

Legislatures in Modern States: The Role of Legislature in Ensuring Good Governance Is Inadequate

A Case Study of the United Kingdom and Sierra Leone

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Abstract

This essay is about examining the role of legislature in ensuring good governance and how adequate or otherwise they are in ensuring good governance. To examine and establish the facts, a comparative analysis is made between the United Kingdom and Sierra Leone Legislatures. This article first and foremost tried to establish that, indeed legislatures all over the world have an important role in ensuring good governance, which is the bed-rock and an essential ingredient in any government intending to thrive in governance, achieve its goals of success and a well-ordered and sustainable society. This piece of work chose transparency and accountability, two vital components that make up the concept of good governance as criteria in making the comparative analysis between two independent countries with legislatures as an arm of the Government. In comparing and analyzing the two jurisdictions, it was further established that there are certain factors that may limit or enhance the achievement of good governance by these legislatures. Nevertheless, the irrefutable fact this article tried to illustrate is that Good Governance needs an effective Parliament.

Keywords: legislature, good governance, comparative analysis.

A. Introduction

I. Aims and Objectives

The hypothesis of this essay is that the role of legislatures¹ in modern state in ensuring good governance is inadequate. The United Kingdom and Sierra Leone will be used as a case study in making a comparative analysis to prove the hypothesis. The questions to be answered and facts established in order to prove the

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1 This essay uses the words legislature and parliament interchangeably for the generic word legislature.

hypothesis are whether modern state legislatures have a role in ensuring good governance, if they have, how inadequate or adequate is their role in ensuring it. The aim and objective of this essay is to prove the above-mentioned hypothesis.

II. *Methodology, Justification and Structure*

I will prove my hypothesis by testing the concept of good governance principles of transparency and accountability as against the factors that affect the role of legislature in ensuring good governance. Good Governance is the bed-rock and an essential ingredient in any government that intends to thrive in governance. It is the basic foundation for a successful, prosperous, well-ordered and sustainable society. Good governance is about ensuring that the resources of a society are used to the best and most durable effect; and to the benefit of the greatest number of the population. It is a broad concept and area of study which encompasses accountability, transparency, probity, the rule of law, responsiveness, equity and inclusiveness, effectiveness and efficiency, and participation.²

I decided to choose transparency and accountability as criteria because they are two key aspects of good governance that are crucial to all the other elements of good governance. By testing these two criteria as against factors that affect good governance and influence legislative independence and power, one would be able to establish whether the role of these two legislatures in ensuring good governance is inadequate or not. These criteria are interlinked with the rule of law. For accountability and transparency cannot be enforced without the rule of law. Furthermore, these two aspects have phenomenal impact on the political, economic and social facet of any government in a country.

The two jurisdictions are being used because Sierra Leone, a former British Colony³ and a commonwealth country, adopted several of its processes in law and governance from the United Kingdom. Moreover, importation, transplantation or imposition of laws and legal institutions has been a permanent feature in world history, both ancient and modern,⁴ of which both countries have practised. Both jurisdictions are a common law country and practise democracy. The focus of this essay therefore is to establish whether the legislature in these two jurisdictions has a role in ensuring good governance (transparency and accountability). In this quest I intend to use primary and secondary sources from which I can analyse and draw a valid conclusion on my hypothesis.

- 2 P. McAuslan, 'Law, Governance and the Development of the Market: Practical Problems and Possible Solutions', in J. Faundez (ed.), *Good Government and Law: Legal and Institutional Reform in Developing Countries*, Basingstoke: Macmillan, 1997, p. 27; A. Seidman, R. Seidman & N. Abeyesekere, *Legislative Drafting for Democratic Social Change: a Manual for Drafters*, London: Kluwer Law International 2001, p. 7.
- 3 J.A.D. Allie, *A New History of Sierra Leone*, New York: St Martin's Press Inc 1990, pp. 62-63; C. Fyfe, *A History of Sierra Leone*, Oxford: Oxford University Press 1962, p. 97; A.P. Kup, *Sierra Leone: A Concise History*, Vancouver: Douglas David and Charles Limited 1975, p. 167.
- 4 J. Faundez (ed.), *Good Government and Law: Legal and Institutional Reform in developing Countries*, Basingstoke: Macmillan 1997, p. 1.

In section A, as my introduction, I have stated my aims and objectives, hypothesis, methodology and structure. In section B I will briefly define what good governance is, the various aspects of good governance and lay emphasis on the two criteria. In this same section, I will briefly discuss the general role of modern state legislatures and establish whether their role includes ensuring good governance. In Section C, in using the two identified criteria for comparison and analysis, I will test the criteria against the factors influencing good governance and legislative independence to prove whether the two legislatures perform their role inadequately or not in ensuring good governance. In Section D, I will further analyse to establish my hypothesis and verify or falsify it and conclude. I will now move on to briefly discuss the general role of modern state legislatures.

B. Description of Concepts and the Roles of Modern States Legislatures

I. Description of Good Governance

Good governance may be broadly defined as the use of resources of the state in a transparent and accountable manner for the benefit of society as a whole.⁵ It refers to the processes that bring and collate different interests and resources together in a functioning order to produce and achieve collective goods at global and national levels.⁶ According to Seidman et al⁷ good governance in the developing community means 'effective government plus non-arbitrary decision-making: governance by rule, accountability, transparency and participation'. The World Bank⁸ defined it as 'the traditions and institutions by which authority in a country is exercised for the common good'. United Nations High Commissioner for Human Rights⁹ defined good governance as 'the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation'. Organisation for Economic Co-operation and Development adopted the description of good governance as that which:

'helps to strengthen democracy and human rights, promote economic prosperity and social cohesion, reduce poverty, enhance environmental protection and the sustainable use of natural resources, and deepen confidence in government and public administration'.¹⁰

5 R. Nzerem, *The Drafter and Good Governance*, Lecture notes on Themes in Legislative Drafting 2010, available at <<http://studyonline.sas.ac.uk/course/view.php?id=17>> [accessed 26 April 2010] 13-14.

6 C. Aktan and H. Ozler, 'Good Governance: A New Public Managerialism', in *USAK Year Book, International Politics and Law* 2009, p. 214.

7 Seidman et al. (2001) at p. 7.

8 The World Bank, *Entering the Twenty-first Century*, Oxford: Oxford University Press 2000.

9 United Nations High Commissioner for Human Rights (UNHCR), *Good Governance Practices for the Protection of Human Rights*, New York: United Nations Publication 2007, p. 2.

10 Organisation for Economic Co-operation and Development, *Public Governance and Management*, (2010), available at <www.oecd.org/topic/0,33373,en_2649_37405_1_1_1_1_37405,00.html>, p. 1 [accessed 30 March 2010].

Curtin and Dekker (quoting the Secretary General of the United Nations, 2005; 9) states:

'By good governance is meant creating well-functioning and accountable institutions- political, juridical and administrative- that citizens regard as legitimate, through which they participate in decisions that affect their lives, and by which they are empowered.'¹¹

From statements above, it is clear that good governance encapsulate a variety of elements in ensuring sustainable development. Some of these key elements of good governance are accountability, transparency, probity, rule of law, responsiveness, integrity, equity and inclusiveness, effectiveness and efficiency and participation.¹²

Transparency (openness and access to information) means that decisions by both the executive and legislature should be taken (and seen to be taken) and implemented in line with defined rules and regulations. It also means that (subject to limited exceptions) information must be freely available and directly accessible to those who will be affected by such decisions and their implementation.¹³ It also requires the provision and right to an appropriate level of information, in an easily understandable form, by the government and the public service to the public, and media.¹⁴

With accountability, the executive, legislature, the private sector and civil society organisations among others, must be answerable to the public and, where appropriate to their institutional stakeholders.¹⁵ These groups should be answerable to those who will be affected by its decision or actions, and must be subjected to checks and balances, including scrutiny by the legislatures, committees of legislators, and other appropriate bodies. Institutions should in general be accessible, open to the public and the media so that confidence can be built up within society that these organs are functioning properly and in the general interest. Transparency and accountability are key elements of good governance that work together.

11 D. Curtin and I. Dekker (eds.), 'Good Governance: The Concept and its application by the European Union', in D.M Curtin and R.A. Wessel (eds.), *Good Governance and the European Union: Reflections on Concepts, Institutions and Substance*, Antwerp: Intersentia 2005, p. 9.

12 McAuslan (1997), p. 27; Seidman *et al.* (2001), p. 7; C. Harlow, 'Global Administrative Law: The Quest for Principles and Values', *The European Journal of International Law* Vol. 17 (1) 2006, pp. 182-214; Aktan and Ozler (2009), p. 214.

13 United Nations Development Programme (UNDP), 'Governance for Sustainable Human Development: A UNDP Policy Document', in United Nations development Programme, *Governance for Sustainable Human Development: A UNDP Policy Document*, Ch.1, 2007. Available at <<http://mirror.undp.org/magnet/policy/chapter1.htm#b>> [Accessed 4 March 2010].

14 T .Mendel, 'Parliament and Access to Information: Working for Transparent Governance', in WBI (World bank Institute), *Conclusion of Commonwealth Parliamentary Association-World Bank Institute Study Group on Access to Information*, held in Partnership with the Parliament of Ghana. Ghana, 5-9 July 2004, Washington: The World Bank Institute 2005, pp. 1-17.

15 United Nations Development Programme (UNDP) (*see* note 13).

II. Roles of Modern States Legislatures

The legislature also known as Parliament, Assembly or Congress is a multimember representative body sometimes referred to as a committee of grievance, a grand inquest of the nation, a congress of opinions that is responsible for making laws, debating public matters, scrutinizing the executive among other things.¹⁶ Depending on the jurisdiction, the main roles of the legislature includes representing the citizens of the society in government, considering and debating matters of national importance, passing laws, scrutinizing and authorising expenditure of the government, approving all appointments to the executive arm of government, and oversight over the executive.¹⁷

For the UK (bicameral legislature), the House of Commons and the House of Lords have as their main roles, examining and challenging the work of the government (scrutiny) debating and passing all laws (legislation) and enabling the government to raise taxes. The House of Commons for instance in the form of various committees (created by standing orders of parliament) have the responsibility to scrutinize proposed legislations, check and report on areas ranging from the work of government departments to economic affairs, and in each government departments examine three aspects: spending, policies and administration. Depending on the issue under consideration, the House of Commons by its setup committees can cut across departmental boundaries and examine public accounts *Parliament's role*.¹⁸ They can look at any or all of the government departments. The House of Commons also examine within by involving in a range of on-going investigation, such as administration of the House itself or allegations about the conduct of individual MPs.

The House of Lords besides scrutinizing bills concentrate on four main areas: Europe, science, economics, and the UK constitution. Both Houses by the set up of a joint committee examines particular areas such as human rights or specific matter such as consolidating bills and tax law rewrite, in which reports are normally made and may be available to the public in printed and online formats. The government usually has 60 days to reply to the committee's recommendations *Parliament's role*.¹⁹

16 K.C. Wheare, *Legislature I*, 2nd ed., London: Oxford University Press 1967, pp. 1-2; C. Stefanou, *Legislature*, Lecture notes on Legislature at the Institute of Advanced Legal Studies 2009, p. 1, available at <<http://studyonline.sas.ac.uk/course/view.php?id=16>> [Accessed 4 March 2010].

17 S.H. Beer, 'The British Legislature and the Problem of Mobilizing Consent', in P. Norton (ed.), *Legislatures*, Oxford: Oxford University Press, pp. 71-74; Stefanou (2009), pp. 2-3; J.K. Johnson and R.T. Nakamura, *A Concept Paper on Legislature and Good Governance* 1999, pp. 3-4 available at <<http://studyonline.sas.ac.uk/mod/resource/view.php?id=2001>> [Accessed 3 March 2010]; J.K. Johnson, *The Role of Parliament in Government*, Washington: The World Bank Institute 2005, pp. 2-3. Available at <www.agora-parl.org/sites/default/files/WBI%20Role%20of%20Parliament%20in%20Government.pdf> [Accessed 3 March 2010].

18 United Kingdom Parliament, *Parliament's Role* 2010. Available at <www.parliament.uk/about/how/role/> [Accessed 12 April 2010].

19 *Ibid.*

For Sierra Leone (unicameral legislature), the House of Representatives have three main roles which are representing citizens by bringing their needs, goals, problems, and concerns to the policymaking process, make laws that govern the nation and exercise oversight by ensuring that legislation and government policies are implemented effectively, according to the intent and within the parameters of the rule of law. Similarly to the UK, these are carried out through setup committees *Roles and Responsibility of Members of Sierra Leone Parliament*.²⁰

Both parliaments it can be seen have a crucial role in good governance through their mandate to legislate, scrutinize, oversee government activities, hold them to account, audit and enquire into other government institutions and agencies. However, one may ask whether their mandates are followed in practise by the legislature in both jurisdictions? In establishing this matter, factors that affect the legislature in ensuring transparency and accountability and the practical activities of the legislature of both jurisdictions is compared and analysed below.

C. Comparative Analysis of UK and Sierra Leone Legislature in Ensuring Transparency and Accountability

I. Comparative Analysis of UK and Sierra Leone in Ensuring Transparency and Accountability and Factors that May Limit and Enhance Its Achievement

Table 1 *Factors that affect the role of legislature in ensuring transparency and accountability*

Country	United Kingdom (UK)	Sierra Leone
Factors	<ul style="list-style-type: none"> - political systems - electoral systems - formal parliamentary powers - political will - technical capacity 	<ul style="list-style-type: none"> - political systems - electoral systems - formal parliamentary powers - political will - technical capacity
Type of system and applicability of factors to both jurisdictions	- parliamentary system- strong partisanship	- parliamentary system-strong partisanship

20 B. Lahai, 'Organisation and Institutional Mechanisms for Enhancing Accountability: Linkages Between Parliamentarians and Civil Society in Fighting Corruption', in *Capacity Building Course on Anti-Corruption for Members of Parliament and Civil Society*, Sierra Leone, 4-8 September 2006, pp. 1-5. Available at <www.apnacafrica.org/docs/Sierr%20Leone%20Workshop_PRESENTATION%208%20BY%20HON.%20BERNADETTE%20LAHAI.doc>; National Democratic Institute for International Affairs, *The Roles and Responsibilities of Sierra Leone Members of Parliament* 2008, pp. 1-6. Available at <www.ndi.org/files/2351_sl_rolesofmps_engpdf_04012008.pdf> [Accessed 23 April 2010]; Sierra Leone Constitution 1991, Ch VI. Available at <<http://www.sierra-leone.org/Laws/constitutin1991.pdf>>.

Table 1

Country	United Kingdom (UK)	Sierra Leone
	-proportional representative system	-proportional representative system
	-limited lawmaking and oversight power	-limited lawmaking and oversight power
	- weak political will to exercise independent power	- weak political will to exercise independent power
	- strong technical capacity	- strong technical capacity

Sources: Johnson, 2005; 1 (for World Bank Institute), Johnson & Nakamura, 1999; 4-12 (for United Nations Development Programme)

From table 1 above, one can observe that both jurisdictions share the same political and electoral system among other factors. Because of these systems, strong multi-partisan politics operates in these parliaments where, the cabinet members are not only named from the parliamentary majority, but the government of the day almost always have a majority in parliament. This pattern acts as a hindrance for the legislature to develop a strong committee system or deep policy expertise which can be used to scrutinize the government and ensure that they are answerable to the public and that their activities are open, clear, well reasoned and accessible to the public.

As highlighted above the role or duties of the legislature in both jurisdictions are carried out by committees set up in parliament for effectiveness and speed in parliaments activities. The proportion of Members in most of these Committee mirrors the political parties' strengths in parliament therefore there is a government majority which does hinder parliament achieving adequate transparency and accountability of executive activities. This is visible because the majority party are generally not inclined to investigate operations of government for deficiencies and problems, and the minority in most instances lacks the means especially in numbers.

Proponents of the parliamentary system would argue that question periods for ministers and public accounts committee that are geared towards routine examination of how government use their funds, provides an important mechanism for parliament to ensure accountability and transparency. Question time arise in both jurisdiction and works to a large extent for the UK as is evident in the UK parliamentary website *Checking the work of Government*,²¹ wherein ministers from each government department attend the commons on a rota basis to answer oral questions; and for the House of Lords at the start of each day's business. For Sierra Leone however, members of parliament rarely exercise their power to force members of the executive (who dislike this legislative oversight) to give account of their activities and expenditure due primarily to lack of political will and the high climate of partisan politics *Roles and Responsibility of Members of Sierra Leone*

21 United Kingdom Parliament (see note 18).

Parliament.²² This matter brings us to the next factor that affects the role of parliament in ensuring transparency and accountability which is the political will of members of parliament to use their powers.

From research, the UK legislature exercise more political will in comparison to Sierra Leone legislature as is evident from the wealth of information published on their website highlighted above. Question time and the publication of enquires and investigations of the executives' activities which are easily accessible by the public on the UK parliament official website are evidences that the UK legislature ensures more transparency and exercise more political will than Sierra Leone legislature. It is reported that UK government in turn issues -response to most committee reports within the 60-days span. Whereas for Sierra Leone legislature, there is very little political will to enforce their power in forcing ministers to go through question time and give account of their activities due to high partisan politics in the legislature. Moreover there is hardly any information much more updated information on the official website of the Sierra Leone legislature. This matter brings us to technical capacity of both legislatures in ensuring transparency and accountability.

By the vast activities highlighted on the role of the UK and the availability of resources, the UK parliament has the ability, and does make use of the available managerial and technical staff to seek and consider expert advice on budgets and policies and legislations in ensuring both elements are achieved.

For Sierra Leone, this is hardly the case; parliamentarians are generally over-worked with many competing committees, out-reach programmes, campaigning and political party demands affecting their work. For instance, over the 27 committees, with every member sitting on at least two committees there are only four clerks serving these committees. There are no research staffs or professional assistant available to the committees. Committee work is a technical matter and therefore requires specialized knowledge, skills and accurate information which can be provided for by experts within and outside the committee. The committees lack sufficient resources to draw on outside expertise. Furthermore, parliamentary records and library information are scattered, disorganized and out-dated. More important to note is that there is a high level of computer illiteracy among members of parliament, which also affect their access to information for committee work.²³ Therefore one can conclude that Sierra Leone unlike the theory put forward in table 1 of a strong technical capacity has weak technical capacity.

From the above analysis one can say that in comparison, the UK to a large extent utilize their mechanisms to ensure the elements of transparency and accountability more than Sierra Leone. The Sierra Leone legislature despite the multiplicity of its role enshrined in the constitution (1991; Ch VI) there are very few mechanisms in place, with little resources for its work to be carried out. Added to this

22 B. Lahai (note 20); National Democratic Institute for International Affairs (note 20).

23 B. Lahai (note 20), pp. 1-5.

the illiteracy level among members of parliament is high and a hindrance. Despite these disparities what is common to both legislatures is the fact that their political and electoral system produce high partisan climate which is a key factor that undermines both jurisdictions legislatures' role in ensuring transparency and accountability hence rendering their role inadequate in ensuring good governance.

D. Role of UK and Sierra Leone Legislatures in Ensuring Good Governance Is Inadequate

I. Good Governance Needs Effective Parliament

Good governance in terms of ensuring transparency and accountability of the government depends on a strong legislature. It is clear that both legislatures are at the centre of the struggle to achieve and sustain good governance. For a parliament to be fully effective in this role, it must first and foremost be comprised of individuals of integrity. This is because parliament plays a crucial role in identifying the needs of the people, articulate their experiences and views in determining the national political agenda. As an overseeing body, they help identify problems of policy failure (through legislation) that require attention and help in overcoming bureaucratic inaction. However parliamentary system of government which is practise by both jurisdictions hampers to some extent the role of parliament in exercising their mandate to ensure good governance.

Since political party majority in parliament also controls the government, separation of powers between the executive and the legislature is to a large extent blurred. Since majority party members often want to gain a place in the executive, this career goal discourages a more adversarial stance hence their usual lukewarm attitude to investigate operations of government. Political party consideration is seen to take priority in most instances over matters of transparency and accountability in scrutinizing and overseeing government activities. This imbalance in the relationship between the executive and the legislature does not allow proper critical scrutiny of the executives' activities in governance, thus, this weakens the legislatures investigative and oversight roles and to less transparent, accountable and effective governance.

The political party having the majority in the various committees in both legislatures is a fundamental issue that affects, and to a large extent undermines the mandate of parliament in ensuring transparency and accountability of the executive and other spheres of governance. In almost all instances the distinct prevalent culture of members of parliament being in the majority party for both legislatures is to support the policy of their party (executive's policy) out of fear of being alienated, party discipline and personal interests.

The question that may arise in one's mind is whether a presidential system of government rather than a parliamentary system of government is the way forward to have an effect legislature that may ensure good governance. This is an

issue that can best be dealt with in further research as this matter is not the main focus of this essay, besides, there are other fundamental factors such as integrity of members' of parliament, availability of resources (the list being non-exhaustive) that affects ensuring good governance.

II. Conclusion

What this essay attempted to prove is that the role of legislatures, in particular, the UK and Sierra Leone in ensuring good governance is inadequate. From the research and analysis above it appears that the UK parliament has more fundamental mechanisms in place and does to a large extent utilizes them to ensure transparency and accountability in good governance far better than their counterpart Sierra Leone. One cannot categorically conclude by saying that the UK's legislature in ensuring good governance is adequate and the Sierra Leone legislature is inadequate because there is the common fundamental hindrance or challenge of multi-partisan politics that instinctively takes priority over ensuring good governance in most instances. What can be verified from this research is that the role of the UK legislature is far better in ensuring good governance than Sierra Leone legislature. If it can be measured one might say the UK legislature is moderately inadequate whiles the Sierra Leone legislature is extremely inadequate.

It is apparent that achieving good governance poses a series of challenges for all involved. It does not only involve the legislature but the executive, judiciary, civil society organisations, the media and the general populace working for that common goal. What is clear however is that one country does have better mechanisms in place to ensure transparency and accountability and does make use of them than the other.

Parliament's role in ensuring good governance is far from negligible however factors such as the type of political and electoral system, formal legislative powers, the political will and availability of resources are issues that affect the role of parliament. In other words, the system and composition of parliament, the subordination of every aspect and approach to the legislative process, to the demands of partisan conflict all limits parliament's role in ensuring good governance.

It may seem that a non-partisan, independent and objective legislature coupled with availability of resources may adequately ensure good governance. As to whether a non-partisan legislature can be developed in these two jurisdictions is yet to be seen. Notwithstanding the aforesaid view, it is to a large extent up to the legislators themselves to build strong legislative institutions, by asserting themselves in the regular law-making or oversight functions, or through certain structural changes, constitutional amendments, legislation or rules of procedure for the executives and other institutions. An effective parliament that is balanced may ensure proper scrutiny and oversight of the executive which can play a key role in promoting good governance, in developing and developed countries alike because good governance requires collective action and rights to participate in policy making.