of the elements were in place in rudimentary form and the USAID and DFID program helped to catalyze them into what became a reform partnership. The group of reform MPs had developed relationships with donors who supported initial efforts, and CSOs (i.e. Center for Democracy and Governance and the Institute for Economic Affairs) who advised them on specific issues and provided help.<sup>62</sup> The reform MPs themselves were a sophisticated lot who were bold and confident but also knew what they did not know.<sup>63</sup>

A CSO participant described what happened next: “SUNY walked into this environment and it was highly regarded because it brought on board comparative experience, dedicated resources and introduced coherence to sustain its engagement. The MPs readily accepted external support because they had been manipulated by the Executive for years and they were frustrated by this because they did not have the information, official and legislative skills necessary to counter the manipulation.”<sup>64</sup>

SUNY’s expertise, recognized by the reform MPs, laid an initial basis for influence insofar as the incipient partners believed and would continue to believe that Parliamentary Support Project (PSP) shared their goals.<sup>65</sup> Later, as we shall see, this was augmented by other sources of influence such as the ability to help advance more specific member goals and projects.

### *Skill to Deliver Votes*

Implementers simply lacked some important resources that some of their partners could provide, among these was the political skill and bona fides necessary to build voting majorities inside parliament.

Recall that parliamentary development was a goal of only a minority of members, and it competed with other important goals such as capturing the presidency for many of them. As we shall see, SUNY to do its work had to be able to use the legitimacy provided by parliamentary interlocutors backed by legislation and other measures adopted by parliamentary majorities and abiding by the partial fiction that these few people and measures represented the enduring will and preferences of a collective institution. Creating and holding together the voting majorities was therefore a critical task. It was also a task beyond the ability, access and legitimacy of project personnel who were outsiders employed by a foreign government.

While analysts often talk about the importance of political will, change agents, and reform actors in implementation, these descriptions are necessarily bloodless abstractions. SUNY was fortunate in initially working with a dynamic, resourceful, and committed advocate to work with from the outset: the Hon. Peter Oloo Aringo. He brought with him the authority that came from having been chairman of the ruling party and twice cabinet minister, he knew many of the critical players and he knew what they wanted, and he was enormously energetic and persuasive. Finally, he had a clear view on what parliament’s initial problems were and this analysis defined his agenda.<sup>66</sup>

He could be persuasive. Jesse Biddle, the second SUNY manager, observed how he could work a room: “We had a meeting with members of parliament, and I saw him get up in a room full of contentious MPs, point to people and call them out verbally. He could talk them into approving a budget office even while the Finance permanent secretary opposed it. Had never appreciated the term charisma before.”<sup>67</sup>

In addition to personal persuasiveness Hon. Aringo was a skilled tactician. He had previously, in the passage of legislation and constitutional amendment creating the PSC and parliamentary financial independence, used these skills to create a two-thirds majority and later simple majorities needed for passage. John Johnson described his three pronged strategy of: appealing to member self-interests (“why don’t you want these things?”), educating them as to the benefits the legislation would provide (through a series of workshops supported by donors), and making them part of the process to give them ownership of the legislation.”<sup>68</sup> He used this support, for example, to hold a budget amendment hostage until the government allowed his bill to move.<sup>69</sup> He also knew how to use credit, and on a key measure allowed Moi to save face by having the government introduce one of his reform measures they had initially opposed. Others also got authorship credit for bills designed by Aringo. Later, other less flamboyant interlocutors with other skills of persuasion and legislative acumen would also become come to the fore. But in the critical early stages of the program, Aringo’s skill was critical.

### *Skill in Bureaucratic Politics*

While MP interlocutors were needed to assemble and maintain legislative coalitions, another important dimension was sustaining cooperative relationships within the legislative staff.

The staff were key actors because much of the capacity building work would be done on staff members, through staff units, and would later be utilized through staff structures. A World Bank Report noted staff must have the requisite skills to deal with such intensely political and competitive environments and to pursue collective actions where incentives are directed at individual politicians to procure private and patronage goods rather than collective public goods, especially at the national level.<sup>70</sup>

As the parliamentary bureaucracy grew, so did the importance of bureaucratic politics and the corresponding need for effective bureaucratic politicians as allies. Earlier we noted how his energetic deputies Omolo and Gichohi worked around a reluctant clerk. As the staff expanded, these deputies and other program alumni rose in power and commanded a larger set of subordinates. Staff interlocutors had to manage that expansion, deal with internecine staff tensions, resolve jurisdictional squabbles, and generally keep the expansion process running smoothly often in partnership with committed formal leaders like Deputy Speaker Musila, and later Speaker Marende.

One example of skillful intervention occurred during the establishment of the Parliamentary Budget Office. Resistance from established offices proved frustrating enough for one key staff person to provoke a letter of resignation. Patrick Gichohi, by that time promoted to Clerk and the Speaker told that person they would not accept the resignation and that they would provide the necessary support to overcome bureaucratic obstacles. That show of support was critical and the office developed as hoped.

### *Borrowing Legitimacy from Partners in Positions of Authority*

In the beginning of the project, the legitimacy of project efforts and formal access to parliament depended on having a relationship with the official leadership. They needed the cover of official support to do their work, but the top leadership was not initially supportive. The Speaker (from 2002-2008) was initially opposed, and later took a more passive role, and the Clerk was not an active supporter of change. So, SUNY project managers created working relationships with others in positions of authority. They included: the Hon. Aringo vice-chairman of the first Parliamentary Service Commission, Hon. David Musila<sup>71</sup> who was deputy speaker in the 9<sup>th</sup> Parliament and headed the liaison committee for the project (a body itself created to get around the Speaker) as well as chairing the committee on standing orders, and Deputy Clerks Patrick Gichohi and Peter Omolo. So, in the absence, of energetic opposition from the Speaker who had other priorities, and an ailing Clerk, these officials did have the discretion and willingness to help. As the project progressed, the official stature of allies also increased (the Speaker of the 10<sup>th</sup> Parliament, the Clerk, Patrick Gichohi the PSC, and energetic committees chairs). They became strong supporters of the program and were instrumental in using PSP help to consolidate and extend significant reforms.

### *Borrowing Legitimacy by Reference to Existing Parliamentary Powers*

Another technique for legitimating given PSP capacity building activities was to connect them to existing but underutilized constitutional and other formal powers. In the words of a Project Manager: "SUNY was able to 'lead' a bit more overtly as there was a large gap between what parliament was actually doing versus what it had the authority to do.... we...adopted the strategy of communicating and educating MPs and Clerks as to what were parliament's authorities and responsibilities under the standing orders and law." He continued, "We organized the overall committee strengthening agenda and used committee strengthening activities in turn to educate/empower MPs and Clerks to use authorities which they already held. Gichohi and Omolo helped a lot with this by always coming to committee activities and representing to the MPs what it was they could/should do under KNA rules and Kenyan law (as opposed to at the behest of some donor or advice of some expatriate expert)."<sup>72</sup>

### *"Showing Up," Creating a Communications Network, and Serving as a Broker*

An important form of "soft" power in dispersed or fragmented political environments is being central in a communications network. That is being in frequent communications with actors who are only in periodic contact with one another.<sup>73</sup> If, as Woody Allen observed, success is mostly about showing up, then



SUNY had to show up and meet more often with a broader spectrum of partners and concerns than others in their network.

*Of all the institutions of government, legislatures are the place where activities are most often undertaken by individuals, organized and interacting in formal and informal face to face groups, and in which information is communicated primarily by people talking to one another.* In such an oral and personal culture, the composition, character and scope of the people whom legislators meet and talk determines a lot of what they know about the world and their choices in it.

SUNY became a central element of the communications network for parliamentary reform because of the frequency and intensity of its interactions with dispersed participants. SUNY was a constant presence in the KNA, it had ready access to an increasingly important set of parliamentary interlocutors including the chamber and staff leadership, it was in frequent contact with donors, and its civil society links expanded over time as participation grew beyond core CSOs (CDG and IEA) and to include new ones as participants in programs and as their program responsibilities expanded to include making small grants to CSOs.

Thus SUNY became a frequent informal source for information about the technical, financial, administrative, and political feasibility of options being considered by diverse actors. For example, the Speaker and SUNY Chief of Party held frequent informal meetings to discuss the workshops and other activities that shaped reform of the rules. SUNY also served periodically as a venue for donor coordination meetings.

SUNY's continuing access to otherwise dispersed participants put it in a position to influence, convey, amplify, expand upon, or qualify what was being said. The need to maintain the trust of other participants was essential to its mission thus provided SUNY with a visible incentive recognized by those with whom it was speaking to be accurate and to avoid misleading. And SUNY's recognized technical expertise and professions of neutrality positioned it to serve as an honest broker of information. Honors brokers, of course, don't have to be conveyer belts and they can influence how and what is communicated.

### *Convening respected voices – engaging policy discussions*

Because SUNY had access to important players, it could use its centrality in a communications network to identify issues of common interests and create opportunities for participants to get together for their mutual benefit. These activities did expand the “social capital” of trust that comes from familiarity in MPs, CSO participants, outside experts and others. And in so doing, expanded participant's range of potential partnerships, degree of cohesion, and their awareness of areas of divergent and mutual interest.

PSP drew on its network to develop interactive knowledge sharing mechanisms that allowed MPs, technical experts and stakeholders to share views, experiences and tacit knowledge, within forums that provided a safe space for deliberation. Over the years, PSP forums and workshops contributed to better uptake of research, more openness to the idea of consulting outside experts, and ultimately enhanced the Parliament's capacity for evidence-based policy making. <sup>74</sup>

Essentially PSP convened discussion forums took two formats. First, the project presented over 70 technical reports and presented evidence regarding bills and budgets to Committees and MPs *almost exclusively* through workshops wherein technical reports were pre-circulated, and then presented and discussed among committee members, technical experts, CSOs and other stakeholders, using a skilled facilitator. Over the years, the project organized dozens workshops, retreats and other special "one off" forums for MPs and parliamentary staff to explore options for dealing with a specific issue or to consider changes in parliamentary practice that would enhance the operations of the National Assembly. For example, PSP organized annual pre- and post-budget workshops that joined interest groups, academics and CSO in discussions of the budget. Forums to discuss specific legislation, or the revision and implementation of the Standing Orders and those that led to the Fiscal Management Act provide further examples. In a recent interview, the Clerk cited PSP's role as an "outside convener and information broker" as a fundamental PSP contribution to Parliament's handling of difficult issues.

In addition to paying for experts to prepare technical reports, the approach involved arranging off-site meeting space, refreshments and sometimes accommodations and travel. So the approach is costly, but it has been effective. MPs generally have little time to read reports, and prefer discussions to reading. Meetings offered the chance to talk about specialized technical inputs with external experts. As externally convened discussions, the workshops were not subject to the rules and heightened rhetoric of plenary debate, nor to the expected outcomes of Committee meetings (formal, on record reports to plenary). In workshops MPs and experts were free to explore options openly, to seek advice, to sound out opinions and positions of their colleagues, to test the waters before negotiating decisions with political and house leadership.

Second, PSP regularly organized small policy discussions on high priority issues, usually under the discussion series named the Parliamentary Study Group (PSG). About six to eight times per year, the PSG gathered from 20 to 30 people, including a few MPs, one or two Government officials, and representatives of civil society groups and other stakeholders (which frequently included several donors or implementing agencies) in the SUNY Kenya boardroom. Lively discussions were held on topics ranging from talks related to the post election violence of 2008 ("Prospects for Governance Reform through the Legislative and Policy Review Actions of the Kenya Parliament"), presentations by the Kenya Vision 2030 team on the role of parliament in Kenya's development plan, and a series of talks related to passage of and implementation of the 2010 Constitution, with speakers from the

Transition Authority, the Constitution Implementation Commission (CIC) and the Constitutional Implementation Oversight Committee (CIOC) to discuss various aspects of the constitution's implements, challenges being faced and lively discussion on interpretation (of clauses, articles and the spirit) of the Constitution.

The meetings were an invention of the SUNY Kenya Chief of Party (project director) who was highly skilled at selecting the topics, identifying interlocutors who would learn from each other, was an expert facilitator and who realized that meeting should be conducted under Chatham House Rules. Chatham House Rules ensured that opinions would not be attributed outside of the meeting, creating the safe space for discussion. Strategic invitations made certain that the quality of information exchanged was perceived as pertinent and reliable, and frequently fostered subsequent collaboration around the issue.

The meetings were always very well attended and their popularity can be attributed to the fact that: confidentiality encouraged higher levels of informal and candid interaction between researchers and politicians, the organization was politically savvy and timely in its identification of key current issues needing discussion, the interlocutors invited were the most respected experts or institutions working in their field in Kenya, the forum provided for timely sharing of research and inputs to policy makers, and the meetings were run with skilled facilitation.

The PSG encounters not only encouraged information sharing, they positioned the PSP's as the home of intellectual leadership on matters pertaining to the parliament. This reinforced SUNY Kenya's presentation of self as an impartial convener and provider of technical assistance, and the "place to go" for getting current and relatively uncensored information about how policy makers and MPs were thinking about current topics.

A final example of the Project's "convening" power and influence includes PSP sponsorship of the Parliamentary Initiatives Network (PIN). PIN is a collection of CSOs that collaborate on Parliamentary support work. Its member organizations meet with MPS and representatives of civil society to discuss pending legislation and other reforms. PIN has been essential in helping to link the legislature, its committees and leaders, to a wider policy community in Kenya. The PIN gave special assistance to the National Assembly in areas of critical national interest by helping to mobilize Kenya's foremost experts from think tanks and CSOs in support of legislative deliberation and budget analysis. A working paper published in 2010 by Harvard's Kennedy School credits the National Assembly's connections to civil society organizations as one of the key factors contributing to KNA's ability to promote reforms and its expanded analytical capacity.<sup>75</sup> The same article describes respondents identifying PIN members, USAID, and the PSP as among the main contributors to positive change and reform.

### Technical skill combined with political sensitivity

We will discuss program development and delivery in the next section. For now, it is sufficient to note that the programs were well received and considered useful by parliament. What is important in this early phase of trust building between parliament and the project is the deliberate and consistent strategy of playing a secondary role to parliamentary leaders in order to sustain the sense that the program was that of parliament and not the donors. Project managers insured that “senior MPs or senior Clerks always the ones who formally convened activities -- so, they were parliament's activities, not just SUNY's.” Another example from Jesse Biddle illustrates this point. The project held committee workshops to help them to develop the work plan to produce greater functionality in their efforts: “After presenting information and having discussions, the agenda turned to what they wanted to do.... At that point, and Fred (then the deputy project manager) and I left the room saying that this next step was for their decision alone and not a joint one. News of this got around. Kaparo mentioned it as well.”

### Energizing support by linking personal goals with collective purposes

Potential interlocutors and their motivations differed and the task of identifying and working with interlocutors depended on being able to deliver different things to different people. Some actors had very broad goals, the Hon. Aringo and later the Speaker Marende in the 10<sup>th</sup> Parliament, wanted a more independent and effective parliament with many capacities. Others—such as the deputy clerks—were focused on how the support staff could become more important, more knowledgeable, and better compensated and play roles as significant actors. Then there were motivations that would develop as capacity building progressed and as members increasingly understood how expert help could be used to advance their agendas. Some previously indifferent committee chairs, for example, would develop goals as they saw how support could increase their power.

Implementers, therefore, followed a strategy of making themselves useful for the achievement of varying goals consistent with their mission. (See discussion of “saying yes” and “saying no”) They were fortunate in having potential interlocutors with congruent goals. An example of this is their developing relationship with the Deputy-Speaker David Musila. Hon. Musila, who would be a strong deputy speaker was sympathetic to parliamentary development, also had a personal interest in helping poor pensioners to claim what was due to them, at the time many died before collecting due to inefficiencies. He credited SUNY with providing timely help in collecting the data necessary to advance this legislation, which he considered one of the most important bills in this period helping the poor. Hon. Musila succeeded in passing one of the few private member bills of those years and went away convinced of the importance of having legal service research available to members. This helped pave the way for the creation of a bill drafting capacity in subsequent parliaments. In another area, reform of the standing orders, Hon. Musila as chair of

the committee on standing orders experienced difficulties in making modifications in them, this experience shaped his support for SUNY assistance efforts to streamline the process as PSP organized technical assistance and vetting workshops through seven drafts of rules reform. In this, and other areas, the experiences and incentives of interlocutors informed the SUNY agenda and energized cooperation for many of the activities that resulted.

### Public Uses of Private Interests

Adlai Stevenson, an American presidential candidate, was once told by a supporter that he had the votes of every thinking American, and he replied, “that was fine but I need a majority.” This was true for the SUNY relationship with their reform interlocutors, they were a potent team but often required additional support to act, and they required the support of opportunists. They also needed occasional support from often-inattentive ordinary members whose votes and passive acquiescence were required at times. Many of them had pecuniary concerns such as a bigger salary, funds for constituents, or simply more perquisites.<sup>76</sup>

We now turn to how achieving a public good can be helped by the use of private interests.<sup>77</sup> The Hon. Aringo proved to be a master at using the often narrow self-interest of members and others to gain support for parliamentary development. He identified the power of money as an incentive to shape behavior early on: “We got stuck in a situation where the Executive was powerful and it was corrupting members. Handouts were an important issue at the time. Handouts over weekends with pressure of *Harambee*. If we were going to undertake reform, we had to deal with incentives.” As discussed elsewhere, he succeeded in getting control over money by establishing a Parliamentary Service Commission which controlled parliament’s budget. He anchored this reform in law. And they used that power: the budget of parliament increased from \$9.5 million in 1998-99 to nearly \$46 million in 2001-2002 and continued increasing after that.<sup>78</sup> Part of that money, in turn, was used to increase member salaries—spreading a taste for the benefits of parliamentary development. Total member compensation increase over tenfold between 1998 and 2008.<sup>79</sup> Aringo notes that they also paid “committee chairs, vice chairs, and for member allowances” so they would take their positions more seriously. All this made membership in Parliament and leadership of its committees more competitive with Executive patronage. They used the money to pay staff so that members would be able to ask better questions of executive officials. And, as noted, they paid high enough staff salaries to “poach” critical bill drafting and budget experts from the executive and bring them into the career legislative service.

### Managing Transitions

Sustaining working partnerships is particularly difficult because of turnover due to parliamentary elections. Some changes benefitted the project, the departure of the

Clerk put project ally Patrick Gicohi in that office, and in the 10<sup>th</sup> Parliament Hon. Marende replaced Speaker Kaparo.

But electoral turnover also poses problems for parliamentary support programs. In Kenya, turnover among members was high, and later increased as the value of a seat (with its increasing perquisites) increased. One interviewee noted that each parliament “brought around a 60% change in members” necessitating dealing with “rookies” a lot of the time. More specifically, early on some key reformers were defeated or had to be replaced. These included defeated reformers Oloo Aringo, Paul Muite, and losses to ministerial appointments like A’nyang Oyang’o.

### *Electoral Vulnerability, The Opportunity Costs of Reform*

In high turnover systems, with strong incentives for highly particularistic and personalized constituency services, reformers who spend a lot of time dealing with parliamentary development are especially vulnerable. One scholar of the US Congress noted that it is easier to claim and receive credit for delivering selective benefits to constituents than it is to get credit for delivering collective goods to the nation.<sup>80</sup> The Hon. Aringo was defeated because he had spent his time developing parliament rather than attending to constituency service. He noted wryly that his constituents did not think they were being represented unless he was at home with them rather than in Nairobi working on parliamentary business. The current Assembly Speaker attributed the loss of his seat earlier to spending so much time on House affairs—as whip, and member of Public Investments and business committees—that he was seen as neglecting his constituents.<sup>81</sup> While Hon. Aringo was brought back as an appointed member, because of the high regard in which he was held, that was only for an additional term.

### *Transitions*

Over time, SUNY’s principal parliamentary interlocutors were in increasingly higher official positions. 9<sup>th</sup> Parliament Deputy Speaker Musila took on the role of principal interlocutor, but he too had to be replaced as he subsequently served as a deputy minister, and was elected to the Senate when that institution was created. The next period was politically sensitive because the coalition government in power had little formal opposition and SUNY worked mostly “...behind the scenes and offered nonpartisan support.”<sup>82</sup> Support to the speaker was stepped up: “Speaker Marende provided leadership from the front, he was proactive and worked with SUNY to develop areas of intervention as he appreciated the work to be done unlike previous Speaker Kaparo who was suspicious of external help and was very territorial.”<sup>83</sup>

One interviewee with long-term involvement noted that “when Marende became Speaker, SUNY got to do what it did well.” And Speaker Marende’s term as speaker is now highly regarded for its contributions to institutional and national development.

As the project grew more successful, the need for particular point people diminished and project staff increasingly had access to a wide range of important actors—committee chairs and staff, deputy clerks, and ultimately the top political leadership--- because of their record of usefulness. Indeed, in the present Parliament, most of the staff in leadership positions—in the Clerk’s Office, Budget Office, legal drafting, in the training center, and other key positions—are themselves alumni or beneficiaries of past capacity building efforts. At the next level down, many alumni of the earlier internship program have been hired on as staff.<sup>84</sup>

### Continuity in the Face of Transitions

Evidence for successful transitions between parliamentary partners is the continuation of targeted capacity building efforts across several parliaments despite changes in parliamentary personnel and political circumstances. Efforts maintained across several parliaments despite turnover included: creation of a parliamentary budgeting capacity, the reform of the Standing Orders, increasing parliament’s constitutional powers, improvement of the committee system. Each of these and others involved the work of multiple cohorts of members over time. *Continuity meant that the work in successive parliaments in many of these areas could accumulate rather than being started anew with each one.*

### 3. Bringing It All Together: Creating Capacity and Orchestrating Utilization

#### A Kenyan Face All the Time—Being There and Being of There

Thus far we have moved from initial access, to developing and sustaining partnerships, the next critical component is using access and partnerships to deliver the goods on a larger scale and across dimensions. Much of this activity occurred at the point that SUNY project leadership moved from ex-patriate Americans—Johnson and Biddle—to Kenyan nationals Dr. Fred Matiangi and his successor Francis Aywa. SUNY has been fortunate in its ability to recruit and retain politically astute, diplomatic and skilled managers to run the program.<sup>85</sup> So PSP had Kenyans in charge as activities were expanding and becoming more visible.

Many parliamentary development programs are managed from afar, delivering high quality periodic training and workshops, occasional consulting support and meetings where parliamentarians to share comparative experiences. This type of intervention lacks the continuous presence of dedicated resident program staff, whose daily monitoring of the political economy and day-to-day contact with Members allows them to continuously assess political climate and to understand Member incentives and needs. PSP's all-Kenyan staff, understood how to work-with-the grain and what locally available and politically appropriate resources are best suited to solve problems and develop capacity.

Their Kenyan identities, political skills, and the continuing technical support provided by SUNY, helped to further reinforce the view that this program had a Kenyan perspective. At that time, and mid-way through the project, the Kenya National Assembly had been building its capacity for six years. SUNY's support had facilitated a complex web of varying and complementary activities centered on procedures, departments, committees, legislation and rules reform. (See Appendix 2 for the Chronology)

We now turn to how capacities created with donor support were sometimes linked to utilization by MPs and the role of SUNY efforts in securing that linkage.

#### Working under the “cover” of legitimated development and work plans

An important part of SUNY's presentation of self was that it was an agent of parliamentary development working for parliament. So nearly all their activities were justified in plans approved by parliament or its working groups (the Clerk, the committees, the secretariat, etc.). There was, of course, room for discretion. The initial development plan, developed in the 1990s, was heavy on material benefits for participants—such as better housing and facilities-- and did not address the needs for legislative functionality. But it did provide a sanctioned place to start. The



subsequent Strategic Plan of Parliament was more specific about the desire to develop budget, committee, and staff capacities, and better rules or a participatory constitutional process but the details about how to get from where they were to the specifics of the finishing point were necessarily more vague. *This left considerable discretion for SUNY assistance to fill out and shape those plans to what they could help with while respecting the categoric requirements of their funding agencies.* (See our later section on “saying yes” and “saying no.”) And while many of the MPs with whom they worked realized that they were ceding some discretion, the exchange had enough benefits in terms of their own priorities so that cooperating in the semi-fiction of a sharp division between policy and implementation was worthwhile to both.<sup>86</sup>

Comprehensive plans all have the fault of being adopted without knowing what will happen during implementation. Successful implementation in this and other areas is achieved by adapting an initial plan to the circumstances and opportunities that arise during implementation. Both donor plans and parliamentary development plans were initially formulated at the outset when information was scarce, and both benefited from improvements in knowledge achieved during implementation. We see in Kenyan efforts such a pattern of “mutual adaptation” observed in other implementation experiences.<sup>87</sup>

Using discretion entailed a political balancing act. It was important for SUNY not to appear to be the agent of the foreign governments for whom they worked (and whose funding categories had to be followed), and for parliamentary interlocutors not to be perceived as ceding any discretion to outside experts on whom they characterized as subordinate to parliament. Officially adopted plans whose practical meaning could be produced by dialogue about details provided both with the cover they needed.

In practice, then, while SUNY worked under sanctioned plans, the exact understanding of what those plans required was in part mutually determined between MPs and the implementers. But the public story for both SUNY and its parliamentary interlocutors was that it was Parliament that determined what was being done and SUNY was helping do it. *In the examples that follow below we will see how the substance of rules reform and the form of budget staff support were both shaped by the access to expertise provided by SUNY program efforts.*

The specific cases we will examine next followed an approach of advancing SUNY’s presentation of helpfulness while pyramiding successful activities: (1) start small achieve limited success on dimensions appealing to the interests of members; (2) use that success to attract new participants seeking to share in those benefits; (3) insure that public credit goes to participants when efforts achieve success; (4) and when possible orchestrate or facilitate utilization of the created capacities.

## Committee Development

Sen. Musila recalled the old state of committees: “Prior to the 8<sup>th</sup> parliament, everything was done in plenary. Committees did not exist in substance. We decided to strengthen committee system as way of moving house forward. Most of the activities to strengthen committee system were supported by SUNY.”

How did committee strengthening move from commitment of leaders like Hon. Musila, Aringo and Nyong’o to something sought by and acted upon by many committee chairs more widely?

The recollection of one participating member is instructive. Hon. Abdalla described her own experience: “When [I] first joined Parliament in the 9<sup>th</sup> Parliament I was placed in the supposedly weakest committee i.e. Legal Affairs. The chair was the Hon. Paul Muite, a leading reformer, and it had potential as an oversight body so SUNY made an early investment in increasing its capacity. As part of committee strengthening efforts the committee went on a study tour to the US Congress and Canadian Parliament and members came to understand their mandate and they were also given support to develop a strategic and work plans (with annual support from SUNY). These interventions transformed the committee from being reactive to proactive and it became an integral part of the constitutional reforms driven by Parliament. They also influenced other committees to adopt strategic plans and although this practice was normalized it was not always so effective because good committee leadership is key to its success.”<sup>88</sup>

SUNY rounded out its committee support by working intensely with committees to support legislative review and by assisting them to understand and effectively debate policies and legislation. The Project support assisted committees to prepare over 200 technical reports and expert presentations for departmental and watchdog committees. Committees that received initial support made additional, indeed continuous requests for more, while other committees joined in the process.

Timing of committee training, workshops, and other events also proved useful in linking strengthened oversight committees with opportunities to use those capacities. SUNY with Ford Foundation, World Bank and USAID support, held regional Public Accounts Committee meetings which informed the Kenya PAC chair of sneaky practices used by executives elsewhere. The Anglo Leasing scandal broke in the 9<sup>th</sup> Parliament under President Kibaki and provided the KNA with opportunities to use oversight capacities developed earlier. The 10<sup>th</sup> Parliament was very open to using their power to call Ministers to appear before committees so much so that the Vice-President complained that executives spent so much time appearing before committees that they could not do their work. At that same meeting, however, Prime Minister Odinga commended the MPs for their fastidiousness in their oversight mandate.<sup>89</sup>

Now an expected adjunct to any scandal or even a controversial decision is a legislative hearing. And audit irregularities often provoke an appearance before the departmental committee. One cabinet secretary told us that when he learned of a controversial decision by one of his agencies, he cleared his calendar for the following week knowing that he would be summoned before a legislative committee. Under President Moi, it was he who called legislators to private meetings to instruct their behavior.

There were also problems. A persistent problem is the effect of turnover on committee capacity building. With high turnover in each parliament, most committee chairs and members are new to their positions thus necessitating some rebuilding of capacity. However the continuing of some experienced members, like Hon. Abdalla, means that at least some functioning committees stand as examples for newer members and spurs to developing internal capacity. To mitigate the effects of committee turnover, SUNY used its institutional memory by preparing committee briefs summarizing previous legislative committees work-plans, reports and achievements for the use by in-coming committee members. It also supported the institutionalization of strategic planning and annual work planning by continuing workshops for committees in these areas.

### **The Parliamentary Budget Office (PBO)**

Another example of capacity development and utilization coming together is the budget office and its influence on what has become a central parliamentary function in the new constitutional system.<sup>90</sup> We will briefly describe the journey from an idea to a functioning system.

The process started modestly. Hon. Aringo's initial goal on the budget was to better use what was then parliament's limited powers on the budget. He said: "Creation of the budget committee was extremely important. By creating the budget office, [we] had help to make a meaningful interrogation of the budget." Hon. Aringo, backed by the Parliamentary Service Commission, was able to draft the Fiscal Management Bill which created the Parliamentary Budget Office at a time when the only amending power that parliament had was to change the budget by 20 Pounds. Before the Fiscal Management Act, the executive could manipulate the budget process. One interviewee provided this example: "Before the Fiscal Management Act was passed the committee that scrutinized the budget was vulnerable to executive mischief and at some point it was abolished by then President Moi for asking too many questions." The Fiscal Management Act also set out a budget calendar according to which the Executive had fixed deadlines for presenting the budget policy statement, estimates and expenditure reports, so that the legislature had sufficient time to deliberate on budget matters.

## *Capacity Building*

A functioning budget office resulted from parliamentary actors creating a formal basis in specific legislation (the Public Financial Management Act) and in the Rules of Procedure, using their control over the budget to pay well enough to attract good staff, recruiting knowledgeable people who could be trained in the new job, and having SUNY available to organize and support that training.<sup>91</sup>

While newly hired budget staff people knew about finance and taxation, they did not know how legislative budget offices functioned. A participant described the SUNY role in filling that gap: “When the PBO was first established there was very little capacity to run an efficient PBO and the PSP [SUNY] bridged this gap, by facilitating capacity building activities such as study tours and providing macroeconomic analytic tools.<sup>92</sup> SUNY assisted the design of the office and its functions, its human resource plan and job descriptions, and supported the PBO to hold annual budget workshops wherein experts from Kenyan academia, civil society and government discussed the budget policies, estimates and execution with the Budget Committee and Members. Parliament provided good people, SUNY provided capacity building to use and adapt their knowledge to the new parliamentary context.

During this process new interlocutors emerged. Mrs. Makau, who had been “poached from Treasury,” became head of the Budget Officer, proved to be a knowledgeable and effective advocate for the PBO and made extensive use of SUNY assistance in her efforts. She championed its role during the reworking of Parliament’s Strategic Plan (2008-18), and promoted the creation and use of macroeconomic models in Kenya making it the fourth in the world to do so.

The now-trained staff of the newly created Parliamentary Budget Office (PBO) produced an annual Budget Watch report, worked with Departmental Committees for a thorough scrutiny of appropriation bills, reviewing all the votes and regularly advising Budget and Departmental Committees. This made it easier for committees with budgetary jurisdiction to be informed participants.

While Parliament started with modest powers in budgeting, positive experience with the budget office and committees helped to fuel what became a central parliamentary role under the new constitution.

Thus, in a relatively short period of time, PBO staff was providing accurate useful summaries and analysis of Executive budget submissions in forms that legislators could understand.

## Utilization, If You Want Someone To Do Something, Make It Easier to Do

Several factors led to committee members actually using that capacity. The reformers were committed to using budget deliberations as way of influencing the use of executive power. In addition, ordinary members were supportive because they may have seen it as a way of increasing funds that went to their own constituencies.<sup>93</sup> Again a combination of institutional interests and the self-interest of members helped to energize the use of capacities once created.

SUNY also worked to make it easier for committees to actually use the reports they received. The substance of this work was made easier to digest by presenting analytical work to committees via pre and post budget workshops, conveying information through discussion rather than exclusively by written reports (legislatures are “oral” societies), and other means for implying use. PSP relied on this approach in other areas as well although it was more costly than merely handing a report to committees. The workshops and other events also increased the standing of the PBO both within and outside of parliament, as the invited speakers were frequently eminent experts

### *Contributing to Institutional Change*

Committees used and came to value budget support. And with that experience, the confidence of MPs to develop a larger parliamentary role in the process increased. This confidence, along with the opportunity to re-write the parliamentary role in budgeting during the constitutional revision process resulted in the present configuration making the Kenyan parliament rare among legislatures in the extent of its budget powers and staff support. So parliament has moved from having the power to change a budget by 20 Pounds Sterling, to a new Constitutionally created mandate to actually write and pass the budget based on executive submissions and to do so assisted by a highly regarded budget office. It is, of course, an open question whether or not this massive shift in Constitutional authority would have occurred without the prior development of the Parliamentary Budget Office. But it is clear that those who drafted the new Constitution knew that the ability to analyze the budget already existed in parliament and be counted upon if parliamentary powers were expanded.

### Rules Reform

Complementing the stronger and specialized Committees, enhanced budget analysis and budget control, the project also facilitated the protracted and delicate process of amending the Parliaments Standing Orders (Rules of Procedure). As noted above, the process of revising the standing orders, led by Hon. Musila, floundered, on

repeated occasions by diverse factions and interests, fragmenting the needed push for cohesive reform.

Over a period of three years, the SUNY combined delivery of technical expertise, and workshop support allowed for in-depth review and discussion of each of the seven drafts. These rules of procedures now give a precise framework for how the House engages in the legislative analysis and debate, its interaction with other arms of government, government departments and other stakeholders in society.

Rules reform was developed concurrently with the Fiscal Management Act. And there followed activities and strategic plans to strengthen committees, enhance oversight, implement parliamentary budget review powers. Rules reform then was used as an opportunity to ground PFM Act tasks into house procedure.

In addition, rules reform incorporated lessons learned during committee strengthening efforts. The new rules expanded and committee structure to include more specialization. And provided for expert review of proposed legislation and policy. And provided for a more transparent and participatory legislature, by opening committee and plenary meetings through broadcasting deliberations to the public.

### *Complementarity, Synergy and Serendipity*

The example of rules reform reflects another advantage that SUNY efforts gained over time with increasing “social capital” in the form of trust and access and as well as better intelligence that flowed from the increasing breadth of its involvements. (see Appendix 2 for a list of areas and activities)

The range of SUNY activities—with committees, staff departments, on processes like the budget, rules reform, orientations—provided it the intelligence data (see earlier discussion of centrality in a communications network) to identify the possibilities of complementing one activity by connecting it with others and in combination (or the overused term synergy) increase the effect of the whole.

### **Legislative Process**

As noted above in the 8th Parliament, drafting capacity did not exist in the institution, committees were weak without structures that paralleled executive departments, the Standing Orders did not facilitate law making, and there was little incentive to concentrate on the law-making role of a legislator as constituency service was the main focus of most members because of its link to re-election.<sup>94</sup> The shift began in 1998 when Parliament (through its reformers) began to take more of an interest passing reform legislation and later a gained a legislative platform to engage in the policy-making process.<sup>95</sup>

Subsequently the KNA's law making capacities and responsibilities increased. As in the case of the PBO, the KNA used their control over staff and finances to hire bill drafting staff away from the Attorney General's office, create a more functional committee structure, created a staff system to support the business of processing legislation, wrote new Standing Orders to facilitate business, and passed constitutional provisions making it the central law making institution and requiring the input of citizens in its considerations.

SUNY supported the shift to better performance of the KNA's law making function. That support included helping with more technical analysis of draft bills in response to requests by committee chairs for this. SUNY support was concentrated on nine key committees: Health, Education, Finance, Budget, CDF, PAC, PIC, the now defunct LAFAC, and CIOC. And since 2008 when SUNY first began tracking training numbers, over 3500 Members and Staff have participated in workshops and other short-term capacity development programs orientated around in legislative process and procedure.<sup>96</sup>

During the 10<sup>th</sup> Parliament, both the deliberation and review of laws increased. Committees actively engaged in the law-making process and engaged with the executive and civil society.

We will in a subsequent section discuss how the quality of legislation has been improved during this time of gaining greater capacity.

#### 4. Knowing when and how to say yes and how to say no

We now turn to how SUNY worked to manage its finite resources in an environment where demands from those whose cooperation that they need are at any time numerous, often legitimate, and usually unending.

##### Saying Yes

Requests provide information about what people want and what motivates them. And saying yes is a way of demonstrating responsiveness, building relationships, insuring access, creating informal obligations for reciprocity, and promoting trust. As we note below, saying yes also dissipates resources and made produce unmanageable expectations.

Not surprisingly, especially in the period of expanding program activities, the SUNY project manager said yes to requests that were consistent with project purposes sometimes broadly interpreted. In this, he was assisted by USAID and DFID who provided the necessary discretion.

We noted earlier, how SUNY assisted interlocutors and increased the strength of their partnership by helping them to advance favored goals consistent with project purposes: Hon. Aringo on the budget process Deputy Speaker Musila on rules reform and private member bills, Speaker Marende on facilitating parliamentary business. In each of these cases, yes meant delivering a well run, useful program of capacity building support. This was support that was delivered to those who wanted it adding an important dimension of motivation to use the products of the help once delivered.

Numerous examples exist of requests made by committee chairs, the leadership, and staff people, for workshops, study tours, seminars, and other events to facilitate legislative business. This provided a chance to respond and reinforce the message that parliamentary priorities were foremost.

##### Delivering on Yes By Prompt, Sound, and Responsive Programming

But responsiveness in saying yes is only part of the story. Delivering on yes is also important. The programs had to be good and fast enough to be responsive. According to one project manager: "In the early years, the senior SUNY managers (John, Sam, Fred and I) were self-conscious (talked about it regularly) of the importance for SUNY to set a standard in programming excellence -- high-end experts, well-orchestrated agendas, respected venues, etc. Partly this was about building SUNY's credibility with the KNA. But it was also about building the KNA's own credibility and stature."<sup>97</sup>



The SUNY team configured itself to quickly respond to Parliament's requests for programming, which evolved dynamically and frequently changed due to political necessities. PSP was able to mount workshops, organize consulting assistance or technical analysis at a moment's notice when needed. This often required working quickly through donor required procedures, working around parliamentary calendars, and getting the necessary experts. Thus by accepting Parliament's priorities, ensuring that Parliament received credit, and by responsive programming, SUNY burnished its status as "parliament's program."

### **Saying No Without Hard Feelings**

The other side of saying yes, is the ability to say no. Successful programs have to be able to control, expand, and carefully use their scarce resources of money, access, and influence. A great danger, which grows with success, is in controlling demands for use of those resources in wasteful ways or for other purposes.<sup>98</sup> In either case, too little may remain for use in achieving program goals. This is a common problem in places where needs are numerous, for example, the UN's process of deciding on a set of new targets to its successful Millennium Development Goals is beset by demands for additions that threaten focus.

Development professionals can provide specific examples of costly requests. One program manager in a war ravished country, for example, cited pressures to pass a new set of parliamentary standing orders (treated by the donor as evidence of a sustainable achievement) at a time when doing so would dissipate time, access or other political resource which could have been put to greater use in a parliament that hardly existed.

But turning down requests also has its costs especially if demands come from actors who control essential program resources. *Thus the ability to say no in ways that do not alienate or otherwise damage relationships with partners is an essential part of implementing successful programs.*

We observed a number of instances in which the development participants were able to say no without sustaining lasting damage. Many of these can be understood in terms of what Thomas Schelling has termed commitment strategies: the ability of an actor to lock himself into a position from which they cannot give-in because they have manipulated their ability to concede (means) or their ends (goals).<sup>99</sup>

### **Eliminating the Means to Give In**

One way of gracefully saying no is to deny that you have the power to say yes is to say "my hands are tied." Saying you lack the power to concede proved useful to program managers. The SUNY project used this expedient in contracting decisions for the House live broadcast system to be installed in parliament. When parliamentary decisions to create the system were made, and donor support

dedicated to that purpose, SUNY was beset by demands from MPs to award contracts to favored providers. SUNY refused by citing their need to follow procurement rules laid down by USAID. When some MPs were not given an opportunity to “influence procurement to preferred companies”, it “created animosity towards the program and they were constantly accused of advancing the American agenda.” Thanks to help from the Clerk, the program survived.<sup>100</sup> While denying such demands did create some resentment and criticism, it did not prove fatal.

### *Passing the Buck*

A variant of the above is to assert that the decision really resides elsewhere. PSP was organizing a study tour for committee chairs and one of the chairs was viewed by the Americans as corrupt and his participation would conflict with US policy. If he were not allowed to participate, then PSP would appear to be an agent of US policy rather than an institution that worked in behalf of the KNA. In the words of the Project Manager “I knew it could kill the study tour, and possibly wreck the relationship with (key interlocutors), to seek to disinvite (the committee chair with a reputation for corruption).” The project manager asserted to USAID that this was a tour for “committee chairs” and it was parliament as an independent institution, not SUNY or USAID, which picked the chairs.” He was assisted in making the argument by supportive staff within USAID. And “in the end, the USAID Director went to the Embassy (talked to the Ambassador in my understanding) and successfully made the case for all Chairs to join the tour.”

### *Raising the Costs of Concessions*

Another tactic is to raise the costs of making concessions to unacceptable levels by pointing out that giving in will endanger some other value cherished by the requester.<sup>101</sup> The goal is to get the requester to re-evaluate the costs to them of getting their way.

Saying no to a friend and donor. At one point, the American Embassy wanted SUNY to use its access to press for anti-terrorism legislation favored by the U.S. Government.<sup>102</sup> As noted, SUNY had succeeded in presenting itself to parliament as an agent for parliamentary goals and development and was sensitive to reviving the charge that they were a tool of the Americans. Pushing for legislation favored by a foreign government would, in the eyes of program people, seriously endanger that reputation and compromise the program’s future. But they did not want to say no to their funding agency, and in this case saying no to a high official who as a friend to these efforts had been supportive of the program and what it had achieved. This problem was solved when one of the MP program interlocutors simply told the SUNY manager to tell the Americans that he—a high official of Parliament – had simply vetoed the idea. The requester’s calculation was changed from the apparently low cost of getting compliance from a subordinate contractor, to one

sacrificing the goodwill of an important ally by having their SUNY agents continue to press for the legislation. This took the onus of refusal off the project.

Saying no to a key MP. One frequent request accompanying parliamentary events everywhere is the use of an expensive venue. While there are some program benefits for this (increases the likelihood of attendance, etc.) there were the decided disadvantages of dissipating finite funds and testing the forbearance of donors. In response to one such request, the Project Manager pointed out that such a costly event would be an “eyesore” and thereby damage the KNA’s public reputation. So the cost of saying yes to this request now involved sacrificing another valued goal.

## IV. So what?

We now come to the question of what difference a successful program of legislative capacity building made for the governing of Kenya?

Thus far we have focused on how a program to build legislative capacity was for the most part successfully implemented. Successful program inputs of training, informational workshops, expert technical assistance produced outputs in the form of more able, better informed, and more savvy legislators and staff. These outputs are only important for the donors and Kenyans if they are used to produce better outcomes whose impacts benefit Kenya.

While successful capacity building on the scale we observed in Kenya is a rarity, it is not the ultimate goal of donors or Kenyans. At this point it would be useful to be able to evoke a widely accepted standard of a legislatures quality operationalized into a set of indicators for measuring legislative productivity and functionality. While many standards and indicators exist, and are useful for particular purposes (scholarly concerns with identifying and explaining variation, reformers seeking to motivate change, aid agencies seeking to document their accomplishments), none are without significant problems for measuring the quality of what legislatures do when they are functioning.<sup>103</sup> *Presently there is no agreed upon definition of, let alone objective indicators, to directly and objectively measure legislative functionality.* Instead, observers rely on various definitions of what legislatures are supposed to do, and available surrogate indicators to assess how well they perform.

For most of its history, the KNA was a “rubber stamp” that approved whatever the President wanted, so it made no difference what its internal capacity for law-making amounted to. The same is true of its oversight powers, which lacked both motivation and capacity to exercise them. Over the past 15 years, the KNA has gained both formal power and real capacity to process legislation. So, it is fair to ask if members are sufficiently motivated to use well those law making and oversight powers.

At this point, we can contribute some partial evidence that the Kenyan parliament is producing outcomes whose impact betters governance by producing on indicators of better laws and by providing more oversight.

We plan to present a fuller discussion of these measures in a subsequent work, but for now we will briefly discuss our findings on changes in the quality of legislation and in the frequency and character of oversight.

## Quality of Legislation

There are crude measures of the quality of the legislative process (number of bills considered, amended, voted upon, passed, etc.) and many of these are parts of reporting requirements used by donors. There are also more sophisticated and nuanced ways of measuring the quality of particular laws in terms of their adequacy for specified purposes. An example of this is provided by Kent Weaver in his analysis of what an implementable health insurance law would have to anticipate.<sup>104</sup>

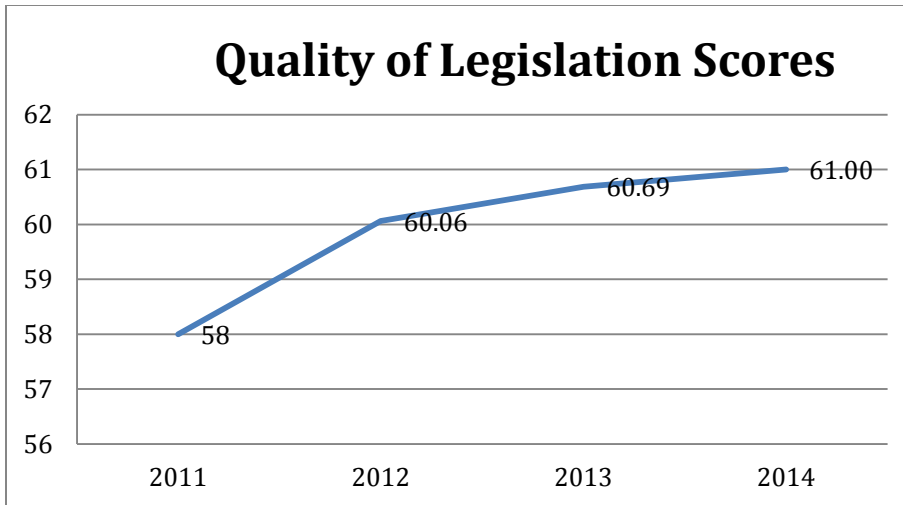
To move beyond the crude standard indicator of number of bills passed (reported on in their 2005-2010 contract period), SUNY devised a quality of legislation measure used to collect data til the project ended in 2015. The purpose was twofold: (1) Measure the quality of the process that produced laws and the quality of the laws themselves.<sup>105</sup> (2) And to determine if its capacity building efforts had affected the quality of legislation passed.<sup>106</sup>

SUNY developed a quality of legislation matrix with Kenyan legal scholars and evaluation experts. *The idea was not to necessarily take a 'best practices' approach cited in various international conferences and journals, but rather to take an approach that looked at quality through the lens of Kenya and its constitution.* It was vetted by key legal staff in Parliament and also by an independent legal consultant.

The matrix assesses quality along seven criteria: (1) Constitutionality, (2) Objectives of the Bill, (3) Due Legislative Process-Debate, (4) Due Legislative Process-Stakeholder Consultation, (5) Status upon review by other authorities, (6) Feasibility/Enforceability, and (7) Clarity of Drafting. A subset of each years laws was selected for evaluation by an expert panel using that matrix and their responses were scored on a Likert scale.<sup>107</sup>

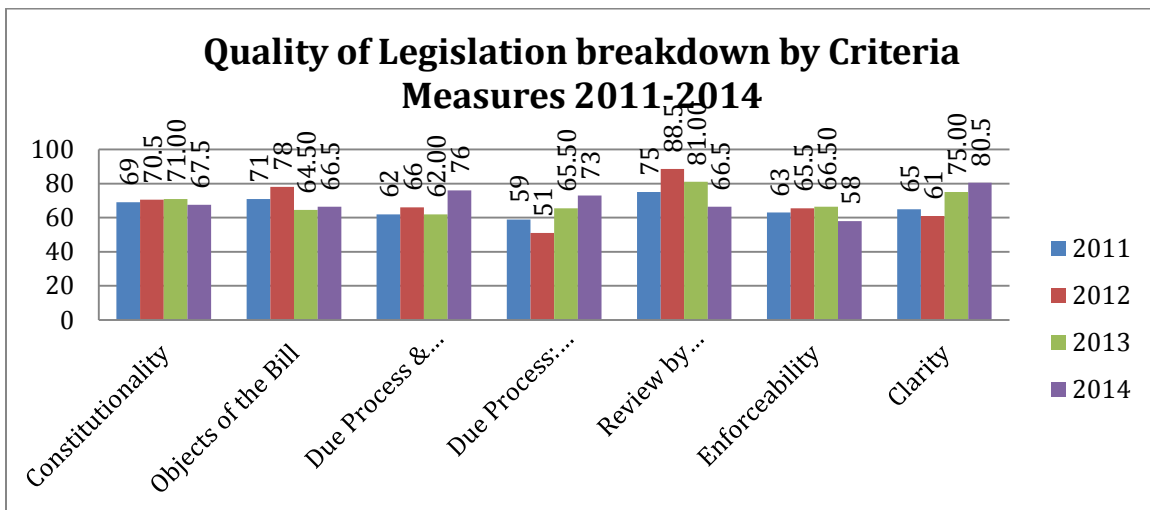
## Results

Overall, there has been an upward trend in the four years that it tracked the quality of legislation. Improvement has been incremental; however that has been in keeping with overall development of Parliament.



Graph 1

A look at the separate components of quality yields interesting differences. Several things do stand out: there have been clear gains on due process/consultation and clarity while Parliament appears to be struggling with providing provisions for enforceability and constitutionality.



Graph 2: All Years by Criteria

### Oversight: What to Measure and how to Assess Progress?

The legislative function of exercising oversight over the executive is a new practice in Kenya. While the power may have existed in the past, neither the motivation nor capacity has existed until relatively recently. By that low standard, any recent activity at all could be considered an improvement. Using better measures, we see below several forms of specific oversight activities that followed program efforts to build capacity in each area.

### Oversight increases as a member priority and use of oversight as a tool increases

SUNY conducted two surveys of Members and Staff in Parliament (2011 and 2015 respectively) and one of the topics focused on oversight within the institution. What we learned was that Members placed highest importance (in terms of their time allotment) on their committee work and Member’s understanding of their oversight responsibilities saw the second highest gain in percentage terms from 2011 to 2015.<sup>108</sup>

SUNY’s indicator tracks types of action and we can see that conducting investigations and questioning public officials remain the most used ‘tools’ of oversight and reporting on their findings has increased approximately two-fold:

	CY 200 9	FY 200 9	CY 201 0	FY 201 0	CY 201 1	FY 201 1	CY 201 2	FY 201 2	CY 201 3	FY 201 3	CY 201 4	FY 201 4
<b>Investigation</b>	10	8	15	16	5	7	15	15	6	19	20	12
<b>Vetting</b>	0	0	3	0	7	8	3	6	10	9	0	1
<b>Refusal</b>	0	0	1	0	1	2	1	1	4	5	1	4
<b>Censure</b>	1	1	1	1	1	1	8	7	5	23	4	5
<b>Report</b>	10	8	12	11	10	12	19	20	12	13	22	22
<b>Q&amp;A</b>	24	13	16	19	13	21	1	1	18	0	21	19
<b>Total</b>	<b>45</b>	<b>30</b>	<b>48</b>	<b>47</b>	<b>37</b>	<b>51</b>	<b>47</b>	<b>50</b>	<b>55</b>	<b>69</b>	<b>68</b>	<b>63</b>

### Louder Watch Dogs

One of the significant changes from the 10<sup>th</sup> to the 11<sup>th</sup> Parliament was the activity in the watchdog committees (The Public Accounts Committee and the Public Investment Committees, PAC and PIC respectively). While the survey did not delve into question motivation nor did SUNY have a motivation indicator, it is worth noting high publicity ‘wins’ for the committees especially the Public Investment Committee.<sup>109</sup>

These activities produced by-products that motivated members. (1) highly public investigations were well covered by the media outlets and Members were profiled. SUNY observed that during the committee selection process in 2013 getting onto the watchdog committees was very competitive and certainly more so for the Chairmanship. These were the committees to be on for a Member. They had power, prestige and commanded public attention. (2) The 11<sup>th</sup> Parliament saw an increase in resources to the committee (staff and budget) as well as increased sitting allowances for Members. Members had the staff support to conduct research, set up

site visits and hearings, and had the financial support to devote time and energy to these tasks.

### Making Actionable Suggestions

There is some evidence that committee oversight work is moving toward improving government practices by suggesting changes rather than exclusively focusing on finding fault. While far from a robust practice which has produced legislative fixes, there is a nascent process underway to locate areas for improvement. In 2012 SUNY began classifying and tracking these suggestions (which while *actionable*, are not a specific *action* as defined above). There has been a continual increase by the SUNY target committees:

Type of Action	FY 2012	CY 2012	FY 2013	CY 2013	FY 2014	CY 2014
<b>General Recommendation</b>	86	83	134	108	117	187

This is underscored by the fact that committees are better resourced than in the past with staff that are able to provide the technical and analytical skills necessary to interrogate audit reports and evaluations of public policies. This is a good development; however, SUNY has also observed that follow up (i.e. to ensure that the EACC, the State, the Cabinet Secretary, etc. has acted upon those recommendations and/or formal requests) has been not been as robust.



## V. A Kenya Model and Lessons?

Kenya has experienced a sea change in its political system. An important part of that is the transformation has been the acceptance of the KNA as in fact a major participant in governing the country. And the USAID-DFID SUNY legislative development program played an important supporting role in that change by helping to convert reformers ideas into actions.<sup>110</sup> Finally, there is both anecdotal and more systematic evidence that the KNA is performing its functions more effectively.

### An Exercise in Improvisation With a Constant Theme

As the foregoing indicates, *what we can retroactively call a Kenya Model was, in large measure, an exercise in skillful improvisation on a theme rather than a plan laid down in detail at the outset.* It was a strategy that depended on tactics that took advantages of opportunities—shaped by both external societal and political circumstances as a result of project work-- as they occurred and developed. The ability to follow that strategy, and improvise successfully depended on the discretion of donors and the trust of parliamentary interlocutors both resources that had to be developed and extended over time. Certainly the project in the latter phase (2010-2015) operated under grant funding mechanisms that provided greater flexibility for the implementer and allowed the project to be more agile and responsive.

### The Challenge of Working Through an Industrious Minority

The critical theme guiding efforts was the presentation of the program as an agent of Parliament providing the technical skill necessary to achieve parliamentary development. *The difficulty was that there was no parliament collectively committed to its own development*

Parliaments are gatherings of people. All effective parliaments, of course, gain their collective character from an industrious minority of their members. In Kenya, the work of that industrious minority was energized by external capacity building assistance at critical junctures. *So the presentation of SUNY as a helpful agent, and the treatment of the industrious minority as representing the whole of Parliament—was provided cover by formally adopted statutes and plans. The activities, in turn, produced a mix of beneficiaries that included others less involved.* Over time, the minority grew as the benefits of cooperation spread until accepting the relationship of parliament and its agent became the default understanding for most participants.

## Orchestration: Co-Production Without Hierarchy

An initial problem we noted is that donor programs of parliamentary development depend on success from the joint efforts—donor help in building capacity and utilization by MPs. MPs and donors are not in a hierarchical relationship with one another. Donors and their implementers cannot tell MPs what to do and if they try they can scuttle the program.

We have seen that SUNY's contribution to joining capacity building to action by members lay in successful *orchestration*: identifying activities that met the requirements of the “strings” on donor money and what interlocutors wanted to achieve at the moment, tailoring capacity building to both achieve member short term goals and longer term parliamentary development, identifying critical junctures/opportunities where capacity and motivations could come together to produce behavioral change, and all the while maintaining the critical relationships providing money, access, and legitimacy to support a program of technically sound activities.

We now turn to a series of evaluation questions we posed at the outset: (1) The big question of how parliamentary capacity development was connected to national development and what was the role of USAID, DFID and SUNY? (2) What was the impact of the variable of time and what are the benefits of long-term involvement? (3) And what strategic and tactical lessons that can be used to improve the implementation of programs of shorter duration and intensity?

### 1. Examining the Role of Capacity Building Assistance in Producing Outcomes

The central evaluation question for donors is how much credit do their programs deserve for contributing a result in which a neo-patrimonial system has been replaced by a more competitive system of institutionally shared power (see again Appendix 1 for a summary of these changes)? Undoubtedly, the biggest portion of this is the truth of the proposition that “success has many fathers.” Big changes—or outcome or impact variables-- are typically determined by many redundant forces. These included long term changes occurring outside parliament: the coming apart of the Moi Presidency, the development of Kenyan parties, the energizing of civil society, and the effect of diminished central control on the freeing of sub-national claims on money and power. All of these external or historical forces pose threats to the validity of measuring the causal role played by the USAID-DFID SUNY program. This is not a unique problem as many legislative development programs face similar challenges in apportioning contributions.

While external societal factors were at work, the internal development of parliament as an institution played an important role in a system now characterized by greater parliamentary powers, assertiveness and independence.. And the role of

capacity building and utilization by parliament was a crucial component of those changes. The KNA is now legislating by offering its own bills, by processing them in a developed committee system, taking the principal role in making and public considering the budget, and exercising oversight. There is evidence that the products of these efforts are of increasing quality. Of course there is still strong executive influence, but it must be exercised through a parliamentary majority which itself must operate within a body with stronger internal requirements governing the processing of legislation, which represents diverse constituency interests exerting their own centrifugal forces, and in the presence of a vocal opposition. .

If the utilization of parliamentary capacities was an important contributor to outcomes, assistance in building those capacities should receive some credit. *The part that parliament played in the process—as claimants diminishing executive power, and as a venue for the representation of sub-national populations and citizen advocacy groups—draws upon capacities that parliament lacked at the outset and were developed with USAID-DFID SUNY help.*

Having formal legislative powers without the capacity or motivation to use them is a formula that sustains executive dominance everywhere that combination exists. In Kenya, parliamentary capacity and motivation have come together often enough to make it an arena that must be considered. PSP efforts to identify and nurture motivations, and facilitate acting upon them by providing capacity help when needed has been documented in this case study.

The evidence presented in our previous analysis shows that the program could claim direct credit for successful capacity building and receive indirect credit for contributing to utilization. We now examine the evidence for both of these.

### **Credit for Being A Necessary Condition?**

*As the summary of implementation efforts made clear, the capacities developed were jointly determined and co-produced by donor “money with strings,” efficacious activities, and by the access and receptiveness of parliamentary partners or interlocutors. Conversely, while the capacities built by these programs were not a sufficient cause, they were without doubt a necessary cause. Many subsequent developments built on the base of these capacities and important by-products came from the building process in the form of cooperative relationships and partnerships. Using the language of an old political science conception of power, program efforts shaped results that otherwise would not have occurred without them.<sup>111</sup>*

Evidence for this claim of being a necessary condition and therefore deserving credit for a share in join-production rests on the following. (1) *Sequencing*. Capacity development did not start until the program started. Capacity development activities had not occurred for the year or two immediately following parliamentary

decisions to adopt a development plan, to create a parliamentary service, or to strengthen committees, or to create a budget staff. Major coordinated efforts—workshops, seminars, technical assistance, work plan development, study tours—awaited the major donor program implemented by SUNY. (2) *Raising the Priority of Capacity Development*. The program was incrementally developed through collaboration with parliamentary interlocutors who also had other goals. These interlocutors had other related goals that they could have pursued and the availability of program resources may have influenced their decision to proceed on specific capacity building. If program support had not been available, interlocutors may have chosen to pursue other reform goals.<sup>112</sup> (3) *Providing a missing dimension of technical expertise*. As the previous sections made clear, parliamentary interlocutors wanted various forms of institutional capacity but knew they lacked technical knowledge about how to go about creating it and therefore welcomed program efforts. SUNY provided the venues and windows through which that expertise reached the KNA at critical points. (4) *Visibility and availability*. There are no other credible competitors for providing capacity building help on the scale of the USAID-DFID SUNY project. While other capacity building programs did occasionally deliver help, the PSP effort was the most visible and available and often provided the means for coordinating outside help.<sup>113</sup>

#### ***A critical infrastructure of capacity***

Donor assistance for capacity building, and the successful implementation of that program by SUNY, did produce capacities that were not there before these programs. And like economic infrastructure, these capacities made other things possible. It is fair to say, therefore, that the program deserves major credit for translating development decisions made by parliamentary reformers into activities that refined, focused and implemented major aspects of those policies.

#### **Program Credit for Utilization of Capacity**

Our description of SUNY implementation has not spelled out in detail the capacity building activities and processes themselves, much of this is dealt with elsewhere in the form of reports required by USAID and DFID and summarized in the appendices. Suffice it to say that capacity building per se is not an easy nor automatic activity, and that it constitutes significant challenges in itself, and reports and interviews support the view that many of these were successful in producing the desired results. We have in the interest of space and analytic focus, concentrated instead on the link between capacity building and the actual utilization of capacities once built.

Our concern with utilization is based on a view that this is the most difficult element of capacity building programs undertaken to change target population behavior as well as the most critical for donor agencies to both influence and claim credit for achieving.

We have asserted in our earlier discussions of program delivery that SUNY used orchestration as an instrument for linking capacity to utilization. In this section, we suggest two mechanisms by which program credit may be claimed for what occurred.

### *Creating small functioning systems.*

There is the initial creation of small-scale functioning systems linking the legitimacy and visibility of legislators, with the expertise they need to participate, with an outside audience of consequence. So, for example, efforts to create such systems in oversight have produced working partnerships between public accounts committees providing a political venue, auditors providing expertise, and civil society groups and others seeking greater transparency.<sup>114</sup> SUNY's role in facilitating the synergies of the budget process through cross cutting work with the PBO staff, relevant committees, CSOs and outside experts also showed many of these elements. A similar process was described in the committee building process. In each instance, the timely delivery of required capacities allowed participants to create and engage in functional relationships. While the results were produced directly by legitimate participants, the capacity development program in each case came from program efforts operating in the background. *And while something may have happened without those capacities, what did happen used the expertise and capacity that was developed by program efforts.*<sup>115</sup>

### *Demonstration Effects Spread Innovation*

Social scientists use the term *demonstration effect* to describe how observation of the actions of others and their consequences can influence the observer's behavior. Another term is the two-step flow through which innovations shown to be successful when adopted by an innovative and attentive group may be subsequently adopted by their similarly situated but less innovative neighbors.<sup>116</sup> On an international level, Hon. Aringo used the experience of Uganda's parliamentary development to model his initial efforts. And just as the Hon. Dan Ogalo, author of the Uganda PSC law, assisted in Kenya as a SUNY consultant, Hon. Aringo has performed a similar role elsewhere. Currently the KNA itself has become a stop for other parliamentary delegations from countries seeking to develop their own institutions.

The success of the creation of some functional sub-systems above arguably produced demonstration effects that helped practices to spread. We cited, for example, the role of the empowerment of one committee hitherto considered weak through capacity building and utilization converted it into an important arena for constitutional consideration. That success, in turn, led other committees to welcome similar help. A count conducted at the time found that a majority of committees engaged in the development of strategic plans and workplans. And a

novice member of the earlier empowered committee, in her subsequent career as a committee chair replicated those lessons in her new assignment. Another example is that of the budget office and the committees it serves. The perceived consequence of their success in an earlier parliament arguably shaped the larger budget-making role created by the new Constitution. Knowledge that the previous parliaments could play an informed and constructive role in the budget process laid the foundation for an expansion of that mandate. Finally, demonstration effects can also be found in the current attempts of devolved legislatures at the sub-national level to adopt practices found in the national parliament.<sup>117</sup>

## 2. Benefits of a long time period

### Amortizing Costs

One advantage realized as a function of SUNY's long tenure as an implementer was that some difficult activities did not have to be repeated. Getting in the door, for example, proved to be a time consuming task that threatened both the program's access to parliament and its relationship with donors. So, like all high costs efforts, it is better to pay them once than repeatedly.

### Capacity to Pyramid On Success

We have noted that advantages that accrued from being able to build upon earlier success to expand subsequent efforts. While SUNY personnel and USAID partners changed, SUNY was able to present and have accepted a collective identity and reputation for helpfulness that has persisted over time and facilitated building on earlier successes.

### Improved Social Capital Reduces The Transaction Costs of Cooperation

Social capital is a term that is used to describe the ability of individuals to engage in mutually beneficial relationships without resorting to coercion or extensive negotiation. A reputation for trustfulness, and a history of benefits derived from trusting, reduce transaction costs for engaging in new cooperative activities. Without trust, each new activity requires more negotiation and resource-consuming mechanisms to monitor behavior. Reputations for trustworthiness are affected by time during which the untrustworthy could reveal themselves and the trustworthy could burnish their reputations as desirable partners. Our interviews indicate that something of this long-term development of social capital with parliamentary interlocutors took place over the decade and a half. A short-term program, however trustworthy it intends to be, cannot develop that degree of social capital and would therefore be disadvantaged by comparison.<sup>118</sup>

### 3. Lessons not dependent on time

#### Program assumptions

*An important lesson for all programs is that the conditions for cooperation must be built and maintained rather than assumed.* Nearly all programs start with MOUs or agreements that describe a shared interest in reform and willingness to use capacities once built, an altruistic donor, a welcoming target population, and agents ready and able to carry out a well specified plan of action. The reality in Kenya and elsewhere is usually different. Donors have both common and divergent interests from the target population and are seen that way so trust must be built rather than assumed. Relationships have to be built with a subset of parliamentary actors with the necessary motivations. Keeping the process of co-production of parliamentary capacity going depends on the constant effort of matching donor funds/categories, to parliamentary interlocutor motivations and needs, joined in delivering technically feasible programs. Given this reality, and the need for implementers to improvise it makes the most sense for donor to take a flexible view of interpreting what is required by their often mandated results frameworks and evaluation methodologies which are typically written prior to project implementation.

#### Strategic Lessons

*The most obvious lesson is a strategic one that programs should present themselves as agents for the realization of the target population's goals and they should behave insofar as possible as if that were true.* This presentation recognizes the reality that the program's long-term goals—of building capacities that will be utilized to achieve desired behaviors-- cannot be accomplished without target population cooperation. *As we have seen, getting this presentation of self accepted, functioning, and sustained is a more problematic exercise and depends on making it as convincing as possible through carefully selected actions, and by finding the right interlocutors to serve as surrogates for a problematic target population.*

#### Tactical Lessons

All tactics are aimed at securing the cooperation of critical actors and insuring that the resources necessary for action-- money, access, legitimacy and technical knowledge—are combined in efforts that will cumulate into the desired combination of capacity and utilization.

The list of ever-useful tactics not dependent on operating in a long-term program include the following. (1) The cultivation of interlocutors by serving their priorities whenever possible, recognizing and utilizing their special resources (skill, knowledge, positions), and working under them insofar as possible. (2) The utilization of a wide range of interests including self-interest in service of a common

goal. People want different things some highly selective (a trip, more salary, money for constituents) others more collective (contributing to a unit or office, desire to be an effective chair) and program support must be built by using what is available. (3) Maintaining the “cover” of official sanction. While foreign supported programs cannot be the simple servants of other’s national institutions, maintaining the appearance and insofar as possible the associated behavior of serving as agents is necessary. Like most of the other tactics, this is a continuing exercise—of interpretation, of citation, and of expressing deference—rather than a once and for all statement. (4) Using the power of yes sparingly and carefully. While reserving the capacity to say no by eliminating the means to concede, or by framing concession as a sacrifice of another more cherished goal.



## VI. LIVING IN THE PAST, LIVING WITH THE PAST, AND WORKING OUT HOW TO LIVE IN THE FUTURE

Kenya has experienced substantial political and institutional changes. Some portions are still “living in the past” of neo-patrimonial practices such as corruption in public contracting, and constituency expectations of MP largesse through harambee, and other such inherited practices. Some are shaped by “living with the past” such as the difficulty that political actors are having adapting to new roles such as some committee chairs trying to behave like cabinet ministers in what is now a presidential-legislative and not parliamentary system. And there are the problems of working out how to “live in the future” being faced in the form of developing relationships between wholly new institutions—bicameralism, devolution of power to governorships and sub-national assemblies—whose powers and prerogatives are not yet well defined. We now turn to that last set of problems, working out how the Kenyan Parliament will live in the institutional environment created by their past efforts.

*Democratic development is about progress but it is also about changing the nature of problems that are dealt with.* We have seen how the Kenyan Parliament moved from a position of weakness—in its control over itself, its internal capacities, and its formal budget powers—to one of strength in these important dimensions. In addition, its representative functions defined by the Constitution have increased by the obligation to consult the public in making decisions and to represent new constituencies under bi-cameralism.

The changes that have occurred at the institutional level in Kenya are deeper than the formal adoption of a presidential-legislative system of shared powers, and a devolution on paper. They go beyond isomorphic mimicry in which changing forms appear to alter over a more static world.<sup>119</sup>

Evidence of the actual sharing of power—increasing the number of veto players-- in the present Kenyan system is found in recent events. The Courts recently invalidated a law on Constituency Development Funds and delayed action until a Constitutional Requirement on public consultation is met in revising the statute. A failure of the Senate and Assembly to agree on how much money should go to the counties for a period stopped funding to sub-national governments. Feuding between the Kenyan National Assembly and governors, and Senators and individual governors, is common.<sup>120</sup> And, at the institutional level, the Senate and Assembly have argued over what powers each house has to a point where their capacity to act together is periodically in doubt.

On a more positive note, our interviews indicate that in some areas of executive-legislative relations, some committees and cabinet departments have worked together to insure that departments get the statutory and financial support they need.<sup>121</sup> Both note, however, that other areas of executive-legislative relations do not operate as smoothly and the institutional barrier to joint action remains a major problem.

### **The Evolution of Problems From Concentrated Informal Power to Dispersed Formal Power**

At the broadest level, the operations of Kenyan government are no longer controlled by the President and his personal network operating outside formal institutions and the country is governed through institutions that share power and whose cooperation is necessary.

In each of the three areas of legislative functionality—representation, law making, and oversight—major shifts have occurred and the mix of problems associated with each have changed.

#### **Expanding Representation to New Constituencies**

The problem of representing constituents has expanded from speaking for geographic subdivisions to other dimensions.

Bi-cameralism has created new constituencies whose interests as a whole (division of national funds between the Presidency and counties) are now represented as well as their diverse separate interests (as unequally developed regions, as repositories of tribal, religious, and occupational differences). The obligation for public consultation, used by CSOs and others to gain access, also complicates the problem of representation by providing greater opportunities for voice to groups with often more pointed and well defined interests to express.

Devolution has further complicated representation. Inter-governmental representation problems currently take several forms. First there are disputed claims between Senators and Governors over who speaks for county level interests. Second, there are the competing claims of the national representative institution and the county and sub-county level legislative bodies over who speaks for the people and therefore has the legitimacy to act. While the sub-national levels are not yet well developed, they do constitute potential competitors to the national parliament.

## Making Laws In a More Institutionally Differentiated Environment

Once, practical control over law making was primarily controlled by the executive who controlled the official capacity to draft measures, contended with only a weak legislative committee system, and could determine the parliamentary calendar and even the tenure of a given parliament. Not surprisingly, in that period nearly all legislation that passed originated in the executive, and only a handful of private member bills were introduced and succeeded. Now all measures must originate in parliament, whose bill drafting capabilities are widely available to members, and many of who's committees function. The distinction between the executive and the legislature has sharpened as MPs can no longer serve as ministers replaced by cabinet secretaries.

Not surprisingly, as institutional separation and parliamentary capacity has sharpened the division between the executive and legislature and made the latter better able to assert itself, the problem of coordinating efforts has also become greater. In the current parliament, the first under the new constitution, interviewees have encountered this problem in a number of forms: uncertainty in how committee chairs relate to government departments with some trying to be like ministers of the past but lacking knowledge and practical control; uncertainty about the role, legitimacy, and scope of activities on the part of the President's party in the legislature; and the relationship of each chamber's speaker to the majority party and executive branch.

The other major element of this new law-making environment is the relationship between the Assembly and the Senate. Bi-cameralism and devolution were considered essential features of getting enough support to pass the new Constitution. But while they had enough support to be included, participants could not or did not agree over many of the details about how they were to work in practice.<sup>122</sup> So there is now a hot dispute over which powers are exclusively those of the Assembly and which must be shared by the Senate. The assembly position is that they have extensive and exclusive law making powers and the Senate has an occasional and peripheral role justified by their mandate to represent counties when those interests are involved.<sup>123</sup> The Senate has the view that nearly everything touches upon counties because that is where all Kenyans live, and therefore their official role is quite wide.<sup>124</sup>

The differences between the two houses have been expressed in a number of ways: the recent deadlock over county level funding; an argument over court litigation supported by the senate and opposed by the assembly; and tensions between the speakers of each house over joint matters. Potential sources of coordination, such as party or commonalities of constituency interests, have not developed to address the problems. One bright spot is the willingness of houses to work together when something vital to individual members is at stake as in the recent court mandated requirement that the constituency development fund law be revised.<sup>125</sup>

## Legislative Executive Relations and Oversight

The new parliament's relationship with the executive is also a problem area. The transition from a parliamentary form of government to one that separates executive and legislative powers has occurred in form but is still ambiguous in practice. We cited above the still developing connections between ministries and legislative committees, and the issues surrounding the role of the President's party within parliament.

A related area is that of the role of legislative oversight. Parliamentary oversight of executive actions is now supported by a committee system that legitimate enquiries and provide a highly public venue for the airing of charges and responses. While oversight tools like these are widely considered useful for holding executives to account, they can also produce their own problems of harassment<sup>126</sup> and corruption. In Kenya, as well as in Indonesia, there have been accusations about the predatory use of oversight by legislators as means for shaking down potential targets. This problem is, of course, a part of the larger problem of how governmental powers are used in systems where substantial corruption exists.

In addition, there is a developing oversight role for the Senate in their obligation to try impeachments of Governors. Currently, the Senate is examining precedents from other countries on how to conduct impeachments.<sup>127</sup>

## Dealing With Joint Action Problems

The problems of the past arose from concentrated power, the problems of the present are those that arise in a more democratic and institutionally differentiated system.

The system is now more centered in formal institutions, which both powers and the means to exercise them, and in which the legislative portion represents a wider set of divergent demands. A common feature of shared power in governing systems is the ability to stop action unless an institution's cooperation has been secured.<sup>128</sup> In general, democracy, decentralization of power, presidential-congressional systems, and bi-cameral legislatures are all factors increase the number of political scientists term "veto players."<sup>129</sup> Veto players can stop actions from occurring.

This has made the Kenyan system more prone to what implementation scholars have termed the problem of the "complexity of joint action."<sup>130</sup> In this case, the more interests that are represented, and the more access they have to institutions whose cooperation is necessary for collective decisions to be made, the greater the likelihood of breakdown. This is a problem even when participants share some interests in common, society is better off if they can compromise. In another literature, this problem is phrased as the difficulty of achieving mutually beneficial

solutions requiring voluntary action on the part of participants with both common and divergent interests.<sup>131</sup> The transaction costs of such agreements are always higher in systems where players have little history of successful past cooperation. In Kenya, bi-cameralism is new and the Assembly and Senate have only a short contentious history with one another.

Constitutional changes have put Kenya in the early stages of implementing a new system requiring higher levels of inter and intra governmental cooperation. Trust has always been in short supply in Kenya and the problem is particularly sharp when new institutional forms are added to the mix which also includes high member turnover. This deficit in trust, or social capital, is particularly acute at this point and threatens to produce more frequent deadlocks.

Thus the challenge for the next phase is the development of functioning ties between the Senate and Assembly, Parliament and the Presidency and its executive departments, and between the national and subnational governments. One means of increasing trust is to encourage small instances of cooperation among sub-sets of participants from different institutions, and use the functionality and benefits of the these relationships as a basis for expanding trust and supporting bodies that facilitate such partnerships.

Thus the successful development of the present system, and the problems that this advance to democracy have brought with it, can be addressed in the incremental fashion that has created the present.

## Appendix 1

### THEN AND NOW. SUMMARY OF CHANGES PRIOR TO 1997 AND THE PRESENT (2015)

	Prior to the Beginning of 8 <sup>th</sup> Parliament (1997)	The Road Between	11 <sup>th</sup> Parliament (2013 to present)	Present Problems, Many arising from more pluralistic and competitive institutional and political environment
	A highly personalized system centered on long serving president		A government of institutions with independent powers, following legally defined processes, with greater levels of public dispute among participants over power and policies	More representative institutions operating in a divided society have made collective action more difficult to achieve and sustain.
<b>Overview of Changes in the Political System</b>	Neo-Patrimonial system with centralized discretionary power in a strong executive, presidential manipulation of constitution and law	Constitutional and Statutory changes, development of parliamentary capacity and motivations to use powers, emergence of competitive party system, increasing permeability of	Power shared between strong executive, empowered parliament, and legally entitled counties with conflicts adjudicated by courts.	Inter-House rivalry between National Assembly and Senate, competition with devolved governments, and problems with judiciary

	making to insure position, little opposition from weak institutions (subservient judiciary, bureaucracy and parliament)	government decision making to civil society.		
<b>Overview of Parliamentary Status and Capacities</b>	Rubber stamp parliament externally controlled by Executive through subservient Speaker as agent, patronage to buy MPs, control over legislative agenda and budget.	SEE BELOW	A bi-cameral legislature with the on-going capacity and periodic motivation to exercise power, operating in a more pluralistic and accessible political environment (devolved and empowered governments, guaranteed civil society participation rights)	Partisan differences reflected in conflicts in both houses.
Institutional Autonomy from Executive	Executive set budget, determined calendar, and could (and did) abolish parliament. Staff controlled by President and could be transferred	Legal changes: Parliamentary Service Commission Act of 1999 creates an independent parliamentary staff, The Constitution of 2010 gives Parliament control over its	Parliament sets its own budget, has its own career staff, and cannot be dissolved by president. Specialized internal staff for committees,	Sharp increases in parliamentary budgets due to higher salaries, allowances, increases in constituencies, and in creation of second chamber.

	at executive will, members dependent on Attorney General to draft legislation.	calendar and sets fixed terms for membership. PSC planning and building of capacity were supported by SUNY CID during their implementation phases.	budget process, and bill drafting.	
Member Autonomy	Low salaries, dependence on cash from President or appointment to cabinet and subcabinet for additional benefits.	Salary Act (currently 2013) raises member compensation. Constituency Development Fund creates allotments controlled by members for use in constituencies.	MPs now have resources independent of executive control. High salaries and other allowances for members. MPs can no longer serve in Executive positions, and they are entitled to CDFs for constituency use (current legal challenges)	High turnover in membership following competitive elections and proliferation of elected political offices
Internal Capacity to Process Legislation	Committees became more active during the transition to multi-partyism but lacked staff and other support necessary to play a major legislative	PSC plan to develop portfolio committees. SUNY CID assistance to committees developing and implementing workplans. The passage of new Standing Orders—	A largely functioning committee system in which committees serve. Committees under active chairs and members have become significant	Turnover among committee chairs and memberships due to competitive elections. Varying performance of committee chairs in developing a



	role.	supported by SUNY PSP-- to facilitate parliamentary business.	centers of power and decision.	relationship with their respective executive departments with shift from parliamentary to presidential systems.
Budget powers	Could only amend the President's budget by nominal sum (insert amount here) to show symbolic displeasure. No specialized support for financial committees and dependence on executive goodwill for information about the budget.	<ul style="list-style-type: none"> <li>▪ Creation of the Budget &amp; Appropriation Committee (2005)</li> <li>▪ <i>Fiscal Management Act (FMA), 2008 and again 2009</i></li> <li>▪ <i>Creation of Parliamentary Budget Office-PBO (2008)</i></li> <li>▪ <i>Budget Office Develops Macroeconomic Model (2012)</i></li> </ul> <p>The implementation of these actions were subsequently supported by SUNY PSP to build the capacity required.</p>	Budget committees have access to budget statement (name?) early in the year and can make changes that are incorporated into the final submitted budget. The budget office advises both houses and their committees on the budget and gives them technical support. Parliament can and does change amounts and departmental allocations.	Prospects for deadlocks between National Assembly and Senate over financial powers and over allocations to counties. Slow implementation of the program budgets intended to facilitate oversight over executive performance. Threatened use of budget powers to sanction judiciary for decisions unfavorable to MPs.
Oversight	Financial	PSC and other	Active	Potential

	oversight limited by weaknesses in committee system and by external manipulation of audit institutions. Widespread corruption through use of state supported institutions for political purposes.	plans to develop the oversight capacity of committees. Implementation supported by SUNY PSP.	committee oversight responding to periodic scandals in executive branch.	predatory use of oversight and appointment confirmation capacities for corrupt for narrowly partisan purposes
Parliament and Civil Society	CSOs in a largely adversarial relationship with Parliament where the former presented MPs as members of the corrupt political class. Limited partnerships with particular groups assisting in drafting reform legislation or providing expertise.	Development of opportunities for cooperation and mutual advancement. When developing independence of parliament allowed it to become a venue for discussing the Constitution, CSOs with SUNY PSP assistance participated in the Constitution process. The CSOs used the opportunity to achieve important elements of their transparency	CSOs using the rights to public participation enshrined in the Constitution are asserting their access to parliamentary budget, appointments, and oversight processes. Legislative committees are at the center of many of these efforts.	The participation requirements are currently being defined and subject to competing interpretations fueling court actions and political conflicts.

		and participation agendas. Parliament, for its part, used the opportunity to expand its own powers independent of the executive.		
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## APPENDIX 2

### CHRONOLGY OF PARLIAMENTS AND SUMMARY OF INSTITUTIONAL CHANGES

Political and Institutional Context	8 <sup>th</sup> Parliament (1997-2002) Moi KANU (late period). Kaparo Speakership	9 <sup>th</sup> Parliament (2003-08) Kibaki Spkr Kaparo	10 <sup>th</sup> Parliament (2008-13) Kibaki-Odinga, Speaker Marende	11 <sup>th</sup> Parliament (2013-17) Kenyatta Jubilee. Assembly Spkr
Turnover (no systematic record is available from official sources)	Data not available.	Out of 190 outgoing MPs defending their seats, 71 were re-elected (out of 207 seats). 20 ministers defeated. KANU reduced from 64 to 14 seats. 15 females elected.	77 MPs re-elected out of a total of 207 seats.	First election under new constitution. 30 experienced MPs were elected to 47 member Senate (19 from 10 <sup>th</sup> and 11 from earlier parliaments). 21% (60) MPs running for re-election to 290 seat National Assembly succeeded.
Political Agenda	Multi-partyism, internal competition within KANU. Opposition unites to oppose Moi (Kibaki-Odinga MOU)	Failure of Kibaki-Odinga MOU. Positioning for next presidential election, first constitutional referendum fails.	Accord in response to violence creates PM, Constitutional revision process with parliamentary arena, internal competition in ruling coalition	Devolution and bi-cameralism

Parliamentary Development	Passage of PSC Act; Committees become opposition vehicles (later move to Kibaki cabinet)	Salary bill, CDFs, Strategic Plan includes Committee development. Portfolio committees developed	Revisions of Standing Orders, staff leadership transitions (Gichohi/Bundi; Nyegenye)	Development of staffing for bicameralism; separation of exec and parliamentary membership
PSP COPs	Johnson	Biddle-Matiangi	Matiangi	Aywa
Key Parl. and staff Interlocutors	Aringo deputy clerks	Aringo, Deputy Spkr Musila; PSC; clerks (Gichohi and Omolo); Budget Office	PSC Clerks Office Speakers Office (as leader of house, with staff development)	PSC Bi-Cameral; Chamber Speakers Clerks
Budget/oversight	Proposals to increase role in budgeting (ideas later developed)	Creation of Budget Office by Fiscal Management Act of 2008; ; implementation of strategic plan and support for oversight committees (PAC, PIC, Budget and Appropriations) ; Investigation of Goldenberg Scandal	Public Financial Management Act ; Investigation of Anglo Leasing Scandal	Constitutional parliamentary budget powers, program budgeting, ; Investigation of Chicken Scandal (ballot)
Quality (and independence) of leg process	Creation of separate parliamentary staff and portfolio committee system	Staff training	Staff training	Sen. and Assembly staff structure
Parliamentary Performance		Committees and pvt member bills	Transition bills passed to give effect to the new Constitution	Separation of MPs from cabinet membership

Curriculum/Inst t Strengthening	Actions creating staff and committee functions	Creating capacity to fulfill changed requirements	In service/internal training as staff grows in size; creation of specialized training body (CPST)	Responding to constitution al changes. Bi cameral staff, bill drafting capabilities; county training
CSO involvement	Limited participation in legislation (PSC and Donde bills)	Committee hearings increasingly had CSO participation; outside agitation critical of parliament and government	CSO increasingly on inside during Constitution process and input (transparency, accountability, responsiveness, agenda)	Constitution al rights to participation ; participating in committee and other deliberation s

## FOOTNOTES

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<sup>1</sup> This case study is based on interviews with project staff, members of parliament, parliamentary staff, executive branch personnel, and civil society conducted over two weeks in February 2015 and documentary research using project reports, evaluations, parliamentary documents and other materials. Citations to documents are found in the footnotes. The list of interviewees can be found in Appendix 3.

<sup>2</sup> Greg Power, *A Political Approach to Parliamentary Strengthening: An Analysis of the Kenyan Experience and Recommendations for Future Programming*. Global Partners Governance, 2015.

<sup>3</sup> Barkan and Ng’ethe write: “The Moi government was a quintessential example of the one-party regimes that ruled half of Africa prior to the 1990. It was dominated by then President Daniel arap Moi who centralized power in his own hands to the point that the Kenyan state was equated with his persona and vice versa. This type of political system has been labeled variously as “big man rule”, “personal rule”, or “neo-patrimonial rule” (Jackson and Rosberg 1982, Bratton and van de Walle 1997). Neo-patrimonial regimes are *not* held together by a shared commitment among political elites to a set of policies or ideology, but by loyalty to the leader.” From Joel Barkan and Njuguna Ng’ethe, “An Evaluation of USAID Kenya Program to Strengthen the Kenya National Assembly, August 22, 2004.

<sup>4</sup> See, for example, Francis Fukuyama, *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (New York: Farrar, Strauss and Giroux, 2015).

<sup>5</sup> A recent meeting to discuss an approach to analyzing USAID efforts in the past brought up the nearly exclusive focus on contract periods, and the need of agencies for credit, as a characteristic of evaluations. USAID convened Workshop on Legislative Development, Washington, June 27, 2014.

<sup>6</sup> See, for example, Sabatier on the workings of advocacy coalitions over time and Martin Levin’s evaluations of the YEDPA. For different reasons, these scholars and others see the cumulation of program efforts in a single area as significantly affecting the implementation environment by laying foundations on which subsequent efforts can build. This phenomenon is missed by shorter term looks at given programs. See M. Levin and B. Ferman, *The Political Hand*, *Journal of Policy Analysis and Management*. See also Paul Sabatier on advocacy coalitions in Paul Sabatier and Christopher Weibel, eds., *Theories of the Policy Process*, Third edition, Westview, 2014.

<sup>7</sup> Robert Nakamura and Frank Smallwood, *Politics of Policy Implementation*, characterize this as a “classical model” of policy evaluation and it is usually applied to programs that are clear in means and goals, and implemented by those who have the power to comply. It contrasts with the evaluation of programs that evolved with the implementation process.

<sup>8</sup> This distinction was originally made by Paul Sabatier.

<sup>9</sup> See Greg Power, *Enabling Change: A Behavioral Approach To Political Programming*; Hudson and Lefwich, “From Political Economy to Political Analysis.”

<sup>10</sup> Matt Andrews, *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*, Cambridge University Press, New York 2013. The same point in a very different context was made by Michael Lipsky’s classic works on “street level bureaucracy.”

<sup>11</sup> See Global Partners. *Politically Agile Programming Paper 2, Enabling Change: A Behavioral Approach to Political Programming*.

<sup>12</sup> David Booth and Sue Unsworth, “Politically Smart and Locally Led Development,” ODI Discussion Paper, September 2014.

<sup>13</sup> For example an OECD guideline publication advises: “The emphasis should be on taking context as the starting point, and developing program options which represent the best fit rather than standardized best practice.” Considering the Political Dimension, Getting Traction and Achieving Results,” *Accountability and Democratic Governance: Orientations and Principles for Governance*. P. 32

<sup>14</sup> For evidence of success see USAID evaluations conducted by Barkan and Ng’ethe, the encomiums delivered by MPs and others at the 2013 “Decade of Legislative Strengthening Conference”, Nairobi, the World Bank, IDEA and Greg Power papers reviewing approaches to parliamentary development.

<sup>15</sup> A review of available cases in USAID files did not identify any cases of single programs with longer duration.

<sup>16</sup> Martin Levin has called this, in a US domestic context, development by remote control. Jeffrey Pressman in his *Federal City Relations* (New Haven: Yale University Press) sees this as a principal means by which the federal government seeks to influence the development of American cities by grants in aid

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and other methods. It is a major component of federal programs to the state level, and of state programs to the local level. See Lester Salamon, *The Tools of Government*.

<sup>17</sup> While the terms vary among donor agencies, an example from educational reform illustrates the differences. Inputs like teacher training produce an output in the form of better trained teachers which in turn are supposed to result in an outcome of better student performance which then produces an impact of a more productive society. See Frank Levy, Arnold Meltsner, and Aaron Wildavsky, *Urban Outcomes* (Berkeley: University of California Press) for one of the earliest statements of these distinctions.

<sup>18</sup> The principal-agent problem is discussed by Terry Moe, Moe, "The New Economics of Organization," *American Journal of Political Science*, November 1984. The reasons for planning in detail are described in Robert Nakamura and Malcolm Russell-Einhorn, "Improving the Implementation of Legislative Development Programs: Mapping the Imperatives and Circumstances," Paper delivered at the 11<sup>th</sup> Annual Workshop of Parliamentary Scholars and Parliamentarians, Wroxton College, Oxfordshire, UK. July 26-27, 2014. Greg Power has likened the DFID logframes to "game plans" which are subsequently frustrated by the actual start of play.

<sup>19</sup> Greg Power and Oliver Coleman write: "the 'aid effectiveness' agenda, in particular its emphasis on 'results', appears to be pulling programmes away from this approach. This is generally being interpreted by donor agencies as the need for a 'return on investment' with tangible signs of change, but this risks distorting the way in which such projects are delivered. It has been described by Thomas Carothers as a 'projectization' of such work, which places greater emphasis on fitting work into the structure of bureaucratic forms required by donors. As a senior figure from a donor agency put it, it means that governments are 'more interested in doing things the right way, than in doing the right things'. The emphasis on 'results' runs the risk of reducing the effectiveness of such political programmes, as the desire for quantitative data means that projects end up with the wrong indicators, which in turn means that they end up doing the wrong things." *Challenges of Political Programming*. Discussion Paper prepared for IDEA, November 2011.

<sup>20</sup> For a fuller discussion of implementation issues see t Nakamura and Russell-Einhorn, "Improving the Implementation of Legislative Development Programs..."

<sup>21</sup> Lester Salamon contrasts implementation through hierarchies where command and control modes are used with implementation through networks which are dependent on cooperation and coordination. See his *Tools of Government*.

<sup>22</sup> For example, Richard Elmore compared the results of having the same general plan implemented across a wide variety of implementers with substantially varying success. See Richard Elmore, "Knowledge Development Under Youth Employment and Demonstration Projects Act, 1977 to 1981. A commissioned paper contained in Charles Betsey ed., "Youth Employment and Training Programs, the YEDPA years," National Academy Press, 1985. For another discussion of the sometimes transformative effect of implementation see Albert Hirschman, *Development Projects Observed*, for his discussion of how initially unpromising decisions led to successes because they tapped unanticipated ingenuity during implementation.

<sup>23</sup> See Erving Goffman, *The Presentation of Self in Everyday Life*, Doubleday Anchor, 1959.

<sup>24</sup> See discussion of how words are tools for shaping deeds in game-like interactions in Erving Goffman, *Strategic Interaction*, University of Pennsylvania Press, 1970.

<sup>25</sup> Email to author from Jesse Biddle.

<sup>26</sup> An anecdote illustrates the success of the presentation. Jesse Biddle writes: "In retrospect, I remain surprised at the extent of trust we developed by staying on message about this -- by 2003/04 I could circulate back and forth among tables of partisan MPs who would congregate in separate tables over lunches and freely discuss in front of me their strategies and tactics for opposing/undermining other parties even though they well knew that I was listening to parallel conversations at the next table!" Email to author.

<sup>27</sup> Goffman calls these expressions given (messages over which presenters have visible control) and expressions given-off (messages where their control is less complete).

<sup>28</sup> Establishing and sustaining such trust is one form of the "social capital" that Robert Putnam and others have argued are critical to facilitating cooperative behavior to achieve common goals. See Robert Putnam,



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Bowling Alone: The Collapse and Revival of American Community, Touchstone 2001 and Making Democracy Work, Princeton, 1994.

<sup>29</sup> USAID was supportive of the deferential strategy. One official said we: “approved of PSP’s approach of working with institutions within Parliament i.e. the MPs through committees, the leadership through the Office of the Clerk and the Speaker and the staff. This approach guaranteed that PSP was supporting Parliament who were the drivers of the vision therefore the PSP work plan was developed to support their activities.” Interview with Sheila Karani, 2/17/ 2015.

<sup>30</sup> Political analysis or political economy analysis advises designing programs with the interests of target populations in mind. One under-appreciated dimension is the changeability of those interests and motivations in response to the contexts in which subsequent decisions are made. See Cohen, March and Olsen, “A Garbage Can Model of Organizational Choice,” *Administrative Science Quarterly*, March 1972.

<sup>31</sup> Speaker Kaparo, for example, had in the past used slots on donor support for study tours as benefits to sustain his own power. See Barkan and Matiangi.

<sup>32</sup> In recent years, for example, Kenyans had bridled at strenuous US efforts to push anti-terrorism legislation on them.

<sup>33</sup> For a discussion of the donor-contractor principal-agent problem and its consequences see Robert Nakamura and Malcolm Russell-Einhorn, “Improving the Implementation of Legislative Development Programs.”

<sup>34</sup> Goffman distinguishes between expressions given (messages under the apparent control of the presenter) and those given-off (apparently under less control) which are used by audiences to check the veracity of the messages given. A simple example is what people say (messages given), and how they behave (given-off) especially when behavior may be costly to the presenter.

<sup>35</sup> These are similar to the presentational strategies used by congressional staff who like development implementers have knowledge but not power. See John Kingdon, *Congressmen’s Voting Decisions*.

<sup>36</sup> For a review of the literature and summary of these developments see pp. 60 to 70 in John Johnson, *Parliamentary Independence in Uganda and Kenya*, Ph.D. Dissertation, Department of Political Science, Rockefeller College of Public Affairs, University at Albany, State University of New York, 2009. See also Joel Barkan and Fred Matiangi, “Kenya’s Torturous Path to Successful Legislative Development”

<sup>37</sup> Rules were often changed when they proved inconvenient. For example, during the period of one party rule, there was a requirement that the chair of the public accounts committee be a member of the opposition. Since there was no opposition, the rule was without force. In the return to multiparty politics in the 1990s, that rule was abolished. More importantly, a weakened president changed the electoral laws prior to the 1996 election so that he could win with a minority of the votes cast by requiring minimum voting strength across the nation.

<sup>38</sup> Because of Pres. Moi’s relatively poor showing in the 1996 election, his supporters had a narrow majority in the National Assembly thanks to a coalition, and thanks to his ability to appoint members to cabinet and sub-cabinet positions and otherwise purchase loyalty.

<sup>39</sup> See John Johnson, *Parliamentary Independence in Uganda and Kenya*, p. 179.

<sup>40</sup> Peter Oloo Aringo, in an author interview.

<sup>41</sup> Example cited in an interview with Wachira Maina,

<sup>42</sup> From Author interview, source kept anonymous.

<sup>43</sup> See Barkan and Matiangi. Table 2 on salaries.

<sup>44</sup> Barkan and Matiangi, “Kenya’s Tortuous Path to Legislative Development.”

<sup>45</sup> Barkan and Matiangi. See also John Johnson, dissertation.

<sup>46</sup> Robert Nakamura interview with Joel Barkan, Nov. 20, 2000. Barkan noted that the 1997 election produced a coalition for reform, augmented by cross party dialogs, by 2000 numbered from about 50 to 60 hard supporters.

<sup>47</sup> Robert Nakamura’s analysis of the PSC plan written in 2000 for USAID summarized some of its problems: “The PSC plan does not, however, present an explicit vision of what the institution should become and how that transformation will make it more effective contributor to Kenyan democracy. Such a vision would be useful to outside donors for practical reasons such as establishing priorities or allocating limited resources in the face of less limited needs, and for providing benchmarks for measuring outcomes like increases in functionality rather than just focusing on inputs to meet particular needs.”

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<sup>48</sup> This is a term from Lester Salamon. Orchestration, along with similar functional skills such as facilitation and modulation are necessary to implement programs that involve multiple participants and lack coordinating hierarchies. See Lester Salamon, ed., *The Tools of Government: A Guide to the New Governance*, Oxford, 2002.

<sup>49</sup> Eugene Bardach, *The Skill Factor in Politics*, notes that resource dissipation can occur in many ways: (a) dissipation of resources such as time (through transaction costs of deciding on activities or cumbersome bureaucratic and political clearances), money (diversion by corruption/rent seeking), and attributions of public credit for achievements (competition for authorship credit from politicians, for attributions of causal effects by donors, and for democratic development by host nations and donors).

<sup>50</sup> See annual and semi-annual SUNY PSP reports.

<sup>51</sup> Nearly all donor programs start with an assumption of cooperation—often in the form of a memorandum of understanding or similar document signed by principals—but often voiced support is achieved by vagueness about goals or simply the desire to gain access for donors or material benefits for the target population. So building cooperative relationships is often the first task rather than a given.

<sup>52</sup> One example of the dictum “where you stand depends on where you sit” is that of President Moi’s Minister of Finance, who in his prior role as a member of the opposition to President Moi in National Assembly had supported an expanded parliamentary budget operation but opposed it upon becoming Finance Minister. See author interview with the Hon. Peter Oloo Aringo, Feb. 24, 2015.

<sup>53</sup> Barkan and Ne’gethe write: “The Speaker of Parliament (Francis ole Kaparo) was initially suspicious of USAID’s intentions, and remains cautious about the relationship between the National Assembly and the donor community. As discussed in the first section, the Speaker together with the then Clerk had been assigned the role of watchdog by the Moi regime to limit the empowerment of Parliament vis-à-vis the executive and resist or slow donor efforts to strengthen the institution. They succeeded in resisting change throughout the Seventh Parliament, but after the 1997 elections the Speaker was put on notice by MPs seeking to expand the role of Parliament that his continuation as speaker would be contested if he were not more forthcoming in supporting reform.” p. 11. Joel Barkan and Njuguna Ng’ethe, *An Evaluation of USAID-Kenya’s Program to Strengthen the National Assembly*, August 27, 2004.

<sup>54</sup> Under colonial rule, there was an advisory legislative council but it was dominated by the executive. Other precedents were also with a weaker parliament. After Kenyan independence, the UK Commons subsequently developed a stronger committee system. See Barkan and Matiangi.

<sup>55</sup> One example of the relative indifference to institutional development or skepticism about donors on the part of many MPs was the experience of the World Bank Institute in 2000. WBI had organized a workshop, hired a large hall, recruited experts and put together a program, and only a handful of MPs showed up for it. Jesse Biddle in email correspondence to author.

<sup>56</sup> One interviewee, an MP at the time, laughingly recounted a rumor that a SUNY manager was a CIA spy. Kenyans, like most people, are jealous of their independence and the motives of foreigners and those perceived as their agents always receive scrutiny. The US government, the World Bank, and others had had their agendas periodically conflict with those of the Kenyan National Assembly which had bridled at passing anti-terrorism measures in the form advocated by the Americans, or the World Bank expressed opposition to the Donde bill which sought to regulate the interest rates that commercial banks could charge. Thus SUNY efforts were also likely to be viewed initially with some suspicion. This was particularly true because the SUNY program was a broad one rather than the more specific support given to particular tasks undertaken at the specific request of MPs that had characterized previous aid initiatives in Parliament.

<sup>57</sup> DFID provided support to the program beginning in 2007.

<sup>58</sup> According to several interviewees in USAID, civil society and other places, opponents of parliamentary assistance both within USAID and in civil society groups were vocal and active in efforts to limit the parliamentary program and circumscribe the SUNY role. This opposition diminished later as program successes mounted.

<sup>59</sup> Ms. Gitau later went on to become a key advisor to presidents Kibaki and Kenyatta. Despite her current ties to the Executive, she noted in a newspaper interview that she had taken particular satisfaction from her work on parliamentary development. She said that she had “spearheaded a programme to strengthen the Kenyan parliament.” *Kenya Today*, October 20, 2013.

<sup>60</sup> The apt term energizing the political ecology is from Eugene Bardach’s, *Skill Factor in Politics*.

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<sup>61</sup> Joel Barkan refers to these people in his writings on African legislatures as the “the coalition for change” whom he contrasts with the more common “opportunists.” In a different vein, James David Barber refers to this minority in established legislatures as the “lawmakers.”

<sup>62</sup> These workshops included MPs and CSOs like the Center for Governance and Development. See also Barkan and Matiangi.

<sup>63</sup> The group included a former cabinet minister, a lawyer regarded as among the best in the country, a political scientist trained at a top US institution, and other notables.

<sup>64</sup> Author interview with Wachira Maina, an outside participant in the drafting of reform legislation, Feb. 25, 2015.

<sup>65</sup> French and Raven identified five basis of power, or how a person is influenced to behave by another: reward, coercion, expertise, referent and legitimacy. Two require the ability to reward and punish, while the others depend on how the influencer is perceived as a sharer of goals or values. John R.P. French and Bertram Raven, *The bases of social power*. In D. Cartwright and A. Zander (eds.), *Group dynamics* (pp. 607-623). New York: Harper and Row, 1960.

<sup>66</sup> “Internally we had no control over money, staff, agenda, calendar. This ignited me. I said, where is the weakness? . . . it is in the law that gives the president power to control parliament.” We became just a government department. That was the wakeup call. The question now is how do you disentangle it? It became my sole objective that nothing else was going to work until you cut this appendage, cut this umbilical cord.” Interview with John Johnson, *Parliamentary Independence in Uganda and Kenya*, quoted on p. 179.

<sup>67</sup> Author phone interview, February 6, 2015.

<sup>68</sup> John Johnson, *Parliamentary Independence in Uganda and Kenya*, P. 182.

<sup>69</sup> Johnson, *Parliamentary Independence in Uganda and Kenya*, quotes Aringo: With the support being built in parliament, Aringo was able to move, and to pass, a private motion on the independence of parliament. With the motion passed, he could then draft and introduce independence of parliament legislation. He introduced the bill, lobbied MPs, and built sufficient support to pass the legislation. The National Assembly next did something it had never done: it held a budget amendment hostage until government agreed to allow the legislation to move. Aringo states, “We moved a motion. The motion allowed me to bring the bill. We drafted the bill. . . Members had not realized they could deny the budget to the government. I waited till they were bringing supplementary estimates. At that time they had run out of money. They could only act illegally. We paralyzed their work. We said we would reject their budget. But rather than do that, we said we could negotiate. We said if you support our bill, we will pass the budget. We will pass yours, and you will pass ours.” P. 182.

<sup>70</sup> World Bank Report No. 44924-KE. *Understanding the Evolving Role of the Kenya National Assembly in Economic Governance in Kenya An Assessment of Opportunities for Building Capacity of the Tenth*

<sup>71</sup> Jesse Biddle recalled: “A key example of this was with Hon. Musila, who shared the goal to have committees better conduct executive oversight and legislative reviews. He and I looked carefully at the Standing Orders and determined that the Deputy Speaker was Chair of the Liaison Committee. Thus, he (not Kaparo or the PSC) had the authority to organize committees and the committees themselves had strong oversight and legislative review powers.” Email to author.

<sup>72</sup> Jesse Biddle, email to author.

<sup>73</sup> Richard Neustadt, *Presidential Power*, considers this an important resource of the President. This point is developed by Peter Sperlich in his essay on Neustadt.

<sup>74</sup> For a discussion of facilitating dialogues that support policy deliberation SUPPORT Tools for evidence-informed health Policymaking (STP) 14: Organising and using policy dialogues to support evidence-informed policymaking, John N Lavis<sup>1</sup>, Jennifer A Boyko<sup>2</sup>, Andrew D Oxman<sup>3</sup>, Simon Lewin<sup>4</sup> and Atle Fretheim<sup>5</sup>, accessed <http://www.health-policy-systems.com/content/7/S1/S14>

<sup>76</sup> In both Uganda and Kenya, parliamentary reformers used the self-interest of members to pass substantial salary bills against the wishes of presidents who controlled Uganda’s NRM (the only party in parliament at the time) and Kenya’s majority KANU led coalition. When member self-interest conflicted with party

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discipline, self-interest prevailed in these instances. See Robert Nakamura and John Johnson, *Rising Legislative Assertiveness in Uganda and Kenya 1996 to 2002*, Paper prepared for delivery at the 19<sup>th</sup> International Political Science Association World Congress Durban, South Africa, June 29 to July 4, 2003.

<sup>77</sup> This phrase is adopted from Charles Schultze, *The Public Use of Private Interest* (Harvard: 1977).

<sup>78</sup> Quoted from work by Nancy Gitau in John Johnson, *Parliamentary Independence in Uganda and Kenya*, p. 181.

<sup>79</sup> Salaries plus allowances in 1998 totaled 79,033 Kenyan Shillings, by 2008, it was 851,000 KS. See Table 2, Barkan and Matiangi.

<sup>80</sup> See David Mayhew, *Congress the Electoral Connection* (New Haven: Yale University Press, 2004).

<sup>81</sup> Author interview with Speaker J.B. Muturi, 2/19/2015.

<sup>82</sup> Karani author interview.

<sup>83</sup> Interview with Wachira Waceke, former deputy chief of PSP, 2/17/2015.

<sup>84</sup> This dynamic of interns showing members the value of professional staff mirrors developments in the California Legislature during the 1950s and 60s in the aftermath of the Coro and Ford Foundation internship programs. See Lou Cannon, *Ronnie and Jesse*.

<sup>85</sup> Two senior managers have subsequently served at high levels in the Executive Branch. Sam Mwale, a former Deputy Chief of Party was cabinet secretary during the Kibaki-Odinga period. Dr. Fred Matiangi is the Secretary of Telecommunication in the Kenyatta Administration.

<sup>86</sup> Woodrow Wilson's distinction between politics and administration, the former the province of elected officials and the latter technicians, is also usually blurred in practice.

<sup>87</sup> See Robert Nakamura and Frank Smallwood, *The Politics of Policy Implementation*, New York: St. Martins. See also M. McLaughlin, "Implementation as Mutual Adaptation," in M. McLaughlin, *Curriculum Studies Reader 2004*; E. Bardach, *The Implementation Game* (Cambridge: MIT Press, 1979) and Robert Behn, *Leadership Counts* (Google Books, 1991).

<sup>88</sup> Author interview with Hon. Amina Abdalla, February 26, 2015.

<sup>89</sup> This exchange was from the Decade of Legislative Strengthening Conference at Windsor Hotel, Nairobi March 2012.

<sup>90</sup> Wachira Maina, in an author interview notes: "SUNY's strongest area of support was around budget work and the subsequent establishment of the PBO which to date is the strongest and most well established office in Parliament. SUNY's engagement which included the hiring of technical expertise led to more investment of time at the committee level to ensure that adequate scrutiny was done to flag any issues which would result in better use of floor time."

<sup>91</sup> An interview with Hon. Aringo provided the details. The next step was to recruit a knowledgeable staff. The PSC and parliamentary control over the budget meant that parliament could pay high enough salaries to staff to attract the necessary talent. Aringo said: "I poached the treasury for a very capable person. We recruited her and paid her well. Asked for their loyalty and training. Had a solid group of informed staff." That person who at Treasury had been the most knowledgeable adversary of Parliament in the budget process became an asset of Parliament who, according to one interviewee, "knew where all the bodies were buried." She, in turn, recruited three key staff including from executive branch and elsewhere. Today the PBO staff number seventeen plus interns.

<sup>92</sup> Author interview with Martin Masinde, deputy director, Parliamentary Budget Office, 2/34/2015. He notes: "The increased capacity of the PBO has led to greater demands being made on the office by various committees in both houses."

<sup>93</sup> Author interview with Wachira Maina who speculated that constituency specific motives influenced some legislators to support an expansion of work on the budget and to use the analysis provided by the budget office.

<sup>94</sup> Surveys by the African Legislatures Project have repeatedly identified constituency service—the delivery of material benefits—as a major activity area. Representation and law-making varies, and has been increasing in a subset of Kenyan MPs.

<sup>95</sup> Barkan and Matiangi. "Kenya's Torturous Path to Successful Legislative Development" Pg. 33

<sup>96</sup> This was the year the F-Indicators were implemented and SUNY began tracking participant training details through a training database. SUNY data source

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<sup>97</sup> Jesse Biddle email to author.

<sup>98</sup> For a discussion of the forms that dispersion takes see Eugene Bardach, *The Skill Factor in Politics* (Berkeley: University of California Press).

<sup>99</sup> Thomas Schelling, *The Strategy of Conflict*, Harvard Reprint 1981.

<sup>100</sup> Interview with SUNY staff, identity not disclosed.

<sup>101</sup> Albert Hirschman, *The Passions and the Interests: Political Arguments for Capitalism Before Its Triumph* (New Jersey: Princeton Press, 2013) lists three—futility because it won't do enough, perversity because it will do the opposite, and jeopardy because it will sacrifice a more cherished goal. This is an example of jeopardy.

<sup>102</sup> An earlier example, prior to the SUNY program, was the uniform opposition of the donors to the Donde Bill, a private member bill, considered and passed by parliament in 2000.

<sup>103</sup> See Robert Nakamura, "Legislative Indicators: Measuring How We Doing Depends On What We Want To Do," forthcoming.

<sup>104</sup> Kent Weaver, "But Will It Work: Implementation Analysis to Produce Improved Government Performance," *Issues in Governmental Studies*, Brookings, Feb. 2010.

<sup>105</sup> Specifically the measure was to track and assess whether the KNA improved in how it passed legislation, whether the said legislation meets certain standards, whether the legislation is timely, and whether the legislation is based on more public input and therefore is responsive to public issues and needs. Of particular importance at this time in Kenya's history, and a driving reality of the Project, was whether KNA would rise to the challenge of passing timely transitional legislation to facilitate implementation of the new constitution.

<sup>106</sup> SUNY was interested in learning whether through it technical support in the law-making, deliberative and budget-making processes, resource support to the various committees and departments within Parliament and capacity building among Members and Staff had any discernable effect on legislative quality in Parliament.

<sup>107</sup> Each year the review was undertaken by a panel of four (4) experts comprised of distinguished scholars and practitioners in the fields of law, economics and policy analysis and one legal and/or budget staff in parliament. The panel was headed by a Panel Leader, who not only coordinated the process but also wrote the panel's report on the quality of legislation for that reporting year.

Each criterion is assessed by scoring (1-4 likert scale with one being low and 4 being high) three questions. Therefore with seven criteria measures a total of twenty-one questions are scored and the highest possible score is 84. Each piece of legislation is read and scored by two panelists; their scores are then averaged to determine the mean score for that piece of legislation. To test for bias SUNY looks at the scores of non-parliamentary panelist and parliamentary panelists. The difference between the two has not been significant (historically less than  $\pm 2\%$ ) and SUNY concludes that there is no effect on the overall quality score each year.

<sup>108</sup> The greatest gain in terms of percentage was in the quality of technical staff supporting committees

<sup>109</sup> The tremendous output from this Committee was virtually equal in the final months of the 10<sup>th</sup> Parliament and the newly constituted committee in the 11<sup>th</sup> Parliament took up their mandate quickly and effectively. The PIC in the 11<sup>th</sup> Parliament began investigating National Cereals and Produce Board and M/s Erad Supplies and General Contracts Ltd for Supply of Maize. In this highly controversial matter (the public was outraged given the tremendous food shortages and famine in many parts of Kenya), PIC investigated the failed multi-billion shilling public tender for maize and other grain importation that ultimately fell through. During the course of this investigation PIC called 18 officials to testify before the committee and answer MP's questions. The PIC ultimately found the National Cereals and Produce Board (NCPB) entered into a Sh4.9 billion tender without consulting the country's chief legal advisor, the Attorney General to verify the procurement laws were followed and the tender was legal. The black listed directors will have to refund SH313 million and all other monies they received after arbitration and

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litigation. Even before the report was tabled in Parliament, further controversy continued as some sought to amend the report to shield an MP and two directors of the firm.

The PIC also published the special Report on the Independent Consultant for Design Review and Construction Supervision for the Standard Gauge Railway from Mombasa to Nairobi and Procurement and Installation of Facilities, Locomotives and Rolling Stock. The Committee took this task on after there were allegation of improprieties in the procurement of the project. During the course of this investigation, the Committee summoned 11 individuals involved in the tendering process and grilled them for background and details. Ultimately the Committee called for the controversial Sh3.7 billion (\$41 million) contract awarded to a Chinese firm for supervision of the standard gauge railway construction between Mombasa and Nairobi to be stopped over irregularities.

<sup>110</sup> These points were well stated in an e-mail from Wachira Maina dated 2.10.15 “Though I personally think that SUNY's greatest impact has been in changing the nature of legislative- executive relationship. Before SUNY and CGD the mandarins never took parliament seriously. Now, even when government has a majority, they do. Tracking how and why this has happened is such an integral part of the SUNY story that it needs to be captured. I am not sure it will be captured by oversight and budget. It is not merely because parliament asks difficult questions or that it votes money. Rather, it is the acceptance and appreciation of its role as an independent arm of government. What parliament has achieved since 1998 is what the judiciary is trying to achieve now: namely, fighting to be accepted as a self accounting and legitimate arm of government. This is a structural question quite independent of the functions of parliament or of the judiciary. I do not know how you capture this in your TORs but I feel as if something critical will be lost if you don't. Parliamentary strengthening is not merely a question of improving functions, it is helping people and government accept the legitimacy of checks and balances at a structural level. Sometimes parliament will- as this current one has- fail in its functions but if the principle is accepted- which now is fact- that it is an autonomous arm of government, it can always recover in more clement circumstances...

<sup>111</sup> Robert Dahl, Preface to Democratic Theory (University of Chicago, 2006) and Modern Political Analysis (the concept of power is clearest in earlier edition). His definition of power is the ability of A to change the behavior of B from what B otherwise would have done.

<sup>112</sup> Indeed, some did precisely that by devoting their energies to presidential elections and advancing policy goals through ministerial office rather than through parliamentary development.

<sup>113</sup> On a large scale, this was the means by which a portion of USAID assistance was replaced by DFID support without interrupting program delivery. On a smaller scale, efforts by the Ford Foundation and World Bank were coordinated in events organized by the SUNY program.

<sup>114</sup> See for example, Robert Nakamura, Effective Oversight and Iron Triangles: Toward A Better Understanding of Implementation Challenges or Lessons from BiH and Turkey,” Paper presented at the International Political Science Association Meeting, July 23, 2014, Montreal, Canada.

<sup>115</sup> Many of our interviewees did give credit in that respect to program.

<sup>116</sup> The term comes from studies of agricultural innovation in planting new crops. A similar mechanism has been identified in the spreading of innovations among American states in which regional leaders influence neighbors with new ideas for statutory changes.

<sup>117</sup> SUNY has played a role in transmitting lessons from the KNA to the counties. Dr. Matiangi, the Project Director, stood up at the first meeting of all County Speakers, and urged them to stop their bickering, and challenged them to create a “speakers forum” later called the County Assemblies Forum. He urged CAF to aggregate their demands, and to pool resources for development. Which they did. Later, DFID provided SUNY almost \$2million to train county assemblies and supported the analysis of Standing Orders Revision in the County Assemblies, HR, Budget and Committee Management. A separate grant through the Ford Foundation also support the development of a training program with six modules.

<sup>118</sup> In a discussion at a Wroxton Conference, a USAID official referred to the time it takes to establish a relationship as a “transaction cost” and noted the time consumed by replacing a successful implementer in Uganda with a competitor thereby incurring a lengthy start up period.

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<sup>119</sup> Matt Andrews and others have used this and similar terms to describe the formal adoption of new systems which fail to deliver on new behaviors. See Matt Andrews, “Isomorphism and the Limits of African Financial Management Reform,” HKS Faculty Working Paper Series, May. 2009.

<sup>120</sup> A recent law was passed that forbid governors from displaying Kenyan flags on their cars and people referring to them as “excellency” can be made to pay fines.

<sup>121</sup> Author interviews with Hon. Abdalla about her committee and the cabinet department overseen, and Secretary of ICT Fred Matiangi about his relationship with the committees overseeing his work.

<sup>122</sup> See interviews with Wachira Maina and Collins Odote.

<sup>123</sup> Author interview with Speaker of the Assembly.

<sup>124</sup> Author interview with Speaker of the Senate.

<sup>125</sup> Cite the case here.

<sup>126</sup> For example, Albert Hirschman discusses the problems of excessive “voice” in diminishing the ability of failing actors to deal with problems causing dissatisfaction. See Hirschman, Exit, Voice and Loyalty.

<sup>127</sup> Author interview with Ms. Eunice Gichangi, Director of Legal Services in the Senate.

<sup>128</sup> This is a central theme in the discussion of checks and balances found in the American Federalist Papers.

<sup>129</sup> For a summary of this literature and its implications see Francis Fukuyama, Political Order and Political Decay.

<sup>130</sup> See Jeffrey Pressman and Aaron Wildavsky, Implementation.

<sup>131</sup> See, for example, Mancur Olson, The Logic of Collective Action