

**THE INFLUENCE OF EXECUTIVE-LEGISLATURE RELATIONS ON LEGISLATIVE
OVERSIGHT IN KENYA, 2008-2013**

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DECLARATION

This project is my original work and has never been presented for examination in any other University.

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This project has been submitted for examination with my approval as University of Nairobi Supervisor.

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Despite the contributions and support of the above named persons, any error(s) of commission and or omission remain solely my responsibility.

DEDICATION

I dedicate this work to my family; wife, Mrs. Devoter Awuor – Ambasa and my daughters; Connie Chantal Ambasa and Channah Christel Ambasa for their ever presence moral and psychological support. Further, I dedicate this work to my brother Eric Ambasa, my late mother Connie Ambasa and my uncle Joseph Atela for their unrelenting sacrifice that has led me to this feat.

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ABBREVIATIONS

ACECA	-	Anti-Corruption and Economic Crimes Act
BAC	-	Budget and Appropriations Committee
CDF	-	Constituency Development Fund
CIC	-	Constitution Implementation Commission
CKRC	-	Constitution Kenya Review Commission
CoK	-	Constitution of Kenya
CPST	-	Centre for Parliamentary Studies Training
DP	-	Democratic Party
EACC	-	Ethics and Anti-Corruption Commission
ECK	-	Electoral Commission of Kenya
FORD	-	Forum for Restoration of Democracy
GCG	-	Grand Coalition Government
IPPG	-	Inter Party Parliamentary Group
KACC	-	Kenya Anti-Corruption Commission
KADU	-	Kenya African Democratic Union
KANU	-	Kenya African National Union
KKV	-	Kazi Kwa Vijana
KNC	-	Kenya National Congress
KPU	-	Kenya Peoples Union
LegCo	-	Legislative Council
MP	-	Member of Parliament
NA	-	National Assembly
NDP	-	National Development Party
NPM	-	New Public Management
NPSC	-	National Police Service Commission
ODM	-	Orange Democratic Movement
PAC	-	Public Accounts Committee
PIC	-	Public Investment Committee
PICK	-	Party of Independent Candidates in Kenya
PNU	-	Party of National Unity
PSC	-	Parliamentary Service Commission
SOs	-	Standing Orders
SUNY	-	State University of New York

ABSTRACT

Kenya has witnessed evolution in the Executive-Legislature relations starting from independence. Re-introduction of multi-party politics in 1990 witnessed an increasingly assertive and strong legislature ready to effectively check the Executive. The formation of grand coalition government in 2008 radically altered the executive-legislature relations which was occasioned by the absence of a formal opposition. Whereas many studies have focused on the grand coalition government, not much has been done on the influence of executive-legislature relations on legislative oversight between 2008-2013. It is on the basis of this scholarly gap that this study sought to examine how the Executive-Legislature relations influence legislative oversight in Kenya between 2008 and 2013. This study employs principal-agent and behaviorist theories to understand how executive-legislature relations influenced legislative oversight. The study relies on case study research design and employs interviews and conversations for data collection. The study finds that the executive-legislature relations between 2008-2013 was conflictual, which led to a strong legislative oversight. The study also found existence of cordial executive –legislature relations. The study also found that, conflictual executive-legislature relations contributed to political stability. This study documents, analyzes and provides insights on how executive-legislature relations influence legislative oversight in grand coalition governments using the case of Kenya 2008-2013. The study has made both policy and academic recommendations that will contribute to the general body of knowledge on the influence of executive-legislature relations in different political systems.

CHAPTER ONE

INTRODUCTION

1.0 Overview

This chapter introduces the study. It provides the background to the study, statement of the research problem, objectives of the study, research questions, research assumptions, justification of the study, literature review theoretical and conceptual framework, methodology, definition of key concepts and terms and the study outline.

1.1 Background to the Study

Legislative oversight is one of the three critical functions of legislature, together with representation and lawmaking. While these core functions of legislature are functionally distinct, they are interdependent meaning, legislature can effectively play its oversight role through legislation and representation. Whereas legislature and executive have diverse functions, legislative oversight remains a necessary characteristic of the doctrine of separation of powers. According to Barkan, (2009, p.7), “legislative oversight therefore remains an essential function for any democratic legislature because it ensures both vertical accountability of rulers to the ruled and the horizontal accountability of all other agencies of the executive to the legislature”. Consequently, in realizing the legislative oversight roles, legislative oversight procedures and mechanisms measure the impact of executive activities to the public, follow up to ensure that adequate resources are allocated to implement government programmes and supervise the implementation of government commitments at all levels of governance.

In the process of legislative oversight, the legislature relates with other government arms. The executive-legislature relations in this context are crucial features of any political system (Kopecky, 2004, p.142). According to Kopecky (2004), in his incisive study of executive–legislature relations in Eastern Europe, he opines that executive-legislature relations are unique to constitutional architecture of various governments because they outline comprehensive mechanisms for relations between the executive and legislature. Accordingly, the executive-legislature relations in presidential system may not be the same as the executive-legislature relations in a parliamentary system or semi-presidential system. The same logic applies in non-coalition or coalition governments. For instance, Santiso (2004,p.6), in his study of parliamentary oversight in Latin

America, observes that, “parliamentary oversight in Brazil, which is a presidential system, is weak due to a proportional representation system which makes it almost impossible to get pure majorities in the legislature”. Similarly, there are constitutional restrictions on legislative budget authority in Costa Rica with legislature having limited authority in budget making processes. Hence, in Costa Rica, the budget can only be proposed by the president (Santiso, 2004, p.54). As noted by both scholars above, the exercise of legislative oversight relies on the nature of political system and the legal architecture in a country.

The strength of legislative oversight can be determined by the availability and effective use of various legislative oversight tools. According to a study on parliamentary accountability in Western Europe, “Italy and Spain have a fully proactive parliamentary accountability while France has a limited parliamentary proactivity” (Sanchez, 2008, p.22). The author further states that legislature in the two countries have the initiative to control the executive because they have strong monitoring procedures of oversight, policy supervision and policy orientation (Sanchez, 2008, p.22). It is worth noting from his study, the significance of strong monitoring procedures as a prerequisite for proactive legislative oversight. Accordingly, his study faults the French legislative oversight mechanism for failure to establish a strong legislative committee system because of over reliance on written questions, executive responses and reports from the executive (Sanchez, 2008, p.22). Sanchez (2008), offers insights on the significance of the availability and use of legislative oversight tools for effective legislative oversight.

According to Barkan (2009, p.2), “most African legislatures, like legislatures worldwide, remain weak in relation to the executive”. This implies that regardless of what political system exists in a country, most African legislatures play subordinate role to the executive, much to the detriment of their core functions including oversight. This situation notwithstanding, his study further argues that there are situations where some African legislatures have asserted themselves more powerfully, as a check on the executive. In his examination of South Africa’s legislature, the author observes that the legislature often reviews legislations proposed by the executive in a manner that enables the executive to achieve its policy objectives (Barkan, 2009, p.2). This argument presupposes that, for the executive to achieve policy effectiveness, it has to relate with the legislature in a manner that promotes supportive policy environment. The study also observed that

whereas, the South African legislature has remained weak, it is still the most established legislature in Africa in terms of legislative oversight tools. The author however attribute its weaknesses to be partly due to the dominance of the legislature by the African National Congress (ANC) party (Barkan, 2009, p.29).

In Kenya, the insubordination of its legislature to the executive can be attributed to the numerous constitutional amendments from independence up to the promulgation of the new constitution in 2010. According to Barkan and Matiangi, (2009, p.36), “the constitutional changes between 1963 and 1967 had intense impacts on the development of legislature in Kenya”. The two authors further states that the constitutional changes focused mainly on the transfer of power from other arms or institutions to the presidency (Barkan & Matiangi, 2009, p.36). In this transfer of power to presidency, the Kenyan legislature became a victim and as a result was weakened. Consequently, these amendments also ushered a hybrid system of government in 1964 which was characterized by a powerful presidency who became both the head of state and government (Barkan & Matiangi, 2009).

Despite the protracted attempts to weaken the legislature by the executive in Kenya, there were anecdotal milestones that improved the strength of Kenyan legislature. According to Kanyinga (2014, p.36), “the return of multi-party democracy saw parliament begin to re-assert itself as an independent institution and from then on, there has been a good attempt to regain independence and to effectively play an oversight role, especially through different parliamentary committees”. This consequently widened the political space which had a positive impact on the strength of legislative oversight in Kenya. Similarly, Barkan and Matiangi (2009, p.40) argue that the legislative development and democratization in Kenya grew despite being shrouded in the executive stranglehold. The re-introduction of multi-party politics was followed by numerous legislative developments including the establishment of Parliamentary Service Commission (PSC) and Constitution of Kenya Review Act 2000 which saw the legislature play lead role in budget making. The growing independence of Kenya’s parliament was seen in the intense legislation of oversight laws¹ post-2002 general elections.

¹ During this period, the Kenyan legislature enacted Anti-corruption and Economics Crimes Act, 2003, Public Officers and Ethics Act, 2003, the Constituency Development Fund Act, 2003 among others.

In 2008, the Kenyan legislature reviewed the constitution that facilitated the enactment of National Accord and Reconciliation Act of 2008. The Accord created the office of prime minister thereby expanding the executive and establishing a Grand Coalition Government (GCG). The formation of the GCG meant that two leading political parties in the contested 2007 general elections were to be both part of the executive. The GCG meant that members of the Kenyan legislature from the two leading political parties were to work cordially with their party leaders who were to be prime minister and president in the coalition government to help address national policy reforms. In his classical argument, Lijphart (1969, p.218) observed that, “legislative oversight is compromised in coalition governments as policy choices require support of all groups in the coalition”. It would be important to understand whether this assumption still holds in a political system featuring a hybrid system that later transformed the powers of president through a new constitution.

1.2 Statement of the Problem

The doctrine of separation of powers is predicated to preserve and protect the right of the individual by distributing the authority of government to prevent tyranny. Ideally, the doctrine anticipates that the legislature continues to exercise oversight over the executive. The doctrine remains a distinctive characteristic of executive- legislature relations. Within this doctrine, the executive and legislature are proffered with authority to perform specific functions that will safeguard their distinctive and interdependence nature. Constitutionally, legislature and the executive are interdependent and are expected to work together. However, in reality in many jurisdictions, it has been observed that this doctrine is characterized by tension thereby interfering with constitutional functions especially the legislative oversight.

The government of Kenya 2008 -2013, specifically the executive and the legislature was unique and unprecedented in Kenya’s political history. First, Kenya had a grand coalition government which brought together, as part of the executive, top political parties that contested the 2007 presidential election. Second, the political party that was to be conventionally in the opposition became part of the executive. Third, the President’s political party did not have the highest number of legislators and instead it was the political party that was to be conventionally in the opposition that had the highest number of legislators. Fourth, the Executive had the largest ever cabinet drawn from the legislature (40 Cabinet Ministers and 51 Assistant Ministers), translating to 42% of the

members of the legislature being part of the executive. Fifth, both Executive and Legislature presided over a constitutional overhaul in 2010 which substantively ceded presidential powers to other government arms and constitutional commissions. For instance, unlike in the previous dispensation where the executive controlled the legislature's calendar, the legislature assumed full control of its calendar in the new constitutional order. Further, the Constitution established the Constitution Implementation Commission (CIC) charged with the responsibility of overseeing the implementation of the Constitution by the executive, a function that was hitherto fully done by the latter.

From these unique and unprecedented attributes, the structure of the grand coalition government fundamentally upended the traditional legislative oversight architecture. Despite this, the role expectations of Kenya's legislature was to exercise oversight over the executive in keeping with the doctrine of separation of powers, however, it remained to be seen how this role was played given ensuing constitutional architecture. Kenya's case presents a unique scenario of the legislature-executive relations that is yet to receive empirical examinations. It is for this reason that this study sought to examine how these unique and unprecedented attributes influenced executive-legislature relations on legislative oversight in Kenya between 2008-2013. While some studies have focused on the grand coalition government, not much has been done on the influence of executive-legislature relations on legislative oversight within the life of grand coalition government in Kenya. For instance, while examining the impact of post-election power sharing agreement in Kenya, Ganiyu (2013), focused on the aspects of mechanisms for political accountability during the period. The scholar dwelt on horizontal and diagonal accountability of parliament in grand coalition government with no specific attention to the executive –legislature relations in a grand coalition context and how the nature influenced legislative oversight. Further, Kisobo (2013), examined the impact of the coalition government to social and economic development and Biegon (2008) examined the application of post-election coalitions in sustaining peace between 2008-2013. It is on the basis of this scholarly gap that this study seeks to respond to the following broad research question: How did executive-legislature relations influence legislative oversight in Kenya between 2008 and 2013.

1.3 Research Questions

The study sought to respond to the following question:

1. How did executive-legislature relations influence legislative oversight between 2008 and 2013?

1.4 Objectives of the Study

This study sought to examine the influence of executive-legislature relations on legislative oversight in Kenya between 2008 and 2013. More specifically, the study:

1. Examined how executive-legislature relations influenced legislative oversight between 2008 and 2013

1.5 Justification of the Study

The exercise of legislative oversight relies on the nature of political system and the legal architecture of a country. This also implies that the executive-legislature relations in presidential system may not be the same to parliamentary system. The same argument applies in different forms of government. According to Kreppel (2009), “legislatures in presidential systems have more legislative power and less executive control, compared to their counterparts in parliamentary systems who exhibit less legislative power, but more executive control”.

Previous studies focused on executive-legislature relations on legislative oversight in presidential, parliamentary and hybrid systems. Most of these previous studies were conducted within developed democracies in relatively peaceful environments and non-transitional regimes. None of the previous studies reviewed; (1) post-conflict grand coalition governments and, (2) a post conflict coalition government that subsequently presided over a constitutional overhaul that substantively ceded powers from presidency to other government agencies. No experiential study has been conducted to assess the executive- legislature relations in Kenya between 2008-2013. This study is hence, both well-timed and important. This study contributes to the academic spheres by documenting, analyzing and providing insights on how executive-legislature relations influenced legislative oversight in grand coalition governments using the case of Kenya 2008-2013. It also contributes to the general body of knowledge on the influence of executive-legislature relations in different political systems. Subsequently, the recommendations in this study will improve inter-

branch relationships in grand coalition governments. This study is useful to scholars who may wish to conduct further research on executive-legislature relations.

In the policy sphere, this study offer new insights and recommendations that can be used by policy makers in both legislatures and executives when formulating policies especially in understanding legislative oversight in conflictual and cordial executive-legislature relations.

1.6 Scope of the Study

The subject matter of this study is on the influence of executive-legislature relations and legislative oversight. The study focused on the cordial and conflictual executive-legislature relations, and internal legislative oversight. The time scope for this study covers period between 2008 and 2013 when Kenya had a grand coalition government resulting from the disputed 2007 general elections. The choice of the study period was purposively informed by five unique and unprecedented scenarios during the period under study which were that; there was a grand coalition government which brought together two top political party that contested the 2007 presidential elections, the political party that was to be conventionally in the opposition became part of the executive thereby creating a thin line between opposition and government, the president did not have majority members in the legislature and instead the political party that was to be conventionally in the opposition had majority members in the legislature, the grand coalition government had the largest cabinet ever in the history of Kenya with 40 cabinet ministers and 51 assistant ministers translating into 42% of members of the legislature sitting as members of the executive and the grand coalition government in Kenya also presided over a constitutional overhaul in 2010 which substantively ceded presidential powers to other government agencies. The study is further informed by the researcher's knowledgeableability of the dynamics characterizing the period and the availability of data to unravel the dynamics. This study was only limited to internal legislative oversight mechanisms, however, external oversight mechanisms could be pursued further.

1.7 Definitions and Operationalization of Key Concepts

1.7.1 Executive-Legislature Relations

According to Shugart (2005, p.3), “executive-legislature relations is the transactional relationship of the executive to the legislature”. In the context of this study, executive-legislature relations means the extent of conflictual or cordial relationship between the executive and legislature.

1.7.2 Conflictual Executive-Legislature Relations

In the context of this study, conflictual executive-legislature relations is the failure of the executive to act in keeping with the law in a manner that undermines the inter-branch relationship between the executive and legislature.

1.7.3 Cordial Executive-Legislature Relations

In the context of this study, cordial executive-legislature relations is where the executive act in a manner that is consistent with laws as set out by the legislature

1.7.4 Legislative Oversight

According to Schik (1976), “legislative oversight is the supervision of policies and programs implemented by the government”. Similarly, according to Maffio, “legislative oversight is the supervision of legislative proposals from government”. Given the emphasis on supervision of government policies in the two definitions, this study similarly views legislative oversight as legislative function of supervising the activities of the executive to ensure their conformity with the law. This study will consider the availability and usage of legislative oversight tools like parliamentary committees, written questions, debates, vetting and budget making processes among others.

1.7.5 Strong Legislative Oversight

In the context of this study, strong legislative oversight is the optimal use of legislative oversight tools in a manner that aligns the intended outcome with the provisions of law.

1.7.6 Weak Legislative Oversight

In the context of this study, weak legislative oversight is the minimal use of legislative oversight tools in a manner that does not fully satisfy the provisions of law.

Table 1.1: Operational Definition of Key Concepts

EXECUTIVE ACTIONS	WITHIN THE LAW	OUTSIDE THE LAW	LEGISLATURE ACTION	OVERSIGHT: STRONG/WEAK
Nomination of state officers (CJ, AG, ODPP, Solicitor General)		Done outside the law	Rejected the nominees Legislative Oversight Tools: Vetting, debates, inquiry	Strong
Unilateral decision to deploy Kenyan troops to Somalia without approval of the legislature		Done outside law	Accepted Legislative oversight tool: Debate	Weak
Redeployment of provincial administration post – constitution 2010		Done outside law	Accepted Legislative Oversight tools: Enacted a Legislation for retrospective application of law to correct the executive action	Weak
Confidence vote on the then Minister for Finance, Hon. Amos Kimunya		Outside the law (Leadership and Integrity law)	Rejected Legislative oversight tools: Inquiry, committee vetting, debate, majority report rejecting Kimunya.	Strong
Nominees for the 2008-2013 cabinet	Done within the law		Accepted Legislative oversight tools: Inquiry, committee vetting, debate and majority report	Strong

Source: Field Survey (2019)

1.8 Literature Review

1.8.1 Introduction

This section comprehensively reviews previous studies on the influence of executive-legislature relations on legislative oversight in attempt to establish knowledge gap. Because of the fusion between cordial and conflictual executive-legislature relations in the existing studies, this section presents a review of global perspectives on executive-legislature relations and legislative oversight; then African perspectives on executive-legislature relations and finally Kenyan perspectives.

1.8.2 Global Perspectives on Executive-Legislature Relations and Legislative Oversight

The executive-legislature relation is an essential feature of the workings of any political system. This relationship was first captured in the doctrine of separation of powers by Montesquieu (Montesquieu, 1689-1755). The relationship is predicated on the assumption that there are three critical functions of government that ought to be exercised by three separate and distinct, though interdependent arms of government. The doctrine meant: (1) that the same person should not be part of more than one of the three arms of government: (2) that one arm of government should not interfere with the functions of the other arms: (3) that one arm of government should not exercise the functions of another arm of government. It's worth noting that the doctrine is premised on the desire to protect individual liberties by checking against excessive and arbitrary exercise of governmental powers. Accordingly, the executive-legislature relations in the context of the doctrine of separation of powers is done through, among other means, exercise of legislative oversight, which includes checking the other two arms from arbitrariness. This is what Locke (1966) calls limited government to check against the executive tyranny.

The doctrine of separation of powers is occasionally influenced by the type of governmental system under which a country operates. In a seminal work on executive-legislature relations and legislative oversight in the US, Britain, France and West Germany, Rockman (1984, p.407) observed that executive-legislature relations are more cordial in parliamentary system than in presidential system. The study further notes that legislative support for the policies of the executive is problematical when the legislature and the executive are independent of one another. This implies conflictual relationship in presidential system where the legislature and the executive are

architecturally independent. The author further argues that the greater legislative capacity afforded greater opportunities for the opposition to influence the legislative agenda in West Germany. He attributes the success of legislative oversight in West Germany to stronger legislative committees with well-established capacity to oversight. His study informs my study in the sense that he examined executive-legislature relations in both presidential (USA), parliamentary (Britain), semi-presidential (France) and coalition government (West Germany) which according to his observations assumes different forms and natures of executive-legislature relations. His observation about the modes of interactions in both the system and forms of government is critical because it ideally situates my study on executive-legislature relations in the context of Kenya's coalition government 2008-2013. However, the scholar does not make specific reference to the form of governments like in the former West Germany and factors that necessitate coalition governments as such factors, largely influence or determine executive-legislature relations in different countries. His study also focused on more developed democracies of the west which may not give the practical picture of executive-legislature relations in broader democratic contexts.

In an incisive study by Kreppel (2009,p.183) on the executive-legislature relations in Italy, she observes that, “contrary to what might be expected in either presidential or parliamentary system, legislatures in presidential systems tend to have more legislative power and less executive control, compared to those in parliamentary systems who generally exhibit less legislative power, but more executive control”. The study reveals an important observation that in some political systems, legislatures can have well established legislative oversight tools but have less executive control and that is common in presidential systems. Similarly, some legislatures can have less legislative oversight tools but have more executive control and that is common in parliamentary systems. This study implies that executive-legislature relations are influenced by the system of government among other factors like legislative oversight tools. The author further reveals a weak Italian legislature which was subservient to the executive until a constitutional amendment in 1988 which strengthened legislature. It is also important to note that there were constitutional changes in Kenya during the 2008-2013 which ceded powers from the executive presidency to other government agencies, including to a new office of the prime minister. It will be critical to observe in my study, how the constitutional changes also altered executive-legislature relations in Kenya in 2008-2013. Her study will also be central to my study in examining extent to which the legislative oversight

tools mentioned in her study influenced legislative oversight using the Kenyan case 2008-2013. Despite the significance of her study, the author did not examine how executive-legislature relations in hybrid system and coalition government, all which are significant subjects of my study.

Shugart (2008, p.3) observes that, “presidential systems present a legislature and executive that are elected independently for fixed terms, and thus have incentives to transact, or bargain, with one another, in order to produce legislation and to govern”. The author’s view on the legislative behavior under presidentialism is further corroborated by Lee and Shin (2011, p.457) in their study that legislators are less disciplined in presidentialism than their counterparts in parliamentarism because of independent elections of the president and the legislature. Both the observations by Shugart, and Lee and Shin are central to this study since they provide a groundwork for measuring executive-legislature relations on legislative oversight during the period of this study. This will be done by reviewing the constitutional structure and oversight tools in both systems of government as discussed by Shugart (2008), and Lee and Shin (2011) respectively. However, the two scholar’s observation paints a picture of a continually conflictual executive-legislature relations in a presidential system without specific reference to other factors like the strength and ideals of a ruling political party and form of government as other factors that may also influence executive-legislature relationship in any system of government. The other notable limitation of Lee and Shin (2011) is that, their study only concentrated in all continents except Africa. The factors influencing executive-legislative relations often vary in different cultural context and level of democratic maturity.

According to Rose-Ackerman (2011), “presidents are inclined to circumvent constitutionally imposed limitations through the exercise of residual and implied powers”. This observation on the behaviors of presidents under presidentialism is a recipe for conflictual relations between the legislature and the executive. In examining executive-legislature relationship on legislative oversight in Kenya, this study attempts to assess the extent to which an executive president and prime minister in the Kenya’s coalition government (2008-2013) related with the legislature in light of Ackerman’s observations. This study will also examine how these relations influenced the exercise of legislative oversight against the backdrop of Ackerman’s arguments above.

In a study of parliamentary oversight, Rehman (2015, p.21) examines the role that parliamentary oversight plays in socio-economic development of a country. The author argues that the effectiveness of parliamentary oversight can be measured as a function of its contribution to good governance. In the scholar's view, good governance is a function of, among other factors, financial accountability. Consequently, the author identifies various financial parameters for which the legislature exercises oversight. These include the process of making budget and the allocations, government expenditures, audit reports, government investments, all that which if the parliament effectively plays oversight of, will lead to economic development. In this regard, author further identifies certain finance-related tools through which legislative oversight can be done. These include budget related tools like consultation in budget preparation, parliamentary examination of budgets and budget reports, and final approvals. Another tool is audit-related and includes "financial audits, special audits, and performance audits" (Rehman, 2015, p. 23). Interestingly, while his study examines the role of parliamentary oversight in economic development, it offers insights into how certain oversight tools influence executive –legislature relations. As a result, the study spurs interest on examining executive-legislature relations during Kenya's coalition government 2008-2013. While the study focused on various audit tools used for parliamentary oversight on financial resources, it did not look at other oversight tools that parliament uses in its relationship with the executive like vetting of executive nominees to state offices which equally contribute to executive –legislature relations. Despite the applicability of the author's legislative oversight tools in this study, it's worth noting that his study did not have specific focus on hybrid systems and coalition governments which are likely to have unique context on legislative oversight.

Pelizzo and Stapenhurst (2004, p.4) in examining trends in Parliamentary oversight also assessed various tools available for legislative oversight. The two scholars identified various legislative oversight tools that include committee hearings, questions, use of public accounts committee, interpellations among other tools. In their study, they provided an empirical inquiry into what parameters influence the effectiveness of parliamentary oversight tools in 83 countries including the European Union. The two scholars found that the type of government, level of economic development and how democratic a country is, have strong influence on executive- legislature relations as well as the strength of legislative oversight. Consequently, their study reveals that the

more democratic and economically developed countries with parliamentary systems are more likely to have strong legislative oversight as compared to their presidential, less democratic and less economically developed counterparts (Pelizzo & Staphenurst, 2004, p.21). It is also noteworthy, that the executive-legislature relations in the context of the two scholars is likely to be more conflictual than cordial in parliamentary systems as opposed to the presidential system because of more developed oversight tools. Another significant finding in the study is that an increase in legislative oversight results in equal increase in democratic ideals. Based on their argument that legislative oversight is an attribute of democracy, their study offers an intellectual premise for examining whether or not Kenya's 2008-2013 coalition government espoused democratic ideals necessary for effective legislative oversight. In this regard, this study provides a basis for using the various tools they identified to examine whether or not Kenya's coalition government and its executive-legislature relations advanced democratic ideals that resulted in effective legislative oversight. Although, the author's study offers very incisive insight to this study, one of its limitations was that their conclusions were largely based on both parliamentary and presidential systems on-coalition forms of governments. This study will focus on Kenya's coalition government, which was also a hybrid system of government, an area that the authors did not much allude to in their study.

Friedberg (2011, p.256) examines Israel's parliament by classifying legislative oversight into two types namely, political parliamentary oversight which she observes is, "strong, integrally structured in the parliamentary system and in its foundations emerges from the legislature". The author further describes the second type of legislative oversight as, "administrative parliamentary oversight which is 'weak', and it encompasses all ongoing actions including verification, investigation, examination, criticism and censure, challenge, questioning and calls to account" (Friedberg, 2011, p.256). Her classifications of parliamentary oversight properly situate my study which will examine the two types of parliamentary oversight but with specific focus on the internal oversight tools which speaks to her administrative legislative oversight. It is worth noting that, Friedberg (2011, p.528) equates parliament as a construct of sovereignty of the people of Israel and posits that the executive emanates from parliament which alludes to how important legislative oversight is in the Israeli context. Her concept of legislature as a construct of the sovereignty of the people is key in the selection of the choice of relevant theoretical framework applicable to this

study. It is also worth noting that Friedberg's study focused more on parameters for low or high oversight such as high and low attendance of committee meetings determining of high or low legislative oversight is in Israeli context. For example according to the study, high attendance of the committee meetings meant high oversight potential (Friedberg, 2011, p.532). Her parameters for high or low oversight does not take into consideration the capacity to oversight by the legislators in the committees and other factors determining executive-legislature relations. Similarly, Friedberg's study focused only on four committees of the Israeli Knesset namely; education and culture, internal affairs and environment, labor, welfare and environment committees. This study focuses on the role of legislative oversight as a whole institution with specific focus on nomination and approval of state officers and implementation of public accounts committee reports. It is also important to note that the author's study was done in a pure parliamentary system in Israel which is different from my study whose focus is on a hybrid system. Her findings in a pure parliamentary system may not reflect the practical nature of executive-legislature relations in hybrid system which is the system under my study.

In the study of the French *Assemblée nationale*, Kerrouche (2006, p.34) measures the strength of legislative oversight in French legislature through the number of Bills processed as private members or government sponsored Bills. His study further scrutinizes the influence of French legislators and reveals that, even if the executive's influence of the legislative process is actual, the French legislature still wields legislative oversight tools that makes them strong. The author opines that strategic calculations in the French legislature overrides the executive influence (Kerrouche, 2006, p.342). The study will help situate this study in the application of the passage of Bills as a significant tool in examining parliamentary oversight during the period of this study. Despite the significance of Kerrouche (2006), his central focus is the role of parliament in legislation while this study is largely premised on the role of parliament on the broader oversight role. However, Lazardoux (2009, p.290), in a different study of the French national assembly's oversight observed that, "the French parliament shares legislative responsibilities with the executive". The author also presents as significant, legislative oversight mechanisms like debates, questions and motions of censure. While Kerrouche (2006) exhibits a conflictual relations between the executive and legislature, Lazardoux (2009) paints an antithetical view of the French parliament's relations with the executive as cordial relation with very developed oversight

tools/mechanisms. Lazardeux (2009) observed that French legislature shares legislative responsibilities presents a significant dimension to my study. It will be important to consider in my study the circumstances when the Kenyan legislature operating under a coalition government shared legislative responsibilities and how it influenced legislative oversight. While Kerrouche (2006) focused on the passage of Bills as an important measure of the strength of legislative oversight in France, my study will go beyond just the Bills and bring to fold other internal legislative oversight tools.

While assessing the strength and weakness of Danish legislature, Damgaard and Jensen (2006, p.430) observe that, “the ruling Social Democrats relied on collaboration with the opposition-based Socialist People’s Party to form a majority in crucial divisions”. The two scholars further observed that the executive in Denmark won against the legislature in many contests which revealed the cordial relationship of the Danish executive–legislative relations. The study also considered three sets of indicators for a strong legislative oversight; the number and success rate of Bills and resolutions by opposition parties compared to the success rate of the proposed Bills by the executive; the success rate of government and opposition amendments to executive Bills and the analysis of a number of case studies covering various aspects of policy and law-making (Damgaard & Jensen 2006, p 426). The same study observed that the more private members Bills passed by the legislature, the stronger the legislature in relation to the executive. The two scholars observed that, “the simplest measure of parliamentary strength in the legislature is the number and success rates of the proposals and resolutions tabled by opposition parties or private members compared with those from the government” (Damgaard & Jensen p. 427). While their study focused only on legislative role of the Danish legislature in assessing its strength in relation to the executive, this study is focused on oversight role as complemented by both legislative and representation role of legislature.

Kopecký (2004), examines the executive-legislature relations during the transition period and in the post-communist period in Eastern Europe. He observed that parliaments during the communist period were subservient to the executive as the Communist party was strong and vested authority in the president but these started to change during the transition period in 1989 when parliaments in Eastern Europe was vested with the responsibility of reviewing and coming up with a new

constitution (Kopecky,2004,p.151).The study notes the changing nature of executive-legislature relations, which had rubberstamp parliaments during the communist regime, cordial during the transition periods and conflictual in the post-communist period. His study underscores the strength of political party (Communist party) in determining executive legislature relations in any governance system and this is critical to the current study that will attempt to look at executive-legislature relations during period of my study in Kenya. It is also worth noting that Kopecky 2004 has only largely alluded to a strong communist party that made legislatures in Eastern Europe weak but has not touched on the availability of internal oversight tools that were probably available during communist regime, transition period and post-communist regime period, this study will rely more on the use of the internal audit tools on the executive –legislature relations during Kenya’s 2008 -2013.

1.8.4 African Perspectives on Executive-Legislature and Legislative Oversight

According to Pelizzo and Stapenhurst (2014, p.258), “the acquiescence of African legislatures has led many scholars, practitioners, institutional reformers and political activists to criticize legislatures for the way in which they perform, or, more correctly, fail to perform, their oversight function”. In their study of legislative oversight in West Africa, the two scholars observed that legislative oversight in African legislatures is tied to the benefits derived by the legislatures from the role itself. They posited that the willingness to perform legislative oversight may be tied to the expectation of deriving a symbolic benefit from the oversight function. The two scholars also arrived at a generalization that, “when legislators believe they might derive a benefit from effectively performing an oversight activity, they have the political will to perform it effectively and become effective overseers” (Pelizzo & Stapenhurst 2014, p. 256). Their study further revealed that individual gain or benefit of a legislator on a particular issue is another factor that influences legislative oversight in West African legislatures. Accordingly, the two scholars take into consideration material benefit as a probable factor that determine the executive-legislature relations. In exploring factors influencing legislative oversight, this study will also pay attention to the possibility of material benefit as an intrinsic drive to effective use of legislative oversight tools. For example, material benefit as a factor will be significant in examining why a legislator or a group of legislators resolved to support an executive nominee to a plum political office in 2008-2013. What the two scholars failed to establish is whether, the individual benefit or material gain

referred to in their study of West Africa was causally related to political party agenda or parliamentary agenda. This will be important in relating it to, for example, the role of a parliamentary political party in the application of internal oversight tools in determination of the executive-legislature relations.

Fashagba (2009) observes that Nigeria adopted presidential system to address three things; the multi-ethnic conflict torn Nigeria, disperse power to other government agencies and strengthen parliament which was weak in the preceding republics. He further observes that the use of legislative oversight tools in Nigeria was more effective during the presidential system since it had the most investigations arising from parliamentary motions (Fashagba, 2009, p.458). Fashagba's view of the strength of legislative oversight in a presidential system is in agreement with the general observations by other scholars like Rockman (1984) in his seminal work on executive-legislature relations in USA, France, UK and Germany and Shugart in his article which looked at a comparative executive-legislature relations in different systems of government. This study will utilize the tools referred to in Fashagba (2009) to examine the executive-legislature relations in Kenya between 2008-2013 and how that nature of executive-legislature relations influenced the exercise of parliamentary oversight of the executive. What is not clear from Fashagba's view of parliamentary oversight effectiveness during the Nigerian presidential system is whether effectiveness meant they (executive-legislature) worked together or the relationship was conflictual.

Burnell (2001) in examining financial indiscipline in Zambia and the role of legislative scrutiny uses the Zambian Public Accounts Committee (PAC) to illustrate the case for more enforceable tools in making the executive accountable. He argues in his study for stronger oversight tools and mechanisms that, "if there is to be a significant reduction in 'financial indiscipline' in Zambia's legislature, there must be stronger oversight tools" (Burnell, 2001, p. 34). The author's arguments, underscores the significance of stronger oversight tools in executive-legislature relations. Similarly, in his later study of parliamentary committees in Zambia, he attributes the weak parliamentary oversight in Zambia to the hybrid system of government which in his view combined a strong executive presidency with legislative features (Burnell, 2002, p. 293). He further argues that Zambian legislative committees have minimal effect in holding the executive

accountable (Burnell, 2002, p. 292). His study paints a picture of a rubberstamp legislature whose oversight authority is consumed by the executive. Whereas Zambia's model exhibits a strong presidency in a hybrid system like the Kenyan case during this study period, the author's scholarly work did not review the nature of oversight tools in Zambia which is likely to play a role in manifesting a weak or strong oversight. This study intends to consider the influence of internal legislative oversight tools on legislative oversight in Kenya 2008-2013.

In South African parliament, Obiyo (2013, p.101) observed that, "while the South African constitution and the rules of legislatures imbue committees with the capacity to exercise strong oversight of the executive, the multiparty feature of those committees bolster their capacity for legislative oversight". The author further observes that the strong party-based system in South Africa is also a recipe for weak legislative oversight and accountability by the ruling party. This study brings an important perspective of the role of political parties in the study of legislative oversight or executive-legislature relations in different political systems. It is important to note that Barkan (2009, p.33) made similar observation about the South African legislature as, "well-resourced but with weak oversight as a result of a strong political party system". Despite the significance of Obiyo (2013), he did not capture other important aspects of a strong party system like the effect of proportional representation on legislative oversight in South Africa.

1.8.5 Kenyan Perspective on Legislative Oversight

Barkan and Matiangi (2009, p.33) observed that, Kenyan and South African's parliaments are arguably the two most significant national legislatures on the African continent in the context of debates and legislative procedure. They further argued that Kenya's legislature had evolved into an institution of genuine, albeit modest, countervailing to the executive branch which meant that Kenyan president could no longer assume as they once did that the legislature will automatically pass executive originated Bills into law. Debates and legislative procedure are important aspects of internal oversight tools that measure the strength of legislative oversight. The scholars' observations on debates and strength in law making are significant component of oversight tools that my study will explore in examining the executive-legislature relations in Kenya between 2008-2013.

Barkan and Matiangi argued that the legislative development and democratization in Kenya developed from weak to a strong legislature particularly from the seventh to tenth Parliament. They observe that these developments were characterized by the establishment of Parliamentary Service Commission (PSC) and the enactment of the Constitution of Kenya Review Act 2000. The Constitutional review Act was a major milestone in granting powers to the Kenyan legislature to take lead in budget making processes. According to authors these developments made the legislature stronger in relation to the executive (Barkan & Matiangi, 2009, pp. 44-45). Consequently, the foundation for the actual emergence of an independent legislature in Kenya laid out in the eighth parliament bore fruits in the ninth Parliament 2003-2007 where legislative oversight zeal was seen in the passage of public finance accountability laws like the Anti-corruption and Economic Crimes Act, 2003, Public Officer Ethics Act, 2003 among others. The development, debating and the enactment of the Constituency Development Fund 2003 against the executive objection was even more, the beginning of the epitome of legislative independence in Kenya (Barkan & Matiangi, 2009.p.58). The background of the development of Kenya's legislature established by the two scholars is significant in revealing the executive-legislature relations in preceding parliaments to the tenth Parliament which is the focus of this study. The study of executive-legislature relations during the tenth Parliament is unique because of the unprecedented form of government (grand coalition).

Onyango (2019), in exploring the effectiveness of legislative oversight and behavior at the local government level in Kenya, studies the relationship between the nascent county legislatures and the county executive on the implementation of New Public Management (NPM). He observes that County legislators tend to engage in activities with personal gains. The author, further opines that weak structural framework and overlapping institutional relationships affects mechanisms of legislative oversight (Onyango, 2019, p.8). Moreover, the author also underscores the role of political parties in influencing the behavior of county legislators towards the county executive (Onyango, 2019, p.12). The above observations by the author are significant to this study in; (1) underscoring the role of political parties in influencing legislative oversight during the period under study, (2) the influence of new structures on legislative oversight, (3) how overlapping executive-legislature relations influence mechanisms of legislative oversight like the oversight tools, and (4) the influence of selfish political interest of the county legislature on legislative

oversight. His observations, especially on legislative oversight influenced by personal gains will also guide my study on the choice of suitable theories for analyzing what influences the behavior of legislators in exercising legislative oversight. Whereas, his study has provided suitable tenets for this study, it was based on a nascent county government framework (initial county legislatures and initial county executives) unlike my study which focuses on the tenth parliament in Kenya. In addition, legislative oversight at the county level is affected by the role of senate in overseeing the county executives which could partly explain the weak oversight as observed by the author at the county level. This is, unlike my study, whose focus is at the national level during which counties were not in existence.

1.9 Theoretical Framework

This study utilizes the principal-agent and behaviorist theories to assess the problem under study.

1.9.1 The Principal- Agent Theory

This study utilizes the principal-agent theory as postulated by Riccardo Pelizzo and Rick Stapenhurst (2008). Originating from economics, the principal-agent theory is an institutional theory that seeks to explain the “procedural and structural mechanisms that actors use to influence policy outcomes” in a given context (Pelizzo & Stapenhurst, 2008, p.268). It explains how organizations and various agencies act within certain contexts on how to influence various policies that affect them. The theory is presumed on the following three tenets. The first major tenet is that there exists “informational asymmetries” between the delegating authority, the principal, and the agent to whom certain duties are delegated (McGrath, 2011; Delreux & Adriaensen, 2017; Schoemaker, 2014). This tenet implies that ordinarily, the legislature, as the principal, is disadvantaged on informational and technical grounds especially with the day to day operations of the executive. On the other hand, the executive is largely made up of cabinet technocrats and the president or prime minister and is therefore well informed on the operations of the government. Consequently, the proponents of principal-agent theory present that there is need for legislative oversight especially because the executive may abuse its informational advantage on the legislature/principal much to the detriment of the legislature that is charged with the mandate of oversight.

The second tenet of principal-agent theory is that the relationship between the principal and the agent is that of delegation with the intent of ensuring accountability (Delreux & Adriaensen, 2017; Pelizzo & Stapenhurst, 2011). With regards to executive-legislature relations, principal-agent theory presents the argument that the legislature delegates “authority” to the executive that enables the latter to perform its functions within the law. The failure to comply with the legislative provisions necessitates oversight that will ensure and restore accountability (Pelizzo & Stapenhurst, 2008, p. 105). It is the legislative authority that the parliament affords the executive that establishes its position as the principal and that of the executive, to whom the authority is delegated, as the agent. The subsequent legislative oversight derives from this delegated authority that implies that the executive has got to answer on how it executes its duties based on the legal authority it has.

As a framework for political analysis, the principal-agent theory offers “insights into the reasons, modalities and consequences” of why principals delegate authority to their agents to undertake certain actions (Delreux & Adriaensen, 2017, p.2). This implies that as a framework for analysis, principal-agent theory explains why the parliament oversees the activities of the executive, how it performs that role and the outcomes of such actions. Through the provisions of its tenets, principal-agent theory offers a comprehensive framework from where not only the oversight role of parliament can be examined, but also the relationship between the executive and the legislature based on the principal-agent relations. This way, it becomes a reliable analytical tool for examining how executive-legislature relations on the oversight role of Kenya’s tenth parliament.

In executive-legislature relations, McCubbins and Kiewiet argue that the principal-agent theory applies to legislative oversight through four main measures through which the legislature, as principal, can exercise oversight of legislature. These include “(1) contract design, (2) screening and selection mechanisms, (3) monitoring and reporting requirements, and (4) institutional checks” (Kiewiet & McCubbins, 1991, p. 27). Of the four measures, the first two are particularly relevant in parliamentary systems of government where the legislature plays a critical role in the election of the Prime Minister. For this reason, they have little applicability to the Kenyan hybrid system that existed between 2008 and 2013. The latter two measures, on the other hand, are *ex post* measures that are used after the head of government and/ or state has been elected and are therefore

used for oversight of his/her performance. The latter classification will be most relevant in keeping with this study's examination of the executive-legislature relations on parliamentary oversight.

The third tenet of principal-agent theory is that it provides for "horizontal accountability" (Pelizzo & Stapenhurst, 2011, p. 23) or "horizontal controls" (Delreux & Adriaensen, 2017, p.108) that enables it to be used as an analytical tool for examining the relations between the executive and the legislature. Based on the principle of separation of powers, the executive and the legislature are two separate but equal branches of government. Accordingly, it is of necessity to use a theory that is both able to explain their relations while equally upholding that none of the two branches is subordinate to the other. The principal-agent theory remains a popular analytical framework to study political relationships because it offers theoretical insights into the explanations, modalities and consequences of "principals" delegating powers to "agents". Furthermore, the principal-agent theory aids scholars to better appreciate the functional relationships between the two branches. It is also important to note that, principal-agent theory can explain legislative oversight as a function of the relations between the executive and the legislature without undermining their functional autonomy and equal stature of the two branches. Based on the general provisions of the principal-agent theory, it is not only able to explain but is also able to provide analytical insights into the nature of the executive-legislature relations on parliamentary oversight. It is for these provisions that this study will utilize it as an analytical tool with which to examine the executive-legislature relations on legislative oversight.

Despite the applicability of this theory to this study, it is important to note that scholars have asked more questions on the relevance of the theory. According to Delreux and Adriaensen (2017, p.2), "the principal-agent theory has exclusive focus on hierarchical, dyadic relations, the principal-agent model seems at first sight ill-equipped to study an empirical reality where decision-making is increasingly characterized by large, horizontal networks among a plethora of public and private actors". The authors further opine that the principal-agent theory is only significant to better understand a political relationship when an act of delegation can be identified (Delreux & Adriaensen, 2017, p.12). Despite the criticism against the principal-agent theory it still provides a framework for the analysis of legislature-executive relations in this study. The principal-agent

theory addresses this study because legislative oversight happens within dyadic context and in my case, the executive and the legislature.

1.9.2 Utility/Application of the Theory to this Study

The suitability of Principal-Agent theory to this study is grounded on its ability to explain the procedural and structural mechanisms that actors use to influence policy outcomes and how institutions act within certain contexts to influence policy. The theory appreciates the functional relationships between the executive and the legislature and explains legislative oversight as a function without undermining the functional autonomy of both the executive and the legislature. In the executive-legislature relations context of this study, the legislative authority of the legislature establishes it as the Principal and the executive –agent. The legislature in this context, delegates authority to the executive through policies and legislation for implementation and explains accountability relationships between the Legislature (Principal) and the executive (agent). The theory further explains mechanisms used by the principal to monitor and ensure compliance by the agent. Such mechanisms include the use of legislative oversight tools. The theory is therefore suitable in analyzing the relationship between the executive and the legislature on nomination and appointment of individuals to state offices, development and debates on proposed legislation, and implementation of legislative committee recommendations by the executive.

1.9.3 Behaviorist Theory

The origin of the theory can be traced back to the First World War. A number of political scientists of the USA were motivated to examine political behaviour empirically and which adopted methods which ultimately led to a new concept called behaviouralism. Behavioral theory is based on the following assumptions; (1) It is based on the observable behavior of individuals who are regarded as political actors, (2) Behavioral theory also asserts the essence of studying the political behavior of individuals and not the units and organizations.

According to Rosenthal (1981, p.117), “political institutions are shaped largely by people who inhabit them who are motivated by specific purposes and particular incentives, most of which involves their own interest.” The author further observes that before a legislator takes an action on oversight, s/he first calculates the cost and benefits and ask himself/herself “what is in it for me?”

(Rosenthal, 1981, p.117). The political behavior of legislators therefore dictates the overall direction of the legislature.

This study looks at the dyadic relations between the executive and the legislature and accordingly, the behavioral theory will be applicable in analyzing the behavior of other key actors in executive-legislature relations like the speaker, parliamentary committee chairs and the president in analyzing what informed the major decisions they took during the period of study which also played a role in influencing the executive legislature-relations. This approach shall employ seeking the opinion of these key actors on what informed the decision each one of them took on matters that touched on executive-legislature relations.

1.9.4 Utility/Application of the Theory to this Study

To address the role of the individual behavior of political actors in influencing the executive-legislature relations during 2008 – 2013, this study uses behaviorist theory to explain behavior of individual actors both within the legislature and executive and in the relationship between the two arms.

This theory, for instance, gives an account of the various responses by various actors such the Speaker of the legislature, individual members of the legislature, president and the prime minister.

1.10 Research Assumptions

The following research assumptions guide the study:

- i. The conflictual executive-legislature relations leads to a strong legislative oversight between 2008 and 2013.
- ii. The cordial executive-legislature relations leads to a weak legislature oversight between 2008 and 2013.

1.11 Research Methodology

This section presents the methodology adopted for the research which includes the study approach, research design, study population, sample frame, sample size, method of data analysis, reliability, validity and ethical considerations.

1.11.1 Study Approach

This study utilized qualitative research methodology through which it attempts to comprehend the influence of executive-legislature relations on legislative oversight in Kenya between 2008 and 2013. As a qualitative study, it provides an insight into the influence of executive-legislature relations on legislative oversight in Kenya.

1.11.2 Research Design

The value of study findings are usually measured alongside the quality of the methodology employed (Kerlinger, 1973; Ojo, 2003; Aworh *et.al.*, 2006). The research design adopted for this study was case study research design for specific case of Kenya. This design was appropriate since the objective of this study was to respond to how executive-legislature relations influenced legislative oversight.

1.11.3 Sources of Data

The study examined both primary and secondary data. Primary data included both publication that were generated during the study period like newspaper articles, books and on the topic of study. Other primary data included government official documents like the Hansard reports, parliamentary committee reports and, official government documents like letters, government reports. I sought to get information on debates on executive and private members Bills, debates and voting on executive nominees, public accounts committee recommendation reports on auditor general reports. Additional primary data was collected from informant interviews. On the other hand, secondary data will include books, journal articles, journalistic reports related to the study topic.

1.11.4 Data Collection Techniques

The interviews was made based on tailored interview guides with specific questions on executive-legislature relations and the perceived influence on the parliamentary oversight role (as shown in appendix 1).

1.11.5 Study Population

The target population in this study comprised of respondents from a sample frame such as current parliamentarians, who served in the tenth Parliament. Former MPs who served in the tenth Parliament as Cabinet Ministers was also be interviewed as well. Other respondents to be interviewed include members of the current executive who served in the cabinet office in 2008-2013. Gender composition within the respondents was taken into consideration.

1.11.6 Sample Frame

The sample frame was be drawn from the relevant legislative committees, former and present legislators, and former members of the cabinet, ex-official members of legislators who served or occupied vantage positions during the period under study. The sample frame also comprised of current state officers from the executive arm occupying positions that were actively engaged during the period under study. The state officers from the executive were directors from the Attorney General's office, Cabinet Office, Department of Justice, Auditor General's office, office of the President and the National Treasury among others. The sample frame also included independent governance experts with experience and knowledge on the executive-legislature relations during the study period.

1.11.7 Sample Size

The sample size was limited to 30 interviewees including from the Parliamentary Accounts Committee (PAC), Parliamentary Investments Committee (PIC), current non-committee members of legislature who also served in the tenth parliament and members of parliament who served in the tenth parliament but not in the current parliament. It also included state officers in the level of directors from the Attorney General's office, Cabinet Office, Department of Justice, Auditor General's office and the National Treasury who served at during the period of the study.

1.11.8 Sampling Technique

The respondents for the interviews was be purposively sampled from among the parliamentary and executive sample frame that includes current and former ministers and parliamentarians. The purposive sampling for this study was be guided by; (1) the role or the position an individual held during the period under study, (2) an individual currently occupying a privileged position in

legislature or executive with relevant information and knowledge on the subject matter under study.

1.11.9 Reliability and Validity

To ensure the reliability and validity of the data collected, the study collected data from a wide range of interviewees including committee members, current and former members of parliament and the executive. The study conduct regular item analysis to weed out ambiguous or poor performing questions. The study also invited a reviewer to look into my research schedule as this will also enhance the reliability and validity of the data collected.

The study also employed verification to obtain reliable and objective information. The study will also pilot test the survey on a subset of my intended population. External validity was assured by the use of both theories and empirical facts in a manner that its conclusions are generalizable in different countries under similar circumstances.

1.11.10 Data Analysis

The data analysis employed deductive approach of qualitative data analysis using a predetermined structure informed by the research questions. The data collected was structured and organized in line with objectives and questions for ease of analysis. The data analysis employed descriptive coding to compress the data into easily understandable concepts for more efficient data analysis.

1.11.11 Ethical Considerations

More importantly, the study utilized ethical research standards which ensured participation was voluntary and that all respondent information are kept confidential. To ensure ethical values are observed, the study included a letter of consent that has all the ethical standards laid out and which was presented to the respondents to sign before the interviews.

1.12 Organization of the Study

This study is organized around four chapters. Chapter One introduces the study and outlines background to the study; Statement of the Research Problem; Research Questions, Objectives of the Study, Justification of the Study, Scope of the Study, Literature Review, Theoretical

Framework or Conceptual Framework and Research Methodology; Chapter Two discusses the Background/Historical perspective of the problem under investigation; Chapter Three provides Data Analysis, Presentation and Discussion; and Chapter four presents Summary, Conclusion and recommendations.

CHAPTER TWO

EXECUTIVE- LEGISLATURE RELATIONS ON LEGISLATIVE OVERSIGHT: HISTORICAL CONTEXT

2.1 Introduction

This chapter examines the historical developments of Kenyan Executive-Legislature relations on legislative oversight after independence. A critical analysis of the historical developments is appropriate to the understanding of the present-day realities of executive-legislature relations Kenya. This chapter is organized into sections comprising the historical developments of the Executive –Legislature Relations in post-independence Kenya. The chapter reviews the relations from first to ninth parliaments. This chapter further contains a summary of the historical developments of Executive – Legislature Relations up to the ninth parliament.

2.2 Executive –Legislature Relations on Legislative Oversight

The independence constitution ushered in a parliamentary system of government in Kenya which largely borrowed from Westminster architecture and whose legislative system was bicameral (Slade, 1975). The Legislative Council (LegCo) was succeeded by bicameral legislature pursuant to the independence constitution which consisted of Senate and the House of Representatives. According to Ghai and McAuslan (1970), Kenya had a dual executive system based on the Westminster design between 1963 and 1964. The dual executive system meant that both the governor and the prime minister exercised executive authority. The new prime minister of Kenya was leader of the party with majority members in legislature, appointed his ministers from among members of the legislature (Stultz, 1968, pp.482-483). The prime minister was the head of the government and was appointed by the governor from the House of Representatives (Oloo & Oyugi, 1992). The parliamentary system at the time of independence also meant that members of the cabinet were to be drawn from the legislature.

2.2.1 First Parliament 1963-1969

According to the African Parliamentary Index (2012), the membership and composition of the bicameral legislature changed at independence. Majority of members of the independence legislature were Africans unlike the council composition before independence. However, other aspects of the legislature remained as they were during the colonial period. The only functional

legislative committee at independence was legislative standing committee and there was no provisions for backbench members to introduce legislative proposals in the legislature, accordingly, their functions were only limited to reacting and reviewing the business as was set out by the executive (API, 2012, pp.6-8).

At independence, the practice of multiparty politics worked to the advantage of legislative oversight in Kenya. According to Barkan and Matiangi (2009), Kenyan politics was dominated by two coalition of ethnic –based political parties known as Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). The legislative debates became livelier as a result of political contest between KANU and KADU which were rich and strong. For example, KADU members in the Senate frustrated and defeated the executive when its members in the legislature unilaterally introduced a motion to impose state of emergency in North Eastern part of Kenya. In particular, the Standing Orders (SOs) then required that, to pass a state of emergency motion, the executive needed 65 per cent of the Senate members present and voting. The executive loss was exasperated by KADU members and some KANU members who were ideologically *majimbo* leaning in the Senate and were passionate about protecting the regions. According to Hornsby, (2012), the debate was open and more acrimonious before the KADU defections (Hornsby, 2012, p.167).

Hornsby further observes that the Kenyan legislature had in place the relevant legislative oversight tools like public accounts and parliamentary powers and privileges committees but despite all these tools, the legislature did not assert its independence from KANU stranglehold. However, Hornsby also opines that the independence legislature did reject some government Bills but the overall legislative contribution remained marginal (Hornsby, 2012, p.167). Independence legislative debates were replete with appeals to the executive by legislators to provide roads, water and other social amenities in different parts of the country (Hornsby, 2012, p. 167). From the foregoing, it is important to note the availability and practice of legislative oversight tools at independence. The legislative oversight in the first few years of independence was strong from the KANU-KADU debates and the rejection of the state of emergency motion by the executive for lack of consultation.

The raging zeal for debate between KANU and KADU was however short-lived one year after independence when President Kenyatta, lured KADU into dissolution allegedly to form one big unity government. Consequently, the dissolution of KADU weakened the quality of debate in the legislature by strengthening KANU in the legislature to the advantage of the executive. Additionally, the legislature was further ostracized with the growth of the imperial presidency catapulted by plethora of consecutive constitutional amendments which reinforced executive supremacy. The executive was further remodeled along the colonial tradition of consolidated - executive power. According to Barkan and Matiangi (2009), “members of the Kenyan legislature learnt that the key to obtaining resources to their constituencies was to toe government line”. The legislature was slowly reduced to a near if not complete, “rubber stamp” (Barkan & Matiangi, 2009, p.36). However, after the dissolution of KADU, Hornsby (2012), observes that the legislature still debated and passed a private members Bill titled the Hire Purchase Bill, 1968. The passage of this Bill did not however go down well with president Kenya and his subsequent action was to veto all private members Bills passed by the legislature (Hornsby, 2012, p.168). It is important to note that, despite the availability of legislative tools in the first parliament, legislative independence remained marginal especially after dissolution of KADU which begs the question as to whether the availability of legislative oversight tools are quintessential to strong legislative oversight?

The weakening of the Kenyan legislature did not stop with the disbandment of KADU. The stage was set for the first post-independence multiparty election where Kenya Peoples Union (KPU) was established in April 1966. However, the birth of KPU did not save the strength of the legislature. According to Oyugi (1994), legislators from the KPU were continuously harassed through provincial administration (Oyugi, 1994, p.161). Oyugi further observes that the executive through provincial administration denied KPU members license to hold public rallies and where licenses had been issued, the executive threatened withdrawal when they felt that the opposition legislatures worked against the interest of the executive (Oyugi, 1994, pp.161-162). It is also important to note that this was the same time that preservation of public security Act was amended to empower the president to authorize detention in the pretext of preventing a security risk occurrence (Oyugi, 1994, p.163). It is apparent that the inter-party power struggles between KANU and KPU also influenced executive –legislature relations. For example, KANU used its numerical strength to

review the preservation of public security risk occurrence to provide a legal framework for harassing the KPU members. Ultimately, the efforts of the executive to strangle opposition from another political party bore fruits and the second multi-party system lasted until 1969 when KPU was banned making Kenya a de facto one party state (Sialai, 2017, p.6).

It is important to note that many other competing factors contributed to the weakening of the legislature. Besides having transformed into patron client one party state, the British legislative legacy was also replete with poor salaries for both members of the legislature and staff. The annual budget of the legislature was also set by the Ministry of finance and parliament was not responsible for recruitment of its own staff. All private members Bills were referred to the Attorney General for drafting and review and the consequences was that only a few of those Bills made it into the floor of the house especially if those Bills touched on executive powers. The legislative committee system was also very weak because every effort was aimed at pleasing the executive by the legislators. The Kenyan legislature was largely reliant on the executive to function (Barkan & Matiangi, 2009, p.37).

The constitutional changes between 1963 and 1967 had profound bearing on governance in Kenya whose effects are felt to date. These changes abolished the senate and altered the method of electing the president. The amendments, among other things provided that, the president would be elected directly by the people, which literally took away the election of the president from the party, and weakening the structures of Parliament (Stultz, 1968). Previously, the president as head of government was answerable to the legislature. The common feature of the constitutional amendments primarily transferred power from other arms or government agencies to the presidency. During this period, the legislature's ability to check the executive was diluted. It was also within this period that, an amendment to the Constitution was effected to make Kenya a republic and introduce an all-powerful president who is the head of both state and government. These amendments also empowered the president to appoint Judges and Chief Justice single-handedly as opposed to the previous constitutional arrangement that demanded that the president consult at least 4 regional presidents before such appointments were made.

The life of the first Parliament was extended from the constitutional period of five years for another two years. This was mainly as a result of the abolition of the Senate and the absorption of the former Senators by the Lower House. The First Parliament was subsequently dissolved on 7th November, 1969 (Third Parliamentary report, 1979 p.3.).

2.2.2 Second Parliament 1970 – 1974

The second parliament first met on 6th February 1970. According to Hornsby (2012), the elections had brought into the legislature several educated, outspoken young newcomers who sympathized with the message of the banned KPU. The second parliament composed of radical legislators, whose critique of the executive's policies of growth at the expense of greater inequality and its reliance on western assistance appealed to intellectuals and the landless alike. Subsequently, the front bench met more focused censure from the 'informal opposition' than it had ever faced from the KPU in the last parliament. The backbenchers in the second parliament on regular occasion mauled executive policy and forced the executive to recall numerous objects of legislation. It is important to note that despite Kenyatta's assertion that the legislature 'does not exist to oppose or to harass the Government', in February 1970, the legislature rejected its first motion from the executive and attempted to force a majority of radical backbenchers into the House Business Committee as a strategy of rejecting the executive proposals at the committee level without finding itself in the floor of the house.

According to Hornsby, (2012), the government lost various motions in March 1970 and in May when the backbench first defeated the election of G.G Kariuki an executive nominee for position of legislature chief whip, secondly, the legislature also defeated a Bill to introduce the death penalty for armed robbers, to which Kenyatta had given his personal support (Hornsby, 2012,p.224). In 1970, forty one Bills were introduced in the legislature and four were defeated and thirty seven Bills were withdrawn – an unprecedented record. Even though backbenchers operated within limits, the unsanctioned opposition consistently spoke out against corruption, tribalism and the growing wealth of the elites. Whereas the backbenchers did not threaten to bring the executive down, they were a vocal safety regulator that successfully forced a cabinet minister McKenzie to resign after constantly being labelled corrupt and a British sympathizer by the legislature. Hornsby

(2012), observes the then Vice-President Moi had the difficult task of controlling the legislature as the leader of executive Business in the legislature (Hornsby, 2012, p.225).

According to Hornsby (2012), much of the legislature's ire was focused at the civil service, whom they saw as having 'gone astray' and become 'big headed'. Hon. Martin Shikuku, was quoted saying that "the provincial administration is now a Government within a Government, I do not believe this provincial administration can coexist with Parliament" (Hornsby,2012, p.225). It is important to note that the relationship between the executive and the legislature was conflictual which prompted the backbench unsuccessfully try to remove repressive legislations such as the preservation of public security Act and the Public Order Act. The legislators continued to defeat or force the withdrawal of government Bills: four in 1971 and at least three in 1972.

In 1971, for example, the legislature set up a Select Committee on corruption, tribalism and nepotism but Kenyatta then convened KANU parliamentary group and directed that the select committee would be prohibited from making investigations, and that the police had been ordered not to collaborate. The KANU parliamentary group allowed the committee to lapse (Hornsby, 2012, p.265). Despite, the decision by KANU members not to allow the select committee to operate, the legislature still passed a motion that obligated that civil servants declare their assets, but this died with the dissolution of the legislature in 1974. The Second parliament of the republic of Kenya was dissolved by the president on 9th August, 1974.

2.2.3 Third Parliament 1975 - 1979

The third parliament held its first session on the 6th November, 1974. The parliament established legislative standing committee which determined the business of the house, and the Public Accounts Committee (PAC) which met on numerous occasions. To demonstrate the growing strength of the legislature, the third parliament further set up eight select committees to deal with different aspects of political development. The Select Committees dealt with issues ranging from the investigation of the murder of the former Member of Parliament for Nyandarua North, the late J. M. Kariuki; the causes of corruption, nepotism and tribalism and devising means and ways of eradicating them; the legal ownership of forest areas within Elgeyo/ Marakwet district; the review of the Standing Orders; privileges of the House and the plight of the landless along the ten-mile

Coastal strip among others. The legislature was more combative, self-assured and sensitive about its supreme legislative powers. Most of the committees published their reports which generated a lot of heat during their discussion in the Chamber.

According to parliamentary report on third parliament, (1979), one hundred and seven (107) Bills were presented for consideration. Out of these Bills, two were rejected, two were withdrawn and one hundred and three were passed. The Bills included five constitutional amendment Bills. There were four hundred and forty seven (447) Government and Private Members' motions tabled in the House for discussion. The majority of these motions (372) were adopted, a few were rejected and others were either dropped, deferred or withdrawn. There were three thousand, nine hundred and eighty (3,980) Ordinary Questions and more than six hundred (604) Questions by Private Notice raised during the same period.

The intra-KANU political rivalry gave the Kenyan legislature some semblance of strength in terms of legislative oversight. However, this did not go down well with president Kenyatta as he was faced with a growing legislature in terms of strength in legislative oversight. But the legislative resilience strength was partly supported by the differing of opinions by KANU legislators in the legislature. The party's weakness ensured that instead of policy disputes being settled within the party they often made their way to the floor of the house (Gertzel, 1970, p. 10). During this period, the Kenyan legislature gained stature and confidence in the eyes of politicians and the public alike as an important institution of state. Furthermore, the executive branch could not just ignore parliament as was happening at the time in other African countries. Instead, ministers were forced to prepare well for question time and Kenyatta himself had to intervene by dangling 'development' carrots to the legislators to ensure that backbencher disgruntlement did not lead to government defeat on key issues on the floor of the house. The third parliament was dissolved in September, 1979.

2.2.4 Fourth Parliament 1980-1983

The epoch 1980–1983 was relatively uncluttered period for legislative activity, displaying sectarian unpredictability inside the executive and the lack of firm presidential grip. According to Hornsby, (2012), four Bills were withdrawn under backbench pressure during the fourth

parliament. Hornsby further observes that executive-legislature relations during the fourth parliament was cordial that decisions on Bills, whether passed or withdrawn was arrived at amicably. Accordingly formal divisions on key motions were rare, however, and no legislation was actually defeated during the fourth Parliament (Hornsby, 2012, pp.348-349).

However, at the tail end of the fourth parliament, the executive-legislature relations became relatively conflictual with Moi warning the legislature to stop criticizing corruption in the legislature. In 1982, the nineteenth constitutional amendment converted Kenya into a *de jure* one-party state. Subsequently, the constitution was also amended to require that legislators would lose their seats if they ceased to be members of KANU. Whereas, President Kenyatta, presided over a system that encouraged competition at the parliamentary level as long as his presidency was never challenged, president Moi demanded complete loyalty from the members of the legislature. According to Barkan and Matiangi (2009), the fortunes of the Kenyan legislature declined further during president Moi's regime. The two scholars observe that legislative elections under Kenyatta were intra-party and largely free and fair but this was not the same during president Moi as intra party election results had pre-determined results favoring his loyalists (Barkan & Matiangi, 2009,pp.37-38).

2.2.5 Fifth Parliament 1983-1987

The fifth Parliament was established by proclamation through legal notice in October 1983. The nomination of the speaker to the national assembly was a secretly guided affair as KANU forwarded only one name for consideration by the legislature (Kamau, 2011, p.19). The members of the legislature who did not support president Moi fell by wayside in the September 1983 general elections (Hornsby, 2012, pp.393-394). Subsequently, the fifth parliament deliberated and passed many constitutional amendment Bills, key among them were the ones that ensured the high court decisions were final, Bill that provided for acquisition of citizenship, abolition of the powerful office of the chief secretary, offences punished by death to be non-bailable and motion on the registration of voters among others (Kamau 2011,p.19).

According Hornsby (2012), the legislature also passed the twenty-second constitutional amendment which had three objectives. First, the attorney general and the controller and auditor-

general (who monitored and audited the executive's use of public funds) lost their security of tenure, making the holders of these offices to serve subject to presidential pleasure). Second, the amendments increased the number of constituencies from 158 to 188, in readiness for constituency boundary review which was rife. Third, the amendments also abolished the position of the Chief Secretary which was alleged to be in competition with the veto powers of the president. It is important to note that the fifth parliament was more cordial with the executive as an obvious response to the high-handedness of the executive through the heavy presence of provincial administration. The level of agreement between the legislature and the executive in the passage of Bills is a good testimony during the life of the fifth parliament. The fifth parliament was dissolved by the president in February 1988.

2.2.6 Sixth Parliament 1988-1992

According to Hornsby (2012), the February–March 1988 general elections saw effective end to representative democracy in Kenya. The introduction of queue voting famously referred to as *mlolongo* destroyed the legislature as a tool for political legitimacy. Subsequently, most members of the sixth parliament were acolytes of the executive, because their election to the legislature was eased by the executive (Hornsby 2012, pp.454-455).

Kamau (2012), observes that the election that gave rise to the sixth parliament, returned an increased number legislators to two hundred and two including the nominated members (Kamau, 2012, p.36). In an apparent effort to accumulate power from other arms or institutions of the executive, the president swayed the legislature to pass constitutional amendment that abolished the security of tenure of judges and members of the Public Service Commission in August 1988. The legislature also increased the period for which the police could hold suspects of capital crimes (deemed to include treason and therefore sedition, and therefore statements critical of the government) from 24 hours to 14 days. Hornsby further observes that the legislature backed the Constitutional Amendment Bills en masse 168 to 0 votes (Hornsby, 2012, p.460). The executive-legislature relations in the sixth parliament was largely influenced by the executive hand in the election of majority members of the legislature. Accordingly, legislative oversight during the sixth parliament reflected cordiality between the legislature and executive. It was a pay-back time for being facilitated to 'win' election by the executive.

The strong hand of the executive accumulation of power was also seen in the scrapping of the security of tenure for judges and members of the public service commission. The reason behind the abolition of the security of tenure of judges and PSC was Moi's desire for unlimited power. Barkan and Matiangi observes that multi-party politics was tolerated in the sixth parliament but the mode of operation of neopatrimonial politics remained the same. The two authors equally opine that the opposition legislators or critics of the executive would be excluded from major decision making and were profiled for periodic harassments with KANU legislators put under pressure not to establish cross party alliances because such alliances could only serve to strengthen the legislature. The sixth parliament was dissolved on October 1992.

2.2.7 Seventh Parliament 1993 -1997

The general election held in December, 1992 signaled the return of multi-party democracy. This election effectively changed Kenya from a de jure one party state to a de jure multi-party state. Despite the attempts to weaken the legislature by successive regimes, the return of multi-party politics brought a new impetus to the strength of legislative oversight in Kenya. According to Kanyinga (2014, p.36), "the return of multi-party democracy saw the legislature begin to re-assert itself as an independent institution and from then on, there has been a good attempt to regain independence and to effectively play an oversight role, especially through different parliamentary committees". Consequently, multi-party politics opened up political space which had a positive impact on the strengthening of legislative oversight in Kenya.

The seventh parliament also saw an increase in the number of political parties in the legislature which effectively strengthened legislative oversight role of the legislature.

Table 2.1: List of political parties represented in the seventh parliament

No.	Name of the Political Party	No. of seats	Political Party leader
1.	Kenya African National Union (KANU)	100	President Daniel Arap Moi
2.	Forum for Restoration of Democracy Kenya (FORD-Kenya)	31	Jaramogi Oginga Odinga
3.	Forum for Restoration of Democracy Asili (FORD-Asili)	31	Kenneth Matiba
4.	Democratic Party (DP)	23	Mwai Kibaki
5.	Kenya Social Congress (KSC)	1	George Anyona
6.	Kenya National Congress (KNC)	1	
7.	Party for Independent Candidates of Kenya (PICK)	1	Haroun Mwau
8.	National Development Party of Kenya (NDP)	1	Raila Odinga

Source: Field Survey (2019)

According to Kamau (2013), the seventh parliament is credited among other things for increase of the salaries of members of the legislature through the National Assembly Remuneration (Amendment) Bill 1994 which also established new offices as a result of the multiparty leadership in the legislature (Kamau, 2013, p.47).The establishment of opposition offices and new parliamentary staff offices also contributed to the strengthening of the legislature. The seventh parliament also enacted a Constitutional of Kenya Review Commission (CKRC) Bill 1997 which was charged with the responsibility of leading the collection of public views that was to lead to constitutional review.

The hallmark of a face-to- face conflictual relationship between the legislature and the executive was during the budget reading speech by the then cabinet minister for Finance Hon. Musalia Mudavadi. According to Kamau (2013), the 1997 budget speech was drowned in the famous “no reforms no budget” slogan chanted by opposition legislators whose number increased as a result of the multiparty democracy. According to Barkan and Matiangi, the 1992 general elections held under the theme of reinvigorating the legislature, did not live to its promise as executive still

controlled the legislature in the same manner it did before the 1992 general elections (Barkan & Matiangi, 2009, pp.39-40).

In August 1997, the conflictual engagement between the legislature and the executive bore fruits by receiving a lot of international sympathy and president Moi was enticed to negotiate with the opposition legislators. The negotiation led to the formation of Inter-Parties Parliamentary Group (IPPG), which gave recommendations which were eventually drafted into institutional reform Bills and passed by the legislature (Kamau, 2013, p.47). The process of legislative development did not however gain traction until after the country's second multi-party elections in 1997. The seventh parliament was dissolved on tenth November 1997.

2.2.8 Eighth Parliament 1998 – 2002

The election that ushered in the eighth parliament was held on the 29th and 30th December, 1997. This election was historic because it was the first time election was being held in Kenya for two days consecutively since independence. The 1997 elections saw KANU return to power but with a very narrow majority which emboldened the opposition to maintain pressure on the executive. The immediate seizure of power from the presidency after the 1997 elections was to force president Moi relinquish the power to name all 12 of the nominated members of parliament (Barkan & Matiangi, 2009, p.42). KANU also secured a strong majority against the opposition parties in the legislature. Accordingly, the election of the speaker and the appointment of the clerk of the legislature was tightly under the grip of the executive.

The move to transform and strengthen the Kenyan legislature was however, realized during the eighth parliament. The eighth parliament was even more conflictual in its relationship with the executive. According to Kamau (2014), the eighth parliament had several incidences that could be described as drama. On the inaugural meeting of the legislature, the opposition legislators declined to stand as a sign of respect to president Moi as he entered Chambers as was the tradition provided for by the house Standing Orders (SOs). In the ensuing drama, the then opposition leader Hon. Kibaki, unprocedurally attempted to address the house amid the heckling by the KANU legislators who were representing the interest of the executive in the legislature (Kamau, 2014, p.21).

Kamau, (2014), further opines that the legislature led by Hon. James Orengo guided by the House Standing Orders, suspended debate and deliberations on the presidential address citing reasons for the executive not being properly constituted without a vice president who had not been appointed then. This disruption was unprecedented in the history of Kenyan legislature. The conflictual relationship between the executive and the legislature did not stop at the disruption of legislative debate on the presidential address. In 1998, Hon. Kombo led committee that investigated corruption at the executive and gave a list of shame report containing the names of who was who in the executive circles. However, a combined vote of KANU and NDP legislators defeated the list of shame report by Hon. Kombo committee and instead recommended the enactment of the Anti-corruption and Economic Crimes Act (ACECA) to provide a legislative framework to support the fight against corruption (Kamau, 2014, p.21).

To establish the authority of the legislature, the role of the official opposition was given a legal backing by the legislature and a shadow cabinet was appointed by the leader of official opposition. The local Authority Transfer Funds Act and Parliamentary Service Commission Act was enacted by the legislature with the aim of improving service delivery by the both the executive and legislature. According to Kamau (2014), all these were done amidst reluctantness by the executive which displayed a protracted conflictual relations between the executive and the legislature (Kamau, 2014, pp. 21-22).

According to Barkan and Matiangi (2009), the eighth parliament forced president to relinquish power to name all the twelve nominees to legislature. The capacity of the Kenyan legislature also improved as a result of the involvement of the civil society organizations (CSOs). The two authors also observed that the legislative capacity to understand the budget was enhanced and the legislature started assuming greater role in budgetary process. The eighth parliament also successfully pushed for and passed the Constitutional amendment Act that established the Parliamentary Service Commission (PSC). The passage of the PSC Act meant that the legislature was to recruit, assign and set terms of references including salaries (Barkan & Matiangi, 2009, p.46). Additionally, the PSC made the legislature autonomous and freed it from the direct control of the executive. It was also at the eighth parliament that the committee system was restructured to enable the legislature carry out strong oversight.

2.2.9 Ninth Parliament 2002- 2007

The ninth parliament was constituted in 2003 and was unique because; (1) it was the first time executive power was transferred in the country by an election since independence and, (2) it was also the first time power had alternated between rival political parties (Barkan & Matiangi, 2009, p.51).The ninth parliament made remarkable milestones building from the infrastructure that were laid out by the eighth parliament. Consequently, the Kenyan legislature started flexing muscles and exploring the operations of the executive branch with zeal. The legislative vigor during the ninth parliament led to the investigation and unearthing of the Anglo-leasing scandal by the legislative committee. According to Barkan and Matiangi (2009), the legislature response on the Anglo-leasing scandal “raised the bar” for the future.

The ninth parliament also successfully passed the Constituency Development Fund (CDF) Act 2003 against the wishes of the executive (Barkan & Matiangi, 2009, p.58). Another milestone was the passage of anti-corruption laws² by the ninth parliament. It was also at the ninth parliament where the legislative committees were strengthened with Public Accounts Committee (PAC) and Public Investment Committee (PIC) being improved (Barkan & Matiangi, 2009, pp.59-60).The legislative committees of the ninth parliament were also assigned university interns who were selected among the brightest in Kenya to learn and in particular assist the committees on matters legislative and policy. According to Barkan and Matiangi (2009, p.63), the total number of Bills introduced in the ninth parliament were one hundred and twenty three (123), the number of government Bills were ninety seven, number of private members Bills at 26.This translated into 21.1% of the private members Bills with 5% of these private members Bills being passed into law and 47% of government Bills being passed into law.

² Anti-corruption and Economic Crimes Act 2003,Public Officer Ethics Act, ratification of the UNCAC

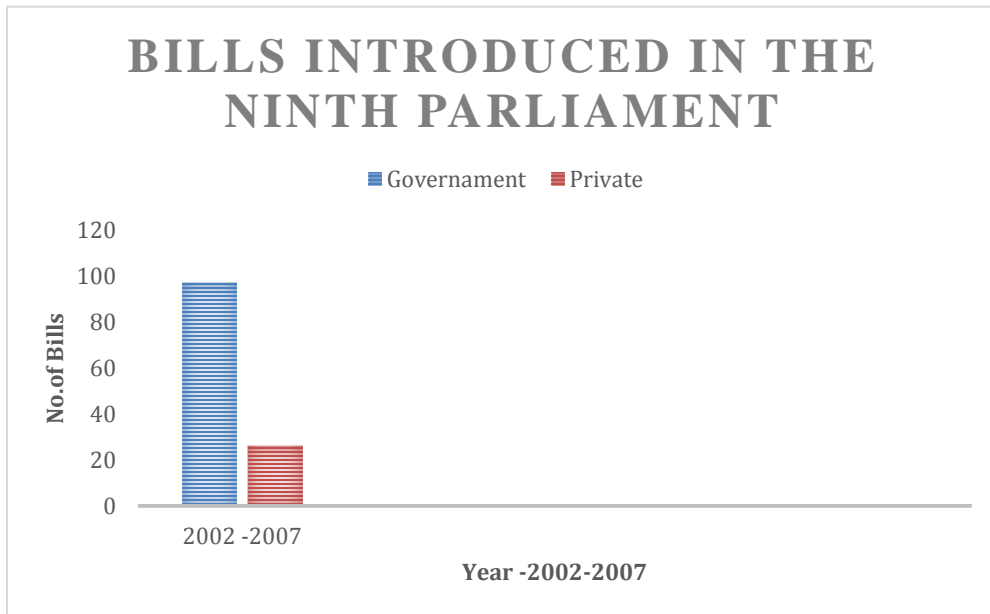
Table 2.2: Major Legislations Passed By the Ninth Parliament 2003 – 2007

No.	Year	Bill	Bill(s) Sponsor	
			Government	Private Members
1.	2003	The Anti-Corruption and Economic Crimes	Government	
		Public Officer Ethics	Government	
		National Commission & Gender Development	Government	
		National Assembly Remuneration	Government	
		Public Audit	Government	
		Constituency Development Fund	Government	
		Presidential Retirement	Government	
2.	2004	Financial Management	Government	
		Investment promotion	Government	
3.	2006	Cotton (Amendment)		Private Member
		Micro Finance	Government	
		Sexual Offences		Private Member
4	2007	Political Parties	Government	

Source: Field Survey (2019)

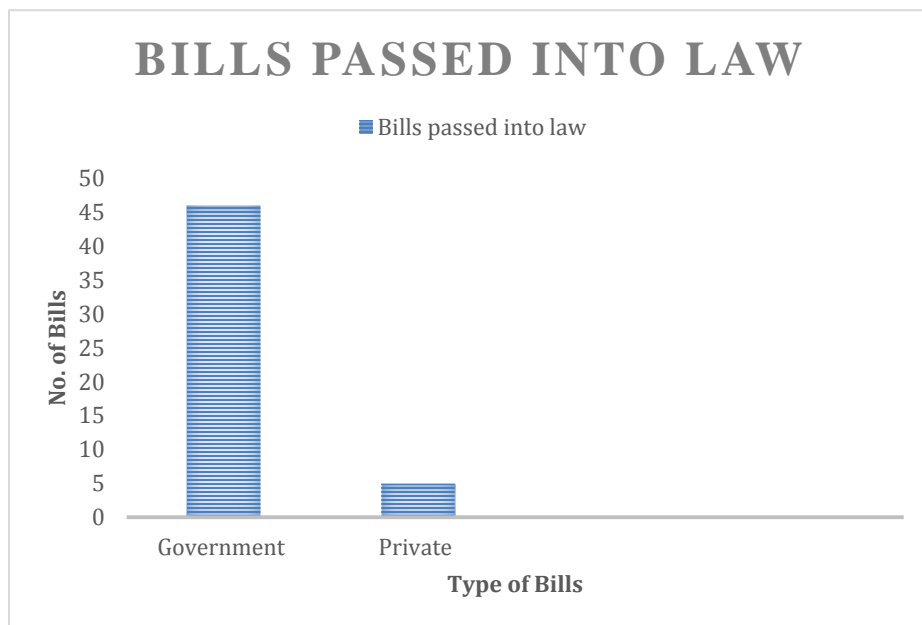
Note: The table focuses only on Transparency and Accountability Bills

Figure 2.1a Bills introduced in the ninth parliament



Source: Barkan & Matiangi, 2009, pp.62-63

Figure 2.2b: Bills passed into law



Source: Barkan & Matiangi, 2009, pp.62-63

According to Barkan and Matiangi, (2009), “the ninth parliament as shown in the table above was a significant continuation of what had become a decade plus effort to build legislature’s capacity to perform on its core function” (Barkan & Matiangi , 2009, pp.62-63).

At the end of the ninth parliament, Kenya experienced post-election violence following the disputed presidential election vote tally and the adoption of the negotiated grand coalition government in the next parliament. Borrowing from the ninth parliament, there was sustained pressure for more legislative reforms which handed legislature more and more roles especially in the budget process particularly during the Tenth parliament (2008-2012). Standing Orders were changed in 2008 and a new law, Fiscal Management Act was enacted giving parliament more leverage in the budget process (API, 2012, p.4).

2.2.9.1 Summary of the Historical Background

It is apparent that the Kenyan legislature remained weakened by the numerous constitutional amendments to the independence constitution. These consistent efforts to weaken the legislature appeared successful up to the seventh parliament. It is also important to note the legislature was

more cordial from the first parliament up to the seventh parliament albeit intermittent authority and disagreements registered during the first to the seventh parliament. The legislative oversight tools used by the legislature were weak, with the legislature relying on debates and weak committees. This is not the same between the eighth and the ninth parliament where legislative oversight tools were enhanced, legislative oversight was stronger with the legislature facing the executive mano-a-mano on matters corruption, appointments, Bills etc.

CHAPTER THREE

DATA PRESENTATION, ANALYSIS AND DISCUSSION

3.1 Introduction

The preceding chapter examined the historical developments of executive-legislature relations on legislative oversight in Kenya. It is worth noting the progress registered on the establishment and enactment of legislative oversight tools in the preceding parliaments discussed in the previous chapter. This chapter examines the influence of executive-legislature relations on legislative oversight during the tenth parliament which operated during the grand coalition government. As a basis of understanding the context within which the legislature and executive related in the tenth Parliament, the chapter begins by outlining the constitutional design, then, architecture of the legislature, before moving to examination of executive-legislature relations. It finally presents analysis and discussions and conclusions.

3.2 Constitutional Design: Defining the relationship between the Executive and Legislature

The tenth Parliament (2008-2013) operated under two constitutional regimes: the Independence Constitution (IC) and the Constitution of Kenya 2010 (CoK 2010). Even though it operated under two constitutional regimes, the system of government remained the same: semi-presidential. It's essentially a system that allows sharing of executive power between the president and the prime minister. It is also important to note that Cabinet Ministers were drawn from the Legislature. The Executive had forty Cabinet Ministers and fifty one Assistant Ministers, all drawn from the Legislature. The preceding Cabinet had a total of twenty Cabinet members, with less than thirty Assistant Ministers.

The implementation of the chapter on legislature under the new dispensation was suspended by CoK 2010 until the first election of the members of the Legislature under the CoK 2010. Relevant to this study, although CoK 2010 suspended the implementation of the chapter on the Executive, the provisions on appointment and establishment of independent commissions and other constitutional office holders namely the Attorney General (AG), Director of Public Prosecutions (DPP), Auditor General, and Controller of Budget came to effect immediately. Consequently, both the Legislature and the Executive largely operated as per the provisions of the IC. It's important to note that, the procedure of appointment of independent commissions and other constitutional

office holders in CoK 2010 required the President to nominate these holders, first, in consultation with the Prime Minister, second, forward the names to the Legislature for due diligence and approval for appointment. This was a complete departure from the provisions of the IC before the enactment of the National Accord and Reconciliation Act (NARA) which neither required the President to consult nor obligated the office holder to send the names to the Legislature for due diligence and approval.

Architecturally, the Cabinet, as part of the Executive, was also drawn from the Legislature. Within the Executive, consultations were required to be undertaken between the President and the Prime Minister in the overall administration of the government. These consultations were prescribed in NARA which formed part of CoK 2010 under the transitional and consequential provisions. Unlike previous parliaments under multiparty system, the tenth Parliament was unique in some way; the political party that was to be conventionally the opposition became part of the Executive, occasioning a blurred line on the expectation of the role of the opposition in the tenth Parliament. Such a scenario was alien to both the Independent Constitution and the Parliamentary Standing Orders (SOs). It's also worth noting that under the IC, the oath of allegiance for both members of the Legislature and the Executive prescribed loyalty and honor to the President of the Republic of Kenya. However, CoK 2010 reviewed the oath of allegiance for both the Executive and the Legislature.

3.3 The Architecture and Functional Design of the Legislature 2008-2013

Legislatures have the responsibility to ensure accountability and openness of government through oversight of the Executive, in order to curb misuse of public funds, corruption and influence good governance. This is an essential feature of legislative democracy. The rationale behind legislative oversight of executive roles is to ensure that public policy is implemented in accordance with public aspirations (Burnell, 2001, p. 35). Accordingly, legislative role does not end with the enactment of Bills, passage of budgets or approval of Executive nominees but continues beyond to ensure implementation for accountability. Thus, it's only by checking on the implementation process that legislators expose any deficiencies and act to resolve maladministration.

The tenth Parliament comprised the Speaker, Deputy Speaker, Members of the Legislature and the Clerk. Members of the Legislature included both elected and nominated members and the Attorney General who was an ex-officio member. The Speaker was the head of the legislature assisted by the Deputy Speaker. There were 210 elected members and 12 nominated members. The Speaker of the Legislature was elected by both elected and nominated members. The Deputy Speaker was elected from among the Members of the Legislature. The tenth Parliament also had Parliamentary Service Commission (PSC), comprising Members of Parliament drawn from the political parties represented in Parliament. Political representation in PSC was based on the strength of respective political parties in the Legislature. The PSC was chaired by the Speaker of the Legislature with the Clerk as its secretary. The House was guided by Standing Orders whose provisions were drawn from the Constitution and Commonwealth Parliamentary traditions.

Conventionally, the Legislature had both the government and the opposition sides. The government side would comprise both elected and nominated members under the ruling party or ruling coalition of parties. Additionally, it would comprise Ministers, Assistant Ministers and the Attorney General. The opposition would comprise both elected and nominated members under the party/coalition of parties not forming the government. Contrary to this tradition, as earlier mentioned the tenth Parliament had some radical departures from the norm; first, the political party that was to be conventionally in the opposition became part of the Executive, second, the sitting arrangement was significantly altered, with members accorded the latitude to sit anywhere except the front benches on either side of the House that were reserved for ministers. It is important to note that the President, Prime Minister and their respective deputies were also members of the Legislature by the virtue of being elected representatives as Members of Parliament. The House comprised various committees. Broadly, they were categorized into; House Business Committee, Departmental Committees, Investigatory Committees, House Keeping and other select committees. However, this study focuses on the following committees; Justice and Legal Affairs Committee, Administration and National Security committee, Defense and Foreign Relations committee, Finance, Planning and Trade committee, Public Accounts committee, Public Investment committee. The relevance of the identified committees derives from the study's focus on appointments, Bills and implementation PAC recommendations on Auditor General Reports.

To accord with the new constitutional architecture, the tenth Parliament reviewed its Standing Orders in alignment with, first, the expanded Executive and introduction of the new position of Prime Minister's question time and, second, the creation of new parliamentary committees and other legislative oversight tools. For example, the CoK 2010³ established an executive-legislature relation architectural framework which obligated the Executive to nominate persons for state offices and forward the names to the Legislature for vetting and approval before appointment. Thus, the Legislature was then expected by law to come up with relevant vetting tools for such state officers whenever nominated and forwarded by the Executive. Elected and nominated members representation in the tenth Parliament derived from twenty three (23) political parties, of which the Orange Democratic Movement (ODM) had majority at ninety nine (99). The second largest was Party of National Unity (PNU) with forty three, followed by Orange Democratic Movement Kenya (ODM –K) with sixteen and KANU with 15. The remainder of the seats went to other political parties.

3.4 Legislative Oversight Tools 2008 -2013

Legislature has three primary roles namely representation, oversight and legislation. Under oversight, legislature seeks to ensure that all applicable policies, laws and regulations are effectively implemented. To ensure effective implementation, legislature uses a number of legislative oversight tools. They are either internal or external. External legislative oversight tools include such tools that, though used by the legislature, derive their full utility from extra-legislative avenues. For example, the use by legislature of judicial processes to resolve executive –legislature conflict is a case of application of external legislative oversight tools.

Internal legislative oversight tools are tools internally developed by the legislature for use internally. Such tools include committees, debates, motions, petitions, vetting, legislations and inquiries. The legislature establishes various committees mostly defined by thematic roles that align with the broad roles of the executive. They are either standing, departmental or ad hoc in nature. Some of the committees in the tenth parliament included, among others, Public Accounts Committee, Public Investment Committee, Justice and Legal Affairs Committee, Defense and foreign relations, national security and administration and house business committee.

³ Article 132 (2), Constitution of Kenya

Primarily, committees serve as legislative entry points on various areas. They receive, among others, Bills, motions, petitions which they subject to pre-publication scrutiny in the case of Bills and institution and facilitation of public participation processes aimed at securing public input for the proposed legislation. Additionally, the committees conduct due diligence on executive nominees to state offices. Thirdly, they conduct inquiries on identified cases of maladministration by public officers.

Legislature also uses debates to ensure compliance by the executive. They are used both at the plenary and at the committee level. Through debates, members of the legislature freely voice their views regarding issues that are under deliberation. Such views can either be in support or against the matters under discussion. To arrive at a decision, debates are channeled through established legislative procedures which mostly end up in voting.

Vetting as an internal legislative oversight tool involves subjecting executive nominees to state offices to thorough and comprehensive scrutiny. Usually such nominees are forwarded to relevant committees who conduct due diligence to ascertain their compliance with all applicable laws. Subsequently, such committees prepare reports based on the outcome of their vetting which are in turn presented to the plenary for final approval.

Legislature prepares legislation which defines implementation parameters by the executive. Through legislation, legislature establishes the contours of operation within which the executive operates. Some of the legislations passed by the tenth parliament include National Accord and Reconciliation Act, Truth Justice and Reconciliation Commission Act, National Government and Coordination Act and National Cohesion and Integration Commission Act.

3.5 Executive – Legislature Relations and Legislative Oversight

This section establishes executive-legislature relations and oversight techniques in attempt to understand how the relationship influenced legislative oversight between 2008 – 2013.

3.5.1 Conflictual Executive -Legislature Relations 2008-2013

This study examines how conflictual Executive-Legislature relations influenced legislative oversight between 2008 and 2013. This section presents findings on the conflictual Executive-Legislature relations with regard to; Executive nominations of key state officers for approval, debate and passage of key Bills and implementation of Public Accounts Committee (PAC) recommendations on Auditor General Reports. Despite the express role of Executive nomination for state appointments, the decision on who to nominate to such offices was influenced by many factors, which tended to vary from time to time depending on predominant political environment. Fundamentally, some of these factors related to; tactical political opportunities by the Executive, entrenched inter-branch interest and deep seated political party interest. Specifically, these factors were more biased towards tribe, nepotism, regionalism, political party interest, individual interest, and power politics in Kenya.

As evidenced in the first Executive nomination for debate and approval by the tenth Parliament, political party interest and political inter play between President Mwai Kibaki and Prime Minister Raila Odinga informed nomination on the leadership of the House Business Committee (HBC). On 22nd April, 2008, President Kibaki nominated Kalonzo Musyoka as the Leader of Government Business and Chairperson of the very important HBC in the Legislature. According to the National Assembly (2017), the Office of the Speaker received two letters, one nominating Musyoka as the Chair of the HBC from the President and another from Odinga nominating himself for the same position (NA, 2017, p.29). Faced with this circumstance, the Speaker ruled that, he would chair the HBC in the interim until the Executive could consensually agree and formally send correspondence to the Legislature as to who would be the chairperson of the HBC: “ I rule that the Speaker of the National Assembly,, shall serve as the chairperson of the Committee” (NA, 2017, p.38) .In the same ruling, the Speaker directed that, all the provisions of Standing Orders that required specific action by the Leader of Government Business would remain suspended until the Executive could resolve their disagreement (NA, 2017, p.38).

The study further observes that the decision taken by the Speaker was not open to debate in accordance with the Parliamentary Standing Orders. This meant that, even members of the Executive who were dissatisfied with the Speaker’s ruling, especially the PNU side of the political

divide did not have any window to further ventilate on the ruling. The consequences of the Speaker's ruling was that; first, the Executive could not transact business in the House, especially those that required the Leader of the Government Business to execute because the Speaker's ruling effectively suspended the application of such Standing Orders. Second, it was meant to entice the Executive to respect the Constitution and other legislative frameworks in arriving at decisions which required the approval of the Legislature. Third, it was meant to push the Executive to expeditiously resolve the stalemate to enable them process their matters in the Legislature. This was one instance that the tenth Parliament flexed its muscles through the Speaker's ruling in checking in checking the excesses of the Executive .Subsequently, Odinga, after consultation with Kibaki, wrote a letter on 11th August, 2010 to the Speaker endorsing Musyoka as the Leader of Government Business and the Chairperson of the HBC, effectively withdrawing the letter that nominated himself as the HBC chair (NA, 2017, pp. 38-39).

Similarly the study also found that the second Executive nomination of Justice Aaron Ringera for re-appointment as Director of Kenya Anti-Corruption Commission (KACC) on the 15th September, 2009 exhibited conflictual Executive –Legislature relations. It also comes out as a classic example of how inter-branch interest plays out in the nomination of state officers. In his ruling on the 8th September, 2009, the Speaker directed that the nomination be investigated for compliance by Justice and Legal Affairs Committee and Committee on Delegated Legislation. The tenth Parliament debated and rejected the Executive re-appointment of Justice Ringera, noting that he “had disregarded the law” (Mathenge, Daily Nation, 2009). According to Kombo (2019), the President failed to consult the KACC Advisory Board and Legislature in accordance with the Anti-Corruption and Economic Crimes Act 2003 and Interpretation and General Provisions Act, Cap. 2 of the Laws of Kenya. The Legislature in its rejection of the re-appointment of Justice Ringera showcased its authority as defender of law.

The study also found that conflictual Executive-Legislature relations manifested itself during the Executive's nomination of top state officers in January 2011. President Kibaki nominated Alnashir Visram to the position of Chief Justice, Githu Muigai as Attorney General, Kioko Kilukumi as Director of Public Prosecutions and William Kirwa for the position of Controller of Budget. The nominees were forwarded to the Legislature for debate and approval as was required by the

Constitution. However, on the 1st February 2011, the Office of the Speaker also received another letter from the Prime Minister disputing the validity and constitutionality of the earlier correspondence received from the President. In determining this matter, the Speaker directed that, “the matter be ...canvassed at relevant departmental committee to consider all aspects....., including compliance with the Constitution and all relevant...laws” (Hansard, 2011, pp.30 -41). According to Hansard (2011), the Justice and Legal Affairs and Finance Committees tabled their reports on the Thursday 17th February, 2011 both of which rejected President Kibaki’s nominees on the ground of lack of consultation between the President and the Prime Minister as required by the Constitution and the National Accord and Reconciliation Accord (Hansard, 2011, p. 53).In his ruling, the Speaker while rejecting the nominations cited the need to arrive at a compromise based on consultation between the President and the Prime Minister: “I am convinced that the minimum consultation expectedis one that results in “compromise”. Indeed,.....willingness to compromise is the center piece of the National Accord” (NA, 2017,p.154).This rejection further aggravated the conflictual relations between the Executive and the Legislature. President Kibaki rejected the verdict of the Legislature stating that, “I acted within my constitutional mandate and before we can conclude the nominations that we have embarked upon, the executive will await the verdict of the Constitutional Court on the nominations” (Ndegwa, East African Standard, 2011). President Kibaki further stated that the executive would proceed with other aspects of Constitutional implementation. The nomination list was formally withdrawn by the Executive after the bitter exchange of words.

The rejection of executive nominees by JLAC and Finance & Trade committee of the legislature agrees with Obiyo (2013) who in examining South Africa’s legislature highlights the role of committees as potent tools in legislative oversight. The scholar situates strong committees in multi-party composition. In addition to multi-party composition, Kenya’s case had a unique dynamic deriving from grand coalition government which appended conventional norms by having the ‘opposition party’ being part of the executive.

The study established that the other executive nomination that got the Legislature and the Executive sweltered in further showdown was when the parliamentary committee on National Security and Administration unheeded to a letter from the President nominating Amina Masoud

as the chairperson of the National Police Service Commission (NPSC). According to Hansard Debate (2012), the Legislature, through the office of the Speaker, received a correspondence from the Executive referenced OP/CAB3/77 nominating Masoud for the position of Chairperson, Esther Chui, Ronald Musengi, James Atema, Major Mutia and Mary Auma Owuor as members of the NPSC. The Committee, acting on the strength of the Standing Orders, instead resolved to vet all ten candidates who had been earlier shortlisted for the position of the Chairperson by the interview panel. The committee later prepared a report with its own recommendations on the suitability of the candidates against the wishes of the Executive. The parliamentary committee on Administration and National Security led by the then Mt Elgon MP Fred Kapondi rejected Executive nominee for the chairperson because she lacked qualifications, and instead recommended Jean Kamau who had also applied for the position to head the team (Hansard, 2012, pp.56-60). These nominees were returned to the Executive by the Legislature.

The study further revealed that Executive-Legislature relations was not only conflictual during Executive nominations to state offices but extended to the implementation of PAC recommendations on Auditor General Reports. In the first year of the tenth Parliament (2008), the PAC presented report with recommendations for action by the Executive. Hon. Fahim Twaha noted that “the committee had recommended that the treasury appoint permanent secretaries (PSs) who are the accounting officers to the then new ministry of Nairobi Metropolitan for the purposes of increasing accountability of public finance but the treasury (read executive) had not effected the PAC recommendation” (Hansard, 2008, pp.625-626). Twaha further complained at the slothfulness of the executive to implement PAC report recommendations was worrying. He stated “ PAC committee recommendation that the accounting officers who awarded questionable contract to face severe disciplinary action including surcharging them had not been effected by the Treasury” (Hansard, 2008. Pp.625-626).

The other notable conflictual Executive-Legislature relations was further evident on the debate and censure of the then Finance Minister Amos Kimunya. The PAC chairman Boni Khalwale tabled a censure motion against the then Finance Minister for flouting Public Procurement and Disposal Act 2005 in the sale of Grand Regency Hotel. The motion also listed the irregular sale of the Initial Public Offer (IPO) by Safaricom, sale of Kenya Railway, Telkom and De La Rue contract. In a

personal interview Khalwale observed that his motion was further legitimized by Hon. Kombo who tabled a Bill to nullify the sale of Grand Regency Hotel the same afternoon of the Kimunya censure motion (Interview, 13th August, 2019, Nairobi). The Kimunya censure motion passed by a landslide in the House but this did not go down well with the Executive. The Executive did not agree with the Legislature's decision to pass a vote of no confidence on the Minister of Finance claiming that the motion was irregularly approved for debate. Consequently, the Executive established a commission of inquiry known as the Cockar Commission to investigate the allegations by the Legislature against Kimunya while he stepped aside. The Cocker Commission later vindicated Kimunya and the Executive re-appointed him as the Minister for Transport (Hansard, 2009, p.1525).

The censure motion against Kimunya aligns with Rehman (2015) where he examines the role parliamentary oversight plays in social economic development of a country. The successful censure motion was a desire to promote financial probity by the executive. Like Rehman, Burnell (2001) underscores the significance of parliamentary committees in enforcing executive accountability. Like in Kenya's case Burnell singles out Zambia's PAC as a typical oversight tool that can be used in promoting financial discipline. Kenya's PAC in Kimunya's case played a pivotal role in streamlining the government's prudence financial management.

The Legislature, in other PAC reports, investigated and made adverse recommendations which were in conflict with the Executive view. In the Financial Year 2009/2010, the Public Accounts Committee investigated maize scandal which touched on the Ministry of Agriculture and the then Minister William Ruto on the 20th January, 2009, the procurement, disposal and construction of Kenya's diplomatic mission in Tokyo on 27th October, 2010 which touched on the Minister for Foreign Affairs Moses Wetangula and his Permanent Secretary Thuita Mwangi and investigation on the 'missing' Kazi kwa Vijana funds in 2011 touching on the officials in the Office of the Prime Minister. Of the three PAC- investigated scandals, only the maize scandal proceeded to the floor of the house, a censure motion was introduced but was defeated (Hansard, 2010, pp.1-34).

The study also found that the Executive - Legislature conflictual relationship spilled over to discussion of Bills. The Deputy Prime Minister and Minister of Local Government introduced the

County Government Bill on the 13th January, 2012 and later passed on the 19th June, 2012 making it the only constitutional deadline Bill whose discussion was protracted longer than expected. According to the Executive, the legislature passed the County Government Bill ‘insurbodinating’ the provincial administration. President Kibaki declined to assent to the Bill on the 27th June, 2012 citing usurpation of role of the provincial administration by the county Government (Hansard,2012,pp.72-77). Through a memorandum to the Legislature, the Executive argued that the amendments made by the legislature on the Bill stripped the national government of its constitutional role. The Legislature, in their immediate rebuttal to the Executive, accused the Executive of arrogating themselves powers as the ‘only national government entity’ with the authority to restructure the provincial administration. However, after a protracted conflict, both the Legislature and the Executive later agreed that functions touching on security and restructuring of the provincial administration be shelved for a stand-alone legislation where the two branches would have equal say.

The other Bill that caused sharp differences between the legislature and the executive was the National Opposition Bill presented on the 8th August, 2008 as a private members Bill sponsored by Ababu Namwamba. The intention of the Bill was to establish a formal opposition which was ‘lacking’ during the grand coalition government according to the sponsor and proponents of the Bill. The Prime Minister expressed reservation towards the realization of such a law arguing that “MPs of the same party cannot be in government and the opposition at the same time” (Namunane, Saturday Nation, 2008) . In a personal interview, Senior Deputy Clerk legislative and procedural services – National Assembly observed that efforts of the proponents of the National Opposition Bill partially paid when the House Speaker ruled that the Standing Orders be amended to allow a composition of thirty members belonging to a single party with the approval of the party leader to be legible as an opposition party. None of the Members of Parliament who coalesced around Namwamba’s Bill could raise the numbers dictated by the Standing Order. The Bill died a natural death after the first reading (Interview, 15th August, 2019, National Assembly Nairobi).

The study notes that the conflictual Executive –Legislature relations were largely cross –cutting; the Executive nominations for approval, implementation of PAC recommendations on auditor general’s report and discussions and debate on selected Bills. The study further notes that there

was growth and development of legislative oversight tools like the Speaker's rulings and strong committee system. These characteristics supports the study assumption that conflictual Executive-Legislature relations leads to a strong legislative oversight.

3.6 Cordial Executive-Legislature Relations 2008-2013

The study further examined how cordial Executive-Legislature relations influenced legislative oversight between 2008 and 2013. This section present findings on the Executive-Legislature relations observed as cordial in the executive nomination of key state officers for parliamentary approval, debate and passage of key Bills and implementation of PAC recommendations on Auditor General Reports Present the findings first.

The study notes that executive nominations for state office appointments on some occasions exhibited convergence of interest even in circumstances where the Executive was accused by individual members of the legislature for not honoring regional and ethnic diversity of the nominees. Soon after the promulgation of the new constitution, the Executive presented to the Legislature nominees to the Commission for Implementation of Constitution (CIC). The Legislature received a letter from the Executive referenced OP/CAB.27/1/2 and dated 23rd November, 2010 nominating Charles Nyachae for the position of Chairman, Peter Wanyande, Ibrahim Ali, Elizabeth Muli, Florence Omosa, Catherine Muma, Kamotho Waiganjo, Philemon Waisaka and Kibaya Laibuta as members of the CIC. The Justice and Legal Affairs Committee (JLAC) vetted and approved the nominees before presenting the names to the plenary for approval. Some members raised concerns regarding regional balance. In particular, Kilemi Mwiria noted that "it is important that if we are selecting a team that is going to implement the Constitution.....that it represents the face of Kenya. Looking at the list, I found that four of the members are from Nyanza" (Hansard, 2010, pp. 13). Even though questions regarding regional balance, ethnic diversity and integrity were raised regarding a section of these nominees, the Legislature voted ninety one to forty four in favour of the nominees. Interestingly, the study observes that even Members of the Legislature who raised questions on regional balance of the nominees either voted AYES or ABSTAINED (Hansard, 2010, pp.17-18)

The study also observed Executive – Legislature concurrence on the nomination of the Chair and commissioners to the Ethics and Anti-Corruption Commission (EACC) despite reservations raised by Justice and Legal Affairs Committee which vetted and rejected the nomination of Mumo Matemu for the position of Chairperson, Jane Onsongo and Irene Keino for commission membership respectively. The committee recommended that the Executive should conduct fresh nominations for consideration and approval, citing lack of relevant experience and “passion” (Hansard, 2011,p.33) However, the Committee’s report was overturned during the plenary debate with majority members present, voting to approve the executive nominees for appointment. It is imperative to note that the plenary voted to approve nominees disregarding substantive issues raised by JLAC on their suitability. The overturning by the plenary of JLAC’s recommendations regarding EACC nominees accords with Pelizzo and Stuppenhurst (2014) who in their examination of West African legislatures observed a transactional mentality by members of legislature in exercising legislative oversight.

The study also found that some constitutional deadline Bills were part of the Bills and motions expedited in the legislature with less or no scrutiny. The first Bills were presented by the Executive during Kibaki’s first inaugural speech in the tenth Parliament on 6th March, 2008 .Four post conflict negotiation Bills by the panel of Eminent Persons were tabled in the Legislature by the Executive during the inaugural speech. They were Constitution of Kenya (Amendment) Bill, National Accord and Reconciliation Bill, National Cohesion and Integration Commission Bill and Truth, Justice and Reconciliation Commission. They were high interest Bills whose framework was carefully canvassed by both the Executive and the Legislature. The study that extraordinary measures were taken to fast track their passage including as moved in a motion by James Orengo “that the period for publication.....be reduced from fourteen to six days”(Hansard, 2008, p.60). Orengo’s motion was seconded by Martha Karua (Hansard, 2008,p.61). It is important to note that the convergence of interest in the first four Bills was as a result of the need to first establish a grand coalition government, second fast track institutional reforms, third, address historical injustices and fourth unite Kenyans and expedite processes that would lead to a new constitution. The need to address national policy issues that precipitated post-election violence became a priority for the leaders in the Grand Coalition Government in the debate and passage of Bills in the tenth parliament. The fast-tracking of the post conflict bipartisan Bills aligns with Kopecky (2004) who

examined Eastern Europe's post- communist executive-legislature relations as cordial during its transition period. Like in Eastern Europe, Kenya's executive-legislature relations was partially typified with instances of cordial relations especially when dealing with institutional reform Bills such as the Truth Justice and Reconciliation commission Bill and National Accord and Reconciliation Bill. This also confirms Lijphart's observation that legislative oversight is compromised in coalition government which is largely established to address matters of critical national importance arising from crises.

Table 3.1: Executive – Legislature relations on Appointments

No.	Yr	Executive nominations	Nominations within/without the law		Nominations within/without the law		Reasons for Action by Tenth parliament	Relations	
			Within the Law	Against the Law	Approved	Rejected		Conflictual	Cordial
1.	2008	Kalonzo Musyoka – Leader of Government Business		In disregard of the National Accord and reconciliation Act		Rejected	Executive violation of the law - NARA	Conflictual	
2.	2009	Aaron Ringera-Director KACC		In disregard of the National Accord and reconciliation Act		Rejected	Executive violation of law- KACC Act	Conflictual	
3.	2010	CIC Commissioners		In disregard Article 250 (4) and Article 10 (2) CoK 2010	Approved		JLAC report – academically and professionally qualified		Cordial
4.	2011	Attorney General, Controller of Budget and Chief Justice		In disregard of the National Accord and reconciliation Act		Rejected	Executive violation of the law - NARA	Conflictual	
5.	2011	Mumo Matemu	Within the law		Approved		JLAC-Vetting established not qualified – Plenary - Done within the law		Cordial
6.	2012	National Police Service Commission		In disregard of the National Accord and reconciliation Act		Rejected	Executive violated the law	Conflictual	

Source: Field Survey (2019)

From the table above, the Executive violated the law in many nominations of state officers according to vetting reports of various departmental committees that handled due diligence on the nominees forwarded by the Executive. The study exhibits evidence of violation of law by the Executive judging by the subsequent corrective actions by the Executive whenever the Legislature rejected their nominees. According to Hansard reports, the Executive retreated and deliberated from within, consulted within the meaning of the National Accord and Reconciliation Act and later sent to the Legislature a single letter nominating Hon. Kalonzo Musyoka as the consensus candidate for the position of Leader of Government Business in the House. Accordingly, after the rejection of the re-appointment of Justice Ringera, the Executive consulted the KACC Board and nominated Prof. Lumumba to head the antic-corruption agency, the executive later consulted and nominated Prof. Githu Muigai, Justice Willy Mutunga and Agnes Odhiambo as the Attorney General, Chief Justice and Controller of Budget respectively. The same was observed in the fresh nomination of the chairperson of the National Police Service Commission (NPSC) – Mr. Johnston Kavuludi to replace Amina Masoud. The subsequent Executive actions in response to rejections by the Legislature further legitimizes parliamentary reports with recommendations that the Executive violated law during nominations and also shows a strong Legislature.

Table 3.2: Executive-legislature action on accountability reports/questions

No.	Year	Scandal investigated	Status	PAC/House Recommendation	Executive Action/implementation
1.	2008	Grand Regency	Investigated and Debated in Parliament	Finance Minister to step a side	Finance Minister stepped aside. Appointed an investigation commission
2.	2009	Maize	Investigated and Debated in Parliament	Defeated in the floor of the house	Lobbied and defeated the motion in the legislature
3.	2010	Tokyo	Investigated and Debated in Parliament	Defense and foreign relations to investigate – Defeated in the floor of the house	Lobbied and defeated the motion in the floor of the house
4.	2011	Kazi Kwa Vijana (KKV)	Investigated and Debated in Parliament	Defeated in the floor of the house	Lobbied and defeated the motion in the floor of the house
5.	2012	-	-	-	-

Source: Field Survey (2019)

From the table above, the study found conflictual Executive –Legislature relations on the implementation of Auditor General Reports, departmental committee inquiry reports and investigative committee reports. The study observes a common thread of a balanced motions targeting both sides of the political divides. For example Hon. Khalwale (PNU affiliated) moved a successful censure motions against a PNU cabinet minister Hon. Amos Kimunya in 2008. According to Kimunya (2019), the motion was cleared for discussion ‘irregularly’ by Hon. Farah Maalim – Deputy Speaker and ODM legislator in a PNU and its affiliates dominated House

Business Committee. The study observes that Hon. Khalwale also moved a censure motion against Hon. William Ruto, the Agriculture Minister – ODM on the maize scandal. The study further notes Hon. Adan Keynan - ODM the chair of public investment committee in partnership with the committee of Defense and Foreign Relations moved a motion against Hon. Moses Wetangula, the Minister of Foreign Affairs (PNU affiliated) on the procurement and disposal of Kenyan embassy in Tokyo.

3.7 Analysis and Discussion

The study applied both Principal-Agent Theory and Behaviorist Theory. Principal- Agent theory has three fundamental assumptions namely, informational asymmetries, delegation for accountability and horizontal accountability. This study proceed with the Legislature as the Principal and Executive as the Agent. Additionally the study notes the role played individuals, both in the executive and the legislature, in shaping the outcome of the decisions by both the executive and the legislature which defines the relationship between the two arms of the government. It is this acknowledgment of the role of individuals that has informed the application of behavioral theory.

Findings of the study have captured the suitability of the application of the two theories. For example in the executive-legislature stand-off that ensued with the nomination of Attorney General, Chief Justice, Controller of Budget and Director of Public Prosecution, the legislature as the principal passed the NARA which provided for the mechanism for nomination of state officers. The executive as the agent with the responsibility of implementation exercises a delegated responsibility. As a delegating entity, the legislature, as principal, reserved the responsibility of overseeing the successful implementation of NARA on nominations. As witnessed in the standoff, the failure by the executive, to implement NARA on nomination invited the Legislature's intervention who by rejecting the nominees, compelled the executive to undertake the process afresh in compliance with the law. Similar cases are evident in the nomination of commissioners to the National Police Service Commission, Kenya Anti-Corruption Commission and the Chairperson of the House Business Committee. This case aptly captures the delegation and accountability tenet of principal-agent theory.

The study notes that majority of the Bills originated from the executive demonstrating the asymmetrical distribution of information, the executive has the advantage of controlling a lot of information, knowledge and expertise which informs its ability to originate and defend majority of the Bills. As an example identified by the study, the executive originated the County Government Bill 2012 and vigorously defended it against the amendments that were introduced to it by the legislature including critical relationship between the county government and the then to be restructured provincial administration. Reservations raised by the executive led to an agreement between the two arms that restructuring of the former provincial administration be considered in a stand-alone legislation. The application of informational asymmetry tenet also applied on the Truth Justice and Reconciliation Commission, Constitutional (Amendment) and National Commission for Integration and Cohesion among others.

The study further observes horizontal accountability in the case of Public Accounts Committee (PAC) recommendations on the Auditor General's report. By subjecting the Auditor General's Report to scrutiny, PAC ensures horizontal accountability between the executive and the legislature in the exercise of oversight. Of the three Principal –Agent theory tenets, delegation for accountability is the most prevalent tenet observed in appointments, Bills and implementation of PAC recommendations on the Auditor general's reports.

The action by Individual state officers shaped executive-legislature relations. From the study, this was evidenced from the executive and legislature side. On the legislature side, the Speaker stood out as a defining personality towards the executive-legislature relations through his rulings, he was able to strengthen, enhance and consolidate the speakers ruling as a concrete legislative oversight tool. Through the rulings, the study notes he played a crucial role not only in steering and stabilizing the relationship between the executive and the legislature but also ensured executive compliance with the law. In particular, his rulings on the nomination of state officers and the leadership of the House Business Committee steered the course towards compliance with the law.

The study notes the individual interest of members of the legislature in the decisions that the house took on state office appointments. Ethnic, personal friendship with a nominee and regional factors mobilized the individual legislators to vote for or against an executive nominee. For example,

during the debate about Mumo Matemu for EACC chairperson, four Members of Parliament from his ethnic identity spoke in his defense with Charles Kilonzo speaking nine (9) times, Kiema Kilonzo eight(8) times Mike Mbuvi two (2) times and Haroun Mwau two (times) in either tabling a supporting document or offering a rebuttal in favor of Mumo Matemu (Hansard, 2011, pp.32-48).According to Hansard report (2011), Mbuvi in support of Matemu discredited an ‘ evidence’ against Matemu’s approval stating “ I know this man very well....he is an extortionist ...he is a fraudster. I was with him in Remand prison” (Hansard, 2011, p.47).This was in apparent reference to an auctioneer who deponed an affidavit accusing Matemu for deliberately not collecting tax amounting to Kes. 2billion. Mumo Matemu and the two other commissioners were finally approved for appointment by the legislature. From the above case, it is evident how individual interest of legislators in the nomination and approval for appointment of Matemu influenced legislative oversight.

On the side of the executive, the ability of the president and the prime minister to discuss and agree to reconcile their hitherto divergent position was crucial in defining executive-legislature relations. Similarly, the disagreements that arose from their rival positions too shaped executive - legislature relations.

3.8 Conclusion

This chapter has presented data on the constitutional design of the executive –legislature relations, architecture of the legislature between 2008-2013, conflictual and cordial executive-legislature relations. The study found that the executive-legislature relations between 2008-2013 was conflictual in appointment of state officers, implementation of PAC recommendations on Auditor General Reports and to an extent on the passage of Bills. The study further reveals a strong legislative oversight tools such as the committee system, prime minister’s question time, speaker’s rulings, debates and petitions among others by the tenth Parliament. The availability of strong oversight tools are indications of a strong legislative oversight by the legislature. This finding supports the study assumptions that conflictual executive-legislature relations leads to a strong oversight.

CHAPTER FOUR

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

The objectives of this study was to examine two germane issues. First, how conflictual Executive-Legislature relations influenced legislative oversight between 2008 and 2013 in Kenya. Second, how cordial Executive-Legislature relations influenced legislative oversight between 2008 and 2013 in Kenya. This chapter summarizes the findings of the study, discusses how the executive-legislature relations influenced legislative oversight in Kenya between 2008 and 2013, gives major conclusions of the study and outlines some key recommendations with regard to legislative oversight during grand coalition epochs.

4.1 Summary

This study sought to examine the influence of executive-legislature relations on legislative oversight in Kenya between 2008 and 2013. The study was guided by two specific objectives namely; to examine how conflictual executive-legislature relations influenced legislative oversight between 2008 and 2013 and, to examine how cordial executive-legislature relations influenced legislative oversight between 2008 and 2013.

The study applied both principal-agent and behavioral theoretical framework. In particular, the study applied principal agent theory in understanding the executive-legislature relations on key appointments, passage of Bills and implementation of PAC recommendation on Auditor General reports between 2008 – 2013. However, there were decisions that were by implication informed by individual interest for example, considered Speaker's rulings on key Executive-Legislature issues, which decisions are better understood within behavioral theory.

This study utilized qualitative research methodology to comprehend the influence of Executive-Legislature relations on legislative oversight in Kenya between 2008 and 2013. The study relied on phenomenological research design and employed interviews and conversations for data collection. The study relied on both primary and secondary data. Primary data included both publication that were generated during the study period like newspaper articles, government official documents like the Hansard reports, parliamentary committee reports and, official

government documents like letters, government reports. The study also applied secondary data which included books, journal articles, journalistic reports related to the study topic. The study relied on interview schedule.

The study sample frame, was drawn from the relevant legislative committees, former and present legislators, and former members of the cabinet who served or occupied vantage positions during the period under study. The sample frame also included state officers from the executive including directors from the Cabinet Office, Auditor General's office, Controller of Budget Office. The sample frame also included independent governance experts with experience and knowledge on the executive-legislature relations during the study period. The respondents for the interviews were purposively sampled from among the parliamentary and executive sample frame guided by; (1) the role or the position an individual held during the period under study, (2) an individual currently occupying a privileged position in Legislature or Executive with relevant information and knowledge on the subject matter under study. Data analysis employed deductive approach of qualitative data analysis using a predetermined structure informed by the research schedule. The data collected was structured and organized in line with objectives and questions for ease of analysis. The data analysis employed descriptive coding to compress the data into easily understandable concepts for more efficient data analysis.

The study findings reveal existence of strong legislative oversight tools in the 10h Parliament: enhanced committee systems, increased legislative role of the legislature such as the appointment of state officers, enhanced capacity of the speakership role, strong Parliamentary Service Commission, Prime Minister's question time and robust legislative debate among others. These are characteristics of a strong legislative oversight. The study also reveals intra-Executive divisions whose internal contest for power was occasionally settled on the floor of the house. Nonetheless, intra-Executive divisions contributed to strong legislative oversight.

The study found that Executive-Legislature relations was conflictual between 2008 and 2013 which also occasioned strong legislative oversight. However, the conflictual relations was more pronounced on the nominations for appointments and implementation of PAC recommendations

on Auditor General Reports. Accordingly, the study found that Executive- Legislature relations was more cordial during discussions and debate on Executive-sponsored Bills.

4.2 Conclusions

The aim of the study was to examine the influence of executive-legislature relations on legislative oversight in Kenya between 2008. Specifically the objective of this study was to examine how conflictual executive-legislature relations influenced legislative oversight between 2008 and 2013 and, how cordial Executive-Legislature relations influenced legislative oversight between 2008 and 2013.

The study concludes that the Executive-Legislature relations was conflictual during the grand coalition government consistent with strong legislative oversight. The study further reveals aspects of Executive-Legislature relations which were slightly cordial. In particular, the presentation, debates and passage of Bills were generally cordial during the grand coalition government, a characteristic consistent with a weak legislative oversight. The study finds that the cordial nature of Executive-Legislature relations were as a result of the need to quickly establish Grand Coalition Government structures and the need to beat strict constitutional deadlines for specific Bills.

On the other hand, the study concludes that the strong legislative oversight may have been occasioned by; (1) the passage of a new constitution in 2010 which enhanced the role of the legislature, (2) strengthened legislative oversight tools like the role of committees. It is important to note from the study findings that the constitution of Kenya 2010 reaffirmed the independence of the legislature and established independent commissions like the Constitutional Implementation Commission (CIC) and institutions like the Auditor General's office fortified additional checks and balances between the legislature and the executive.

4.3 Recommendations

4.3.1 Academic Recommendations for Future Research

Due to limited resources and time, the study concentrated on executive-legislature relations on internal legislative oversight within grand coalition government. Future studies should look at the

executive –legislature relations on external legislative oversight emanating from the Judiciary, independent commissions and institutions and Civil Society Organizations.

This study can be replicated in Zimbabwe which is another case of post-election grand coalition government after Kenya in Africa. Hopefully, such study may shed further light on the executive-legislature relations dynamics in grand coalition context on legislative oversight.

4.3.2 Policy Recommendations

The policy recommendations will contribute to the general body of knowledge on the influence of executive-legislature relations in different political systems. Subsequently, the recommendations in this study will improve inter-branch relationships in grand coalition government contexts.

A strong committee system remains the most potent tool for the legislature to effectively and efficiently conduct its legislative oversight mandate over the executive. The capacity of the House Committees should be strengthened especially in terms of qualification. Legislators seconded to various the house committees should be equipped with relevant academic qualifications mirroring the committees to which they have been seconded. Additionally, committees should be staffed with competent research, legal and clerking staffs .To realize this, the Budget and Appropriations Committee (BAC) of the legislature should increase funding and make use of the Centre for Parliamentary Studies and Training (CPST).

Financial autonomy is crucial to legislative independence. To fully achieve this, the Budget and Appropriations Committee (BAC) of the legislature should consider increasing budgetary allocation to the legislature. This is likely to insulate the legislature from undesired consequences associated with financial dependence, including insubordination.

A mechanism for mediating between members of the executive and the legislature should be instituted. Such mechanism should be able to legally mediate between the executive and the legislature.

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APPENDICES

APPENDIX 1: INTERVIEW SCHEDULE

1. What is your view on the effectiveness of Parliamentary oversight during the 2008-2013 grand coalition government in Kenya?
2. What in your view were the reasons for Parliamentary (1) strength or (2) weaknesses in 2008-2013?
3. Were there instances where Parliament disagreed/agreed with the Executive during the grand coalition government?
 - a) Executive nominations for state office Appointments
 - b) Debate and passage of Bills
 - c) Implementation of PAC recommendations on Auditor General Reports
4. What in your view were the possible causes of the disagreements mentioned in (3) above?
5. How did the (1) Executive (2) Parliament respond to the above suggested causes of disagreements?

APPENDIX TWO: LIST OF RESPONDENTS

No.	Portfolio	Date
1.	Clerk of National Assembly	15/08/2019
2.	Director Legislative Procedure – KNA	16/08/2019
3.	Director of Legal Department – KNA	20/08/2019
4.	Controller of Budget	19/08/2019
5.	Deputy Auditor General	22/08/2019
6.	Former proponent of grand opposition – Current CAS Foreign Affairs	23/08/2019
7.	Former (tenth parliament) and current member of Budget and Appropriation Committee of National Assembly	14/08/2019
8.	Former Senator –Kakamega and former PAC chair	13/08/2019
9.	Five former MPs (tenth parliament)	26-27/08/2019
10.	Director Communication- Cabinet Affairs Office	28/08/2019
11.	Director Legislative Drafting – KLRC	12/08/2019
12.	One former Assistant Minister for Finance in the grand coalition government	29/08/2019
13.	Senator- Makueni County	19/08/2019

Source: Field Survey (2009)