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AFRICAN LEGISLATURES AND HIV/AIDS: AN
EXPLORATORY ANALYSIS

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African Legislatures and HIV/AIDS: an Exploratory Analysis

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AFRICAN LEGISLATURES AND HIV/AIDS: AN EXPLORATORY ANALYSIS

Chapter 1 Introduction

Since 1981 AIDS has killed more than 25 million people world-wide, the majority of whom lived within developing countries.¹ The worst affected region, Sub Saharan Africa, currently has 3.5% of the world's population yet 37% of the world's people living with HIV.² In light of the magnitude of the pandemic in the region it has been increasingly acknowledged that not only are HIV and AIDS health issues but also pervasive development issues due to the impact they have on national socio-economic development.³ Unsurprisingly a disease of 'sex and drugs'⁴ is a highly controversial and politicized issue. An effective response represents a serious challenge for national governance institutions, particularly within the unique and complex socio political environments of the region.⁵

The need for 'democratic governance' and a 'multi-sectoral'⁶ approach within the HIV & AIDS response highlights the critical role of national legislatures. Due to the severity and scope of the pandemic there is an assumption that elected representatives would be in the forefront of the response. Effective legislatures are the sine qua non of a representative democracy, and arguably an important vehicle through which to drive the HIV national response.⁷ Legislatures represent a cross section of society and play a central role in the coordination and implementation of national responses. Further understanding and explanation of legislative responses around HIV & AIDS speak to issues of democratic governance and the need to improve overall accountability and transparency within these institutions.⁸ Central actors in the field have recently highlighted the need for more research on the

¹ Marais, H. 2010. Turning off the tap: Understanding and Overcoming the HIV Epidemic in Southern Africa. 2031, Hyperendemic pillar. Rockefeller Plaza, New York. And Andrejevs, G. 2008. How can political action keep HIV on the top of the political agenda? *HIV Medicine* 9(2). British HIV Association. At 28.

² Sekgoma, B and Samuels, S. 2007 -2011. Report on Strategic Plan for Southern African Development Community – Parliamentary Forum on HIV/AIDS 2007 – 2011. SADC Parliamentary Forum, HIV and AIDS Programme. Windhoek, Namibia. www.sadcpf.org. at 5.

³ Caesar-Katsenga, M and Myburg, M. 2006. Parliament, Politics and AIDS A Comparative Study of Five African Countries. IDASA Governance and AIDS Programme. Logo Print Cape Town. And Sekgoma, B and Samuels, S. Report on Strategic Plan for Southern African Development Community – Parliamentary Forum on HIV/AIDS 2007 – 2011. SADC Parliamentary Forum, HIV and AIDS Programme. Windhoek, Namibia. www.sadcpf.org. at 5.

⁴ Marais, H. 2010. Turning off the tap: Understanding and Overcoming the HIV Epidemic in Southern Africa. 2031, Hyperendemic pillar. Rockefeller Plaza, New York. And The AIDS 2031 Consortium. 2011. AIDS: Taking a Long Term view: The AIDS 2031 Consortium. Pearson Education Inc. FT Press. USA.

⁵ Strand, P. 2007. 'Comparing AIDS Governance: A research Agenda on Responses to AIDS Epidemic,' in Poku, N, Whiteside, A and Sandkjaer, B. (eds) AIDS and Governance. Aldershot Ashgate Publishers.

⁶ UNAIDS. 2005. The Three-Ones in Action: where we are and where do we go from here. UNAIDS. Geneva, Switzerland. <http://www.unaids.org>.

⁷ National Response to AIDS: More Action Needed. 2004. UNAIDS Report on the Global AIDS epidemic. At 157. www.unaids.org.

⁸ Strand, P. 2010. Making Accountability work for the AIDS Response. Global Health Governance. 4 (1). Centre for Global Health Studies. Seaton Hall University. USA. www.ghgj.org.

role of legislatures in country responses to AIDS.⁹ Although international ‘blueprints’ and calls for coordination, do not explicitly place legislatures at the centre of the response, there is a strong argument to suggest that the role of legislatures should be strengthened and supported in respect to the HIV/AIDS agenda. It has been posited that the HIV movement should work with individual members of parliament and cultivate the necessary political incentives to ensure that action around HIV & AIDS is taken.¹⁰

Existing global HIV & AIDS governance prescriptions, and assumptions of elective representative response position legislatures at the centre of the effort. UNAIDS and other regional actors have called for and supported greater Legislative engagement around HIV/AIDS, and recent calls to implement the HIV model laws within the region, suggest a legislative mandate. The overall effectiveness of responses will to some extent depend on the legislatures own ability to fulfil their various tasks. These tasks include executing the functions of oversight, representation, law making and constituency service. However, as noted by Barkan,¹¹ legislatures cannot execute all of these functions equally and simultaneously due to competing institutional requirements that are inherent to all legislatures. It is interesting, therefore to track and describe the African legislative activity around these four functions, and to provide more accurate information as to the role of legislatures within the HIV & AIDS response. Therefore the creation of an analytical framework to identify and describe legislative activity on the four functions is followed by an exploration of potential reasons for variations in legislative activity between parliaments in a set of countries.

The analytical framework draws from traditional legislative theories and literature and is the first systematic framework to analyse all of the legislative functions, through the lens of HIV & AIDS. This descriptive section alone is an important contribution, not only to the understanding of democratic structures, but also to overall AIDS and Governance literature. The framework is applied to eight legislatures within the Eastern and Southern African region, each facing a generalised national epidemic.¹² The variations in legislative activity are then explored according to established arguments via correlation analysis.

The indiscriminate nature of the epidemic coupled with the disproportionate levels of HIV & AIDS within Sub Saharan Africa result in generation-long effects that undermine economic productivity, socio-cultural structures and national health and welfare.¹³ HIV & AIDS impact upon voting patterns,

⁹ Sidebe, M, Tanaka, S and Buse K. People Passion and Politics: Looking back and moving forward in the Governance of AIDS Response. Global Health Governance. 4 (1). Centre for Global Health Studies. Seaton Hall University. USA. www.ghgj.org.

¹⁰ Ibid.

¹¹ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Reinner Publishers. Boulder, London.

¹² Countries: Kenya, Malawi, Mozambique, Namibia, South Africa, Tanzania, Uganda and Zambia.

¹³ Whiteside, A. 2008. HIV/AIDS: A very short introduction. Oxford University Press. Oxford. London. At 102.

constituency demands and the individual legislatures. Therefore there is an expectation that African legislatures should have particularly high levels of activity around HIV & AIDS issues as it is clear that HIV & AIDS together present one of the most salient issues African legislatures will ever face. Unfortunately responses to the epidemic remain 'well behind the curve' with political leadership and overall accountability lacking in many parts of the world.¹⁴ African legislatures appear to offer no exception to this, raising questions as to what role, if any, legislatures play within HIV & AIDS responses.¹⁵

This analysis raises questions as to what legislatures actually have been doing around HIV & AIDS within the eight countries, and regarding the variations between these legislatures. It further raises questions as to the role of legislatures in the HIV epidemic and areas where further research or action is required. The research further highlights the established argument that 'cookie cutter models'¹⁶ are not suitable for national responses to HIV & AIDS, confirming arguments put forward by Putzel¹⁷ and De Waal¹⁸ that country specific approaches need to be pursued.

This research speaks to the growing need to find African solutions for African problems, to be able to accurately evaluate the actions of institutions towards HIV & AIDS. There is a renewed interest in the role of legislatures in the epidemic and effective ways to mobilize and harness the capacity of government institutions. This research provides the first systematic framework and analysis, from which further case analysis and research can be done. It raises pertinent questions and provides a significant contribution to AIDS and Governance literature.

¹⁴ The AIDS 2031 Consortium. 2011. AIDS: Taking a long term view: The AIDS 2031 Consortium. Pearson Education Inc. FT Press. USA. <http://www.ftpress.com/store/product.aspx?isbn=0132172593>

¹⁵ De Waal, A. 2003. How will HIV/AIDS transform African Governance. African Affairs. 102 (406) Oxford University Press. United Kingdom.

¹⁶ The AIDS 2031 Consortium. 2011. AIDS: Taking a long term view: The AIDS 2031 Consortium. Pearson Education Inc. FT Press. USA. <http://www.ftpress.com/store/product.aspx?isbn=0132172593>

¹⁷ Putzel, J. 2004. The Global fight against AIDS: How adequate are the National Commissions. *Journal of International Development*. (16) 1129 – 1140. John Wiley Sons limited. UK. Available online at: [available online at: http://onlinelibrary.wiley.com](http://onlinelibrary.wiley.com).

¹⁸ De Waal, A. 2003. How will HIV/AIDS transform African Governance. African Affairs. 102 (406) Oxford University Press. United Kingdom.

Chapter 2

Literature Review and Analytical Framework

This chapter develops the analytical framework that is the basis for the empirical analysis of legislative performance in Chapters Three and Four. The framework consists of two sections: the first is a literature review that will identify the current state of knowledge and dominant arguments on the functioning of African legislatures in general and their contributions to the AIDS response in particular. This section will motivate for a focus on four legislative functions that will structure the descriptive part of the thesis, as well as generate the hypotheses that will be tested in the explanatory part of the thesis. The second section of this chapter will present the research design for the descriptive and explanatory analysis. The section will also introduce the four legislative functions in further detail as well as discuss how they are operationalized into variables that will be used to test alternative explanatory arguments.

Literature Review

What are African legislatures doing about HIV & AIDS? To answer this question we need to highlight the overall governance role legislatures play in the face of the HIV epidemic, and then, more specifically the role of *African* legislatures within the HIV epidemic. To develop a relevant research design and to accurately interpret the data it generates on legislative activity, the analytical framework must be sensitive to some general features of the political culture in which the selected legislatures are embedded. For this purpose, this section will review central political science literature on legislatures generally, and on African legislatures specifically.

The important role of legislatures in the HIV epidemic has long been acknowledged, with earlier calls for a ‘multisectoral response’ and the realisation of the power that legislatures wield in a society, due to their representative and oversight roles.¹⁹ However, although there have been many studies on legislatures and assemblies, the majority were conducted in the late 60’s and throughout the 70’s and primarily focused on comparing western legislatures. Significant contributions from authors such as

¹⁹UNAIDS. 2005. The Three-Ones in Action: where we are and where do we go from here. UNAIDS. Geneva, Switzerland. <http://www.unaids.org>.

Mezey,²⁰ Kornberg,²¹ Copeland,²² Patterson²³ and Blondel²⁴ *inter alia* have informed our understanding of the formal legislative structures and mechanisms in several non African countries. Although this prior comparative research remains detached from the African context, the nature of the comparative studies assists in the formation of a framework for the study of African legislatures.

The first generation of studies on African Legislatures came in the form of case studies with limited comparative scope.²⁵ The research was often conducted by resident in-country specialists or external researchers who came and studied the country in isolation.²⁶ Mezey therefore concludes that the state of the knowledge was that it was either conducted by researchers who had little knowledge of legislative structures, but much of the African context, or much understanding of western legislative structures, but little of the African context or application.²⁷ Therefore early comparisons were often between a developing legislature and an established one, namely the US Congress.²⁸ This made cross national comparisons within the existing research problematic as opposing research methodologies and variables were used.²⁹ One of the first exceptions to this is Joel Barkan's work on African legislatures, specifically Kenya and South Africa. Consistent methodological approaches and variables were utilized in these studies, informed by sound research and understanding of the country contexts.³⁰

The research currently underway at the University of Cape Town, the African Legislatures Project under direction of Professors Robert Mattes, Shaheen Mozaffar and Joel Barkan *inter alia*³¹ seeks to address this gap in the study of African legislatures through the creation of a comparative framework through which these African legislatures can be assessed. Several aspects of this research are of

²⁰Mezey, M. 1983. The Functions of Legislatures in the Third World. *Legislative Studies Quarterly*. 8(4) Comparative Legislative Research Centre. <http://www.jstor.org/stable/439701> Accessed: 07/08/2009. And Mezey, M. 1979.

Comparative Legislatures. Duke University Press, Durham, North Carolina. USA.

²¹Kornberg, A and Musolf, L. 1970. On Legislatures in Developmental Perspective. In Kornberg, A and Musolf, L. (eds) 1970. *Legislatures in Developmental Perspective*. Duke University Press. USA.

²²Copeland, G and Patterson, S. (eds) 1994. *Parliaments in the Modern World: Changing Institutions*. University of Michigan Press. Ann Arbor. USA.

²³Ibid.

²⁴Blondel, J. 1973. *Comparative Legislatures*. Prentice Hall Inc. Englewood Cliffs, New Jersey. USA.

²⁵Nijzink, L, Mozaffar, S. Azevedo. E. 2006. Can Parliaments enhance the quality of democracy on the African Continent? An Analysis of the Institutional Capacity and public perceptions. Democracy and Africa Research Unit. *CSSR Working Paper* No 160. Centre for Social Science Research, University of Cape Town. South Africa.

²⁶Mezey, M. 1983. The Functions of Legislatures in the Third World. *Legislative Studies Quarterly*. 8(4) Comparative Legislative Research Centre. <http://www.jstor.org/stable/439701>. Accessed: 07/08/2009. and Mezey, M. 1979. *Comparative Legislatures*. Duke University Press, Durham, North Carolina. USA

²⁷Ibid. and Mezey, M. 1979. *Comparative Legislatures*. Duke University Press, Durham, North Carolina. USA

²⁸Copeland, G and Patterson, S. (eds) 1994. *Parliaments in the Modern World: Changing Institutions*. University of Michigan Press. Ann Arbor. USA.

²⁹Lofchie, M. 1968. Political Theory and African Politics. *The Journal of Modern African Studies*. 6. 1. Cambridge University Press Stable URL: <http://www.jstor.org/stable/158673> Accessed: 07/08/2009. At 3-15.

³⁰Barkan, J. (ed) 2009. *Legislative power in Emerging African Democracies*. Lynne Reinner Publishers. Boulder, London. At 8.

³¹Mozaffar, S. 2005. Everything you ever wanted to know about African Legislatures but were afraid to ask. Centre for African Studies Gallery, Ground Level, Harry Oppenheimer, Institute building, Upper Campus. Graduate School of humanities. University of Cape Town, unpublished (27 July 2005)

particular relevance to this paper - including the comprehensive tracking of bills, interviews with Members of Parliament and information on civil society engagement. Data collected on individual health and HIV/AIDS committees by the African Legislatures Project (ALP) further contributes to this paper. A recent book published by Mohammed Salih highlights the difference between African legislatures and traditional Western ones.³² This book offers reasons for the difference and highlights the different nature of African legislatures and the impact this difference has on overall legislative functioning. The functions of African legislatures are discussed in this publication, offering further clarity. Although Salih's publication does not provide a comparative framework for assessing African legislatures, much of the qualitative discussion informs the contextual environment and enriches an understanding of African legislative structures.³³

Work by both Barkan³⁴ and Mohammed Salih³⁵ suggest that African legislatures may have different strengths than legislatures in the US and Europe. Barkan submits that African legislatures exercise high levels of constituency service, potentially offering an explanation for the weakness of the other functions.³⁶ Mohammed Salih argues that stronger representative functions within African legislatures result in an improved response to social problems.³⁷ Tension between the different legislative functions is inherent in all legislatures, and this must be borne in mind when undertaking any study on legislatures, their performance or functions.³⁸

Clapham argues that African legislatures often lack the institutional memory and history of the more established legislatures and many lack autonomy and the capacity to develop suitable functions tailored to the country context.³⁹ Corruption and inefficiency are compounded by resource constraints and existing systems of patrimonialism, clientelism and 'big man' politics.⁴⁰ African legislatures exist in a socio political context that is different from their European counterparts. Research by Van de Walle⁴¹ and others highlights the practices of patriarchy and clientelism in African governance, and identifies the ways in which this influences policy formation and institutional functioning. Efforts to build legislative capacity in Africa must acknowledge these competing and complex dynamics.

³² Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

³³ Ibid.

³⁴ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

³⁵ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

³⁶ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

³⁷ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa. At 6.

³⁸ Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

³⁹ Clapham, C. 1998. Discerning the New Africa. *International Affairs*. 74(2). Blackwell Publishers, London. At 263 – 503.

⁴⁰ Ibid. And Mezey, M. 1983. The Functions of Legislatures in the Third World. *Legislative Studies Quarterly*. 8(4)

Comparative Legislative Research Centre. <http://www.jstor.org/stable/439701> Accessed: 07/08/2009. And

⁴¹ Van De Walle, N. 2001. African Economies and the Politics of Permanent Crisis. Cambridge University Press. USA.

Indeed, as noted by one such project: “strengthening parliaments isn’t simply a capacity issue; it’s an intensely political issue.”⁴²

Literature on both African and Western legislatures informs the selection of four legislative functions for this paper. An empirical framework by which legislative functioning around HIV & AIDS can be assessed is divided into four core indicators: Law making, oversight, representation or civil society engagement and constituency service. Each of these four indicators exists in both longer-established as well as African legislatures and activity around each of them vary, due to overall institutional, political and cultural contexts. The degree to which legislatures perform these functions in relation to issues pertinent to HIV & AIDS provides an understanding of the overall legislative performance on HIV & AIDS.

Despite the important role legislatures play in country responses to HIV & AIDS, few academic studies exist on African legislative responses to HIV & AIDS. Much of the existing literature is drawn from conference papers, reports handbooks and guides, highlighting the discourse and value of the topic.

The Institute for Democracy in Africa (IDASA) published a study in 2006 in which they looked at the relationship between legislatures, politics and AIDS in five African countries.⁴³ To date this appears to be the only systematic comparative analysis of African legislatures and their response to HIV & AIDS. IDASA’s five country analysis sets out to determine whether ‘Parliaments can and have made significant contributions to the national HIV/AIDS responses, in particular via the use of the parliamentary oversight function.’⁴⁴ The primary research goal is to identify ways to improve the overall effectiveness of parliaments in national HIV/AIDS responses,⁴⁵ with particular focus on the oversight function. The study includes five African countries; Botswana, Ghana, Mozambique, South Africa and Kenya, and is a snap-shot analysis focussing primarily on the oversight function of these legislatures.⁴⁶ This study highlights the importance and relevance of this legislative function in combating the epidemic and provides a useful framework for evaluation of the unique and pivotal role individual parliamentarians’ play. This study contributes some key recommendations for legislative strengthening and calls for strong leadership and full engagement of parliamentarians.⁴⁷

⁴²Strengthening Parliaments in Africa: Improving Support. 2008. A Report by the Africa all Party Parliamentary Group. House of Commons. London. at 10.

⁴³Caesar-Katseng, M and Myburg, M. 2006. Parliament, Politics and AIDS. A Comparative Study of Five African Countries. IDASA, Governance and AIDS Programme. Logo Print, Cape Town. South Africa.

⁴⁴Ibid. At 1.

⁴⁵Ibid. At 1.

⁴⁶Ibid. At 5.

⁴⁷Ibid.

The main limitation of the IDASA is its singular focus on the oversight function. Further, more consideration should have been given to contextual elements that influence legislative activity in Africa, as this provides a better understanding of the variations and differences in activity. An evaluation of overall legislative performance around HIV & AIDS needs not only to consider the overall institutional functions but also the inherent legislative institutional tensions that exist within all legislatures,⁴⁸ and the socio cultural and political influences that alter activity and performance. The IDASA study focuses on the role of the individual parliamentarian as opposed to the institutional structure on a whole.

The Regional Network for Equity in Health in East and Southern Africa (EQUINET) has published several papers specifically relating to parliamentary/legislative committees and the provision of health equity in the region, of which an HIV & AIDS response should be considered a key feature.⁴⁹ Similar to the IDASA research, EQUINET highlights the important role parliaments play in health within the region⁵⁰ through exercising oversight (specifically budget oversight) law-making and representation. The EQUINET papers provide additional material to assist in the operationalization of the legislative functions of oversight, legislation, representation and budget allocation.⁵¹ The EQUINET papers bear some overlap with research in this thesis, but differ in their broad focus on health as opposed to an HIV & AIDS specific focus.

EQUINET's research focuses on the parliamentary committees within the Eastern and Southern African region, the region most affected by the epidemic.⁵² The data collected through their research addresses a significant research gap within the AIDS and Governance field and makes informed and critical recommendations to individual parliamentarians within the region.⁵³ EQUINET's ten country study provides critical and comprehensive data for analysis and activity around health and HIV & AIDS. Although they look at the important role of individual parliamentarians and individual health committees, they contribute to overall understanding of the legislative institutions on a whole. The strength of this research is in the broad scope of the data and the important recommendations and suggestions made to legislatures in this affected region.

⁴⁸ Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

⁴⁹ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. UCT, TARSC, SEAPACOH: EQUINET, Harare.

⁵⁰ Ibid. And London L. Mbombo N, Thomas J, Loewenson R, Mulumba M, Mukono A. 2009. 'Parliamentary committee experiences on promoting the right to health in east and southern Africa'. *EQUINET Discussion Paper 74*. EQUINET. UCT, TARSC, SEAPACOH: EQUINET, Harare.

⁵¹ Ibid.

⁵² Marais, H. 2010. Turning off the tap: Understanding and Overcoming the HIV Epidemic in Southern Africa. 2031, Hyperendemic pillar. Rockefeller Plaza, New York. And The AIDS 2031 Consortium. 2011. AIDS: Taking a Long Term view: The AIDS 2031 Consortium. Pearson Education Inc. FT Press. USA.

⁵³ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare.

The National Democratic Institute for Democratic Affairs (NDI), in collaboration with SADC PF published the report: *Survey of Legislative efforts to combat HIV/AIDS in the Southern African Development (SADC) Region*.⁵⁴ The report emphasises the important role parliaments and legislatures play in addressing the multi-sectoral approach required to combat the HIV & AIDS epidemic. The survey is focused on the SADC region and looks at legislative institutions on a whole.⁵⁵ The report differs from the EQUINET and IDASA reports as it looks broadly at several different parliamentary functions, and does not restrict its scope to the role of individual members of Parliament. It concludes that, although African parliaments and legislatures appear to have adopted respective National Strategic Plans and committed to multi-sectoral responses for HIV & AIDS, few have established committees to specifically deal with HIV & AIDS and many are failing to sufficiently enact HIV & AIDS related legislation.⁵⁶

Amid claims that African legislatures are not taking full advantage of their 'constitutionally mandated powers to address HIV & AIDS',⁵⁷ Glassman⁵⁸ and the World Bank explore; *How Parliamentarians can Help Ensure Accountability for Spending on HIV/AIDS and Reproductive Health*.⁵⁹ This publication specifically looks at the role of Parliamentarians in ensuring accountability for HIV & AIDS spending.⁶⁰ The focus on legislative oversight over the HIV & AIDS budget points to the important role of legislatures and individual parliamentarians. The report highlights some of the limitations of legislatures, while clearly operationalizing legislative functions.⁶¹ Both the Glassman and the EQUINET articles provide important quantitative and qualitative information for the operationalization of the descriptive variables and for a deeper understanding of the limitations and roles of African Parliaments.

Organisations such as the Inter-Parliamentary Union (IPU)⁶², Southern Africa HIV and AIDS information dissemination service (SAfAIDS)⁶³ the SADC Parliamentary Forum (SADC PF),⁶⁴ Health

⁵⁴Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Glassman, A. 2007. How Parliamentarians can Help Ensure Accountability for Spending on HIV/AIDS and Reproductive Health. *World Bank Institute*. Washington DC.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Taking Action against HIV and AIDS. Handbook for Parliamentarians. 2007. No 15/2007. Inter parliamentary Union, UNAIDS, UNDP. Available online: <http://www.ipu.org/PDF/publications/aids07-e.pdf>.

⁶³ 50 by 15: Intensifying HIV Prevention in Southern Africa: Action Toolkit for Parliamentarians and Civil Society. 2010. SAfAIDS and SADC PF. Available online: <http://www.saf aids.net/?q=node/1281>.

⁶⁴ Sekogma, B and Samuels, S. 2007. Report on Strategic Plan for Southern African Development Community – Parliamentary Forum on HIV/AIDS 2007- 2011. SADC Parliamentary Forum, HIV and AIDS Programme. Windhoek, Namibia. www.sadcpf.org. at 5.

Economics and HIV/AIDS Research Division (HEARD)⁶⁵ and the Southern and East African Parliamentary Alliance of Committees on Health (SEPA COH)⁶⁶ among others, have produced manuals and guidance handbooks to support increased Parliamentary action around HIV & AIDS in African countries.

The conference reports, handbooks and guides provided by HEARD, SAfAIDS, SADC PF and IPU all highlight the important role of legislatures within the context of the HIV pandemic. However, due to the nature of this literature, none seek to undertake a rigorous comparative analysis or data of the African legislative responses to HIV & AIDS. As in the EQUINET papers, many of the reports approach the HIV and legislative relationship from the perspective of the Member of Parliament or member of civil society and the actions each individual may take in their own capacity.⁶⁷ Although these papers may not provide academic analyses or data, each informs the discourse around the role of Parliaments and each highlights areas of action, including goal setting. In order to strengthen the literature on the governance of the AIDS response, however, research needs a stronger theoretical grounding. It must be based on more extensive data, and must seek to assess the contribution by parliaments at an institutional level. This research aims to make a solid contribution in these regards.

Research Design and Methodology

Case selection

This paper is a cross national, small-N comparative analysis of the legislatures in eight African countries: Kenya, Malawi, Mozambique, Namibia, South Africa, Tanzania, Uganda and Zambia. All of these countries fall within the most affected region of the world, Eastern and Southern Africa (ESA), where all countries are facing either hyper endemic or generalised epidemics.⁶⁸

The selection of countries to include in the study was influenced by two main considerations. Firstly, an active role by parliaments in the response is arguably most needed where the epidemic is most severe, hence the focus on the ESA region. Although the epidemic is extraordinarily severe across the

⁶⁵ Searle, A. 2009. *Parliamentarians and Civil Society: Collaborating on Rolling back HIV in Southern Africa*. (unpublished) Conference Report. 2009, July 17th and 18th. Health Economics and HIV/AIDS Research Division (HEARD). Durban. South Africa.

⁶⁶ SEAPACOH, PPD ARO, EQUINET, APHRC, UNFPA, DSW, *Venture Strategies (2008) Resolutions: Regional meeting of parliamentary committees on health in East and Southern Africa: Health Equity and Primary health care: Responding to the challenges and opportunities in Munyonyo, Uganda, 2008*, EQUINET/PPD ARO, South Africa

⁶⁷ Sekogma, B and Samuels, S. *Report on Strategic Plan for Southern African Development Community – Parliamentary Forum on HIV/AIDS 2007- 2011*. SADC Parliamentary Forum, HIV and AIDS Programme. Windhoek, Namibia. www.sadcpf.org. and Searle, A. 2009. *Parliamentarians and Civil Society: Collaborating on Rolling back HIV in Southern Africa*. (unpublished) Conference Report. 2009, July 17th and 18th. Health Economics and HIV/AIDS Research Division (HEARD). Durban. South Africa. And Taking Action against HIV and AIDS. Handbook for Parliamentarians. 2007. Inter parliamentary Union, UNAIDS, UNDP. . No 15/2007 Available online: <http://www.ipu.org/PDF/publications/aids07-e.pdf>.

⁶⁸ A generalised epidemic implies HIV prevalence of 1% or more in the adult population. In a hyper endemic epidemic prevalence is 15% or more in the general adult population.

region, previous analyses have identified variations in the type and intensity of parliamentary performance in the response to AIDS. A systematic and comprehensive description of these variations and an exploration of factors that may explain them will generate new knowledge with relevance for efforts to further strengthen parliaments' capacity to act constructively within the overall country response to HIV & AIDS. Such an analysis also has the potential to contribute to a more general literature on parliaments' role in African democracies.

This thesis is an analysis of institutional performance. The second consideration for the selection of cases was therefore governed by the availability of data on parliamentary performance at an institutional level. The African Legislatures project has collected data on: specific parliamentary committees, on individual Members of Parliament, the law making function of the legislature and the overall institutional design of the legislature. This data has been collected via surveys and primary data collection. At the time of this thesis, only a small selection of legislatures had been completed, thereby restricting the number of legislatures that could be analysed.

The above stated reasons for the selection of cases imply that there is no basis for arguing that the eight parliaments that are included in the study are representative, in a statistical sense, of a larger group of cases, such as all parliaments in the ESA region or across Africa. However, the more general findings in this research nevertheless provide an evidence-base that provides a point of comparison when discussing parliaments not included in this analysis.

The data in this research paper have been collected via both primary and secondary research and are both qualitative and quantitative in nature. Although many of these data derive from desktop research, gaps in the data have resulted in personal interviews, email correspondence and investigation. This paper is the first of its kind to attempt to investigate African legislative institutions and their functions with regard to HIV & AIDS using these specific variables and measurement. It is a unique piece of research that utilizes the African Legislatures project, UNAIDS data and other data from NGO's, primary research and theories of political science to provide a comprehensive exploratory analysis of legislative activity.

Dependent variable: parliamentary functions

The thesis will assess parliamentary performance on four central parliamentary functions: law making, oversight, legislative engagement with civil society and constituency service. The variables that capture these functions were created by aggregating data from several sources, as will be detailed in the following sections and further in chapter three. Each of these aggregate indices has several sub categories that independently measure different aspects. These aggregate indices have been created through reference to a variety of resources and data bases. Each is informed by various components

relating to the overall aggregate function.. In the final part of this paper a composite score is derived from analysis of these aggregate indices and used to evaluate the legislative activity in each of the eight countries.

Law- making

The law making function is executed in legislatures, through the creation and passing of laws and the formulation of policies,⁶⁹ literally, legislatures ‘amend, create and sanction laws.’⁷⁰ Although many policies emanate from the executive, the ability of parliaments to mould and influence the policies independent to the executive is a measure of their own independence and strength.⁷¹ In addressing the HIV & AIDS pandemic appropriate legislation needs to be introduced to protect all citizens, including those living with HIV and vulnerable sub populations such as sex workers (SW), men who have sex with men (MSM), and injecting drug users (IDU). In addition to this Parliaments need to ensure that their national strategy is updated and regularly reviewed to accommodate all sections of society in the pursuit of epidemic management. Legislation needs to be introduced to protect all citizens from discrimination and stigma and ensure universal access to life saving medications and to health services more generally.

This aggregate construct is consists of eight subcategories, all of which measure the law-making function within a legislature: (1) number of new bills introduced the explicitly mention HIV in the title;⁷² (2) number of new bills passed that explicitly mention HIV in the title;⁷³ (3) number of bills referred to the health committee;⁷⁴ (4) country review of the national policy on HIV/AIDS; (5) law that protects PLWHA from discrimination; (6) obstacles in the protection of vulnerable groups; (7) laws that present obstacles to the protection of vulnerable groups, and; (8) laws that criminalize MSM, SW and IDU.⁷⁵ The data for each of these subcategories is collected from two sources; The African Legislatures project and UNAIDS.⁷⁶

Legislative Engagement with Civil Society

Traditionally the representative function is executed when members represent the views of their constituents within the house. However, for the purposes of this research this aggregate indices will be

⁶⁹ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Reinner Publishers. Boulder, London. At 8.

⁷⁰ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa. At 3.

⁷¹ Ibid.

⁷² African Legislatures Project.. University of Cape Town.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ UNAIDS. www.unaids.org.

⁷⁶ The data from UNAIDS comes from the National Composite Policy Index that is part of the UNGASS monitoring framework. This data was collected in 2007. The data was accessed through AIDS Accountability International.

measured by the frequency and degree to which civil society can engage and does engage with the legislature around HIV & AIDS issues. Whether or not civil society organisations have opportunity to participate in debates and governance processes that shape parliamentary activity will be measured through six sub-categories: (1) civil society input into new bills;⁷⁷ (2) whether or not the chair of the parliamentary committee meets with civil society;⁷⁸ (3) whether parliamentary meetings within the committee tasked with HIV & AIDS are held in camera or in the open;⁷⁹ (4) the number of civil society presentations in the committee tasked with HIV & AIDS;⁸⁰ (5) percentage of MP's who turn to either civil society or academia for research and information⁸¹ and, finally; (6) the level of civil society involvement in the National Strategic plan.⁸² The data for this aggregate indices primarily comes from the African Legislatures project

Oversight

The oversight function can be executed with regard to the budget and in the monitoring of the executive and its expenditure. However additional legislative influence over the structure of the budget, questions directed to the executive and the promotion of debate are also considered oversight functions.⁸³ Although, data is limited on legislative influence over the budget components specifically related to HIV & AIDS, EQUINET's study on Parliamentary roles around the monitoring and engagement with the executive and around the Abuja Commitment to health spending highlights the role Parliaments can play with regard to the health budget.⁸⁴ Therefore, this function will be measured by two variables: oversight over the budget and oversight in the committee. Oversight of the budget is important for accountability, particularly when faced with an epidemic that places such extreme financial burdens on the state.⁸⁵

Whether or not there is an active and well-staffed committee, specifically created to address HIV & AIDS issues, or an existing committee tasked with HIV – may influence execution of oversight.⁸⁶ The three subcategories to this aggregate indices are the following: (1) what do MP's think about the

⁷⁷ African Legislatures Project. University of Cape Town

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ordinal measurement contained in the Country National Composite Policy Index. www.unaids.org.

⁸³ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. UCT, TARSC, SEAPACOH: EQUINET, Harare. At 3. And Caesar-Katseng, M and Myburg, M. 2006. Parliament, Politics and AIDS. A Comparative Study of Five African Countries. IDASA, Governance and AIDS Programme. Logo Print, Cape Town. South Africa.

⁸⁴ Ibid. at 3.

⁸⁵ Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

⁸⁶ Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia.

parliamentary influence over the budget and the monitoring of the executive;⁸⁷ (2) what is the percentage of total government expenditure directed to health between 2003 – 2006⁸⁸ and; (3) what are the committee budget priorities and what is the content of questions raised with the executive?⁸⁹ With regard to an HIV & AIDS specific committee, or committee tasked with HIV & AIDS the six questions are: (1) does such a committee exist; (2) what is the degree of activity; (3) what is the funding and budget situation; (4) what is the medical and technical expertise of the chair and the members; (5) how many special investigations have there been, and; (6) was a committee report produced, tabled and debated?⁹⁰

Constituency Service

Constituency Service⁹¹ entails individual legislators acting individually to perform certain functions and activities within their respective constituencies. These actions can vary, but normally involve routine visits, funding of individual needs and the involvement in small to medium scale development projects.⁹² For the purposes of this research, the level of constituency service will be measured by the amount of money spent in the constituency in a given year, of a personal and project nature, and the frequency of the visits and length of stay in this same constituency.⁹³ The subcategories of this variable includes: (1) the percentage of time devoted to the constituency in days (in and out of session); (2) the length of stay in the constituency (in and out of session); (3) the level of project-related donations in the constituency, and (4) the level of personal donations to members of the constituency. Calculation of the expenditure has been converted to the US dollar exchange rate during the year that the survey took place.

The section above details how the four parliamentary functions will be captured by five variables. It is important to note here that two of the five variables are concerned with the oversight function; oversight generally and oversight of the budget, therefore despite their only being four function variables, for the purposes of this study there are five variables. As data on these variables is presented in chapter three it will be further specified how the subcategories are aggregated into a value – a ‘score’ – for each variable, and also how the five variables are aggregated into an overall composite variable. The five variables, plus the overall composite variable, are all dependent variables in this analysis as they capture different aspects of parliamentary performance on HIV/AIDS.

⁸⁷ African Legislatures Project. University of Cape Town.

⁸⁸ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare.

⁸⁹ Ibid.

⁹⁰ African Legislatures Project. University of Cape Town.

⁹¹ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

⁹² Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

⁹³ Ibid.

Explanatory variables: context and institutions

The ambition of this thesis is not only to identify variations in performance between the eight parliaments, but also to do initial statistical tests to see which variables may contribute to explanations of the variation. As noted above, it is important to consider the socio cultural and political dynamics in which the legislatures exist, as a variety of factors may influence legislative activity on HIV & AIDS. The thesis will use statistical analysis to explore whether there are any tendencies in the data that would suggest links between the six dependent variables and six independent variables. The six independent variables are: (1) the severity of the HIV epidemic; (2) the duration of the National AIDS Council; (3) the financial resources available to the legislature (measured by GNI per capita); (4) the quality of governance generally; (5) the electoral system; (6) whether parliament functions in a presidential or parliamentary system, and; (7) the nature of public opinion on HIV & AIDS. Each of these variables will be discussed further in the following paragraphs.

The severity of the epidemic is measured by HIV prevalence in the adult population, based on data from 2007, as presented by UNAIDS. HIV prevalence is used here as a proxy to indicate the overall severity, or scope, of the epidemic in the eight countries. Whereas other information – such as data on HIV incidence, demand for treatment and/or total expenditure on HIV & AIDS – would have given other nuances to the measure, HIV prevalence is arguably a reasonable proxy for the purposes of this analysis. The expectation on this variable is that more severe epidemics will motivate greater activity by the legislatures, as measured by all dependent variables. The necessity to respond would be higher due to the devastating effects of the disease.

The international blueprint for the institutionalisation of the AIDS response is captured in the notion of the ‘three ones’. Countries should have one national policy framework, one system to monitor and evaluate the response, and one national coordinating authority.⁹⁴ This authority, a National AIDS Council, must coordinate the roles of other institutions to ensure a smooth governance process, including legislative activity. The formation and funding of the National AIDS councils located within the health ministries in the 1980 signalled an international acknowledgment of the scale and importance of the HIV epidemic.⁹⁵ Additional funding flowed in with the conditionality that the existing councils be revised to address a call for a multi sectoral approach under the ‘Three Ones

⁹⁴ UNAIDS. 2005. The Three-Ones in Action: where we are and where do we go from here. UNAIDS. Geneva, Switzerland. <http://www.unaids.org>.

⁹⁵ England, R. 2006. Viewpoint: Coordinating HIV control efforts: what to do with the National AIDS Commissions. The Lancet. 367 1786-89. www.thelancet.com

Principles'.⁹⁶ In theory this organisational blueprint would coordinate all funds, actions and groups around a common agenda, streamlining the government response and improving overall effectiveness of the national response. This emerged out of the belief that the existing councils, located within the health ministries were unable to adequately address the social and behavioural issues and therefore required a more holistic coordination authority.⁹⁷ In theory the implementation and subsequent set up of the NAC's should have streamlined and improved the national HIV & AIDS responses. It is asserted by UNAIDS that a functioning National AIDS Council increases legislative efficiency around the HIV & AIDS issue.⁹⁸ This assumption has been questioned by Putzel and others who instead argue that they tend to undermine the national response.⁹⁹ Putzel argues *inter alia*, that since the powers of the NAC were never clearly identified they caused complications and confusions and a general bureaucratic overburdening of the governance system, thus undermining the effectiveness of the national response.¹⁰⁰ A qualitative comparative study by SAHARA on National AIDS Councils in five African countries explores the efficiency and influence, and informs the discussion and operationalization of this variable.¹⁰¹ However, no comparable data is available to capture the effectiveness of the NACs in the eight countries included in this study. The variable will therefore use the number of years that the NACs has been in existence as a proxy for their effectiveness. While it is clear that NACs will need time to get established and develop processes to fulfil their mandate, it is equally clear that their effectiveness will depend also on a host of other factors, including independence, mandate and internal financial and institutional capacity. A separate study on the independence, mandate and internal capacity of the National AIDS councils would be of great use to further evaluate their effectiveness, unfortunately this is out of the scope of this study and a proxy measurement is used to provide an indication of activity. Until such more nuanced data becomes available, duration of activity will have to suffice as a proxy. The imprecision of the measure will be taken into account when the results of the analysis are interpreted.

The issue of financial capacity is often raised in discussions of African legislatures, or African institutions on a whole.¹⁰² Cash-strapped societies often have a reduced capacity to respond in the

⁹⁶ Hongoro, C, Mturi, A, Kembo, J. 2008. Review of the National AIDS Councils in Africa: Findings from five countries. *Journal of Social Aspects of HIV/AIDS*. 5(4). Sahara Journals. www.sahara.org.za.

⁹⁷ England, R. 2006. Viewpoint: Coordinating HIV control efforts: what to do with the National AIDS Commissions. *The Lancet*. 367 1786-89. www.thelancet.com

⁹⁸ UNAIDS. 2005. The Three-Ones in Action: where we are and where do we go from here. UNAIDS. Geneva, Switzerland. <http://www.unaids.org>

⁹⁹ Putzel, J. 2004. The Global Fight Against AIDS: How Adequate are the National Commissions? *Journal of International Development*. 16. John Wiley and Sons. www.interscience.wiley.com.

¹⁰⁰ England, R. 2006. Viewpoint: Coordinating HIV control efforts: what to do with the National AIDS Commissions. *The Lancet*. 367 1786-89. www.thelancet.com

¹⁰¹ Hongoro, C, Mturi, A, Kembo, J. 2008. Review of the National AIDS Councils in Africa: Findings from five countries. *Journal of Social Aspects of HIV/AIDS*. 5(4). Sahara Journals. www.sahara.org.za.

¹⁰² Piot, P and Coll Seck, A. M. 2001. International Response to HIV/AIDS epidemic: planning for success. *Bulletin for World Health Organisation*, 79 (2). Available online: http://www.scielosp.org/scielo.php?pid=S0042-96862001001200006&script=sci_arttext&tlng=en

same manner as their wealthier counterparts¹⁰³ therefore reducing their overall institutional response and effectiveness. Capacity, or the financial resources available to the legislature, as measured by the overall GNI per capita (PPP USD) by the World Bank is therefore an important explanatory variable to include when exploring the variations between legislative activity and functioning.¹⁰⁴

The understanding that good governance is required to adequately respond to the epidemic is central in the literature.¹⁰⁵ The data used for this variable comes from the ‘accountability and corruption’ element of the Mo Ibrahim governance index from 2008.¹⁰⁶ The expectation on this variable is that we will see higher parliamentary activity in countries with better governance.

Work by Barkin¹⁰⁷ and IDASA¹⁰⁸ both note that the type of electoral system influences legislative functioning. In countries with Proportional Representation (PR) systems lower levels of representation should be expected, compared with levels within ‘First Past The Post’ countries (FPTP).¹⁰⁹ Higher levels of constituency service are also expected in First Past the Post systems, while law making and oversight functions should be stronger in PR systems. Differing electoral systems may help explain why not all legislatures in Africa are able to perform on the same level, as there are inherent tensions within the institutional design that influence overall institutional activity.¹¹⁰ The case selection in this paper includes electoral systems from First Past The Post, and Proportional Representation systems. Exploring parliamentary functioning and activity around HIV & AIDS while noting the difference between electoral systems, is an important consideration in this paper.

Similarly, the institutional design regarding Presidential or Parliamentary systems will also be looked at with cognizance of the existent ‘big man’ politics of many African countries. The existence of either a parliamentary system or a presidential system will influence the degree of power and control the parliament has within the country. It can be asserted that legislative performance within parliamentary systems should be higher than in countries with presidential systems.

¹⁰³Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia.

¹⁰⁴GNI Glassman, A. 2007. How Parliamentarians can Help Ensure Accountability for Spending on HIV/AIDS and Reproductive Health. *World Bank Institute*. Washington DC.

¹⁰⁵As discussed in Strand, P. 2007. Comparing AIDS governance: A research agenda on responses to the AIDS epidemic. *CSSR Working Paper No. 203*. AIDS and Society Research Unity. Centre for Social Science research. Cape Town. South Africa. At 3.

¹⁰⁶Mo Ibrahim Governance Index. Available online: <http://www.moibrahimfoundation.org/en/section/the-ibrahim-index>.

¹⁰⁷Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

¹⁰⁸Caesar-Katseng, M and Myburg, M. 2006. Parliament, Politics and AIDS. A Comparative Study of Five African Countries. IDASA, Governance and AIDS Programme. Logo Print, Cape Town. South Africa.

¹⁰⁹Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

¹¹⁰Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

In democracies, parliaments and legislatures are meant to reflect and represent, in broad terms, the political sentiments held by the voting public; in other words, legislatures should be representative of dominant opinions in the voting public.¹¹¹ Whether or not public opinion on the governance of the response to HIV & AIDS has an impact on parliamentary activity will be measured with two variables in the third round of the Afrobarometer public opinion surveys.¹¹² The first capture the percentage of people who feel AIDS is one of the three most important problems that their government should address, and the second capture the percentage of people who think their Government has performed badly in the response to HIV & AIDS during the year prior to the survey (2007). The expectation is to find higher parliamentary activity in countries where more people prioritize AIDS, and similarly in countries where more people are critical of Government performance. Salih¹¹³ asserts that African parliaments are more effective in responding to social problems and the common public interest than in governance roles, which would allocate a certain weight to the role of public opinion.¹¹⁴ De Waal notes however that governments only act when there is a real perceived threat to their power, and often respond very late.¹¹⁵ In light of these two arguments the role and impact of public opinion on overall legislative activity is important.

Leadership, particularly executive leadership, around HIV & AIDS is highlighted in responses to the epidemic due to success stories from; *inter alia*, Senegal and Uganda. Successful results in Uganda have been attributed to Museveni's enlightened leadership. A growing body of literature demonstrates the link between active vocal, HIV & AIDS aware leaders and increased national HIV & AIDS response and it has been asserted that stronger leadership promotes a better HIV & AIDS response. Patterson¹¹⁶ and Whiteside¹¹⁷ for example emphasise the important role leadership plays, both on an international and a national level in fighting HIV & AIDS.

In executive dominant African Parliaments, riddled with 'Big- man' Politics – tracking examples of good leadership around HIV/AIDS, while exploring the link with Parliamentary activity becomes an interesting pursuit.¹¹⁸ Patterson¹¹⁹ and Whiteside¹²⁰ emphasise the important role leadership plays, both on an international and a national level in fighting HIV/AIDS. It has been asserted that stronger

¹¹¹ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

¹¹² The data was made available by Per Strand and Robert Mattes from their current research manuscript *Public Opinion on AIDS in Africa* (preliminary title).

¹¹³ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

¹¹⁴ *Ibid.* at 4

¹¹⁵ De Waal, A. 2003. How will HIV/AIDS transform African Governance. African Affairs. 102 (406) Oxford University Press. United Kingdom. At 20.

¹¹⁶ Patterson, A. (ed). 2005. *The African State and the AIDS Crisis*. Ashgate Publishing. Aldershot. England.

¹¹⁷ Whiteside, A. 2008. *HIV/AIDS: A very Short Introduction*. Oxford University Press. Oxford. London.

¹¹⁸ Van De Walle, N. 2001. *African Economies and the Politics of Permanent Crisis*. Cambridge University Press. USA.

¹¹⁹ Patterson, A. (ed). 2005. *The African State and the AIDS Crisis*. Ashgate Publishing. Aldershot. England.

¹²⁰ Whiteside, A. 2008. *HIV/AIDS: A very Short Introduction*. Oxford University Press. Oxford. London.

leadership promotes a better HIV/AIDS response however a powerful leader may overshadow a parliament, reducing its function or alternatively drive parliamentary activity around an issue the executive believes is important. It is therefore interesting to consider the role of leadership within the context of the national response to HIV/AIDS.

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Chapter 3

Descriptive Analysis

Legislatures are the central governance institution for political deliberation, legislation, oversight of the executive and representation of public and stakeholder opinions.¹²¹ With such core functions in the democratic process, effective legislatures are essential to ensure good governance and they are a necessary – albeit not a sufficient – factor for the consolidation of democracy.¹²² Although many African legislatures are relatively young compared to legislatures in Europe, Mohammed Salih argues that they have begun to wield greater power and influence in the shaping of legislation, oversight of the executive and the creation of the necessary link between the governed and the governing.¹²³

In order to address the HIV pandemic, a coordinated multi-sectoral response has been called for. This response presents a significant challenge for governments in the region.¹²⁴ It requires the coordination of health ministries, national AIDS-coordinating agencies, international donors, civil society, government and the public at large, within resource-constrained and politically divided environments. It is an arduous and complex task resulting in many shortfalls and duplications in the approach.¹²⁵ Due to their unique governance powers, legislatures play a critical role in the multi-sectoral approach.

To accurately answer the question, “What are African legislatures doing about HIV & AIDS?” it is necessary to track and describe legislative activity around the four aggregate indices mentioned in Chapter 2. It is broadly accepted that the functions of legislatures include, oversight, representation

¹²¹Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDs in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 1.

¹²²Fish, S. 2006. Stronger Legislatures: Stronger Democracies. *Journal of Democracy*. 17, 1. Johns Hopkins University Press. United States. At 5 – 20. Also see: Barkan, J, Mattes, M. Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>. At 1. And Mezey, M. 1983. The functions of third world legislatures. *Third World Legislative studies Quarterly*. VIII 4. Comparative Legislative Research Centre. Jstor.org.

¹²³Mohammed Salih. MA. (ed). 2005. African Parliaments: between governance and government. HSRC Press. Cape Town, South Africa. At 3.

¹²⁴Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDs in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 7 and Caesear-Katseng, M and Myburg, M. 2006. Parliament, Politics and AIDS: A Comparative Study of Five African Countries. IDASA, Governance and AIDS Programme. Cape Town, at 1.

¹²⁵Ibid. See note 4.

and law-making,¹²⁶ while the work of Barkan¹²⁷ extends this set of functions to include constituency service.

Opposing narratives exist on how African states and legislatures respond to and manage HIV & AIDS. There is an assertion that many African countries still lack adequate HIV & AIDS legislation and policies and remain insufficiently coordinated to address the pandemic.¹²⁸ Political leadership is still shrouded in stigma and shame and resource-constrained environments limit parliamentary capacities.¹²⁹ However, it has also been noted that legislatures hold more power now than they have since independence and the frequency with which they are shaping and influencing legislation independent of the executive, has increased.¹³⁰

A description of the activity around the four key legislative functions will further clarify and improve the understanding of parliamentary activity around HIV & AIDS.

Law-making

The law-making function, as defined in Chapter 2, is executed in the legislatures through the creation and passing of laws and policies.¹³¹ Most SADC countries appear to have insufficient legislation to protect citizens' rights with regard to HIV & AIDS and several have recently introduced laws that actively undermine the rights of vulnerable sub-populations.¹³² The Homosexuality Bill in Uganda would be an example of such legislation.¹³³ In addition to this, laws that criminalize transmission of HIV also exist and undermine overall goals of epidemic management in Sub-Saharan Africa.¹³⁴ Legislation needs to be introduced to protect all citizens from discrimination and stigma and ensure universal access to life-saving medications.

¹²⁶Mezey, M. 1983. The functions of third world legislatures. *Third World Legislative studies Quarterly*. VIII 4.

Comparative Legislative Research Centre. Jstor.org.

¹²⁷Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

¹²⁸De Cock, K, Mbori-Negacha, D and Marumi, E. 2002. Shadow on the Continent: public health and HIV/AIDS in Africa in the 21st Century. *AIDS in Africa* V, 360, 6 (July). The Lancet. The Lancet Publishing Group. www.thelancet.com. At 67 – 73.

¹²⁹Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 7

¹³⁰Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

¹³¹Mohammed Salih. MA. (ed). 2005. African Parliaments: between governance and government. HSRC Press. Cape Town South Africa. At 3.

¹³²Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 7.

¹³³Aslop, Z. 2009. Ugandan bill could hinder progress on HIV/AIDS. *The Lancet*. Vol 374, Issue9707. At 2043 – 2044. Elsevier Publishers. United Kingdom. www.thelancet.com.

¹³⁴Willyard, C. 2007. Africa's HIV Transmission laws based on questionable science. *Nature Medicine*. Vol 13. Issue 8. (August). Macmillan Publishers. United States. At 890.

The table below tracks legislative activity on the law-making variable in the eight countries in this study. Focus on the creation and passing of new HIV-specific legislation, the revision of the national HIV & AIDS policies and the existence of discriminatory laws have been recorded in an attempt to provide an understanding of legislative activity in each country. This table records the number of new bills, both introduced and passed, that explicitly mention HIV or AIDS in the title. In addition to this it records the number of bills annually referred to the health committee, HIV Committee, or committee tasked with HIV & AIDS. It records whether or not the individual country has reviewed national HIV & AIDS policy and if the country has a law that protects people living with HIV/AIDS (PLWHA) from discrimination. Finally, this table records whether or not laws exist in the country that present obstacles to the protection of vulnerable sub-groups, including laws that criminalize men who have sex with men (MSM), sex workers (SW) and injecting drug users (IDU). It should be noted here that the information contained in the table was collected between the years of 2002 – 2008. Although several of the countries in this case study have since amended or altered their individual laws, these alterations will not be reflected in this study. Kenya and Mozambique¹³⁵ are examples where positive amendments have been made, including updating and revision of the National Strategy and the introduction of new legislation. Uganda is a negative example, due to the recent proposal to introduce anti homosexual legislation.¹³⁶

On the first look at this data, it appears that all countries, with the exception of Kenya, have a law that protects PLWHA from discrimination. However, despite this positive point, all these countries also have laws that present obstacles to the protection of vulnerable sub-groups, and, with the exception of South Africa, all the countries in the case selection have laws that criminalize MSM. Therefore it could be deduced from this that the legal environment for the HIV & AIDS response contains internal contradictions in many countries.

With reference to the first two columns, introduction and passing of legislation (explicitly mentioning HIV in the title), it appears that the majority of the countries are showing some, albeit limited, levels of activity on these variables. These levels of activity are a positive indication of parliamentary activity, although when compared with the stark realities that these same countries continue to have laws that present obstacles to the protection of vulnerable subgroups, and laws that criminalize MSM, it is clear that much work needs to still be done around the important HIV & AIDS agenda.

¹³⁵UNAIDS: Kenya. 2010. Kenya Launches 3rd National AIDS Strategic Plan. UNAIDS online: <http://www.unaids.org/en/regionscountries/countries/kenya/#2>. and UNAIDS: Kenya. 2010. Breaking down cultural barriers to address HIV. UNAIDS online:

<http://www.unaids.org/en/resources/presscentre/featurestories/2010/january/20100112loucouncil>. And UNAIDS:

Mozambique. 2008. Strengthening the AIDS response in Portuguese speaking countries. UNAIDS online:

<http://www.unaids.org/en/resources/presscentre/featurestories/2008/july/20080728aidsalertonnationalportuguesetv/>.

¹³⁶ Aslop, Z. 2009. Ugandan bill could hinder progress on HIV/AIDS. *The Lancet*. Vol 374, Issue 9707. (December) At 2043 – 2044. Elsevier Publishers. United Kingdom. www.thelancet.com.

Law-making Table 1: Law Making Activity

	Number of new bills introduced that explicitly mention HIV in title	New bills passed that explicitly mention HIV in the title	Number of bills referred to Health or HIV Committee	Country review of National HIV Policy	Law that protects PLWHA from discrimination	Laws that are obstacles in the protection of vulnerable sub groups (Govt response)	Does the country have laws that criminalize MSM	Does the country have laws that criminalize SW	Does the country have laws the criminalize IDU
Kenya	1	1	13	No	No	Yes	Yes	Yes	Yes
Malawi	2	2	2	Yes	Yes	Yes	Yes	No	No
Mozambique	1	1	1	Yes	Yes	Yes	Yes	No	No
Namibia	0	0	1	Yes	Yes	Yes	Yes	no	Yes
South Africa	1	0	4	Yes	Yes	Yes	No	Yes	Yes
Tanzania	1	1	0	No	Yes	Yes	Yes	Yes	No
Uganda	0	0	1	No	Yes	Yes	Yes	Yes	No
Zambia	0	0	2	Yes	Yes	Yes	Yes	Yes	No

Sources: African Legislatures Project and UNAIDS

Law-making Table 2:

Law-making Table 2 captures information around two questions; (1.) Does the parliament have too much control, about the right amount or too little control over the content of legislation? (2.) Has the effectiveness of parliament over the past five years become worse, stayed the same, become better, do not know, with regard to making laws?¹³⁷ Both questions were asked of Members of Parliament in the respective countries and the data has been collected by the African Legislatures Project. The table shows the distribution of MP responses across the various response options as a percentages of the total number of MPs that were interviewed within the study.

When asked about the ‘parliamentary influence on the content of legislation’, it appears that the majority of MP’s in six out of the eight countries believe that the legislative influence is ‘about right’ or too little’. This is consistent with the understanding that African Democracies that appear to have relatively weak legislatures struggle under heavy executive dominance. It is intriguing to note that the two exceptions, Namibia and Tanzania, surprisingly, and overwhelmingly, believe that legislative influence on the content of legislation is too much.

When asked the question, ‘parliamentary effectiveness in lawmaking, over the past five years’ minority percentages identify that parliamentary effectiveness has worsened in the eight countries. In Kenya, South Africa, Uganda and Zambia, the majority belief is that legislative effectiveness has remained the same, while in Malawi, Mozambique, Namibia and Tanzania the majority believe that legislative effectiveness has improved over the last five years. It is interesting to note that the majority

¹³⁷ African Legislatures Project. University of Cape Town.

of the MP's interviewed in these eight countries believe that legislative effectiveness has either stayed the same or improved over the last five years, suggesting revision, reform and positive activity within the legislatures as a whole. It is important to note, however, that this second question, does not allocate a weighting or illicit judgment on the value of parliamentary effectiveness, but simply asks if parliamentary effectiveness has worsened, improved or stayed the same in the preceding five- year period.

Law-making Table 2: Opinions of Members of Parliament

Legislative Table 2 - Opinions of Members of Parliament (%)						
Country	Does the parliament have too much, about the right amount or too little control over the content of legislation			Has parliamentary effectiveness over the past 5 years got worse, stayed the same or got better with regard to making laws		
	Too much	About right	Too little	Worse	Stayed the same	Better
Kenya	6	47	47	14	45	41
Malawi	2	63	31	25	23	37
Mozambique	12	42	44	6	30	64
Namibia	71	20	9	17	28	56
South Africa	22	69	9	17	45	38
Tanzania	92	8	0	3	11	86
Uganda	4	94	2	6	46	34
Zambia	12	41	41	4	35	29

Sources: African Legislatures Project

Analysis

As stated in the introduction, although the focus of this study is on the institution rather than the individual (macro) opinions of MP's, provide an interesting and useful indication of the activity and progress within the legislatures. When read together, the two tables (Table 1 and Table 2 pages 25 and 26) provide an interesting insight into the legislative dynamics. Considering the impact of individual MP's on the overall functioning and efficiency of a parliament, the opinions of those MP's who serve in the parliament in any given time may provide a deeper understanding of the overall law making activity at the time.¹³⁸ Although opinions of MP's do not speak to issues of actual independence of the legislature, they speak to perceptions which act as indicators of structural realities and potential areas of weakness or strength within a legislature, these considerations are important when evaluating the activity and capacity of individual legislatures around any given issue.

Kenya appears to have the highest law making activity within the case selection, particularly with regard to the number of bills that have been referred to the health committee or relevant HIV & AIDS

¹³⁸ Taking Action against HIV and AIDS. Handbook for Parliamentarians. 2007. No 15/2007. Inter parliamentary Union, UNAIDS, UNDP. Available online: <http://www.ipu.org/PDF/publications/aids07-e.pdf> at 7 – 25.

committee. This second variable, although important, is a crude estimation as we do not know the content of the referred bills. The high activity within the Health Committee could indicate increased action around HIV & AIDS. However, without an in-depth study of the content of such bills there is no way to say for certain.

The Kenyan *HIV/AIDS Prevention and Control Bill* was initially introduced in 2004. It was defeated after its first reading, but later reintroduced and finally passed in 2006. It is intriguing that there is only one bill explicitly mentioning HIV & AIDS, and this same bill took two years to be passed.¹³⁹ From a law making perspective, this suggests that the legislature is active around HIV, and not simply a rubber stamp parliament. Work by Barkan¹⁴⁰ would confirm and highlight that Kenya's parliament is functioning, and that it shows evidence of independence from the executive. Therefore, it appears that there is relatively high law making activity across these three variables, within Kenya during the timeframe of this study.

No country review of the National HIV policy had occurred within the time frame of this study as the National Strategic plan was due to conclude in 2010. However, more recent information confirms that such a review has now been done. According to the data in the above tables, Kenya still does not have a law that protects PLWHA and laws continue to exist that present obstacles to the protection of vulnerable sub-groups, compounded by the existence of actual laws criminalizing such sub-groups. Despite this, the majority of MP's interviewed by the African Legislatures project note that parliament's influence on the content of legislation is either 'too little' or 'about right'. In addition to this 40.8% of the same MP's believe that legislatures' effectiveness in law-making has improved over the last five years.¹⁴¹ In light of these MP opinions, there is an indication, that despite the existence of negative attributes within the Kenyan legislature, MP's are aware of their important role, and increased activity and effectiveness are currently being pursued. When read together the two tables suggest that there is a relatively high level of legislative activity and Kenya is moving towards a more positive 'HIV & AIDS aware' future.

Both Malawi and Mozambique appear to have similar law-making activity according to Table 1, above. In Malawi in 2003, the Legislature passed *The Multi-sectoral HIV/AIDS project authorization and ratification bill*, and in 2007 The HIV/AIDS National Policy Bill.¹⁴² In Mozambique in 2008 *The Defense of rights and fight against discrimination and stigmatization of holders of HIV/AIDS bill* was passed. Both countries show relatively high activity around the review of the National HIV Policy, but

¹³⁹ African Legislatures Project. University of Cape Town.

¹⁴⁰ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London.

¹⁴¹ African Legislatures Project: Module 2: Bill Tracker. University of Cape Town

¹⁴² Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare.

continue to have laws that present obstacles to the protection of vulnerable sub populations, with specific laws that criminalizes MSM. Although the above table (Table 1 page 25) suggests relatively high law making activity in both of these countries, qualitative information presented in the UNAIDS Country Reports and a report by National Democratic Institute (NDI) and SADC PF in 2004 paint a more mottled reality.¹⁴³

The Mozambican legislature is criticized for the limited role it has played in addressing HIV & AIDS in the country. It is stated that several pieces of legislation are required for an adequate approach to HIV & AIDS within the country. Mozambique's predominantly rural and agrarian population undermines the efforts expounded in the legislation brought in to protect the rights of employees in the workplace.¹⁴⁴ It was suggested by one of the participants in the NDI/SADC PF survey that the paucity of AIDS legislation can be attributed to limited information dissemination and access for MP's.¹⁴⁵

Malawi's UNAIDS country report acknowledges a slow initial response to HIV & AIDS, attributed to limited public discussion around sex and sexuality.¹⁴⁶ However, it appears that more recently the Legislature is reviewing existing policies to ensure both national and international policy consistency.¹⁴⁷ It is therefore noted that several relevant pieces of legislation have been introduced, and are currently operational. Although only two of these pieces of legislation explicitly mention HIV & AIDS in the title, all six pieces attempt to tackle pertinent HIV & AIDS issues: the National HIV/AIDS policy, National Policy on Orphans and other vulnerable children, National Youth Policy, National Early Childhood Development Policy, National Health Policy and several sectoral pieces of legislation governing HIV & AIDS in the workplace. Unfortunately it is noted that although Malawi has the appropriate legislation in place, implementation often suffers due to inadequate infrastructure and resources.¹⁴⁸ As with Mozambique there remains no official recognition of IDU's and MSM. This is evidenced by the recent homophobic activity in the past year within the country.¹⁴⁹

¹⁴³ Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 7. **and** Malawi HIV and AIDS Monitoring and Evaluation report. 2007. Office of the President and Cabinet. UNAIDS. www.Unaids.org. **and** Mozambique Progress Report for the United Nations. 2008. General Assembly Special Session on HIV and AIDS. Republic of Mozambique National AIDS Council. UNAIDS. www.Unaids.org.

¹⁴⁴ Ibid. at 18.

¹⁴⁵ Ibid.

¹⁴⁶ Malawi HIV and AIDS Monitoring and Evaluation report. 2007. Office of the President and Cabinet. UNAIDS. www.Unaids.org. at 13.

¹⁴⁷ Ibid. at 80.

¹⁴⁸ Ibid. at 91.

¹⁴⁹ Johnson, R.W. 2010. West Turns Africa into a gay battlefield: Western evangelists and gay rights groups are stoking Africa's bitter rows over homosexuality. *The Sunday Times* (online). <http://www.timesonline.co.uk/tol/news/world/africa/article6991023.ece>

MP opinions in response to the question, “Has parliamentary effectiveness over the past five years got worse, stayed the same or got better with regard to making laws?” is in line with the law making activity in the two countries. Although both countries appear to be performing identically in the quantitative data, the qualitative data, as provided by NDI and the country reports suggests a different picture. Malawi appears to be performing better, with more activity overall and more suitable legislation and policies being passed. 63.3% of Malawian MP’s believe the Parliamentary influence over the content of legislation to be ‘about right’, while 44% of Mozambican MP’s believe it to be too little. This suggests that there is an institutional awareness of the shortcomings within the Mozambican legislature and a desire to improve upon this. Legislative effectiveness in lawmaking, in the preceding five years is seen to be improving in both Malawi and Mozambique, therefore painting a more positive picture about the relative activities of both of these Legislatures.¹⁵⁰

Both South Africa and Tanzania show evidence of some law making activity. In both countries bills have been introduced into the legislature. Although South Africa has not passed any bills explicitly mentioning HIV & AIDS, there appears to be higher levels of activity in the South African committee, with four bills being referred to the Committee. Within the Tanzanian legislature one bill has been introduced and passed: *The HIV Prevention and Control Act*.¹⁵¹ It is noted, however, that within the Tanzanian standing orders, committees are not tasked with dealing with bills, and therefore bills are not referred to the committee. Law making activity in Tanzania can therefore not be measured by the number of bills through the Health Committee.¹⁵²

In 2003, the South African Parliament introduced the *Compulsory HIV testing for sexual offenders bill of 2003*. This bill was defeated and no other bill, explicitly mentioning HIV & AIDS has been introduced since.¹⁵³ The discussion of mainstreaming HIV & AIDS is relevant to the South African example since, although there appear to be no bills explicitly mentioning HIV & AIDS, the parliament has enacted legislation to address the rights of citizens’ access to health care and has been pursuing a multi-sectoral approach within the country since 1998, applying HIV & AIDS to existing legislation. This approach has been upheld as an example within the region.¹⁵⁴

Unfortunately, both Tanzania and South Africa have laws that present obstacles to the protection of vulnerable sub-populations. Tanzania continues to have laws that criminalize MSM and SW, while South Africa continues to criminalize SW and IDU. Opinions of Members of Parliament within

¹⁵⁰ African Legislatures Project: Module 3: Committee Worksheet. University of Cape Town.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 25.

Tanzania are particularly interesting. When asked about parliamentary influence over the content of legislation, an overwhelming percentage answered that parliamentary influence was too much (91%) while in South Africa the majority believed that parliamentary influence was 'about right'. These figures provide an insight into the powers, institutional perceptions and role of Members of Parliament in these two countries, and may have influence on the content of legislation and the number of bills that are passed. When asked the question concerning parliamentary effectiveness over the preceding five-year period, the majority of Tanzanian MP's believed that it had improved, (86%) while the majority of South African MP's believed it had stayed the same.¹⁵⁵

Bills explicitly mentioning HIV & AIDS in the title have not been introduced or passed in Namibia, Uganda or Zambia during the time period. There is some activity around the number of bills referred to each of the respective health committees in these countries, although in fairly low numbers (1, 1 and 2 respectively). As with Tanzania, the Namibian legislature does not refer bills to the Committee as a mandatory process, therefore making such a value an inaccurate measurement.¹⁵⁶ In addition to this, although no bills were referred to the Ugandan Committee on Health, the committee participated in discussions around the Penal Code Amendment, which included discussions on HIV & AIDS, therefore suggesting a measure of activity independent of the number of bills referred to the Committee.

It appears that all three legislatures have adequate laws that prevent PLWHA from discrimination,¹⁵⁷ but unfortunately all three countries still have laws that criminalize vulnerable sub-populations. Within Namibia, despite the best legislative efforts, the failure comes in implementation.¹⁵⁸ It appears that the Namibian legislature has initiated some successful policies to combat HIV & AIDS, including the Orphan Law and that governing protection from dismissal.¹⁵⁹ The legislature also played a role in enacting legislation that ensured the manufacture of ARV's and condoms within the country, thereby improving prevention and treatment interventions.¹⁶⁰ Unfortunately the law remains silent on MSM and IDU and sex work remains illegal.¹⁶¹ Within Zambia further revision is required to address

¹⁵⁵ African Legislatures Project. University of Cape Town.

¹⁵⁶ Ibid.

¹⁵⁷ Namibia United Nations General Assembly Special Session Country Report. 2005. Ministry of Health and Social Services. Directorate of Special Programmes. Windhoek, Namibia. At 13. And Malawi HIV and AIDS Monitoring and Evaluation report. 2007. Office of the President and Cabinet. UNAIDS. www.Unaids.org. and Uganda: UNGASS Country Progress Report. 2008. Uganda AIDS commission. UNAIDS. www.unaids.org.

¹⁵⁸ Ibid. At 13.

¹⁵⁹ Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 18.

¹⁶⁰ Ibid. at 21.

¹⁶¹ Ibid. at 18.

legislation that deals with HIV & AIDS, the primary example being in the form of the Rape Law which still remains silent on HIV & AIDS.¹⁶²

As with Tanzania, the majority of Namibian MP's believe that legislative influence over the content of legislation is too much. The majority of Zambian and Ugandan MP's believe that the influence is just right. Within Namibia the majority of MP's believe that legislative effectiveness has improved, while in Uganda and Zambia it has remained the same. These points can be validated through qualitative literature on the topic.¹⁶³

Discussion

The above tables (Table 1 and Table 2 pages 25 and 26), and analysis provides an indication as to how each of these eight parliaments is functioning on the legislative variable. However, it is important to note that neither the quantitative data, nor the qualitative data alone provides sufficient information to assess legislative activity in the parliaments. Furthermore, differing power dynamics and institutional structures impact upon the legislative variable, with notable examples from the Namibian and Tanzanian legislature, neither of which provide for mandatory referral of bills to the respective Health Committees. Another issue that is worthwhile to note, is the issue of HIV & AIDS mainstreaming, South Africa's Parliament is a key example of this because within the South African Parliament attempts to mainstream HIV into existing legislation have reduced the number of explicit HIV & AIDS bills being introduced and passed. This has, however, not undermined their overall performance and activity.

It appears from the above analysis and tables that all the legislatures within the case selection appear to be active in some way around the law-making variable. However, as with the Zambian Legislature, additional review and revision need to occur to tackle HIV & AIDS. Many of the legislatures appear to be addressing the issue and yet many of them do not successfully implement legislation. The parliaments of Malawi and Mozambique appear to be performing consistently well, within the time frame of this study, according to the preset criteria. However, both South Africa and Tanzania appear to be taking the appropriate steps to address the epidemic.

Legislative Engagement with Civil Society

Traditionally the representative function is executed when members represent the views of their constituents within the House. However, for the purposes of this research these aggregate indices will

¹⁶² Ibid. at 18 – 19.

¹⁶³ African Legislatures Project.. University of Cape Town.

be measured by the frequency and degree to which civil society can engage, and in fact does engage, with the legislature around HIV & AIDS issues. Whether or not civil society organisations have a space in which they can contribute, influence and alter parliamentary activity will be measured through several sub-categories: civil society input into new bills,¹⁶⁴ whether or not the Chair of the parliamentary committee meets with civil society,¹⁶⁵ whether parliamentary meetings within the committee tasked with HIV & AIDS are held in camera or in the open,¹⁶⁶ number of civil society presentations in the committee tasked with HIV & AIDS,¹⁶⁷ percentage of MP's who turn to either civil society or academics for research and information¹⁶⁸ and finally the level of civil society involvement in the National Strategic plan.¹⁶⁹ The data for this aggregate indices primarily comes from the African Legislatures project.

Do civil society organizations have a space in which they can contribute, influence and alter legislation and parliamentary activity? As defined in Chapter 2, these aggregate indices measure the degree to which civil society engages with the legislature on a whole, but specifically around issues of HIV & AIDS.¹⁷⁰ Civil society plays a critical role not only in the consolidation of democracy, but in the representation of the public at large and the contribution of worthwhile resources and capacity. Through civil society engagement, increased vertical representation is cultivated from a grass roots level.¹⁷¹ Although, this is not the traditional understanding of representation, limitations on data, and literature around civil society participation informed the operationalization of this function. Traditionally representation refers to a wide variety of activities, I have selected a more narrow interpretation to satisfy the focus of this study.

Table 3 (page 34) below, captures civil society engagement across the eight legislatures. Due to data limitations, Malawi cannot be compared across all sub-categories of this aggregate score. It is also important to note how this table is divided: The first five columns are specific to the parliamentary Committee tasked with HIV & AIDS matters. The following three columns deal with civil society engagement in general, with regard to the legislature as a whole.

Table 3 highlights the fact that, with the exception of Mozambique, all parliaments hold public meetings, have civil society presentations and utilize either external or internal research support. It is

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ordinal measurement contained in the Country National Composite Policy Index. www.unaids.org.

¹⁷⁰ Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia. at 18 – 19.

¹⁷¹ National Response to AIDS: More Action Needed.. 2004. UNAIDS Report on the Global AIDS epidemic. At 157. www.unaids.org.

also interesting to note that the majority of MP's in all countries, except Malawi, utilize civil society for input. In most of the countries in this study, a lesser percentage of MP's use academics for input. Notably high percentages of MP usage of civil society input are recorded in Namibia, South Africa and Tanzania across both academic and civil society columns.

The first column identifies whether there was any civil society input into bills that explicitly mention HIV & AIDS in the title. Due to the obvious limitations of this measure, this may not be a wholly accurate measure of civil society engagement; however, it does provide an indication as to the role civil society plays around issues of HIV & AIDS in the legislature. In Mozambique, South Africa and Tanzania there is civil society input into bills such as these.

In column 2, 'Chair or Parliamentary Committee meets with Civil Society', activity was recorded along a scale (none, seldom, sometimes and frequently).¹⁷² Column 5 records research support; external research support classified as: members external to the institution are consulted, such as a hired consultant, local civil society organizations, academics/universities or ministries. Internal support is defined as research staff from parliament, clerk or other assigned to the committee and interns.¹⁷³ Some countries recorded that they used both external and internal sources. Finally, column eight is an ordinal ranking, provided by the governments themselves around the level of civil society involvement in the National Strategic Plan. This information is captured in the Country National Composite Policy Index, and recorded by UNAIDS.¹⁷⁴

Table 3: Legislative Engagement with Civil Society

	Civil Society input into new bills	Chair or Parliamentary Committee Meets with Civil Society	Parliamentary meetings held in Camera or Open	Number of Civil society Presentations to Committee	Is Research support, internal or external	Percentage of MP's who turned to CSO's for information and research (in general) %	Percentage of MP's who turned to Academics for research and information (general) %	Ordinal ranking: National Composite Policy Index: Level of CS involvement in National Strategic Plan
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¹⁷² African Legislatures Project. University of Cape Town.

¹⁷³ Ibid.

¹⁷⁴ Country National Composite Policy Index. UNAIDS. www.unaids.org. NCPI questionnaires. [The National Composite Policy Index is data collected, against a predetermined questionnaire for every country. This data is then reformulated into reports and checked for internal validity and illogical values.](#)

Kenya	no	Sometimes	open	>10	both	58	38	4
Malawi	Yes					49	27	4
Mozambique	Yes	Frequently	closed	0	none	50	42	4
Namibia		Sometimes	open	2 times	internal	84	86	3
South Africa	Yes	Frequently	open	between 6 and 10	internal	88	72	3
Tanzania	Yes	Sometimes	open	between 3 and 5	internal	75	49	
Uganda		Frequently	open	between 3 and 5	internal	54	34	5
Zambia		No	open	between 6 and 10	both	55	43	4

Sources: African Legislatures Project, bill tracker and committee worksheets and Country National Composite Policy Index, 2008, UNAIDS.

Comment

Out of the above case selection, Mozambique stands out due to the results recorded in columns three to seven. Mozambique is the only country which holds the parliamentary meetings in camera, hence there are no civil society presentations to the committee. It is also the only country that records that neither internal nor external research support is sought, and it scores the lowest percentages of MP's who use either civil society organizations or academics for general input. Overall this paints a particularly poor view of civil society engagement within the Mozambican legislature. This low level of civil society engagement is acknowledged in the UNAIDS country report, and the need for stronger civil society relationships and partnerships is noted.¹⁷⁵

South Africa, Tanzania and Namibia record notably high percentages of MPs are who to use both civil society organizations (CSOs) and Academics (broadly) for input into legislative affairs. The variation between 87% and 50% may suggest differences in the capacity or organization of the committee, or it may be an indicator of the level of country civil society networking and cohesion. More independent study is required to reach any further conclusions.¹⁷⁶ Although this measure is not specific to the committee tasked with HIV & AIDS, it may provide an indication of overall civil society engagement. Further studies are needed to explore civil society engagement with the HIV & AIDS committee specifically, as several factors such as donor pressure or the strength of the in-country civil society around HIV & AIDS may impact on such engagement. Current data limitations prevent further exploration into the specific HIV & AIDS committee/civil society engagement.

¹⁷⁵ Mozambique Progress Report for the United Nations. 2008. General Assembly Special Session on HIV and AIDS. Republic of Mozambique National AIDS Council. UNAIDS. www.unaids.org.

¹⁷⁶ Lister, S, Nyamugasira, W. 2003. Design Contradiction in the 'New Architecture of Aid?' Reflections from Uganda and the Roles of Civil Society Organizations. Development Policy Review. 21 (1). Blackwell Publishing, Oxford.

Both Tanzania and South Africa introduced bills that explicitly mentioned HIV & AIDS, and both these bills had civil society input during the process. South Africa is being hailed as a country which is successfully implementing a multi-sectoral response to HIV & AIDS. Information suggesting high levels of civil society engagement confirm this claim.¹⁷⁷ It is interesting, however, that within NCPI report both Namibia and South Africa only score a three on the CS involvement with the National Strategic Plan, as opposed to scoring five, like Uganda. Despite scoring relatively low in column 1 (civil society input into bills) and column 3 (number of civil society presentations to the committee) Namibia's Country Report notes claims that civil society has been involved at all levels of HIV & AIDS policy in Namibia, and although no budgetary allowances are made to foster civil society engagement, such interaction and engagement has increased in Namibia.¹⁷⁸ This suggests relatively high activity on behalf of Namibia, South Africa and Tanzania around the variable of civil society engagement.

With the exception of Malawi, Kenya: Uganda and Zambia show similar levels of activity to each other, in the sense that they all appear to be consistently performing around civil society engagement. The table above notes that each has unusual patterns of activity around civil society engagement within each of the legislatures.

Kenya appears to be consistent in its civil society engagement, and scores the highest number of civil society presentations to the committee (more than 10 per year). In addition to this they score a four in the NCPI questionnaire and utilize both internal and external resources and input. Although the percentages of MP's who claim to use CSO's and academics for input are not particularly high, both percentages suggest that ample usage of these two resources occurs in the Kenyan Legislature. Although this data may suggest an active legislature that has cultivated and continues to cultivate a good standard of civil society engagement around HIV & AIDS issues, the bill explicitly mentioning HIV & AIDS did not have any civil society input. This appears to be unusual in the context of the relatively high levels of civil society engagement.

A similar picture can be painted of Uganda, where we note that the Chair frequently meets with civil society and that civil society presents to parliament between three and five times a year. In addition to this there appears to be consistent usage, albeit not particularly high, of CSOs and academics by MP's. They have been allocated a five on the NCPI score, suggesting that there is sound Civil Society engagement around HIV & AIDS. This is interesting, as Uganda historically has suffered under strict

¹⁷⁷Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia.

¹⁷⁸ Namibia United Nations General Assembly Special Session Country Report. 2005. Ministry of Health and Social Services. Directorate of Special Programmes. Windhoek, Namibia. (14)

civil society regulations, and currently has an NGO bill that further limits civil society on a whole.¹⁷⁹ In light of such civil society restrictions some doubt is raised about the validity of the NCPI data. Although NCPI data originates from civil society representatives, validity may still be questioned.

Similar to Uganda and Kenya, Zambia appears to perform well around this variable. There is evidence that MP's use both civil society and academics for input, and that civil society makes presentations to the committee fairly often (6 – 10 times a year). The Zambian Legislature utilizes both internal and external sources for research and they maintain that meetings are held in the open. However, the Chair does not engage with civil society as it is noted that he is a new politician who is unlikely to have a substantial political power network outside the legislature.¹⁸⁰

Malawi is limited due to data restrictions and therefore cannot be quantitatively analyzed accurately with this variable. Malawi's limited data note that there is some general engagement by MP's with civil society and academics, although the percentages in both are the lowest out of the case selection. The country has been allocated a four in the NCPI, survey suggesting some activity, although validity of this data is not determined in this paper. Although it appears that the levels of civil society engagement highlighted in the NCPI survey can be confirmed by qualitative data in the Country Report, the governmental origin of the country report may alter the report's validity. It is interesting to note, however, that the Country Report notes full involvement and participation of civil society in the national strategic plans.¹⁸¹

Conclusion

Although there is some variation between the countries in this case selection, with the exception of Mozambique and Malawi, it appears that all countries are performing relatively well across this variable. Although some improvement could be sought on the individual case level, it appears that civil society engagement occurs in each of the eight legislatures and that each of these eight legislatures recognizes the important role civil society plays in the pursuit of a multi sectoral response to HIV & AIDS.

Oversight Function

As noted in Chapter 2, the oversight function can be executed with regard to the monitoring of budget and holding the executive to account.¹⁸² Legislatures can play a key role in promoting health and

¹⁷⁹ Lister, S, Nyamugasira, W. 2003. Design Contradiction in the 'New Architecture of Aid?' Reflections from Uganda and the Roles of Civil Society Organizations. *Development Policy Review*. 21 (1). Blackwell Publishing, Oxford.

¹⁸⁰ African Legislatures Project. University of Cape Town.

¹⁸¹ Malawi HIV and AIDS Monitoring and Evaluation report. 2007. Office of the President and Cabinet. UNAIDS. www.unaids.org, at 74.

¹⁸² Mohammed Salih. MA. (ed). 2005. African Parliaments: between governance and government. HSRC Press. Cape Town, South Africa. At 3.

health equity through these functions.¹⁸³ Oversight of the budget and ensuring that the government adheres to the promises it has made ensure horizontal accountability and transparency with regard to budget expenditure.¹⁸⁴ Although, data is limited on parliamentary influence over the budget specifically related to HIV & AIDS, EQUINET's study on Parliamentary roles around the monitoring and engagement with the executive and around the Abuja Commitment to health spend highlights the role Parliaments can play with regard to the health budget.¹⁸⁵ Traditionally African parliaments struggle under neo-patrimonial executive-dominant systems, undermining their oversight capacities. However, it is asserted by Mattes et al., that more recently many African legislatures have seen a renewal of the oversight function.¹⁸⁶

To measure this variable, there are two components: the budget and the committee. Oversight of the budget is important for accountability, particularly when faced with an epidemic that places such extreme financial burdens on the state.¹⁸⁷ Whether or not there is an active and well-staffed committee, specifically created to address HIV & AIDS issues, or a committee tasked with HIV, may influence execution of oversight.¹⁸⁸ It is important to note here, that the committees used to measure activity around this variable are not explicitly HIV/AIDS committees, but rather any committee that has been tasked with the HIV/AIDS agenda.

Table 4 (page 39), below, collects data across several budgetary oversight functions. It is important to note that the first three columns deal with the parliaments in general, and are not focused on the Health or HIV & AIDS Committee. The final two columns are specific to the health committees in each country. Data has been collected from two different data sets, EQUINET and the African Legislatures project; however there are limits to the data on a whole.

The first two columns note the percentage of MP's who responded either 'about right' or 'improved' respectively to the two questions, across the eight-country case selection. MP's were asked: 1. "Does the parliament have too much, about the right amount or too little influence over the budget?" 2. "Has parliamentary effectiveness over the past five years worsened, stayed the same or improved with

¹⁸³Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare. At 3.

¹⁸⁴Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>. at 1.

Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare.At 3.

¹⁸⁶ Ibid.

¹⁸⁷ Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>. P 1.

¹⁸⁸Musavengana, T. (ed) 2004. Survey of Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region. Report on the survey conducted by the National Democratic Institute for International Affairs (NDI), the Southern African Development Community Parliamentary Forum (SADC PF). Namibia.

regard Monitoring Executive?" Both questions speak to one aspect of oversight, that of the budget. Monitoring what the executive spends is an important parliamentary role, as it plays out one of the constitutional democratic checks and balances, 'legislative oversight is nowhere more important than over the budget'¹⁸⁹. It is important to note here that these questions were asked of parliament as a whole, not the individual committees, or committees tasked with HIV & AIDS. Therefore, as with the Civil Society engagement and the legislative questions, these figures provide only an indication as to how parliament as a whole is functioning around these variables and the relative comparative activity. Although these data does not specifically relate to the HIV committee, and while the focus of this study is on the role of the institution, rather than the individual, these opinions provide a small insight into potential strengthening of the legislative institution. Traditionally the execution of the oversight variable in many African parliaments, is not particularly strong, with improved parliamentary strengthening initiatives, and increased HIV/AIDS focus, it is both interesting and important to note any changes around the oversight function.

The third column refers to the governmental allocation towards the health budget. In terms of the Abuja Declaration each country should allocate 15% of their entire budget towards health. These data track the country's adherence to this commitment. This column, when read together with the MP opinion data and the activity within the Committees around Health and HIV, provides an interesting insight into the parliamentary oversight of the budget, specifically relating to health. Although this budgetary commitment is broadly allocated to health, and not specifically HIV & AIDS, further examination of the individual committee priorities suggests the relative importance placed on HIV & AIDS within the countries.¹⁹⁰

The final two columns are health committee- specific. They identify the priorities within the committees and the questions from the committees directed at the Executive.¹⁹¹ Although these are both snapshot pieces of data, they both fall within the time frame of this study and are an interesting indication of budget and oversight activities within the committees. Parliamentarians, specifically those within the committees, can assist in the effective use of the oversight function through scrutinizing how funds are spent, the reasons behind under-spending and increasing the amount allocated to HIV & AIDS.¹⁹²

¹⁸⁹ Glassman, A. 2007. How Parliamentarians can help ensure accountability for spending on HIV/AIDS and Reproductive Health. *World Bank Institute*. Washington DC.

¹⁹⁰ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare. At 10

¹⁹¹ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare. At 11.

¹⁹² Glassman, A. 2007. How Parliamentarians can Help Ensure accountability for spending on HIV/AIDS and Reproductive Health. *World Bank Institute*. Washington DC. At 10.

Although the data presented in Table 4 (page 39) below, is far from comprehensive, when both specific Health Committee data and general parliamentary data are read together, they provide a base level understanding of oversight within each of the eight legislatures. As noted, it is critical to gain insight into budgetary allocation as a country's budget is a sound indicator of the priority afforded to the HIV & AIDS epidemic - a more telling indicator perhaps than legislative activity or civil society engagement. In addition to this, tracking changes of perception and practical application of oversight powers provides a useful indication as to the success of HIV/AIDS and legislative strengthening initiatives. Furthermore, government initiatives require funding to sustain them, therefore the national budget often proves to be the key resource in project sustainability.¹⁹³

To supplement Table 4 (page 39), below additional information collected by EQUINET through questionnaires given to Health Committees within Eastern and Southern Africa helps to provide a stronger understanding of legislative oversight.¹⁹⁴ Conclusions drawn from this data note that legislative budgetary influence over health equity issues are potentially significant and require additional assistance and support.¹⁹⁵

¹⁹³ Guthrie, T and Hickey, A. 2004. Funding the fight: budgeting for HIV/AIDS in developing countries. IDASA, AIDS Budget Unit. Cape Town, South Africa. At 2.

¹⁹⁴ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. UCT, TARSC, SEAPACOH: EQUINET, Harare. At 3.

¹⁹⁵ Ibid. At 3.

Table 4: Budget Oversight

Budget					
	Does the parliament have too much, about the right amount or too little influence over the budget -percentage of MP's who believe it is about right (%)	Has parliamentary effectiveness over the past 5 years got worse, stayed the same or got better with regard Monitoring Executive Expenditure—percentage of MP's who believe it has improved (%)	Percentage of total government expenditure allocated to health 2003 -2006 (5)	Committee budget priorities	Content of questions raised with executive ¹⁹⁶
Kenya	75	35	6	increased budget allocation and the priority of health needs (personnel, commodities, facilities)	Poor budget allocation
Malawi	27	53	11	improved drug supplies including ARV's	Service level agreements between government and NGOS and mission hospitals
Mozambique	12	60			
Namibia	49	50	14	ARV and testing supplies	Questions on health issues raised by opposition MP's
South Africa	47	33	11		
Tanzania	50	89		Maternal health	None/Not answered
Uganda	86	24	12	Maternal and rural health, family planning, reproductive and health and primary care	Increased funding of Maternal Health, Reproductive Health and family planning
Zambia	33	31	17	increased funding to health care to improve service provision	Incentives to attract back health personnel from abroad.

Sources: African Legislatures Project and EQUINET

Analysis

According to Table 4 (page 39),above, it appears that Kenya is not meeting the Abuja commitments, as only 6% of government funds have been allocated to health, 1994 – 2006.¹⁹⁷ However, poor budget allocation is acknowledged both in the questions directed towards the executive and in the priorities within the committee itself. Therefore it appears that although the Kenyan parliament has not sufficiently allocated government resources to health, the committee acknowledges this shortcoming, and should be working to reach the target as set out in the Declaration.

This relative lack of influence has been highlighted in other literature and it has been asserted that the parliament does not to have much influence over the budget. In Kenya the Minister of Finance prepares the budget, including the estimated expenditure on HIV & AIDS. This is then transferred to the parliament for approval, as in most countries.¹⁹⁸ However, although there is a legal framework for fiscal management by the government, there appears to be no corresponding role for parliament, due

¹⁹⁶ [Questions here refer to questions raised in plenary around issues of HIV/AIDS, often recorded in the Hansards or minutes of the proceedings.](#)

¹⁹⁷ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare. At 6.

¹⁹⁸ Guthrie, T and Hickey, A. 2004. Funding the fight: budgeting for HIV/AIDS in developing countries. IDASA, AIDS Budget Unit. Cape Town, South Africa.

to a constitutional restriction on parliament acting on financial laws.¹⁹⁹ Furthermore, information collected by EQUINET notes that MP's within Kenya felt that they did not have enough influence over the budget.²⁰⁰

What is unusual is that the majority of MP's within Kenya appear to believe that the parliamentary influence over the budget is 'about right' and the monitoring of the executive expenditure has improved (35%) in the past five years. In addition to this, the majority of MP's (58.3%) believe that political independence from the executive and oversight of the executive is 'about right'.²⁰¹ The MP opinions are, however, taken from the MP's in general, not specifically the Health Committee, which may suggest relative government neglect of health issues, as budget allocation is a health issue. It could be concluded from the above table that additional work needs to be done around HIV and Health. It is clear from the questions that within the Health Committee itself, HIV is not a priority, although indirectly the issues raised will speak to the issue of HIV & AIDS. The comparison between the two sets of data speaking to budgetary oversight provides an indication for further legislative strengthening and HIV/AIDS interventions; although the MP's believe that oversight of the budget is about right, and while they also appear to consider the oversight to have declined in the past 5 years, commitments made to international agreements continue not to be met. This potentially suggests that additional work around oversight initiatives should be done to better inform and mobilize MP's around these issues.

Although Mozambique's data is incomplete, a very small number of MP's in both Malawi and Mozambique believe influence on the budget is 'about right'. However, in both countries the majority of MP's believe that monitoring executive expenditure has improved in the last five years. It is interesting to note, therefore, that again in both these countries MP's believe that political independence²⁰² is 'too little'.²⁰³ In the case of Mozambique, the EQUINET data confirms that indeed MP's feel that they cannot exert parliamentary influence over the budget. However, in Malawi the opposite is true.²⁰⁴ It is intriguing to note that both Malawi and Mozambique perform in similar ways on both the legislative and budget oversight variables.

¹⁹⁹ Ibid. At 20.

²⁰⁰ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. UCT, TARSC, SEAPACOH: EQUINET, Harare. At 8.

²⁰¹ Appendix 3 – data collected from ALP MP Questionnaire Kenya.

²⁰² Appendix 3

²⁰³ Appendix 3.

²⁰⁴ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A. 2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. UCT, TARSC, SEAPACOH: EQUINET, Harare. At 8.

Malawi (1994 – 2006) is close to meeting the Abuja target, (11%) and the issues raised within the committee clearly prioritize HIV & AIDS. The questions directed towards the executive broadly address health in the country, as opposed to specific HIV & AIDS issues. This data suggests positive activity within the Malawian parliament around budget oversight, and HIV & AIDS.

Qualitative data highlights that the Mozambican legislature does not play an important role in the budget process, and that the legislative organ requires more attention to build suitable capacities around budget analysis.²⁰⁵ In addition to this further studies assert that although HIV & AIDS has been declared one of Mozambique's top priorities, this is not reflected in the allocation of financial resources to the issue.²⁰⁶

Namibia is close to meeting the Abuja targets (14%) and there appears to be a prioritizing of HIV & AIDS within the Committee, which could suggest allocation of funds towards HIV & AIDS issues.²⁰⁷ Unfortunately, when it comes to asking questions of the executive, questions are asked only by the opposition members, and these questions go unanswered. The general MP opinion is divided between the answers 'too little' and 'about right' (49%) when asked about parliamentary influence over the budget. This could indicate an ideological split between different parties, confirmed by the questions directed at the Executive. This result is interesting in the Namibian case, as at any given time, the number of MP's who are Ministers and also Deputy Ministers is very high.²⁰⁸ Therefore it is surprising that these same MP's would conclude that the parliament needs more budgetary powers. Finally, Namibian MP's claim that parliamentary monitoring of executive expenditure has improved over the past five years. The EQUINET survey concludes that within Namibia that MP's feel that they do have influence over the budget.²⁰⁹ With regard to perceptions of oversight and political independence from the executive, the majority of Namibian MP's believe both are 'too little'.²¹⁰

Both South Africa and Tanzania are missing data in Table 4 (page 39). Within Tanzania the MP opinion over parliamentary influence over the budget is divided between 'about right' (50%) and 'too little', again suggesting a potential party split. However, there is clearly a belief that executive monitoring has improved. This data alone, potentially suggests that there is some positive activity

²⁰⁵Mohammed Salih. MA. (ed). 2005. African Parliaments: between governance and government. HSRC Press. Cape Town, South Africa. At 152.

²⁰⁶Guthrie, T and Hickey, A. 2004. Funding the fight: budgeting for HIV/AIDS in developing countries. IDASA, AIDS Budget Unit. Cape Town, South Africa..

²⁰⁷ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare.

²⁰⁸Mohammed Salih. MA. (ed). 2005. African Parliaments: between governance and government. HSRC Press. Cape Town, South Africa. At 152.

²⁰⁹ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A.2009. Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*.UCT, TARSC, SEAPACOH: EQUINET, Harare. At 3.

²¹⁰ Appendix 3.

within Tanzania, however, there appear to be no questions asked of the Executive by the Committee, and HIV & AIDS has not been prioritized within the Committee as only maternal health has been raised. This does not suggest an overall positive picture about Tanzanian parliamentary activity around budget oversight. An MP evaluation of political independence from the executive, and oversight both render the majority result of ‘about right’²¹¹

Within South Africa 11% of the budget has been allocated towards health, highlighting progress within the country. MP’s within South Africa believe parliamentary influence to be ‘about right’ and that parliamentary monitoring of executive expenditure has remained the same over the preceding five-year period. When asked to evaluate oversight, and political independence from the executive, the majority of MP’s believed that influence to be ‘too little.’²¹² South Africa, however, presents an interesting case study: the percentages of MP’s who feel that the influence is ‘about right’ are very similar to those MP’s who believe that there is too much influence/too little influence over the budget. This may speak to the ideological divisions between the parties within South Africa.

However, the unusual and precarious situation of the South African parliament with regard to its budgetary powers, would suggest that more MP’s would fall into the ‘too little’ category. Under S 77 of the Constitution of South Africa the parliament is afforded powers to amend money bills; however, no legislation has been passed that allows the parliament to execute this power, therefore leaving the extent of the powers is under debate.²¹³ Furthermore, the parliament’s budgetary process has been described as ‘moderately transparent’, primarily due to the limited role played by parliament. It is therefore surprising that more MP’s are not objecting to the apparently limited role of the parliament with regard to these matters.²¹⁴

Uganda appears to be allocating more to health than South Africa, and appears to be exercising oversight around the budget, and health, although not specifically around HIV & AIDS. It is interesting to note this variation in health expenditure and oversight capacity, due to Uganda’s history of strong executive leadership around HIV & AIDS. MP’s within Uganda believe that parliamentary influence over the budget, oversight and independence from the executive²¹⁵ is ‘about right’ while only 24% believe executive monitoring has improved. Although Uganda appears to be making headway around the Abuja commitments, there does not appear to be much oversight exercised over the budget. This may be due to limited information or institutional structures.

²¹¹ Appendix 3.

²¹² Appendix 3.

²¹³ Guthrie, T and Hickey, A. 2004. Funding the fight: budgeting for HIV/AIDS in developing countries. IDASA, AIDS Budget Unit. Cape Town, South Africa. At 116.

²¹⁴ Ibid. At 150.

²¹⁵ Appendix 3.

Zambia not only appears to be meeting the Abuja targets but surpassing them. However, the committees do not appear to prioritize HIV & AIDS, as neither the issues raised within the Health Committee nor those directed towards the Executive have an HIV & AIDS component. Although there is no specific focus on HIV & AIDS, the issues raised in the questions directed at the Executive indirectly speak to HIV issues and therefore suggest the mainstreaming agenda. The majority of Zambian MP's believe that parliamentary influence is 'about right' and that executive monitoring has improved over the past five years. However, when asked about political independence, and the quality of oversight, the majority of MP's believed it was 'too little'.²¹⁶

Conclusions

There does appear to be some activity around budget oversight within each of the eight cases. Malawi and Namibia appear to prioritize HIV & AIDS directly while issues relating to HIV & AIDS are addressed more indirectly in Uganda, Zambia and Kenya as they are mainstreamed into more general concerns relating to health and development.

From this examination, it appears that Kenya's parliamentarians need additional support in budgetary oversight, and that Malawi is performing well. These conclusions potentially would change with the introduction of additional, more comprehensive data, both of longitudinal and specific time-frame in nature.

Comment

Unlike Table 4 (page 39) above, Table 5 (page 44) relates specifically to parliamentary committees that are tasked with HIV & AIDS. Due to the magnitude of the epidemic, each parliament should have a specific HIV/AIDS committee.²¹⁷ It should be noted that while *all* parliaments in this study have committees *tasked with* HIV & AIDS, only a few have specific HIV & AIDS committees.²¹⁸ Arguably, whether or not such a committee exists should be a valid indicator of how highly HIV & AIDS is prioritized and, presumably, the level of parliamentary activity on the issue. Clearly, an active committee that is equipped with sufficient expertise and funds to execute its parliamentary mandate should result in more effective oversight.²¹⁹

It appears that all committees have sufficient funding for regular meetings, as well as for travel and hearings. Further, each of the seven committees has a portion of members who have technical and

²¹⁶ Appendix 3.

²¹⁷ Taking Action against HIV and AIDS. Handbook for Parliamentarians. 2007. No 15/2007. Inter parliamentary Union, UNAIDS, UNDP. Available online: <http://www.ipu.org/PDF/publications/aids07-e.pdf>. at 67.

²¹⁸ As no data on this function was obtained for Malawi it will not be included in this analysis.

²¹⁹ Ibid. note 216.

professional expertise. All except Uganda and Zambia have a Chairperson with parliamentary expertise. Finally, the majority of committees meet regularly and all committees produced a committee report on the proceedings of the committee at the end of the year for which data was obtained. On the basis of this data we can conclude that all seven countries have a committee with sufficient resources to perform its oversight functions.

Table 5: General Oversight

Oversight via Committee	Is there a specific HIV/AIDS committee	Degree of activity within Health Committee or HIV/AIDS Committee	Does the Chair Solicit funding	Sufficient funding for regular meetings	Sufficient budget for travels and hearings	Medical Expertise of Chair	Chair has Parliamentary Expertise	Members have technical/professional expertise	Number of special investigations	Committee Report produced	Committee Report tabled/debated/challenged
Kenya	No	<quarterly	seldom	Yes	Yes	Yes	Yes	Some	2	Yes	Yes
Malawi	No										
Mozambique	Yes	regular	seldom	Yes	Yes	No	Yes	Many	1	Yes	Yes
Namibia	No	more than quarterly	No	Yes	Yes	No	Yes	Some	0	Yes	Yes
South Africa	No	regular	No	Yes	Yes	Yes	Yes	Many	0	Yes	Yes
Tanzania	Yes	more than quarterly	No	Yes	Yes	No	Yes	Many	0	Yes	no
Uganda	Yes	Not regularly	frequently	Yes	Yes	No	No	Many	3	Yes	Yes
Zambia	Yes	regular	No	Yes	Yes	No	No	some	0	Yes	Yes

Sources: African Legislatures Project

Analysis

Mozambique, Tanzania, Uganda and Zambia all have a committee that is dedicated to issues directly relating to HIV & AIDS. South Africa is in the process of creating such a committee, which is planned to be functioning later in 2011.²²⁰ Although South Africa's committee does not fit within the time frame, it is worthwhile noting the progressive positive steps that are being taken in the different African legislatures.²²¹

In relation to funding, the committee in Uganda faces particular challenges.²²² Unlike committees in Zambia and South Africa, the Chair of the committee in Uganda frequently has to solicit for funds as the funding received from the Parliamentary commission is insufficient to cater for the needs of the committee.²²³ For lack of funds – the committee receives less than half of its budgeted funds²²⁴ – it is unable to hold regular meetings and to undertake necessary travels around the country. Although less

²²⁰ Establishment of Joint Committee on HIV/AIDS. Parliament of the Republic of South Africa. Annexure 2. Available online: <http://www.parliament.gov.za/live/index.php>

²²¹ Ibid.

²²² African Legislatures Project. University of Cape Town.

²²³ Ibid.

²²⁴ Ibid

frequently than in Uganda, the Chair of the committee in Tanzania also needs to seek external funds from donors and NGOs.²²⁵ When such funding is not forthcoming, the committee in Tanzania is restricted in its ability to travel across the country.²²⁶

Despite apparent resource restrictions the committee in Uganda managed to execute three special investigations, more than any other committee analyzed here.²²⁷ The committee led investigations into allegations about the production of substandard generic ARV drugs by a Ugandan pharmaceutical company, into the shortage of ARV's at health facilities (often called 'stock outs') and into the existence of substandard condoms on the market.²²⁸ In Mozambique a special investigation was made into a private company which ordered all employees to undergo HIV testing without informed consent.²²⁹ Both of these examples highlight the significant role HIV & AIDS specific committees can play.

In Kenya, Malawi and Namibia, issues relating to HIV & AIDS are handled by committees with a broader mandate: the Committee on Health in Kenya, the Health and Population Committee in Malawi²³⁰ and subcommittee on Human Resources, Social and Community development in Namibia.²³¹

In both Kenya and Namibia, these committees meet regularly and have some members with technical expertise specific to HIV & AIDS. They both have adequate funds to support travel, public hearings and meetings. As in Uganda, the Chair of the committee in Kenya may solicit additional funding, but in Kenya such additional funding is only necessary for particular activities that lie outside of the core activities for which parliament provides funding.²³² In Namibia, independent soliciting of funding by the Committee is not permitted.²³³

Conclusions

The HIV & AIDS specific parliamentary committee in Uganda has performed particularly well on this function considering the number of special investigations it has executed. With the exception of Uganda, the data provided in the above tables do not suggest that parliaments with HIV & AIDS specific committees are more active or better resourced. There are fairly high levels of activity across the majority of countries in all committees tasked with HIV & AIDS. It is difficult to establish what priority is being given to HIV & AIDS issues in Namibia and Kenya on the oversight function since

²²⁵ African Legislatures Project. University of Cape Town.

²²⁶ African Legislatures Project. University of Cape Town.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ SADC PF Website. http://www.sadcpf.org/index.php?disp=porfolio_committees accessed 9/12.

²³¹ Parliament of Namibia. Available online: http://www.parliament.gov.na/national_assembly/na_committees.php.

²³² African Legislatures Project. University of Cape Town.

²³³ Ibid.

the committees have a broader responsibility. Additional analyses presented further below will provide a stronger basis for making an assessment in this regard.

Constituency Service Function

As highlighted in Chapter 2 ‘constituency service’ refers to the extent to which Members of Parliament perform certain functions and activities within their respective constituencies.²³⁴ The nature of these functions can vary, but normally they would involve personal visits, responding to demands from individual members of the constituency and the involvement in small- to medium-scale development projects.²³⁵ For the purposes of this research, the level of constituency service will be measured by three factors: the amount of money spent by a member of parliament in the constituency in a given year to meet personal or project needs, the frequency of the visits, and; the length of stay in the constituency.²³⁶ Previous analyses have noted that the performance by African legislature in general in terms of constituency service have improved more recently.²³⁷ Although this function does not explicitly measure HIV/AIDS activity, consideration and inclusion of this function may suggest an interesting link between the AIDS pandemic and activity levels by MP’s at their constituencies. Activity of MP’s may be altered or influenced by the severity of the pandemic, impacting upon their time spent in parliament, the amount of money they spend and the duration of their stay in their constituencies. Although there is no direct link between the pandemic and MP constituency service, and this study does not prove that such a link exists, it is an interesting approach requiring additional research to corroborate. This point is emphasized in the EQUINET study.²³⁸

Comment

Table 6 (page 47), below details the various factors used to assess the level of constituency work: the percentage of time; the number of trips; the length of stay both in an out of session, and the amount of money spent by MPs in their constituencies. The interpretation of the data must take the following limitations into account. There are no financial data available for Zambia, and due to the nature of the questions in the original survey the time period referred to in the Zambia and Uganda surveys is a year whereas in the other it was a month. This fault therefore upsets the data, limiting the comparisons

²³⁴ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

²³⁵ Barkan, J, Mattes, M. Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings.

²³⁶ Barkan, J, Mattes, M. Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. P 1.

²³⁷ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London. At 8.

²³⁸ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A (TARSC, UCT, SEAPACOH) (2009) Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ’ *EQUINET Discussion Paper Series 73*. EQUINET: Harare. At 8.

that can be made within the case selection. Both means and medians have been calculated with regard to expenditures, to assist with accuracy.

Table 6: Constituency Service

Country	Percentage of time devoted to constituency work: Country Mean (%)	In session, number of trips to Constituency: Country Mean	In session, length of stay in Constituency: Country Mean	Out of Session, number of trips to constituency: Country Mean	Out of Session, length of stay in Constituency: Country Mean	Personal Donation (\$US): Country Mean	Personal Donation (\$US): Country Median	Project Donation (\$US): Country Mean	Project Donation (US\$) Country Median
Kenya	41	3	3	4	5	\$740	\$658	\$864	\$659
Malawi	46	7	6	14	12	\$699	\$666	\$346	\$200
Mozambique	20	2	3	3	27	\$244	\$209	\$45	\$0.00
Namibia	16	1	3	3	11	\$129	\$87	\$178	\$73
South Africa	30	7	4	6	14	\$216	\$316	\$145	\$122
Tanzania	36	1	2	1	25	\$545	\$33	\$492	\$64.
Uganda	20	83	3	2	8	\$886	\$793	\$1,016	\$1,107
Zambia	2	6	39	6	51	<i>no data</i>	<i>no data</i>	<i>no data</i>	<i>no data</i>

Sources: African Legislatures Project

Analysis

Malawi and Kenya register the highest percentage of time devoted to constituency work, with 46 and 41 percent respectively, followed by Tanzania and South Africa at 36 and 31 percent. Although it must be noted that different electoral systems result in different levels of constituency service, it is intriguing to note that MPs in two of Africa's wealthiest parliaments (Kenya and South Africa) are recording the highest percentage of time devoted to constituency work.

Members of Parliament in Malawi record the highest number of trips to the constituency and they also spend the longest time there. South African MP's also appear to spend a fair amount of time and frequently travel to their constituencies, when compared with other cases in this selection. As would be expected, the length of stay increases considerably when the parliament is out of session across all the countries, since MPs then have no duties at Parliament. MPs in Malawi and Kenya spend most resources in their constituencies, followed by MPs in South Africa. While this should come as no surprise in terms of Kenya and South Africa, as those parliaments are relatively wealthy, the fact that spending is high in Malawi is more interesting. Only 4 percent of Malawian MPs are satisfied with the allowances allocated to constituency work, and none of the MPs in the survey are satisfied with allowances allocated to constituency offices.²³⁹ Malawi's relatively low wealth can be noted in the GNI per capita index as produced by the World Bank, see Table 8 in Chapter 4 below.

²³⁹ Appendix 4 – MP questionnaire Malawi.

In Kenya an overwhelming majority of MP's are satisfied with their allowances allocated to constituency work and the constituency offices, while in South Africa only 34.4% and 12.5% are happy, respectively.²⁴⁰ It appears that within Tanzania few visits are made to constituencies by MPs, and all are short in duration, while parliament is in session. The information on personal financial donations is particularly interesting for Tanzania. In terms of the mean value the contributions are the third highest. However, the fact that the mean is more than 16 times the median value suggests great variation in contributions by MPs in Tanzania. Relatively few of the MPs make considerable donations and most of them donate much less; in terms of the median value, MPs in Tanzania spend the least of MPs in all parliaments for which there is comparable data. Only 28% of MPs in Tanzania are happy with the funds allocated to constituency work and even fewer of them are satisfied with the funds allocated to constituency offices.²⁴¹

Namibia consistently records very low levels of constituency work, both in terms of time and financial contributions, which could be attributed to its electoral system. Mozambique and Uganda devote similar amounts of time to constituency service. It is interesting to note that Mozambique's personal donations are higher than those of South Africa, considering the relative wealth of the parliaments in comparison, and due to the fact that both countries share the same electoral system. This variation could possibly indicate that there is a greater need for expenditure within Mozambique, which, with additional research could be attributed to HIV & AIDS. However, Mozambique's project donation means are the lowest in the case selection, this could be an indication of overall national wealth (and therefore resources available to parliament) or attributed to electoral system. Considering the current crisis experienced in Mozambique related to HIV & AIDS it is particularly interesting to consider the role of constituency work in the fight against HIV & AIDS. Qualitative information contradicts the data on Mozambique's constituency service, as it is claimed that much work was done on the ground by individual MP's around HIV & AIDS within Mozambique, and rather a bottom up as opposed to a top down approach was fostered.²⁴²

Within Namibia the country means and medians differ significantly, suggesting that the majority of MP's spend less than the country mean on both project donation and personal donation.

As mentioned in Table 6 (p 47) above, the data for Uganda and Zambia are problematic due to the difference in time-frames in the original survey. The information is thus not comparable. This is of course very unfortunate as Uganda and Zambia present interesting anomalies across the other

²⁴⁰ Appendix 4 – ALP MP Questionnaire Kenya

²⁴¹ Appendix 4 – ALP MP questionnaire Tanzania

²⁴² Joaquim Meneses, I. 2010. Parliamentary Oversight of HIV and AIDS Pandemic – The Case of Mozambique. In Classen, M and Alpin- Lardies. (eds). 2010. *Social Accountability in Africa: Practitioners Experience and Lessons*. IDASA. ABC Press. Cape Town

variables. In Uganda, as many as 86 percent of MPs were satisfied with allowances for constituency work but none of the MPs in the survey were satisfied with the funds allocated to constituency offices. In Zambia only 15 percent of MPs were satisfied with allowances for constituency work and only 8 percent with funds allocated to constituency offices.²⁴³

Conclusion

Despite the stated limitations, these data nevertheless provide new and interesting insights into the level of resources that are spent within the eight parliaments in terms of time and money. While further analyses will be done on these findings in the subsequent chapter, it is clear that MPs in Kenya and Mozambique perform particularly well on the constituency service function, both in terms of time and financial donations. This is in sharp contrast to MPs in Namibia who have the poorest performance.

Conclusion

Scorecard

To further assist in the creation of a comparable, cross-national data set, a scorecard of legislative activity has been created. It must, however, be noted that this scorecard, weights the individual subcategories and allocates a score to each based on the perceived impact it will have on the HIV & AIDS response. Therefore some of these composite scores represent a normative value, and are not reflective of actual legislative activity.

Each of the four aggregate indices has been grouped under five composite score headings: Progressive law-making activity, legislative engagement with civil society, oversight of the budget, oversight generally and constituency service. For the purposes of this score card, oversight of the budget has been divided into an independent composite score. Each of the scores has been calculated, with consideration to missing data, and has been recorded as a percentage of the maximum performance around each function. An average score is allocated, which is simply calculated upon the subcomponents, and not on the composite score. A detailed explanation of the methodology is included in Appendix 6 of this paper.

Although this scorecard does not capture the nuances of the data around legislative performance, it provides a sound indication of overall activity, allowing us to note the variations. It is sufficient to

²⁴³ African Legislatures Project. University of Cape Town.

note positive activity and award it with a positive numeral, while activity that is detrimental to the overall combating of the epidemic is allocated a negative numeral, and inactivity receives a zero.

Table 7: Scorecard to explain parliamentary activity across the four variables

Scorecard						
	Law - making Activity (%)	Legislative Engagement with Civil Society (%)	Oversight Activity (%)	Oversight Activity (%)	Constituency Service (%)	Composite Score (%)
			Budget	General		
Kenya	18	84	33	76	49	52
Malawi	64	NA	56	NA	66	62
Mozambique	45	53	11	71	52	46
Namibia	9	74	67	65	29	49
South Africa	27	89	22	71	49	52
Tanzania	18	63	11	59	46	39
Uganda	0	79	33	71	N/A	46
Zambia	18	68	67	59	N/A	53
Average	25	73	38	67	49	41.2

Comment

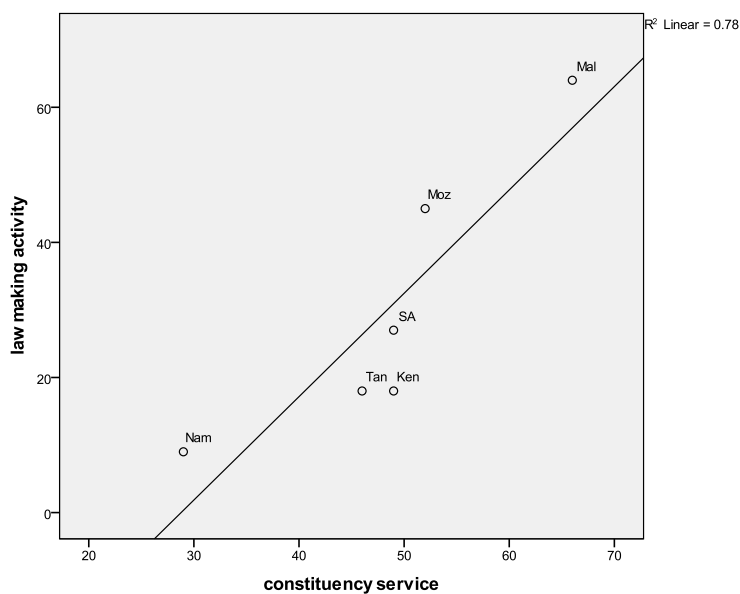
A simple correlation analysis run on both the function scores and the overall composite score highlights an interesting relationship between constituency service and law-making activity. There is a strong positive correlation, which is statistically significant, suggesting that within these eight countries, legislatures that perform well on law-making also perform well on constituency service. Table 8 shows the correlation between the law-making activity and constituency service. This correlation, although statistically significant is limited due to the small case selection. Although correlations analyses were run on all of the variables, the relationship highlighted in Table 8, below, was the only one statistically relevant.

Table 8: Pearson Correlation: Law making activity and constituency service

	Constituency Service
Law-Making Activity	.883
	N = 6

Barkan notes that within all legislatures there is an institutional tension between the various legislative functions.²⁴⁴ Legislatures that perform well on the oversight and legislative functions do not perform well on the representative and constituency service functions. This tension is inherent in all legislatures irrespective of socio-political context or external influences. However, the strong positive relationship highlighted above suggests that within these eight legislatures, the legislatures that have high law-making activity around HIV & AIDS *also* perform well around constituency service. This contradicts Barkan’s work and may suggest that traditional legislative functioning is different when dealing with the issue of HIV & AIDS.

Figure 1: Constituency Service and Legislative Activity



Concluding Remarks

While it is certainly true, as noted by Strand, that ‘AIDS is too complex a problem for any clever governance quick fix’²⁴⁵ it is nevertheless worthwhile to capture data on actual performance by key governance institutions that share responsibility for the AIDS response. This chapter has identified and detailed levels of activity across four key functions; law-making, legislative engagement with civil society, oversight and constituency service. Each of the different countries records different levels of activity across the different variables, which although limited, may provide a useful insight into the role of governance with regard to HIV & AIDS within ESA. This unique systematic approach is the first to cover all four of these functions of legislative activity and present it in a way that promotes cross national comparisons. Although it is difficult to accurately evaluate the performance

²⁴⁴Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London.

²⁴⁵ Strand, P. 2007. October. Comparing AIDS Governance: A Research agenda on responses to the AIDS epidemic. AIDS and Society Research Unit. Centre for Social Science research at 2.

of each country, based on limited data and only with quantitative data these difficulties are noted and highlighted and a comparison, of this nature is a worthwhile contribution to the study of HIV/AIDS and governance

Chapter 4

Explaining variations in legislative activity

The previous chapter identified the variation in parliamentary performance on HIV/AIDS by ‘scoring’ actual activity on four key functions. This chapter will present explorative statistical analyses of what factors may explain the differences in performance between the eight parliaments. At this stage it is worth re-emphasizing a point made in the discussion on research methodology in chapter two above. Statistical tests of causality require multivariate regression analyses. However, that technique is not appropriate here due to the few cases in this analysis (N=8). The following statistical tests are therefore meant to identify any general tendencies that might appear when variables on parliamentary performance are correlated with variables that capture arguments in the literature on what factors might contribute to the explanation of levels of parliamentary performance on HIV/AIDS. These tendencies cannot be generalized but are restricted to the parliaments in the eight countries that are included in the analysis. Although correlations were run for each of the explanatory variables, against each of the legislative functions, the scatterplots included and displayed in this chapter are the only ones that showed an interesting correlation or relationship between the variables.

Explanatory variables

The table below records data on eight variables that are plausible explanations for the variation in parliamentary performance; HIV/AIDS prevalence, the number of years the National AIDS Council has been in place, GNI per capita, the quality of political governance more generally, the electoral system, whether the country has a parliamentary or a presidential political system and the nature of public opinion of the Government’s performance on HIV/AIDS. Each of these explanatory variables is drawn from an established argument or hypothesis in the literature. However, this list of plausible explanations is not exhaustive. The quality of leadership from the Executive is emphasized in the literature, but since no data was available on this variable it will be discussed only in a more qualitative fashion below. Although there may be some merit in discussing legislative leadership, as with executive leadership very little quantitative data exists on this topic.

Table 9: Explanatory Variables

Country	Adult prevalence 15 - 49 in 2007 (%)	National AIDS Councils: year of inception	Resources available to legislature - GNI per capita (PPP USD)	Quality of Governance	Electoral System	Parliamentary/Presidential	Critical of Government's handling of HIV/AIDS (%)	Prioritize AIDS
	UNAIDS	How long has it been in existence	World Bank ranking : GNI per capita	Mo Ibrahim 2010 (accountability and corruption)	ALP	ALP	Afrobarometer	Afrobarometer
Kenya	8	2000	1560	33	FPTP	Presidential	21	4.5
Malawi	11	2000	760	45	FPTP	Presidential	24.9	1.0
Mozambique	13	2001	790	45	PR	Presidential	36.8	6.3
Namibia	15	1999	6370	78	PR	Presidential	27.7	23.2
South Africa	18	1999	10140	77	PR	Parliamentary	40.5	23.9
Tanzania	6	2001	1300	48	FPTP	Presidential	13	3.3
Uganda	5	1992	1140	48	FPTP	Presidential	13.4	6.0
Zambia	15	2002	1240	47	FPTP	Presidential	22.3	5.6

Sources: African Legislatures Project, University of Cape Town, UNAIDS, Afrobarometer, Mo Ibrahim Foundation, World Bank and National AIDS councils

1. HIV prevalence

On this variable, the expectation is that higher HIV prevalence in the adult population is linked to higher parliamentary activity. The reason for this would be that the need for parliamentary responses to increase with higher prevalence, both in terms of the legislature showing leadership by taking initiatives in law-making and oversight, as well as in terms of the legislature and individual MPs responding to a demand for services in society and their constituencies respectively. This reasoning seems to underpin the work by IDASA.²⁴⁶

The analysis, however, provide only vague and qualified support for the hypothesis, with all coefficients being quite weak and two being negative.

Table A: Pearson Correlation on Adult (15 – 49) HIV Prevalence

²⁴⁶ Caesar-Katseng, M and Myburg, M. 2006. Parliament, Politics and AIDS. A Comparative Study of Five African Countries. IDASA, Governance and AIDS Programme. Logo Print, Cape Town. South Africa.

	Law making activity	Legislative engagement with civil society	Oversight (budget)	Oversight (general)	Constituency Service	Composite aggregate
Adult (15 -49) HIV Prevalence	.263	.140	.377	-.091	-.187	.452
N	8	7	8	7	6	8

Impact from HIV prevalence on Law Making Activity

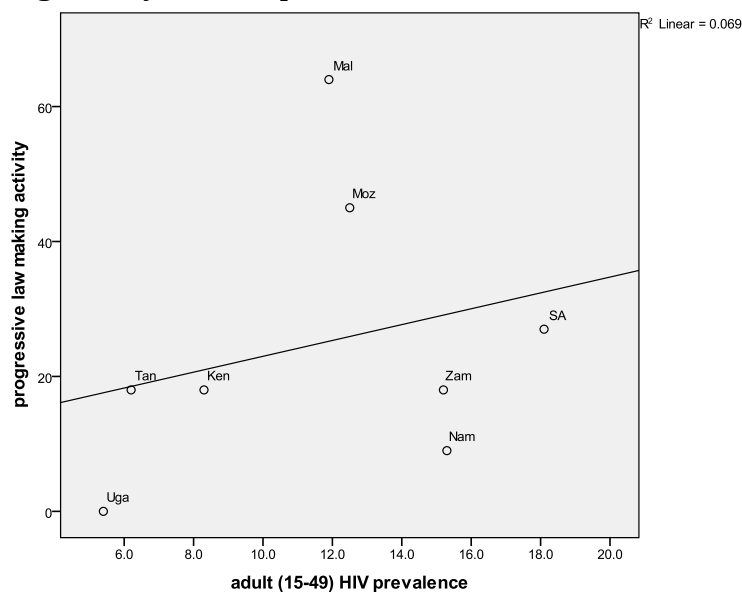
Although the positive relationship (*Pearson's r* .263) between law-making and HIV prevalence supports the hypothesis, it is not a strong tendency in the data. The scatterplot below is in this instance more interesting as a visual guide to support analytical narratives about individual countries. For instance, South Africa's poor score on law-making, despite having the most severe epidemic, reflects the AIDS denialism that dominated under the Thabo Mbeki presidency.²⁴⁷ However, it is also interesting to note the low position of Namibia, a country regarded as relatively wealthy with the same electoral system as South Africa. According to Nattrass, Namibia performs better than expected on Leadership of HIV/AIDS, while South Africa's leadership is poor, while their legislative performance remains stronger than Namibia's.²⁴⁸ Further research into the independence of the Namibian legislature may provide further clarification on this topic. It is interesting to note the position of both Malawi and Mozambique: both perform well on law making, despite having a lower prevalence. If only the five countries with the highest HIV prevalence had been included, the analysis would have generated a strong and negative correlation that would have falsified the hypothesis. The case of Uganda determines much of the tendency in the data. With the lowest HIV prevalence and no progressive law-making activity during the period of the study, Uganda will ensure a positive tendency in the data.²⁴⁹

²⁴⁷ Fourie, P and Meyer, M. 2010. *The Politics of AIDS denialism: South Africa's Failure to Respond*. Ashgate Publishers, United Kingdom.

²⁴⁸ Nattrass, N, 2008. Are country reputations for good and bad leadership on AIDS deserved: an exploratory quantitative analysis. *CSSR Working Paper*, 219. AIDS and Society Research Unit. Centre for Social Science Research. University of Cape Town.

²⁴⁹ As was discussed in chapter three, the scoring on the law-making variable is normative in the sense that it records only legislation that can be said to be progressive, i.e. in favour of a constructive response to HIV/AIDS. For the scoring of Uganda's performance on this variable, the persistence of homophobic laws cancel out other instances of progressive law-making.

Figure 2: Law making activity and HIV prevalence



Budget Oversight and HIV Prevalence

There is a slightly stronger positive relationship between budget oversight and HIV Prevalence .377 (*Pearson's r*). This relationship supports the hypothesis that increased prevalence will result in improved legislative performance. However, a scatterplot of this relationship did not provide any further visual clarification. Legislatures play an important role with regard to the budget and particularly promoting the Abuja Commitment. It follows that countries with a higher prevalence would exercise more legislative oversight over the budget, to ensure that more money is allocated towards health generally and HIV/AIDS. This relationship is highlighted and explored by EQUINET in their paper – where they note that although most countries remain below the target allocation, there has been an improvement in the exercising of the oversight of the budget.²⁵⁰

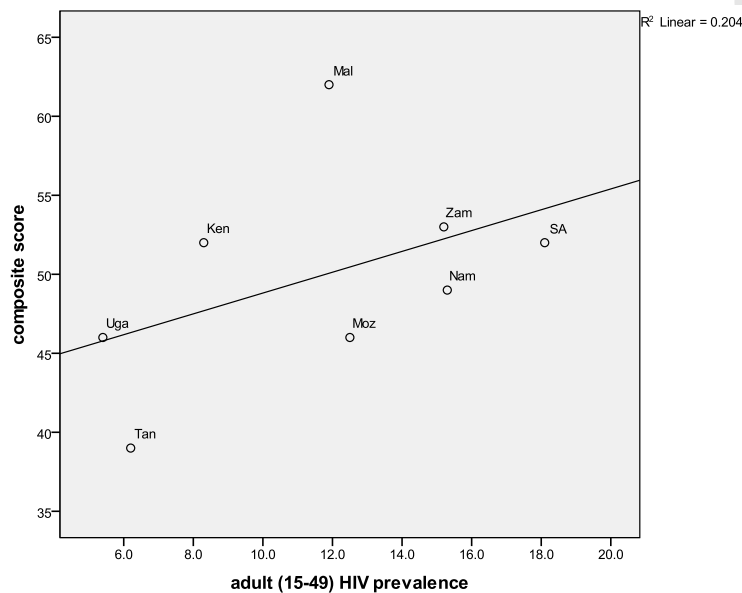
Overall Legislative Composite Score and HIV Prevalence

The hypothesis that higher prevalence would result in higher legislative performance is tentatively supported when a correlation is run on the composite score. There appears to be a tendency that overall legislative performance increases with adult prevalence. As we shall see in all but one of these analyses, the legislature in Malawi performs better than what would be 'predicted' by the statistical analysis, i.e. it scores higher on various indicators of performance than what would be expected by the

²⁵⁰ Loewenson R, London L, Thomas J, Mbombo N, Mulumba M, Kadungure A, Manga N, Mukono A (TARSC, UCT, SEAPACOH) (2009) Experiences of Parliamentary Committees on Health in promoting health equity in East and Southern Africa ' *EQUINET Discussion Paper Series 73*. EQUINET: Harare. At 8.

more general tendency in the data. Such ‘macro’ patterns in the data will be commented on further in the concluding section of this chapter.

Figure 3: Composite Score and Prevalence



2. National AIDS Commissions

As discussed in chapter two above, the opposing views in the literature on the wisdom and effectiveness of NACs there is clearly no dominant argument for what impact upon legislative performance we should expect from this variable. On the basis of Putzel²⁵¹ we would hypothesize a negative impact, whereas the ‘Three Ones’ recommendation would hypothesise a positive impact.

²⁵¹ Putzel, J. 2004. The Global fight against AIDS: How adequate are the National Commissions. *Journal of International Development*. (16) 1129 – 1140. John Wiley Sons limited. UK. Available online at: <http://onlinelibrary.wiley.com>.

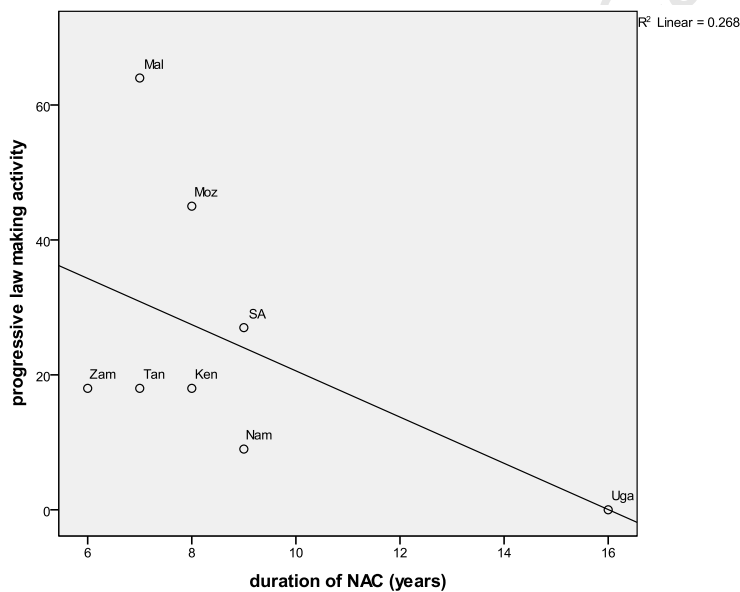
Table B: Pearson Correlation on Number of Years with NAC

	Law making activity	legislative engagement with civil society	Oversight (budget)	Oversight (general)	Constituency Service	Composite aggregate
Number of Years with NAC	-.518	.351	-.145	-.427	-.640	-.256
	8	7	8	7	6	8

Law Making and Number of years with NAC

The is a relatively strong negative tendency between law making activity and the number of years the NAC has been in existence -.518 (*Pearson’s r*). This negative relationship tentatively confirms Putzel’s argument that the NAC’s have a negative impact on overall national response to the epidemic. It is important to note however that Uganda, with its long standing NAC may alter this relationship. Uganda’s unique executive leadership around HIV/AIDS ensured a top down approach was taken within the country. Although the NAC was established early on in Uganda, Putzel notes that often the powers and role of the NAC’s are left un defined – therefore resulting in inefficiency. Top down leadership within Uganda may explain the negative relationship between the NAC and law making activity.²⁵²

Figure 4: Progressive law making activity and NAC duration



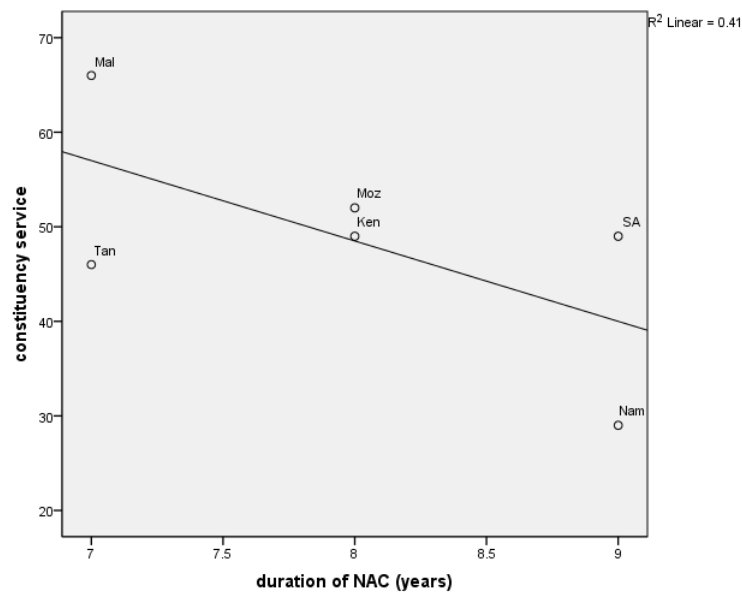
Constituency Service and duration of NAC

There is a relatively strong relationship between constituency service and the duration of the NAC. However again it is important to note here that due to data limitations Uganda was not included in this graph, therefore the above argument that Uganda and its top down leadership was driving the

²⁵² Robinson, M and Friedman, S. 2007. Civil society, Democratization and Foreign Aid: Civic Engagement and Public Policy in South Africa and Uganda. Democratization. 14 (4). Taylor and Francis Group, London. At 643 – 668.

relationship no longer holds. The duration of the NAC therefore is altered to a two year variation, as opposed to the longer duration above, and remains a negative relationship. In this scatterplot, the positions of Namibia and South Africa are interesting: both countries share the same electoral system which influences their levels of constituency service, according to Barkan.²⁵³ However, it appears that South Africa is performing relatively well despite the electoral system, suggesting not only that Namibia is underperforming but also that there may be another reason for South Africa's and Mozambique's improved responsiveness.

Figure 5: Constituency Service and NAC Duration



3. GNI per capita (Wealth/Capacity)

Resource constraints and general wealth of a country is frequently raised as a reason for inactivity around the HIV/AIDS agenda. Within the legislative context, wealth would influence the resources available for the legislative activities. It is further acknowledged that resource constraints, coupled with weak institutions, systems of patronage and poor governance exacerbate the overall country level issues, compounding the problems of HIV/AIDS.²⁵⁴ Therefore, the hypothesis is that greater wealth would result in higher legislative performance.

Analysis on this variable highlights two notable tendencies. There is a positive relationship between legislative engagement with civil society and GNI, confirming the hypothesis. However, there is a negative relationship between GNI and constituency service.

²⁵³ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London.

²⁵⁴ Poku, N. 2005. AIDS in Africa: how the poor are dying. Polity Press. UK. at 180 and Van De Walle, N. 2001. African Economies and the Politics of Permanent Crisis. Cambridge University Press. USA.

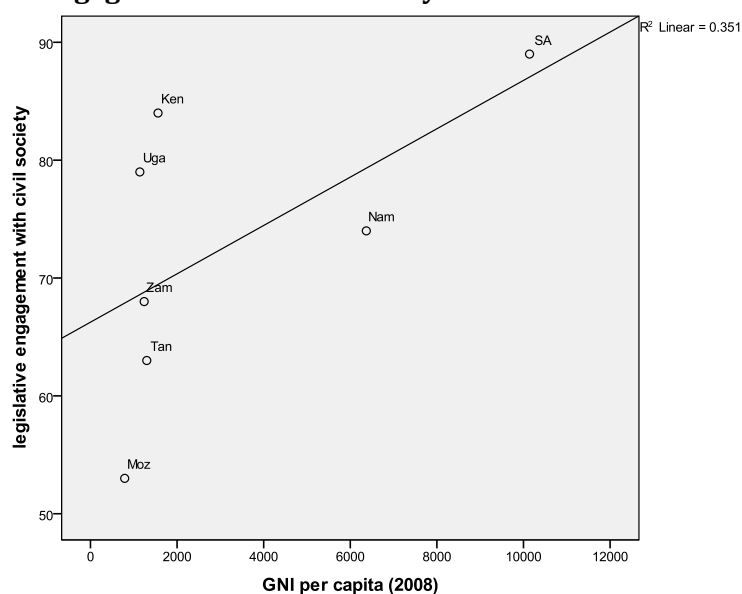
Table C: Pearson Correlation on GNI

	Law making activity	Legislative engagement with civil society	Oversight (budget)	Oversight (general)	Constituency Service	Composite aggregate
GNI (World Bank)	-.182	.593	.025	.137	-.456	.066
	8	7	8	7	6	8

Legislative engagement with civil society and GNI

A relatively strong relationship .593 (*Pearson’s r*) exists between these two variables, confirming the hypothesis. This relationship is influenced by South Africa’s high level of performance and high levels of wealth.

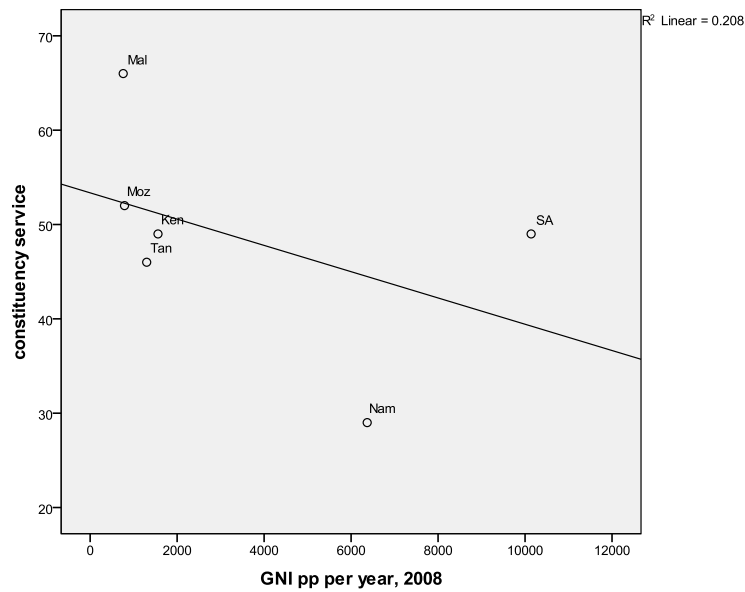
Figure 6: Legislative engagement with civil society and GNI



Constituency Service and GNI

There is a strong negative relationship between GNI and constituency service. However, the scatterplot highlights that the position of Namibia, with regard to their low constituency service drives the correlation. It is interesting to highlight that South Africa, Mozambique and Namibia all have the same electoral system however both Mozambique and South Africa manage to maintain relatively high levels of constituency service, suggesting that some other factor is at play. Therefore it is clear that although there is a negative relationship between GNI and constituency service, this is may not be a true reflection of the relationship between the variables as electoral system and other factors may be at play.

Figure 7: Constituency Service and GNI



4. Quality of Governance

The quality of governance, not only in relation to HIV/AIDS but with regard to the country as a whole has been raised as a reason for successful or unsuccessful HIV/AIDS policies. Poor HIV policies are often exaggerated by existing governance weaknesses, corruption and accountability.²⁵⁵ According to Van de Walle post-colonial African states struggle under weak institutions with limited legitimacy, low state capacity and a propensity to focus expenditures on government consumption over development activities.²⁵⁶ Therefore the hypothesis states that countries that score better on governance (specifically accountability and corruption) should have better legislative performance around HIV/AIDS.

The analysis highlights two interesting relationships, a relatively strong positive relationship between legislative engagement with civil society and governance, confirming the hypothesis and a fairly strong negative relationship between constituency service and governance.

Table D: Correlations with quality of governance

	Law making activity	Legislative engagement with civil society	Oversight (budget)	Oversight (general)	Constituency Service	Composite aggregate
Governance (Ibrahim Index)	-.300	.428	.109	-.158	-.676	-.113
N	8	7	8	7	6	8

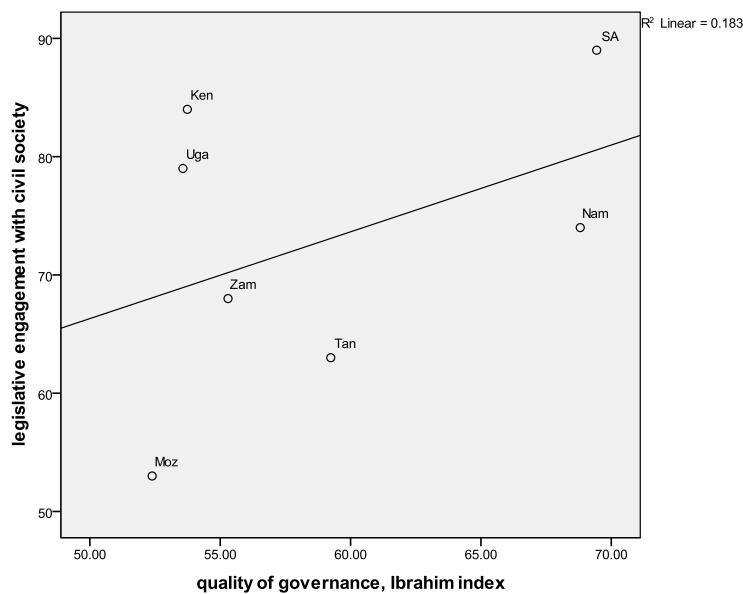
Legislative engagement and with civil society and quality of governance

²⁵⁵ Poku, N. 2005. AIDS in Africa: how the poor are dying. Polity Press. UK. At 190.

²⁵⁶ Van De Walle, N. 2001. African Economies and the Politics of Permanent Crisis. Cambridge University Press. USA.

The positive relationship between these two variables confirms the hypothesis. Increased quality of governance (improved accountability and corruption) results in better engagement with civil societies. Again this relationship is driven by South Africa and Namibia both of which score well on governance, however both score well on legislative engagement with civil society. This suggests that where there is reduced corruption and improved accountability greater engagement between civil society and the legislature can be fostered. A potential reason for this is that an improved quality of governance may reduce issues of clientilism and patronage, therefore increasing the scope of civil society access to the legislature. However, it is important to note that if South Africa and Namibia were not included this would not be a particularly strong correlation.

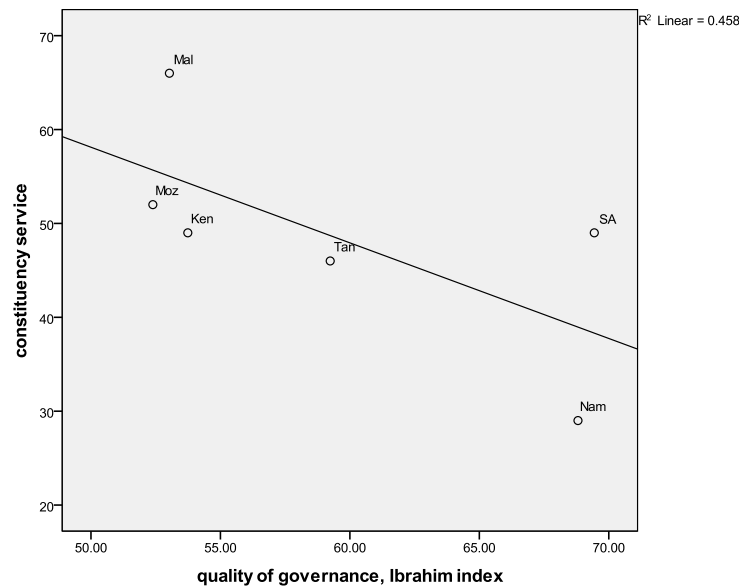
Figure 8: Legislative engagement with civil society and quality of governance



Constituency Service and quality of governance

This negative relationship is yet again influenced by the position of Namibia although South Africa and Mozambique share the same electoral system – they perform better on constituency service result of Namibia’s low performance on constituency service. Again the position of Malawi is of interest as it scores low on governance, but repeatedly high on constituency service. Both South Africa and Mozambique perform similarly on constituency service, which may be a negative reflection on South Africa, who scores better on governance and is wealthier than Mozambique.

Figure 9: Constituency service and quality of governance



5. Electoral System

The choice of electoral system influences the type of activity within the parliaments as it determines the procedures for seat allocation, party representation and the nature of the relationship between the executive and the legislature.²⁵⁷

Within the eight country selection, only two electoral systems are present; Proportional Representation (PR) and First Past the Post (FPTP). The differing electoral systems result in different levels and types of activity within the parliaments. Within PR systems constituency service is less important and the legislatures often tend to be weak on accountability.²⁵⁸ It therefore follows that representation of citizen's interests is slightly less in PR systems.²⁵⁹ However, due to the inherent pull existent in all legislatures between parliamentary functions, PR systems often have more time allocated to legislating and other internal operations.²⁶⁰ FPTP systems logically have stronger representation, higher levels of constituency service and better accountability,²⁶¹ following from the direct election of independent candidates in their constituencies.²⁶²

Three PR systems are included in this case study. Since correlation analysis would not be suitable to analyse these relationships a cross-tabulation capturing the average activity across each of the functional variables is a useful way to analyse this data.

²⁵⁷ Chirambo, K. 2006. Democratisation in the age of AIDS: Understanding the political implications. Governance and AIDS Program. IDASA, Cape Town and Barkan at 5..

²⁵⁸ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Rienner Publishers. Boulder, London.

²⁵⁹ Ibid.

²⁶⁰ Barkan, J, Mattes, M, Mozaffar, S and Smiddy, K. 2009. African Legislatures First Findings. *African Legislatures Project*. <http://www.africanlegislaturesproject.org/publications>.

²⁶¹ Chirambo, K. 2006. Democratisation in the age of AIDS: Understanding the political implications. Governance and AIDS Program. IDASA, Cape Town.

²⁶² Ibid.

Table E: Electoral system

Electoral System	Law making activity (%)	Legislative engagement with civil society (%)	Oversight (budget) (%)	Oversight (general) (%)	Constituency Service (%)	Composite aggregate (%)
PR N=3	27	72	33	69	43	49
FPTP	24 (N=5)	74 (N=4)	40 (N=5)	66 (N=4)	54 (N=4)	50 (N=5)

According to Barkan countries with a PR system will have higher levels of law making activity and oversight, while FPTP systems will be stronger on the legislative engagement and constituency service variables. Although the variation between the two systems is small and cannot conclusively support Barkan it appears that Barkan's argument is tentatively confirmed within these eight countries.²⁶³

6. Parliamentary or Presidential System

African legislatures often find themselves struggling under 'big man'²⁶⁴ politics, systems of clientilism and patronage,²⁶⁵ pulled between executing a chiefly function and modern constitutionally mandated legislative roles.²⁶⁶ Compounding the complexity is the executive struggle to control the legislature.²⁶⁷ This dynamic and political culture may be altered with the existence of a parliamentary or presidential system, as the constitutionally entrenched checks and balances may restrain the powers and reign of the executive.

It is important to clearly distinguish between these two systems. This can be done based on two criterion; within parliamentary systems citizens cast one single ballot electing both the executive and the parliament simultaneously. Both the parliament and the executive have joint tenure which ends simultaneously. Within a presidential system, there is separate tenure, both the parliament and the executive are independent of each other, elected separately with separate ballots.²⁶⁸

As with electoral system, there is insufficient variation within the case selection between parliamentary and presidential systems, as South Africa is the only country classified as a parliamentary system, according to the African Legislatures Project.

²⁶³ Barkan, J. (ed) 2009. Legislative power in Emerging African Democracies. Lynne Reinner Publishers. Boulder, London.

²⁶⁴ Mattes, R. 2004. Public Opinion and HIV/AIDS: facing up to the future. Afrobarometer Briefing Paper no. 12. www.afrobarometer.org. and Whiteside, A, Mattes, R, Willan, S & Manning, R. 2003. Examining the HIV/AIDS Epidemic in Southern Africa Through The Eyes of Ordinary Southern Africans Afrobarometer Working Paper No. 21. www.afrobarometer.org.

²⁶⁵ Van De Walle, N. 2001. African Economies and the Politics of Permanent Crisis. Cambridge University Press. USA.

²⁶⁶ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa. at 248.

²⁶⁷ Ibid. at 252.

²⁶⁸ African Legislatures project. University of Cape Town.

7. Public Opinion

Theoretically legislatures are a mirror or pulse of society, monitoring the political and social culture, the general ideologies and the social mores.²⁶⁹ Legislatures are set up to be representative of the people and the society and to provide democratic governance reflective of the electorate. It follows that important public issues are reflected within the legislature. Analysis on two different questions relating to public opinion highlight some interesting relationships between the variables. As discussed in chapter two, the two variables are based on two questions in the Afrobarometer survey (round 3).²⁷⁰ With regard to ‘prioritize AIDS’ there appears to be a strong positive relationship between legislative engagement with civil society as well as with constituency service.

With regard to ‘critical of government’ there are two notable positive relationships; between progressive law making activity and the composite aggregate. It is worthwhile to note that the relationship between the composite aggregate and the explanatory variable is statistically significant at the 0.5 level.

Table E: Pearson Correlation on Public Opinion

	Progressive Law making activity	Legislative engagement with civil society	Oversight (budget)	Oversight (general)	Constituency Service	Composite aggregate
Prioritize AIDS	-.303	.463	.134	.102	-.661	-.033
Critical of Gov't	.608	.385	.229	.261	.314	.714
N	8	7	8	7	6	8

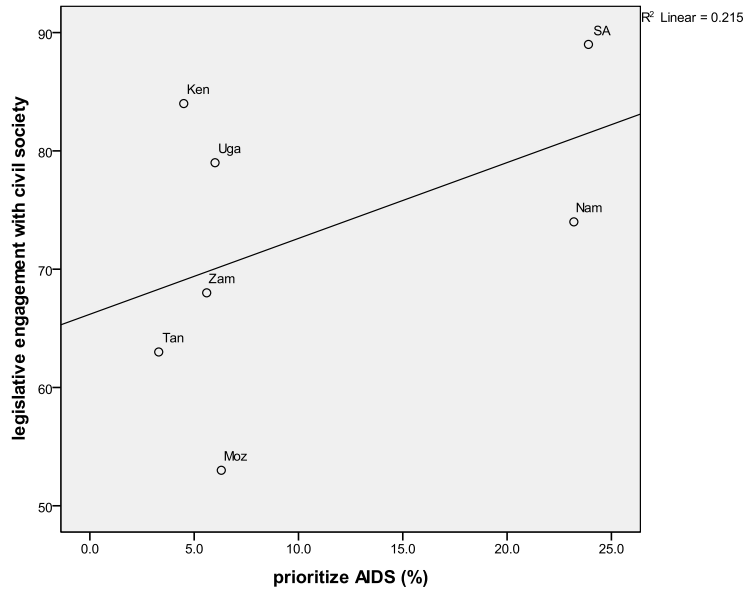
From amongst the explanatory variables, the tendencies highlighted between both public opinion variables and the function variables are the most notable within this Chapter. These positive relationships suggest, generally speaking, that the eight parliaments are responsive to public opinion on AIDS. The results will be discussed in the following paragraphs.

Legislative engagement with civil society and Prioritize AIDS

The positive relationship between these two variables supports the hypothesis. Increased public prioritization of AIDS results in increased legislative engagement with civil society. This may suggest that increased public opinion around this issue galvanizes civil society to engage and lobby around the HIV/AIDS agenda. Of course, Mozambique’s parliament does not allow for such engagement and therefore does not feature well on this function.

²⁷⁰ The question for the variable ‘prioritize AIDS’ is an open question asking respondents to name the three most important issues that their government should address. The percentages on this variable reflect the percentage of people who mention HIV/AIDS as one of the three issues. The percentages for the variable ‘critical of government’ represent the percentage of people who felt that their government had handled HIV/AIDS badly or very badly during the previous year.

Figure 10: Legislative engagement with Civil society and Prioritize AIDS



Constituency Service and prioritizing AIDS

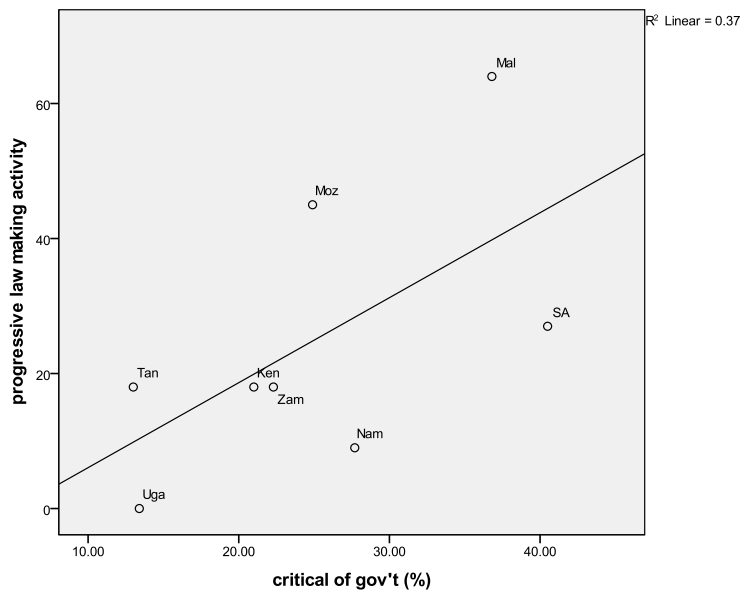
There is a notable tendency between the variables of constituency service and the public opinion : prioritizing AIDS. This tendency is a negative tendency, -0.661 (*Pearson's r*) and is relatively strong. However, as with other relationships regarding the constituency service function, Namibia alters the relationship negatively due to its poor performance on this variable. As noted above, Namibia's poor performance can be attributed to its electoral system and is not a true reflection of the relationship between the variables. For this reason the scatterplot has not been included, although the correlation appears to be fairly strong.

Law making and those critical of government

On the second question relating to public opinion, those who are critical of the government's response to HIV/AIDS there are two notable positive relationships. The first is between law making and those who are critical of government: parliaments are more active on this function in countries with higher level of public criticism of government. Again it is interesting to note the high performance of Malawi on this variable and the position of South Africa. Considering the time frame – South Africa's below expectation performance can be

attributed to the poor leadership under the Mbeki presidency. Such non responsiveness would seem to confirm arguments put forward by both De Waal and Mattes.²⁷¹

Figure 11: law making and critical of government

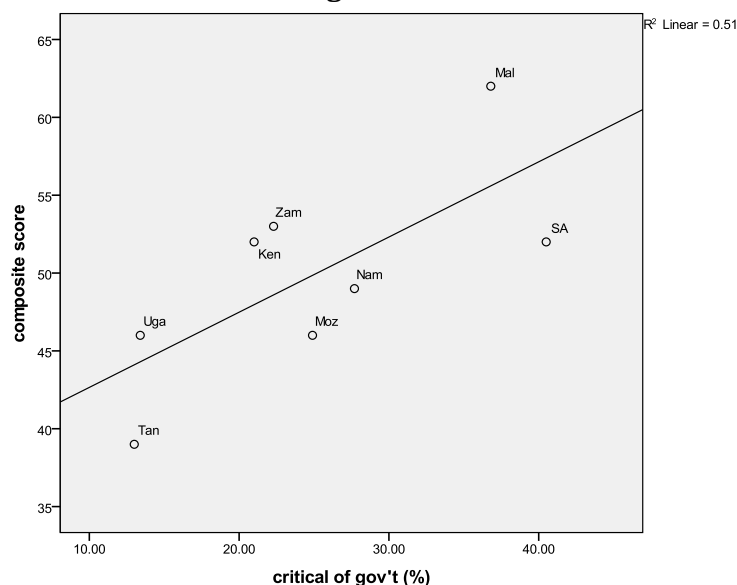


Composite Score and critical of government

Finally the most significant relationship .714 (Pearson’s r) is the tendency highlighted between overall legislative performance and the level of criticism to government’s response to HIV/AIDS. This figure tentatively contradicts De Waal who notes that governments have been slow in their response to HIV/AIDS and have performed well behind the curve on these issues. This data support the argument that where there is an active, critical citizenry, positive legislative performance will result.

²⁷¹ De Waal, A. 2003. How will HIV/AIDS transform African Governance. African Affairs. 102 (406) Oxford University Press. United Kingdom.

Figure 12: Composite score and critical of government



8. Leadership

*'HIV/AIDS can fame or shame Africa's powerful presidents on a global stage, irrespective of other deeds and grand visions, political legacies are determined by what actions are taken around HIV/AIDS'*²⁷²

It is clear from the qualitative literature on this subject, that leadership, particularly executive leadership plays a significant role, not only in motivating and rallying government around the issue, but also in placing it on the public agenda. Unfortunately, limited quantitative data exists around leadership, despite its importance. Therefore, a correlation analysis cannot be run the data relating to leadership, as there is too little variation between the results. Two measures of HIV Leadership have been considered; NCPI questionnaire which asks whether high officials speak publicly about AIDS efforts in major domestic for a at least twice a year; President/Head of Government, Other high officials, other officials in other regions and a media screen for any positive executive activity around HIV/AIDS. In all of the eight countries, across both measures there was evidence of positive leadership.

As aforementioned African governments are often 'top heavy'²⁷³ and patriarchal²⁷⁴ with strong man presidents entrenched against weak civil societies and legislatures.²⁷⁵ The necessity to garner the

²⁷² Strand, P. 2007, October. Comparing AIDS governance: A research agenda on responses to the AIDS epidemic. *CSSR Working Paper No. 203*. AIDS and Society Research Unity. Centre for Social Science research. Cape Town. South Africa. at 1.

²⁷³ Hyden, G. and Lanegran, K.1993. Aids, policy and politics: East Africa in comparative perspective. *Policy Studies Review* 12 (1). Ebscohost. at 12.

²⁷⁴ Van De Walle, N. 2001. *African Economies and the Politics of Permanent Crisis*. Cambridge University Press. USA.

support and rally the strength of these leaders around the HIV/AIDS agenda becomes critical in the overall fight against the epidemic. Strong and successful leadership has been seen in Senegal, Uganda and Thailand, with powerful vertical impact on the country epidemics.²⁷⁶ However, despite political commitment voiced at international meetings, leadership around stigma, prejudice and overall HIV/AIDS issues remains wanting.²⁷⁷ To date Museveni remains the only political leader who has openly advocated for the use of condoms and elevated HIV/AIDS in the national arena by moving the National AIDS council into the office of the president.²⁷⁸ In Zanzibar in the 2005 the electoral commission included AIDS messages however these were not taken up by the political leaders themselves.²⁷⁹ It has been asserted that AIDS issues do not come with immediate rewards for individual MP's, and in some circumstances may be damaging, therefore reducing their overall attention.²⁸⁰

Several regional initiatives have begun to foster leadership around HIV/AIDS including the Champions for an HIV free Generation.²⁸¹ This organisation is a collective of pertinent leaders, heads of state, religious leaders amongst others, who openly speak about HIV/AIDS. Positive steps taken by Kaunda in Zambia in the 90's regarding public testing, and Mandela and the Archbishop Desmond Tutu lead the way in regard to leadership, however more needs to be done.

Conclusion

Although restricted to eight legislatures, this chapter highlights some of the established arguments used to rationalise variation in legislative activity or inactivity. The tentative findings within this chapter, cannot be generalised out as a measure of all African legislatures, but must be restricted to the case selection. It must also be noted that this exploratory analysis of legislative activity has occurred through a restricted lens of HIV/AIDS and therefore is not an assessment of overall legislative performance and activity.

It is notable that the explanatory variable that appeared to have the greatest impact upon legislative performance is that of public opinion. This is interesting as it speaks to issue of democratic

²⁷⁵ Mattes, R. 2004. Public Opinion and HIV/AIDS: facing up to the future. Afrobarometer Briefing Paper no. 12. www.afrobarometer.org. and Whiteside, A, Mattes, R, Willan, S & Manning, R. 2003. Examining the HIV/AIDS Epidemic in Southern Africa Through The Eyes of Ordinary Southern Africans Afrobarometer Working Paper No. 21. www.afrobarometer.org.

²⁷⁶ Strand, P. 2007, October. Comparing AIDS governance: A research agenda on responses to the AIDS epidemic. *CSSR Working Paper No. 203*. AIDS and Society Research Unity. Centre for Social Science research. Cape Town. South Africa.

²⁷⁷ Dickenson, C and Buse, K. 2008. Technical approach paper, Understanding the politics of national HIV policise. hlsp institute. www.hlsp.institute.org.

²⁷⁸ Hyden, G. and Lanegran, K.1993. Aids, policy and politics: East Africa in comparative perspective. *Policy Studies Review* 12 (1). Ebscohost. at 13.

²⁷⁹ Chirambo, K. 2006. Democratization in the Age of AIDS: Understanding the Political Implications. Institute for Democracy in South Africa. Pretoria, South Africa.

²⁸⁰ Strand, P. 2007, October. Comparing AIDS governance: A research agenda on responses to the AIDS epidemic. *CSSR Working Paper No. 203*. AIDS and Society Research Unity. Centre for Social Science research. Cape Town. South Africa. at 10. and Chirambo

²⁸¹ Champions for an HIV/AIDS free Generation. <http://www.hivfreechampions.org/>.

governance and of HIV/AIDS. From the outset legislatures are set up to be representative, therefore the positive relationship between public opinion and legislative activity suggests that indeed these eight legislatures are indeed representative. This confirms Salih's claim that African legislatures appear to be more responsive to social problems and contradicts Mattes, who argues that HIV/AIDS has not yet made it on to the public agenda.²⁸²

Other interesting variations include the exceptionally high performance recorded within Malawi. Malawi is considered a relatively poor country, with limited notable leadership around HIV/AIDS appears to perform above expectation on many of the variables, particularly law making. Further research into Malawi's high performance would be a worthwhile pursuit, potential reasons could include donor support, particularly active or aware civil society organisations or increased participation within regional organisations, such as SADC PF or SADC. Malawi's performance is notable considering its relative poverty and poor governance rankings.

Mozambique consistently performs poorly on legislative engagement with civil society, however it must be reiterated here that the Mozambique legislative system does not hold its committee meetings in the open, therefore the institution is not set up to allow for civil society engagement on that level. Mozambique therefore performs badly on this function – throughout. The influence of the electoral system is interesting to note in the cases of South Africa, Namibia and Mozambique. With regard to constituency service Namibia performs particularly badly. This raises the question as to why and how South Africa and Mozambique manage to perform so well, despite their PR system.

The relationships, albeit tentative, confirm and refute some of the more established arguments about the role of legislatures in the HIV/AIDS epidemic, and present some intriguing tendencies and arguments to be pursued in further research. This analysis raises questions as to overall government response, legislatures as an institution and whether or not they are valid vehicles through which to address the HIV/AIDS epidemic. As noted by De Waal, the HIV/AIDS epidemic has been most successfully addressed by NGO's, not government.²⁸³ The negative relationships between several of these explanatory variables, such as public opinion, the role of the NACs and the epidemiology of the disease may confirm De Waal's argument and potentially suggest that; not only are parliaments not responding to the epidemic, but that they may not actually be the appropriate mechanism or vehicle to drive government response.²⁸⁴

²⁸² Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

²⁸³ De Waal, A. 2003. How will HIV/AIDS transform African Governance. African Affairs. 102 (406) Oxford University Press. United Kingdom.

²⁸⁴ Ibid.

Chapter 5

Conclusions

Despite the extraordinary achievements in the fight against HIV/AIDS since 1981 much remains to be done. This research highlights not only the role of legislatures in the fight against HIV/AIDS but also how little is in fact being done by these institutions with regard to combatting the epidemic. Although this research is restricted to eight legislatures in Eastern and Southern Africa, the framework and tentative conclusions within this paper lay the ground for further analysis and research on this topic. Unfortunately, as noted by De Waal, governments often respond too late to issues of public concern. This appears to hold true for the legislatures in the eight countries, therefore placing an increased emphasis on the power of the executive and political will around issues of HIV/AIDS.²⁸⁵

This study is, to the best of my knowledge, the first comprehensive analysis of the contribution by African legislative responses to HIV/AIDS that is grounded in political science and extensive survey data. It has considered information from both qualitative and quantitative sources and collected and collated the data according to predetermined decision rules. This empirical study draws on literature located within both comparative governance and political studies to inform the framework and analysis. The descriptive analysis alone is a significant contribution to comparative research on African legislatures. The scorecard that was created to enable cross national comparisons is also the first of its kind in relation to parliaments. The scorecard presents an assessment of parliamentary performance on five functions, each of which are composed of several data points. A sixth score – a composite score of parliamentary performance – was calculated on the basis of the scores on the five functions.

Within the descriptive chapter, there is relatively low activity across all of the legislative functions. However, it is interesting to note a strong correlation between law making activity and constituency service within the eight cases. The correlation highlights that increased law making corresponds with increased constituency service within the eight country selection. Barkan highlights the inherent tension existent in all legislatures, the pull between the law making and oversight functions and the representative and constituency service functions.²⁸⁶ Within this eight country selection, and through the lens of HIV/AIDS, it is clear Barkan's argument does not hold.²⁸⁷ This is an interesting finding – and one worth noting and exploring further in later research.

²⁸⁵ De Waal, A. 2003. How will HIV/AIDS transform African Governance. *African Affairs*. 102 (406) Oxford University Press. United Kingdom.

²⁸⁶ Barkan, J. (ed) 2009. *Legislative power in Emerging African Democracies*. Lynne Rienner Publishers. Boulder, London.

²⁸⁷ *Ibid*.

The information on the actual activity of legislatures within each of these eight countries makes a significant contribution to overall understanding of not only each of these cases but how better aid national governance of the epidemic. Results confirm that the imposition of broad frameworks or ‘cookie cutter’ approaches are not suitable and contextual analyses of national responses are critical.²⁸⁸ This is emphasised by the variations in legislative activity within this country selection, and the unique challenges each of them face.

In the explanatory section of this research, bivariate correlation analyses were done on the scores against a set of variables that have been suggested in the literature as explanations of variations in parliamentary performance, either in the context of AIDS or more generally. Correlations that were particularly strong were analysed further through scatter plots that identified how individual countries were placed in relation to the central tendency in the data. The statistical analysis resulted in tentative conclusions about what factors appear to impact on parliamentary performance on AIDS and what is the nature of that impact.

Although the results from the correlation analyses are merely indicative of a possible causal impact, they highlight interesting relationships between legislative activity or parliamentary performance and the explanatory variables, in particular public opinion and the number of years that the overall response to AIDS has been coordinated by a National AIDS Commission.

The negative relationship between law making and length of time with a NAC tentatively supports Putzel’s argument that NACs may in fact undermine the effectiveness of the AIDS response.²⁸⁹ The findings also suggest an impact from public opinion on parliamentary performance that support De Waal’s arguments about the delayed relationship between government performance and public opinion.²⁹⁰ A greater case selection would provide more conclusive results, as would individual analysis of unusual cases. However, the general tendencies that are highlighted in this research raise important questions about overall legislative activity around HIV/AIDS and the role of legislatures in country responses to the epidemic.

An interesting result arises from the strong relationships between public opinion and legislative engagement and the overall composite score. Based on these correlations, further support is given to the argument that African legislatures are better at responding to social and development issues, as

²⁸⁸ The AIDS 2031 Consortium. 2011. AIDS: Taking a long term view: The AIDS 2031 Consortium. Pearson Education Inc. FT Press. USA. <http://www.ftpress.com/store/product.aspx?isbn=0132172593>

²⁸⁹ Putzel, J. 2004. The Global fight against AIDS: How adequate are the National Commissions. *Journal of International Development*. (16) 1129 – 1140. John Wiley Sons limited. UK. Available online at: [available online at: http://onlinelibrary.wiley.com](http://onlinelibrary.wiley.com).

²⁹⁰ De Waal, A. 2003. How will HIV/AIDS transform African Governance. *African Affairs*. 102 (406) Oxford University Press. United Kingdom.

raised by Salih.²⁹¹ Furthermore, the criticisms of the representation within African legislatures appear to be undermined by this data as public opinion clearly has an impact on overall legislative performance. These tendencies and relationships suggest that an increased citizenry should be cultivated, and grass root activism and lobbying should be cultivated. Steps to foster a more active and engaged public around issues of HIV/AIDS would potentially positively influence legislative performance and therefore national governance around this pertinent issue.

Although this study is restricted to eight parliaments, and therefore only highlights correlations rather than causal relationships; these findings beg further questions about the role of parliament within the HIV/AIDS epidemic and how to strengthen legislative responses and potential ideas for in-country support. Based on the strong results seen in some of the analyses, potential areas of intervention should focus around mobilizing public support and advocacy efforts around HIV/AIDS. Although the relationship between legislative responses and public opinion requires further research, tentative conclusions could be drawn from this data. As expected, the oversight function does not suggest strong performance around HIV/AIDS issues, therefore future interventions around legislative strengthening should look at the promotion and strengthening of oversight by MP's. Finally, the recent drive for legislatures to adopt a model law on HIV/AIDS, and strengthen and set up HIV/AIDS committees, may have had an impact upon the overall legislative functioning, however, political agendas, resource constraints and political will should all be considered and factored into additional studies, programs and approaches. The relatively low levels of activity across the descriptive variables give credence to De Waals argument as which government institutions are best suited to drive the HIV/AIDS epidemic. Overall the findings here make a worthwhile contribution and are a unique blend of various data sources to put forward an empirical analyses of eight countries within the most affected region in the world.

²⁹¹ Mohammed Salih, M. A. (ed). 2005. African Parliaments: Between governance and governing. HSRC Press. South Africa.

Appendices

Appendix 1: Additional Legislative Tables

MP Opinions as to parliamentary influence over the content of legislation and effectiveness in law-making

Country	Parliamentary influence on content of legislation			Parliamentary effectiveness in law-making		
	too much	about right	too little	worse	stayed the same	better
Kenya	6.10%	46.90%	46.90%	14.30%	44.90%	40.80%
Malawi	2%	63.30%	30.60%	25%	22.90%	37.50%
Mozambique	12%	42.00%	44%	6%	30%	64%
Namibia	71.40%	20%	8.60%	16.70%	27.80%	55.60%
South Africa	21.90%	68.80%	9.40%	17.20%	44.80%	37.90%
Tanzania	91.70%	8.30%	0	2.70%	10.80%	86.50%
Uganda	4%	94.00%	2%	6%	46%	34%
Zambia	11.90%	41.20%	41.20%	4%	35.30%	29.40%

Appendix 2: Additional Oversight Table 1

MP Opinions on Oversight of Budget

Budget						
		Parliamentary influence over budget			Monitoring executive expenditure over past 5 years	
	too much	about right	too little	worse	the same	better
Kenya						
Malawi	8.3%	75.0%	16.7%	25.0%	36.6%	35.4%
Mozambique	0.0%	26.5%	71.4%	16.3%	14.3%	53.1%
Namibia	12.0%	12.0%	76.0%	14.0%	26.0%	60.0%
South Africa	2.9%	48.6%	48.6%	25.0%	25.0%	50.0%
Tanzania	43.7%	46.9%	43.7%	23.3%	40.0%	33.3%
Uganda	0.0%	50.0%	50.0%	2.7%	8.1%	89.2%
Zambia	8.0%	86.0%	4.0%	6.0%	54.0%	24.0%
		33.3%	23.6%	15.7%	21.6%	31.3%

Appendix 3: Additional Oversight Table 2

MP Opinions on Independence from Executive

Independence						
		Political independence from the Executive			Oversight of the Executive	
	too much	about right	too little	too much	about right	too little
Kenya	0.0%	58.3%	41.6%	0.0%	58.3%	30.0%
Malawi	6.1%	12.2%	81.6%	12.2%	12.2%	41.6%
Mozambique	2.0%	50.0%	48.0%	10.0%	50.0%	44.0%
Namibia	34.3%	34.3%	65.7%	2.9%	34.3%	48.0%
South Africa	31.0%	40.6%	56.3%	9.4%	40.6%	56.3%
Tanzania	2.0%	68.0%	30.0%	0.0%	68.0%	30.0%
Uganda	0.0%	56.0%	44.0%	0.0%	56.0%	44.0%
Zambia	13.7%	23.5%	51.0%	0.0%	23.5%	51.0%

Appendix 4: Additional Constituency Service Table 1

MP Opinions on Constituency allowances

Country	MP's satisfied with current allowances allocated to constituency work	MP's satisfied with current allowances allocated to constituency offices
Kenya	79.20%	69.30%
Malawi	4.10%	0.00%

Mozambique	34.00%	4.00%
Namibia	0.00%	0.00%
South Africa	34.40%	12.50%
Tanzania	28.00%	18.40%
Uganda	86.00%	0.00%
Zambia	14.80%	7.90%

Appendix 5: Individual Scorecard tables for each variable

Legislative Scorecard	Number of New Bills Introduced that explicitly mention HIV in title	New bills Passed that explicitly mention HIV in the title	Number of Bills referred to Health or HIV Committee	Country Review of National HIV Policy	Law that protects PLWHA from discrimination	Laws that are obstacles in the protection of vulnerable sub groups (Govt response)	Does the country have laws that criminalize MSM	Does the country have laws that criminalize SW	Does the country have laws the criminalize IDU	Does the country have a policy on treatment care and support	TOTAL SCORE
Kenya	1	1	3	1	0	-1	-1	-1	-1	1	3
Malawi	2	2	1	1	1	-1	-1	1	1	1	8
Mozambique	1	1	1	1	1	-1	-1	1	1	1	6
Namibia	0	0	1	1	1	-1	-1	1	-1	1	2
South Africa	1	0	2	1	1	-1	1	-1	-1	1	4
Tanzania	1	1	1	0	1	-1	-1	-1	1	1	3
Uganda	0	0	1	0	1	-1	-1	-1	1	1	1
Zambia	0	0	2	1	1	-1	-1	-1	1	1	3

Civil Society Engagement Scorecard	Civil society input into new bills (not included in total score)	Chair or Parliamentary Committee meets with civil society	Parliamentary meetings held in camera or open	Number of civil society presentations to committee	Is research support, internal or external	Percentage of MP's who use CSO's for input (general)	Percentage of MP's who use academics for input (general)	Extent of CS involvement in National Strategic Plan	TOTAL SCORE
Kenya	0	2	1	4	2	3	2	2	16
Malawi	1					2	1	2	
Mozambique	1	3	0	0	0	2	2	2	10
Namibia		2	1	1	1	4	4	1	14
South Africa	1	3	1	3	1	4	4	1	17
Tanzania	1	2	1	2	1	4	2		12
Uganda		3	1	2	1	3	2	3	15
Zambia		0	1	3	2	3	2	2	13

Budget					
	Monitoring Executive Expenditure over past 5 years		Committee budget priorities	Content of questions raised with executive	<i>TOTAL SCORE</i>
	Majority Percentage	EQUINET	EQUINET	EQUINET	
Kenya	0	1	1	1	3
Malawi	1	2	2	0	5
Mozambique	1				1
Namibia	1	3	2	0	6
South Africa	0	2			2
Tanzania	1		0	0	1
Uganda	0	2	0	1	3
Zambia	1	4	1	0	6

University of Cape Town

Oversight via Committee	Is there a specific HIV/AIDS committee	Degree of activity within Health Committee or HIV/AIDS Committee	Does the Chair Solicit funding	Sufficient funding for regular meetings	Sufficient budget for travels and hearings	Medical Expertise of Chair	Chair has Parliamentary Expertise	Members have technical/professional expertise	Number of special investigations	Co Re pr
Kenya	0	3	1	1	1	1	1	1	2	
Malawi	0									
Mozambique	1	2	1	1	1	0	1	2	1	
Namibia	0	3	2	1	1	0	1	1	0	
South Africa	0	2	2	1	1	1	1	2	0	
Tanzania	1	3	0	1	1	0	1	2	0	
Uganda	1	0	2	1	1	0	0	2	3	
Zambia	1	2	2	1	1	0	0	1	0	

Constituency Service								
Country	Percentage of time devoted to constituency work: Country Mean	In session, number of trips to Constituency: Country Mean	In session, length of stay in Constituency: Country Mean	Out of Session, number of trips to constituency: Country Mean	Out of Session, length of stay in Constituency: Country Mean	Personal Donation (\$US): Country Mean	Project Donation (\$US): Country Mean	TOTAL SCORE
Kenya	3	2	2	1	1	4	4	17
Malawi	3	4	3	3	3	4	3	23
Mozambique	1	2	2	1	4	2	1	13
Namibia	1	1	2	1	3	1	1	10
South Africa	2	4	3	2	3	2	1	17
Tanzania	2	1	1	1	4	4	3	16
Uganda	0	0	0	0	0	0	0	0
Zambia	0	0	0	0	0	0	0	0

Appendix 6: Rules for Score card

Variable	Subcategory and column number	Decision Rule
Legislative Variable	(1) Number of new bills introduced that explicitly mention HIV in the title and (2) New Bills passed that explicitly mention HIV in the title	Calculated according to actual number of bills. Each bill is counted as one.
	(3) Number of bills referred to health or HIV Committee	Scores allocated (low, medium, high) Low = 1 -3, Medium = 3 – 6, High = 7 – 14
	(4) Country review of National HIV Policy	No review = 0 Review = 1. Positive score (1) allocated if no review has happened because National Policy is still in place during time of study, and review falls out of timeframe.
	(5) Law that protects PLWHA from discrimination	No = 0 Yes = 1
	(6) Laws that are obstacles in the protection of vulnerable sub-groups. (7) Does the country have laws that criminalize MSM? (8) Does the country have laws that criminalize SW? (9) Does the country have laws that criminalize IDU?	Because the existence of these laws actually harms overall responses to HIV/AIDS, when a country has these laws in place they are awarded a negative score. No = 1 Yes = -1
	(10) Does the country have a policy on treatment care and support?	No = 0 Yes = 1
Civil Society Engagement Variable	(1) Civil society input into new bills	This has not been given a value as the data does not exist for all countries
	(2) Chair or parliamentary committee meets with civil society	No = 0 Yes = 1
	(3) Parliamentary meetings held in the open or in camera	It is the general assumption that democratic society should allow for participation from the

		'demos' therefore meetings should be held in the open. Closed = 0 Open = 1
	(4) Number of Civil society presentations to the committee	0 – 3 = 1 4 – 5 = 2 6 – 10 = 3 10+ = 4
	(5) Is research support internal or external	On the assumption that increased participation and input is better: None = 0 Internal = 1 Both = 2
	(6) Percentage of MP's who use CSO's for input (general) (7) Percentage of MP's who use Academics	Assuming that the higher the usage the better the process is overall: 0 – 30 = 1 30 – 50 = 2 50 – 70 = 3 70 – 100 = 4
	(7) NCPI value on extent of CS involvement in the National Strategic Plan	3 = 1 4 = 2 5 = 3
Budget Oversight	(1) Parliamentary influence over oversight of the budget	Unable to put a value on this and therefore it is not calculated in the scorecard
	(2) Parliamentary monitoring over executive expenditures	Assuming that improvement is good Same = 0 Improvement = 1
	(3) Percentage of total government spending allocated to health.	Assuming that more spending is better: 5 – 9 = 1 10 – 12 = 2 13 -15 = 3 16+ = 4
	(4) Committee budget priorities (5) Questions raised by the Parliament to the executive.	Since the measure is to assess coverage and activity around HIV aids, and the lobbying for funds for HIV: If mention was made of : Budget or funds = 1 HIV/AIDS = 2
Oversight (General)	(1) Is there a specific HIV/AIDS committee	Assuming that having a specific committee is better: No = 0 Yes = 1
	(2) Degree of activity within Health committee or committee tasked with HIV/AIDS	Assuming more activity is better, quantified by the frequency of meetings: Not regular = 0 Quarterly = 1

		Regularly = 2 More than Quarterly = 3
	(3) Does the Chair solicit funding	If a Chair is required to solicit funding from external sources, there is an assumption that the committee does not have adequate financial resources to support itself, therefore no soliciting of funding is positive: No = 2 Seldom = 1 Often/Frequently = 0
	(4) Sufficient funding for regular meetings (5) sufficient funding for travels and hearings	These are both necessary functions of an active committee. If they do not have these funds available they are unable to perform well. Therefore: No = 0 Yes = 1
	(6) Does the Chair have medical expertise (7) Does the Chair have parliamentary expertise	Having a Chair with the expertise to oversee a health committee, and function properly in parliament is a positive measure. It could be suggested that committees staffed with medical professionals, and those with parliamentary expertise are better run, therefore: No = 0 Yes = 1
	(8) Members have technical/professional expertise	The assumption is the more members with expertise the better, therefore: Some = 1 Many = 2
	(9) Number of special investigations	The more special investigations, the more likely that the committee is active, with budget and autonomy to determine their own activities, therefore: This is a simple numeric calculation – the number of investigations is the score the country receives.
	(10) Committee report produced (11) Committee report tabled/debated/challenged	Both of these are positives, the production of a well debated committee report is a good indication of activity and committee autonomy: No = 0 Yes = 1
Constituency Service Variable	(1) Percentage of time devoted to constituency work: country mean	The higher the percentage, the better the indication of the levels of constituency work: 40% - 50% = 3 30% - 40% = 2 0 – 30% = 1
	(2) In session, the number of trips to Constituency:	Assuming the more trips and the longer the stay

	Country Mean. (3) In session the length of stay in Constituency: Country Mean	is an indication of more constituency work being done: 1 – 2.00 = 1 2.01 – 4.00 = 2 4.01 – 6.00 = 3 6.01- 7.00 = 4 7.01 += (cannot include)
	(4) Out of session, number of trips to constituency, country mean (5) out of session, length of stay in constituency, country mean	As above – same rule applies, although different calculation: 1 – 6 = 1 6.01 – 10 = 2 10.01 – 20 = 3 20.01+ = 4
	(6) Personal Donation, country mean (8) Project Donation, country mean	The higher the expenditures the more work being done, only the means have been allocated a score as this provides an overall idea of country activity: 0 – 200 = 1 201 – 350 = 2 350 – 500 = 3 501 + = 4

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