

**THE PRINCIPLE AND PRACTICE OF PARLIAMENTARY  
INDEPENDENCE: INTERROGATING THE CASE OF  
KENYA, 1963-2014.**

**BY**

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**DECLARATION**

I declare that this thesis is my original work and has not been presented for a degree in any other university.

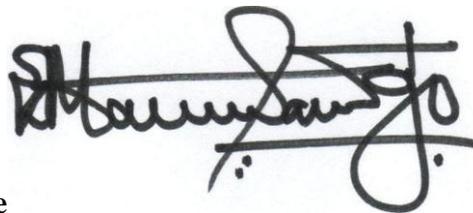
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## **DEDICATION**

To my late Mama Bernadette Mukhaye Naburuk.

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## **LIST OF ABBREVIATIONS**

|      |                                       |
|------|---------------------------------------|
| PSC  | Parliamentary Service Commission      |
| PS   | Parliamentary Service                 |
| SOs  | Standing Orders                       |
| PAC  | Public Accounts Committee             |
| PIC  | Public Investment Committee           |
| C&AG | Controller and Auditor General        |
| HBC  | House Business Committee              |
| PA   | Provincial Administration             |
| KPU  | Kenya Peoples Union                   |
| NCEC | National Convention Executive Council |
| NACC | National Aids Control Council         |
| IPPG | Inter-Parliamentary Parties Group     |
| CDF  | Constituency Development Fund         |
| NARA | National Assembly Remuneration Act    |
| NARC | National Rainbow Coalition            |
| PSA  | Parliamentary Service Act             |
| KANU | Kenya African National Union          |
| KADU | Kenya African Democratic Union        |
| LDP  | Liberal Democratic Party              |
| NDP  | National Democratic Party             |

## OPERATIONAL DEFINITION OF TERMS

|                            |  |
|----------------------------|--|
| Quasi-presidential system: | A variant of a presidential executive where the post of head of state is combined with head of government with no checks and balances in place.                              |
| Kitchen cabinet:           | An informal inner circle composed of trusted people who have access to the president and influence his decisions.  |
| Little general election:   | Elections held in 1966 after the formation of Kenya People's Union (KPU).  |
| Neo-patrimonial state:     | A state ruled by a single leader who relies heavily on distribution of patronage in form of government positions and distribution of rents to remain in office.              |
| <i>Maendeleo</i> :         | Literally means development but understood as patronage of state resources.  |
| Party-state:               | Transformation of a state from a single party loosely organized with limited representative functions to an instrument of political and social control under the presidency. |
| Hansard:                   | The official records of parliamentary proceedings.   |

|                       |  |
|-----------------------|--|
| Appropriations Bill:  | A Bill introduced in parliament to allow various ministries to get money from the Consolidated Fund in order to meet their expenditure. The Appropriations Bill normally comes before parliament within four months of the budget.                               |
| Finance Bill:         | Taxation proposals.  |
| Consolidated Fund:    | The account in which all money collected by the government through, grants, loans, levies, and is kept. Withdrawals from the Fund is not allowed without approval of parliament.   |
| Parliamentary debate: | A debate that involves contributions to any Questions (Motions) or bills in parliament.  |
| Dissolution:          | The bringing of parliament to a formal end.<br>Dissolution of parliament is always followed by an election.  |
| A Division:           | A decisive vote on an issue that requires a fixed majority. The speaker normally calls for a division in instances where the constitution lays down that a fixed majority is necessary to decide any question. A division is only taken if a Member requests it. |
| Prorogue:             | An executive act of adjourning parliament to a day other than the next normal sitting. This  |

should not be more than three (3) months. Parliament is commonly prorogued each December. The president usually prorogues parliament, marking the end of a session.

**Quorum:** The House, or any Committee of the Whole House, must have a minimum of 30 Members present to conduct business.

**Session:** The time between when the House reconvenes after being prorogued or dissolved until the next time it is prorogued again. A session is the period between two recesses and can even be one day's sitting.

**Standing Orders:** Parliamentary rules and procedures.

**Vote:** In this research, vote has two meanings: It is money allocated for a specific purpose: for example, the Ministry of Education vote. It is also be used to describe a matter or a question put to Members to decide by numbers for or against where the majority carry the vote.

**Vote on Account** A request brought before parliament by a Government Ministry seeking permission to spend up to half of the funds outlined in the budget. Such a request is presented in situations

where parliament has not passed the Appropriations Bill for the particular Ministry.

*Habeas corpus:*

The right of a person under arrest to be brought before a judge who would determine whether the accused detention is lawful.

Ethnic group:

A community of people claiming a common identity based on issues of origin, kingship ties, traditions, cultural uniqueness, a shared history and language.

Ethnicity:

A pattern of behavior in which individuals in position of authority give systematic preference to a specific ethnic group in appointments or access to resources such as jobs, land and loans.

## ABSTRACT

This study interrogates the principle and practice of parliamentary independence in Kenya. It investigates factors that have contributed to lack of independence and assertiveness in the Kenyan parliament from 1963-2014, with a view to exposing challenges and pitfalls. This study is necessary because a lot of studies by scholars have focused on democracy and democratization but not on the importance of parliament as a driver of the democratic process. Further, a lot of studies have failed to show that despite political reform efforts, there exist certain challenges that have their origin in the character of the African state, that continually undermine parliamentary independence. The overall objective of the study was to demonstrate factors that have undermined parliamentary independence in Kenya despite political reform efforts to empower parliament to effectively discharge its mandate. The study employs a descriptive research design and applies the purposive, snowball, and simple random sampling techniques. The study focuses on Members of Parliament who have served in parliament from immediately after independence. A total of 78 respondents were sampled. Questionnaires, interviews and analysis of library sources were also used. The study employed the political philosophy of Nicollo Machiavelli, and the Neopatrimonial theory. These theories are important because they shade light on the genesis of problems of the African state. They provide an avenue for the understanding of reasons that impede efforts to democratize, and parliamentary independence in spite of significant political reform efforts. The study was premised on the argument that the one-party state constrained parliament from undertaking its core functions, that political reforms did not result into an independent and effective parliament and that Kenya, like other African states faces challenges that continually undermine parliamentary independence and assertiveness. The study reveals that for parliament to effectively discharge its mandate, it ought to be independent and institutionalized. However, political reform and other measures undertaken to empower parliament as an institution, did not translate into an independent and assertive House. This is in regard to the performance of parliament's core functions. The study therefore exposes challenges that endure and undermine parliamentary independence.

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.0 Background to the Study**

In any democratic system, parliament is a central forum for political participation and democratization. Parliament is fundamental in the development and building of democratic governance since it provides checks on the excesses of the executive and the judiciary. Most significantly, parliament influences governance by contributing to the policymaking process. This is realized through its law making function when legislation is passed into law. This however can only be done through an institutionalized and independent parliament (Johnson, 1998; Forshee, 2006; Kihoro, 2007; Barkan, 2009).

The question therefore is: what are the determinants of an independent and institutionalized parliament? Rosenthal (1981), Johnson (1998), Forshee (2006), and Barkan (2009) provide yardsticks that can be applied to the Kenyan context. According to these scholars, capacity enhancement of parliament through establishment of specialized departmental committees is key. These committees are responsible for specific areas of public policy hence enable MPs to acquire information for effective discharge of representation, lawmaking and oversight functions. Adequate pay and sitting allowances also enhance commitment among MPs. The increase in expert staff, quality physical facilities such as meeting rooms, computers and well equipped libraries facilitate research. The ability of parliament to acquire and

analyze information of other political institutions independently is necessary for effective oversight. More so, separation of parliament administratively from the executive arm enables parliament to control its calendar and therefore its own agenda, which further empowers parliament to set its own annual budget and employ its own staff. This is achieved through separation of powers, a key principle that guarantees parliamentary independence. Finally, the ability of parliament to introduce and pass legislation independent of the executive's will, or the party, or any other competing interests also determines its independence.

There are four core functions of modern parliaments. The first is representation of society's diverse interests at the center of the political system. The second is legislation but at two levels: the first is at the level where MPs pass laws. Second is when parliaments contribute to public policy making, which can be achieved by crafting legislation in partnership with or independent of the executive, and with input from civil society, and then passing such legislation into law. This is legislation in the broad sense. Third, legislatures exercise oversight over the executive branch to ensure that policies agreed upon and passed into law are implemented by the state. Lastly, parliamentarians individually perform the function of constituency service. This function is mainly practiced in countries where MPs are elected from single-member districts as is the case in Kenya. In this regard, politicians and citizens define their political interests in geographic and/or ethnic terms (Barkan, 2009).

The above functions were enshrined in the Kenyan constitution of 1963. This constitution at independence created a new hope in that after years of colonialism parliament would take charge and introduce democratic practices in political life and economic management. To this point, it is imperative noting that at independence, Kenya adopted a Westminster model of government which upheld the principle of separation of power. It sought to cushion parliament from undue influence from the executive by providing for regional governments and assemblies and a bicameral legislature, with decision-making and legislative authority over a substantial range of matters. The Senate was to effectively check both the House of Representatives and the executive (Ghai and McAuslan, 1970). Thus, the degree of power exercised by the central government was in principle limited as the executive had to make policy decisions in consultation with parliament, the regional assemblies or both. The spirit of this provision was to foster popular participation and broad representation at all levels (Bakwesegha, 1993).

Under President Kenyatta, the Kenyan parliament effected the first amendments that revised the independence constitution from December 1964. This amendment made Kenya a Republic and was preceded by the dissolution of Kenya African Democratic Union party (KADU) which made Kenya a de facto one-party state. The dissolution of KADU strengthened the Kenya African National Union (KANU) party. The unanticipated de facto one-party status dealt a blow to competitive elections since recruitment to parliament was initially based on a competitive process. In addition, the existence of the

one-party state meant that there would be no other party in parliament to keep the ruling party in check (Oyugi, 1994). This, therefore, raises two pertinent questions as regards governance. First is the political effect of the demise of competitive politics on parliament's independence. Second is what informed the desire to centralize political power by the executive.

Further amendments to the independence constitution were effected from 1965 to 1969. These amendments further strengthened the position of the executive at the expense of the party and other state organs. In this way, Kenya became a quasi-presidential state, where the president held all the executive authority against the basic principles of constitutionalism that underscores limited government (Ogendo, 1972). The introduction of 'Section 2A' in the constitution in 1982 however had far-reaching effects on political participation and accountability. Kenya became a one-party state de jure as KANU was institutionalized as the only lawful political party. Ajulu (2000) observes that the period was marked by maladministration, resource mismanagement, human rights abuse, decay of other governing institutions and proscription and criminalization of alternative ideas for democratic governance. This raises the question of the effects of constitutional amendments on parliament's independence.

In 1990, the clamor for multipartism reached its peak. This third wave of democratization that swept across the world especially in Africa, Eastern Europe and South America, was generated by the collapse of the Berlin wall and bad governance among other factors. There was yet again renewed hope

about prospects for political and economic development in Africa and Kenya in particular. In the light of this new hope, the African Charter for Popular Participation<sup>1</sup> developed in 1990 in Arusha, Tanzania. This charter defined Africa's basic challenges which needed a process of fundamental change and transformation. This change would accelerate political, economic empowerment, public accountability, and popular participation at all levels of the society.

The empowerment of parliament through opening of democratic space for competitive politics would be instrumental in this regard. In Kenya, this expectation seems to have been realized when President Moi effectively declared the repeal of 'Section 2A' of the Kenyan Constitution thereby providing for competitive politics. A majority of Kenyans expected that with democratic space opened, parliamentarians could push through their agenda as representatives of the people and lead to far-reaching reforms in the country. Even with this important political milestone, questions were raised as to whether this expectation was realized. This question is significant because despite the constitutional provision, parliamentary performance was not remarkable.

After the re-instatement of multiparty politics, significant reforms were undertaken by parliament to build its capacity, to undertake its core functions

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<sup>1</sup>International Conference on Popular Participation in the Recovery and Development Process in Africa, *African Charter for Popular Participation in Development and Transformation* (Arusha: UNECA, 1990); see also Patrick Bond, ed., *A Civil Society Reader on The New Partnership for Africa's Development*, 2<sup>nd</sup> ed. (Trenton: NJ: Africa World Press, Inc, 2005), 144.

and to redress the imbalance of power between the executive and parliament (Forshee, 2006). Further, in 2003 there was regime change for the first time in the history of Kenya through elections. Many Kenyans had lots of expectation of changes to be effected by the 9th Parliament. In his inaugural speech, President Mwai Kibaki promised total commitment to tackle and eliminate corruption and ensure good governance (Daily Nation, 18<sup>th</sup> February, 2003 P.1). Even though the 9<sup>th</sup> Parliament passed some relevant and good bills, its performance was not very significant (Barkan and Matiangi, 2009). This therefore raises the question of whether the enhanced capacity, power and regime change translated into an independent and effective parliament.

In August 2010 a new constitutional dispensation was promulgated with complete separation of powers guaranteeing parliament's independence. Even with this achievement, questions were raised in regard to parliamentary independence. For instance is the numerical strength of the Jubilee ruling coalition as seen in the 11th Parliament a new way of interfering with parliament? As it emerges, even with capacity building and other constitutional provisions, parliamentary independence is a challenge.

### **1.1 Statement of the Problem**

Parliamentary independence is significant in ensuring democratic governance. It is also significant in ensuring effective discharge of parliament's core functions; representation, lawmaking, oversight and constituency service. This study sought to investigate factors that have contributed to the lack of parliamentary independence and assertiveness in the

Kenyan parliament for the period under study. This weakness had earlier been observed throughout the one-party state in Kenya. However, the reinstatement of competitive politics in 1991 and constitutional reforms aimed at strengthening the institution of parliament were expected to empower parliament to effectively discharge its mandate. Additionally, the regime change through elections in 2003 and the promulgation of a new constitution in August 2010 were expected to further empower the Kenyan parliament. In spite of these significant developments, parliament has remained relatively weak in discharging of its core functions. This scenario allows the researcher to question why parliamentary independence remains a challenge yet there seems to be significant reforms undertaken to empower parliament.

## **1.2 Objectives of the Study**

- a) To identify the effects the one-party state had on parliamentary independence and assertiveness.
- b) To analyze the effects of political reform on parliamentary independence.
- c) To analyze challenges of the African state with regard to the Kenyan experience on parliamentary independence and assertiveness.

## **1.3 Premises of the study**

- a) The one-party state constrained parliament from undertaking its core functions.
- b) Political reform has not translated to an independence and effective parliament.

- c) The Kenyan State, like other African states, faces challenges that continually undermine parliamentary independence and assertiveness.

#### **1.4 Research Questions**

- a) What were the effects of a one-party state on parliamentary independence?
- b) What were the effects of political reform on parliamentary independence?
- c) What challenges do African states face that continually undermine parliamentary independence and assertiveness?

#### **1.5 Justification and Significance of the Study**

Parliament is an important institution in any democratic country. It ensures democratic governance, transparency and accountability. Parliament has not performed its core functions as is expected by many Kenyans in terms of initiating genuine and far-reaching reforms. This study contributes to knowledge by documenting and analyzing the activities of parliament during the various transitional phases in Kenya. The findings highlighted issues which, when considered, will enrich the effectiveness of parliamentary independence. The documented knowledge benefits the academic world, politicians, and governance experts in Kenya and Africa at large.

#### **1.6 Scope and Limitations**

The study traced the ineffectiveness of parliament in Kenya from 1963-2014 highlighting various developments and regressions. The time period touches on the transition phases in Kenya from a multiparty democracy

to a de facto one-party state (1963-1969), to a one-party state de jure (1982-1991) to the reintroduction of multiparty politics in 1992, the change of regime in 2003, the promulgation of a new constitution in August 2010 and the period after the promulgation of the new constitution up to 2014. These transitions provide an ideal setting within which an analysis of the functioning of parliament could be undertaken from a longitudinal comparative perspective. A critical limitation regards interviews with some of the scheduled MPs who were too busy hence never honored their appointments for scheduled interviews as agreed. Also MPs who were part of the Parliamentary Service Commission (PSC) were prohibited from disclosing information without proper authorization. The study however maintained confidentiality by ensuring anonymity of sources drawn from the PSC and MPs.

## **1.7 Literature Review**

The literature review was done thematically. Three categories of literature were reviewed; the one-party state and parliamentary independence, political reform and parliamentary independence and the challenges of the African state in regard to Kenya and parliamentary independence (1963-2014).

### **1.7.1 The one-party state and parliamentary independence**

Oyugi (1994) notes that the Westminster model adopted at independence established a legislature, executive, administrative and judicial institutions roughly similar to those of England. Political power was vested in parliament where the Prime Minister and his cabinet were responsible to a

popularly elected assembly. He further notes that the powers of the presidency were thus fairly limited within the Montesquean framework of separation of powers. According to Stultz (1968) and Gertzel (1974) the Westminster model creates competitive politics characterized by opposition parties which are acceptable and legitimate and which provide an alternative should the government in power for some reason or the other fail. Ogendo (1972) and Ghai and McAuslan (1970) however observe that multiparty democracy in Kenya only lasted for a year. They note that Kenya became a republic through the first amendment Act No. 28 of 1964. The posts of Head of State and Head of Government were combined with the president becoming the head of the ruling party (KANU). However, the post-colonial era witnessed transition from multiparty to a de facto and later de jure one-party state.

According to Nyong'o (1989), President Kenyatta defended the one-party state by arguing that it was necessary to attain political unity and economic development. Kenyatta maintained that opposition parties were potentially subversive, wasteful and destructive. He declared that the government could accept "fair and constructive" criticism but not the luxury of a negative and destructive opposition. The question that arises is what constitutes fair and constructive criticism? Did this not amount to muzzling those with dissenting views?

Mueller (1973) and Sihanya (2009) assess the impact of the enormous constitutional powers granted to the presidency during the one-party state. This included the power to appoint and dismiss the cabinet that was chosen

from among members of the national assembly and the other constitutionally protected offices (Constitution of Kenya Chapter 2 Part 2). They focus on the relationship between the president and parliamentarians. They contend that cabinet positions were the most important forms of patronage controlled by the executive to maintain their political support.

Mueller (1973) further analyzes the effect of the president's patronage in the one-party state on MPs participation during parliamentary debates. She argues that after the demise of competitive politics, debate in parliament between the government and backbenchers became less lively and of low quality. She links the lack of interest to the patronage powers of the president. She posits that the patronage powers affected the behavior of backbenchers not appointed in government, in terms of support for government. As such the researcher interrogated the political effect of the president's patronage powers on parliamentary independence in terms of performance of its core functions.

Gertzel (1970), Mueller (1984), Widner (1992) and Gimode (2007) have documented at length the state's monopoly of the instruments of coercion throughout the one-party era. They argue that the period witnessed intolerance to divergent views. They note that the state put in place a number of laws effected by the Provincial Administration that completely curtailed democratization. Among them was the Public Order Act that required meetings to be licensed by the government, Public Collections Act that regulated the conduct of fund-raising events, the Preservation of Public Security Act that allowed the president to detain persons seen as a risk to

public security for an indefinite period, the Chiefs Authority Act that empowered local Chiefs to implement the Public Order Act at the local level and the Penal Code that declared speech critical of the government as seditious. The penal code allowed the government to ban and censor publications and impose stiff penalties on those involved in “seditious activities” (Ndegwa, 1998). Kihoro (2007) and Sihanya (2009) point out that detention without trial, selective political prosecutions and general intimidation and assassination during the one-party period led to limited debate on issues of national importance both within and outside parliament.

The above works are vital to the study in showing that the one-party state limited democratic space. This is what the study had raised earlier about the boundaries of fair and constructive criticism.

Widner (1992) and Wanyande (2006) assess the role of elections in the one-party state. They argue that for elections to be democratic they must be free and fair. This calls for an independent and impartial body. They posit that the absence of competing political parties, policies and programmes from which the electorate could base their choice during the one-party state rendered the elections undemocratic. Wanyande (2006) further argues that throughout the one-party period, elections were a means of confirming the regime in power. This illustrates the dominance of the presidency on the political system. This study investigated the effect of this dominance on the independence of the legislature.

The dominance of the presidency on the political scene was entrenched further in 1988's general elections when the voting procedure was changed from secret ballot to "open queue" voting. On this, Widner (1992) and Ngw'eno (2007) observe that the 'right' candidates won despite being unpopular with their constituents. They comment that the regime and parliament lost legitimacy in the eyes of the public. Sihanya (2009) concurs with this when he observes that the state became ineffective and illegitimate especially in its role of fairly distributing and allocating resources and its maintenance of a fair and a just system of governance

According to Nyong'o (1989) and Forshee (2006), throughout the one-party period Kenya experienced a long period of non-democratic government yet continued to maintain the institution of parliament. They note that the autocratic rule and abuse of power is what led to agitation against the one-party state and the push for an open, free and democratic Kenya that respects the rule of law and human rights. The question is what informed the executive to revert to the colonial undemocratic laws and structures that went against democratic governance in reinstating the absolute power of the state?

The above works were significant to the study since they informed the genesis of the transition from multipartyism to a one-party state. The studies demonstrate the executive's dominance on the political scene through patronage powers, the undemocratic laws that curtailed democratization and the undemocratic elections in the one-party state. However, the studies do not focus on the effects of undemocratic governance on parliamentary

independence and assertiveness. This is because parliament as an institution should promote democracy and good governance through its functions and therefore the need for its independence.

Ghai and McAuslan (1970), Ogendo (1972) and Kihoro (2007) observe that with the demise of competitive politics, further amendments to the independence constitution were undertaken. Consequently, the independence constitution was dismantled and power centralized in the presidency. They note that the constitutional changes fundamentally restructured government and undermined further other state organs. They further argue that the amendments derailed democracy and the democratic process since they paved way for tyranny and dictatorial rule.

The prevailing literature is useful to this study in that it has outlined how further amendments to the independence constitution violated the doctrine of separation of powers among the three branches of government. The works portray further how these amendments resulted into a political system that was dominated by a powerful presidency at the expense of the legislature from the 1960s until the late 1990s. However this study focused on the effects of the constitutional amendments in the one-party state that weakened parliament's independence in the discharge of its core functions. This study also focused on the reasons for parliament's inability to enact policies that would deconstruct the post-colonial state politically, economically and socially hence building of a democratic culture that stimulates development.

### **1.7.2 Political Reform and Parliamentary Independence**

According to Oloo and Oyugi (1990) political change in Kenya culminated in the December 29, 1992 multiparty general elections. They observe that the demand for openness in the political system grew out of twenty years of political oppression and economic discrimination that was characteristic of the one-party regimes. Agitation for change was collective and included individuals, civic bodies and leading clergymen who agitated for political space to be widened.

Despite this, Forshee (2006) and Barkan (2009) aver that even though political liberalization heralded a new level of democracy, it did not immediately restore governmental accountability to the public which is one of the cardinal pillars of democratic governance. The question is, was the reinstatement of multipartyism enough to entrench democracy and guarantee parliamentary independence?

On the role of parliament facilitating democratic governance, Barkan (2009) postulates that parliaments are both representative bodies and instruments for horizontal (accountability across and between other state institutions and quasi-state institutions) and vertical accountability (accountability of the state to the public at large). He contends that democratic consolidation which is the highest stage of democratization can best be achieved with a powerful and developed parliament. Democratization requires parliamentary empowerment since parliament is a driver of the democratic process. It is worth noting that until the second multiparty elections in 1997, the Kenyan parliament remained weak and struggled to exercise its mandate.

In keeping with the above discussion, this weakness of parliament could be attributed to lack of independence and capacity to perform its core functions effectively.

On his part, Ndegwa (1998) notes however that 1992 multiparty elections ushered in parliament a group of reformers who embarked on building the national assembly's to enable it perform its core functions effectively. The reformers included opposition MPs such as Paul Muite, Peter Anyang Nyong'o, Gitobu Imanyara, James Orengo and Mukhisa Kituyi among others. The reformers in conjunction with lawyers among them, Kivuiha Kibwana, Willy Mutunga and Gibson Kamau Kuria, and religious organizations and some members of civil society established the National Convention Executive Council (NCEC) and demanded constitutional and for legal reforms before the second multiparty elections in 1997. Later NCEC transformed into the Inter-Parliamentary Parties Group (IPPG).

Ndegwa (1998) further observes that the IPPG repealed a set of laws that had curtailed democratization. These included the president's unilateral authority to appoint nominated MPs with a system based on a party's parliamentary strength. It also replaced the permit requirement for public rallies with a requirement to notify the police of a planned public meeting. The Preservation of Public Security Act that allowed for detention of dissidents was also repealed. The Chief's Authority Act was also amended and clauses were deleted from the penal code that made critical speech seditious among others.

Johnson (2009) commends parliament effort to build capacity to perform its core functions effectively. He notes that in 1998, parliament embarked on strengthening its departmental and oversight committees, and revised the Standing Orders (SOs) to modernize its operations. Parliament also provided adequate office space for MPs to meet their constituents as well as meeting space for all committees. He further observes that the private bill introduced by Peter Oloo Aringo an opposition MP then, in November 1999 to seek political autonomy of the parliament was remarkable. This Act led to the formation of the Parliamentary Service Commission (PSC) which delinked parliament administratively and its operations from the executive branch. Parliament also enacted the Salary bill in 2003 that freed MPs from executive patronage powers.

Johnson and Nakamura (2003) and Barkan and Matiangi, (2009) evaluate the effects of the parliamentary reforms. They note that the above mentioned reform efforts enabled the Kenyan parliament to become significant, and could only be equated to that of South Africa in terms of enactment of legislation.

This was due to a significant number of Kenyan MPs devoting significantly more time than previously to the three core functions of the legislature that are performed collectively within the institution. They however observe that the record of the 8<sup>th</sup> Parliament that oversaw these developments was modest in respect to oversight of the executive and passing landmark legislation. The performance of the 9<sup>th</sup> Parliament under the new regime of

President Kibaki in 2003 was equally modest in performance. This was in spite of an enabling environment already undertaken by the 8th Parliament.

The above scholars benefitted this study by bringing to light the ardent efforts displayed by reformers in building of the capacity of parliament to undertake its core functions. However despite the efforts, the institution of parliament remained relatively weak. This shows that there could be other factors that undermined parliament in the discharge of its core functions which this study sought to unearth.

Ndegwa (2003) and Sihanya (2009) evaluate the new regime under President Kibaki that took over from President Moi in December 2002. They contend that the period witnessed a change of regime from KANU to NARC as well as a new set of legislators. They observe that the euphoria that followed NARC's victory was due to the expectation that the new regime would deliver the country from economic malaise, extreme corruption and negative ethnicity. There was again hope that the new regime would ensure equity in resource allocation and ultimately create the environment for creation of job opportunities and poverty eradication. The new regime promised a new constitutional dispensation that would secure economic and political equity and egalitarianism. Sihanya (2009) further notes that even though the Kibaki administration did not put in place negative constitutional amendments that curtailed democracy, there was a delay in enactment of a new constitution. The question is why? The hope of a new constitution was however realized in August 2010.

The above works are relevant to this study as they give a clue to political and socio-economic factors that have affected the independence of parliament. However they emphasize democratization in Kenya and the clamor for a new constitution with devolved power. The concentration is mainly on the executive. But this study notes that there are other factors besides the presidential patronage powers that undermine the independence of parliament as an institution. The study poses that even with the improved capacity for parliament to perform its core functions other challenges and pitfalls still exist that undermine parliamentary independence which this study sought to investigate.

### **1.7.3. The Challenges of the African State: The Kenyan Experience and Parliamentary Independence**

The African states, like Kenya, continue facing challenges resulting from poor corporatist practice (Nyang'oro, 1987). In most African states, the state is the primary arena for competition of power and influence over scarce resources witnessed in the post colony. Thus in spite of political reform efforts ethnicity, corruption, and patronage still pervade leadership in majority of African states. This scenario has impacted negatively the democratization process.

Throup and Hornsby (1998) argue that multipartyism particularly intensified negative ethnicity. According to them, ethnicity has proved a more powerful ideology in determining political loyalties. According to Rothschild

(1969), ethnicity acts as a pole around which group members mobilize and compete efficiently for state controlled resources and other benefits.

Alex (2000) writes that African states at independence faced the challenge of consolidating nation-states out of arbitrary defined colonies, blending nationalists' parties mostly formed on the basis of ethnicity and steering economic growth. The simultaneous realization of these goals hindered the preservation of democratic rule. He further notes that the modern African state is controlled by a ruling class that competes for power with other political, economic, and social groups both internally and externally. Therefore, rulers seek to consolidate and increase state power to further their own interests.

Hornsby (2012) posits that, the Kenyan state, like other African states, faces the challenge of corruption, ethnicity and elite dominance. He observes that these factors affect the entire political and socio-economic system by continuously frustrating efforts of democratization and the creation of a nation-state since independence. According to Berman (1998) regardless of the efforts of political reforms and multi-party elections, all of the earnest concern with promoting the growth of civil society and pluralism, the evil triumvirate of patronage, corruption and ethnicity reasserted their retrograde influence on African societies.

The above works were relevant to this study since they confirm that challenges exist in the African states and indeed Kenya which undermine democratization efforts. However, I hasten to add that this study sought to

analyze how challenges faced by the state undermine parliamentary independence and assertiveness in the discharge of its mandate.

## **1.8 Theoretical Framework**

This study employed the political theory of Niccolo Machiavelli and the Neopatrimonialism theory as tools to appraise the problem under study.

### **1.8.1 The Political Theory of Niccolo Machiavelli (The End Justifies the Means)**

This theory was developed by Niccolo Machiavelli in 1532. This theory examines how political power of a state would be used to ensure the survival of the state. The political leader therefore must do whatever it takes to establish and maintain the strongest possible government. It focuses on the acquisition, perpetuation and use of political power. The theory justifies rule by force rather than rule by law. According to Machiavelli the greatest moral good is a virtuous and stable state. Therefore actions to protect the state and to maintain political power by the political leader are justified regardless of their cruelty, cunningness or shrewdness. He argues that it is better for the political leader to be feared than to be loved. This theory tends to assume that politics is the means and an authoritarian absolute state is the end (Could, 1999). This theory was informative to this study since it opened an avenue for understanding the rationale behind the executive's desire to centralize political power, reduce or undermine the formal powers of other state organs, and the establishment of autocratic rule. The weakness of this theory is that it

promotes bad governance because it promotes arbitrary rule. It also ignores individual liberty, equality and justice.

### **1.8.2 The Neopatrimonialism Theory**

Neo-patrimonialism, is defined by Christopher Clapham in *The Nature of the Third World State*, (1985) as a "form of organization in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on rational-legal lines." In this system, patrons use state resources to secure the loyalty of clients' in the general population. Hence an office of power is used for personal gains, as opposed to a strict delineation of the private and public spheres.

The term neo-patrimonialism grows out of Max Weber's notion of patrimonialism, an ideal-type of traditional rule in which authority is based on ties of personal loyalty between a leader and his administrative staff. Initially it was not about corruption or weakness of the state rather it was a form of exercising power which incorporated Weberian forms of patrimonialism and rational-legal authority (Alex, 2000). This began to change in the late 1960s, when neopatrimonialism was used to explain why African societies were not "modernizing", and the failure of "charismatic leaders" who were overthrown or whose image had lost the luster of liberation struggles. By the 1980s neopatrimonialism assumed a greater importance and was linked to Africa's economic problems.

Neopatrimonialism does not provide the institutional framework within which capitalism can flourish due to its preference for relationship based

transactions. Neopatrimonialism intensified patronage, ethnicity and corruption. In addition, most voters in a neopatrimonialism state operated under severe information constraints and were thus not in a position to make sound judgments about the credibility of a government or a politician. They found it easier to evaluate a concrete donation in the form of a private good such as a job or a local school for constituents (Barkan, 2009). This theory opens an avenue in understanding the challenges that faced African states in the pursuit of democracy soon after independence. It shows that political leadership has been based on 'relationship' therefore promoting vices such as patronage, ethnicity and corruption.

## **1.9 Research Methodology**

### **1.9.1 Research Design**

The research design for this study was descriptive in nature. This design is appropriate since it relies on a research strategy that is flexible and interactive such as interviews and questionnaires. It is also appropriate since the research entailed measuring of people's values, attitudes, biases, affiliations, and perceptions.

### **1.9.2 Study Area**

The study was done in Nairobi County which is the center of parliament operations. However the study moved outside the County since the veteran politicians as well as some former parliamentarians could not be found within Nairobi

### **1.9.3 Study Population**

The target population in this study comprised of resource persons such as veteran parliamentarians, who witnessed the first constitutional dispensation, and those who served in the first parliament and are still alive. Former MPs who have been part of the amendments to the independence constitution and present MPs were interviewed as well. Other resource persons interviewed included academicians with relevant information to the research as well as members of the civil society. Gender composition within the respondents was taken into consideration.

### **1.9.4 Sampling Design**

Since the nature of the study required resource persons, snowball and purposive sampling were employed. Purposive sampling was used on members of parliament both former and current while snowball sampling was used to identify respondents from the civil society and the academia.

### **1.9.5 Sample Size**

The study had a total of seventy-eight (78) respondents. Due to limitation of time and resources, the researcher sought views of a total of sixty-eight (68) MPs. These respondents were drawn from veteran, former and current parliamentarians who have served in the Kenyan parliament since independence. Also 5 academicians and 5 members from the civil society were interviewed. Confidentiality of respondents was upheld.

### **1.9.6 Methods of Data Collection**

#### **(i) Secondary Data**

Document review and content analysis methods were used in collecting information on the institution of parliament. Materials consulted included the Constitutions of Kenya and the Standing Orders. The Hansard and the archives were consulted in order to analyze some of the factors that shape or frustrate parliamentary proceedings. Academic literature on theoretical foundations of parliamentary functions was reviewed to develop a solid background to the study. Secondary sources include books, journals, magazines, articles, unpublished theses and dissertations, pamphlets, government reports, periodicals and newspapers. The research made use of libraries and the internet. All data collected was treated cautiously as it may be biased.

**(i) Primary Data**

Although the research intended to carry out interviews alone with former and current parliamentarians, questionnaires were introduced in the process for MPs who were too busy for interviews. Questions were open ended. The questionnaires were also used to solicit information from respondents from the civil society and academicians on factors attributed to underperformance of parliament. Note taking was used in writing down information obtained from the respondents.

**1.9.7 Data Analysis and Interpretation**

The presentation in chapters three, four and five takes a historical approach in order to capture the developments of the Kenyan parliament and the character of the African states. In keeping with the topic under study, all

the information was categorized according to the objectives and premises of the study. To authenticate the data collected, corroboration of both primary and secondary data was done. The study relied on qualitative technique of analysis, interpretation and presentation of data in drawing logical conclusions and interpretations. Moreover verification was also used to obtain reliable and objective information.

#### **1.9.8 Ethical Considerations**

In keeping with ethical considerations, the researcher obtained permission from the Department of History, Archaeology and Political studies to conduct research. The researcher also obtained permission from Head of Research at parliament to access parliamentarians at their offices in Continental House. The respondents were not coerced to give information. Due to the sensitive nature of the study names were omitted. The appointments were given on time allowing the respondents to schedule their time.

#### **1.9.9 Problems Related to the Study**

Based on their political career, it was difficult for some MPs to honor their appointments and to return their questionnaires. Also finding MP's who had served under Jomo Kenyatta, Daniel Moi, Mwai Kibaki and Uhuru Kenyatta was a challenge.

## **CHAPTER TWO**

### **PARLIAMENTARY INDEPENDENCE: PHILOSOPHICAL AND HISTORICAL CONTEXT**

#### **2.0 Introduction**

This chapter examines the theory of separation of powers and its application to the Kenyan situation. To realize this, the chapter analyses views of some political philosophers of Enlightenment period in regard to human nature and the best form of government. This analysis lays the basis for the theoretical and historical developments of the principle and practice of separation of powers. The chapter also examines the British Westminster model of government and the principle of separation of powers. This is because the British Westminster model is the original parliamentary system and the model that Kenya adopted at independence.

This chapter is significant because the central focus of the entire thesis is conceived within the broader context of the principle of separation of powers. Separation of powers is one of the factors that determine an independent parliament. The chapter further gives an insight into absolutism as illustrated by the political theory of Machiavelli and personal rule exercised in the neopatrimonial state.

#### **2.1 Classical Period: Theoretical and Historical Developments of Separation of Powers**

The doctrine of separation of powers can be traced back to the medieval times in Aristotle's work *Politics* (350 BC). In regard to forms of

government, Aristotle was the first to distinguish between the state as an assemblage of the body of citizens, and the government which consists of citizens alone who hold supreme political power and administer the state. He argued that the government is a tangible means of attaining the end and performing the moral and political functions of the state. Aristotle enumerated six different kinds of governance and argued that the best forms of governance should involve different elements of society such as monarchic, aristocratic, and democratic interests. According to him the monarchy was concerned with promotion of supreme virtue as its guiding principle, aristocracy represented a mixture of virtue and wealth and constitutional government or polity representing medium virtues, with power resting mainly with the middle class (Vile, 1967).

Aristotle argued that in any good state, laws must be the ultimate sovereign and not any person whatsoever. According to him even the worst of rulers cannot dispense with the law, since the law has an impersonal quality. Hence, his ideal state is constitutional and not despotic. It was, however, during the Enlightenment period that the political thinker John Locke argued against concentration of governmental power in one body. Later, French political thinker Charles Louis Baron de Montesquieu also an Enlightenment political philosopher formulated the doctrine of separation of powers as implemented in many constitutions as we know today (Ochieng'-Odhiambo, 1998).

Enlightenment was an intellectual movement that originated in the 17<sup>th</sup> and 18<sup>th</sup> centuries in Europe and America. Enlightenment thinkers shared a great sense of optimism about human reason. Philosophers such as John Locke, Isaac Newton, Thomas Hobbes and Jean Jacques Rousseau among others had made great progress in understanding the way the world works and how human knowledge is acquired. They believed that the advances made in the the field of science and philosophy could be made in social, moral and political life. The Enlightenment period is therefore credited with changing the way Europeans thought about government, politics, property, and liberty (Delaney, 2009).

These philosophers were influenced by the renaissance, the reformation and the scientific revolution. They began debating the question of who should govern a nation. As the absolute rule of kings waned, Enlightenment philosophers argued for different forms of democracy. They challenged long held ideas about society. They examined principles such as the divine right of monarchs, the union of the church and the state, and the existence of unequal social classes and established that all of them needed reforming (Sembou, 2013).

The belief that society was best developed when its members regardless of status were equally engaged in governance process was important in this era. The philosophers questioned traditional forms of authority and power and the moral standards that supported these forms. Among these are the right to self-governance, autonomy of thought and

equality. The inherent virtue of these ideas forced most European nations to relinquish aristocracies and monarchic systems. Since the middle ages, European leaders had ascended to power through heredity and family ties and the people were not involved in this process. Contrary to the observation above Gingell et.al., (2000) argue that Enlightenment philosophers believed in republicanism which proposed that a country's leader should be chosen in a general election.

Enlightenment ideas also challenged the authority of institutions deeply rooted in society such as the catholic church. The philosophers questioned the religious beliefs and the teachings of the church. They believed that the church represented dogmatism and oppression where outdated and superstitious sets of principles were imposed on the masses. They believed that all people can think for themselves hence they should not believe in the church as the final authority. They preached tolerance of all religions allowing for multiple religions (Delaney, 2009).

The Enlightenment period is therefore associated with political commitments to liberty, equality, freedom of conscience and freedom of speech. These ideals are the foundation of modern day democracies. The exchange and diffusion of these ideas on government, religion, and human rights led to changes in the structure of society and government in Europe. Many of the ideas of the Enlightenment thinkers influenced the political reforms and revolutionary ideas of the late eighteenth and early nineteenth

centuries. The Enlightenment remains a vital part of the world's intellectual, cultural, and political heritage (Could, 1999).

In his distinguished work, the *Two Treatises of Government* (1690), John Locke (1632-1704), one of the key Enlightenment political philosophers was critical to the political thought of his predecessor Thomas Hobbes (1588-1679). Hobbes reasoned through the *Leviathan* (1651) that the state should have absolute power, governed by a supreme ruler, charged with making and enforcing laws for the whole community. Hobbes compared life without a government to life in a state of nature where all individuals were naturally free. In this case everyone was free to do whatever was required for survival. However, no one individual was able to guarantee his own security. Consequently, everyone suffered from continued fear and danger of violent death; and life of man was solitary, poor, nasty, brutish and short. In such a society, no man's life or property was safe since there were no laws or anyone to enforce them. Therefore, human beings agreed among themselves to surrender their lives and liberty to a sovereign for protection (Ochieng'-Odhiambo, 1998).

Hobbes argued that human beings are naturally cruel, selfish, and greedy and are constantly driven by a restless desire for power. Hence, his justification for absolutism in the state. He contends that even though abuses may arise due to the ruler's possession of absolute power, absolutism was to be preferred to living in chaos and disorder (Sembou, 2013). However, the Hobbessian thinking violates the principle of separation of powers since it

advocates for all governmental power to be vested in a single person, the Leviathan. Further, the absolute ruler is not required to be accountable to the people. This goes against the democratic spirit that has been sought in modern day states.

Locke on the other hand disagreed with Hobbes about the state of nature. He believed that the state of nature was not as bad as Hobbes had depicted it. This is because the state of nature had a law of nature to govern it, which was reason. However, the freedom in the state of nature was a source of conflict especially in regard to property, which according to Locke was the most important natural right. He argued that property was equal to all since the individual could appropriate it from whatever nature offered. Therefore the shortcoming of the state of nature according to Locke was the lack of an organization, magistrates, written laws, and fixed penalties, to give effect to the rule of right. Consequently, people would want to move from the state of nature to civil society that guarantees preservation of their natural rights which are life, liberty, and property. This formed the basis of the social contract (Gingell et.al. 2000).

Locke posits that people's natural rights cannot be taken away or even voluntarily given up. They are "inalienable". As such it is the individual natural rights of the individual that limited the power of the king. Thus, the king did not have absolute power as Hobbes had said, but acted to enforce and protect the natural rights of people. Consequently, the true purpose of government according to Locke was to protect people's natural rights. In

exchange for this protection, people gave the government the power to make and enforce laws. Locke therefore emphasized a representative government based on the consent of the governed. He argued that if the government failed to protect people's natural rights, then the social contract was violated and citizens had a right to revolt and create a new government. In this way, Locke advocated for leadership accountability and removal of leadership that failed to be accountable to the people (Could, 1999).

Locke believed in the separation of state power to safeguard people from concentration of power. He divided governmental power into executive, legislative, and federative branches where each would function as a check upon the other. According to him, the legislative and executive branches would lay down consistent and uniform laws while the federative branch would be concerned with carrying on resolutions with foreign powers (Sembou, 2013).

Locke influenced modern democratic principles in various ways. For instance, he stressed the rule of law, not force or arbitrariness as the basis for civil society. This is the basis of the democratic principle where government operates under laws based on the consent of the people and which are promulgated so that citizens are familiar with them. Locke also influenced modern liberalism in that government has limits and individuals have certain rights and freedoms. Modern day states have these rights and freedoms enshrined in their constitutions in the form of Bill of Rights. Locke revised the

Hobbesian theory of absolutism by advocating for separation of state power (Ochieng'-Odhiambo, 1998).

Locke's contribution contextualizes this study since his ideas uphold popular sovereignty as well as the necessity of separation of state power against concentration of executive power. It also upholds individual's rights and freedoms which limit government's power. Absolutism in the state leads to arbitrary rule and other ills such as abuse of human rights which include detention without trial manifested in Kenya during the one-party rule.

Jean-Jacques Rousseau (1712-1778), like Locke, rejected Hobbes' theory of absolutism. In his work, *The Social Contract* (1762), he concurred with Locke that individuals should never be forced to give up their natural rights to a King. He believed that uncorrupted morals existed in the state of nature. Man, according to Rousseau is compassionate by nature and is interested in self-preservation and has natural moral duties. The problem with the state of nature according to Rousseau was to find a way to protect everyone's life, liberty and property while each person remained free. The solution was for the people to enter into a social contract where they would give up their rights not to a king, but to "the whole community," which is "all the people". He called "all the people" the sovereign. The people then exercised their "general will" to make laws for the public good (Delaney, 2009). Everyone had an equal right in government matters.

Rousseau argued that the general will of the people could not be decided by elected representatives. He therefore believed in a direct

democracy where everyone voted to express the general will. He believed that citizens must obey the laws of the general will or be forced to be free. Rousseau like Locke rejected Hobbes' theory of absolutism. He believed that fair and just laws should govern society. He therefore advocated that people meeting together would deliberate individually on laws and then by majority vote find the general will. Rousseau distinguishes between the sovereign and the government. According to him the government is composed of magistrates charged with the responsibility of implementing and enforcing the general will. The sovereign on the other hand is the rule of law ideally decided on by a direct democracy in an assembly (Sembou, 2013).

Rousseau's idea of the "General will" is significant since it emphasizes popular sovereignty or sovereignty of the people. This is the principle that the authority of the government is created and sustained by the consent of its people through their elected representatives who are the source of all political power. It is this popular sovereignty that upholds democracy (Ochieng'-Odhiambo, 1998). This is relevant to this study since laws protect citizens from abusive rulers. This can be realized through separation of powers where the legislature develops laws and the executive enforces them.

After examining the political views of Hobbes, Locke and Rousseau on government, the next section discusses the theory of separation of powers.

## **2.2 The Theory of Separation of Powers**

The theory of separation of powers dates back to Aristotle and Locke as mentioned above. However, it was Charles Louis Baron de Montesquieu

(1689-1755), who expounded on the works of Locke, adding the judiciary to come up with the tripartite form of separation of powers. Montesquieu, in his famous work *The Spirit of Laws* (1748), advanced the theory of separation of powers and how government would best work. His ideas were influenced by his experience in France. During his days, the Bourbon monarchy in France had established despotism and the people enjoyed no freedom. The monarch was the chief law giver, executor, and the adjudicator. Informed by this, Montesquieu, a great advocate of human dignity, developed the theory of separation of powers as a weapon to uphold the liberty of the people (Held, 2006). Montesquieu disliked despotism arguing that a despot directed everything by his own will and caprice leading to tyranny (*Spirit of Laws 2.1*).

The theory of separation of powers classifies governmental power into three branches namely the executive, the legislature, and the judiciary. The Legislature has the power to make and repeal laws. In addition, the legislature has a representative role to play. Legislatures are also known by various names such as parliament, congress, diet, and the national assembly. The Executive branch is charged with implementing, or executing, the law whereas the judicial branch is responsible for interpreting the law. According to Montesquieu, the best constitution would be formed by the three bodies with equal but different powers, to check and balance each other. He argued that the three bodies should be kept separate, each entrusted to different persons, so that the bearers of each body are vigilant and work within their constitutional authority. He argued that every man entrusted with some power is bound to

misuse it. The separate bodies would therefore limit the power of each other such that no branch could threaten the liberty of the people.

Thus Montesquieu's view is that concentration of legislative, executive, and judicial functions either in one single person or a body of persons results in abuse of authority leading to tyranny. Therefore political liberty in a state is possible when restraints are imposed on the exercise of these powers and the balance of power among the three branches of government maintained (*Spirit of Laws*, 1.6). It is this interface between the three arms of government that shapes the political landscape in modern democratic states (Vile, 1998).

In Book II Part 1 of the *Spirit of Laws*, Montesquieu talks of three types of government. These are a monarchy where a single person governs by fixed and established laws. A republic which he termed a democracy, where the supreme power is either with the collective body of the people exercised by an elected representative or with particular families (an aristocracy). There is also a despotic government that is ruled by a dictator. Montesquieu believed that the people in whom the supreme power resides ought to manage their own affairs as much as possible but those that exceeded their abilities must be conducted with their representatives. Hence a government elected by the people was the best form of government, since the people are the most qualified for choosing leaders that they can entrust with part of their authority (*Spirit of Laws*, 3. 2.). Montesquieu argued that the holders of power ought to

have fixed periods of service, neither too short nor too long to prevent corruption (Spirit of Laws, 3. 3).

Montesquieu's preferred form of government was a state system modeled on the constitutional monarch of England. The system divided power between the king (who enforced laws), parliament (which made laws), and the judges of the English courts (who interpreted laws). Based on the English constitution, Montesquieu also approved of division of legislative power into two chambers one for the hereditary nobles and the other for representatives of the people where the nobles would retain the right to reject legislation while the commons would have the legal power to initiate legislation. Although Montesquieu advocated only a strict and complete separation of powers, he did accept that in practice, only a partial separation of powers would be workable and complemented by checks and balances (Sprit of Laws, 3).

The doctrine of separation of powers is essentially a theory of government, the objectives of which are the protection of liberty and the facilitation of good government by appropriate specialisation. Hence, the doctrine may be adopted to varying degrees by any system of government. The form in which it is adopted may be by way of political practice, convention, or legal principle. The doctrine, like other great principles such as representative government, is provided for in a variety of ways in different constitutional systems (Verkuil, 1989).

Locke, Rousseau, and Montesquieu were libertarians in regard to the power of the state. They advanced the concept of the rule of law, popular

sovereignty, accountability of political leadership, and the rights and freedoms of individuals. They argued that the political leader should not be allowed to run the affairs of the state as he pleased but according to equitable and agreed upon procedures. Thus, Rousseau and Locke emphasized that the relationship between the government and citizens was like an agreement where citizens agree to obey a set of rules and the government agrees to protect their rights. Locke particularly emphasized that people should have the right to petition the government if it failed to live up to the agreement.

In addition, Locke and Montesquieu maintained that separation of state powers was necessary to uphold the liberty of citizens. In general, the above philosophers emphasized restrictions over the powers of the political leader which prevent tyranny and uphold the fundamental human rights of citizens. These views are in opposition to absolutism as is propounded by Hobbes who advocates for centralization of political power in the hands of the political ruler.

The views of these political philosophers are relevant to the overall study because consolidation of state power in Kenya soon after independence, was blamed for political and socio-economic ills that ensued. The analysis of the above ideas helped the study in examining whether political reforms that emphasized separation of powers and checks on the powers of the executive ensured good governance and parliamentary independence.

The Westminster Model as a sample of Separation of Powers highlights the extent to which the doctrine of Separation of Powers operates within the Westminster system of government.

### **2.3 Separation of Powers in the Westminster Model**

The Westminster model of government is one of the examples of separation of powers. It has features which distinguish it from other forms of government.

The position of a sovereign or head of state is one of these features. In this model of government, the head of state is often a ceremonial figurehead either elected popularly or by parliament or a hereditary Monarch. In theory, the head of state is a nominal or de jure source of executive power. In practice, such a figure head does not actively exercise executive powers, even though the executive power may be exercised in his or her name. On the other hand, the head of government is a position held by the Prime Minister. The Prime Minister is not chosen by the people but by the legislature, usually by the majority party in parliament. The Prime Minister must always ensure a majority in parliament. This majority is significant in the passage of important bills such as the national budget. If Members of Parliament fail to pass the budget, the government must resign so that a new parliament can be appointed or seek a parliamentary dissolution so that fresh general elections may be held (Lijpart, 2004).

The executive branch of government is headed by the Prime Minister is made up of ministers and their assistants known as the cabinet. The cabinet

is appointed from among Members of Parliament by the Prime Minister. The cabinet is bound by the principle of collective responsibility in that all cabinet members must support the decisions of the government or resign. There is also an independent civil service which advises on and implements decisions of the cabinet. Members of the civil service are appointed on merit and hold permanent appointments. This ensures continuity even when a new government takes power. There is therefore a fusion of the executive and legislative arms of government (Carney, 1993).

Bicameralism is another major feature of the British parliamentary system. A parliamentary system has a Lower House and an Upper House under various names where Members of Parliament are either elected by popular vote or appointed. A Parliamentary system also allows for the existence of two or more political parties to compete for seats in parliament. The party that wins more seats forms the government and its leader becomes the head of government as noted above. The Lower House has the ability to dismiss a government by rejecting a budget as shown above, and by passing a vote of no confidence or defeating a confidence motion. Dissolution of government and snap elections is another characteristic of the parliamentary system. This is used as a secret weapon by the incumbent regime. In addition, parliamentary privileges are granted to parliament that allows it to discuss relevant issues without fear of the consequences of defamatory statements (Mosley, 1969).

Britain is one of the most well-known parliamentary systems. The British political system is a constitutional monarchy where the government rules under guidance from parliament. The most important institutions in Britain are the Monarch, House of Lords, House of Commons and the Premiership. This reflects the doctrine of separation of powers in terms of structure. The Monarch is the head of state whereas the Prime minister is the head of government. The Monarch's duties are ceremonial though innumerable. For instance, after every general election the Monarch invites the new parliament and addresses both Houses together in the House of Lords. The Monarch also prorogues parliament at the end of a parliamentary session (Lijpart, 2004).

The Prime Minister on the other hand forms the government by making appointments to the cabinet, senior civil service and foreign affairs. The business of government carried out in the Monarch's name is done by the Prime Minister and the ministers. The executive (government ministers) members are associated with parliament. Ministers are answerable to parliament for the policy and administration of their departments and the acts or omissions of their civil servants. There is therefore responsible government and representative government (James, 1979). This illustrates that the personnel of the parliament overlap with that of the executive. Therefore, there is a capacity for the powers of each to be shared to some extent (Lijpart, 2004).

The legislature is bicameral, composed of the House of Lords and House of Commons. The Lord Chancellor presides at meetings of the House of Lords. Its membership is drawn from people of high offices such as Bishops and retired judges. The members are nominated by the Monarch. The House of Commons on the other hand is composed of elected representatives of the nation. The House of Commons is the major legislative arm of the government. In particular it controls revenue and expenditure and directs government policy. Most significant, it has the power to pass a vote of no confidence in the executive, thus it checks the power of the executive to ensure that the rule of law is maintained. Members of the cabinet are appointed from the party with majority votes in the House of Commons by the Prime Minister with the approval of the Monarch (James, 1979). This also serves as a check on the executive powers.

By convention, the Monarch will not dissolve parliament on his/her own initiative but will act on the advice of the Prime Minister. A bill initiated in the House of Commons must be scrutinized by the House of Lords. Sometimes the House of Lords can help the House of Commons in keeping a check on the powers of the executive. Even though the House of Commons is superior since it represents the electorate, there must be a concurrence of the two Houses before a bill becomes law. In addition, there must be royal assent for the proposed bill to become an act of parliament (Whiting, 1985). This illustrates checks and balances on the legislative process. Privileges enjoyed by members of parliament include freedom of speech, protection against arrest

for civil offences forty days prior to and after a session of parliament. Also Members cannot also be harassed within the precincts of parliament (James, 1979).

The British judiciary is independent and this independence is ensured by salaries of judges being fixed and retirement placed at age seventy-five (75). Moreover, judges are appointed by the Lord Chancellor and can only be dismissed through a resolution from both Houses and with the consent of the Monarch (Mosley, 1969).

The government must command a majority in the House of Commons and any government that is outvoted on a major issue must resign or seek dissolution of parliament. Hence, the government can only continue in office as long as it retains the goodwill of the House of Commons. In theory therefore, the House of Commons is the master of the government especially since there is a constitutionally recognized opposition party ready to take advantage of its mistakes. However, the government usually represents a single party and members will seldom vote against it for both reasons of loyalty and fear a general election which will certainly put them to expense and they may also lose their seats as well (James, 1979).

Carney (1993) observes that parliament is not able to exercise its power of control over the government directly especially the vote of no confidence, but it does exercise it indirectly at least in two ways. First, through 'question time' to the Ministers and Heads of Departments in the House of Commons. And an unsatisfactory answer given due publicity in the press may

have a ministerial effect upon the popularity of a government. Secondly debates whether in the House of Lords or Commons may show weaknesses in administration. Debates are published in the Hansard Reports and their substance transmitted by the media to the nation. It is through the debates that the electorate appraises political personalities and governments and modern British governments are sensitive to the feelings in the constituencies, (Mosley, 1969). The above measures therefore are controls put on the executive power.

The Executive is composed of the Privy Council, the ministry and the Departments of State and governmental agencies. The Privy Council is the source of all the central institutions, the executive the legislature and the judiciary. It is a formal body which gives legal sanction, by Order in Council to government policies. The head of the Privy Council is a minister called the Lord President of the Council and the Monarch attends its meetings. Officials of the Privy Council include cabinet ministers and the Lords Justice of Appeal. Cabinet members are members of the Privy Council and take before the Monarch an oath of secrecy. The oath rests upon confidentiality which collective responsibility requires. All major decisions are taken by the cabinet and all policy is ultimately directed by it. Thus, in constitutional theory the government is responsible to parliament since it must maintain a majority to remain in office as noted above. The cabinet is however based on the doctrine of collective responsibility where cabinet makes decisions as a whole and is responsible to parliament and must face parliament with a united front. If a

cabinet minister expresses views contrary to agreed policy he/she ought to resign since ministers are jointly responsible for the actions and policies of government (Lijpart, 2004).

In relation to the powers of the Executive, the theory of separation of powers appears to have less practical effect. Although the organs of the executive do administer the laws enacted by the legislature, they also have powers of subordinate legislation and adjudication. For instance, by innumerable statutes, parliament confers powers of legislating by statutory instruments upon ministries and departments and also permits local authorities to make by-laws. There is also an increase in the number of tribunals falling outside the system of ordinary courts entrusted with exercising powers of a judicial or administrative nature and most of these tribunals are closely connected with the executive (James, 1979)

Britain therefore upholds the doctrine of parliamentary supremacy in that parliament is the supreme and highest authority to make or unmake any law it chooses and no court or other authority has any claim to permanently overrule any decision of parliament (Lijpart, 2004). Thus, other organs of the government, Monarch and the executive operate under laws enacted by parliament. Parliamentary supremacy may be limited however in that the moral values of society are taken into consideration during legislation, actions of parliament are heavily influenced by opinion polls, before legislation is made in parliament the interests of the affected institutions are taken into account, local authorities are empowered to make legislation without

consulting parliament and a law made by one parliament may be altered by a future parliament (Whiting, 1985).

Carney (1993) contends that the doctrine of separation of powers is however reflected in the structure of the constitutional system of the legislative assembly, the executive and judiciary each with its mandate. However, the personnel of the legislative assembly overlap with that of the executive and must do so as the principal feature of the Westminster system: responsible government. He notes that the Ministers of the Crown including the Premier must by convention be Members of the Parliament in order for them to have the confidence of the Lower House to form the executive government. Hence, they are responsible to the Lower House. The Lord Chancellor who is a member of cabinet and presides over the House of Lords in both its legislative and judicial capacities is also responsible for the appointment of judges. Hence, while the powers of each of these three branches of government are essentially different, there are grey areas where it is difficult to characterize the power as legislative or judicial.

He further notes that the consequence of the doctrine not being a legal restriction at the state level is that parliament can enact a law which constitutes an exercise of judicial power or interferes in the judicial process; a State Court or judge may be vested with powers of a legislative nature; the Executive or a Minister or public official may be vested with legislative or judicial power. In other words, while the Westminster system reflects the doctrine in terms of structure, and less so as regards personnel, there is a capacity for the powers of

each to be shared to some extent. This may be desirable in many cases but there are dangers as well (Lijpart, 2004).

The British Westminster model does not have a very strong separation of powers in practice. However, it implements the doctrine of separation of powers in a number of ways. The constitution allocates power among the three branches of government which are the executive, judiciary, and the legislature. Through bicameralism, each House has constitutionally given powers and the manner in which they are exercised. The Prime Minister can be removed through the vote of no confidence by the Lower House or the House of Commons. Since members of cabinet are chosen from among members of parliament, the distinction between the legislature and executive is not clear cut. However as Montesquieu indicated the concept of separation of powers is implemented to varied degrees by different countries.

### **2.3 Summary and Conclusion**

This chapter has examined the views of political thinkers and the importance of separation of powers in upholding the rule of law and political liberty. The chapter has also examined the British Westminster Model of government and how the doctrine of separation of powers is applied. An examination of the Westminster model of governance leads the study to the Kenyan constitution at independence. The independence constitution was modeled along the Westminster system of governance. However, the independence constitution was later altered by way of constitutional

amendments. The next chapter examines to what extent the new constitution upheld the doctrine of separation of powers.

**CHAPTER THREE**  
**SEPARATION OF POWERS AND THE KENYAN EXPERIENCE,**  
**1963-1990**

**3.0 Introduction**

The previous chapter discussed separation of powers and its importance in upholding separation of powers. It also highlighted various features of the British parliamentary model and the extent to which it upholds separation of powers. This chapter examines various features of the British parliamentary model that were adopted in the Kenyan independence constitution. The chapter thereafter examines the republican constitution following amendments to the independence constitution. The chapter further illustrates challenges of the new constitutional dispensation in upholding the principle of separation of powers and parliamentary independence.

This chapter is significant to the study because it lays the historical and theoretical background for examining parliamentary independence in Kenya in the post-colonial era. The chapter heavily relies on secondary sources from the library and the Hansard.

**3.1 The Historical Development of Kenyan Parliament (1907-1962)**

Kenya has had legislative history since 1907, when the first Legislative Council (LEGCO) was established under the chairmanship of Governor, Sir James Hayes Sadler. The LEGCO was established after the East African Order in Council of 1906 was promulgated. It provided for the establishment of an executive council and the LEGCO with powers to make ordinances, subject to

the government's veto and with assent from the King. The LEGCO was a unicameral legislature that held its first sitting on Friday, 16<sup>th</sup> August 1907. The Kenyan parliament is a direct descendant of the LEGCO (Ghai and McAuslan, 1970).

The first LEGCO had 6 nominated European civil servants and 2 nominated European non-officials (non-civil servants). LEGCO Members were appointed by the British government on recommendations from the Governor. They were charged with the responsibility of providing feedback to the colonial administration in regard to how its policies were being received by the local elites and the general public (Kipkemoi and Murkomen, 2009).

Elections to the LEGCO were first held in 1920 after the Legislative Council Elections Ordinance was passed in 1919. Under the ordinance, Kenya was split into eleven constituencies. It provided for the election of 11 Europeans. In 1924, the Legislative Council (Amendment) Ordinance was passed. It provided for the election of 5 Indians members and 1 Arab representative. Provision was also made for nomination of a clergyman to represent the 'interests' of Africans and the Rev. J.A. Arthur was nominated. The Indian community however boycotted the elections to protest their registration on a separate voters' roll. Nevertheless, by 1927 360 Indians registered on the Indian voter's roll. The single Indian candidate who presented himself for election was unopposed (Ghai and McAuslan, 1970).

In 1932, another election was held and 5 Indian representatives were elected. They again refused to take their seats in protest of the government's

failure to provide a common voters' register that incorporated all communities, and the lack of representation for Africans. After discussion, the Indian lawmakers eventually took their seats in April 1934. A European priest, the Rev. L. J. Beecher, was nominated by the Council again to represent African 'interests'. It was not until 1944 that the first African Eliud W. Mathu was nominated to the LEGCO to serve alongside Rev. Beecher. In 1946, Fanuel W. Odede, another African acted briefly in place of Rev Beecher. Apollo Ohanga replaced Rev. Beecher upon his retirement in 1947. Both Ohanga and Mathu served in the LEGCO until March 1957, when they lost their seats in the first direct election of African members to the LEGCO (Kipkemoi and Murkomen, 2009).

A number of significant events took place before Africans were allowed to elect their own representatives to the LEGCO. This began with the Littleton Constitution that was introduced in 1954. The new Constitution provided for a Council of Ministers with 6 official members who were appointed from the Civil Service and 2 nominated members all appointed by the Governor. The unofficial members were appointed from elected representatives: 3 Europeans, 2 Asians, and 1 African. Apollo Ohanga became the first African Minister. At this point Africans held only 2 seats. Africans agitated for more representation. This was granted in March 1957 elections when the number of African representatives increased to 8. Elected Members included, Tom Mboya to represent Nairobi, Masinde Muliro for North Nyanza, Lawrence Oginda for South Nyanza, Jaramogi Oginga Odinga for

Central Nyanza, Ronald Ngala for Coast, Daniel Moi for Rift Valley, Bernard Mate for Central and James Mailu for Ukambani (Parliamentary Reporting Booklet, 2009).

The elected Africans still demanded increased African representation in parliament. As a result, the British Colonial Secretary, Sir Lennox Boyd, introduced the Lennox-Boyd Constitution in 1958. Consequently, Africans had the same number of elected representatives as Europeans. Of 36 elective seats, 14 were claimed by Europeans, 14 by Africans, 4 by non-Muslim Asians, 4 by Muslim Asians, and 2 by Arabs. However, elected Africans were still dissatisfied. They demanded a conference where all parties would discuss a new constitutional dispensation for Kenya. The 1<sup>st</sup> Lancaster House conference was therefore convened in 1960 by Ian Macleod in London. As a result, the Macleod Constitution was introduced. It provided for Africans to have the majority of elected Members: 33 Africans, 10 Europeans, 8 Asians and 3 Arabs in addition to the 3 ex-officio members and the Speaker. In February 1962, the second Lancaster House Constitutional Conference under the Colonial Secretary Reginald Maulding was held with the aim of granting Kenya independence (Kipkemoi and Murkomen, 2009).

Following the constitutional talks, a general election was held in May 1963. Kenya African National Union (KANU) party, led by Kenyatta, won against Ronald Ngala's Kenya African Democratic Union (KADU) party and the African People's Party (APP) led by Paul Ngei. On 1<sup>st</sup> June 1963, internal governance was granted with Jomo Kenyatta as the Prime Minister, and a

Governor-General representing the Monarch in Kenya. This composition of the legislature and the government remained in place until 12 December 1964 when the first amendment to the independence constitution was effected making Kenya a Republic. Kenyatta became the first president (Ogendo, 1972). This historical exploration of the Kenyan parliament moves the study to the historical development of the post-colonial state. The section begins by examining the features of the 1963 independence constitution.

### **3.1.1 Historical Development of the Post-Colonial State, 1963-1992**

The Lancaster constitution of 1962 introduced a parliamentary system of government in Kenya, which borrowed a number of features from the British Westminster model. These were a dual executive system, bicameralism, multipartyism, an independent civil service and police and separation of powers among the three arms of government, which is the executive, the judiciary and parliament.

Between 1<sup>st</sup> June 1963 and December 1964, Kenya had a dual executive in that power was vested in both a Governor-General and a Prime Minister (PM). Executive authority remained vested in the British Monarch though exercised by the resident Governor-General. The Governor-General in turn was advised by the PM and the cabinet. The PM was head of the government, appointed by the Governor-General from the House of Representatives (Oloo and Oyugi, 1992). This ensured separation of powers and checks and balances.

The Kenyan parliament was bicameral, comprising a Senate and the House of Representatives. The Senate which had 41 members was created as a constitutional safeguard for minority rights whereas the House of Representatives with 117 members acted as the people's voice, irrespective of ethnicity and race. The House of Representatives was constitutionally stronger of the two Houses. It was to sit in an electoral college after general elections to choose the twelve specially elected members. It had the sole authority in financial matters and in votes of no confidence. The Senate though subordinate was significant especially in regard to constitutional amendments where 90% approval of the senators was required. A declaration of a state of emergency also required the authorization of the Senate and all bills had to get the approval of both Houses (Ghai and McAuslan, 1970). Thus the Senate was to work as an effective check on both the House of Representatives and the executive.

Kenya was a multiparty state that allowed existence of more than two political parties to compete for seats in parliament. They included KANU, KADU and APP. Representatives of the people were elected through a single-member district just like in the British parliamentary system. There was a cabinet headed by a PM and bound by the doctrine of collective responsibility. The cabinet was the driving force behind all government policies and legislation and was collectively responsible to both Houses. The life of government was related to the life of parliament since the House of Representatives could pass a vote of no confidence and force either the

dissolution of government or a fresh election. In addition, the PM could ask the Governor-General to dissolve the House of Representatives (Ogendo, 1972).

Regionalism, which was a form of federalism, was adopted to ensure all parts of the country shared power or authority in government. This however is not a feature of the British parliamentary system. Accordingly, the constitution provided for the formation of seven regions, each with its own executive and legislative powers over a substantial range of matters. Hence, in the performance of certain important functions, the central government could only act with the approval of the regions. For instance, the constitutional boundaries could not be altered unilaterally by the central legislature without consultation with the affected region and the Senate. Therefore, the creation of regional governments was a way of checking the central government and preventing it from asserting itself too far (Oloo and Oyugi, 1992). Ghai and McAuslan (1970) however observe that regional governments were not designed from the outset to be strong. They had very little true autonomy in the sense that they had no clear lines of responsibility. In spite of this short coming, the Independence constitution was concerned with state institutions and structures, power distribution and limitation of the government as the broad basis for executive accountability.

An independent and impartial judiciary was created to ensure justice and to prevent corruption. Judges were therefore shielded from political influence in that their appointment to these positions was vested in the Judicial

Service Commission (JSC). Moreover, judges were accorded security of tenure. They could however be removed from office after proper investigations by an independent tribunal made up of senior judges from the commonwealth. Security of tenure was similarly extended to the Attorney General (AG) who served as the government's principal legal advisor in parliament. In addition, the civil service was insulated from political interference by the establishment of the Public Service Commission (Parliamentary Reporting Booklet, 2009).

A separate appointment's commission was also set up for the police. The independence constitution also provided for an independent Electoral Commission (EC) which consisted of the speakers of the two Houses of parliament, a nominee of the P M and nominees to represent the regions. The EC was also responsible for the drawing up of constituency boundaries. The independence constitution also contained a detailed Bill of Rights, modeled on the European Convention on Human Rights and Fundamental Freedoms. The Bill of Rights enshrined personal freedoms such as freedom of expression, religion, and freedom to own property (Oyugi, 1994).

The three arms of government in the independence constitution were based on the principle of separation of powers and were supposed to work independently, but with checks and balances on each other. The provision of a bicameral legislature, quasi-federal (*majimbo*) system of government and other institutions noted above aimed at upholding this principle of separation of powers. It was difficult for the executive to make major policy decisions

without the input of parliament, the regional assemblies or both (Oloo and Oyugi, 1992). The independence constitution intended to empower parliament to undertake its core functions; legislation, oversight, and representation in government (Constitution of Kenya, 1963). The examination of the independence constitution leads the study to constitutional amendments on the independence constitution.

### **3.1.2 Constitutional Amendments to the Independence Constitution**

The above constitutional provisions changed when Kenya attained republican status in December 1964, through amendments to the 1963 independence constitution.

The first amendment, Act No. 28 of 1964, fused the roles of head of state and head of government creating an executive president. This was preceded by the dissolution of opposition parties and the president became the chairman of the sole ruling party KANU. The 2<sup>nd</sup> amendment, Act No. 38 of 1964, changed certain specially entrenched powers of the regions such as the financial relations between the center and the regions and the procedure of effecting changes on the regional boundaries. The 3<sup>rd</sup> amendment, Act No. 14 of 1965, amended the procedure for constitutional amendment. It lowered the parliamentary majority for approval of a state of emergency in the country from 90% in the Senate and 75% in the House of Representatives to 65% for all purposes. This was then reduced to 65% in a miscellaneous amendment and later to a simple majority for a decision by parliament. The amendment also provided for extension of the duration within which a parliamentary

resolution had to be sought over the declaration of a state of emergency from seven to twenty-one days (Mueller, 1984).

The 3<sup>rd</sup> amendment also altered the name 'Regions' to the colonial term 'Province' and Regional Assemblies became 'Provincial Councils'. The provisions relating to the exclusive executive authority of the regions were removed and transferred to parliament. This amendment marked the end of regionalism. The 4<sup>th</sup>, 5<sup>th</sup> and the 8<sup>th</sup> amendments dealt with parliamentary discipline. The 4<sup>th</sup> amendment, Act 16 of 1966, provided that a member who failed to attend eight consecutive sittings of a session of the national assembly, without the permission of the speaker, or was sentenced to a period of imprisonment exceeding six months, would lose a parliamentary seat. The 5<sup>th</sup> amendment, Act 17 of 1966, required MPs who resigned from the party that had sponsored them at the time of election to forfeit their seat. The 8<sup>th</sup> amendment, Act 4 of 1967, removed doubts on the interpretation of Section 42A of the constitution with regard to resignation of MPs from the party which sponsored them to parliament. It made it retrospective in operation (Gertzel, 1970).

The 6<sup>th</sup> amendment, Act 18 of June 1966, empowered the president to detain without trial any citizen, if the conduct of such a citizen presented a threat to the security of the state. By the same act the president acquired the power to control freedom of the press. The 7<sup>th</sup> amendment, Act 40 of 1966, provided for the merger of the Senate and the House of Representatives to create a unicameral legislature. This amendment also provided for twelve

nominated members, and the power of nomination vested in the presidency. The Attorney-General (AG) and the speaker also made up the new assembly as ex-officio members. The 10<sup>th</sup> amendment, Act 45 of 1968, changed the procedure of presidential elections. It provided that the president would be directly 'elected' by the electorate during a general election rather than by the parliamentary party. The amendment also provided that all candidates for a general election should be nominated by a political party hence the ban of independent candidates (Tamarkin, 1978).

It is significant to note that after the demise of competitive politics, power struggles emerged within KANU that pitted the conservative group led by Jomo Kenyatta and Tom Mboya and the radicals led by Jaramogi Oginga Odinga and Bildad Kaggia. Consequently, Odinga and his supporters resigned from KANU to form Kenya People's Union (KPU) party in May 1966 after the Limuru KANU Conference. Up to 29 MPs crossed the floor to join the new party. The government reacted to the KPU recruitment with the 5<sup>th</sup> constitutional amendment mentioned above. This amendment was also the cause of the 'Little General Election' of 1966 (Mueller, 1973). After the election, KPU became the official opposition in parliament (The National Assembly, House of Representatives, Official Report, 28<sup>th</sup> April 1966, Col. 1994-1995). The second multiparty elections were held in Kenya in 1969. However, KPU was banned in October 1969. After the ban of KPU Kenya became a de facto one-party state until May 1982. In the subsequent general

elections held in 1974, political recruitment was only through KANU (Ng'weno, 2007).

By December 1969, Kenya had emerged as a de facto one-party state with a dominant president. The above constitutional amendments were reflected in the 11<sup>th</sup> Constitution of Kenya (Amendment) Act of 1969. It revised the Kenyan independence constitution and provided for a new constitutional dispensation (Ogendo, 1972). The Act also led to changes in the electoral system where all members of the EC were to be appointed by the president. The amendment also required that candidates for parliamentary seats be nominated by preliminary elections rather than party caucuses. The president, elected Members of Parliament (MPs) and the AG made up the National Assembly (Chapter 2 of Constitution of Kenya, 1970). This constitution granted enormous powers to the presidency.

The president gained the power to allocate ministerial positions and other appointments to constitutionally protected offices (Chapter 2, Section 23 of the Constitution). He also gained the power to prorogue and dissolve parliament (Constitution of Kenya Part 3, Section 58 (1)), and to call for new elections, the power to nominate MPs to parliament (Section 33 of the Constitution) and the power to assent to bills making them into law (Section 46).

Under the constitutional dispensation of 1970, the 15<sup>th</sup> amendment Act was passed in 1975. It provided for the conduct of contestants in elections. Prior to the amendment, the constitution provided that election offenders be

barred from contesting future elections until after five years from the date when the court found them guilty of the offence. In 1975 however parliament passed an amendment that extended the prerogative of mercy exercised by the president. Mr. Paul Ngei, a minister and Kenyatta's friend, who had been found guilty of an election offence, was now allowed to contest the Kangundo by-election after President Kenyatta pardoned him (Ghai, 1972).

The above amendments took place under President Kenyatta who reigned from 1963 to August 1978. After his death, President Daniel Moi took over in October the same year and ruled for 24 years. During his presidency, Kenya became a one-party state de jure after the passage of the 19<sup>th</sup> amendment, Act No. 7 of 1982. The act introduced the infamous 'Section 2A' in the constitution and institutionalized the ruling party KANU as the only lawful political party (Hornsby, 1989). Later in 1986, the 22<sup>nd</sup> amendment, Act 14 of 1986, removed security of tenure from the offices of the Controller and Auditor-General, the AG, and the Chief Secretary. In 1988, President Moi's government changed the procedure of elections from secret ballot to queue voting. Even though this was not a constitutional amendment, it had an impact on political recruitment to parliament since only KANU loyalists were elected (Mwaura, 1997). It is against this backdrop that the demand for openness in the political system emerged. The question is: what effect did the violation of the principle of separation of powers in a republican constitution have on parliamentary independence? The next section evaluates this impact.

### **3.2 The Principle of Separation of Powers and the Kenyan Parliament**

The above constitutional amendments form the point of departure for the exploration of constitutional amendments on the independence of parliament. The amendments profoundly eroded parliament's power to check the executive. This is illustrated by a number of observations.

The first amendment that created an executive presidency violated the principle of separation of powers in that a section of the executive was represented in parliament. In the Westminster model upon which the Kenyan parliament was originally derived, the PM who is the head of government, derived legitimacy from parliament (Oloo and Oyugi, 1992). However the fusion of parliament changed the relationship between parliament and the president in that it was no longer one in which the presidency derived legitimacy from parliament (Hakes, 1972).

Further the powers granted to the presidency made the position of the president paramount not only within the government, but also in his relation with parliament. This made it difficult for parliament to call on the government to account (Mwaura, 1997). As Gertzel (1970) notes, the efficacy of the functions of parliament depends on checks on the growth of the executive power. Thus even though the constitution recognized the supremacy of parliament, in reality parliament never functioned as a check on the executive, she adds. The theory of separation of powers advocates for separation of governmental power as well as personnel so as to prevent abuse of power and to uphold political liberty. This is a significant element of

democracy and parliamentary independence as is discussed in chapter 2. The republican constitution removed possible checks and balances on the presidency leading to authoritarianism. This impacted negatively on the Kenyan parliamentary independence.

The overlap of roles between the executive and parliament created confusion in the manner in which government business was conducted in parliament. The old constitution required that the president represents a constituency (Sections 5, 32 and 42). The Standing Orders (SOs) (SO No. 11 to 16 of 1963) were amended to outline the president's participation in parliament either as the president or as an MP. He could occupy the Chair of State where he was listened to in complete silence as he delivered presidential addresses and government policy. He neither took part in the parliamentary debate nor voted. He could also address the House on Ceremonial occasions from the Speaker's Chair. As head of the government, he could move to the front government benches and participate in the proceedings of the House just as any MP, and could vote or be interrupted or questioned (Ghai and McAuslan, 1970).

President Kenyatta declined to step down as head of government terming the position as a valuable personal right as well as a significant presidential obligation despite the contradiction in roles (The National Assembly, House of Representatives, Official Report, December 14 1964, Col. 4). In 1968 a backbencher, James Kibuga, MP for Kirinyaga, lamented on the watered down position of the PM arguing that MPs needed a PM who was

ready to go to parliament to be heckled and to answer criticism in good faith (The National Assembly, Official Report October 18, 1968 Col. 2008).

According to Ghai and McAuslan (1970) there was also fear that the president may use the more favorable position as head of state to make controversial announcements in parliament and therefore avoid debate on them. This issue was raised in parliament by the Parliamentary Secretary for Health and Housing, Argwings Kodhek (House of Representatives, National Debates, 28<sup>th</sup> October, 1964, Col. 4018). Ghai (1972) contends that even though the presidency was a parliamentary executive one, criticism of the president was not permitted unless on a substantive motion, and therefore the government and the ministers were allowed to hide behind this rule. This impacted negatively on parliamentary independence.

The power to appoint the cabinet from among MPs had far-reaching effects on parliamentary independence. This affected parliament's primary functions such as law-making, representation and oversight. The ministers were bound by collective responsibility in the cabinet for the policy decisions of government as is the case in the Westminster model. This, however, is not a problem in a parliamentary system as is discussed in chapter 2, but it became a problem in Kenya due to the absence of opposition parties. According to Mueller (1973), the efficacy of the different functions of parliament depends on the existence of a pluralistic political system among others. Since the dominant party in parliament was that of the president, his power compromised parliament (Barkan, 2009).

The executive's ability to compromise MPs was evident in the large cabinets as well as appointments to the state owned statutory bodies. President Kenyatta's cabinet after the 1969 general elections stood at twenty-two including Kenyatta himself as compared to Tanzania's thirteen ministers. He reserved key positions for members of his community among them the Attorney General, Charles Njonjo, minister for state Mbiyu Koinange, and the minister for defense James Gichuru. President Moi also maintained a large cabinet and appointed members of his community to key positions. However the height of this was after the 1988 general elections when he announced a cabinet of thirty-three (33) including himself (Ng'weno, 2007). This was compounded further by the president's nomination powers mentioned above. Patronage weakened parliament since a significant section of MPs could no longer oppose the government agenda due to collective responsibility requirements (Johnson, 2009).

Ministers were well compensated and therefore unwilling to challenge the government. Most important, they gained access to various state resources which they channeled to their respective constituencies. This ensured that they maintained their political bases. Since the constituents expected their MPs to channel national resources to their areas, it was important for MPs to cooperate with the government that controlled these resources (Mueller, 1984). In addition, MPs were dependent on and indebted to the state for a variety of economic rewards such as loans and credit facilities. Since the quasi-governmental statutory boards that offered credit facilities were

controlled by the government, it became very expensive for MPs to challenge the government. As Tamarkin (1978) notes, Kenyan MPs have always shown a marked inclination to engage in business where government assistance is useful. MPs therefore remained compliant to the regime in power (Hakes, 1972). The five academicians and the five members of civil society interviewed noted that political patronage weakened MPs in undertaking of core functions.

Due to limited parliamentary independence in the one-party state, almost all important pieces of legislation desired by the executive were enacted and often hastily, notwithstanding the fact that nearly all this legislation further concentrated power in the person of the president away from parliament. Among such legislation was the Detention Act mentioned above. This Act was passed on 2<sup>nd</sup> June 1966 with 74 votes to nil on the third reading (The National Assembly, House of Representatives, Official Report, 2<sup>nd</sup> June 1966, Col.330). The 15<sup>th</sup> amendment act was drafted by the AG Charles Njonjo in one afternoon and given presidential assent in total regard of required procedures. The 19<sup>th</sup> Amendment Act was passed unanimously with parliamentarians voting 158 to nil on the second reading (The National Assembly, Official Report, 9<sup>th</sup> June 1982, Col.85). In these entire acts, parliament dispensed with the fourteen days publication period as was required by the SOs (Amutabi, 2009).

Cabinet ministers who failed to support the government's position faced consequences such as dismissal. A case in point is the parliamentary

report on Josiah Mwangi (J.M) Kariuki's murder in March 1975. The Select Committee formed was chaired by Elijah Mwangale, MP for Bungoma East, whereas Mark Mwithaga MP for Nakuru, served as the Vice-Chairman. Upon completion of the report, Mwangale called on parliament to adopt the Select Committees' report in total. However the AG Charles Njonjo, a government representative put fourth an amendment on Mwangale's report requiring parliament to sanction the use of the report in a court of law should the issue lead to prosecutions. Njonjo's amendment bill was defeated and Mwangale's report was adopted (The National Assembly, Official Report, 3<sup>rd</sup> June 1975, Col. 200). Hours after the vote, three cabinet members were sacked for voting against the government. They were Masinde Muliro, Minister for Works and MP for Kitale East, His assistant John Keen and MP for Kajiado North, and Peter Kibisu, assistant minister for Labour and MP for Vihiga (Ng'weno, 2007). Consequently, their political stars and profiles waned.

The one party-state fused the presidency with the party chairmanship. This was a hindrance to democracy. This was because it gave leeway to the presidents and members of their inner cycle's considerable scope for manipulation, since the only avenue for political recruitment was through KANU. Mueller (1973) contends that in a democratic society, it is essential that party politics are separated from the administration of the country to facilitate accountability of those in power. The fusion therefore was a violation of the principle of separation of powers since the executive was synonymous with KANU. This impacted negatively on political recruitment to parliament

hence undermining the development of the legislature into an autonomous and powerful branch of government (Gertzel (1969). Barkan (2009) contends that the development of parliament into an autonomous institution is determined by free and fair elections among other factors.

The 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> 11<sup>th</sup> and 15<sup>th</sup> amendments mentioned above also had a negative impact on political recruitment. The passage of the 11<sup>th</sup> amendment in particular gave the president power to control the electoral process. Consequently, political dissidents were often denied access to parliament. For instance, in 1977 the Nandi KANU Branch rigged out Jean Marie Seroney, an outspoken government critic. KANU was also used to prevent Jaramogi Odinga from recapturing a place in parliament in the 1974 general elections, after his release from detention (Mueller, 1984). The dominance of the presidency on the political scene was further entrenched after the passage of the 19<sup>th</sup> amendment mentioned above. President Moi declared the party was supreme over parliament and the High Court (Weekly Review, November 21<sup>st</sup>, 1986 P. 9). The candidature of the parliamentary elections was vetted by KANU and only those who were loyal to the president survived. Diversity of opinion was seen as undermining the presidency (Amutabi, 2009).

Due to intolerance during the period, party suspensions and expulsions became common especially after the attempted coup of 1982. Among the expelled were George Anyona on 20<sup>th</sup> May 1982 when together with Jaramogi Odinga, they attempted to register an opposition party. Martin Shikuku and Masinde Muliro in August 1991 when they also attempted to register an

opposition party and Maina Wanjigi, MP for Kamkunji constituency in June 1991 for protesting against the inhuman manner in which the *Mworoto* slum in his constituency had been demolished. Due to the fear of being locked out of the political system, independent minded MPs had to toe the party line for political survival (Ng'weno, 2007). This jeopardized parliamentary independence due to constricted political space.

Regionalism and bicameralism enshrined in the independence constitution were designed to limit executive power as noted. However the regions were systematically abolished through the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> amendments. This denied citizen participation in government. The bicameral legislature was significant in the passage of quality legislation. For instance, budgetary oversight and some legislation required the approval of both houses. The abolition of the Senate also led to limited debate in parliament on crucial national issues (Hakes, 1972). After the creation of a unicameral parliament the AG, a government appointee, became responsible for drafting bills until 2008 (Barkan, 2009). Thus, initiation of bills and subsequent legislation for a long time was purely a government preserve. The result was control of content, a lack of legislative drafting capacity among MPs and stifling of most private members' bills during the one-party era (Kirui, 2012). The Hansard confirms that there was only one private-member's bill enacted into legislation, the Hire Purchase Act introduced by J.M. Kariuki (Hire Purchase Act, No. 42 of 1968). The data collected for this study indicates that ninety-nine percent of the respondents; MPs, academicians and members of the civil

society strongly agree that the AG's role in the drafting legislation during the one-party era largely reflected the wishes of the executive and other vested interests. It is worth noting that the constitutional amendment that removed the security of tenure of the AG mentioned above further ensured that the executive's vested interests in the legislature were protected (Barkan, 2009).

The executive used the detention without trial act mentioned above to undermine parliamentary independence. Even though this act became a legitimate exercise of presidential powers after its passage, it was a problem as it was used to silence those who constantly criticized the government in parliament (Ng'weno, 2007). This violated the provisions of parliamentary powers and privileges that law had granted to MPs and parliamentary committees. This statute was significant in protecting MPs from certain court proceedings such as utterances made in the House, arrest for civil debt and protection for those who produce parliamentary reports (Section 1 of the National Assembly Powers and Privileges Act). The act was first used on KPU members, Jaramogi Oginga and Ochieng Aneko among others in 1966. Later, it was used on MPs for contributions made in the House (Amutabi, 2010).

The detention act was used on Martin Shikuku, MP for Butere and Jean-Marie Seroney, Deputy Speaker of the National Assembly. The two were detained on October 15<sup>th</sup> 1975. This followed an assertion on the floor of parliament to the effect that KANU was dead as it had failed to abide by the ideals that brought it to power at independence. Seroney ruled in favor of Shikuku that indeed KANU was dead (National Assembly, 9<sup>th</sup> October 1975,

Col. 1303). Philomena Chelegat Mutai, MP for Eldoret North, was also arrested and detained for voting against the passage of the 15<sup>th</sup> amendment noted above (Ng'weno, 2007). It was passed with 158 votes to 2 (The National Assembly, Official Report, 9<sup>th</sup> October 1975 Col. 2008). The other dissenter in the division was George Anyona, MP for Kitutu East.

Anyona was detained on 4<sup>th</sup> May 1976 following his allegation in parliament that the AG, Charles Njonjo, the Minister of Information, Power and Communication, Isaac Omollo Okero, and the resident British High Commissioner in Kenya had influenced the cancelation of a tender for supply of equipment worth Kshs. 50million to Kenya Railways. He alleged that this was because a British firm had failed to win the tender. He later drafted a freelance motion asking parliament to investigate if corruption had taken place on 3<sup>rd</sup> May 1976 (The National Assembly, Official Report, 3<sup>rd</sup> May 1976, Col. 289). The motion was never debated since Anyona was already in detention (Ng'weno, 2007).

In addition to detentions, there were selective arrests based on contributions made in parliament. Mark Mwithaga who served as Vice-Chairman in the J.M. Kariuki probe mentioned above was arrested for tabling the motion that led to the formation of the Select Committee. In June 1975 the election petition filed against Mwithaga was allowed. In August 1975 he was arrested while campaigning to defend his seat. He was accused of assaulting his former wife Jane Njeri and for destroying her property, an offense allegedly committed twenty months earlier. Jane Njeri's plea to have the

matter settled out of court was ignored. On the eve of polling day he was found guilty and sentenced to two years imprisonment (Amutabi, 2010).

In February 1977 Jesse Gachago MP for Makuyu and Godfrey Muhuri Muchiri MP for Bahati were charged for stealing five-hundred bags of coffee in transit from Uganda to Mombasa. Both MPs had taken defying positions on the J.M Kariuki murder issue in parliament. Gachago was a member of the Select Committee that investigated the murder and Muchiri spoke against the AG's attempt to water down the impact of the Select Committee's report. Indeed, during the period many prominent people took part in the lucrative coffee trade but only the two were convicted and jailed (Ng'weno, 2007). Additionally, Waruru Kanja, assistant minister for local government when in parliament asked the government to name J.M Kariuki's and Tom Mboya's killers. The next day he was relieved of his ministerial duties by the president and in June 1980 he was taken to court and charged with contravening foreign exchange regulations. Three months later he was convicted and sentenced to three years imprisonment (Amutabi, 2010). These examples indicate the possibility that this was the government's way of clamping down on dissidents. This undermined parliamentary independence.

Other than amendments to the independence constitution, there were certain provisions in the republican constitution that undermined parliamentary independence. The republican constitution made parliament a department within the executive (Section 45 of the Constitution). This was the case until 1998 when the Parliamentary Service Commission (PSC) was

established. This violated the principle of separation of powers which upholds parliamentary independence as noted in chapter 2. Parliament was dependent on the executive for recruitment of its own staff, its budget and salaries for MPs. For MPs to discharge their functions independently they must assume authority over existing staff, they require resources physical, human and financial to be effective. This includes office and meeting space both in the capital and at constituency level. Parliament also requires a strong committee system to aid their legislative, representation, and oversight capacity. This help uphold parliamentary independence (Rosenthal, 1981).

The executive, however, denied adequate resources both to the legislature as an institution, and to the individual MPs so as to keep executive monopoly on power (Barkan, 2009). This undermined parliamentary sovereignty. Further, the constitutional power to prorogue and to dissolve parliament at will as noted above and to call for new elections allowed executive to interfere with parliamentary independence. Parliament did not control its own calendar. Instead the president as head of the executive determined the life of parliament, set up its calendar and influenced its decisions (Johnson, 2009).

There were instances when this power to control parliament was abused by the executive branch. For instance, to forestall further defections from KANU to KPU in 1966, President Kenyatta recalled parliament from its Easter recess and the 5<sup>th</sup> amendment bill mentioned above was passed. Again during the 3<sup>rd</sup> Parliament in December 1974, backbenchers proposed to have

Jean-Marie Seroney as deputy speaker. The government did not approve of him. Indeed, earlier in 1969 Seroney had written the 'Nandi Declaration Document' in which he bitterly attacked the encroachment of non-Kalenjin settlers into Nandi Hills (Ng'weno, 2007). President Kenyatta prorogued parliament when the government failed to have its way (The National Assembly, Official Report, 9<sup>th</sup> December 1974 Col. 1620).

In July 1983 President Moi dissolved the 4<sup>th</sup> Parliament earlier after the attempted coup of 1982, to ensure only MPs loyal to him were elected in parliament. This also happened during the Sixth Parliament when on 28<sup>th</sup> October 1992 President Moi dissolved parliament five months to pave way for multiparty elections (Parliamentary Reporting Booklet, 2009). This demonstrates the presidents' unfettered dissolution powers used to undermine parliamentary sovereignty.

In addition, Section 48 of the old Kenyan Constitution heavily concentrated the 'power of the purse' in the executive. It provided that only the executive through the Minister of Finance could originate legislation on Money Bills. Therefore parliament could not propose charges on the consolidated fund neither could it propose new taxations. According to Makau and Njuguna (2009) this provision was a major impediment to parliament's budgetary oversight role. Barkan (2009) contends that the provision blocked parliament from initiating legislation in many areas of public policy. This was compounded further by inadequate time allocated for budget scrutiny. Indeed the role of parliament in financial management was clearly outlined in Section

99 through to Section 103 of the old Constitution. For instance, Section 99 empowered parliament to authorize withdrawal of funds from the consolidated fund before 30<sup>th</sup> June each year. The budget was expected to be deliberated upon by the Committees of the whole House. These were the Committee of Ways and Means which looked into taxation proposals and the Committee for Supply which looked into expenditure (Njuguna and Makau, 2009).

The Committee of Ways and Means was given only seven days since the SO 135 of 1967 edition provided that the budget was to be laid before the House on or before the 20<sup>th</sup> of June every year. With regard to the Committee for Supply, the SO 144 (6) of 1967 edition provided for 20 days, before 31<sup>st</sup> October each year. Each vote was to be given a maximum of two days and any vote which would not be debated would be passed as a block on the 20<sup>th</sup> day, not later than October 31<sup>st</sup> in a procedure referred to as guillotine. Over the years the House had practically debated only around ten (10) ministerial votes. Consequently, there are ministries whose estimates may not have ever been subjected to closer scrutiny by MPs (Transparency International, 2010).

A former MP, the author interviewed, lamented that voluminous books were presented before parliament only hours before the minister read his budget speech. There was no evidence that parliament ever adjusted the budget proposal for any ministry; even for the two days provided for each vote. Thus, parliament continually approved and signed documents while the executive took charge in terms of expenditure (Njuguna and Makau, 2009). Out of the sixty-eight MPs interviewed ninety-seven percent ascertained that

their role in the budget process during the one-party era was ritualistic as a good number of them had inadequate skills to engage the relevant minister meaningfully.

The data the author collected revealed that Kenyan MPs faced a number of challenges throughout the one-party state as shown below.

**Table 3.1: Challenges of MPs in the one-party state**

| <b>Challenges</b>                       | <b>MPs</b> | <b>Percentages</b> |
|---|------------|--------------------|
| Intolerant regimes                      | 20         | 29.5%              |
| Politics of patronage                   | 19         | 27.9%              |
| Unrealistic expectation of constituents | 18         | 26.4%              |
| Poor physical facilities                | 6          | 8.8%               |
| Inadequate competent staff              | 5          | 7.4%               |
| <b>TOTALS</b>                           | <b>68</b>  | <b>100%</b>        |

Out of the sixty-eight MPs' sampled, 20 (29.5%) strongly agreed that the one-party era, both under Presidents Kenyatta and Moi was highly intolerant of dissenting views. This was seen in the arrest, detention or assassination of political opponents or in permanent destruction of their political careers. 19 (27.9%) felt that politics of patronage weighed heavily on legislators. 18 (26.4%) abhorred the unrealistic expectations of constituents. The constituents over the years expected MPs to solve their personal problems. Thus the electorate wrongly judged MPs on their ability to 'deliver' development. Six (8.8%) respondents felt that physical facilities such as offices were inadequate. Five (7.4%) respondents observed that there were inadequate competent staffs to help MPs in their functions.

### **3.5 Summary and Conclusion**

What emerges is that the post-colonial state turned into an institution with unfettered powers. Parliament that was ideally meant to check the executive was weakened in power. It is against this background that the second liberation emerged in the post-cold war era. There was hope that the opening of democratic space would lead to transformation in the political, economic and social realms. The next chapter examines subsequent political developments that sought to restore parliamentary independence among other democratic goals.

## **CHAPTER FOUR**

### **POLITICAL REFORMS AND PARLIAMENTARY INDEPENDENCE**

#### **4.0 Introduction**

The preceding chapter discussed how the one-party state violated the principle of separation of powers leading to the dominance of a powerful presidency. Consequently, the Kenyan parliament exhibited very little autonomy. However, from 1990 Africa was swept by a wave of democratization popularly termed as the 'second liberation'. As noted in chapter one, this was influenced by a number of factors, both internal and external. This included the end of the cold war, the collapse of the Soviet Union, and bad governance among other factors. In addition, financial aid from Western countries to African countries was tied to the latter's human rights record and commitment to democratic reform. The most significant pressure for democratic reform however came from Africa's civil society itself. Churches, trade unions, professional bodies and even individuals pressured their governments to embrace democratic ideals (Ihonvbere, 1998). Kenya, like most African countries was forced to allow multiparty politics in December 1991 (Barkan, 2009).

Multiparty politics therefore brought hope for a new political, economic and social order and a transparent and accountable government in Kenya. In addition to multiparty politics, key political reforms were undertaken aimed at upholding parliamentary independence. They included the establishment of the Parliamentary Service Commission (PSC) in 1999 and

the promulgation of a new constitutional dispensation in August, 2010. There were a lot of expectations that reforms would empower Kenyan parliamentarians to effectively discharge their mandate. However, even with these reforms there were political and socio-economic factors that negatively impacted on parliamentary independence. This chapter interrogates whether political reforms necessarily translated into an independent and effective parliament.

#### **4.1 Political Reforms and Developments in the Kenyan Parliament, (1992-2010)**

The period between 1992 and 2010 witnessed major political reforms in Kenya. This period begun with the repeal of Section 2A. However, after the first multiparty elections in 1992 that ushered in the 7<sup>th</sup> Parliament (1993-1997), reformers within parliament realized that the mere repeal of Section 2A was not enough to ensure a responsible and accountable government. The reformers therefore intensified calls for a constitutional review to anchor the new multiparty system upon a sound constitutional foundation (Ndegwa, 1998). As it emerged, President Moi was not committed to upholding democratic ideals. Throup and Hornsby (1998) point out that the multiparty elections in 1992 were neither free nor fair and produced a substantial KANU majority in parliament. President Moi used the Provincial Administration to harass members of opposition political parties. Ndegwa (1998) notes that during the campaign period, out of the twenty-one meetings denied permits, twenty (95%) were for opposition parties.

President Moi also undertook strategies that undermined competitive politics. Indeed, seven parties were represented in parliament after the 1992 elections. They were KANU, which had a majority number of MPs, the Forum for the Restoration of Democracy in Kenya (FORD-K), the Forum for the Restoration of Democracy-Asili (FORD-A), the Democratic Party (DP), the Kenya National Congress (KNC), the Party for Independent Candidates of Kenya (PICK), and the National Development Party of Kenya (NDPK). President Moi undermined the opposition by urging opposition MPs to defect to KANU. Some of the MPs who defected included Apili Wawire, MP for Lugari, and Japheth Shamalla, MP for Ikolomani, who were both elected on a FORD-A ticket. Protus Momanyi, MP for Bobasi, who was elected on a DP ticket followed suit. By the time of the dissolution of the 7<sup>th</sup> Parliament in November 1997, there were a total of 14 defections from the opposition to KANU. Opposition MPs who defected were rewarded financially or were given cabinet positions (Amutabi, 2010).

Due to the defections, between 1993 and 1997, the parliamentary business in Kenya suffered many disruptions. For instance, the defections resulted in the change of leader of opposition in parliament. The leader of Ford-A party Kenneth Matiba was the leader of opposition at the time of convening of parliament, but after a year, his party lost many MPs to KANU. Matiba was replaced by Ford-K's Oginga Odinga as leader of opposition because Ford-K had the second largest number of MPs in the house after KANU (Ajulu, 1998).

Other than defections, President Moi also used cooperation and cooptation strategies with opposition parties in order to strengthen KANU's majority in parliament. For instance, Jaramogi Oginga Odinga, leader of FORD-K entered into cooperation with KANU in 1993, a year after the first multiparty elections (Sihanya, 2009). This co-operation was later enhanced by Raila Odinga under the National Development Party (NDP) who was appointed to the plum position of Minister for Energy (Khamisi, 2011). This undermined parliamentary independence since a significant number of legislators were compromised. The new constitution however, provides an opportunity for professionals to provide expertise for each ministry (Chapter 9, Part 3, Constitution of Kenya 2010).

President Moi also undermined parliamentary independence through the offices of the Speaker and the Clerk. Although the speakership became an elected position after the return of multiparty politics, KANU's dominance under Moi used the speaker's position to undermine parliamentary independence. During the 7<sup>th</sup> Parliament the speaker slowed down reform proposals as well as donor efforts to support them. The same approach to reform was noticeable in the clerk's office. Being in charge of recruitment, development, and assignment of parliamentary staff, the clerk took a passive stance and did little to increase the number of quality staff that provide support to MPs. This power of the Speaker and the Clerk on parliamentary operations frustrated reformers within parliament (Barkan and Matiangi, 2009).

In September 1997, KANU and President Moi agreed to constitutional and legal reforms that would level the playing field for opposition parties. This was through the activism of the National Convention Executive Council (NCEC) that represented a broad range of church-related and other civil society organizations. The constitutional reform occurred after the opposition disrupted the 1997 budget speech, by calling for political reforms. The chaos by MPs in the House received a lot of sympathy from the international community forcing KANU and Moi to negotiate with the opposition or face more international sanctions. At the time, Kenya was already under some form of sanctions by the World Bank and International Monetary Fund (IMF) (Cottrell and Ghai, 2007).

The mounting pressure led to the formation of the Inter-Parties Parliamentary Group (IPPG), in August 1997 that resulted in the Constitution of Kenya (Amendment) Act 1997. The IPPG however was composed of moderates whose interest was to avoid chaos in the country. Thus, IPPG pushed only for moderate reforms in electoral laws and only those demands that Moi and KANU were willing to accept. The IPPG recommendations were eventually drafted into Bills and passed by the House. The laws introduced legal reforms in the management of elections and abolished laws that curtailed democratization and restricted the opposition as noted in chapter one. Unfortunately, the IPPG reforms that took place two months before the 1997 elections were undermined by President Moi who retained power following

the general elections. Hence even with the IPPG reforms, Moi and KANU still had a huge advantage in the electoral process (Ajulu, 1998).

Forshee (2006) posits that despite the return of competitive politics, parliamentary independence and effectiveness did not improve immediately. This was because President Moi continued to use patronage positions to consolidate his position in power. This ensured that a significant number of the entire House was in government that enabled KANU to pass bills that it wanted and ditched those that did not serve its interests (Sihanya, 2009). In April 1998 Mr. Henry Obwocha MP for West Mugirango expressed concern that a number of MPs had taken up parastatal jobs (The National Assembly, Official Report, 7<sup>th</sup> April 1998, Col. 101).

Reforms that transformed parliament began in earnest after the 1997 IPPG reforms and after the 1997 general election. This was during the 8<sup>th</sup> Parliament (1997-2002). The reforms were aided by the civil society organizations support from several sources. For instance, the United States Agency for International Development (USAID) provided funds that were used to organize a number of workshops for MPs. The Institute for Economic Affairs (IEA) and the Institute of Certified Public Accounts were significant in helping MPs to understand the budgetary process. The Centre for Governance and Development (CGD) helped MPs in understanding their core functions, hence the need to develop capacity to perform them. The establishment of the eight Departmental Committees for the first time in 1998 was a significant milestone. The committees were important in empowering MPs to perform

their core functions of legislation, oversight and representation effectively (Forshee, 2006).

Johnson (2009) however observes that none of the committees were provided with adequate staff and few performed as intended during the 8<sup>th</sup> Parliament. He contends that even with this limitation, the foundation had been put in place for progress on committee systems in the 9<sup>th</sup> Parliament. Parliamentary reforms also involved refurbishment of the parliamentary library in order to aid research services for MPs. Computers, the Internet and international databanks were made available to MPs for their individual purposes. Office space was also provided for every MP both at the constituency level and in the city in order for them to interact with constituents (Johnson and Namukara, 2003). As noted in chapter one, parliamentary committees and physical facilities determine parliamentary independence.

The committee members were granted similar and adequate powers, privileges and immunities as those that prevailed for the House in the National Assembly (Powers and privileges) Act. Cap 6, Laws of Kenya. Such powers and privileges were conferred by the SO 173 of 1998. Consequently, committees had the legal empowerment to summon witnesses and to produce papers and records. Committees could also take legal action through the speaker on any person who declined to give evidence or declined to answer questions put to them terming the information confidential (Mukalla, 2001).

Another milestone passed by the 8<sup>th</sup> Parliament was the enactment of constitutional amendment N0. 3 of 1999. This led to the establishment of the

Parliamentary Service (PS) (Section 45A, Constitution of Kenya 2000) and the Parliamentary Service Commission (PSC) (Section 45B, Constitution of Kenya, 2000) respectively. The PS consisted of the Clerk and all staff working in the office of the Clerk. These amendments were significant in that they delinked parliament administratively from the executive. Most significant, they ensured that the terms and conditions of MPs and parliamentary staff, did not create vulnerabilities to corruption and executive allure. The PSC obtained power to control the PS offices, recruit its own staff and set terms including salaries for MPs. This laid the foundation for professionalization of parliamentary staff which was critical for increasing the effectiveness of parliament as well as its independence (Transparency International, 2010). Even though Section 58 and 59 (Constitution of Kenya, 1998) in regard to the power of the president to dissolve and prorogue parliament remained intact, parliament was recognized as an independent branch of government that exercised its powers independent of the executive (Forshee, 2006).

The 8<sup>th</sup> Parliament also passed the Salary Bill of 2000 that raised the monthly allowances of MPs from 79,033 to 177,033 while the basic salary was maintained at Kshs.10, 000. The bill also provided for MPs' sitting allowances at Kshs 5,000 in respect of every sitting of the National Assembly and in committees (Barkan, 2009). Even though this pay increase was controversial since the Kenyan economy was struggling, Opalo (2013) argues that this Bill contributed to parliamentary independence of MPs. It enabled MPs to take

independent positions on legislative matters with less fear of repercussions from the executive. Indeed better pay is one of the factors that determine parliamentary independence as noted in chapter one. Despite these milestones to empower parliament, Barkan and Matiangi (2009) contend that apart from the constitutional amendment that established the PSC, little legislation of substance was passed by the 8<sup>th</sup> Parliament. The two scholars linked the low performance to the struggle over a new constitution for Kenya that consumed much of parliamentarians' time.

The 9<sup>th</sup> Parliament (2003-2007) that commenced on 18<sup>th</sup> February, 2003 won the 2002 general election with nearly 70 percent of total votes cast (Ndegwa, 2003). The change of regime from KANU to the National Alliance Rainbow Coalition (NARC), under President Mwai Kibaki was a very significant milestone for Kenya. NARC was an alliance of the Democratic Party (DP), Ford-K, Ford-A, Liberal Democratic Party (LDP) and the National Party of Kenya (NPK). NARC heralded expectations that a new political era of democracy had dawned in Kenya. Indeed NARC promised a new constitutional dispensation within 100 days of their assumption of power. NARC also promised to ensure good governance and the elimination of corruption (Nasong'o and Murunga, 2007).

The NARC government had a parliamentary majority at 125 out of the 210 elected seats to KANU's 64 elected seats and 21 for other smaller parties (Opalo, 2013). The parliamentary majority of the NARC was expected to

ensure that the government pushed through their agenda that would lead to far reaching reforms in the country.

Indeed, the 9<sup>th</sup> Parliament passed some relevant and good bills. Among them was the Constituencies Development Fund Act (CDF) in 2003 (Act N0. 2003) and revised in 2007. The Act required the government to distribute 2.5% of the annual budget directly to each of Kenya's 210 parliamentary constituencies for the purpose of funding local development. This act sought to cushion MPs against financial strain due to electorate expectations in regard to constituency service and the *harambee* system. The one-party regime initiated *harambees* that required citizens to pool together resources in order to realize development of various projects. During any *harambee* event, the MP was a key figure required to contribute substantially toward development projects. The one-party regimes particularly encouraged voters to vote for politicians who delivered *maendeleo* (Throup and Hornsby, 1998).

The constituency service and *harambee* made Kenyan MPs extremely vulnerable hence easily compromised. Historically MPs had relied on the president to provide them with funds. This vulnerability was more so for the backbenchers who had no access to state coffers. The CDF fund thus freed MPs from the executive allure (Transparency International, 2010). All the sixty-eight MPs the author interviewed, who were either current or former lauded the devolved CDF fund. They stated that the Fund led to their increased independence from the executive since funds for development projects at the constituency level were guaranteed.

The 9<sup>th</sup> Parliament also passed the National Assembly Remuneration (Amendment) Act of 2003. The Act raised the basic monthly salary for MPs to Kshs. 200,000 and allowances to Kshs. 485,000. By 2008, MPs were earning a total of Kshs. 851,000. In regard to the budget-making, reforms such as the implementation of Medium Term Expenditure Framework (MTEF) in 2003/4 resulted in various public finance management reform measures that enhanced budget implementation, audit and oversight by the executive as well as parliament. Among the notable strategies included the launch of the Public Finance Management Reform Strategy (PERMS) and the National Integrated Monitoring and Evaluation Systems (NIMES) in 2007 (Njuguna and Makau, 2009).

In 2007 parliament passed the Political Parties Act (Cap 10 of 2007). The act provided for a framework for political parties regarding registration, funding, rights and obligations, operations, conflict and dispute resolution. MPs who defected from the party that sponsored them to parliament were required to communicate this to the Speaker in writing for fresh elections to be held (Transparency International, 2010). These were measures aimed at improving parliamentary independence.

The 9<sup>th</sup> Parliament was expected to perform better than its predecessor due to improved structures and incentives. However, their legislative output was considerably low, and absenteeism from parliamentary and committee sessions became a major problem especially towards the end of their parliamentary term. This was noted by the speaker Francis Ole Kaparo

(Barkan, 2009). This meant that parliamentary quorum of at least 30 MPs did not increase even with the sitting allowance noted above. Johnson (2009) also notes that this parliament did not make any constitutional input. He attributed this to the break-up of the NARC coalition in 2005 and the runner-up to the general elections in December 2007.

It is imperative to note that the 9<sup>th</sup> experienced a lot of internal fractionalization soon after the election. This was due to an alleged agreed pre-election pact between President Kibaki and other parties in the NARC coalition which he failed to honor (Cottrell and Ghai, 2007). Second, was his choice of the cabinet ministers. Almost half of the cabinet slots and indeed senior positions in the first NARC government went to members of his ethnic region. They included John Michuki, Chris Murungaru, Martha Karua, Amos Kimunya, Kiraitu Murungi and David Mwiraria. The wrangling intensified over the search for a new constitutional dispensation. Consequently, President Kibaki unilaterally dissolved NARC's constituent parties after the 2005 constitutional referendum when Raila Odinga's Orange Democratic Movement (ODM) defeated the new constitution proposed by Kibaki (Sihanya, 2009).

Thereafter, the ODM began a campaign to defeat Kibaki in the next presidential elections. President Kibaki campaigned for re-election as leader of the Party of National Unity (PNU) while Odinga campaigned as leader of ODM. Despite the ODM showing clear signs of winning the national elections, the Electoral Commission of Kenya (ECK) pronounced PNU as the

winner three days after the elections. This sparked violence from ODM supporters who attacked PNU supporters. Later PNU supporters retaliated by attacking ODM supporters (Cottrell and Ghai, 2007). By 2008, Kenya was on the brink of a civil war. About 1,500 people lost their lives while more than 300,000 were displaced. On 28<sup>th</sup> February 2008, however ODM and PNU signed a power sharing deal that recognized Kibaki as the president while Odinga became the Executive Prime Minister with substantial powers for running the government known as the “Grand coalition Government”. This deal was enforced by the Panel of African Eminent Personalities made up of Kofi Annan, Graca Marchel and Benjamin Mkapa. The deal resulted in a huge cabinet of 40 ministers and 54 assistant ministers (Branch and Cheeseman, 2008).

It is against this background that the 10<sup>th</sup> Parliament was constituted. For the first time in Kenya, the opposition ODM had a parliamentary majority of 99 seats compared to Kibaki’s 43. Kalonzo Musyoka’s ODM-Kenya party had 16 seats and KANU’s 14 seats. This parliament increased the number of parliamentary committees from eight to fourteen. It passed the Fiscal Management Bill in November 2008 which enhanced the MPs role in the budget making process further. This Bill presented an opportunity for parliament to actively and meaningfully engage the executive on budget proposals before they were finalized (Njuguna and Makau, 2009).

Most important, the 10<sup>th</sup> Parliament succeeded in passing a new constitution that came into effect in August 2010. The new constitution was

expected to help parliament effectively undertake its core functions. The new constitution upheld separation of powers by separating the functions of the national government and the county governments. The national government consists of the executive, parliament, and the judiciary that is exclusively charged with national government, policy and standards applied uniformly across the country. The functions of Senate and parliament are clearly spelt out focusing on legislation and oversight of the executive. The Senate has a link to the counties and senators are charged with national legislation that affects the counties. MPs have their roles cut out for them in the House Committees and in the national budget making process (Chapter 8, 9 and 10 respectively of Constitution of Kenya 2010).

Further the new constitution allows parliament to control its calendar (Part 2 of Chapter 8). There are no restrictions on the introduction of private member bills as was the case with previous parliaments (Part 3 of Chapter 8). It guarantees parliamentary powers, privileges and immunity in regard to debate in parliament and in the committees. In addition, both parliament and the Senate have power to summon any person to appear before them for purposes of giving evidence and providing information (Part 5 of Chapter 8). Parliament is empowered to develop committees, a complete departure from the past when nearly all matters were addressed in plenary on the floor of the house (Part 5 of Chapter 8). The institution has adequate autonomy and is in control of its own budget (Part 6 of Chapter 8).

The institutional capacity of parliament was further enhanced through the hiring of legal drafters (previously the House relied on the attorney general to draft bills) (Barkan, 2009). The Parliamentary Budget Office was established to assist members with their oversight duties relating to the budget and overall public finance management. These measures were expected to further increase parliamentary independence. It is in this context of a relatively strong and still evolving institution that the 2013 general elections took place. The elections ushered in the re-establishment of the bicameral legislature with a 349-member National Assembly and a 67-member Senate. Members of the National Assembly (MNAs) were elected from 290 constituencies and the 47 counties (women representatives), and 12 nominated proportionately by political parties in proportion to their parliamentary strength. Senators were elected from each of the 47 counties and an additional 20 proportionately nominated by political parties to represent special interest groups, including 16 women, two youth and two persons with disabilities. The 11<sup>th</sup> Parliament was constituted as the strongest in Kenya's history (Opalo, 2013).

From the foregoing, it is evident that the legislative empowerment in Kenya was a long process that begun after the opening of democratic space. The reforms were aimed at making parliament independent in the discharge of its functions. The development of the Kenyan parliament is well advanced though still evolving. The question however is: have the benefits from the above reform process been fully realized? After evaluating political reforms

aimed at strengthening parliament, the next section analyses the impact of these reforms on parliamentary independence.

#### **4.2 The Impact of Political Reforms on Parliamentary Independence**

The establishment of the above committees indeed increased parliamentary independence. This independence was noticed beginning from the 9<sup>th</sup> Parliament. Forshee (2006) notes that a significant number of MPs became increasingly engaged in the functions performed collectively. Indeed the Kombo Report on Select Committees, (2001) confirms that after the first reading, bills were referred to the relevant Departmental Committee for thorough scrutiny, after which the committees made reports to the House. Forshee (2006) further observes that this practice gave parliament unprecedented potential to reshape or even block executive legislation as chairmen and members learned their roles. In some cases, MPs took the initiative on policy issues away from government. Even committee members from the ruling party KANU who had been appointed by the president challenged the government and acted independently. Johnson (2009) remarks that by 2001 there were many committee sittings (over 250) more than ever before. Some committee members travelled outside Nairobi to meet stakeholders affected by legislation under their consideration. Hours for plenary sessions had been increased at the end of the year to allow the House to consider committee reports.

The output of the Agricultural, Health, and Finance Committees were particularly commendable during this period. The Agriculture Committee

submitted extensive legislative proposals on coffee and sugar in 2001 which became the Coffee Act 2001 and Sugar Act 2001 respectively. The Sugar Bill shifted authority for the sector to sugar farmers and increased speed of payments among other benefits. The Coffee Bill also gave coffee growers authority over their sector. The Health Committee initiated amendments to the Children's Bill's where members proposed 23 amendments and 22 were taken over by the minister. The Finance Committee successfully discussed the Financial Statement and Tax Proposals where 38 amendments were proposed and the government accepted 65% of the changes recommended. Significantly, the amendments reduced import duties on a number of items. It is also important to note that the Chairman of the Finance Committee then was also chief whip for the government (Johnson and Nakamura, 2003).

The MPs also improved their legislative and oversight of the executive branch through the two "watchdog committees" PAC and PIC. This also increased parliamentary independence. The PAC committee which relies on the reports from the Controller and Auditor General was able to bring the audits of annual expenditures up to date. Previously parliament handled reports of Controller and Auditor General which were three years old and by then money had already been stolen. It was this timeliness of information that enabled PAC to call attention to the Anglo-Leasing scandal in 2004 (Transparency International, 2010). This again was during the 9<sup>th</sup> Parliament.

The scandal is alleged to have started in 2002 when the government wanted to replace its passport printing equipment. Sophisticated passport

equipment was sourced from France and forensic science laboratories for police were sourced from Britain. The transaction was originally quoted at 6million Euros from a French firm but was awarded to a British Firm Anglo-Leasing Finance that had quoted 30million Euros. The tender was not publicly advertised. The scandal revealed that the government had allegedly paid out millions of shillings to companies that did not exist, for the provision of passports printing equipment and construction of a forensic laboratory for the police (Center for Democracy Report, 2009). The exposure of the scandal was a sign of genuine check by parliament on the activities of the executive before more losses could occur (Mar Group, 2007). Even though the government launched investigations into the Anglo-leasing scandal, it has never been resolved since it emerged.

Even with reforms, questions still arose with regard to parliament's ability to discharge its budgetary oversight mandate independently and effectively. Indeed, there were some unprocedural expenditures and scandals. This suggested that there was need for parliament to strengthen its budgetary oversight role further, to ensure that all funds allocated were spend as intended. For instance, in April 2003 Ms. Margaret Gachara, head of National Aids Control Council (NACC) had been receiving a salary that was seven times the stipulated amount. Further investigations revealed that NACC could not account for Kshs. 37.3 million (Njuguna and Makau, 2009). In the 2004/2005 financial year a review of the Controller and Auditor General's

reports showed that Kshs. 127,435,445.45 was incurred by the executive without parliament's approval (Auditor General Report, 2004/2005)

The Ken-Ren fertilizer scandal that emerged in September 2006 revealed that the government was paying loans to a factory that had not been built since its first conception in the 1970s. In 1970, there was an agreement to enter into a joint venture with an American company to establish a fertilizer processing plant in Mombasa, Ken-Ren Chemical and Fertilizer Company. The government was to be a shareholder and a guarantor for the factory but the deal collapsed. Parliament however took no action to establish why loan repayments to Ken-Ren of over 4.3 billion were being made in 2007 (Center for Democracy, 2009).

A former MP I interviewed disclosed that, MPs' capacity to engage meaningfully in the budget process was still worrying. The MP argued that the fact that the parliamentary budgetary staff was quite lean compounded the problem further. The revelation by an anti-corruption lobby group, Mars Group in 2009 during the 10<sup>th</sup> Parliament illustrates this view. Mars Group revealed discrepancies amounting to Kshs. 9 billion in supplementary budget estimates that had been passed by parliament on 29<sup>th</sup> of April 2009. The budget was presented by Deputy Prime Minister and Minister for Finance, Uhuru Kenyatta. The discrepancies were caused by bloating of budget lines leading to an overestimation of the budget by the said figures (National Assembly, Official Report, Wednesday 29<sup>th</sup> April, 2009, Col. 1). Various answers were elicited from MPs when asked about their competence in

budgetary oversight. Out of the sixty-eight MPs interviewed, fifty-seven (83.8%) noted that some MPs assigned to the Budget Committee lacked requisite knowledge and experience to discharge the function effectively. Eleven (16.2%) noted that budget oversight by parliament needed continuous strengthening for effectiveness.

This study revealed that MPs faced a number of challenges in the established committees. MPs require adequate information from the government and relevant departments to effectively discharge their oversight function. However, the required information was sometimes unavailable. Indeed, the Kombo Report (2001) pointed out that one of the biggest problems of committee members was lack of adequate information to perform their roles. He contends that the problem was exacerbated by the fact that the executive branch had access to superior information and often refused to share it especially when it reflected poorly on the executive. Further, committees still faced challenges in terms of inadequate facilities and professional staff. This view was affirmed by Omino (2001). MPs I interviewed confirmed these challenges as shown in the table 5.1 below:

**Table 4.1: Challenges facing departmental committees**

| <b>Challenges</b>  | <b>MPs</b> | <b>Percentages</b> |
|--|------------|--------------------|
| Inadequate professional staffs                                   | 22         | 32.4%              |
| Inadequate workshops and empowerment programs                    | 17         | 25%                |
| Inadequate capacity in their legislative and oversight functions | 17         | 25%                |
| Inadequate facilities such as meeting rooms and computers        | 12         | 17.6%              |
| <b>TOTAL</b>   | <b>68</b>  | <b>100</b>         |

**Source: Tabulated by Author**

Out of the sixty-eight MPs interviewed, twenty-two (32.4%) noted that some committee staff were not professional leading to incompetently done committee reports and research. This problem was compounded by the lack of stability in committees due to a high turnover. Seventeen (25%) noted that MPs needed more workshops and empowerment programs. However, a member of the civil society I interviewed noted that some MPs failed to realize their role as public servants as some abused resources provided when workshops were organized for them. Some demanded that the workshops be held in prestigious places. Others were not committed to the proceedings in the workshops yet demanded to be paid sitting allowances similar to those paid in parliament. The member however commended and appreciated some of the legislators who were active during such sessions and presented informative papers as well. Seventeen (25%) noted that there was room for parliament to get better information. For instance they noted that the Parliamentary Research Division as it stood was not designed to aid MPs in their legislative roles as should be the case, like in developed countries. The MPs added that some roles in committees needed expertise to discharge effectively yet members were thrown into a committee without consideration of their background and experience. Twelve (17.6%) cited inadequate meeting rooms and computers as the main challenge.

The timeliness of parliamentary reports and timely response of the executive on reports presented another challenge to parliament. Oftentimes

parliament undertook post-mortem scrutiny of past issues rather than current issues. The executive sometimes took long periods to implement or even respond to the committee's recommendations or even ignored their reports altogether (Omino and Kombo, 2001).

The irregular sale of the Grand Regency Hotel (now Laico Hotel) by the Minister of Finance, Amos Kimunya in 2008 during the 10<sup>th</sup> Parliament illustrates this claim. The minister had earlier indicated to parliament that the hotel was still in government possession but later confirmed to parliament that the hotel had been sold to the Libyan government at a cost of Kshs 2.9billion. It was valued at between Kshs 6-7.5billion. The minister ignored the advice of the Finance, Tourism and Trade parliamentary committees to halt any further transaction. When summoned by the committees, the minister failed to show up or even give an explanation (Center for Democracy Report, 2009).

In the maize scandal of January 2009, it was reported that maize to cushion Kenyans against rising food prices and looming shortage had been allocated to individual millers and companies. The government officials colluded with senior government officials where Kshs800million was allegedly lost in the fraud. It was alleged that this maize was to be sold to Southern Sudan at higher prices. No action was taken against the Minister of Agriculture William Ruto since a censure motion against him was defeated. During the same period, the Triton Petroleum scandal also emerged. It involved the Kenya Pipeline Company (KPC) and the Triton Petroleum Company Limited of businessman Yagnesh Devani. About 30 million liters of

petroleum that the KPC was supposedly holding for Triton disappeared. Devani was financed by the Kenya Commercial Bank. As it appeared, Triton was being favored since it was allowed storage facilities way above what they actually needed at KPC importation facilities (ibid). There was speculation that this was intended to cause storage problems and hence delays that would have created artificial fuel shortage, pushing up oil prices and other prices. Even though the CEO of KPC was dismissed as the Prime Minister, Raila Odinga recommended, not much was done to deal with the main culprits in the scandal. In parliament, the scandal was reduced to a political exchange between PNU and ODM as PNU MPs were to protect the Agriculture minister mentioned above from a censor motion while ODM protected the energy minister (Mars Group, 2007).

Another factor that undermined parliamentary independence is politics of self-interest and self-preservation. Rosenthal (1981) observes that at an individual level, legislators are concerned about their re-election prospects, their career, power and prestige. Thus MPs undertake actions that may further their political careers. An example is the cooperation and cooptation strategies that opposition parties have used to engage with the government in power as already discussed.

During the 9<sup>th</sup> Parliament, in 2005 President Kibaki co-opted members from the opposition parties in government after the breakup of NARC party. These were Simoen Nyachae, Ford People party leader, Njenga Karume and John Koech both from KANU (Sihanya, 2009). The 11<sup>th</sup> Parliament under the

Jubilee government took the same measures soon after it came to power in April 2013. It signed post-election pacts with several opposition parties such as the New Ford Kenya, Alliance Party of Kenya, Ford People, Chama Cha Uzalendo and KANU. Deputy President elect William Ruto praised these parties pointing out that Jubilee would have majority seats in parliament of at least 212 out of a total of 349 (Daily Nation Tuesday, 26<sup>th</sup> March, 2013, P. 4). It is clear that the ruling party benefits by enhancing its parliamentary strength. This advantage is illustrated by the defeat of the censure motion against former Vice President George Saitoti during the 8<sup>th</sup> Parliament. Saitoti had been implicated in Goldenberg scandal where non-existent gold was allegedly exported from Kenya. The government lost at least Kshs1.5 billion in the scandal. The motion was defeated through concerted efforts of NDP and KANU (Transparency International, 2010).

The Jubilee government also benefited through the passage of two controversial bills, the Kenya Information and Communications (Amendment) Bill 2013 and Security Laws (Amendment) Bill 2014. The first bill proposed the creation of a government controlled tribunal to punish journalists and media houses for their reporting. This bill severely restricted press freedom and breached the constitutional protections granted to journalists. The Bill retained the Kshs20million fine against media Houses proposed by MPs (Daily Nation, Friday 6<sup>th</sup> December, 2013, P. 2).

The passage of second bill was unconstitutional since the senate was excluded. Jubilee MPs used their numerical strength in parliament to pass the

law that was to give President Kenyatta power to sack non-performing security bosses. It would take away protected rights by authorizing police to detain suspects for longer periods and to charge people merely on suspicion. The bill was to curtail the right to privacy by allowing phone tapping which could easily be misused. It required the media to publish pictures of terror victims only with permission from the police. The bill was signed into law the following day (Daily Nation, Friday 12<sup>th</sup> December, 2014, P. 5). Indeed President Kenyatta had supported the bill even before it was passed by parliament (Daily Nation, Wednesday 10<sup>th</sup> December, 2014, P. 8). This insinuated that MPs allied to the ruling Jubilee government were under pressure from the executive to pass the law. The co-opting strategy has often weakened the opposition that has always been outnumbered. This has made genuine check on the executive difficult. This hinders parliamentary independence since a significant number of legislators are compromised.

The issue of re-election mentioned is also closely linked with campaign finance. Indeed, money matters for democracy because much of democratic political activity could not occur without it (Rosenthal, 1981). Before the political parties fund act was enacted in 2007 candidates were required to contribute significant amounts to the party's election fund and also to pay for their individual campaign. This aspect made politics in Kenya a rich man's game and elected representatives accumulated necessary funds to pay for the next election by accepting bribes (Amutabi, 2009).

Corruption allegations in parliament have been made in regard to votes on crucial bills, censor motions and adoption of committee reports (Transparency International, 2010). Johnson (2009) contends that Kenyan MPs had been ignored in regard to their legislative role for many years. After reforms to strengthen parliament as noted above, external sources took notice of the growing independence of MPs. This ushered in a new phase where lobbyists sought to influence legislators directly. For instance, during the 8<sup>th</sup> Parliament, lobbying was highly reported at the behest of banks on the **Donde Bill** that was passed on 5<sup>th</sup> December 2000. This bill advocated for fixed interest rates to be charged by commercial banks on borrowing, following a public outcry that the lending rates were too high (Kihoro, 2007). Lobbying was also highly reported before the National Health Insurance Fund Bill passed on 10<sup>th</sup> December 2004 during the 9<sup>th</sup> Parliament. This bill introduced by the Minister for Health Charity Ngilu sought provision for universal insurance cover for all Kenyans (Mars Group Report, 2007).

An MP interviewed, however, argued that there was no harm in lobbying for bills as long as money was not involved. According to the MP, lobbying was the best way to ensure that bills made it through parliament. The **Legisconsult**, a registered lobby firm in Kenya was established to represent the interests of clients before parliament (Johnson and Nakamura, 2003). However a former speaker, the author interviewed alleged that there was massive corruption in parliament when voting on crucial bills, censor motions and the adoption of key committee reports. The censure motion mentioned

above against George Saitoti illustrates corruption allegations. However, the fact that some MPs especially from the opposition voted against the motion and against their parties and against public expectation, raised suspicion that there were other considerations. There was a claim that MPs were bribed to vote against the motion in parliament (Transparency International, 2010).

MPs the author interviewed admitted that there were a number of factors that affected voting in parliament.

**Table 4.2: Factors Affecting Voting Pattern**

| <b>Factors influencing the voting pattern</b> | <b>MPs</b> | <b>Percentages</b> |
|---|------------|--------------------|
| Bribery                                       | 21         | 30.8%              |
| Personal interests                            | 15         | 22.5%              |
| Party loyalty                                 | 12         | 17.6%              |
| Ethnicity                                     | 12         | 17.6%              |
| Business cartels                              | 8          | 11.5%              |
| <b>TOTALS</b>                                 | <b>68</b>  | <b>100</b>         |

Of the sixty-eight MPs interviewed twenty-one (30.8%) said that lobbying for bills was rampant and that money was a deciding factor. Fifteen (22.5%) cited personal interests where bills that were viewed as directly or indirectly affecting MPs negatively were ignored however good they were for the common good. Twelve (17.6%) indicated that it is very difficult to vote against the party expectations unless one was an open rebel to their party. Twelve (17.6%) argued that voting along ethnic lines was the reason bills were rejected however good they were. Eight (11.5%) observed that some MPs represented the wishes of rich business people. An academician interviewed reasoned that when voting, MPs' consciences may be guided by

factors that were of importance to them. This indicates that a section of MPs frustrate efforts of those committed to addressing issues of national importance. This undermines parliamentary independence.

There have also been concerns that government departments or individuals adversely mentioned in committee reports bribed MPs so as to quash these reports (Transparency International, 2010). A former MP I interviewed ascertained that committee findings could destroy a career or an organization, and therefore those involved took measures that ensured that such reports never saw the light of the day. He noted that corruption and undue influence from influential people sometimes waters down committee reports. This aspect frustrates the oversight role of MPs. Corruption allegations in parliament are corroborated by media reports.

Boni Khalwale, MP for Ikolomani and the PAC Chairman during the 10<sup>th</sup> Parliament, claimed that MPs were bribed Kshs30,000 to reject the report on a controversial money-printing contract that had implicated transport minister Amos Kimunya and Central Bank Governor Njuguna Ndung'u. While serving as Finance Minister, Amos Kimunya had irregularly awarded a currency printing contract to De La Rue Company to print a new generation of bank notes for the Central Bank of Kenya. The government allegedly lost billions of shillings. The report presented in parliament on Tuesday 4<sup>th</sup> September 2012 had recommended that the two be banned from holding public office (Daily Nation, 5<sup>th</sup> September, 2012, Back Page).

Aden Duale and Jakoyo Midiwo, Majority and Deputy House leader respectively of the 11<sup>th</sup> Parliament claimed that committees were involved in “rent-seeking” as they went about their duties. Midiwo cited the wars between the Transport and PIC committees over control of investigation and oversight over the executive. Both claimed the mandate to scrutinize the standard gauge railway contract which was valued at Kshs327billion. Midiwo claimed that the wars were more to seeking benefits than the public good. He also claimed that an informal meeting he called to discuss the corruption allegation did not take place because only a handful of MPs showed up (Daily Nation, Monday 28<sup>th</sup> July, 2014, P. 10). On this, Joe Khamisi, a former MP, revealed in his book *The Politics of Betrayal: Diary of a Kenyan Legislator* how MPs are bribed to pass Bills in parliament. This is a demonstration that some MPs do not care about honesty and integrity.

Party hopping and defections due to certain vested interests also impacts negatively on parliamentary independence. The re-introduction of multi-party politics required that members who defected to different political parties communicate to the speaker in written, who then declared the seat vacant in readiness for a by-election (Section 40 of the old Constitution). However a majority of MPs defected or associated politically with parties that did not sponsor them to parliament in total disregard of the law. Party hopping and defections impacted negatively on the committees of parliament. The appointment of MPs to sit on various committees including PAC and PIC watchdog committees and the powerful House Business Committee (HBC) is

undermined because the SOs N0. 159, 1998 edition regarded members as being either on government side or in the opposition. Accordingly, the representation of government and opposition parties in the committees becomes uncertain leaving the public and other stakeholders fearful that the government might just do its own accounts especially in case of the watchdog committees (Johnson, 2009). Thus some MPs lacked commitment to the party that sponsored them to parliament.

In regard to party hopping and defections, ninety-seven percent of MPs interviewed argued that the practice was here to stay unless punitive measures were enacted. A former speaker, the author interviewed, argued that party hopping was a reflection of society, since society was politically nomadic, always migrating with the ethnic kingpin. He observed that party hopping was about real politics where the electorates choose to support a party or an individual purely out of ethnic solidarity. Kenyan politics is therefore not mature in the sense that there has never been a nation-state; instead we have many nations within the country.

There were claims that membership of committees was determined by loyalty to party leaders other than the ability to perform assigned functions. This too undermines parliamentary independence. The HBC is mandated by the SO as noted earlier to determine the membership of Select Committees. Some senior party leaders therefore use the HBC to reward loyalists through appointments to influential committees. The Finance Committee is one such committee. This is also one of the committees that often undertakes very

costly and unnecessary trips overseas, and especially in developed countries. Thus MPs often jostle for positions in this committee. The issue of MPs taking lavish spending on foreign trips that do not yield any tangible benefits was raised (Daily Nation, 26<sup>th</sup> October, 2013, P. 4). This is abuse of the committee system. Assigning of MPs to various committees should be based on their education, experience or background for effective discharge of their functions (Transparency International, 2010). According to a former legislator, politics is a game of reward and punishment where every political party aims to reward the most loyal members well and commit the less loyal to peripheral committees. Omino (2001) contends that this leads to apathy which is exhibited by MPs in the committees especially on technical aspects.

MPs also faced challenges in regard to private members' bills. An MP who has served in the legislative committee pointed out that MPs made attempts to introduce private bills. However, once a bill is introduced through the AG's office, it is the duty of the member responsible to follow it up through the entire process. More often, MPs never bother to check the details after the initial stage. Further, some MPs propose a bill without checking with other stakeholders whether the law has been catered for elsewhere. The MP noted that such bills died without making it through parliament and the affected members got discouraged.

A former speaker I interviewed however argued that parliamentary performance should not be judged entirely on the number of bills enacted as laws were expected to address specific needs. The speaker lamented that the

number of existing laws were more than enough if only parliament improves on them, removes moribund ones and ensures that the executive implements the good laws. These sentiments were echoed by three (30%) academicians out of the ten interviewed and two (20%) members of the civil society out of the ten interviewed. They noted that a parliament faced with implementing a new constitution would pass several pieces of legislation than one without such a responsibility.

Blind party loyalty sometimes made MPs to refuse to support policies of parties they do not belong to however good they may be. For instance, Budalangi MP Ababu Namwamba who belonged to the ODM party during the 10<sup>th</sup> Parliament moved a motion sponsored by ODM for the formation of a parliamentary committee on the high cost of living. After the motion started, some MPs left the chamber resulting in a lack of quorum since only 10 MPs remained. MPs refused to heed the call after the division bell was rung for them to return to the chamber for the quorum to be realized. Some MPs were heard outside the House saying they would not return since the motion was an ODM affair (Daily Nation, 5th May, 2011, P. 11).

In regard to parliamentary bills lagging behind several responses were elicited as shown in Table 4.3

**Table 4.3: Challenges in the Passage of Bills**

| <b>Challenges</b>  | <b>MPs</b> | <b>Percentages</b> |
|--|------------|--------------------|
| Failure of ministers and permanent secretaries to submit bills to the AG on time | 23         | 33.8%              |
| Lack of parliamentary quorum   | 11         | 16.2%              |
| Inadequate time for debating of bills  | 10         | 14.7%              |
| A long consultative process of stakeholders                                      | 9          | 13.2%              |
| Vested interests   | 8          | 11.8%              |
| Crowding of legislative calendar and agenda                                      | 7          | 10.3%              |
| <b>TOTALS</b>  | <b>68</b>  | <b>100</b>         |

**Source: Tabulated by Author**

Out of the sixty-eight MPs interviewed, twenty-three (33.8%) cited the lack of understanding of the legislative process on the part of some ministers and Permanent Secretaries, who never pursue bills through the HBC for prioritization, nor participated in Departmental Committee consultations. Eleven (16.2%) showed that parliamentary quorum was the challenge. On lack of quorum however, the MPs pointed out that sometimes committee sessions went on simultaneously with parliamentary sessions. Ten (14.7%) showed that the time for debating bills was inadequate. Nine (13.2%) noted that the consultative process for preparation of bills took unnecessarily long where input from all stakeholders had to be sought. Eight (11.8%) showed that vested interests affected debate on bills where some MPs kept away from the House when certain bills were to be tabled in the hope that such bills would be shelved. Seven (10.3%) however felt that ministers allowed the crowding of the legislative calendar and agenda with reports of trips, mundane committee activities, and unnecessary Sessional Papers. Out of the five members from the

civil society interviewed two (40%) strongly felt that MPs were largely to blame for delay in bills arguing that some were lazy and self-seeking.

Indeed, Kenyan MPs have had the opportunity to make a difference in the manner in which governance is conducted. Whereas some responded positively others did not. This was captured aptly by the outgoing speaker of the 10<sup>th</sup> Parliament, Kenneth Marende when he accused parliament of letting down the nation. While he acknowledged that the 10<sup>th</sup> Parliament passed the highest number of Bills ever, he noted there were missed opportunities that MPs could have exploited to ensure Kenyans had a better life. Marende noted that the 10<sup>th</sup> Parliament failed to pass laws that would have a direct impact on the common man and to fight graft. It failed to ensure that the government projects added value to the lives of Kenyans. Marende also noted that MPs should have given priority to the Bill seeking to reform the health sector thereby making the cost of healthcare affordable (Daily Nation, 17<sup>th</sup> Thursday, January, 2013, P. 11).

The missed opportunity for Kenyan MPs to make a difference in governance has been observed in the 11<sup>th</sup> Parliament under the Jubilee administration. This has been seen in the passage of the bill to gag the media mentioned above. Controversial bills have been passed in very chaotic circumstances in parliament. The speaker Justine Muturi has been blamed for intolerance which has led to the lack of dignity in parliament on several occasions (Daily Nation, Friday 6<sup>th</sup> December, 2013 P. 11).

Ethnicity and lack of commitment to the rule of law has been noted. For instance, when the Chief Registrar Gladys Sholei was sacked by the Judiciary Service Commission (JSC), the parliamentary committee on Justice and Legal Affairs appeared partisan. The committee joined the dispute and summoned the JSC for questioning over the matter which was unconstitutional because Sholei was answerable to the JSC and not parliament. Further, Ms. Sholei hails from the Ainamoi constituency just like the chairman of the parliamentary committee Samuel Chepkonga.

The parliamentary committee further attempted to remove members of the JSC for failing to honor summons to appear before it. They were Ahmednasir Abdulahi, Rev Samuel Kobia, Prof. Christine Mango, Justice Mohamed Warsame, Ms Emily Ominde, and Ms. Florence Mwangangi (Daily Nation, Saturday 26<sup>th</sup> October, 2013 P.5). Further the president in disregard of the principle of separation of powers suspended the six judges through a gazette notice and set up a commission to investigate their conduct chaired by retired Justice Aaron Ringera. This was seen as a move to undermine the independence of the judiciary (Daily Nation, Sunday 30<sup>th</sup> November, 2013, P. 4). Moreover, corruption allegations continue to stalk MPs in the 11<sup>th</sup> Parliament where the PAC committee has particularly been mentioned for receiving bribes to distort reports (Daily Nation, 13<sup>th</sup> Friday March, 2015, P.1).

### **4.3 Summary and Conclusion**

From the foregoing, even with significant political reforms, parliamentary independence remained a challenge. Politics of self-interest, ethnicity, patronage and, corruption still endure. These challenges continued to undermine parliamentary independence. The next chapter seeks to illustrate why these challenges persist by examining the nature of the African states and Kenya in particular that frustrate the realization of an independent and assertive parliament.

**CHAPTER FIVE**  
**CHALLENGES OF THE AFRICAN STATES; THE KENYAN**  
**EXPERIENCE**

**5.0 Introduction**

The preceding chapter examined various political reform initiatives that focused on upholding parliamentary independence in Kenya. It was expected that the establishment of the Parliamentary Service Commission, the refurbishment of parliamentary committees, provision of physical facilities to parliamentarians, a better salary and allowances and even a new constitution would lead to parliamentary independence. However, despite these significant developments, parliamentary independence in Kenya still experienced challenges of patronage, ethnicity and corruption. How can we explain this? This can be explained by examining the character of the African states which have experienced institutional failures since independence. These failures can be explained from the perspective of enduring legacies of challenges of patronage, ethnicity, and corruption. Since parliament is one of the institutions in government, its behavior may not be detached from the general trend.

This chapter is significant to the study because it seeks to shed light on why political reform initiatives have not translated into an independent and assertive parliament in Kenya.

**5.1 The Nature of the African States**

In order to understand the challenges of contemporary African states, it is significant to understand the character of these African states at

independence. This is because challenges such as patronage, ethnicity and corruption have historical roots that continue to bear on the African continent today (Nyang'oro, 1987). These challenges persist in spite of political reforms and therefore frustrate the realization of democratic ideals and parliamentary independence in Africa in general and in Kenya in particular.

According to Berman (1998), Alex (2000), and Hornsby (2012), independent African states faced key challenges such as the task of nation-building. They had to blend together nationalist parties with different ideologies, organizations and personnel. African leaders had to consolidate nation-states out of arbitrary defined colonies derived from an imposed European administration. The arbitrary boundaries divided traditional communities between different nation-states while others found themselves caged together with potential domestic rivals. This proved difficult because the colonial authorities did not build a collective consciousness among Africans during the colonial period. The new African governments therefore struggled with varying degrees of success to build nations within these artificial territories. Hence, institutional mechanisms and ideologies had to be found to reduce ethnic tensions (Hornsby, 2012).

Nyang'oro (1987) contends that this alien nature of the post-colonial Africa state is significant in understanding the state actors' behavior which militated against the realization of democratic ideals. Political leaders in post-colonial Africa have used ethnicity negatively as grounds for mobilization and

resource distribution (Alex, 2000). Thus, cohesiveness in most African states is a challenge.

The most important task nationalist leaders faced, was steering economic growth and social development. Independent governments faced the task of developing the economies of their countries, yet they had inherited weak economies from their colonizers (Hornsby, 2012). Ihonvbere (1998) posits that colonial policy resulted into underdevelopment of African countries by emphasizing mono economies. Hence, at independence, apart from those countries that produced mineral resources, most African states produced little raw materials and industrial development was non-existent or at its infancy. African countries had to increase their productive capabilities in order to raise investment capital that would enable diversification and expansion of the economy. Without economic success, African states would be unable to command the resources needed to provide the social welfare that civil society demanded. Indeed a significant element of political legitimacy is the ability of governments to provide adequate public services to the citizens (Alex, 2000).

Given the weakness of the indigenous private sector at independence, the new states were under pressure to assume considerable economic responsibilities. In fact, the state became the main economic actor, involved in a wide range of activities that included social and economic as well as the ownership and management of productive industry (Ake, 1996). Olukoshi (2004) observes that African countries embarked on development programs of their own soon after independence, in the 1960s and '70s. He observes that the

early years of independence did lead to economic growth and improvement of social services such as education and health. However, African states failed to provide sustainable economic progress (Mkandawire, 2001).

Alex (2000) contends that poor economic progress stalled in Africa partly due to the world market conditions. The crisis started in the 1970s when Africa and the rest of the world went through the oil crisis. Many economies did not recover and states resorted to deficit spending. This led to debt accumulation in Africa. Further agricultural production declined due to long droughts. The decline in productivity forced African states to import most necessities including food. This led to more borrowing from the international financial institutions further increasing their debts (Hornsby, 2012).

Bates (1981), Berman (1998), Mkandawire (2001), and Olukoshi (2004) assert that the main impediment to economic progression in Africa was the establishment of authoritarian regimes. The colonial state had been highly bureaucratic and authoritarian. However at the dawn of independence, most African states adopted constitutions based on liberal democratic ideals that were to ensure good governance through separation of powers, pluralist democracies and the rule of law. The irony was that the liberal ideals had no historical foundations in Africa since they had never been practiced. It was therefore unlikely that liberal structures and practices would be maintained. Consequently, most post-colonial nationalist leaders dismantled the independence constitutions and created de facto and later de jure one-party states shortly after independence (Nyong'o, 1989).

In the debate that ensued, defendants of the one-party system put forth several justifications. African leaders such as Julius Nyerere of Tanzania, Jomo Kenyatta of Kenya and Kenneth Kaunda of Zambia argued that the multiparty system was foreign to Africa since it was western in origin. They further argued that African countries needed to concentrate on unity and development and that difference of opinion could be accommodated through the opposition from within the party (Clapham, 1985). According to Alex (2000) some arguments such as the desire to unify the state were justified, given the artificiality of the African state. Independent governments were composed of several ethnically divided societies, some with separatist inclinations. If this would have remained unchecked he argues, the authority of the national government and the integrity of the state would have been threatened.

Nyong'o (1989) remarks that politics of accommodation did not last long. The one-party state rarely tolerated politicians with dissenting views. As a result, regimes that were autocratic and intolerant to dissent came to characterize the continent. The one-party states centralized all political activity. In this regard, institutions of the state such as the parliament, the local government, and the judiciary were weakened through a series of amendments to the independence constitutions among them Zambia, Ghana, Kenya, and Zaire. Power was therefore hoarded in the executive, often with one individual being dominant; the president. This translated into personal rule since the distinction between the individual and the office held was obscured. The one-

party state also abolished federal systems and centralized government services and economic activities through the bureaucracy (Berman, 1998).

The one-party state was opposed to private sector development and did not recognize the private sector as a crucial development player (Stein, 2000). There was lack of incentive mechanisms to encourage private investment. Instead, state dominance of the economy led to the neglect and crowding-out of the private sector from the economic arena. To be successful, business people depended heavily on political connections rather than performance. Such state business relations encouraged corrupt practices to secure contracts and negatively affected business efficiency and productivity (Mkandawire, 2001). With no rival parties threatening to replace the nationalist leaders, they abused their positions within the state. This chapter shows how the one-party states were absolutist states that placed both political and economic power in the hands of a single ruler. As noted in chapter 2, absolutism in the state leads to arbitrary rule and violation of human rights.

The liberal democratic institutions independent African countries adopted were expected to provide legitimacy that underpinned state authority in post-colonial Africa. This legitimacy was based on legal-rational government, which is government based on social contract. In this respect, state institutions were specifically constituted based on legal authority to carry out functions of the government. Thus governments rule on behalf of citizens, executing and enforcing laws to advance collective welfare and not personal interests. Citizens on the other hand, were expected to obey state laws in

return for the benefits of the rational system of government. In post-colonial Africa, with legal-rational legitimacy lost through centralization of the state, alternative representative links had to be forged between the state and society. Consequently, personal rulers in post-colonial Africa relied on patronage based on the distribution of state resources, which became the main bond between the rulers and the ruled (Alex, 2000; Olukoshi, 2004).

This trend has also been explained by scholars in terms of patronage, patrimonialism, personal rule (Bates, 1981) or neopatrimonialism (Clapham, 1985). Patronage provided legitimacy for authoritarian regimes through patron-client-networks that spread out right from the president to his lieutenants, who in turn used resources received from above to create their own patronage networks (Hornsby, 2010). In most cases, the patronage was based on ethnicity or nepotism. Thus, employment in the bureaucracy, in the civil service, the army or parastatals was rarely based on merit. Consequently, in post-colonial Africa, bureaucracies were built or expanded to service patron-client networks rather than manage and deliver public services. Consequently, they became overstaffed (Bates, 1981). Thus, state officials, in particular, politicians and bureaucrats used state offices to generate material benefits for themselves and their clients. Thus corruption became rampant in post-colonial Africa (Berman, 1998).

Mkandawire (2001) further observes that the political elite influenced public servants particularly with regard to policy making and implementation. This further increased the chances of bureaucracy susceptibility to corruption

and a basic lack of accountability. Alex (2000) and Olukoshi (2004) argue that the investment of scarce resources in this manner was unproductive in economic terms. Accordingly, Africa's economic problems stemmed from the fact that surplus capital accumulation for re-investment was scarce and productive investment was rare.

From the foregoing, the bureaucracies in post-colonial Africa lacked the autonomy and focus deemed necessary for a developmental state. According to Mkandawire (2001), a developmental state is one whose ideological underpinnings are developmental and one that seriously attempts to deploy its administrative and political resources to the task of economic development. The bureaucracies rather than representing the solution to development came to be seen as the problem, hindering development as they came under the control of patronage oriented political rulers. This led to persistent poverty, unemployment, and inequalities (Ake, 1996). The use of patronage by African leaders to remain in office in order to control political and economic resources reflects Machiavellianism. Patronage was an illegitimate method of rulers to retain power.

The above observations illustrate that the one-party states proclaimed by nationalist leaders as appropriate for the dual tasks of nation-building and socioeconomic development served as Ake (1996) has argued, to bolster the ruling elites' power and to facilitate their self-enrichment. This accumulation of property by the ruling elite was known as predatory rule. Although varied in

degree, regimes under predatory rule were based on intense personalization of authority and were not conducive to performance-oriented governance.

Ruling elites in such regimes depended on distribution of spoils to stay in power and diverted huge amounts of public resources for patronage purposes, detracting from genuine development efforts in the process (Bates, 1981). Nyang'oro (1987) describes this phenomenon as peculiar to the African state where the state became the primary arena for competition, power and influence over the distribution of scarce resources. This was achieved through the centralization that allowed for the formation of a political bureaucratic bourgeoisie that was predominantly urban consisting of ministers, party officials, members of parliament, bureaucrats, military officials, managers of public industries and anyone who exploited their command over institutions (Alex, 2000). This political class wielded the most power in post-colonial Africa and used their positions for personal economic gain. This strengthened the position of the political class at the expense of civil society (Nyong'o, 1989).

Nyang'oro (1987) contends that it is in this context of the socioeconomic base in Africa that is sporadically capitalist in nature, that contemporary African countries should be understood. This socioeconomic base influences state behavior and performance. According to him politicians in Africa are not inherently corrupt or "tribal". Their behavior is a response to the particular kind of socioeconomic system in which they find themselves. This therefore explains the poor corporatist practice in Africa as the states

attempt to grapple with the two problems of economic development and nation building. On this Nyong'o (1989) contends that the nationalists in power used the state to create a capitalist class and various classes of property instead of the state itself becoming the capitalist preventing the accumulation of capital in private hands but encouraging it in the public sphere.

In a pure capitalist society individuals accumulate wealth from the proceeds of their sweat and talent but not from corruption. In chapter 2, John Locke described property as the most important natural right since it is equal to all and individuals can appropriate it from whatever nature offered. Governments on the other hand have the obligation to protect citizens' property. This reveals that political elites lacked accountability and transparency to the governed as they put their interests over those of civil society.

The era of personal rule or neopatrimonialism in Africa assumed far greater prominence in the 1980s (Mkandawire, 2001). The era witnessed intensified corruption since it licensed the looting of the state, giving rise to "kleptocracies" of which Moi's Kenya and Mobutu's Zaire were the best-known examples. Kleptocracies refers to systems of governance based on patronage and theft that undermined the capacity of most African states to perform their basic functions, including the management of the economy, the collection of revenues, the delivery of social services, the maintenance of law and order, and defense. In the process, the economies of most African countries collapsed. By the end of the 1980s, per capita income in many

countries declined as neopatrimonialism bankrupted the state and necessitated the printing of money. As their resources dwindled, neopatrimonial rulers resorted increasingly to repression in addition to patronage to maintain their regimes (Barkan, 2009). Nyong'o (1992) ascertains that after the 1982 attempted coup, the Moi regime in Kenya became more intolerant and repressive, throwing more dissidents into detention.

A major effect of neopatrimonialism was that it undermined governance as it resulted in a society with no sense of the public; which condoned corruption and was inhabited by individuals whose focus was "politics of the belly" because power was centrally concerned with access to wealth. Neopatrimonialism, encouraged consumption and redistribution of public resources rather than savings and investments (Clapham, 1985).

The neopatrimonialism theory was important to this study because it illustrates how the practice of neopatrimonialism did not allow for embracing of democratic ideals. In these states, the political and administrative systems were formally constructed on rational legal lines, such as a legal system that demarcated the private and public domain, or an administrative code with formal criteria for staff hiring and promotion. However, powers of officials were exercised as a form of private property as noted above. Thus, neopatrimonialism did not provide an environment in which capitalism flourishes but one that promoted corruption, ethnicity and patronage. This has had devastating effects on African economies.

This section has illustrated key features that describe the characteristics of personal rule in Africa. Due to centralization of political as well as economic resources it was arbitrary and authoritarian. Personal rulers dispensed patronage to consolidate their positions in power. Consequently, personal rule intensified ethnicity and corruption due to abuse of office. It bred inefficiency in the bureaucracies due to predatory behavior of African rulers. The question is can these observations help us understand the behavior and practice of the Kenyan parliament? The next section demonstrates how these observations have undermined parliamentary independence in Kenya.

## **5.2 The Kenyan Experience: Implications on the Independence of the Kenyan Parliament**

Centralization in Kenya and the consolidation of the autocratic state can be traced to the amendments on the independence constitution from 1964. Consequently, there were drastic changes in the country's political system. Kenya abandoned multiparty politics and transferred state powers from the other branches of government, namely the legislature and the judiciary to the executive, especially the presidency as mentioned in chapter 3. Centralization marked the construction of patron-clientelist relations. As we have seen the strategy involved recruiting to key positions mostly from those who belonged to the president's ethnic group or his close confidants. This led to monopoly of the political and economic resources by a few in the state.

Patronage in the one-party state was seen in a number of ways. It was evident when President Kenyatta made full use of the powers vested in the

presidency to make grants of unalienated land soon after independence to his cronies, family and friends. Consequently, politicians and senior civil servants became and still are the greatest land owners in Kenya (Hornsby, 2012). The presidents had discretionary powers to use the ministries, the parastatals, and the civil service as a locus for patronage resources for their cronies. As a result, the presidents and members of their inner circles amassed a lot of wealth from the 1960s due to abuse of office (Alex, 2000).

In Kenya bureaucratic centralization led to implementation of Africanization or Kenyanization of the public service where senior positions in the public service were required to be filled by Africans. Nyong'o (1989) observes that Africans appointed into key positions vacated by senior white colonial public servants were predominantly drawn from the members of the Kikuyu community. Mbai (2003) contends that although it may be true that the majority of those appointed into the key positions had some experience in the areas they were appointed, it was generally acknowledged that a significant number of them were not the most qualified to fill those positions at the time they were appointed.

In 1964, concerns of patronage based on ethnicity and nepotism in both the bureaucracy and the cabinet were raised (Rothchild, 1969). KADU MPs regularly alleged that the Kikuyu and Luo were given far too much preference in allocation of resources, especially loans to farmers and traders and appointment to the civil service. However, by 1966 both KANU backbenchers and KPU were raising the issue of Kikuyu dominance. Martin Shikuku, a

government chief whip listed the Permanent Secretary, Deputy Permanent Secretary, the Undersecretary and the Director of Agriculture in the ministry of agriculture as all members from the Kikuyu community (House of Representatives, 14<sup>th</sup> October, 1966, Col.879-880). A member also complained that the Public Administration and strategic positions were heavily ethnicized in favor of the Kikuyu (House of Representatives, 14<sup>th</sup> October, 1966, Col.259 and 270-1).

By 1978, four out of the eight PC's were Kikuyu. In 1974 seven out of the twenty cabinet ministers were Kikuyu and five of these ministers were from Kiambu. In 1970, there were nine Kikuyu Permanent Secretaries out of a total twenty-two (Okumu, 1970). The 1969 census provided an estimate of the Kenyan population at a total of 11,560,964. The Kikuyu stood at 2,506,952 (20% of the total population), yet they occupied nearly 50% of key positions (Government Printers, 1970).

Kikuyu from outside Kiambu, Kenyatta's home area, felt marginalized from the government's economic policies (Gertzel, 1974). An MP alleged that the Kikuyu from Kiambu controlled security in the country where the AG, Commissioner of Police, Director of Intelligence and the State House Controller were all from Kiambu (House of Representatives, 14<sup>th</sup> October, 1966, Col.883-884).

A similar pattern was evident between 1979 and 2002, when Moi took over power in 1978. The Rift Valley province, home to President Daniel arap Moi was disproportionately represented in government (Throup and Hornsby,

1998). By the mid-1980s and early 1990s Moi was surrounded by a coterie from his Kalenjin community. Murunga, (2004) observes that the Moi regime did not even pay attention to one's qualifications before appointment since ethnicity was the first deciding factor.

Mbai (2003) observes that due to centralization, state powers concentrated in the executive were exercised by the senior officials of the cabinet, the central civil service, and parastatal organizations. However, senior members soon became very powerful in the government and wealthier than members of the legislature. Consequently, it became difficult for the legislature and the constitutionally established office of the Controller and Auditor General to effectively control them especially with regard to misuse of office and corruption. As a result parliamentary independence was greatly undermined which led to underperformance.

This inability of parliament to call the government to account was evident in the Controller and Auditor General's reports (CAG) during the one-party period. During the financial year 1962/63, the CAG report did not show any misuse of public funds. But immediately after independence, the misuse of public funds began to be noticed. For instance, in the report for the year 1963/64, one year after the country had attained its independence, the CAG, noted many instances of petty frauds, thefts and evasion of the regulations.

In the report for 1965/66 financial year, the CAG reported several cases of fraud, irregularities and theft. More specifically, the report noted that whereas in 1963 there had been 188 cases of theft by government servants

involving £10,160, in the first eleven months of 1966 alone, there were 356 cases involving £34,720. Besides, cases of theft by government servants, the report also named several government ministries that had excess expenditure above amounts permitted to be spent by parliament. The ministries and government departments in this category were State House, Ministry of Defense, Ministry of Education, Voice of Kenya, Ministry of Home Affairs, and Ministry of Housing and Social Services. Parliament approved the budget yearly despite the anomalies. These examples illustrate that patronage and ethnicity fuelled corruption due to lack of accountability in government.

The one-party regimes did not adopt a national policy in regard to resource allocation. For instance, infrastructure expenditure was centrally allocated and thus a prime area for political patronage. Road spending concentrated in Kikuyu districts during the Kenyatta regime. This trend of favoring Kikuyu districts declined when Kenyatta died in 1978. A corresponding increase in Kalenjin road funding increased exactly after Kenyatta's death suggesting that Moi had the authority to rapidly target road resources in favor of his home districts (Sihanya, 2009). This illustrates that the centralized regime was an important determinant of ethnic favoritism. This also illustrates that parliament was unable to exercise effective constraints on the executive's action.

Barkan (2009) argues that it is the imbalance in resource allocation that necessitated the need for MPs' especially backbenchers from poor areas to beg the presidents for resources and appointments in the cabinet and be

subservient in return, increased the power of the executive vis-à-vis the National Assembly. This meant that cabinet members and high ranking civil servants from the presidents' respective communities as well as the few incorporated from different ethnic communities dominated the policy making process at the expense of other ethnic communities (Rothchild, 1969).

Ethnic imbalance in opportunities led to extreme poverty for some regions such as North Eastern, Turkana, and Coast (Sihanya, 2009). Most significant was that those appointed to the cabinet had vested interests in the regime on which they thrived on and thus refrained from addressing issues of national importance such as imbalance in resource allocation, poverty, and corruption (Barkan, 2009). This undermined parliamentary independence.

Alex (2000) contends that President Kenyatta chose the Provincial Administration because the political position he together with members of his inner circle had chosen was unpopular with the masses and so they needed to protect their positions. The Provincial Administration could deliver this effectively than the party. Thus, the state became insecure and used the electoral process to restrict political competition.

The state resorted to the use of coercive resources employed during the colonial period such as detention without trial. This enabled the political elite to protect and consolidate political gains. They used ruthless means to remain in office at all costs and individual challengers were intimidated, marginalized, or assassinated as noted in chapter 3. This illustrates Machiavellian tendencies. The presidents during the one-party era remained in power not because they

were loved but because they were feared by the masses and opponents. The independent Kenyan government therefore preferred an absolute state and realized this by dismantling structures that limited state power in the independence constitution.

Even though parliamentary elections were held at regular intervals of five years, the focus was purposely local and Kenyan MPs never stood on policy or issues (Barkan, 2009). This was not possible since political decision making took place in the higher echelons of the executive and not in parliament. For instance, the idea of making Kenya a one-party state de jure was first discussed in the party before it was presented to parliament (Ng'weno, 2007).

The one-party leaders, Kenyatta and Moi, wanted to divert attention away from national government yet used elections to legitimize their regimes. They therefore urged MPs to focus attention on the development of their constituencies. They likewise urged the public to evaluate their representatives' performance in similar terms. If the candidate failed to win resources, the electorate would vote for an alternative candidate in the next primary elections as noted in chapter 3. In this way, presidents retained a monopoly over political activity in the country (Bates, 1981). This reflects neopatrimonialism mentioned above. Neopatrimonial rule undermined parliamentary independence because it ignored the role of parliament in initiating policies that would lead to overall development. Thus, whereas a few MPs like Martin Shikuku saw it fit to serve their constituents, for a majority

the pork barrel politics was the foundation of their success. A significant number of MPs saw their role as overseeing development in their constituencies (Alex, 2000). This reflects MPs' investment in the patronage system that undermined parliamentary independence.

Ihonvbere (1998) contends that with few exceptions, the post-colonial leaders in the 1960s sought first the political kingdom and failed to achieve any substantial progress in the economic, social, and cultural realms. By mid-1960s, conditions had degenerated to levels similar to or much worse than what the colonial state represented. Repression, corruption, mediocrity, violence, manipulation of ethnicity, economic decay and the concentration of resources in a few locations became the order of the day.

According to Mkandawire (2001), the struggles for genuine democracy in Africa started immediately after political independence. The masses realized that the new inheritors of power had no intention of fulfilling the promises of the nationalist struggles (Nyong'o, 1992). In Kenya, the quest for a true representative democracy started in 1964 after the all-powerful presidency enabled the president and members of his inner circle to put in place structures that on paper promoted capitalist economy but in reality entrenched an exclusive predatory and dictatorial system (Berman, 1998).

The struggle for democracy, accountability, social justice, and democratization culminated into the re-introduction of multiparty politics in Kenya and in Africa generally. According to Ake (1996), in many ways, this movement resembled the struggle for independence in the 1950s and early

1960s. While 30 or so years apart, the two movements had in common a deep popular aspiration for a better life economically and socially. Again multiparty politics brought about renewed interest in the role of legislatures and other democratic institutions as illustrated in chapter one. The second liberation as it was popularly known shattered the aura of invincibility of political strongmen in Africa. It encouraged challenges to authoritarian, military, and repressive one-party regimes. Kenneth Kaunda in Zambia was defeated in the first multiparty elections. In Kenya, the all-powerful Daniel Arap Moi, whose succession could not be discussed except at the risk of being charged with treason against the state, was forced to hold multiparty elections and to live with a new reality. Multiparty encouraged the rise of new political parties and movements on the political landscape. It enabled formerly apolitical organizations to develop or openly support political programs. This included the Law society of Kenya and the Catholic Church. The new struggle witnessed the emergence of new leaders, many of whom were not part of the struggle for independence in the 1960s, and several of whom had nothing to do with discredited authoritarian regimes (Mkandawire, 2001). In Kenya, they included Peter Anyang' Nyong'o, James Orengo, Mukhisa Kituyi and Gitobu Imanyara.

Even though there were gains in terms of opening up of political space, among others there was despair in terms of prospects for democratization (Forshee, 2006). Huntington (1991) observes that some African countries showed signs of reverting from democracy to authoritarianism due to

difficulties in consolidating democratic gains. He contends that among factors which contributed to this reversal was the weakness of democratic values among key elite groups and the general public in Asia, Africa, and the Middle East. This was the case for Kenya in the early years of multiparty as noted in chapter 4. This undermined parliamentary independence.

Another factor that frustrated entrenchment of democracy and the realization of parliamentary independence was ethnicity. Throop and Hornsby (1998) note that multiparty intensified ethnicity in Kenya as the political system became characterized by ethnic voting. Consequently, political parties were not based on political programmes but on ethnicity. In this case, political parties became vehicles to access the political center and eventually state resources.

The ease of switching from one party to another by candidates during parliamentary nominations for the parliamentary elections is telling in this respect. When this occurred, voters who supported such candidates switched as well. FORD-K is a clear illustration: in 1992 it was a Luo party with some Luhya support, but with the defection of the main Luo political leader Raila Odinga, it became a pure Luhya party and lost in 1997 all its support in Nyanza Province in which it won overwhelmingly in 1992 (Oloo, 2007).

Oloo (2007) also contends that in the early years of multiparty politics, most parties were small, underfunded and their leaders often doubled up as their chief financiers and controlled them in an authoritarian way. Oloo further

observes that party leaders single-handedly controlled and determined party affairs. This phenomenon continues to persist in present day Kenya.

Deputy President William Ruto who is also the party leader of United Republican Party (URP) and the defacto leader of the **Kalenjin** community, warned **Kalenjin** politicians opposing him among them Governor Isaac Ruto of Bomet County that they were writing their own political obituaries (Daily Nation, Sunday March 22<sup>nd</sup>, 2015, P. 1). As such party leaders continue to influence members including supporting certain vested positions in parliament as noted in chapter 4. Further the weak financial base limited opposition parties' organizational capacity compared to the ruling party that had access to state resources (Forshee, 2006). This made the opposition vulnerable to patronage leading to defections as noted in chapter 3. This undermined parliamentary independence.

NARC that came to power in 2003 was a coalition of parties constituted along ethnic lines. In-fighting and factionalism due to ethnicity prevented them from enacting a new constitutional dispensation as noted in chapter 4. As Cottrell and Ghai (2007) posit, democratization of Kenya was to be done through reform of its constitution. The process of reviewing and reforming the constitution that began in 2000 was to be highly democratic and participatory. It aimed at establishing a new culture of democracy. The establishment of a new constitution was intended to conclude in two years. Instead, it went on for five full years and still failed to produce a new constitution.

Nasong'o and Murunga (2007) contend that NARC increasingly became intolerant of freedom of association. Following the stalling of the constitutional review process, a pressure group named Bomas Katiba Watch was constituted to pressure for the completion of the process. In a manner reminiscent of the old KANU days, the NARC government banned the pressure group's public rallies in July 2004 and unleashed police violence against Kenyans demonstrating peacefully for the enactment of a new constitution in Kisumu city. In addition, journalists writing reports critical of the government and some of its key cabinet members were arrested, detained, and arraigned in court under repressive laws that had rarely been applied even during the single-party days. According to Huntington (1991), when political leaders are out of power, they have good reason to advocate democracy. The test of their democratic commitment comes once they are in office as was the case with President Kibaki.

Cottrell and Ghai (2007) contend that the draft constitution presented by President Mwai Kibaki's government in November 2005 was in key respects different from an earlier (2002) draft which was biased towards democracy, human rights, and social justice. They observe that Kibaki had vigorously defended the earlier draft when he was in the opposition. His Minister for Justice, well known for his advocacy of democracy and human rights in an earlier era instead led the move to sabotage the constitutional making process. Murunga and Nasong'o (2007) remark that once in power the Kibaki government showed little enthusiasm for curbing the president's

powers. This illustrates that constitution making is highly political, with high stakes for those who make a living out of politics such as politicians. The constitution is important to them primarily as the gateway to state power, and therefore personal considerations dominate the national interest (Cottrell and Ghai, 2007).

Barkan (2009) remarks that not all supporters of reform had similar motives. While many were committed to democracy and human rights, others saw in reform an opportunity to get rid of President Moi and his cronies (Oloo, 2007). Therefore, the new regime that was expected to fight negative ethnicity and corruption failed in this regard. Instead politics of patronage, ethnicity, and corruption continued to manifest just as in the old government (Nasong'o and Murunga, 2007). Corruption and abuse of office was noted among some members of the political class. A case in point was the award of a KShs 45 million (US\$600,000) insurance contract to a company run by the son of a cabinet minister under whose portfolio the contract fell in 2003 (Irungu 2003).

In addition, Kinondo Holdings Limited, a family enterprise owned by Minister for Cooperative Development, Peter Njeru Ndwiga, acquired a prime parcel of land in a horticultural farming zone in Embu, measuring 73.5 hectares (182 acres) in December 2004. Finance Minister David Mwiraria, who was in charge of revenue collection, waived a mandatory stamp duty for Ndwiga in the amount of KSh6 million (US\$80,000) under circumstances that suggested abuse of power. Most interesting was that the title for the parcel of land was transferred to Kinondo Holdings on New Year's Eve, the same day

the farm was used to guarantee a loan in the amount of KSh40million (US\$533,330) from the Cooperative Bank. The bank fell under Ndwiga's ministry (Mutiga and Makali, 2005).

In the Anglo-leasing mega scandal mentioned in chapter 4, key ministers among them David Mwiraria, Chris Murungaru and Kiraitu Murungi were adversely mentioned. This illustrates the political class' engagement in business by using their political positions to protect themselves. This continually undermines parliamentary independence.

Berman (1998) contends that after efforts at political reforms and multi-party elections, patronage, corruption and ethnicity continue to have influence on African societies. He argues that of the three, ethnicity appears to be the underlying basis of the other two, the foundation of the power of political leaders. Even though most African leaders deplore ethnicity in public, almost every African politician practices it.

This chapter reveals that Kenyan presidents have been ethnic. A special report on ethnicity in the civil service showed that ethnic groups that have produced the presidents enjoy the lion's share of public service jobs (Daily Nation, Wednesday 6<sup>th</sup> April, 2011, P. 18). This trend is manifest even in the Jubilee government that came to power in March 2013, after the enactment of a new constitution. From the outset appointments in Jubilee were based on ethnicity and patronage (Daily Nation, Monday, 29<sup>th</sup> September, 2014, P.1).

Ethnicity in government undermines parliamentary independence in that state affairs are dictated from the viewpoint of one or two ethnic groups. This is true in the Jubilee government as illustrated by the passage of the media and security bills respectively noted in chapter 4. Due to ethnic competition for scarce economic resources and political power, each ethnic group tends to fight to have a president from their group in Kenya. The height of this competition was seen in the violence that erupted in 2007 noted in chapter 4. Thus elections are dominated by a winner-take-all mentality due to the consolidation of power in the executive branch. The feeling is that the party that loses an election has nothing to offer its supporters. As a result, some opposition MPs sometimes don't show up to conduct the business of parliament, yet the opposition is equally important in regard to policy formulation (Oloo, 2007).

Further, the Jubilee government has been exposed as engaging in corruption at a level only comparable to the 1990s (Daily Nation, Wednesday, 1<sup>st</sup> April, 2015, P 2-11). The International Community has been concerned and alarmed about corruption in the Jubilee government. Ambassadors from the United States and Britain warned that unless the Jubilee government tackled corruption, it would slow down economic growth (Daily Nation, Friday, 20<sup>th</sup> March, 2015 P.1).

Parliamentary committees especially PAC that serve as a watchdog on public finances were accused of receiving bribes by forces in the executive to stop investigations into theft of taxpayers' money as noted in chapter 4.

President Uhuru Kenyatta acknowledged that corruption was rife right in his office and that investors had to bribe members of the executive for award of tenders (Daily Nation March 6<sup>th</sup> 2015 P.1).

Coalition for Reform and Democracy (CORD) leader Raila Odinga however noted that the Jubilee government was incapable of fighting corruption because its members were beneficiaries of the same. He asserted that members of the private sector had raised concerns with him that corruption had increased the cost of doing business in Kenya. Raila further noted that MPs who pretend to be investigating the tenders give approval after their hands have been greased (Daily Nation, Sunday, 22<sup>nd</sup> March, 2015 P.2). Corruption undermines parliamentary independence because efforts of some leaders who are genuinely concerned with fighting corruption are frustrated by a few who are powerful.

Alex (2000) posits that apart from the above, the political culture of a country plays a significant role in entrenching democratic ideals. In stable societies, liberal democratic ideals permeate the whole society. In Africa under the influence of ethnic politics, voters do not appeal to the criteria of the common good (healthcare services, economic performance, and education). Their most important concern is enabling their members to control the state. The rational is to ensure that many from their ethnic group control the state on their behalf. The president is seen as an ethnic ruler (Tarimo, 2010).

Former Speaker Francis Kaparo, in an interview on Citizen Television while contributing to the debate on corruption scandals in the Jubilee

government, observed that Kenyans had also contributed to the corruption. He noted that when electing political leaders, Kenyans ignored the character of the political leaders. Instead they elect those who dish out money. In addition, constituents keep asking for money from their representatives every weekend. This intensifies corruption (Wednesday, 18<sup>th</sup> March, 2015 at 7.30 pm).

### **5.3 Summary and Conclusion**

As it emerges, the state in contemporary Africa and in Kenya is the primary arena for competition, power and influence over distribution of scarce resources. This influences behavior of state actors despite political reforms aimed at guaranteeing parliamentary independence. This leads to entrenchment of patronage, ethnicity, and corruption which continually undermine parliamentary independence and the realization of democratic ideals.

## **CHAPTER SIX**

### **SUMMARY AND CONCLUSION**

#### **6.0 Introduction**

This chapter summarizes the findings of the study, discusses the extent to which the premises have been proven and outlines some key recommendations with regard to empowering parliament to effectively perform its core functions.

#### **6.1 Summary and Conclusion**

Chapter one provides the background to the study, research objectives and questions, literature review, theoretical framework and limitations to the study. Chapter two examined separation of powers. It examines how separation of powers prevents the overgrowth of any arm of government from being too strong so as to undermine the others. The sharing of power among the three branches of government with checks and balances ensures parliamentary supremacy is upheld. The supremacy of parliament is concerned with the relationship between parliament, the executive, and the judiciary. This supremacy is evident in its law making function. Legislators have authority to make and unmake laws that apply to the entire population. The executive operates under laws made by parliament whereas the judiciary interprets these laws. The right to change laws lies with parliament and no other body. Parliament is therefore at the center of the constitution in any democracy.

Chapter three analyzed the first objective of the study which was to identify the effects the one-party state had on parliamentary independence and assertiveness. It was found that this was mainly due to the creation of a centralized government and a president with enormous constitutional powers. The legislative, representation, and oversight functions of parliament were affected by the patronage powers of the president. There was no separation of powers during the period.

The president became a part of the legislature resulting into overlapping of parliament and the executive. This impacted negatively on the autonomy of parliament. Parliament was also a department in the executive and hence dependent on the executive for financial and human resources. This undermined the independence of parliament and parliamentary institutions such as committees. The president through the Minister of Finance controlled finances through the budget-making process thus the budget oversight role was a challenge for MPs. The constituency service function was affected since MPs and especially backbenchers relied on the president for provision of funds to perform this function. In the absence of official opposition parties, this power of the president made MPs subservient to the whims of the executive, since the state controlled political and economic resources. Hence MPs had to toe the party line to survive politically and economically.

Chapter four examined the second objective which was to analyze the effects of political reform on parliamentary independence. It examined various reform measures to empower parliament from 1992-2010. These included, the

repeal of Section 2A in 1991, strengthening of parliamentary committees and provision of physical facilities such as meeting rooms and salary increment and a new constitution. The study established that these developments did empower parliament and that some MPs were determined to make a difference in governance. However, parliamentary independence was still wanting due to influences of patronage, corruption and ethnicity.

Chapter five analyzed the third objective on challenges that affect the African states and Kenya in particular and how these challenges undermine the realization of parliamentary independence. The chapter examined the challenges right after independence that continue to bear on the continent today. These challenges are mainly patronage, ethnicity, and corruption. The reason is the state still remains the primary arena for competition for scarce resources just as it was at independence. The ruling elite use their political positions to secure economic gains for themselves, their friends and families. Therefore the control of the state is important in the struggle for control of scarce resources. Consequently, patronage, ethnicity, and corruption continue to thrive despite political reforms.

Out of the objectives of the study and the findings, the premises were confirmed to be true that the one-party state constrained parliament from undertaking its core functions. The constitutional amendments that were made strengthened the presidency further creating a very powerful presidency. Parliament was therefore operating at the mercy of the president instead of the executive operating under parliament. The result of this was tyranny and

arbitrary rule. This curtailed parliamentary independence. After the re-introduction of competitive politics, the undertaking of relevant constitutional reforms such as the establishment of the Parliamentary Service Commission and the revitalization of parliamentary committees among other reforms as well as change of regime and the promulgation of a new constitution, it was expected that there would be a transformation in the role of parliament. This expectation however, was not fully realized. Even though there were gains, parliament was influenced by patronage, ethnicity, and corruption. These factors which have affected parliamentary independence and effectiveness have their genesis in the character of the African states, which begun to take shape soon after independence.

This study was limited to the period between 1963 and 2014. During the research, it was difficult to find MPs who had served consistently in all the regimes of Jomo Kenyatta, Moi, Kibaki, and Uhuru Kenyatta. Veteran politicians were few. Appointments were not always honored by some MPs due to their busy schedules. Most respondents feared being quoted and were therefore apprehensive about the effects of what they would say. This study maintained confidentiality by ensuring anonymity of sources drawn from members of parliament, the civil society, and academicians.

### **Recommendations**

Based on the findings of this study, the following recommendations are made:

- I. Chapter six of the constitution should be strengthened to sanction violators of leadership integrity. Parliament should enact laws that will

permanently disqualify state officers who abuse their offices from ever occupying public office, over and above other punishment.

- II. An independent body should be created to investigate corruption over parliamentary committees. Currently, the Powers and Privileges Committee investigates corruption, which is a parliamentary committee investigating another committee. As such objectivity of the findings may be biased.
- III. There should be a National Code of Ethics for occupants of public office including politicians in the course of their public duty. This will enable the control of ethical standards of public officials.
- IV. A nominated MP should bring a more independent voice in parliament. There is need for set criteria to nominate active professionals such as farmers, writers, Artists and teachers among others. This will provide parliament with an opportunity to access independent views when enacting legislation as well as ensuring lively debates on topical issues.
- V. The committee system should make use of Information and Communication Technology (ICT) and video conferencing facilities to cut down on travelling cost.
- VI. The Standing Orders should establish objective criteria of MPs to the select committees. The criteria for selection for MPs to serve on specific committees should be based on experience, expertise and background as this will improve the capability of MPs to scrutinize legislation.

## **APPENDICES**

### **APPENDIX 1**

#### **Members of Parliament**

- Respondent 1 (Requested anonymity) June 27<sup>th</sup>, 2012
- Respondent 2 (Requested anonymity) June 27<sup>th</sup>, 2012
- Respondent 3 (Requested anonymity) June 27<sup>th</sup>, 2012
- Respondent 4 (Requested anonymity) June 27<sup>th</sup>, 2012
- Respondent 5 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 6 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 7 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 8 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 9 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 10 (Requested anonymity) June 28<sup>th</sup>, 2012
- Respondent 11 (Requested anonymity) June 29<sup>th</sup>, 2012
- Respondent 12 (Requested anonymity) June 29<sup>th</sup>, 2012
- Respondent 13 (Requested anonymity) July 2<sup>nd</sup>, 2012
- Respondent 14 (Requested anonymity) July 5<sup>th</sup>, 2012
- Respondent 15 (Requested anonymity) July 5<sup>th</sup>, 2012
- Respondent 16 (Requested anonymity) July 7<sup>th</sup>, 2012
- Respondent 17 (Requested anonymity) July 10<sup>th</sup>, 2012
- Respondent 18 (Requested anonymity) July 10<sup>th</sup>, 2012
- Respondent 19 (Requested anonymity) July 14<sup>th</sup>, 2012
- Respondent 20 (Requested anonymity) July 18<sup>th</sup>, 2012

Respondent 21 (Requested anonymity) July 18<sup>th</sup>, 2012  
Respondent 22 (Requested anonymity) July 20<sup>th</sup>, 2012  
Respondent 23 (Requested anonymity) July 20<sup>th</sup>, 2012  
Respondent 24 (Requested anonymity) July 20<sup>th</sup>, 2012  
Respondent 25 (Requested anonymity) July 20<sup>th</sup>, 2012  
Respondent 26 (Requested anonymity) July 20<sup>th</sup>, 2012  
Respondent 27 (Requested anonymity) July 27<sup>th</sup>, 2012  
Respondent 28 (Requested anonymity) July 27<sup>th</sup>, 2012  
Respondent 29 (Requested anonymity) July 27<sup>th</sup>, 2012  
Respondent 30 (Requested anonymity) July 21<sup>st</sup>, 2012  
Respondent 31 (Requested anonymity) August 4<sup>th</sup>, 2012  
Respondent 32 (Requested anonymity) August 11<sup>th</sup>, 2012  
Respondent 33 (Requested anonymity) August 18<sup>th</sup>, 2012  
Respondent 34 (Requested anonymity) August 25<sup>th</sup>, 2012  
Respondent 35 (Requested anonymity) August 29<sup>th</sup>, 2012  
Respondent 36 (Requested anonymity) August 29<sup>th</sup>, 2012  
Respondent 37 (Requested anonymity) August 29<sup>th</sup>, 2012  
Respondent 38 (Requested anonymity) August 29<sup>th</sup>, 2012  
Respondent 39 (Requested anonymity) August 29<sup>th</sup>, 2012  
Respondent 40 (Requested anonymity) September 4<sup>th</sup>, 2012  
Respondent 41 (Requested anonymity) September 4<sup>th</sup>, 2012  
Respondent 42 (Requested anonymity) September 4<sup>th</sup>, 2012  
Respondent 43 (Requested anonymity) September 6<sup>th</sup>, 2012

Respondent 44 (Requested anonymity) September 6<sup>th</sup>, 2012  
Respondent 45 (Requested anonymity) September 6<sup>th</sup>, 2012  
Respondent 46 (Requested anonymity) September 8<sup>th</sup>, 2012  
Respondent 47 (Requested anonymity) September 12<sup>th</sup>, 2012  
Respondent 48 (Requested anonymity) September 12<sup>th</sup>, 2012  
Respondent 49 (Requested anonymity) September 12<sup>th</sup>, 2012  
Respondent 50 (Requested anonymity) September 12<sup>th</sup>, 2012  
Respondent 51 (Requested anonymity) September 15<sup>th</sup>, 2012  
Respondent 52 (Requested anonymity) September 18<sup>th</sup>, 2012  
Respondent 53 (Requested anonymity) September 18<sup>th</sup>, 2012  
Respondent 54 (Requested anonymity) September 18<sup>th</sup>, 2012  
Respondent 55 (Requested anonymity) September 18<sup>th</sup>, 2012  
Respondent 56 (Requested anonymity) September 18<sup>th</sup>, 2012  
Respondent 57 (Requested anonymity) September 20<sup>th</sup>, 2012  
Respondent 58 (Requested anonymity) September 20<sup>th</sup>, 2012  
Respondent 59 (Requested anonymity) September 22<sup>nd</sup>, 2012  
Respondent 60 (Requested anonymity) September 26<sup>th</sup>, 2012  
Respondent 61 (Requested anonymity) September 26<sup>th</sup>, 2012  
Respondent 62 (Requested anonymity) September 27<sup>th</sup>, 2012  
Respondent 63 (Requested anonymity) September 28<sup>th</sup>, 2012  
Respondent 64 (Requested anonymity) October 3<sup>rd</sup>, 2012  
Respondent 65 (Requested anonymity) October 6<sup>th</sup>, 2012  
Respondent 66 (Requested anonymity) October 20<sup>th</sup>, 2012

Respondent 67 (Requested anonymity) October 28<sup>th</sup>, 2012

Respondent 68 (Requested anonymity) November 3<sup>rd</sup>, 2012

#### **Members of civil society**

Respondent 1 (requested anonymity) March 6<sup>th</sup>, 2012

Respondent 2 (requested anonymity) March 15<sup>th</sup>, 2012

Respondent 3 (requested anonymity) March 28<sup>th</sup>, 2012

Respondent 4 (requested anonymity) April 14<sup>th</sup>, 2012

Respondent 5 (requested anonymity) May 11<sup>th</sup>, 2012

#### **Members of academia**

Respondent 1 (requested anonymity) November 3<sup>rd</sup>, 2011

Respondent 2 (requested anonymity) June 6<sup>th</sup>, 2012

Respondent 3 (requested anonymity) September 11<sup>th</sup>, 2012

Respondent 4 (requested anonymity) September 16<sup>th</sup>, 2012

Respondent 5 (requested anonymity) October 24<sup>th</sup>, 2012

## APPENDIX 2

### Question Guide for Parliamentarians

Name (optional).....

Age.....

Gender.....

1. What was the impact of a powerful presidency on parliament in terms of performing their core functions from 1960s-1990s when multiparty was reinstated?
2. Parliament did not have a legal draftsman to help MPs draft personal bills until 2008. The AG was responsible for this role. How did the AG's role affect the nature of bills brought to the House for consideration?
3. What challenges have MPs faced in undertaking their core functions since the reinstatement of multiparty politics?
4. In Kenya, parties seem to be formed along ethnic lines or coalitions of ethnic blocs. How has ethnicity affected MPs in the discharge of their core functions?
5. How did parliament play its budgetary role during the one-party era?
6. How has parliament responded to opportunities for reform in terms of performing their core duties?
7. What effect did political patronage have on MPs in the undertaking of their functions?

8. Why was community service emphasized during the one party era at the expense of other core functions?
9. Why have some scholars asserted that without the involvement of civil society parliament would not have developed to what it is today?
10. Effective oversight requires a significant measure of transparency about the substance of governmental operations. What mechanism has parliament put in place to ensure that they get the required information to undertake effectively their oversight roles?
11. What has been the impact of increase in salary and remuneration on the ability of MPs to perform the defining functions of the House?
12. Has increase in salary and remuneration enabled MPs to vote with their conscious or are there other influencing factors?
13. Has ethnicity or other vested interests compelled MPs to vote in certain ways?

### APPENDIX 3

#### Question Guide for members of the Civil Society and Academicians

Name (optional).....

Gender.....

1. What was the effect of the violation of the principle of separation of powers and the principle of parliamentary independence after the constitutional amendment that made Kenya a republic?
2. What factors have contributed to MPs inability to perform their core functions over the years?
3. How would you compare the performance of parliamentarians during the Kenyatta, Moi and Kibaki regimes?
4. What has been the impact of increase in salary and remuneration on the ability of MPs to perform the defining functions of the House?
5. How has parliament responded to opportunities for reform in terms of performing their core duties?
6. Has ethnicity or other vested interests compelled MPs in the discharge of their duties?

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