

The Legislature: Bi-Cameralism under the new Constitution



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Kipkemoi arap Kirui
and Kipchumba Murkomen



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Abstract

The aims of this paper are threefold. First, the paper retraces the history of the Kenyan legislature before and after independence tracking the various transformations spanning a century of its existence. These transformations have been largely characterised by two competing forces: one epitomized by a strong executive seizing power from other arms of government, and the other by pro-reform forces pushing for an expanded democracy, better governance and accountability, and the promotion of rule of law. They agitated for electoral, legislative and constitutional reforms resulting in the reduction of the powers of the president, the re-introduction of multiparty democracy and the expansion of people's democratic space and shifting power from the presidency back to other arms of the state, including parliament, and by extension to the people.

Second, the paper will critically examine the reasons why Kenya, after only four years of independence, reverted to a state with a unicameral parliament. It is worth noting that at independence the framers of Kenya's Constitution opted for a Westminster-style bicameral legislature under a quasi-federal system. It is suggested that the experience gained from 1963, to 1967, when Kenya had a Senate, is crucial in redesigning the current bicameral legislature under the 2010 Constitution.

Finally, this paper looks at the changes envisaged by the new Constitution of Kenya, and in particular the provisions relating to the reintroduction of the Senate. The paper critically examines the re-designed structure of the legislature and how the different components will interact with each other.

Kipkemoi arap Kirui is a Bachelor of Laws (LLB) graduate of Bangalore University currently pursuing graduate studies in Advanced Legislative Studies and a diploma in legislative drafting. He is co-author of *Working Structures of Parliaments in East Africa, 2003* with Dr. Roland Schwartz, Partner *Legis Consult*; and founder of *Journal of Parliamentary Studies-East Africa*. He currently works as the Prime Minister's Parliamentary Secretary.

Kipchumba Murkomen holds a Bachelor of Laws (LLB) degree from the University of Nairobi; a Master of Laws degree (LLM) in Trade and Investment from the University of Pretoria, and a Masters of Laws (LLM) in International Legal Studies from the American University Washington College of Law. He is an advocate of the High Court of Kenya, and presently lectures in the department of Public Law at Moi University School of Law, as well as being adjunct lecturer at the University of Nairobi's School of Law. Previously he lectured at the Catholic University of Eastern Africa. His interests are in human rights, good governance, trade, investment and international development.

The SID Constitution Working Paper Series

In 2010, on the cusp of Kenya's new constitutional dispensation, the Society for International Development (SID) embarked on a project called *'Thinking, Talking and Informing Kenya's Democratic Change Framework'*. Broadly stated, the objective of the project was both historical and contemporary: that is, to reflect on Kenyans struggles for a democratic order through a book project, and to examine the significance of a new constitutional order and its legal and policy imperatives, through a Working Paper Series.

Consequently, SID commissioned research on some of the chapters or aspects of the new constitution that require further policy and legislative intervention, culminating in ten Working Papers. These papers, mostly by Kenyan academics, are intended to help shape public discussions on the constitution and to build a stock of scholarly work on this subject.

These papers seek to contextualize some of the key changes brought about by the new constitutional order, if only to underscore the significance of the promulgation of the new constitution on August 27, 2010. The papers also seek to explore some policy, legislative and institutional reforms that may be necessary for Kenya's transition to a democratic order.

The Working Papers explore the extent to which the new constitution deconstructs the Kenyan post-colonial state: how it re-calibrates the balance of power amongst branches of government and reforms government's bureaucracy; redraws the nature of state-individual relations, state-economy relations, and state-society relations; and deconstructs the use of coercive arms of the government. Lastly, the papers examine some of the limitations of the new constitution and the challenges of constitutionalism.

In the first set of papers, **Dr Joshua Kivuva**, **Prof. Ben Sihanya** and **Dr. Obuya Bagaka**, separately examines how the new constitution has re-ordered nature of Kenya's post-colonial state, especially how it has deconstructed the logic of state power and rule, deconstructed the 'Imperial Presidency', and how it may re-constitute the notorious arm of post-independent Kenya's authoritarian rule: the provincial administration.

The next set of papers in this series, by **Dr. Othieno Nyanjom** and **Mr. Njeru Kirira**, separately looks at the administrative and fiscal consequences of Kenya's shift from a unitary-state to a quasi-federal state system. Whereas Dr. Nyanjom examines the anticipated administrative and development planning imperatives of devolving power; Mr. Kirira examines the anticipated revenue and expenditure concerns, which may arise in a state with two-tier levels of government. Both discussions take place within the context of a presidential system of government that the new constitution embraces.

The paper by **Dr. Musambayi Katumanga** examines the logic of security service provision in post-colonial Kenya. Dr. Katumanga argues that Kenya needs to shift the logic of security from regime-centred to citizen-centred security service provision. However, despite several attempts in the recent past, there are still several challenges and limitations which Kenya must redress. The new constitution offers some room for instituting a citizen-centric security reforms.

The paper by **Prof. Paul Syagga** examines the vexed question of public land and historical land injustices. It explores what public land is, its significance and how to redress the contention around its ownership or use. Similarly, the paper examines what constitutes historical land injustices and how to redress these injustices, drawing lessons from the experiences of

other states in Africa that have attempted to redress similar historical land and justice questions.

The papers by **Dr. Adams Oloo**, **Mr. Kipkemai arap Kirui** and **Mr. Kipchumba Murkomen**, separately examines how the new constitution has reconfigured representation and legislative processes. Whereas Dr. Oloo examines the nature of the Kenya's electoral systems, new provisions on representations and its limitations; arap Kirui and Murkomen look at the re-emergence of a bicameral house system and the challenges of legislation and superintending the executive.

If the other nine papers examine the structural changes wrought by the new constitution; the tenth paper, by **Mr. Steve Ouma**, examines the challenges and limitations of liberal constitutional order, especially the tensions between civic citizenship and cultural citizenship from an individual stand point. Perhaps Mr Ouma's paper underscores the possibility of a self-defined identity, the dangers of re-creating ethno-political identities based on old colonial border of the Native Reserves - the current 47 counties and the challenges of redressing social exclusion and the contemporary legacies of Kenya's ethno-centric politics.

The interpretation of the constitution is contested; so will be its implementation. We hope that this Working Paper Series will illuminate and inform

the public and academic discussions on Kenya's new social contract in a manner that secures the aspiration of the Kenyan people.

SID would like to sincerely thank all those who have made the publication of these papers possible, especially those who participated in the research conceptualization meeting and peer-reviewed the papers such as: **Dr. Godwin Murunga**, **Prof. Korwa Adar**, **Ms. Wanjiru Gikonyo**, **Dr. Joshua Kivuva**, **Dr. Richard Bosire**, **Dr. Tom Odhiambo**, **Ms. Miriam Omolo** and **Dr. Mutuma Ruteere**, for their invaluable input.

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Working Papers Series Coordinators

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Contents

Acronyms.....	viii
1.0 Introduction.....	1
2.0 The History Of Kenya’s Legislature	2
2.1 pre-independence kenya’s unicameral legislature (1907-1961)	2
2.2 The bicameral independence legislature (1962-1967)	4
2.3 The unicameral legislature (1967-2010)	9
3.0 The Constitution Of Kenya of 2010 : The Return To Bicameralism	13
4.0 The Functions Of The 2010 Bicameral Parliament.....	15
5.0 Challenges Of The Bicameral System In Kenya	17
6.0 Conclusion	21
References	24

Acronyms

CIC	Commission for the Implementation of the Constitution
CKRC	Constitution of Kenya Review Commission
GEMA	Gikuyu Embu Meru Association
IPPG	Inter-Parliamentary Parties Group
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KPU	Kenya People's Union
Legco	Legislative Council
MP	Member of Parliament
NARC	National Rainbow Coalition
PBO	Parliamentary Budget Office
PG	Parliamentary Group
PSC	Parliamentary Service Commission
UK	United Kingdom
USA	United States of America

1.0 Introduction

The year 2010 will go down the annals of Kenyan history as the year that the peoples of Kenya finally promulgated a new constitution, after many failed attempts in over 20 years of struggle for constitutional change. The 2010 Constitution revives a bicameral parliament, with a Senate created to protect the devolved government, and a National Assembly to legislate mainly on issues affecting the national government. The aims of this paper are three fold. First the paper retraces the history of the Kenyan legislature before and after independence. The paper will briefly look at various milestones and low points of the legislature, before independence and thereafter, during the successive regimes of the three presidents of Kenya namely presidents Jomo Kenyatta, Daniel Arap Moi and Mwai Kibaki. Since 1963 Kenya's Parliament has undergone various transformations that have been enabled by various amendments to the independence Constitution.

These transformations have largely been characterised by two competing forces: one epitomised by an imperial presidency seizing power from other arms of government, and the other by pro-reform forces pushing for an expanded democracy, better governance and accountability, fighting negative ethnicity and corruption, and the promotion of rule of law. The pro-reform forces comprised a group of bold pro-reform legislators of the first three parliaments,¹ the then budding private media, a handful of scholars, and trade unionists. This was the era when major constitutional changes were introduced to wrest power from other arms of government to strengthen an already overbearing presidency (Hornsby 1989:275; Okoth-Ogendo,

1972:21-29). However, the late 1980s to 1990s saw agitations for electoral, legislative and constitutional reforms led by a bolder civil society, freer media and an increasingly independent and authoritative Legislature, among others. These calls for reform resulted in the reduction of the powers of the president, the re-introduction of multiparty democracy and the expansion of people's democratic space. In effect, power has been shifting from the presidency back to other arms of the state, including parliament, and by extension to the people. We argue that the 2010 Constitution is the hallmark of these reforms.

Second, this paper will critically examine the reasons why Kenya, after four years of independence, reverted to a state with a unicameral parliament. It is worth noting that at independence, the framers of Kenya's independence Constitution opted for a Westminster-derived bicameral legislature under a quasi-federal system (Sihanya, 2010; Ghai and McAuslan, 1970). The bicameral system, which is generally based on the English precedent, has usually followed the principle of constitutional government. Indeed, at present, most national legislatures consist of two chambers.² It is hereby suggested that the experience gained between 1963, when Kenya got independence under bicameral legislature, and 1967, when the Senate was abolished, was crucial in redesigning the current bicameral legislature under the 2010 Constitution.

Finally, this paper looks at the changes envisaged by the 2010 Constitution, and in particular the provisions relating to the reintroduction of the Senate. The paper attempts to critically examine the working structures of the legislature as recreated and how these new formations shall interact among each other. More specifically, the paper asks the following questions: Why the return to a bicameral system? Are these new structures going to introduce new checks and balances, ensure accountability and provide a foundation for a sustainable economy? Is the design an efficient, effective, open and stable

¹ For example, Charles Njonjo, the then Attorney General (AG), nicknamed a group of members of parliament (MPs) the 'Seven Bearded Sisters'. In them, Njonjo saw "communists" out to serve their foreign masters. Funnily enough, they all neither sported beards and only one was female i.e. Hon. Ms. Chelagat Mutai. The seven bearded sisters included: Hon. Chelagat Mutai (Eldoret North), Hon. Onyango Midika (Nyando), Hon. Koigi Wamwere (Nakuru North), Hon. James Orengo (Ugenya), Hon. George Anyona (Kitutu East), Hon. Chibule wa Tsuma (Kaloleni) and Hon. Mashengu wa Mwachofi (Wundanyi). Hon. Lawrence Sifuna (Bumula), and Hon. Abuya Abuya replacing his friend Hon. Anyona (Kitutu East), joined the group later.

² In Africa, Ethiopia and Nigeria are among the nations with bicameral parliaments. Outside Africa, the United States of America (USA), Britain, and Canada among others, have maintained the bicameral system.

working model for Kenya? Have the framers of our Constitution succeeded in creating legislative institutions that represent ‘every last child, woman, and man in the land’ (Morgan, 1988)? Have they created an inclusive legislature? What are the power relations and legislative prerogatives between the Senate and the National Assembly?

2.0 The History Of Kenya’s Legislature

2.1 Pre-independence Kenya’s unicameral legislature (1907-1961)

The first time an attempt was made to establish a legislative institution for ‘Kenya’³ was in 1905, a decade after she had been declared part of the British protectorate in East Africa. The local Colonists Association had requested the Secretary of State to consider nominating a legislative council with unofficial representation (Gicheru, 1975; Slade, 1975). The Colonists Association argued that there should be no taxation without representation (Ndindiri, 2003), and proposed a council on which the official members were always in the majority (Gicheru, 1975). Prior to this, the Commissioner⁴ had limited powers to legislate on matters relating to commerce, agriculture and public order.⁵ To effect this change, the East African Order in Council of 1906 was promulgated. It provided for the establishment of an executive council, and a legislative council (Legco) with the powers to make ordinances, subject to the Governor’s veto, and the assent of His Majesty (Gicheru, 1975). The Legco was a unicameral legislature under an incipient unitary governmental system (Stultz, 1968). The executive

council exercised the functions of government. At this stage of development, the legislative and executive powers were separated, more or less borrowing from the ‘home’ (or English) legislature, albeit retaining some fusion.

On Friday, 16th August 1907, the Legco held its first formal sitting in an iron sheet structure along Whitehouse Road (now Haile Selassie Avenue) (Ndindiri, 2003; Slade, 1975). In attendance were six official and three unofficial members (Gicheru, 1975). In 1919, the Legco enacted the Legislative Council Elections Ordinance. Under this ordinance Kenya was split into eleven constituencies. It provided for the election of eleven Europeans. The first elections were held in 1920, after which consideration for the provision of similar treatment to other races was initiated.

The same year through a Kenya (Annexation) Order-in-Council, the status of Kenya also changed, from an East African protectorate to that of a colony and a protectorate. In 1924, the secretary of state issued an amendment to the 1919 royal instructions thus enabling the Legco to enact the Legislative Council (Amendment) Ordinance, 1924. The amended ordinance made provision of the election of five Indians to represent the Indian community and one Arab to represent the Arab community (Ndindiri, 2003: 10). At the same time, provision was made for nomination of a clergy man to represent African interests on the council. The Reverend J.W. Arthur was accordingly nominated.

The elected Indian members took seats on the council in April, 1934; and further provision was made at the same time for the nomination of one more clergyman – the Reverend L.J. Beecher to represent African interests, and one more Arab to join the one elected Arab member. Thus, the Legco was composed of both elected and nominated Europeans, Indians, Arabs, while African interests continued to be looked after by the clergy (Ndindiri, 2003). These changes were to make the Legco more representative and acceptable to all.

3 Under International Law, the current State was known as Kenya upon independence in 1963. It was a British East Africa Protectorate from 1895 to 1920. Thereafter it became a British Colony and Protectorate.

4 The Commissioner was empowered to make laws of local application referred to as the ‘Queen’s Regulations’.

5 East Africa Order in Council of 1895.

Still, in October 1944 the government nominated Eliud Wambu Mathu, an African to represent African interests in the Legco. In January, 1946, Fanwell Walter Odede acted briefly in place of Canon Beecher until 1947, when the latter finally retired and was replaced by Beneah Apolo Ohanga, popularly known as BA Ohanga (Ndindiri, 2003) and by 1948, the number of nominated African representatives on the Council was increased to four. Governors of the colony served as presiding officers of these councils until the first Speaker was appointed in 1948 (Ndindiri, 2003).

In 1952, the number of members of the Legco was increased by ten more government slots i.e. three slots for Europeans, one slot for Asians, two slots for Africans, and two more slots for Arabs-one elected and another nominated. With this increment, the tally for government (officials) came to 26, while unofficial members came to 28 (Ndindiri, 2003).

From the foregoing, we see a systematic change in the composition of the membership of the Legco where African, Asian and Arab interests are recognised and catered for in the Legco. However, the African nominees were not among the radicals but those considered “responsible” by the Europeans, and therefore able to be accommodated in the program of graduated admission to the Legco (Goldsworthy, 1982). But even with the many royal instructions to expand the Legco, the representation of Asians, Africans and Arabs remained inequitable. The African nominated members therefore tried to give voice to the increasing demand for enfranchisement and self-determination. Following their outcry, the Coutts Commission was appointed in 1955 (Ndindiri, 2003: 10; Coutts, 1955). Arising from the findings of the Commission, an amendment was made to the Legislative Council (Amendment) Ordinance of 1924 which in effect enabled the election of eight African members though the vote for Africans remained qualitative (Slade, 1975). The first election of African representatives to the Legco to the eight electoral areas, was held in March, 1957 (Slade, 1975). In this election, Mathu and Ohanga

contested, but lost. The eight who were elected to represent the eight districts were: Oginga Odinga in Nyanza Central, Ronald Ngala in Coast, Lawrence Oguda in Nyanza South, Daniel Arap Moi in Rift Valley, James Muimi in Akamba, Masinde Muliro in Nyanza North, Bernard Mate in Central and Tom Mboya in Nairobi (Goldsworthy, 1982: 73).

While pressure mounted for majoritarian rule by Africans, the imperial government introduced the Lennox-Boyd Constitution in 1958 (Slade, 1975). Among other proposals, the Lennox-Boyd Constitution provided that the seats for the African elected members be increased by six; provisions were also made for twelve specially elected members. The number of nominated members was left to the discretion of the Governor; while the seats for all elected members were set at 36. By-elections were held in March, 1958 in the African electoral areas, which had been sub-divided. The 36 elected seats were apportioned as follows: 14 Europeans, 14 Africans, 4 non-Muslim Asians, two Muslim Asians and two Arabs. The twelve specially elected members were to be chosen by the Legco sitting as an electoral college: Africans, Europeans and Asians were each to be given a third of the newly created seats.

The constitutional framework introduced by the Lennox-Boyd Constitution, however, did not please Africans and it was met with protests (Goldsworthy, 1982).⁶ The Secretary of State for Colonies announced the first Lancaster House Conference of 1960 which yielded a constitution with considerable advances, including the lowering of franchise qualifications, a common roll, a multiracial executive and legislature, and a lean cabinet - council of ministers (Goldsworthy, 1982). These were condensed into a

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⁶ Jaramogi Oginga Odinga and Thomas Mboya (also known as Tom Mboya) led the movement known as Kenya Independence Movement to champion for Independence. See Goldsworthy (1982).

new constitution, the Macleod Constitution, named after its chairperson, Iain Macleod, the Secretary of State for the Colonies. Deliberations on the Macleod Constitution were concluded and signed on February 21, 1960. It made provision for a 65 elected and twelve national members in the Legco. Of the 65 seats for elected members, 33 were for Africans, ten for Europeans, eight for Asians and two for Arabs. National members were elected by the Legco sitting as an electoral college. Accordingly, four seats were given to Africans and Europeans, respectively. Two seats went to non-Muslim Asians, and one seat to a Muslim Asians, and a seat to Arabs, respectively. In addition, there were three ex-official members and the Speaker. A general election was held to implement the provisions of the Macleod Constitution of 1960, and primary elections were held for the seats reserved for Europeans, Asians and Arabs among electorates of their representative communities, in order to ensure that the candidates commanded an effective and genuine support of their constituents (Ndindiri, 1975).

2.2 The bicameral Independence legislature (1962-1967)

The Lancaster Constitution of 1962⁷ introduced a parliamentary system of government. Its legislative system was bicameral (Slade, 1975). According to Slade (1975:32):

The Legislative Council was replaced by two Houses – the Senate and the House of Representatives. The Senate was composed of 41 members, one drawn from each of the 40 districts in the country and one from Nairobi Area, and the Speaker. The House of Representatives consisted of 117 constituency elected members, twelve specially elected members chosen by the House sitting as an electoral college, the Speaker and the Attorney General.

⁷ Which resulted in internal self-rule and preceded the independence Constitution of 1963.

Why was Senate provided in the Lancaster Constitution of 1962? First, it was introduced to protect minority groups. It is worth noting that to a large extent, this constitution was a negotiated settlement (Okoth-Ogendo, 1972; Gertzel, 1971), and these negotiations led to the introduction of a bicameral legislature. However, it was not a unanimous decision by the Kenyan political actors. Some proponents of bicameralism, mostly members of the Kenya African Democratic Union (KADU) led by Ronald Ngala and Daniel arap Moi, argued that a second chamber was imperative to protect the minority tribes in Kenya. They were wary of the influence of the larger tribes—the Kikuyu and the Luo who were predominantly the members of the Kenya African National Union (KANU) (Iqbal, 2010). According to Ronald Ngala:

...[T]wo-Chamber Parliament with a Senate especially charged with preserving the rights of the regions is the only way to ensure the continuing liberty of the individual (Proctor Jr, 1964: 389-415).

Unlike the House of Representatives, the Senate had one representative from each district. That meant that the minority groups received greater representation than would have been the case, if population was considered. The minority groups in places like Rift Valley and Coast provinces were equitably represented in the Senate and had greater say in Senate than in the House of Representatives.

Secondly, the Senate was established to safeguard the autonomy of the regions and protect the interests of the peoples of the various regions. Generally, the Senate serves to provide a forum within the law-making body for the representation of local political interests over and above that afforded by the ordinary electoral process (Ojwang', 1990: 114). The Senate as understood by KADU as the proponents of dual chambers was not only to represent the interests of the various districts into which the country was divided, but also to protect the regional governments popularly known as *Majimbo*. The

candidates for Senate seats had to have an interest in the constituencies for which they were seeking to be voted, or be rateable owners or occupiers of property, or ordinarily resided in those districts for the past five years (Ojwang', 1990). Ojwang' noted that the Senate acted as a balancing device between the more flexible and progressive "public will" as represented in the House of Representatives, and the more settled economic and social interests of particular localities as represented by the senators (Ojwang', 1990: 115). In this respect, the Senate, as an organ of control, had as a source of its inherent strength, the property interests of the individual senators. Because the senator had a stake in a particular district, they had to ensure it developed and that any legislation passed, was to the benefit of their constituents. Their property interests acted as a motivation for senators and their abilities to air the concerns of their constituents.

However, Proctor Jr. (1964), based on his observation of the performance of the Senate in the first 16 months of its existence, argued that efforts of senators to ask questions on behalf of their regions were resisted by KANU and its legislators. He describes an incident where a KADU legislator had argued on behalf of Western region, that lack of electricity was hampering development in the region. A KANU legislator who soon thereafter was made the Leader of Government Business said:

The mover of this Motion has placed himself as a member for the Western region, not for his particular constituency. If he had moved some Motion referring just to his constituency, well and good, but it looks as if he is moving this Motion as a representative of the Western region (Proctor Jr., 1964).

The position enunciated by Senator J. P. Mathenge as stated above became the norm in Senate debates. Senators found it difficult to ask questions on behalf of their regions, a reflection of the abhorrence of the *Majimbo* system by KANU. In fact, Ronald Ngala,

the leader of the Opposition was labelled a tribalist for making a speech in parliament advocating for the interests of the regions (Proctor Jr., 1964).

The third purpose, for which the Senate was created, was to legislate. The Lancaster Constitution of 1962 gave Senate the power to originate any Bill except money Bills. Senate had the right to originate any other Bills apart from the money Bill and to scrutinize Bills from the House of Representatives. The Bills from the Senate would be scrutinised by the lower chamber. Where amendments were proposed by the later chamber, then the two houses must agree before the Bill could be presented to the Governor/President for signature. The money Bills were preserved for the House of Representatives. Money Bills would be submitted to the Senate for debate, but not for amendment. The Senate would make suggestions for amendments to the House of Representatives, but it was not obliged to accept such suggestions - unless according to section 51 of the 1962 Constitution, the House of Representatives resolved otherwise. In case there was doubt as to whether a Bill was a money Bill, the 1962 Constitution mandated the Senate to refer the matter to the Supreme Court for determination. The Supreme Court had the original and final jurisdiction on the matter. Most senators voiced their disgust on being asked to discuss money Bills yet they had no power to alter them (Proctor Jr., 1964). They saw it as a waste of time and public resources.

According to Proctor Jr. (1964), the ability of the Senate to perform its legislative function was greatly hampered by various factors. First, the KANU government which controlled the House of Representatives had a very negative attitude towards the Senate. They considered the Senate a waste of resources and skewed in representation. Therefore, Bills in the Senate were always rushed.

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Also, though the 1962 Constitution allowed for the appointment of ministers from the Senate, all ministers were appointed from the House of Representatives, thereby depriving the Senate of the attention needed from government to address their Bills. Government ministers rarely attended the Senate and when they did, it was to ask the Senate to rush through legislation. Due to the government's attitude, the Senate did not attract quality candidates

as was the case in the House of Representatives. Debates were therefore not of the same quality as was seen in the House of Representatives. The majority tribes, who were privileged to have a more educated populace, had elected their best and well travelled into the House of Representatives. Indeed, when non-money Bills were submitted to the Senate they did not receive the scrutiny expected of a second chamber. Finally, the Senate was starved of sufficient resources to

facilitate its work. The Senate did not have enough space to accommodate the senators or even a public gallery. Indeed, even moneys to publish the Senate Hansard on schedule, was not provided on time. This was a calculated move by KANU to depict senators as lazy people, and the Senate as unnecessary duplication. The executive also ensured that the state broadcaster did not report Senate proceedings; and if it did, that it was done scantily.

The fourth function of the Senate was to hold the government accountable. This was to be done through question time and parliamentary committees. Whereas the House of Representatives received the adequate attention in performing this function, the Senate was restricted in its ability to hold the government accountable. According to Proctor Jr. (1964), the senators were allowed to ask questions only on behalf of their district and not their regions. The Senate did not have a government minister, only a Leader of Government Business

who did not sit in the cabinet and thus was not able to answer questions authoritatively because they did not exercise executive authority. But the Senate remained the right platform which minority communities, through their representatives, could voice their concerns. The Senate did, however, have the opportunity to frustrate the executive in the use of executive powers towards the end of 1963. The executive needed 65 per cent of the Senate votes to be able to impose state of emergency in North-eastern region; but because KADU was not consulted, they frustrated this effort. The Senate's powers to hold government accountable, were further frustrated by KANU's propaganda machine which depicted the Senate as an organ of a tribalist minority groups. Finally, Senate was created to safeguard the 1962 Constitution. No constitutional amendments would take place without the involvement of the Senate. The 1962 Constitution's 'entrenched clauses' dealing with citizenship, fundamental rights, senate provisions, regional structure, the judiciary, and land could not be amended without the approval of 90 per cent of the Senators. All other amendments required that the approval of up to 75 per cent of members of the Senate. These provisions were necessary to ensure that the majority do not trample on the rights of minority groups and to protect the interests of all the communities in Kenya.

It was also envisaged that the Senate would play a key role in security issues. The imposition of a state of emergency required the approval of 65 per cent of the senators, within seven days. If the Senate failed to meet the 65 per cent threshold within these seven days, then government did not have the power to declare a state of emergency. In December 1963, the government wanted to impose a state of emergency in North-eastern province to enable it deal with the "*shiita*" problem. Although it received the necessary majority in the House of Representatives, they needed 65 per cent approval from the Senate. After threatening to impose a state of emergency against the independence Constitution, the executive through the minister of Justice and

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Constitutional Affairs, decided to consult KADU after which approval was attained (Proctor Jr., 1964). It was this expression of constitutional muscle that solidified the determination of KANU to do away with bicameralism and the Senate. KANU used the House of Representatives to kill bicameralism; the Senate failed to work together for the interests of this House, and the KANU senators became the agents through which Senate was frustrated and eventually destroyed.

Between 1963 and 1964, Kenya had a dual executive system based on the Westminster structure in which the Governor-General exercised executive authority while the Prime Minister shared in the day-to-day running of government (Ghai and McAuslan, 1970). The new prime minister of Kenya, as leader of the party with majority members in Parliament, appointed his ministers from among members of the National Assembly (Stultz, 1968: 482-483). As a result, there was no delineation between Parliament and the Executive. Soon after independence however, elites in KANU the ruling party, started to dismember the independence constitution by perpetuating the 'theory of singular executive authority' then espoused by the then Prime Minister Jomo Kenyatta and the astute political strongman Thomas Joseph Mboya, throwing to the wind the basic tenets of constitutionalism (Okoth-Ogendo, 1991: 33) that underscores restrained government (Sihanya, 2009).⁸ According to KANU diehards like Mwai Kibaki who was then a member of parliament (MP), the Constitution published on 19th April, 1963 was meant to lead Kenya to self-government and not independence (Okoth-Ogendo, 1991). The

independence Constitution (RoK, 1963) was thus accepted to hasten self rule and avoid protracted arguments between KANU and KADU. Thomas Mboya, then a member of parliament, was unhappy with the high threshold required to amend the Constitution and especially the role of the Senate. On October 3rd, 1963, while addressing joint-meeting of the Royal African Society and the Royal Commonwealth Society in London, he stated that:

The Constitution that we have for internal government is a rigid constitution, perhaps the most inflexible anywhere in the Commonwealth. It is an expensive constitution requiring in some cases parallel administration as between the central government and the regions, and the duplication of the local government system. It is also entirely inflexible as far as amendments to the Constitution in the future are concerned. I think, it is the only constitution where in order to amend it you need to have 90 per cent support in the Senate. This is undesirable. We are not seeking to revise this machinery in order that we may be able to scrap the Constitution; we are seeking to revise it in order that the Constitution may be a more sensible and practical document. We believe that if a constitution is so inflexible that it cannot be amended within sensible arrangements then the danger is that it cannot stand the strain of independence and it must break (Mboya, 1964: 6-12).

The constitutional changes that took place between 1963 and 1967 had profound impacts on governance in Kenya, which continue to reverberate to date. The changes focused mainly on the transfer of power from other arms or institutions of government to the presidency. During this period, Parliament's ability to check the executive was eroded and parliament was transformed into a puppet of the executive. Perhaps this might not have happened under a multiparty system. To facilitate these amendments, KANU worked hard to persuade and sometimes coerce KADU members to dissolve the party and join KANU so as to build "one nation". KADU eventually dissolved, and merged with KANU in November 1964, and soon thereafter, in

⁸ During a debate of the State of Emergency in north-eastern Kenya, Thomas Mboya, the then minister for Justice and Constitutional Affairs stated that they would continue the emergency in the area regardless of what the Senate might say. In his address in the Senate words Mboya said: Let nobody be deceived that if this Motion is not passed there will be no State of Emergency; there will still be a State of Emergency. Then you will have no one to blame but yourselves. The world will know that the people who first made it impossible for the Kenya Constitution to work were the Opposition and not the government My own view is that it is wrong to be forced to live outside the Constitution,...but I also know that as a government we have a responsibility...to safeguard human lives, property and the integrity of this country's boundaries, and that responsibility is supreme....This government must act and I hope Mr. Speaker, with the full support of the Senate (Proctor Jr., 1964).

December of the same year, the first amendment was introduced the Constitution of Kenya (Amendment) Act No. 28 of 1964. This amendment made Kenya a republic and introduced an all-powerful president who became the head of state and government. The second amendment was introduced the same month as the first amendment through the Constitution of Kenya (Amendment) (No. 2) Act No. 38 of 1964. This amendment removed the power to alter regional boundaries from the regional assemblies, and transferred it to Parliament. The amendment removed the titles of regional presidents and replaced them with a less glamorous title of chairmen. The regions were denied the power to collect revenue and thus made to entirely depend on the central government. Finally, the amendments empowered the president to solely appoint judges including the Chief Justice. Previously, the president was required

to consult at least four regional presidents before doing so. Slowly the country was drifting towards centralism, something which would not have occurred had KADU remained in existence.

The third amendment through the Constitution of Kenya (Amendment) Act No. 14 of 1965 reduced the threshold for constitutional amendments by the Senate for the entrenched clauses, from 90 per cent to 65 per cent, and from 75 per cent to 65 per cent for other clauses.

KANU centralists also scored another crucial victory when the threshold required for declaring a state of emergency was reduced from 65 per cent in both chambers, to a simple majority and the period for reviewing a state of emergency was increased from seven to 21 days. Furthermore, the powers of the regional executives were abolished and the Supreme Court was replaced with the High Court. It marked the beginning of the unabashed manipulation of the 1962 Constitution to further individuals' political interests, and it paved the way for the Kenyatta tyranny that

followed in the latter years (Irungu, 1999: 63-66). Indeed, between the third and fourth constitutional amendments, discontent had built within KANU and the difference between Jomo Kenyatta on the one hand and Jaramogi Oginga Odinga on the other, on the manner of running the state had escalated. Soon thereafter, for reasons beyond the scope of this paper, Odinga decamped from KANU and formed the Kenya People's Union (KPU).

On March 3rd, 1966, the fourth Constitutional amendment (No. 16 of 1966) legalised detention without trial and preserved the draconian Public Security Act of 1966 that provided for a mechanism for carrying out of detentions without trials (Okoth-Ogendo, 1972: 21-29). This was to enacted to ensure all dissidents are dealt with. Barely a month later, on April 28th, 1966, Parliament passed the Constitution of Kenya (Amendment) Act No. 17 of 1966, popularly known as the 'turn coat rule' to literally force opposition parliamentarians to resign and seek re-election (Gertzel, 1971). This fourth amendment provided that a member resigning from a party that had sponsored him at his election, but which had not subsequently been dissolved, had to resign his parliamentary seat and, if he so wished, fight for re-election (Gertzel, 1971). This was ironic, considering that when KADU members dissolved their party and joined KANU, Mboya and others did not feel that the KADU MPs, who wished to cross the floor, needed to seek re-election. However, by 1966 Kenyatta feared the emergence of a strong political party that would challenge his position. Very few who fell foul of this amendment, were re-elected, and in this way Kenyatta weakened opposition within Parliament.

Moreover President Kenyatta also sought to insulate himself from the threat of a vote of no confidence and the growing support for the opposition party-KPU led by Jaramogi Oginga Odinga (Gertzel, 1971). Yet, Odhiambo-Mbai (2003) argues that during Kenyatta's reign, there was legislative vibrancy in that MPs were quite vocal; they criticised the government and took ministers to task. He states that Kenyatta permitted and even encouraged competitive politics at the

Furthermore, the powers of the regional executives were abolished and the Supreme Court was replaced with the High Court. It marked the beginning of the unabashed manipulation of the 1962 Constitution.

parliamentary level as long as no MP challenged him directly or his position, regime or authority.

The 1963 Constitution was further amended to strip Parliament, sitting as an electoral college, of the power to nominate the national members, and these powers were vested in the chief executive. Until 1966, the 1963 Constitution provided for the election of 12 'specially elected members' by Parliament, sitting as an electoral college (RoK, 1963: Chapter IV, Part 1, Section 39).⁹ The amendment had the effect of increasing the president's grip on Parliament, and by extension, it increased the number of MPs loyal to the president and his policies.

KANU also dismantled the devolved system of government, as well as to control the Legislature. It raided the 1963 Kenya Constitution while maximising on its monopoly in Parliament to deal with any resistance to the amendments which very often passed all stages within one sitting. The KANU Parliamentary Group (PG) meeting would discuss proposed legislation before they were published and sent to Parliament for a First Reading. The discussions were intended to coerce and intimidate members towards an agreed position and KANU was assisted in its efforts by a bloated cabinet whose numbers came handy during controversial Motions or Bills (Odhiambo-Mbai, 2003). As Okoth-Ogendo (1991) aptly put it, we had a 'constitution without constitutionalism'.

2.3 Unicameral legislature (1967-2010)

In December 1966, both Houses of the original National Assembly, through the seventh Constitution of Kenya (Amendment) (No 4) Act No. 19 of 1966, resolved to merge the Senate and the House of Representatives into one House, and to create 41 new constituencies to be represented by the 41 existing senators. The law took effect when the National

Assembly was prorogued on 3rd January 1967. A unicameral Legislature was thus reconstituted.

Scholars have given different reasons for the disbandment of the Senate. Proctor Jr. (1964) termed the Senate's legislative contribution as being 'of slight value'; its control over the executive to be 'insignificant'; its influence on public opinion to be 'negligible'; and its protection of the Constitution to be 'irresolute'. Proctor Jr. (1964) identifies the absence of political notables or politically powerful people, as one cause of its inability to assert its authority and perform its assigned functions. He also cites the presence of docile government majority who never opposed actions that could undermine its operations (Proctor Jr., 1964).

Furthermore, he refers to the notion of a singular authority, propagated by African leaders like Presidents Kenyatta, Nyerere, and Mboya, who based their arguments on African political systems which only recognised one central authority-the paramount chief. This factor militated against the Senate because it was depicted as an institution that protects tribal and parochial interests (Stultz, 1968: 482-483). In an attempt to unify the country, the leaders led by Kenyatta and Mboya moved to erase any institution that, in their opinion, promoted division among Kenyans (Stultz, 1968: 493). These arguments supported the dissolution of the Senate by Parliament; and the shift from bicameralism to unicameralism.

After dismantling the bicameral legislature, another significant attack on the legislature was made through the Constitution of Kenya (Amendment) (No. 2) Act No. 16 of 1968, which altered the method of electing the president. Previously, the president as head of government was answerable to Parliament. The importance of Parliament was guaranteed by the direct involvement of the House

After dismantling the bicameral legislature, another significant attack on the legislature was made through the Constitution of Kenya (Amendment) (No. 2) Act No. 16 of 1968, which altered the method of electing the president.

⁹ This was done via the Constitution of Kenya (Amendment) Act No. 45 of 1968. Section 33 of the Constitution was amended by the Inter-Parliamentary Parties Group (IPPG) of 1997 to provide that the 12 would be nominated by political parties, on the basis of their strength in Parliament.

the focus shifted from the institution of Parliament, as an equal to the Executive, to individual parliamentarians. The significance of the legislature in formulating public policy therefore diminished.

of Representatives in the election of the president. It was also the responsibility of Parliament, as an electoral college, to elect the next president in the event of the resignation of the incumbent. This amendment drastically altered the role of Parliament. It provided that henceforth, the president would be elected directly by the people, literally taking away the election of the president from the party, and weakening the structures of Parliament (Stultz, 1968). While remaining constitutionally responsible to Parliament, the president became politically

more independent of it, because he was no longer dependent upon its members for his election (Gertzel, 1971). The amendment was therefore designed to reduce the power of Parliament over the president (Gertzel, 1971); Parliament was reduced to a “rubber stamp” (Barkan *et. al.*, 1979: 39).

To hold the government accountable, backbenchers within Parliament therefore became critical in keeping ministers on their toes through the parliamentary ‘Question Time’. With this, as Barkan *et. al.* (1979) notes the focus shifted from the

institution of Parliament, as an equal to the Executive, to individual parliamentarians. The significance of the legislature in formulating public policy therefore diminished.

These amendments also changed the nature of relations within the legislature. During the twilight of Kenyatta’s presidency, the Gikuyu, Embu, Meru Association (GEMA) -led succession politics, which pitted Kikuyu parliamentarians against parliamentarians aligned to Moi, who was then vice-president and constitutionally the designated successor of the president. As Odhiambo-Mbai (2003) notes, the Kenyatta succession politics shifted the focus and energies of parliamentarians to issues about the succession, rather than the legislative

agenda. This climaxed in an effort by GEMA MPs, proposing a constitutional amendment that would bar Moi from succeeding Kenyatta (Odhiambo-Mbai, 2003). Another notable outcome of this attack on the institution of Parliament during Kenyatta’s reign, which is often ignored, stems from the newness of the legislature at independence. It lacked the necessary expertise for effective law-making (Odhiambo-Mbai, 2003). On the drafting of Bills, the legislature relied solely on the understaffed Attorney-General’s office, and this limited the number of private members’ Bills that were presented before the House. Close to this, parliamentary committees never existed, and when they did, they were inadequately staffed and lacked proper management that could facilitate the execution of committees’ duties. The fact that Parliament relied on budgetary allocations from the Treasury complicated the situation, because there was limited cash to efficiently run the legislature. All in all, though Kenyatta left a vibrant legislature, it continued to come under increasing attacks from the executive (Odhiambo-Mbai, 2003).

President Moi followed the *nyayo* (footsteps) of Jomo Kenyatta. Within his first term, he introduced the Constitution of Kenya (Amendment) Act No. 7 of 1982 which inserted a new amendment, Section 2A that transformed Kenya from a *de facto* one party state into a *de jure* one party state. This section in effect, outlawed the formation of opposition political parties, giving the ruling party, KANU, a monopoly over political power (Odhiambo-Mbai, 2003). This constitutional amendment also enabled a change in the system of election, effectively making it a preserve of the ruling party KANU. It did, however, see the repeal of the ‘turn-coat rule’.

The Constitution of Kenya (Amendment) Act No. 14 of 1986 also removed the security of tenure of the Attorney General, and the Controller and Auditor General; it abolished the office of Chief Secretary, and provided for an increase in the number of constituencies from 158 to a minimum of 168 and a maximum of 188. A year later in 1987, another constitutional amendment was passed, making

all capital offences non-bailable, in addition to entrenching torture of political prisoners in the criminal justice system. Under Constitution of Kenya (Amendment) Act No. 8 of 1988, the legislature also legalised the detention of capital offenders for 14 days without trial, allowing for enough time for state agents to engage in torture. The same amendment also removed the security of tenure of constitutional office holders. It sparked a lot of remonstrance, but Parliament had already been overrun by the Executive.

Perhaps the 1988 queue voting, popularly known as *mlolongo* voting, was the greatest insult to the people's representation in Parliament. The only bridge to Parliament was through KANU which was by then the only party allowed to field candidates for election in Kenya. During the KANU nominations of February 1988, the government nearly abolished the secret ballot and instead required voters to line up in public behind photographs of the candidates of their choice (Rule, 1988). The result was a farce of an election. However, through this method, the party stalwarts weeded out popular candidates who were strong critics of the party and government. Legislators like Charles Rubia and Martin Shikuku, together with others who had already been banned like Oginga Odinga, were locked out. It led to the eventual demise of internal democracy within KANU. Many fiery politicians were left in the wilderness without a political party where they could find refuge. This period saw intensified calls for reforms and multiparty democracy. President Moi eventually succumbed to both internal and external pressure to accept reforms. He acceded to the introduction of the Constitution of Kenya (Amendment) Act 1990 which reinstated the security of tenure of constitutional office holders. The amendment also pushed the number of constituencies to 210, up from 188.

The passage of constitutional amendment No.12 of 1991 further introduced section 1A, which declared Kenya to be a sovereign multiparty democratic republic, effectively repealing section 2A and

allowing for multiparty politics. It also altered the procedure for nominating members to allow nominations by political parties, in accordance with individual party's strengths in Parliament. Furthermore, the amendment altered the procedure for nominations for elections to the National Assembly, and the presidency.

These reforms came with a surge of public awareness and participation in the democratic arena posing a serious challenge to state agents who were not used to the new environment of freedom. Pursuant to a crackdown on party leaders and other pro-democracy elements the state suffered a backlash and the quest for greater freedom stepped up even further. Between 1992 and 1997, opposition intensified the call for a constitutional review to anchor the new multi-party system upon a sound constitutional foundation. This did not happen. However, in 1997, just before the elections, an Inter Parliamentary Parties Group (IPPG) was formed in response to the growing demand for constitutional change. The IPPG proposed legal reforms which were enacted into law. The reform package, which included legal, administrative and constitutional changes, was intended to remove constraints to the rights of members of opposition political parties in the post-single-party era. It targeted eleven laws, mostly from the colonial government's crackdown on the *Mau Mau* insurgency, that were originally intended 'to restrict anti-colonial political activity' (Ndegwa, 1998: 193). Unfortunately, these reforms, taking place two months before the 1997 general election, were undermined by the incumbent political leadership which retained power following the general election.

Another milestone was the enactment of Constitutional Amendment No.3 of 1999 to

Between 1992 and 1997, opposition intensified the call for a constitutional review to anchor the new multi-party system upon a sound constitutional foundation.

establish the Parliamentary Service Commission (PSC), as well as enabling the enactment of Parliamentary Service Act of 2000 popularly referred to in parliamentary circles as the 'Oloo Aringo reforms'. These amendments, among other reform measures, did away with the stranglehold of the executive on Parliament, thus strengthening the oversight, representation and lawmaking roles of the institution. Accompanying these reforms was a raft of statutes and amendments to statutes, including major reviews of the parliamentary standing orders made in 1997 (later reviewed again in 2008), to further buttress the gains made so far.

In 2002, KANU lost the presidential and parliamentary elections for the first time since independence. President Moi's term had come to an end, and KANU performed poorly in the 2002 general election. Moi had squandered the opportunity to bequeath Kenya a new constitution by disbanding the Constitution of Kenya Review Commission (CKRC) shortly before the 2002 general election. Those within KANU who were unhappy with Moi's choice of KANU's presidential candidate, an unpopular political novice, had teamed up with the Mwai Kibaki's group to form the National Rainbow Coalition (NARC), months before the election, and they won the election with nearly 70 per cent of the total votes cast. During the campaigns, NARC promised a new constitution within 100 days. In his inaugural speech, the president elect Mwai Kibaki, promised to restore and enhance the authority of Parliament (Kibaki, 2002). Despite the broken promises about political inclusiveness in the executive (among NARC parties), and the failed promise of a constitution in 100 days, the 9th parliament, seating between 2002 and 2007, undertook major political and economic reforms which have continued into the tenth parliament.

Some of the landmark statutes enacted during this period include: the Anti-Corruption and Economic Crimes Act (2003), the Public Officers Ethics Act (2003), the Public Audit Act (2003, and revised in 2009), Constituencies Development Fund Act

(2003), the Political Parties Act (2007), the Fiscal Management Act (2009). Most important was the overhaul of the Standing Orders in 2008. These changes underscore the increasing independence and capacity of Kenya's parliament to undertake its constitutional role.

Furthermore, Parliament made constitutional amendments that facilitated the establishment of the post-2007 election coalition government, and enacted the 2008 National Accord and Reconciliation Act of 2008. Additionally, the 10th parliament played a historic role by facilitating far-reaching reforms that include the adoption, enactment and promulgation of the Constitution of Kenya 2010.

All of these advances were made possible, with the introduction of multiparty-ism, through a number of factors. First, was the existence of a vibrant opposition and backbenchers, who used parliamentary instruments of oversight such as questions, Motions and debates, to demand for a better and accountable government. Secondly, there emerged a strong committee system which ensured that government officers, including ministers, faced more scrutiny from Parliament. Some of the committees' reports led to the sacking, resignation and prosecution of ministers and other government officials. These reports include the Parliamentary Anti-Corruption Select Committee report of 1998 (popularly known as the 'List of Shame'); the 2008 report of the Parliamentary Committee on Finance and Trade on the sale of the Grand Regency, which led to the resignation of the then finance minister; and most recently, the report of the Defence and Foreign Relations Committee on the sale of embassy houses, which led to the resignation of the then foreign affairs minister. With an expanded committee system, a Parliamentary Budget Office (PBO), research services, and improved remuneration and facilities for MPs and parliamentary staff, the legislature has been able to make a huge contribution through its oversight functions. However, there are still some great challenges ahead, especially as the legislature transforms itself into a bicameral legislature.

3.0 The Constitution Of Kenya of 2010 : The Return To Bicameralism

The single most important achievement of the 10th parliament is the new Constitution of Kenya, and the enhancement of its sovereignty, is its redemption from the shackles of executive powers. As discussed above, the pre-2010 Constitution created a legislature that operated under the imposing prerogative power of the executive. The five key powers which mostly overshadowed the autonomy of the parliament were: the powers of the president to prorogue the parliament; the power to dissolve Parliament; the power to assent to Bills; and the fact that the president could not be impeached without parliament being dissolved.

Under section 58 of the independence constitution, the president had the power to determine when Parliament may commence as long as they ensured that Parliament seats once in twelve months, and at least within the first three months after a general election. Section 59 of the same also empowered the president to prorogue or dissolve Parliament at any time. The section further provided that as soon a Motion of no confidence is passed against the government of the day, the incumbent president, if they do not resign, may dissolve Parliament, or on the fourth day Parliament stands dissolved, if the MPs do not resign immediately.

The 2010 Constitution of Kenya introduces a pure presidential system with clear separation of powers. It is distinct from the independence constitution in that it enhances the sovereign power of Parliament in a number of ways. First, under Article 126, Parliament commences at the time that the House appoints. As such, Parliament is able to determine its calendar, albeit the Constitution does provide that the very first sitting of Parliament after elections shall be held within 30 days in a place and a date to be determined by the president. Second, the president does not have the power to dissolve or

prorogue Parliament.¹⁰ Third, the president can be impeached and removed from office without any consequential effect on Parliament. As such, Parliament can remove the president without any fear of ending its life.

However, there is need to underscore the fact that under the 2010 Constitution, parliamentary sovereignty is restricted not only in terms of what Parliament can do as an institution, but also in terms of what an individual House of Parliament can do. First, the sovereignty of Parliament emanates from the sovereign power of the people. The sovereign power of the people thus precedes the formation of a constitution and thus cannot be conferred by the 2010 Constitution. On this point retired Justice Aaron Ringera in *Njoya and 6 Others vs. Attorney-General and 3 Others*, stated that because the constituent power is primordial, it is the basis of the creation of a constitution and cannot thereby be granted or conferred by the same. He said:

First, the sovereignty of Parliament emanates from the sovereign power of the people. The sovereign power of the people thus precedes the formation of a constitution and thus cannot be conferred by the 2010 Constitution.

Indeed it is not expressly textualized by the Constitution and, of course, it need not be. If the makers of the Constitution were to expressly recognize the sovereignty of the people and their constituent power, they would do so only ex abundanti cautela (out of an excessiveness of caution). Lack of its express textualization is not however conclusive of its want of juridical status. On the contrary, its power, presence and validity is writ large by implication in the framework of the Constitution itself as set out in sections 1, 1A, 3 and 47.

¹⁰ The President retains the power to dissolve Parliament only for the next five years should Parliament fail to enact legislation necessary to implement the Constitution, but only after a petition to dissolve Parliament is determined by the High Court as per Article 261 of the new Constitution.

Article 1 of the new Constitution affirms this position by stating that all sovereign power belongs to the people of Kenya. Indeed, the Constitution affirms that when Parliament is exercising this power, it merely does so as delegated by the people. What does this mean in practical terms? Under the new Constitution, the Kenyan people have limited the power of the legislature to make any constitutional amendments, making a referendum a prerequisite in certain salient amendments. The people have also under Article 118 and 119 of the Constitution ensured their access to and participation in parliamentary matters through (among others) the right to petition for enacting, amending and repealing of legislation under Article 119. However, Parliament still retains the right, upon consideration, to effect the suggested changes. Under Article 104 the people have also retained the right to recall non-performing legislators.

Parliament's powers to amend the constitutional functions of executive, legislature and judiciary, have also been checked under Article 255. As such, Parliament does not enjoy superiority in determining the relationship between the judiciary and the legislature.

Parliamentary sovereignty is therefore limited by the supremacy of the Constitution. To the extent that the sovereignty of Parliament emanates from the Constitution, this prescribes limits on the legislative powers of Parliament. The new Constitution is explicit on this point. Article 2(4) provides that '... any law, including customary law that is inconsistent with this constitution is void to the extent of the inconsistency and any act or omission in contravention of this constitution is invalid.' Parliament's powers to amend the constitutional functions of executive, legislature

and judiciary, have also been checked under Article 255. As such, Parliament does not enjoy superiority in determining the relationship between the judiciary and the legislature. Instead, the 2010 Constitution goes on to recognize the power of the courts to interpret legislation from Parliament. Article 165 (3) (d) (i) provides that: 'the High Court shall have jurisdiction to hear any questions respecting

any interpretations including the determination of whether any law is inconsistent with or in contravention of this Constitution.' This provision is important because it is born out of the recognition that democracy through Parliament is imperfect and fallible. There is therefore need for an institution that can check the misuse of legislative power by Parliament. That institution is the judiciary. Writings that preceded this new constitution by Ojwang' (1990:121) noted that:

The extent to which the judiciary will take such interventionist position must depend upon crucial elements of the evolving tradition which relate to the question of activism or conservatism; upon that factual position, depend Parliament's stature in terms of doctrine of sovereignty.¹¹

The power of the judiciary to interpret statutes is however limited to interpretation, and not amendment. In terms of what this means, Goldsworthy (1982) notes that statutes:

(A)re assumed to have meaningful content that is binding on the courts as well as other legal officials and citizens. The courts' authority to determine what the law is amounts to authority to ascertain that content, to clarify it when it is obscure and to supplement it when it is indeterminate. They have no authority to change the content except perhaps in very limited circumstances to correct some deficiencies in Parliament's expression of its obvious purpose.

¹¹ The argument that parliamentary sovereignty emanates from judge-made Common law has been criticized as a gross error because Parliament derives its authority to make laws outside Acts of Parliament, just as the Judiciary derives its authority to interpret laws outside Parliament. According to Goldsworthy (1982) parliamentary sovereignty in Britain (which has an 'unwritten Constitution') is derived from 'Common law' in the old-fashioned sense meaning established customs and/or conventions that judges have endorsed but not created by themselves.

In terms of the limitations of the executive, the 2010 Constitution retains the power of the president to assent Bills into law just as was the case under section 46 of the independence constitution. However, this power is qualified under the new constitution. Article 115 states that the president must assent to Bills within 14 days after receipt. The president may refuse to assent to a Bill, but must communicate his or her reasons back to Parliament. Parliament may reconsider the Bill and amend it in light of the president's reservations. However, Parliament need not agree with the President; it may pass the Bill again by two-thirds of members of the relevant House. Once the Bill is returned back to the president, he or she must assent to it within seven days or else it shall automatically be taken to have been assented to on the expiry of the seven days.¹² Article 116 provides that a Bill shall be published as an Act of Parliament within seven days after assent and will come into effect after 14 days unless the Act stipulates a different date. In effect, unlike in the previous constitutional order, the executive does not enjoy an unchecked prerogative to assent to Bills. Indeed, assenting to Bills is not a mere ceremonial function because the president is expected to apply their mind in suggesting amendments. If the president enjoys parliamentary support they may deny parliament the necessary two-thirds majority that would force them to assent to a Bill. But with the inbuilt checks, it is not expected that the president will often use this prerogative to frustrate the lawmaking power of parliament.

4.0 The Functions of the 2010 Bicameral Parliament

The first function of a bicameral parliament will be to enhance the quality of representation. The need for a second chamber was based on the desire to represent

interests for certain specified groups. In most cases, the need for a second chamber of parliament is linked to some level of federalism or quasi-federal states where a country is divided into small units, which are either independent or quasi-independent. In the United Kingdom (UK) for example, the two Houses were meant to represent the aristocracy and the common people (Koenigsberger, 1978). Within the Ethiopian constitution, the House of Federation which is the second chamber represents their ethnic groupings¹³.

The 2010 Constitution of Kenya has created a strong Senate in a presidential system. Unlike in other presidential systems, the Kenyan Senate is unique in terms of the specificity of its functions. Key among these is performing legislative and oversight authority over matters that exclusively affect the county governments (Article 96) and determining any resolution to impeach the president or deputy president (Article 145). It is an organ created for the protection of county interests, while the National Assembly is supposed to represent the people of the constituencies and special interests (Article 95 (1)). The bicameral system of Kenya, therefore, presents a scenario where the Senate represents a geographical area called a county, which is the unit of devolution¹⁴, while the National Assembly represents a geographical area called a constituency which is the unit of population representation (Article 89(5))¹⁵.

The Senate will therefore play a vital role in formulating policies and legislation on various aspects including the functions and/or mandate of the county institutions of governance like the county assemblies, of county executives; accountability of public officials; monitoring the funds allocated to the county government; and delivery of services like agriculture, health, transport; county planning and development, among others. The Senate is supposed

¹³ Article 61 of the Constitution of the federal democratic republic of Ethiopia.

¹⁴ The devolved system of government runs throughout the new Constitution and reorganizes the delivery of services to Kenyans

¹⁵ This article provides that the number of inhabitants in the constituency should be as nearly as possible, equal to the population quota.

¹² This is referred to as parliamentary override of executive power.

to ensure that the principles of cooperation between national and county governments, as envisaged by Articles 6(2) and 189, are adhered to in terms of legislation and implementation by the national government policies regarding the counties. The Senate shall therefore be the backbone of the counties, and its actions will determine the effectiveness of the devolved units in delivering services to Kenyans.

To ensure that senators perform their functions adequately, the legislation on devolution should provide for mechanism through which senators can be held accountable. One suggestion is that they be made to address special sessions of county assemblies three times in a year and account to the county through the assembly, on what they have been doing in the Senate on behalf of their counties. Senators should also hold consultative meetings with county residents through county hearings on issues that must be addressed in the Senate.

The second function of a bicameral Parliament will be to create an appellate hierarchy in the enactment of laws (Heller, 1997: 487). This system gives an opportunity to one chamber to

review laws and decisions of the other chamber. Theoretically, this should enhance the quality of the legislation made by Parliament and protect the interests of the citizens. One chamber may initiate legislation while the second chamber may scrutinize and amend. In performing these functions, the second chamber may be reactive or proactive (Norton, 2007): reactive, if it will only respond to legislation as initiated in the first chamber, and proactive, if it can initiate legislation on its own.

In the 2010 Constitution, the Senate is supposed to be both reactive and proactive. First, in terms of its law-making function the Senate will consider debate and approve Bills concerning counties. In doing so, the Senate may be proactive by utilizing Article 109 which allows a Bill concerning a county to originate from the Senate (but it must be considered by the House from which it did not originate- in this case the National Assembly). As per Articles 111 and 112, any Bill concerning a county government may originate from either House; but it must be considered by the House that did not originate it. The House which scrutinizes the Bill in the second instance will be performing an appellate function and thus reactive. If a Bill relates to election of members of county assemblies or a county executive or if the Bill relates to counties' allocations of revenue, such a Bill will be considered a 'special Bill' under Article 111 and may be vetoed by National Assembly through a resolution supported by two-thirds of its members. In doing so, the National Assembly will be reactive. Although the 2010 Constitution allows the National Assembly to originate Bills concerning counties and/or react to Bills concerning counties that originate from the Senate, the Senate has no power to react to many other legislative proposals originating from the National Assembly, unless such Bills concern counties. It can therefore be said that the Senate's jurisdiction in so far as reacting to legislation originating from the National Assembly, is significantly constricted.

In other bicameral Parliaments, one chamber is given exclusive function. For example, in the United States of America (USA), the Senate has the exclusive duty of approving treaties before they are ratified (Constitution of America, 1787).¹⁶ The Kenyan Senate, unlike the USA, will have no exclusive legislative function. All legislations from the Senate will still be subject to approval by the National Assembly. Besides legislation, the Senate retains the right to impeach the president. Although the National Assembly may move a Motion for the impeachment of the president, Article 145 leaves

¹⁶ See Article II Section 2 of the Constitution of the USA.

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to the purview of the Senate, the right to prosecute and try the president. In so doing, the Senate is converted into a quasi-judicial institution; a sort of a tribunal. It is only senators who will be able to vote to impeach the president. The Senate has therefore been entrusted with the role of acting as a vital check on the presidency. It may be difficult for the National Assembly to perform this role because cases may arise where the president to be impeached comes from a sponsoring party which commands the majority of the membership in the National Assembly. The Senate, by its very composition, is shielded from such probability.

The third function of a bicameral Parliament is to improve the stability of the constitutional structure and political systems, and to provide a system based on checks and balances (Public International Law and Policy Group (PILPG), 2004). The Senate will provide one way of checking the powers wielded by the National Assembly and the executive, and ensuring that the interests of the inhabitants of a county are catered for.

5.0 Challenges Of The Bicameral System In Kenya

The arguments for and against bicameralism can be summed up using four topologies that corresponds to four fundamental functions which modern representative assemblies are generally expected to perform (Uhr and Wanna, 2000). The first is democratic representation. Modern elected assemblies, whatever their design, powers and jurisdiction, are expected to be representative. However, between unicameral and bicameral legislatures, the issue is: which system is more representative? What is a good system of representation and how best can it be put into practice? Second is the capacity of modern

representative assemblies to provide effective public forums for political deliberations. Here, the question is: can a second chamber improve the quality of democratic deliberation by providing an additional forum for public discussion and debate? Third, on the quality of legislation, does the design of a legislative institution (as either unicameral or bicameral) have an impact on the quality of legislation produced? The idea of the upper House as a 'house of review' is especially pertinent here. The fourth issue concerns parliamentary scrutiny of the executive government. In parliamentary systems, parliaments play a critical role in ensuring that executive power is exercised by individuals who are democratically accountable (Jennings, 1959: 503-509). The question here is, are parliaments effective in holding officers of the state or executive accountable?

Proponents of bicameralism argue that second chamber acts as a 'watch-dog' device over central government, either in federal system or presidential system (Uhr and Wanna, 2000). They say that second chambers can scrutinise the activities of central governments (Herman, 1976; Smith, 1972). Second chambers are said to represent the corporate interest of those units or members; they are charged specifically with protecting the interests of component units. It has also been argued that second chambers can share legislative functions with the lower house and be empowered to prevent the passage of legislation into law under certain circumstances. They have been vested with the right to introduce financial and non-financial legislation on an equal basis with other chamber (Coombes, 1976). The lower chamber's right to introduce financial legislation is based on the grounds that the authorization of expenditure and imposition of taxation must be the preserve of the chamber elected by universal suffrage, because the people must consent to financial burdens that they will bear (Herman, 1976: 586). However, in some countries, their role has been largely consultative. Some of the demerits of this system include:

(i) The inhibition of legislative and government action through legislative and administrative bureaucracy

Bicameral systems may create legislative and administrative bureaucracies (Lodge and Herman, 1978). Legislative and governmental action can be inhibited by checks and balances, which may not only result in inefficiency but also may create impasses or total entropy (PILPG, 2004). In the new Constitution for example, the Senate and National Assembly play a critical role in the division of revenue among the counties. The new Constitution requires the Senate, once every five years, to determine the basis for allocating the share of national revenue that is annually allocated to the County level of Government, among the counties (Article 217(1)). In determining the share of allocation, the Senate will consider recommendations from the Commission on Revenue Allocation (CRA), consult the county leadership and the cabinet secretary responsible for finance, as well as seek recommendations from members of public and other experts (Article 217(2)). After all these consultations, the National Assembly may vote to accept or reject such a resolution by the Senate. In case where it is rejected, the Senate is forced to adopt another resolution which

will go through the process afresh (Article 217(5)) or, the resolution may be referred to a joint committee of the two Houses for mediation (PILPG, 2004).

Another area of duplication is in the committee system. In their accounting to Parliament, cabinet secretaries are expected to appear before committees of the National Assembly or the Senate whenever required by the relevant committees, to answer any question concerning any matter for which each cabinet secretary is responsible. Other committee duties include: confirmation hearings for the appointment of state officers; hearings on Bills; and

general oversight duties. Each House is expected to set up more or less duplicate committees whereas not much business will flow between the Houses to warrant a similar number of committees as currently established in the National Assembly.

It is also expected that the legislative process, that is, the formal procedures and informal activities entailed in the passage of legislation will become markedly more complex and, by extension, slower.

(ii) Unequal Representation and skewed composition of Parliament

Though parliament will be made up on the Senate and the National Assembly, the two Houses will be composed of persons elected to represent geographically and demographically varied constituencies. Senators will represent counties, while MPs of the National Assembly represent constituencies which fall under the counties. Therefore, within Nairobi County, a senator will represent eight constituencies with a population of about 1.4 million voters, while MPs of the Nairobi constituencies will represent their respective constituencies. Candidates vying for the office of senator will therefore need to invest comparatively more resources, energy and time than candidates vying for a seat in the National Assembly; senators will carry a greater mandate because of the size of their constituent counties; yet they will preside over senate functions which are limited in nature. Senators powers will be constrained in terms of ability to check most legislation originating from the executive or the National Assembly.

The 47 elected women legislators, each representing a county in the National Assembly, will be elected by a larger constituency than other members of the National Assembly; though they are to be treated equally with the other members in the National Assembly. Therefore, although the reservation of special seats for women was supposed to provide one way of addressing for gender inequalities, it is clear that the approach taken in the new Constitution results in new forms of inequalities.

the formal procedures and informal activities entailed in the passage of legislation will become markedly more complex and, by extension, slower.

(iii) The qualifications and capabilities of a Bicameral Parliament

Here, it is important to understand the powers and power relations between the National Assembly and the Senate. The question is, do the two Houses have equal powers? Power may take the form of persuasion or coercion (PILPG, 2004). The persuasive power of either House means that one chamber may give advice to the other chamber, but the chamber being advised may or may not take the advice. Coercive power is said to exist where the second chamber has the formal capacity to veto legislation originating from the first chamber. The 2010 Constitution does not give the Senate the necessary persuasive power to advise Parliament on various pieces of legislation. Neither does it give the Senate any veto power.

The qualifications for those who will sit in the two chambers of Parliament do not vary. Though senators are supposed to represent counties, and MPs are supposed to represent constituencies, there is no distinction in terms of the qualifications. They are also all to be elected for a five-year term in elections that are to take place concurrently. This is unlike the case in Britain where Norton (2007) states:

Membership of the House of Commons is determined by election in single-member constituencies. The imperatives of constituency service has meant that membership is a full-time job, with the membership being increasingly dominated by career politicians. The House of Lords, on the other hand, is wholly appointed and has been characterised as a full-time House of part-time members. It is essentially a House of experience and expertise, members being appointed for being the leading figures in their field (the arts, sciences, academia) or because they have held high office in the Government or other walks of public life (civil service, the military and so on).

Indeed, powers accorded to either House depend on the system of government put in place. In the Kenyan case, the power of the Senate is directly linked to the strength of the county government. Kenya has under the 2010 Constitution become a quasi-federal state, with weak devolved systems of government. Although the counties will have governments of their own, headed by governors who are directly elected by the people, these counties will have very limited functions; slightly higher than those that were exercised by the local authorities (under the old Constitution).¹⁷ In this regard, the Senate is limited in terms of scope of work and its spectrum of legislative power.

Historically one will find that upper Houses tend to be filled with older politicians.

In the Kenyan context ascending to the Senate may be heavily influenced by the amount of resources that shall be marshalled by a candidate to enable him or her campaign in expansive counties. The cost for campaigning for a seat in the National Assembly has been enormous and therefore one will need even much more resources to penetrate the county. In effect, the Senate position may end up being a preserve of a few well-endowed individuals. If that be the case, the quality of Senate representatives may be immensely compromised. Indeed, the propaganda being used by political retirees in Kenya today is that the Senate is for elders, and if this argument prevails, Kenyans will have an impotent Senate unable to support the devolved system of government. Civic education will need to be intensified to ensure that come 2012, Kenyans have a robust pioneer Senate under the new Constitution.

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(iv) Accountability of legislators

Legislators in a unicameral Legislature are generally

¹⁷ See Part II of the Fourth Schedule of the Constitution of Kenya 2010.

more accountable (Heller, 1997: 491-493). Citizens are able to follow the activities of the legislature owing to its procedural simplicity and openness. Under a bicameral system, decision-making will oscillate from the committees and the floor to negotiations between the Houses, in obscurity and away from the public eye. There is a tendency for inter-House negotiations, particularly before joint committees, to be removed from public view and participation. The responsibility of individual legislators for the decisions they take may be undermined. They may

often pass the buck to the other House or committee, and as a result disguise their decision-making responsibility. In many legislatures, the bicameral legislative system has been found to encourage time wasting, and unnecessary duplicate proceedings with unwieldy inter-House consultations, as well as the frequent rushing of measures through the two Houses without taking enough time for consideration. A Bill can go through duplicate committee hearings and plenary debates in the two Houses, then through a joint committee, and back to the two Houses for debates before passage.

(v) Choice of Election Date

Under Article 101 (1), the election of MPs shall be held on the second Tuesday of August in every fifth year. The election of the president and their deputy under Articles 136(1) and 136, and the election of members of the county assemblies under Article 177(1), and the governor and deputy governor under Articles 180(1), are all going to be held on the same day as the election for MPs. The import of this is that both the legislature and the executive elections will be conducted simultaneously, and the effect of this arrangement on the voter cannot be under estimated. Firstly, the mind of the voter is likely to

be overburdened by a myriad of names vying for the numerous positions. This may affect the calibre of persons elected to the various offices, especially in instances where a certain political party commands fanatical, ethnic or other sectoral following. Secondly, the independence of the legislature is somewhat watered down in that the voter may not distinguish between the relevance of the doctrine of separation of powers which has been strictly well set out in the other provisions of the 2010 Constitution. To the mind of the voter, voting of all these persons on the same day may mean they are all the same, performing the same roles and deserving to be treated and judged on the same standards. Thirdly, the simultaneous election date may serve to take away the much need parliamentary supremacy, especially if there is a dispute in the conduct of the elections. Indeed, the question can be asked: would we have averted the post election violence of 2008, if the parliamentary and presidential elections had been held separately? Can Parliament hold the nation together where the executive elections are in dispute? Indeed, the solution to the post election violence was legislative, and not judicial. In the USA, where Kenya's pure presidential system is borrowed from, the two elections are held separately.

(vi) Lack of clarity in procedural issues:

A number of procedural issues in relation to the two Houses remain unclear and ambiguous. For instance, Article 107 (2) provides for a joint sitting of the House where the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate. It is not clear where this joint sitting shall be held. In most traditional bicameral systems, the Senate serves as the Upper House and joint sittings are held in the Upper House. However, the 2010 Constitution expressly provides for the Speaker of the National Assembly to preside, and this may be construed to imply an inverted hierarchical order where the Speaker of the Senate plays second fiddle to the Speaker of the National Assembly, contrary to tradition. The same anomaly is apparent in the composition of the PSC where the Speaker of the National Assembly

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is to be the chairperson, whilst the Speaker of the Senate is not even a member by right.

Also, Article 108 establishes the leader of the majority and minority parties, respectively. However, no roles are assigned to these positions by the new Constitution. These are issues that should carefully be handled through a legislation to ensure that both houses cooperate to facilitate quality services to the electorate.

(vii) Transitional challenges:

To begin with the new Constitution governs both the transitional period and post transition period. Yet, the transitional provisions in the new Constitution mandating the current legislature to perform the functions of the Senate pose a big challenge. The Sixth Schedule provides that “until the first Senate has been elected under this Constitution-the functions of the Senate shall be exercised by the National Assembly.” The National Assembly, existing before August 27, 2010 is to exercise all the functions of the Senate. As Kamatali (2010) has noted this refers to the continuity of the old tradition and values reflected by the old Legislature, and forces the new Constitution to legitimize those old practices rather than putting an end to them.

Yet, the clamour for a new constitution was necessitated by the desire to break from the past traditions that have militated against democracy and good governance in Kenya. Kenyans wanted to completely remove the wide rift between the “real” constitution and the “formal” constitution of Kenya, because the latter failed to influence and change the former leading to a constitutional crisis.¹⁸ In fact, Kenyans who approved of the new Constitution did so, expecting such a break. However, given this continuity, their expectations might not be met. As Kamatali (2010) argues, the best solution could have been that the old constitution governs the transitional period as the country warms up for

new elections and a new administration, but this was not to be the case.

In addition, the current legislature is mandated to enact legislation including those touching on the counties. Because the Senate is to operate on a platform of protecting the counties, its absence in the enactment of legislation governing the counties might serve to disempower the county governments, thus giving the yet to be constituted Senate a hard time in discharging its mandate.

Finally, there has been a lot of fear regarding devolved units. This fear dates back to the independence debate where the KANU elite campaigned against it. The same fear has been rife in Kenya with many people fearing the use of its Kiswahili version ‘*ugatuzi*’. Some people have also interpreted it as *majimbo* -to mean ‘regionalism with an ethnic connotation’. Close to this is the perception that the Senate will turn into a place for political retirees to find relevance. These negative perceptions significantly militate against the public’s recognition of the key role that the Senate is expected to play. Public participation in the electing of qualified leaders to this House may therefore be lacklustre, with negative impacts upon the quality of leaders, their competencies and the kind of legislation that comes out of the Senate, with challenges for the handling of the complex interplay between the national and county governments. Civic education is thus encouraged to sell to them the importance of the Senate and make it acceptable to the public.

6.0 Conclusion

This paper has attempted to summarise the major reforms and achievements of the Kenyan parliament, from its inception to the year 2010. The major focus of this paper was to postulate the possible roles and challenges that will face the bicameral legislature, established by the 2010 Constitution of Kenya. Firstly, a quick look into the history of Kenyan legislature

¹⁸ The ‘formal’ constitution refers to the text in operation whereas the ‘real’ constitution refers to the actual traditions and practices in a state. For more information on the ‘real’ and ‘formal’ constitutions, see Seidman (1970: 199).

It is critical that any legislation that may have far-reaching consequences on the mandate of the Senate and the county governments should not be fast-tracked (to come before the constitutionally-stipulated timelines), unless it is extremely important and in the interests of the nation to do so.

indicates that if parliament is not shielded from the shackles of executive, then citizens will not reap the benefits of representation that comes with a robust and independent legislature. Having learned from history of manipulated and oppressive parliament, Kenyans under the 2010 Constitution introduced fundamental changes to governance structures. The new Constitution has sought to protect the sovereign

power of the people under Article 1, which provides that Parliament is exercising delegated power from the people and thus cannot legislate against the wishes of the people. This is emphasized by the fact that Kenyan people are now assured of the right to recall non-performing legislators. However, Kenyans will need to be vigilant, and be able to rise up and defend their sovereign power against any attack by any state organ, including the legislature

Secondly, the lessons drawn from the first bicameral parliament show politicians cannot be trusted to protect important constitutional organs like Parliament. They can easily agree to dismantle such bodies, causing profound

damage to the electorate. Fortunately, the Kenyan people reserved the right to amend the chapters in the new Constitution relating to the establishment and functions of Parliament. This means it will also not be possible for the Senate to come under attack and be undermined, either by the executive or the National Assembly.

Third, although the new constitutional dispensation may present great opportunities, there are various issues that must be addressed. As Parliament transits from a unicameral to a bicameral system, it is important to consider the 'vested' role of the National Assembly in exercising the powers of the Senate before the next election. The current legislature having been responsible for stymieing the

powers of scrutiny of the Senate, may be tempted to weaken it further through structural defects and bad laws. It is critical that any legislation that may have far-reaching consequences on the mandate of the Senate and the county governments should not be fast-tracked (to come before the constitutionally-stipulated timelines), unless it is extremely important and in the interests of the nation to do so. Furthermore, under the legislation on devolution, it should be provided that senators shall report to the county assemblies on what they have been doing, insofar as the protection or representation of their counties are concerned, at least three times in a year. Also, the senators should participate in formulation of development policies in their counties, including planning and the implementation of the same, in order to promote comity between the principals (constituent counties) and the agents (senators).

Caution must also be exercised, if at all, the National Assembly will be the recruiting agency for Senatorial secretariat, before the new Senate is in place. The Senate must be seen to play a role in composing the new PSC, recruiting its own staff and ensuring its independence as a check on other arms of government, including the National Assembly. The National Assembly's role needs to be limited to that of simply facilitating the setting up of the Senate.

Fourth, the two Houses of parliament must create a working inter-House cooperation committee. This will assist in coordination and dispute resolution between the two Houses. The structure of the new committee system for the entire legislature and the Senate in particular, must be determined by both houses sitting together. Such an inter-House committee could decide which legislation belongs to which House(s); it could determine especially, what amounts to a '*matter concerning a county*' for the purposes of referring legislation between the two Houses of Parliament¹⁹. It will be difficult for the Speakers of both Houses to decide that a Bill does not concern a county and so does not have to be referred to the other house for scrutiny, if the wider

¹⁹ See Articles 94, 96 and 110.

mandate of Parliament (National Assembly and the Senate), were to be considered.

Finally, the impending review of the standing orders; the engine of the legislative process, is expected to drastically change House rules to conform to the 2010 Constitution of Kenya. The new system will be a major departure from the current one. The drafting of these rules will need to be carefully undertaken

and duly supervised by the Commission for the Implementation of the Constitution (CIC) to ensure the structural relations between the two organs of parliament are protected. Other parliamentary statutes may also have to be drastically reviewed to ensure conformity. All these legislative activities must be monitored by the public to ensure a smooth transition to a more effective and efficient legislature.

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