

DELIBERATIVE DEMOCRACY IN LEGISLATIVE COMMITTEES:
INTERPRETING PUBLIC DELIBERATION IN KENYA'S SUBNATIONAL
LEGISLATURES

by

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A thesis submitted to the University of Birmingham for the degree of DOCTOR OF
PHILOSOPHY

Institute of Local Government Studies
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University of Birmingham
February 2021

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ABSTRACT

Increasingly, there are questions about the value of representative democracy. Some argue that it does not sufficiently enable citizens to express their concerns and engage government in decision-making. Consequently, there is growing demand for increased public deliberation in legislative decision-making processes. However, how legislators, legislative staff and the public make meaning of the process and conceptualisation of public deliberation has not sufficiently been studied. The thesis examines public deliberation as an **emerging practice** to which legislatures in Africa aspire to but often fall short. The thesis examines interpretive understandings of public deliberation with specific pre- and post-colonial contextual considerations for legislatures in Africa, and Kenya more specifically. The thesis establishes that the meanings people assign to public deliberation are informed by their 'ideational' background and the pursuit of thick discursive claims does not always adopt Western centric forum-based conceptions; however, that does not make the practices less deliberative. Pragmatic definitions of deliberation create greater scope to study contextualisation and evolution of deliberative practices. The thesis establishes that the emerging practices of public deliberation in Kenya's subnational legislatures is often a performative exercise, done for show, that fails to achieve both its intention and prescribed benefits. **The thesis concludes by making propositions for practical institutional reforms that can address the challenges of designing successful public deliberation in legislatures. The thesis proposes that legislatures should institute procedural reforms that create new spaces for enacting public deliberation which signal equal power between legislators and the public during public deliberation. Additionally, procedural reforms should address the various stages of public deliberation to ensure that practices are effective and do not**

unconsciously entrench executive power over the legislature at the cost of accountability. Moreover, procedural reforms should be accompanied by a re-examination and clear delineation of the roles of legislative staff in facilitating public deliberation. Finally, clear communication on what the public should expect from each stage of public deliberation in the legislature should form a key part of institutional reforms.

DEDICATION

I dedicate this thesis to the memory of my dad, who at a time and place when it was not yet popular raised three daughters to believe they could dream wild dreams and conquer the world. I see now with adult eyes his unwavering commitment, sacrifice and love, which fiercely protected dreams we did not yet know we would have.

Daddy, this degree is for you. I am out here conquering the world. Until we meet again, *nind gi kwe*.

ACKNOWLEDGEMENTS

This thesis was copy edited for conventions of language, spelling and grammar by Jackson Proofreading Services.

I owe my gratitude to so many people who have made this achievement possible. I faced many challenges over the last four years, and each time I was sure that this thesis would be swept beneath the tide. I owe a debt of gratitude to many people who kept me fighting and believing that I could achieve what at times appeared to be impossible, especially in this final year. I may not acknowledge each person by name below. Still, I will forever be grateful to the community that carried me through. To each one of you, I say, *asante sana*.

I would like to thank the Commonwealth Scholarship Commission for providing me with the financial support I needed to undertake my PhD. The Commonwealth PhD awards are a life-changing academic opportunity. I take great pride in joining and contributing to a wonderful alumni community of scholars and global leaders.

I would like to thank the Parliamentary Service Commission for supporting my request for academic study leave and making financial support available to help me while pursuing my PhD. Your support is a testament to your commitment to developing staff capacity and building a parliamentary service of global repute that can support the Kenyan Parliament in upholding democratic ideals.

I wish to express my deepest gratitude to my supervisors, Professor Vivien Lowndes and Dr Catherine Durose. Thank you for taking a chance on me four years ago and agreeing to supervise my PhD. Your steadfast support kept me focused when I was floundering. Without your continuous optimism concerning this work, encouragement and insightful academic direction, this study would hardly have been completed. Your empathetic understanding when life outside the PhD was overwhelming is the only reason this PhD exists. Thank you for providing a safe space, mentorship and friendship that allowed me to grow as an academic and as an individual. I owe you both a debt of gratitude I cannot repay, but one I hope to one day pay forward.

I would specifically like to thank the governor of Mombasa County, H.E. Hassan Joho, who was instrumental in helping me organise my fieldwork in Mombasa. I am also greatly indebted to the various county executive committee members in Nairobi City County and Mombasa County; the chairmen, members and staff of the Finance, Budget and Appropriation Committees of Nairobi City County Assembly and Mombasa County Assembly; and all the other numerous research participants who took time to engage with me through interviews and focus group discussions.

I owe my sincere gratitude to Mr Gabriel Ndungu, and Ms Njoki Muriithi who helped organise the fieldwork.

I would in a special way like to thank my sisters, Daisy and Kimberley, for the love, patience and support you have shown me these last four years. Your belief in my ability to do this when it was still a dream, to steadfastly pushing me on through every hurdle

is why I never gave up. To my wonderful mummy, your steadfast prayers, encouragement and ever willingness to listen to my despair and anxiety over the last four years carried me through some really dark times. I thank you for always believing in and supporting my dreams. Thank you for everything you have sacrificed and given so that I can have this moment. This degree is as much for you and Daddy as it is for me.

To Lemi, thank you for pushing me to take a chance four years ago and apply for the Commonwealth Scholarship. You have always believed I could achieve anything I set my mind to and never doubted that this PhD would become a reality. I owe you a great debt of gratitude for your support these last four years.

I want to thank my wonderful Birmingham family: team BFAST. Sophie and Jamie, the best coaches in the world, plus my fantastic 7PM crew; you gave me a home away from home. You helped me keep my sanity and knowingly and unknowingly supported me through some tough times these last four years. Thank you for showing me just how STRONG I really am. I am sorry we never got to say a proper goodbye because of COVID, but I hope to someday see some of you in Kenya. You will always hold a special place in my heart. To my dear friend Adriana, thank you for coming along when you did and giving me a UoB family. Thank you for always being ready to listen and support, as well as give me a good kick to get over myself when I needed it.

To my dear friends Jere, Hassan, Emma Lochery, Emma Mwangi, G.K., Elsie and Rachel: your belief in me when I thought this dream would slip from my fingers is the only reason I can write this acknowledgement. Thank you for your patience and support through funding applications, proposal writing, numerous programme applications, overcoming rejections, bureaucratic hurdles, and finally navigating four years of the most unexpected journey I could have imagined. You each went above and beyond to help me reach my goal. To each one of you from the bottom of my heart, I say, *erokamano*.

To friends and family who over the last four years have had to put up with me being distracted, failing to pick up calls, respond to messages and missing many events. I am forever grateful for your patience and understanding. I hope to have time now to reconnect with each of you.

Finally, I would like to thank God and acknowledge that none of this would even be without Him. Thank you for the blessings you have continuously showered upon me, but, above all, thank you for teaching me that your grace is sufficient in all things and through all things.

PREFACE

The thesis before you, on 'Deliberative democracy in legislative committees: Interpreting public deliberation in Kenya's subnational legislatures', is an interpretive case study carried out in two counties in Kenya. The thesis examines how participants in the study attach meaning to the enactment of public deliberation in Kenya's subnational legislatures. Public deliberation is the term used in the thesis to refer to what is termed public participation in the 2010 Kenya Constitution. The term is adopted as it better encapsulates the process envisioned in the constitution, various statutory provisions on public deliberation and citizens' expectations. The intention, as will be established, was beyond simply widening opportunities for participation but instead was focused on establishing thicker discursive opportunities, which are characteristic of public deliberation. As this thesis will show, the terminology of public participation inadequately captures the process of citizen engagement taking place in Kenya's legislatures. The insufficiency of the term 'public participation' is even more glaring when considered against the existing literature on public participation. Therefore, the thesis adopts the term public deliberation in place of public participation, which not only better encapsulates the processes but also allows for greater theoretical exploration.

The research was motivated by my professional experience working as a senior committee clerk in the Senate, Parliament of Kenya. As a part of my responsibilities, I routinely organised public deliberation on legislative bills assigned to committees for consideration. However, a disconcerting observation was the constant refrain from legislators and the public that public deliberation was increasingly becoming meaningless and a waste of taxpayers' money. Legislators complained that public deliberation was time-consuming and controlled by civil society, and that the ordinary

public were increasingly apathetic. The public complained that public deliberation was time-consuming, undertaken in too short a time, and had little to no impact on legislators' decisions.

As part of the push for a new constitution before its promulgation in 2010, Kenyans had consistently advocated for mandatory public deliberation in legislative processes. Public deliberation was viewed as obligatory for accountability and ensuring citizens' views were considered in all legislative decisions. The arising disquiet with public deliberation and its implementation when considered against the strong push for it, therefore, became of increasing research interest to me. I wanted to explore the understanding of legislators and the public vis-à-vis public deliberation and to interpret the meanings they attached to its implementation in the legislature. I was particularly interested in the meaning of public deliberation at the subnational level, where legislators are seen as being in closer contact with the electorate and therefore more accountable.

I want to acknowledge that my professional experience working for several years in providing technical support through development assistance to Kenya's legislative institutions, and recently working with Parliament and specifically committees, informed my situated understanding of the research data. My professional experience meant I was already deeply socialised in my research community, which provided me with deep embeddedness. My embeddedness gave me more access to the authentic beliefs and meanings of the research participants, to which a new researcher would have required significantly more time to gain access. My experience and networks

provided me with institutional access as well as situating my interpretations of the 'meanings' assigned to public deliberation by the research participants.

Bevir and Rhodes (2004, p. 3), whose interpretivist analytical framework I employ in this research, argue that an interpretive approach 'recognises that the human sciences offer interpretations of interpretations'. However, the validity of the data is guaranteed not only through triangulating multiple data sources but also in the way all the data is treated. I was constantly aware of my potential for bias arising from my experiences influencing my critical judgement. I safeguarded against this by triangulating multiple data sources and abiding by Bevir and Rhodes's guiding principle of treating all data as evidence of meanings or beliefs embedded in actions.

I hope you enjoy your reading.

Brenda Ogembo

Birmingham, February 2020

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LIST OF ABBREVIATIONS

Budget Policy Statement (BPS)

County Assembly Service Board (CASB)

Community-Based Organisations (CBOs)

County Executive Committee (CEC)

County Executive Committee Member (CECM)

County Fiscal Strategy Paper (CFSP)

County Government (CG)

District Focus for Rural Development (DFRD)

Finance, Budget and Appropriations Committee (FBAC)

Focus Group Discussion (FGD)

Gikuyu, Embu and Meru Association (GEMA)

Gross Domestic Product (GDP)

International Development Agency (IDA)

Legislative Council (LegCo)

Liberal Democratic Party (LDP)

Member of County Assembly (MCA)

Member of Parliament (MP)

National Alliance of Kenya (NAK)

National Alliance and Rainbow Coalition (NARC)

National Assembly (NA)

Nairobi City County Assembly (NCCA)

National Cohesion and Integration Commission (NCIC)

National Government (NG)

Non-Governmental Organisation (NGO)

Parliamentary Service Commission (PSC)

Participatory Budgeting (PB)

Permanent Secretary (PS)

Senate (Sen)

The Institute of Social Accountability (TISA)

Transition Authority (TA)

United Kingdom (UK)

United States (US)

Very Important Person (VIP)

World Bank (WB)

Key:

... Indicates that text has been cut.

[] Indicates edition or addition.

1 INTRODUCTION

1.1 Defining public deliberation

Public deliberation as used in this thesis is anchored in normative democratic deliberative theory. Public deliberation can be said to be ‘the process through which deliberative democracy occurs’ (Carpini, Cook and Jacobs, 2004, p. 317). There exist many contested definitions of what constitutes public deliberation, with some scholars adopting stricter definitions and others choosing more pragmatic definitions based on implementation realities (Elster, 1998; Carpini, Cook and Jacobs, 2004; Ercan, Hendriks and Boswell, 2017; Bächtiger *et al.*, 2018b). The thesis adopts the pragmatic approach and recognises that public deliberation can take place in diverse sites from ‘highly structured forums to loose informal social gatherings and public interactions’ (Ercan, Hendriks and Boswell, 2017, p. 196).

Public deliberation is accordingly defined in this thesis as including reasoned argument, strategic bargaining, experiential testimony, and other kinds of discursive claims that are aimed at ensuring the public affected by a decision are able to engage in substantive, balanced and civil discussion with legislators. Substantive discussion involves looking at options and giving reasons for a preference of one over another; balanced discussion involves allowing for different perspectives, arguments and views; and civil discussion means discussions are respectful and constructive (Nabatchi, 2014; Beauvais, 2018; Elstub, 2018; List, 2018).

The definition is adopted cognisant of recent arguments in democratic deliberative theory that view public deliberation as part of a ‘deliberative system’. The deliberative system moves the focus away from strict definitions of public deliberation that focus

only on 'micro or forum-based conceptions of public deliberation' (Ercan, Hendriks and Boswell, 2017, p. 195) aimed at collective decision-making. Deliberative democrats are increasingly including as part of deliberation pragmatic 'larger-scale discursive and contestatory activities found in everyday talk, conventional and new media, policy consultations and public protest' (Mansbridge *et al.*, 2012a; Hendriks and Kay, 2019, p. 28). Scholars who argue in favour of a broader definition of what constitutes deliberative communication and where it takes place support moving beyond narrow accounts of reason-giving and consensus (Mansbridge *et al.*, 2012a; Ercan, Hendriks and Boswell, 2017; Bächtiger *et al.*, 2018a).

The increasing support by deliberative democrats for a more open definition of public deliberation that incorporates diverse forms of political communication creates an opportunity to broaden the theoretical lens through which emerging forms of deliberation can be studied. Public deliberation activities that do not fit the narrow definitions associated with the public participation literature or the strict definitions of process-oriented deliberative democrats can be studied more critically by recognising other forms of discursive political communication as deliberative.

The change in the strict definitions of what constitutes public deliberation provides an avenue through which emerging practices of public deliberation in non-western societies can be studied. The study of public deliberation has been criticised as being 'western'-centric, with a majority of the existing empirical research on the subject conducted in countries of the 'Global North' (Min, 2014; Bächtiger *et al.*, 2018a). Practices of public deliberation in the 'Global South' have largely been ignored or discredited as not deliberative as they do not conform to 'elitist white-masculine culture'

(Min, 2014, p. 1), which privileges rational, calm and dispassionate discussions (Min, 2014; Bächtiger *et al.*, 2018a). The very limited empirical research on public deliberation in non-western countries (see for example Fishkin *et al.*, 2017; Chirawurah *et al.*, 2019) have failed to critically take account of the role of local culture and contexts, and simply gone ahead to overlay western-developed public deliberation practices and evaluate them accordingly (Min, 2014). The thesis findings demonstrate that conceptualisation and transference of deliberative practices are informed by governance 'traditions'. The governance traditions provide the context through which people attach meaning to public deliberation. Africa's pre- and post-colonial governance experiences, as demonstrated in the thesis, have shaped its governance traditions and subsequently its engagement with deliberative practices transferred from the Global North.

Broadening the definition of what constitutes public deliberation should be accompanied by a recognition that manifestations of similar deliberative practices will differ depending on cultural contexts. It is only by acknowledging public deliberation as a universal concept with local cultural contextual adaptations that scholars can usefully engage with how best to design transformative deliberative practices. The emergence of public deliberation practices in the Global South, such as the efforts to institutionalise public deliberation in Africa's legislatures, should be acknowledged for the deliberative practice they are. The distinctiveness of local cultural systems that influence how implementation occurs should not be used to discredit these practices as non-deliberative and limit the scope of theoretical scrutiny applied to them simply because they do not conform to a western-induced deliberative standard. This thesis, by adopting a broader definition of what constitutes public deliberation, by acknowledging

that definition of public deliberation, and by acknowledging that deliberative practice adapts to local cultural contexts, creates the foundation to empirically study the emerging practice of mandatory public deliberation in some of Africa's legislatures.

1.2 The role of public deliberation in decentralised governance

The often-referenced 'third wave' of democracy (Cheeseman, 2015) that has swept across the African continent in the last three decades has brought with it major democratic shifts. The single-party autocracies that had been the hallmark of most African countries since independence were replaced by a major shift towards multiparty politics (Fessha and Kirkby, 2008; Cheeseman, 2015). One of the most critical reforms that accompanied the democratic reforms of the third wave of democracy is the 'transfer of power to existing or new subnational political units' (Fessha and Kirkby, 2008, p. 248). Some countries, like Nigeria, had already established subnational units prior to the continent's sweeping reforms. However, supported by powerful regional and international institutions, few countries on the continent were able to resist the move towards the decentralisation of power to subnational levels of government (Crook and Manor, 1998; Fessha and Kirkby, 2008).

The justification provided for the move towards decentralised governance centred primarily on the need to enhance democracy, development and accommodating diversity (Crook and Manor, 1998; Bardhan, 2002, 2006; Fessha and Kirkby, 2008). Central governments have also increasingly lost legitimacy, with citizens perceiving them to be inefficient and unresponsive (Bardhan, 2002). In Africa, there had been earlier efforts with decentralisation in the in the 1960s, as many countries attained independence, in an effort to bring government closer to the people and engage local

communities in their development. These efforts had dissipated by the early 1970s, as many initiatives 'had been vitiated by distrust and interference from above, and by infighting and shortages of resources and expertise in elected councils and local communities' (Crook and Manor, 1998, p. 2).

The re-emergence of the discourse on decentralisation with the third wave of democracy in the 1980s was in this instance supported by heavy critique of the state. A majority of countries in Africa were authoritarian and highly centralised at the start of the 1980s. Economic and political pressures, both domestic and in the international environment, however, exerted pressure on many incumbent governments and domestic pressure for political and economic reform mounted (Cheeseman, 2015). This new climate advocated for decentralisation combined with democratisation, which, it was argued, would lead to 'greater transparency, accountability, responsiveness, probity, frugality, efficiency, equity and opportunities for mass participation' (Crook and Manor, 1998, p. 2).

Yet, despite the efforts that were now mounted towards entrenching decentralisation on the continent, most central governments resisted efforts to create autonomous subnational government. Reforms have focused on 'creating elected councils with delineated legislative and executive powers' (Fessha and Kirkby, 2008, p. 248) but central governments consistently undermine or ignore crucial subnational authority. These reforms have paradoxically led to reinforced central authority at the expense of the goals of decentralisation. Despite this, the enthusiasm for decentralisation has not waned but increased. The increase in enthusiasm for decentralisation is evidenced by the fervour with which large international agencies such as the World Bank and the

United States Agency for International Development (USAID) continue to advocate for it. Public pressure for the adoption of enhanced forms of decentralisation that accord subnational governments greater political, administrative and fiscal responsibilities has also increased in many countries (Crook and Manor, 1998; Fessha and Kirkby, 2008).

The move towards increased decentralisation on the African continent has seen many countries adopt new constitutions establishing varied forms of decentralised government. These constitutions have paid greater attention to securing democratic values, human rights, social justice and the rule of law. One element of these new constitutions that stands out is the emphasis placed on public deliberation in government decision-making processes. Decentralised governments have been viewed as the mechanism through which public deliberation can be best achieved so as to realise constitutional objectives. South Africa was the first country on the continent to establish this trend, with the adoption of its constitution in 1996. Kenya, borrowing heavily from the South African constitution (Ghai and Ghai, 2018), similarly adopted a new constitution in 2010. Tunisia and Zimbabwe have similarly adopted constitutions emphasising the importance of public deliberation in subnational governance (Fuo, 2015, p. 169).

Increased public deliberation gives citizens an opportunity to communicate preferences and views to elected officials, who can then be held accountable for their performance; this is an important element of decentralisation (Bardhan, 2006). Bardhan (2006) further argues that popular participation is valued for its own sake. It is viewed as promoting a sense of autonomy in citizens, promoting the legitimacy of the state through enhanced social order, and can limit separatist pressures in deeply

divided societies. These claims are similarly supported by deliberative democrats (Delli Carpini, Huddy and Shapiro, 2002; Carpini, Cook and Jacobs, 2004; O'Flynn, 2012; Bächtiger *et al.*, 2018b).

Despite the acknowledgement of the importance of public deliberation in decision-making by government, there exists significant conceptual congestion in defining the varied forms of popular participation. In the last decades, as interest in discourses on twenty-first-century democracy has peaked, dialogue, deliberation, citizen participation, public participation, collaborative policymaking and public engagement are terms that are frequently used to refer to popular participation (Escobar, 2009). In many articles, the terms are sometimes used interchangeably. Public engagement, as Escobar (2010, p. 9) points out, has, however, become a blanket term used to describe practices as diverse as 'information giving, dissemination, consultation, public dialogue and deliberation, or collaborative policymaking'.

1.3 Public deliberation in Africa's subnational legislatures

In Africa, the conceptual congestion and the absence of a clear normative grounding for the varied forms of popular participation taking place due to western biases for what constitutes deliberation can partly be attributed to the work of international development practitioners. Participation, as discussed above, has become synonymous with decentralisation. The push by development agencies for increased decentralisation in African countries was therefore also accompanied by an increased focus on participation. Participation increasingly became an end in itself but with no clear normative grounding. Participation became donor-driven rhetoric that was advocated for as an end in its own right (Escobar, 2010). Administrative reforms that

should have accompanied participatory reform were often not transferred, as in the case of participatory budgeting (Baiocchi and Ganuza, 2016). The result of this in the African context, beyond questions about disingenuous and manipulative participatory practices, is the lack of clear distinctions between participatory and deliberative processes (Gaventa, 2006). The generic transfer of participatory processes by international development agencies (IDAs), which often combine participatory and deliberative elements, have also failed to account for cultural contextual considerations in a diverse continent with a complex history.

The interest in public deliberation has, however, not waned, despite conceptual congestion, as demonstrated by the increasing inclusion of public deliberation in the constitutions of countries on the African continent. Public deliberation is referred to as public participation in these constitutions, for example in the Kenyan and South African constitutions. However, when interrogated, the proposed processes of public participation signal a move towards public deliberation through requirements for more discursive processes, as will be demonstrated in the empirical chapters. The constitutional language may reference participation, which is the terminology transferred by IDAs, who are often heavily involved in constitutional drafting and government policymaking processes (Brass, 2012), but the focus has fundamentally been on increasing public deliberation in government decision-making processes. One of the areas, as earlier discussed, where this has been most prominent is at the subnational level. There has been significant attention paid to public deliberation within the executive arm of government. Once again, this is likely to be attributable to how practices of public deliberation have been transferred by IDAs. There has, however, been significantly less attention paid to efforts of public deliberation in subnational

legislatures in Africa. Both the South African and Kenyan constitutions mandate obligatory public participation in their subnational legislatures.

In the last decade there has been increasing interest in studying the engagement of parliaments with the public (Fox, 2011; Leston-Bandeira, 2012, 2013; Kelso, Boswell and Ryan, 2016; Leston-Bandeira and Thompson, 2017; Hendriks and Kay, 2019). Legislative institutions at all levels of government are important representative institutions. They aggregate public opinion and make policy decisions that are aimed at addressing the common good. The important role they play in the policy process may explain why there has been increased interest in increasing public access to legislative institutions and their business (Fox, 2011; Leston-Bandeira, 2012; Power, 2012). The demand for increased direct engagement has seen mounting efforts by legislative institutions to bring the public into their work, leading to a rise in new participatory and deliberative methods (Gaventa, 2006; Font, Wojcieszak and Navarro, 2015; Kelso, Boswell and Ryan, 2016).

However, despite the increasing interest in engaging the public in legislative business, there are questions about whether public deliberation in legislative institutions has any effect on decision-making processes. Does increased public deliberation in the legislature increase the legitimacy of decisions, create greater accountability and transparency in decision-making, and reduce tensions in divided societies? A growing body of literature continues to question the value of representative democracy, arguing that it does not sufficiently enable citizens to voice and advocate their concerns, engage government, and ensure the effective utilisation of resources (Rosenthal, 1998; Fung and Wright, 2003; Michels and Graaf, 2010; Wampler, 2012).

Despite the increasing interest in encouraging public engagement in legislative business, Leston-Bandeira (2012) points out that scholars have not paid sufficient attention to this emerging relationship between citizens and parliaments. Even less research has been done on legislative public engagement in Africa and particularly sub-Saharan Africa (Azevedo-Harman, 2011, p. 66, 2012, p. 19), despite data showing that Africans have the greatest trust in their parliaments when compared to other regions of the world (Beetham, 2006; Azevedo-Harman, 2011; Power, 2012; Aiko, Akinochi and Lekorwe, 2016). The majority of scholarly research on public deliberation in parliaments has been focused not only on national parliaments but primarily national parliaments in the Global North. Almost no attention has been paid to studying public deliberation in subnational legislatures in Africa. The fact that decentralisation and public deliberation have become synonymous on the continent, constitutional provisions have mandated public deliberation in legislative processes and parallel institutions have been established at the subnational level mirroring those at the centre, such as in Kenya and South Africa, and no empirical studies have examined the effects of these changes all indicate a wide gap in the literature that need to be explored. The gap in literature is particularly pressing as it is increasingly apparent that more countries in the region are likely to adopt similar institutions (Fashagba and McMahon, 2015).

The literature on public deliberation in national parliaments may at first seem ill-suited when applied to subnational legislatures. However, not only do subnational legislatures provide an important arena upon which theory can be tested (Downs, 2014) but their political autonomy and mirroring of national parliaments in federal and hybrid

government systems support the applicability of the literature. In federal systems, 'national constitutions recognize and at least formally empower subnational legislatures' (LeVan, 2015, p. 6) and they have specified areas of autonomy that cannot be taken away. Hybrid systems have common organs of national government as sovereign, but 'some independent powers are constitutionally recognized for smaller territorial units' (LeVan, 2015, p. 6). This thesis will study the meaning of public deliberation in Kenya's subnational legislatures, which are part of a hybrid devolved system of government. One of the most visible aspects of decentralisation is political autonomy. The executive and legislative powers and competencies enjoyed by a subnational unit indicate its level of political autonomy from the central government. Political autonomy 'entails democratically elected subnational governments with distinct powers and responsibilities through a constitutional or a statutory reform' (Fessha and Kirkby, 2008, p. 255). Subnational political autonomy varies across states in Africa (Fessha and Kirkby, 2008; Fashagba and McMahon, 2015).

Kenya's subnational legislatures, referred to in its constitution as county assemblies, are the case study for this thesis. The county assemblies are designed to be conceptually and institutionally similar to the national parliament but have and exercise political autonomy from the central government. The subnational legislatures mirror the functions and procedures of the national parliament. The subnational legislatures are constitutionally provided with the same safeguard for their power and authority as the national parliament, with the only difference being that they exercise their power and authority at the subnational level. They were established to be conceptually and institutionally distinct from municipal and city councils, which were 'deconcentrated units of the national government with little political significance' (Nyabira and Ayele,

2017, p. 147). Local councils under the current devolved structure of government can be established by county governments (CGs) through statutory legislation but are at a lower level of governance to the county assembly (Government of Kenya, 2010; Office of the Deputy Prime Minister and Ministry of Local Government, 2011). Unlike the former local councils, which had no 'constitutionally assigned legislative and revenue raising and allocation powers' (Nyabira and Ayele, 2017, p. 138), the county assemblies have these full functions allocated to them by the constitution, as well as being politically significant.

Kenya's devolution design is a semi-federal system with significant political power and resources devolved to a new level of governance at the county level. The subnational legislatures are composed of elected Members of County Assembly (MCAs), with special seats designated for representatives of marginalised communities and the assembly's under-represented gender in any election cycle. The subnational legislatures, similar to the national parliament, have legislative powers for oversight, law-making and representation (Salih, 2005; D'Arcy, 2020). It is therefore not only logical but feasible to apply conceptual ideas used in the study of parliaments to Kenya's subnational legislatures.

The thesis, adopting Bevir and Rhodes's interpretivism (Bevir and Rhodes, 2006a, 2010, 2012), will carry out an interpretive analysis of the meanings of public deliberation in Kenya's subnational legislatures. Interpretivism, as some scholars have argued, is 'well suited to studying deliberative democracy because: it can capture the perspectives of participants in the deliberative process; and it is sensitive to the contextual and contingent nature of such processes' (Ercan, Hendriks and Boswell,

2017, p. 197). The choice to adopt Bevir and Rhodes's interpretivism is therefore important in the context of this research as it allows the exploration of relevant meanings and underlying intentions in the actions of participants by focusing on contextual considerations of public deliberation processes. Contextual considerations, as earlier established, are important in the study of public deliberation in non-western societies, where local, historical and social context considerations produce multiple meanings and interpretations of public deliberation (Ercan, Hendriks and Boswell, 2017). The thesis by adopting an interpretivist approach to the conceptualisation of deliberation, demonstrates that public deliberation in Kenya's subnational legislatures, although not adopting more common Western forum-based conceptions of public deliberation, demonstrate aspiration and commitment to thick discursive claims between the public and the legislature as shown through constitutional provisions, judicial rulings and governance arrangements.

Bevir and Rhodes's (2010, 2012) interpretivism is premised on a constructivist ontology that argues that there is no objective reality 'out there' to be discovered and measured independent of the researcher (Ercan, Hendriks and Boswell, 2017). Bevir and Rhodes instead put forward an argument for a 'web of beliefs' that forms the 'traditions' from which all experiences and local reasoning occur (Bevir and Rhodes, 2010, p. 74). They argue that the agency of individuals can only be understood within the situated context of a web of beliefs and put forward what they term 'situated agency' (Bevir and Rhodes, 2010, pp. 74–75) to explain the behaviour of actors. Fundamentally, and as explored further in the methodology chapter of the thesis, Bevir and Rhodes's interpretivism, which is adopted for this research, establishes the concept of background ideas known as 'traditions', which shape the 'beliefs' of actors

about their interpretations of their world and surroundings. Further, they argue that actors exhibit stable 'practices' over time, which represent the ways in which beliefs and traditions manifest themselves on an everyday basis. The beliefs of actors and the change to traditions, they argue, occur when a 'dilemma' arises. Dilemmas are ideas that stand in contradiction to existing beliefs. Bevir and Rhodes's analytical framework is adopted for the purposes of this research as it provides an in-depth and context-specific framework for illuminating the research of public deliberation in a context that has not received previous empirical attention. The thesis also draws on the analytical framework of performance to supplement Bevir and Rhodes's interpretivism. The works of Jeffrey Alexander (2006) and Maarten Hajer (2005) are used to structure how public deliberation processes are staged in Kenya's subnational legislatures.

Drawing on interpretivism and performance, the thesis demonstrates that Kenya's governance traditions of a 'strong bureaucratic-executive' and 'political ethnicity' have created a performative actualisation of public deliberation. **The actors, in the case, intentionally manipulate public deliberation opportunities to present a caricatured form of deliberation through obfuscated processes that are meant to disempower the public while actively impeding alternatives for redress or clarity.** Interpretivism provides an analytical framework through which the beliefs and practices of actors were examined when faced with the dilemma of public deliberation. The meanings they attach to public deliberation are informed by their situated context. The thesis shows that the beliefs of actors associated with the two governance traditions changed both the conceptualisation and practice of public deliberation. The beliefs of actors showed an appreciation of the importance of thick discursive claims even as they actively and intentionally resisted its actualisation. Understanding the context allows a deeper

exploration of why the many benefits ascribed to public deliberation by the literature are largely not realised. Interpretivism and the recovery of narratives that show the beliefs and practices of the research participants demonstrates that failure to realise the benefits ascribed to public deliberation in Kenya's subnational legislatures is primarily the result of governance traditions that create tacit alliances between bureaucrats and elected politicians and challenge the realisation of the spirit of deliberation. Additionally, political ethnicity is nuanced, but appears to affect the beliefs and practices of actors who engage in performative public deliberation to protect themselves from scrutiny for rewards granted to 'co-ethnics'.

Devolved governance, it is argued, increases local democracy as it empowers the people by giving them ownership of their resources and makes political leaders more accessible and therefore more accountable to the people (Young, 2010). The restoration of decision-making power to the people, increased transparency and accountability, and the dismantling of the ethnic politics that has plagued Kenya's successive governments since independence were to be achieved through devolved governance. The establishment of subnational legislatures, particularly through increased public deliberation in legislative decisions, was an important arena through which these benefits would be realised. It was anticipated that citizens would elect local representatives who would represent them at the subnational legislature on important local decisions. The local legislators would not withdraw to the national parliament in the capital, focusing primarily on central government interests, as elected members of the national parliament were prone to do. Through the subnational legislature the public would take direct part in decision-making and holding the subnational government accountable. Deliberative democracy, where citizens inform policy

decision-making, was therefore a foundational concept in the establishment of Kenya's devolved governments and particularly its subnational legislatures. The meanings and implementation of public deliberation that the public, elected representatives and their staff attached to public deliberation should, however, be considered against the contextual background on which it was adopted. The governance traditions and resulting beliefs that inform the implementation of public deliberation in Kenya's subnational legislatures should be the starting point of any research that attempts to examine the underlying meanings and actions of all engaged in the process.

Using an embedded case study of two city subnational legislatures in Kenya, the thesis will examine the effects of mandatory public deliberation on subnational legislatures. Kenya's subnational legislatures, referred to as county assemblies, were established in 2010 when the new constitution was passed in a referendum. The county assemblies were, however, only formally established on 4 March 2013, following the first general election held under the new constitution. The research focuses specifically on the county assembly public deliberation on the county fiscal strategy paper (CFSP). The CFSP is a critical budget document that mirrors the national budget policy statement (BPS) and sets out the broad strategic priorities and policy goals that will guide the national and county governments in the preparation of budget for the following financial year and the medium term (Government of Kenya, 2016b, p. 27). The CFSP is provided for in Section 117(1) of the Public Finance Management Act (PFM) of 2012 and every county executive is mandated by law to submit its CFSP annually to the County Assembly (Government of Kenya, 2016b, p. 74). The importance of the CFSP in setting out the key policy priorities of the CG that eventually

translate into budget estimates informed the decision to select it as the part of the budget life cycle that would be the focus of this research.

The thesis adopts an interpretivist framework to examine how the existing governance traditions affect the enactment of public deliberation. Through an analytical framework that draws on interpretivism and performance, the thesis will also draw out narratives that show the meanings that actors (legislators and their staff) and audiences (the public) attach to the enactment of public deliberation. The research participants' understanding of the meanings and effects of public deliberation on the legislative process will be used to interpret the effects of public deliberation in legislative committees more broadly, and what this means for long-term institutional and decision legitimacy. The key question therefore emerging is: do the effects of public deliberation in subnational legislatures reflect its espoused benefits? This is an important question for something that is so passionately championed despite little empirical evidence of its benefits.

The thesis will address the issues raised above with the following research questions:

1. How do Kenya's governance traditions affect the enactment of public deliberation in Kenya's subnational legislatures?
2. How does the enactment of public deliberation in Kenya's subnational legislatures shape the behaviour of the research respondents?
3. How do the research respondents **assign meaning to** public deliberation in Kenya's subnational legislatures?
4. What are the implications of the research findings for public deliberation in Kenya's legislatures at the national and subnational levels?

Research data from the two county assemblies is collected through focus groups, semi-structured elite interviews, observation and documentary analysis. The research is not a comparison study between two county assemblies, but rather the two cases enable the researcher to deepen her ability to address the research questions.

1.4 Thesis structure

The thesis, in order to systematically address the research questions identified, is organised as follows:

The introduction has presented a broad overview of the arguments in the thesis, beginning with the definition of public deliberation as used in the context of the thesis and the theoretical grounding of the thesis in the normative arguments of deliberative democracy. Chapter 2, following from the introduction, will discuss democracy in non-western contexts and the meanings attached to public deliberation in those contexts. The chapter will specifically examine how the evolution of governance in the context of African nations in pre- and post-colonial contexts has affected the discussions around the utility of public deliberation and the most effective contextual design for successful implementation. The chapter will examine theoretical arguments on the effects of incorporating or adopting western methods of deliberative democracy within the existing cultural context of existing consensual deliberative practices. The chapter will conclude by examining how the emerging practice of constitutionally mandated public deliberation in some of Africa's subnational legislatures is increasingly gaining importance as a means of not only constructing a more homogenous national identity that has remained elusive for most countries but also simultaneously advancing efforts towards good governance and stronger democracies.

Chapter 3 will begin by examining the existing broader theoretical discourse on participatory and deliberative democracy. The chapter will discuss the history and theoretical foundations of these two schools of thought on democracy and clarify their key theoretical differences. The chapter will then proceed to examine arguments on how public deliberation can address the deficits of representative democracy and how emerging global practices of public deliberation in legislatures are aimed at achieving this. The chapter, drawing on emerging transformation to the definition of what arguably constitutes public deliberation, will define public deliberation as used in the thesis. The chapter will conclude by exploring existing literature to try to establish whether the benefits ascribed to public deliberation appear to help address the deficits of representative democracy or are a futile pursuit.

Chapter 4 will focus on the unique environment of the legislature and the challenges it poses for successfully institutionalising public deliberation. The majority of the literature on deliberative democracy is focused on processes antecedent to the law-making process or running parallel to it. The existing empirical evidence has sufficiently demonstrated the successful incorporation of public deliberation within the context of the executive, particularly when discussing the delivery of public services. The legislature poses a unique context with a particular set of challenges for institutionalising methods of public deliberation. The chapter will focus on drawing out the specific peculiarities of legislative environments that pose a challenge to institutionalisation of public deliberation and particularly how those peculiarities shape the behaviour of legislators and legislative staff.

Chapter 5 will discuss the methodology and analytical framework employed in the research. The choice to adopt an interpretivist epistemology and the resulting research design will be examined, together with justification for this orientation. The choice to specifically adopt Bevir and Rhodes's interpretivist analytical framework and its appropriateness for this research will also be further elaborated upon. The decision to additionally employ the analytical framework of performance to frame and recover narratives as used in Bevir and Rhodes's interpretive framework will also be discussed.

Chapter 6 and Chapter 7 are related chapters that will establish and discuss Kenya's governance traditions based on Bevir and Rhodes's definition of traditions. The central thesis in the two chapters will be to both establish and justify the existence of Kenya's governance traditions and show, through primary data, how they have had and continue to have an impact on the practices of actors in Kenya's legislative institutions and more specifically the subnational legislatures.

Chapters 8, 9 and 10 will draw on primary findings to discuss how the dilemma of public deliberation challenges the beliefs of actors associated with the governance traditions established in Chapters 6 and 7. Drawing on the analytical tool of performance, the chapters will draw out narratives that show how public deliberation is performed by actors and audiences in an effort to adapt as well as to counter the dilemmas over beliefs arising from legally mandated public deliberation. The chapters will focus on establishing the meanings that legislators, legislative staff and the public associate with the enactment of public deliberation and how they navigate, through their practices, the dilemmas over existing beliefs. Chapter 11 which is a discussion and conclusion chapter brings together the various threads of the thesis. The chapter, by examining

each research question, establishes the effects of public deliberation in legislative committees and the long-term meanings for institutional and decision legitimacy.

The next chapter will examine how the discussion on public deliberation is evolving in the African context and its potential for addressing some of the more challenging governance problems for countries on the continent.

2 THE EVOLVING NATURE AND ROLE OF PUBLIC DELIBERATION IN AFRICA

2.1 Introduction

Public deliberation, as used in this thesis and discussed in Chapter 1, is anchored in normative democratic deliberative theory. Deliberation has been criticised by some scholars as an elite form of democratic practice that is specific to western society (Ani, 2013; Min, 2014; Fishkin *et al.*, 2017). Chapter 2, however, lays out an argument on the evolution of public deliberation in Africa.

The chapter opens with a discussion on the aims of public deliberation with a specific focus on the African context. Consensus democracy and its relationship with deliberative democracy is discussed as a major theoretical argument. Some African scholars argue that consensus democracy is rooted in the governance traditions of pre-colonial African societies. The arguments in support of consensus democracy see it as a viable alternative to the challenges of aggregate democracy facing a majority of modern African states (Wiredu, 1995, 2001). The historical roots of consensus democracy in traditional African societies and its similarity to deliberative democracy, with both emphasising dialogue, has seen scholars argue that any governance system in Africa should privilege public deliberation if it is to succeed (Ani, 2013; Ajei, 2016; Matolino, 2019).

This chapter seeks to demonstrate the universality of deliberative practices and establish the importance of prioritising contextual considerations in designing the implementation of public deliberation, particularly in modern African states. The chapter specifically examines arguments on the strong association that has been

established between public deliberation and decentralised governance, particularly in African countries. The chapter evaluates the critical role that international development agencies (IDAs) have played in the transfer of public deliberation practices onto the African continent and the impact that transference has had on subnational governance where it has been most dominant. The chapter concludes by examining an emerging practice of mandatory public deliberation in some of Africa's subnational legislatures and highlighting the existing gap in the literature studying the effects of this emerging trend.

2.2 Practising deliberative democracy in Africa

The term 'deliberative democracy', in its first usage in reference to elected representatives, was 'applied to discussions among the select, the highly educated and especially virtuous' who were expected to refine interests for the common good (Fishkin *et al.*, 2017, p. 142). This definition has been adapted over the last two decades, particularly as more practical applications of deliberation have come about that focus on public deliberation among lay citizens in organised deliberative forums (Ani, 2013; Fishkin *et al.*, 2017). However, its elitist foundation has continued to attract criticisms due to questions about whether ordinary citizens with little education and limited cognitive capacities can successfully engage in complex policy deliberation (Mendelberg, 2002; Fishkin *et al.*, 2017). Questions about the capacity of ordinary citizens to deliberate may explain the dearth of empirical research on public deliberation in Africa. The developing status of countries in Africa, and associated higher population with low levels of literacy and educational attainment, is seen as problematic for deliberation, where complex policy proposal and written briefs need to be evaluated (Fishkin *et al.*, 2017). The contextual considerations that cut across the

implementation of public deliberation in Africa need to be critically examined to accurately understand how factors like educational attainment, inequality and language can affect public deliberation.

Ani (2013, 2018), one of the leading scholars on deliberative democracy in Africa, has argued that public deliberation is an important consideration for African nations. Public deliberation is argued by some deliberative democrats as enabling mutual understanding between participants, particularly in deeply divided societies, thereby contributing to consensus and community building (O'Flynn, 2012; Ugarriza and Caluwaerts, 2014; Bächtiger *et al.*, 2018b). Public deliberation in this sense can therefore in theory be usefully harnessed to address existing challenges of nationhood associated with colonial and post-colonial experiences on the continent.

Many African nations have since independence been plagued with divisions that have led to civil wars, ethnic strife, military rule, authoritarian governments and endemic corruption, among a host of other challenges that have hindered the establishment of a strong sense of nationhood. Public deliberation is therefore discussed in this chapter for its potential to bring about consensus in Africa's divided societies, contribute to community building, reduce ethnic conflict and increase faith in the basic tenets of democracy, as well as improve public perceptions of legitimacy of the political system (Mendelberg, 2002; O'Flynn, 2012). Ani (2013) argues that some scholars ascribe the benefits of public deliberation as solely aligned with western society. This western bias in defining who deliberation is intended for, primarily 'descendants of modern (Western) history' (Ani, 2013, p. 211), Ani contends, is contestable as traditional African societies have made claims to a culture of deliberation.

One of the most significant things to note in the study of public deliberation in Africa is the role that IDAs have played. IDAs have been at the forefront, through development initiatives, in transferring (some would argue imposing) deliberative practices from external contexts with little to no regard for local cultural and political contexts (Cooke and Kothari, 2001; Baiocchi and Ganuza, 2016; Ferreira and Allegretti, 2019). These initiatives have been particularly successful at the subnational level with regard to deliberation in processes of participatory budgeting (Baiocchi and Ganuza, 2016; Ferreira and Allegretti, 2019). A detailed exploration is undertaken later in this chapter of the way in which definitions and the implementation of public deliberation have been influenced by the actions of IDAs in the context of subnational governance in Africa and the implications it has had.

The emerging practice of public deliberation in Africa's subnational governments has been critical to the evolution of public deliberation in Africa. Decentralisation of power to subnational units of government is increasingly gaining popularity on the African continent. Accompanying the interest in decentralisation is its perceived conjoined relationship with increased opportunities for public deliberation in policymaking processes. Public deliberation has been closely associated with the discourse on subnational governance in Africa. Subnational governance has been viewed by both academics and IDAs as an important governance solution to the complexities faced by Africa's multi-ethnic societies. Subnational governments, in aiding greater democratisation, are viewed as providing more opportunities for public deliberation in government decision-making processes (Crook and Manor, 1998; Bardhan, 2002; Fessha and Kirkby, 2008).

One of the noteworthy public deliberation practices emerging out of Africa's subnational governments is constitutionally mandated public deliberation in some of Africa's subnational legislatures; Kenya and South Africa provide such examples (Fashagba and McMahon, 2015). Academic research on public deliberation in legislative institutions is an under-researched area (Leston-Bandeira, 2012, 2013; Kelso, Boswell and Ryan, 2016), and research on public deliberation in Africa's legislative institutions even more so (Azevedo-Harman, 2012). Research on public deliberation has primarily been focused on the experiences of the executive arm of government. It is therefore not surprising that, despite the increasing pace of decentralisation and legally mandated public deliberation in legislative institutions, specific academic research on public deliberation in Africa's subnational legislatures is almost non-existent. The emerging practice of public deliberation within subnational legislatures in Africa and how it can best be adapted for better governance on the continent is an area that urgently requires further research.

2.3 Public deliberation as a path towards nationhood and good governance

Deliberation has become a flourishing field of research (Elstub, 2010b; Bächtiger *Et Al.*, 2018b; Elstub And Escobar, 2019b), with scholars frequently citing the 'deliberative turn' that progressed research from a focus on participatory democracy to deliberative democracy (Dryzek, 2002, p. 1; Chambers, 2003; Floridia, 2018). The focus on deliberation has been driven by various arguments of its benefits. One of the most significant benefits attributed to public deliberation, and which is of particular interest to this thesis, is that public deliberation in comparison to representative democracy produces more considered political decisions. These decisions are argued to be

informed by relevant sources and evidence and reflect public will. Political decisions produced through public deliberation, scholars argue, will have greater legitimacy owing to public input, which will in turn increase public faith in democracy and its institutions (Mendelberg, 2002; Carpinì, Cook and Jacobs, 2004).

The ascribed benefits of public deliberation have been empirically assessed primarily in countries in the Global North. A major criticism of the literature on public deliberation, however, is the glaring 'western'-centric nature of the study of deliberation (Bächtiger *et al.*, 2018b). Min (2014) has argued that a significant proportion of research on the theory and subject of public deliberation has for many years been conducted in western cultural contexts and with participants who are atypical of the majority of the world's population. Min's criticism is particularly significant when comparing participants of deliberation in Africa, where a multiplicity of cultural, economic and historical factors may potentially have significant effects for the study of deliberation.

The research on deliberation in Africa has, however, been very limited, with the majority remaining at an abstract theoretical level (Ani, 2018). Research studying the application of practices of public deliberation such as deliberative polling have been carried out in Uganda (Fishkin *et al.*, 2017) and Ghana (Chirawurah *et al.*, 2019). The research on deliberative polling in Ghana and Uganda both show that, despite popular perceptions of a lack of capacity for public deliberation in Africa, local communities with low levels of education and high levels of poverty, relative to western societies, are still capable of taking part in public deliberation on issues affecting their interests.

There are two major areas where public deliberation has been proposed as potentially bearing significant benefit for Africa's heterogeneous societies. The first is the potential

to address the conflicts faced by its deeply divided societies, some of which are still emerging from conflict or have histories of deeply rooted conflict (Ani, 2018). The second is the potential to promote development and deepening democracy. The arguments in support of this are mainly premised on the potential of public deliberation to increase public engagement in governance and decision-making. The next subsection will delve further into the potential benefits of public deliberation in these two areas and how it can potentially create a path towards nationhood and good governance for these divided societies.

2.3.1 Accommodating diversity, promoting development and deepening democracy

Ani (2018) has argued that there needs to be greater empirical research on deliberation in Africa. He argues that, despite the limited empirical engagement on public deliberation in Africa, it can potentially play an important role in reconciling the experiences of colonialism and the divisive effects that aggregate politics has had in many of Africa's divided multi-ethnic societies. He further argues that aggregate politics in Africa's heterogeneous post-colonial societies has served to entrench ethnic cleavages, and public deliberation can beneficially be used as a supplement to aggregate politics to foster cohesion and increase issue-based politics (Ani, 2013, 2018).

Homogenous societies, it has been argued, are likely to derive greater benefit from deliberation as they would probably face less issue polarisation, leading to higher discourse quality, than societies with greater diversity, who are likely to face more issue polarisation (Bächtiger, Steiner, *et al.*, 2005; Ani, 2018). However, as Steiner (2012) argues, heterogeneous societies may at times derive greater benefit from deliberation

by listening better to each other in deliberation and engaging in higher-quality discourse owing to differences such as language that would necessitate more critical engagement and reduce cognitive bias. The significant attention paid to the Global North in the literature on deliberative democracy has, however, led to a neglect of the testing of many of deliberation's foundational concepts in the Global South and more specifically Africa's multi-ethnic societies.

The challenges of deliberation in deeply divided societies are particular and few scholars have tackled this (O'Flynn, 2012; Olabanji, 2014; O'Flynn and Caluwaerts, 2018); even less focus has been paid to deliberation within state institutions of multi-ethnic societies. Dryzek (2005, p. 229) makes a particular argument that in deeply divided societies deliberation works best when it takes place in what he terms a semidetached 'public sphere', which is removed from sovereign authority. However, the reality of politics is such that in deeply divided societies there is likely to be an even higher demand among people to engage with institutions of sovereign authority as that is where power and access to public goods are seen to reside. There is also significant evidence that deliberation exacerbates existing conflicts and thus in deeply divided societies, where political divisions are often rife, deliberation would likely surface differences and widen political divisions (Ugarriza and Caluwaerts, 2014; O'Flynn and Caluwaerts, 2018). Despite these negative predictions, some scholars argue that deliberation has the potential to foster interactions between heterogeneous groups who 'in the ordinary course of events, would not interact with each other in "reasonable" ways to understand each other's preferences' (Olabanji, 2014, p. 113).

Africa's heterogeneous post-colonial societies, which are the focus here, have specific peculiarities by nature of their pre- and post-colonial experiences. The colonial experience of many African nations saw the amalgamation of tribes that had existed independently forced into new national identities to suit colonial administrative requirements and the 'exigencies of external geopolitics' (Mamdani, 1992, p. 2231). Nations were cobbled together from tribes who had no historical associations owing to the fluid territorial boundaries existent at the time, the result of which has been constant ethnic and, in some cases, religious strife. These ethnic and religious conflicts have been exacerbated by poverty and inequality between and within the various ethnic groups in both the colonial and post-colonial eras (Ndegwa, 1997; Olabanji, 2014). The experience of post-colonial politics in Africa has often been explained using the seminal theoretical work of Peter Ekeh (1975) on the clash between two publics: the primordial and the civic. Scholars like Ani (2018), Akinola (2014) and Ndegwa (1997) have all used Ekeh's two publics thesis to explain the political experience of post-colonial African nations.

The 'primordial public' in Ekeh's thesis refers to the political arrangements that governed traditional African society and which continue to 'influence and determine the individual's public behaviour' (Ekeh, 1975, p. 92). This primordial public constituted 'family (nuclear and extended), village/community, tribe, language group, linguistic region' (Ani, 2018, p. 819). The civic public is used to refer to the 'state, civil service and the social and political life that these entail' (Ani, 2018, p. 819). The primordial and civic public divide in Africa has led to a unique circumstance 'where loyalty is based on ethnic ties and people tend to be more responsive to their primordial demands than to the needs of the civic public' (Olabanji, 2014, p. 116), where loyalty is seen as

secondary to the needs of one's primordial community. Olabanji additionally point outs that the challenge of multiple loci of political loyalty is not usually found in countries in the Global North, where for a majority of countries only one civic public exists.

Ekeh (2012) has noted that his thesis on the two publics in Africa can no longer simply be restricted as unique to Africa. The independence of other colonised nations in Asia such as Papua New Guinea and Yugoslavia in Eastern Europe have similarly demonstrated a manner of bifurcation of its public similar to what Ekeh described for Africa in 1975. The similar experience of other countries emerging from colonial rule validates Ekeh's (2012, p. 225) argument that Africa's experience with colonialism created this 'dual moral perspective in its conception and practice of politics', as evidenced by the experiences of other areas of the world.

The challenge faced by most African nations, and which public deliberation must overcome, is the loyalty to ethnic ties that often leads to canvassing of ethnic interests in politics, which challenges the project of building nationhood. The diversity of ethnic groups means that ethnic groups are constantly trying to differentiate themselves from one another, which has led to inter-ethnic conflict as various ethnic groups have competed for power and public resources. The concern for the primordial was in many ways significantly institutionalised by colonial administrators, who fanned inter-tribal warfare and distrust, particularly in the lead-up to independence, as it facilitated their 'divide and rule' policy and allowed them to better exercise indirect rule (Ekeh, 1975, p. 98). In the lead-up to independence and as part of the struggles for freedom, the indigenous African bourgeoisie encouraged Africans 'to sabotage colonial

governments through absenteeism, pilfering, strikes and tax evasion' (Ani, 2018, p. 820). These acts were seen by the African public as heroic and worthy of emulation.

The consequence of these actions on post-colonial African governments, however, was the undermining of their own rule as citizens did not conceive of civic citizenship as entailing both rights and duties. The public in civic life perceived rights as being far more important than duties, while the primordial public was seen as entailing both rights and duties in equal importance (Osaghae, 2006; Ani, 2018). On independence, the African bourgeoisie, who arose out of their association and cooperation with colonial administrators, therefore found themselves competing for public resources for their various primordial publics, in order to retain their positions of power, dignity and trust (Ekeh, 1975). The new African ruling class exploited the colonially constructed ethnic groups to claim power on behalf of the groups they represented. There was no effort towards genuine democratic governance that actively engaged the people and aimed to restore power to them in decision-making and create a common identity of nationhood. The continued significance of these arguments to the present day has been put forward by scholars in respect of countries like Nigeria (Osaghae, 2006; Olabanji, 2014; Ani, 2018) and Kenya (Ndegwa, 1997).

Post-colonial African nations in the present day continue to see the persistence of these practices due to the 'bifurcation of publics' and the effects it had on post-colonial nationhood (Osaghae, 2006, p. 237). Osaghae points out that African nations have continued to struggle with citizen patriotism, faithfulness to public service, payment of taxes and other obligations of citizens to state duties. He argues that the failure by the African bourgeois class to reconfigure the state at independence allowed its precepts

to continue only this time implemented by Africans themselves. Public deliberation may therefore hold several important benefits for African nations. The first is the possibility of encouraging dialogue, which is more urgently required in heterogeneous societies and from which they could begin to resolve conflict (O'Flynn, 2012; Steiner, 2012; Ani, 2018). The second is increasing the political efficacy of citizens to begin to restore the recognition of their duties to the civic sphere. Third, as political efficacy increases and there is reduced conflict between heterogeneous groups, the primordial competition for public resources and ethnic group acquisition would begin to be addressed. There would be greater transparency and accountability in resource distribution, which would address continued challenges of inequality among different ethnic groups.

Public deliberation, particularly its emphasis on dialogue, could perhaps provide a path through which the heterogeneous public in Africa's artificially constructed nations may begin to relate to one another under conditions of trust, reciprocity and mutual respect and begin the journey towards nationhood. Years of ethnic strife, inequality and underdevelopment necessitate public deliberation where citizens can make governance decisions in free and equal settings. Public deliberation of this kind 'can lead to the construction of national identities which ensure that civic nations with common feelings of loyalty are built' (Olabanji, 2014, p. 119). However, as Ani (2018) argues, without empirical research on the African experience it is impossible to know the conditions in which deliberation is most productive for its intended purpose.

2.4 Democracy by consensus or public deliberation

Some scholars have proposed democracy by consensus as a more viable form of addressing the deficits of **aggregative** democracy. Consensus democracy derives its

roots from the theory of deliberative democracy, with its emphasis on rational discourse in the public sphere as a model of governance that promotes the mutual interests of all in society (Muwowo, 2016). Consensus democracy is reviewed in this chapter as the other theoretical proposal that has received significant attention from African scholars who view it as an alternative to public deliberation and a solution to the challenges arising from western liberal democracy (Wiredu, 1995; Youngs, 2015; Ajei, 2016; Ani, 2018; Matolino, 2019). Consensual democracy is seen as drawing parallels with public deliberation through its emphasis on respect for the views of other participants and for argumentation between parties, which is important for ideal deliberation (Ani, 2013, 2018; Ajei, 2016). Despite arguments that consensual democracy is modelled along traditional African political traditions, there are concerns about its claims as well as practical application in modern African states (Ani, 2018; Matolino, 2019). However, at its core is the underlying question of how public deliberation, although ultimately targeted at achieving consensus, can help address the challenges facing aggregative politics in Africa. It is for that reason that its suitability in comparison to public deliberation is worthy of examination.

Kwasi Wiredu (1995, 2001), the leading African scholar on consensual democracy in Africa, has argued (although he issues a caveat of prudence in its absolutism) that there is 'considerable evidence that decisions by consensus was often the order of the day in African deliberations' (Wiredu, 1995, p. 53). Consensual democracy is defined in Wiredu's theory as 'a democratic system inspired by communalism in the African cultural context in which decisions are characteristically reached by consensus' (Ajei, 2016). Wiredu argues that consensual democracy is inspired by traditional African consensual democracy, which he contends was a successful traditional African

political system of decision-making. Wiredu cites examples of various African societies that successfully practised consensual democracy, such as the Ashanti in Ghana, the Logoli of western Kenya and the Nuer of southern Sudan. The Bemba of Zambia are also said to have practised a traditional governance system of democracy by consensus whereby 'elders settled the affairs of the people through rational discussions' (Muwowo, 2016, p. 1). Wiredu's arguments for the existence of African consensual democracy is supported by arguments of scholars like Stasavage (2020, p. 3) who argues that 'throughout human history many societies on multiple continents have independently developed political systems in which those who rule have been obliged to seek consent from those they govern'. Stasavage argues that democracy occurs 'naturally among humans' and although it cannot be described as inevitable, it has existed in various forms in many ancient societies including those found in pre-colonial Africa (Stasavage, 2020, p. 42).

Wiredu further supports his arguments for the existence of consensual democracy through statements made by some of Africa's independence presidents. Wiredu, citing work by other scholars, quotes President Kenneth Kaunda, Zambia's first president, as stating that 'in our original societies we operated by consensus. An issue was talked out in a solemn conclave until such a time as agreement could be achieved' (Wiredu, 1995, p. 53). President Julius Nyerere of Tanzania is also said to have argued that 'In African society the traditional method of conducting affairs is by free discussions...the elders sit under the big trees, and talk until they agree' (Wiredu, 1995, p. 53). Ani (2014b, p. 343), states that Wiredu (1996) bolsters his arguments for consensual democracy being the dominant form of decision-making in traditional African societies

by contending that that ‘there was no word for voting’ and ‘never an act of formal voting in traditional African society’.

Despite arguments that seem to portray traditional African consensual democracy as promoting free and equal participation of all citizens in the community, caution should be exercised in this portrayal. Often participation was ‘restricted to adult males only – more specifically to circumcised adult males’, who were viewed as having an ‘inalienable right to participate in all community affairs’ (Teffo, 2004, p. 446). Women were also restricted at times dependent on community beliefs. It should also be noted that, in most traditional African societies, the elders who engaged seeking consensus often played a dual role as authority of the tribe but also as religious leaders. The religious practices centred around the gods, spirits and ancestors, as in the case of the Kabaka in Uganda, and they invoked them to solve state problems such as wars and natural disasters (Matolino, 2019). Matolino (2019, p. 126) goes on to show the undue advantage this supposed spiritual power gave leaders involved in the traditional consensual system:

A leader will always have some kind of marginally greater influence than all other participants in a system. In the traditional consensual system, by virtue of the political leader being a religious leader, that gave him some marginal edge over other participants in council. While I maintain that people could see that a leader was proposing unreasonable arguments, they could also listen to their leader if he explicitly relied on his other source of power – communication from the ancestors. ...Leaders could possibly invoke powers other than political, whenever it became necessary for their own purposes

Wiredu does not respond to this concern about religious manipulation in traditional African consensus democracy. Matolino’s argument is, however, an important one when considered in light of how religion, in many modern African states, has been and continues to be politically manipulated by opportunistic politicians to assert claims to

power and influence the public (Deacon and Lynch, 2013; Abbink, 2014). The principal point, however, that Wiredu attempts to draw out despite the potential weaknesses of consensus democracy, is that decision-making political systems for African societies should be based on continued rational discourse that ultimately begets consensus, as was the case in traditional societies.

The emphasis in consensual democracy was on the ability of 'Africans to overcome individual differences in favour of shared or common interpretations of the best way to act or proceed' (Matolino, 2019, p. 7). Wiredu views consensual democracy as the best governance solution for heterogeneous African societies as it ensures the voices of the minority are accounted for, as any agreement reached is arrived at by 'all the members of the group through rational dialogue and mutual accommodation' (Wiredu, 2001, p. 238). Critics of Wiredu's arguments such as Ani (Ani, 2014b, 2018) and Eze (1997) have challenged that Wiredu's arguments are premised on social structures on common ancestry that form the foundation of effective consensual democracy. They argue that these structures no longer prevail in modern African societies in the way they did in the past. Eze (1997) further argues that Wiredu's portrayal of the Ashanti in Akan society from which he derives his main arguments in support of consensual democracy are 'misleading romanticism and an excessive rationalism in his normative accounts of pre-colonial Akan society' (Lauer, 2012, p. 41). Lauer (2012) and Ani (2014b, 2018), however, clarify that Wiredu, contrary to Eze's criticisms, acknowledges that traditional systems, especially their kinship basis, cannot be a model for fabricating contemporary consensus systems. Wiredu instead, it has been argued, seems to be proposing a consideration of 'aspects of traditional African philosophy living and fit for resurrection for contemporary life' (Ajei, 2016, p. 447).

Wiredu's work views traditional African non-party government as the solution to the ills currently facing African nations brought on by majoritarian democracy (Ajei, 2016). He argues for non-party alternatives 'where governments are formed not by parties but by the consensus of elected representatives' who would effectively be a coalition of citizens rather than parties (Ani, 2018). Scholars like Eze (1997) and Matolino (2019) have, however, criticised this proposal which as stated by Ani (2018, p. 822) citing Carlos Jacques (2011) is 'indistinguishable from a totalitarian one-party system'. Ani further states that 'African despots used the same communal and consensual non-party agreements' (Ani, 2018, p. 822). Critics of Wiredu have also challenged his ideas of unanimity of consensus as the ideal of consensual democracy (Ani, 2014a; Matolino, 2019). Ani and Eze have both challenged that Wiredu holds out absolute unanimity as the ideal form of consensus, while simultaneously providing for the possibility of a 'residue of difference'. They argue that this acknowledgement shows that Wiredu is inconsistent in his argument and is aware of the possibility of unanimity being unattainable (Matolino, 2019, p. 59). Matolino (2009), however, in defence of Wiredu, argues that Wiredu's position is not that consensus entails total agreement. Rather it presupposes a diversity of opinion that through rational dialogue can reach an acceptable outcome for all. He argues that Wiredu's position is that, 'where there is a will to consensus, dialogue can lead to a willing suspension of disagreement, making possible agreed actions without necessarily agreed notions' (Matolino, 2009, p. 35).

The full breadth of philosophical arguments in favour of and critiquing Wiredu's theory of consensual democracy are too extensive for this thesis. However, what it shows and what is indisputable is that there is ongoing critical discourse on the most effective

political systems for Africa's heterogeneous societies. These discussions also focus on the importance of establishing and bringing African people into decision-making processes that acknowledge their heterogeneous nature, pre- and post-colonial experiences and, most important, engage the public in decision-making. Consensual democracy rooted in dialogue seems to mirror ideals of public deliberation that emphasise dialogue, mutual consideration and respect as the basis upon which decisions and understandings about the public good are reached (Matolino, 2019). There is an argument to be had, as suggested by consensual democrats, that pre-colonial African societies practised dialogue and privileged the importance of consensus-seeking as 'the hallmark of traditional political decision-making' in community decisions (Teffo, 2004, p. 446; Youngs, 2015). Philosophical discourse about the best political system for Africa's heterogeneous societies acknowledge the central role that should be played by public deliberation and the understanding of others' positions prior to decision-making. Public deliberation has therefore been a part and continues to be an important consideration in organising the political system of Africa's heterogeneous societies. The failure of empirical research on deliberative democracy to pay more attention to its possibilities in this context is inexplicable and requires redress. Ani (2018, p. 826) has pointed out that public deliberation in Africa must be studied for its:

conditions that mitigate the effects of tribalism, inequality, and hierarchism on deliberation, comparative effects of varying social or cultural verbal norms on actual deliberation, and generally to keep finding techniques that improve deliberation.

The thesis contributes to this effort through empirical research that uses interpretive analysis to understand how participants give meaning to deliberation in subnational

legislatures within the context of an African country. The findings of this research will contribute to establishing the desirable conditions for deliberation and the effects of social and cultural norms on actual deliberation so as to improve it.

2.5 The role of development agencies in promoting public deliberation

International development agencies (IDAs) have arguably played the single most important role in spreading democratic innovations like public deliberation around the globe. A good example of this is the transference of participatory budgeting (PB) from its origin in Porto Alegre to various countries around the world (Baiocchi and Ganuza, 2016). Participatory budgeting for example has had a 'resilient African presence since the 90s', where it has been strongly promoted by multilateral institutions or bilateral cooperation agencies (Ferreira and Allegretti, 2019, p. 450). Baiocchi and Ganuza (2016) have explored at length how IDAs, in transferring the globally replicable version of PB around the globe, failed to ensure that the accompanying elements of necessary administrative reform that took place in Porto Alegre were emphasised. Instead, PB was distilled 'into a set of easily adaptable procedures' that were then documented into recommendations for local or regional implementation manuals (Baiocchi and Ganuza, 2016, p. 70).

The consequence of this is undifferentiated 'toolkits' whose uniformity intends to ignore social and cultural contexts and simply outline an implementation process. PB is structured as universal in both its procedures and promised results if implemented according to recommended processes. PB success in Brazil led to its adoption by local administrations in the region. Europe was the first continent beyond South America to adopt PB as European politicians saw its possibilities in helping them address ongoing

public dissatisfaction with politics and questions of political legitimacy. European politicians saw PB as a way to address disaffection by engaging the public and bring them closer to administrative processes of in decision-making. In the European case there was very little institutional reform in the adoption of PB (Baiocchi and Ganuza, 2016).

Development assistance projects by IDAs brought PB to Africa and Asia in the mid-2000s, with the World Bank (WB) at the fore of propelling PB initiatives in Africa. Prior to this, in the 1990s, the WB had taken a direct interest in 'instrumentalising participation to generate support for its own agendas' in countries in the Global South where it had experienced investment failures for its projects and thereby learned the importance of public deliberation in its work (Fischer, 2006). The WB, probably as a result of its experiments in the 1990s with participation, worked in collaboration with other non-governmental organisations (NGOs) and development agencies, particularly at the local level to introduce a large-scale effort towards institutionalising PB on the continent (Baiocchi and Ganuza, 2016). There have been questions raised about the transference of these types of democratic innovations, and particularly experiences of the Global North, to the Global South. Critics have, however, questioned views that began to see participation as an act of faith in development. These types of participation were seen by some as inherently good and not to be questioned (Cleaver, 2001). Gaventa (2006) points out that some critics, however, argued that participation was easily subject to capture by elites and later itself became the 'new tyranny' (Cooke and Kothari, 2001).

Ferreira and Allegretti (2019, p. 453) critically point out that when examining democratic innovations in Africa it is important to consider colonial and post-colonial legacies, which continue to have bearing on the 'method of organising relations between local and foreign actors'. They acknowledge that some of the democratic innovation programmes run by IDAs can potentially 'stimulate or impose' devices for deliberation that are moulded on external models based on a concept of 'stakeholders' who could accelerate processes of decision-making and simply interaction processes between donors and aid beneficiaries. The consequence of this has, however, been the 'elite capture' of incoming resources, which in turn has created or reinforced existing 'ethnic, religious and socio-economic cleavages within communities'.

Increasingly there is an acknowledgement among bureaucrats in development agencies that innovation tools such as deliberation should be flexible and responsive to local contexts. These local methods may appear 'anti-democratic or patriarchal according to the normative gaze of a team of outsiders' (Holland, Brocklesby and Abugre, 2004, p. 262). However, recognising the complexities of deliberation while moving away from preconceived ideas about methods and their appropriateness is a first step to ensuring that IDAs are not colonising the change and indirectly exacerbating the cleavages mentioned earlier. It is perhaps these western-centric perceptions of what deliberation should look like, according to a dominant set of methods, that has hindered research into public deliberation practices in Africa. There has been little to no effort to validate the alternative methods of deliberation on the continent as they do not represent the dominant set of methods. Recognising that deliberation in Africa would obviously be shaped by contextual considerations and local relationships, resulting in different institutional manifestations, would allow for the

critical study of deliberation as a situated practice without marginalising its experiences to the periphery (Carothers, 1999; Holland, Brocklesby and Abugre, 2004). It can be argued that, where IDAs and their consultants insist on binary ideas about what deliberation should be, processes that are deliberative get relegated in pursuit of appropriate methods that ultimately achieve nothing as they become ritualistic to meet donor demands (Hailey, 2001).

Large deliberation processes in Africa have largely been dependent on financial aid from IDAs and international consultants providing technical assistance for their implementation. Beyond their binary ideas about methods and their appropriateness, which have been discussed above, the significant role played by IDAs has meant that the resilience of these deliberation initiatives is weakened by a lack of real commitment on the part of local authorities and no 'internalisation of facilitation and organisational capacities in the community of local civil servants' (Ferreira and Allegretti, 2019, p. 454). The intensive resource requirements of deliberative practices, as well as the extensive use of international (mainly European) consultants, has meant that there was not only a failure to contextualise deliberative practices but also a lack of sustainability. IDAs in some instances worked with local advocacy NGOs as local allies expected to continue public deliberation initiatives once IDAs withdrew their funding. Often times many of these NGOs were unable to survive without continued monetary funding from IDAs owing to an absence of local resources to sustain them. In most cases, once donor funding for these public deliberation initiatives were over, local authorities ceased their reproduction, either because of a lack of adequate financial resources or because local politicians were adhering to them as a means to get funding

for policies and projects rather than any real commitment to their benefits and effectiveness (Carothers, 1999; Ferreira and Allegretti, 2019).

Countries such as Kenya, South Africa, Madagascar, Senegal and Cameroon, among others, that have made efforts to upscale their democratic innovations through 'frameworks to impose, induce, incentivise and/or support more commitment' to deliberation particularly for policies and projects at the local and regional level have failed to generate 'effective and honest' deliberation processes with no real large-scale diffusion of these practices (Ferreira and Allegretti, 2019, p. 465). Ferreira and Allegretti add that these public deliberation efforts are often seen as 'formal requirements to comply with, [rather] than an opportunity to conquer a new level of intensity of democracy'. The experiences that seem to have the staying power, they observe, are those that pre-existed legislation as a result of the political will of government.

Local NGOs and community-based organisations (CBOs) often step in to sustain public deliberation processes once IDAs and their consultants have left. They are usually trained by IDAs to carry on the work of deliberation and holding government accountable through training local citizens to increase their understanding of their rights as citizens. However, these NGOs and CBOs, as Hailey (2001) notes, can become tyrannical in nature. He cites examples of some South Asian NGOs, where leaders manipulated communities through highly personalised and paternalistic relationships enabled by their access to monetary resources, political contacts and new technologies. Local advocacy NGOs, as noted earlier, often continue to receive the majority of the funding for their operations from various IDAs, who view them as

non-partisan and therefore important allies in continuing to public deliberation efforts initiated by the IDAs. These NGOs are often staffed by knowledgeable 'young, up-and-coming, Western-oriented professionals' whom IDA bureaucrats view as English-speaking knowledgeable technocrats 'free of the murky ties and tensions of ethnicity, class, clan and political partisanship' and therefore easier to work with in a space rife with political tension (Carothers, 1999, p. 212).

A good number of these NGOs have had profound positive impacts in encouraging public deliberation efforts and other democratic advancements; however, there are also many opportunists interested in the money given by IDAs and opportunities to build their own political networks. NGOs, which have often been formed to foster public deliberation, become 'elite associations formed by small circles of people possessing expert knowledge' (Carothers, 1999, p. 218). Additionally, the advocacy work of these NGOs becomes less about mobilising public deliberation than about providing 'expert-based persuasion directed at government officials' (Carothers, 1999, p. 218). Often, the leaders of these organisations harbour partisan interests and individual political ambitions, and some become gatekeepers to deliberative processes. NGOs and CBOs also run the risk of not being inclusive as they begin to rely on a small group of self-selecting participants, who become more dominant, articulate and politically adept. These individuals can also begin to reinforce the gatekeeping of political processes in their communities, contrary to the initial intentions of broadening public deliberation and increasing public political efficacy (Hailey, 2001).

2.6 Public deliberation in subnational governance in Africa

The African Charter for Popular Participation in Development and Transformation (1990) (hereinafter the Arusha Charter) was adopted by the leaders of African nations in recognition of the importance of public deliberation in decision-making. While the charter is not considered binding on African nations, it is a recognition by African states that they in agree in principle to the charter's declarations (Kufuor, 2000). The charter is important as it recognised that meaningful public deliberation has continued to be elusive in post-colonial African nations. Kufuor (2000) notes that public deliberation at independence was relegated in importance as countries argued that greater focus needed to be paid to socio-economic development and that they could not afford the luxury of western-style democratic politics with its emphasis on political and civil rights. The result of this was the rise in authoritarianism in Africa, with rubber-stamp legislative institutions from the 1960s to the start of the 1980s (Kufuor, 2000; Cheeseman, 2015).

Claims of the incompatibility of western-style liberal-democratic models with the context of African societies persist to date (Youngs, 2015). Additionally, public deliberation was suppressed as African leaders argued that the new independent African states were still engaged in forging nationhood and that the dissension that could arise from public deliberation in decision-making could threaten the power of central government before national unity was achieved. Finally, it was argued that public deliberation was irrelevant because of the lack of political sophistication of most Africans, whom colonial and post-colonial governments labelled as 'ignorant, irrational and conservative' and who would be resistant to the political change that the new independent countries would be undertaking and would derail plans of modernisation (Kufuor, 2000, p. 12).

The surprising thing to note is that all the reasons given to suppress public deliberation in the new independent African nations are actually argued to be the benefits of public deliberation. Public deliberation is perceived to enhance ideas of nationhood, not destroy it (Ani, 2013, 2018); public deliberation could lead to conflict but is often argued to increase the legitimacy of political decisions (O'Flynn, 2012). Finally, public deliberation is seen as increasing political efficacy and compromise of individuals. Citizens, it is argued, would make decisions that were more considered and informed by evidence and reasons, and public deliberation would therefore be the suitable way of addressing the concerns of ignorance, irrationality and conservatism (Mendelberg, 2002).

The suppression of public deliberation and increase in authoritarianism in the other new independent African nations began to collapse in the 1980s. The 'third wave' of democracy that rolled over the continent challenged the 'single-party autocracies and big-man dictatorships' that had become characteristic of Africa's independence governments (Cheeseman, 2015). Corruption, arbitrary government, the end of the Cold War and the economic pressures resulting from global financial shocks all contributed to an uprising in pro-democracy movements (Mamdani, 1992; Cheeseman, 2015). Despite the different trajectories taken by various countries in this third wave of democracy, there was a concerted move by African nations towards multiparty democracy as the younger generation who had less memory of the struggles for independence demanded redress for the escalating problems of unemployment, repression and economic stagnation.

One of the most significant changes that was brought on by multiparty democracy and the demand for greater public deliberation in government decision-making was the transfer of power from central government to new or existing subnational political units. The Arusha Charter, which was affirmed by African leaders in 1990, was a reflection of the movement of this third wave of democracy, which put citizens at the fore of decision-making. The charter stated:

Popular participation is, in essence, the empowerment of the people to effectively involve themselves in creating the structures and in designing policies and programmes that serve the interests of all as well as to effectively contribute to the development process and share equitably in its benefits. Therefore, there must be an opening up of political process to accommodate freedom of opinions, tolerate differences, accept consensus on issues as well as ensure the effective participation of the people and their organisations and associations. ...This requires that the political system evolve to allow for democracy and full participation by all sections of our societies ('The African Charter For Popular Participation In Development And Transformation', 1990, P. 19).

The acknowledgement of the important role of public deliberation and evolution of the state to accommodate this new role of the public was one of the driving bases of the reforms of the pro-democracy movement. The new democratically elected governments that had been elected on platforms of reform and restoration of power to the people, were unable to resist the demands to 'extend democratic institutions to the subnational level', arguing that these reforms were aimed at 'enhancing democracy, development and accommodating diversity' (Fessha and Kirkby, 2008, p. 248).

The lofty goals of decentralisation that were advocated in most African countries have, however, not been realised, with central governments holding back from creating 'truly autonomous subnational government' (Fessha and Kirkby, 2008, p. 248). The majority of the reforms have seen central governments create councils with 'delineated legislative and executive powers' but have conversely ignored or undermined the need

for administrative and financial control for true autonomy. Subnational autonomy through the machinations of central government has instead reinforced central authority and thereby failed to achieve its goals of enhancing democracy, increasing development and managing diversity (Fessha and Kirkby, 2008).

Ercan and Hendriks (2013), however, would argue that this outcome in the attempts towards subnational autonomy in African states is not surprising. The first step is the recognition that subnational government autonomy can take the form of either decentralisation or federalism. Decentralisation, which 'involves restructuring authority to create a system of co-responsibility' between governance institutions at national and subnational levels, can take three forms: deconcentration, delegation and devolution. The weakest of the three forms is deconcentration and devolution is the most radical form, which sees the transfers of political, administrative and fiscal responsibilities to autonomous subnational units that 'elect their own representatives and raise their own limited revenues' (Fessha and Kirkby, 2008, p. 249).

Devolution is often justified as enhancing the responsiveness of government, accountability, transparency and opportunities for public deliberation. Devolution is therefore often associated with democratisation as it is argued that it brings government closer to the people and widens public deliberation in governance (Bardhan, 2006; Fessha and Kirkby, 2008; Ercan and Hendriks, 2013). Devolution, Ercan and Hendriks (2013) argue, can only achieve its goal of increasing opportunities for public deliberation where democratic renewal at the local level is the goal. Devolution, they say, can only achieve increased public deliberation where there are profound changes in the architecture of governance that create 'new venues for

citizens to engage and be empowered'. Without clear reforms that enable citizens to 'organise themselves into publics capable of understanding, responding to, and directing their state', the democratic potential of public deliberation is likely to not be attained.

The argument for subnational governments in Africa has been that the increased levels of responsiveness and accountability would make subnational leaders more accountable as their re-election would be directly tied to the welfare of their community. However, simply transferring power to these subnational units does not necessarily produce these benefits of accountability and opportunities for public deliberation. Public deliberation is often hampered by factors such as a 'lack of community capacity and pervasive mistrust' (Fessha and Kirkby, 2008, p. 250). Subnational governments have been championed as facilitating development and through public deliberation and close links to democratic issues, promoting better allocative efficiency. The argument here was that local leaders, as compared to their national counterparts, would be better placed to match public goods to local needs and more easily held accountable where they failed to do so (Fessha and Kirkby, 2008).

Bardhan (2002), however, warns of the dangers of subnational elites capturing subnational institutions, thereby disrupting democratic accountability and the allocation of public goods in accordance with community preferences. The specific knowledge that subnational elites have of local needs, desires and contexts makes it easier for them to divert public goods towards a small group in the community who likely already have access to resources. Subnational elites are also more advantageously placed to collude with other local authorities to protect their rent-seeking positions and establish

patron–client networks, and have less risk of being caught owing to their intricate knowledge and networks within the community. Bardhan does argue, however, that where subnational units are ‘equally or less vulnerable to capture than the central government, decentralisation is then likely to improve both efficiency and equity’ (Fessha and Kirkby, 2008, p. 251).

Public deliberation in subnational governments in Africa has also been seen as a way of addressing the challenges and competitions of ethnic divisions. Subnational autonomy is seen as the solution to eliminating ethnic conflict by minorities who are able to exercise autonomy or self-determination on matters crucial to their identity and continued existence without concerns of veto by the majority group (Kymlicka, 2004). Through public deliberation and without the enhanced competition for public goods at the national level, it can be argued that subnational governments would manage diversity and forge unity in the heterogeneous societies that are the majority of African states.

However, as some critics have argued, subnational government and its association with increased democratisation is not a silver bullet to solve the complexities of governance in Africa. The failure by central government to transfer adequate powers to subnational governments to facilitate adequate governance reform and encourage greater democratisation has led to an increasing continental trend to adopt constitutions establishing different forms of decentralised government. These constitutions emphasise and, in some cases, such as Kenya, mandate public deliberation in government decision-making processes. South Africa was the first to set this trend with the adoption of its 1996 constitution and, more recently, Kenya,

Tunisia and Zimbabwe have adopted similar provisions in their constitutions (Fuo, 2015). The next section briefly examines how these constitutional provisions for mandatory public deliberation have affected subnational legislatures in Africa.

2.7 Emerging practice of public deliberation in subnational legislatures in Africa

Africa's subnational legislatures have, as part of the trend to constitutionally mandate public deliberation in government processes, become peculiar arenas for public deliberation. It is important to state at the outset that, when reference is made to subnational legislatures in Africa in this thesis, reference is made to regional assemblies that are conceptually and institutionally similar to national parliaments and not local councils. Subnational legislatures are constitutionally provided with the same safeguards for their power and authority as national assemblies, with the only difference being that they exercise their power and authority at the subnational level. City councils, as Downs (2014, p. 610) points out, are usually distinguishable from subnational legislatures in terms of 'scale, scope, and (sometimes) political allure'. These subnational legislatures can be assessed according to the standard functional roles (representation, deliberation, law-making, oversight), as well as those 'more specifically related to their locations in systems of multilevel governance' (protecting their autonomy from central government intrusions and congruence of party alignment with those at the national level). Therefore, it is not only possible but rational to study subnational legislatures with the same conceptual ideas used in the study of national assemblies, as will be the case in this thesis.

Subnational legislatures are increasingly becoming an important focus of political research, whereas previous research on legislatures focused primarily on national

assemblies. These institutions can provide crucial insights into 'understanding governance and political behaviour across a range of democratic system types', while, additionally, providing a 'largely unexplored arena of empirical cases with which to develop and test theory' (Downs, 2014, p. 609). Surprisingly, however, scholarship has not been as quick to develop in studying these institutions. Similar to the trends in legislative studies more generally, scholarship on subnational legislatures in the United States federal system is perhaps the most developed and is anchored in rational choice institutionalism. The study of Europe's subnational legislatures makes use of quantitative analysis but, as in legislative studies, the majority of the research employs the thick description approach more common in historical institutionalism. There is a significantly smaller literature on subnational legislatures outside North America and Europe (Downs, 2014). It is not surprising that, as is the case in the broader arena of legislative studies, there is very little empirical research on Africa's subnational legislatures despite the establishment of subnational legislatures in countries such as Kenya, Nigeria and South Africa and with the likelihood of increase in the future as more countries adopt decentralised forms of governance that devolve true political power to subnational units (Fashagba and McMahon, 2015).

Public deliberation in Africa's subnational legislatures has been guided by constitutional provisions. It can be argued that these legislative institutions, in the context of African countries, have been primarily established to 'bring democratic governance and service delivery to the people at the grassroots level', which is expected to increase accountability (Fashagba and McMahon, 2015, p. 227) through greater public deliberation in their decision-making processes. However, constitutional provisions for public deliberation are not a guarantee that public deliberation will

produce greater accountability and transparency in Africa's subnational legislatures. The power accorded to subnational legislatures, the influence of subnational leadership and national party politics on the careers of subnational legislators have significant influence on the career progression and therefore behaviour of legislators in Africa's subnational legislatures. The independence of the assembly from the subnational executive also appears to have significant effects on the independence of the legislature as is the case in Ethiopia. The independence of the legislature and its effectiveness in carrying out its functions is directly tied to its ability to control its own budget, as was argued by Joel Barkan (2009), one of the most eminent scholars on African legislatures. The operational autonomy of Africa's subnational legislatures has also had a direct bearing on their efficiency and performance. Subnational executives and central governments in Nigeria, Kenya and South Africa have all used either 'informal and/or a combination of formal and informal instruments' to undermine the authority of subnational legislatures (Fashagba and McMahon, 2015, p. 233).

Elaborate provisions on public deliberation in the constitution that mandate public deliberation in subnational legislatures fail to consider that deliberation takes place within this situated context. The invisible political powers and relationships present in subnational governments have a moderating effect on genuine public deliberation, sometimes reducing it to simply a technical exercise undertaken to claim compliance with the requirements of the constitution and other legislative instruments. **Successful public deliberation is a composite of many things that simple legislative instruments and procedures are not always able to address and is better served by genuine political will and commitment to the foundational principles of public deliberation.**

2.8 Conclusion

Chapter 2 provides a discussion on the framing of the discourse on public deliberation in the context of African countries. The chapter details the focus of public deliberation as a tool in the construction of nationhood and attaining good governance as some of the main benefits that have been advocated in its institutionalisation. Public deliberation has been closely associated with the discourse on subnational governance in Africa. Subnational governance is viewed by both academics and IDAs as an important governance solution to the complexities faced by Africa's deeply divided multi-ethnic societies. Public deliberation at the subnational level in many African countries has received special emphasis. The argument centres on the importance of subnational governments in aiding greater democratisation including providing more opportunities for public deliberation in government decision-making processes.

The chapter pays specific attention to an emerging practice of constitutionally mandated public deliberation in some of Africa's subnational legislatures. Constitutionally mandated public deliberation in subnational legislatures is seen as an important means of guaranteeing public involvement in government decision-making processes. Public deliberation research has in the past primarily focused on experiences within the executive arm of subnational governments. The emerging practice of mandatory public deliberation within subnational legislative institutions has received very little academic research attention despite its increasing importance in subnational governance in Africa. Public deliberation in subnational legislatures is seen as integral for the construction of nationhood and attainment of good governance. The chapter sets the background for the next chapter in the literature review, which

broadens out to examine arguments on how public deliberation can address the deficits of representative democracy and global practices of public deliberation in legislatures aimed at achieving this.

3 PUBLIC DELIBERATION AS A MEANS TO ADDRESS THE DEFICITS OF REPRESENTATIVE DEMOCRACY

3.1 Introduction

Representative democracy has long been seen as the bastion of democracy owing to its foundational tenet in the idea of ‘rule by the people’ (Sartori, 1987, p. 21; Dahl, 1989, p. 5). Chapter 3 builds on from discussions in Chapter 2 by broadening out to examine the discourse on why some scholars view public deliberation as a supplement to representative democracy. Public deliberation has been argued by many academics as a viable solution to the crisis facing representative democracy. This chapter examines existing research on normative participatory and deliberative democratic theory on which public deliberation is anchored. The aim of this analysis is to draw out an analysis for why constitutional drafters and subnational legislative bodies in Africa are increasingly adopting public deliberation as an obligatory part of law-making processes that have traditionally excluded the public. What benefit could they be hoping to draw for legislative institutions through mandatory forms of public deliberation?

The chapter commences by looking briefly at the limitations of representative democracy, particularly in enabling the public to engage with government decision-making processes. The limitations of representative democracy have led to a turn towards more deliberative forms of democracy. The chapter proceeds to discuss the deliberative turn in democratic theory, which has led to the increasing primacy of deliberative democratic theory over participatory democratic theory. The chapter then proceeds to examine ‘public deliberation’ which is coined in the thesis to refer to the pragmatic delivery of deliberation and its alignment with discourses on deliberative

democratic theory that privilege realistic implementation of deliberation over strict forms that favour proceduralism. The chapter engages in a brief discussion on current research on practices of public deliberation in various legislative institutions. The chapter links back to Chapter 2 by concluding with a discussion on the existing gap in studying the effects of public deliberation not only in legislatures but specifically in subnational legislatures. Chapter 3 sets up the discussion in Chapter 4, which, having established the importance of public deliberation in legislative institutions, considers the peculiarities of legislative rules of practice and procedure and the constraining nature they can have on public deliberation.

3.2 Limitations of representative democracy

The most recent literature on public deliberation in legislative institutions has focused on examining the association of educational public deliberation activities of legislatures with increased public trust in these institutions (Kelso, 2007; Leston-Bandeira, 2012; Leston-Bandeira, 2015). There is, however, still a significant gap of empirical evidence on this subject and particularly on the effects of public deliberation in legislative contexts. The literature reveals indeed that very little academic study has focused on the effects of public deliberation methods in parliamentary processes (Leston-Bandeira, 2012), and specifically within legislative committees (Kelso, Boswell and Ryan, 2016).

The gap in knowledge is one that requires urgent redress as legislative institutions globally battle with budget cuts that hinder wider deliberation, while simultaneously legislating on significantly more complex policy issues that require better and more coordinated deliberation between the public and legislators. Identified challenges and

the consequent need for intensive deliberation will see legislatures increasingly needing to justify costs for expensive but meaningful, sustainable and quality public participation initiatives (Fox, 2009, 2011, p. 6), which will need to be supported by empirical evidence of the benefits of such initiatives.

A growing body of literature, however, continues to question the value of representative democracy, arguing that it does not sufficiently enable citizens to voice and advocate their concerns, engage government, and ensure the effective utilisation of resources (Rosenthal, 1998, p. 67; Fung and Wright, 2003; Michels and Graaf, 2010; Wampler, 2012). Scholars posit that representative democracy is today suffering from a democratic deficit and public dissatisfaction with the institution of the legislature, which embodies the essence of representative democracy, is overwhelming. The democratic deficit of representative democracy has been cited as one of the reasons behind increasing voter apathy, declining public trust, corruption, the rise of populism etc. (Caddy and Organisation for Economic Co-operation and Development, 2005, p. 20; Dalton, 2017; Foa *et al.*, 2020). The public, it appears, increasingly see representative democracy as remote and removed from them and their challenges, and instead see it as a system that exists to serve the interests of specific interest groups (Gaventa, 2006, p. 9).

Representative democracy is seen by some scholars as insufficient in enabling true deliberation by the public as it can never fully represent the will of the people who cede their decision-making power to their elected representatives (Urbinati, 2006, p. 7). Some scholars argue that the survival of representative democracy may eventually rest on the ability of legislative institutions to demonstrate to the public that they are

open to deliberation that allows for actual influence over policy determinations (Power, 2012). However, despite the numerous accolades and benefits attributed to public deliberation, some scholars have questioned whether these benefits can be empirically proved (Delli Carpini, Huddy and Shapiro, 2002; Abelson *et al.*, 2003) and whether public deliberation does have any real benefit in addressing the challenges facing legislative institutions (Burton, 2009a).

3.3 Participatory democracy

The prevailing theory of participatory democracy can be defined as envisioning ‘the maximum participation of citizens in their self-governance, especially in sectors of society beyond those that are traditionally understood to be political (for example, the household and workplace)’ (Hilmer, 2010, p. 43). Two seminal works on participatory democracy are Carol Pateman (1970a) and Sherry Arnstein (1969). In her writings, Arnstein (1969) challenged the predominant view of public participation at that time as merely tokenistic. She argued that there existed various levels of participation, viewing participation as existing on a continuum. The lowest levels she viewed as non-participation with no power for citizens, and the highest levels as representing citizen power by awarding them with actual delegated control in decision-making processes. Pateman’s (1970a) book on participation focused on broader self-governance and freedom of the public to engage in decision-making outside of the traditionally recognised spheres of government and elitist institutions. Pateman argued that, where citizens were allowed to engage in decision-making, referencing industrial workers taking part in decision-making at their place of work, an improvement would be occasioned in their sense of political efficacy, which would ultimately translate into better engagement with their country’s governance. The emerging central tenet that

anchored the theory of participatory democratic theory was that people should have 'substantial and equal opportunities to participate directly in decisions that affect them' (Fung, 2004, p. 4) and that ultimately this would translate into a more engaged and empowered citizenry in the economic, political and social sphere. Participatory democracy is therefore focused on deep structural reform (Pateman, 2012) for the 'direct participation of citizens in the regulation of key institutions of society, including spheres of work and the community' (Held, cited in Elstub, 2018, p. 189).

The participatory turn that is considered to have begun in the 1960s led to the emergence of participatory discourses and techniques central to decision-making processes in various sectors of society and policy domains around the world. The emerging participatory mechanisms, it can be argued, began to move away from the more radical structural reform advocated by Pateman (Elstub, 2018; O'Flynn, 2019), and were increasingly 'conceived and designed as a way for citizens' views and input to have some influence on otherwise political and bureaucratic decision-making processes' (Bherer, Dufour and Montambeault, 2016, p. 225). Pateman (1970b) had argued for 'full' participation, where equal decision-making power is given to citizens, thereby empowering them to make 'political decisions directly for themselves in their everyday lives as well as in the broader political system' (O'Flynn, 2019, p. 40), as compared to 'partial' participation, which only achieves influence on decisions (Elstub, 2018, p. 189).

One of the best-known practices that emerged from the discourses on the importance of participatory democracy is participatory budgeting (often also claimed by deliberative democrats), which has travelled around the world in varied forms, often

championed by IDAs (Pateman, 2012; Baiocchi and Ganuza, 2016; Polletta, 2016). In an analysis of cases of participatory budgeting (PB) in Córdoba (Spain) and Chicago (US), Bherer et al. (2016, p. 228) found that, 'although local bureaucracies may strongly resist opening up the decision-making process, the contention between civil servants and citizens is productive and leads to certain small adjustments'. They further argue that, even though overall power structure is not transformed by PB, bureaucrats were forced to 'continuously redefine the legitimacy of their actions' in relation to PB decisions. The gradual introduction of these small changes may not shift the traditional pattern of interactions between bureaucrats and the public but they do 'introduce small changes and progressively institutionalise new practices that may lead in the future to a new, more democratic way of working' (Bherer, Dufour and Montambeault, 2016, p. 228; Fernández-Martínez, García-Espín and Jiménez-Sánchez, 2019).

Bherer et al. (2016) identify other examples of participatory practices such as citizen councils, public consultations, neighbourhood councils and participatory planning, among others. The emergence and expansion of these forms of participatory processes have been argued to produce varied impacts, key among them being addressing growing public sentiments of discontent and detachment in government (Nabatchi *et al.*, 2012; Baiocchi and Ganuza, 2016; Fernández-Martínez, García-Espín and Jiménez-Sánchez, 2019). Other benefits ascribed to greater participatory practices in governance include the creation of a sense of community, inclusion of previously excluded social groups, increased civility and compromise in addressing complex policy problems, greater political efficacy, increased accountability of elected officials, and developing spaces for new leadership to emerge (Michels and Graaf,

2010; Nabatchi and Leighninger, 2015; Elstub, 2018; Fernández-Martínez, García-Espín and Jiménez-Sánchez, 2019), among a myriad other benefits. Fernández-Martínez et al. (2019), drawing on the work of a range of scholars, additionally highlight some negative effects of participatory practices. The negative effects they highlight include resistance on the part of diverse actors such as politicians and public officials, the continuation of established power relations, the exclusion of actors based on their politics and the withdrawal of discontented individuals or groups. Polletta (2016, p. 234) suggests that grand spectacles of participatory practices may make it 'much easier for back room decision-making to carry on as usual, unscrutinised and unchallenged'.

The negative effects of participatory practices have, however, received considerably less attention in the literature. Fernández-Martínez et al. (2019) argue that it is important to acknowledge the emergence of what they term 'participatory frustration'.

Participatory frustration is defined as:

a range of feelings that develop when the participatory experience is perceived by participants as falling short of the initial expectations of political influence. These feelings may be manifested in temporary emotional reactions such as 'disillusionment, grief, or anger as well as in more permanent political sentiments...such as distrust toward authorities or negative external political efficacy. (Fernández-Martínez, García-Espín and Jiménez-Sánchez, 2019, p. 720)

Carol Pateman would in all likelihood argue that the emergence of participatory frustration, particularly in the context of countries in the Global North, is the result of a political culture and will that favour minimalist realistic conceptions of democracy. The result is participation that fails to truly 'disturb existing institutions' in the pursuit of genuine democratisation (Pateman, 2012, p. 15). Fernandez-Martinez et al. (2019, p. 721) propose that participatory frustration 'may stem from gaps between expectations

of influence prior to participation and the experience of participation in [participatory practices] as well as the outputs produced'. Determining the direct negative and positive impacts of participatory practices is challenging. Existing empirical research on the impacts of participatory practices is diverse and in most instances inconclusive (Abelson *et al.*, 2003; Abelson and Gauvin, 2006). Questions such as the

conditions in which policy-makers take seriously the recommendations that citizens arrive at and the organisational forms that promote genuinely diverse participation...how the people who organise and participate in democratic initiatives understand the purposes of participation. How do they understand the appropriate methods and norms of participation? And where do they locate the appropriate boundaries between participation and something else, whether elite decision-making, managerial prerogatives, or the operation of the market? (Polletta, 2016, pp. 234–235)

The complexities of these questions when considered through the already complex political and cultural identities of countries in Africa, where participatory democracy is on the rise, highlights the need for more empirical research that takes into account how these multiple realities intersect. Many countries in Africa, faced with a financial crisis that accompanied the third wave of democracy, beginning in the 1980s and continuing to gain momentum in the 1990s, found themselves forced to adopt participatory democracy 'in order to keep open financial pipelines to donor agencies and the West' (Decalo, 1994, p. 988). To counter mass public demonstrations demanding greater participatory democracy, African leaders adopted, as a first step towards participatory democracy, the dismantling of authoritarian state institutions and the establishment of liberal democracy. Participatory practices, albeit with various levels of practice in different countries, soon followed or became more strongly entrenched. Practices such as the formation of opposition parties, holding regular multiparty elections, the recognition and registration of human rights advocacy organisations, the registration of trade unions and institutionalising requirements for community representation in

school boards, local development projects and other local government activities were increasingly permitted (see various examples and discussions in Sklar, 1983; Decalo, 1994; Adegboye, 2013; Kanyinga, 2014; Piper and von Lieres, 2016). Questions, however, abound as to whether this move towards participatory democracy produced any meaningful change with lasting import. In many instances, political participation did not resolve any of Africa's critical political problems or lead to the evolution of a strong democratic ethos. However, there did seem to be an unrelenting shift towards democracy and greater political accountability that saw some authoritarian civilian and military autocrats ousted. There was also a move towards enhanced civic and human rights in several countries (Decalo, 1994).

The discourse on participatory democracy is, however, beginning in present-day Africa to make a turn towards a more deliberative form of democracy where thick discussion on decision-making is privileged over simply broadening arenas for participation. The shift towards demands for more deliberative democracy is perhaps not surprising when considered against the backdrop of earlier discussions on consensus democracy in pre-colonial African societies. Agitation for participatory democracy may have provided the linchpin required to move Africa's post-colonial societies away from the autocratic trap many of them found themselves in in the immediate post-independence years. The increased arenas for participation that accompanied the third wave of democratisation appear to now be reaching their full potential. Much like in the Global North, deliberative democracy seems to be emerging from participatory democracy, with more demands for public reasoning to become central to the decision-making process. The emerging examples such as mandatory public deliberation in subnational legislatures in Kenya and South Africa are examples of this emerging shift towards

more deliberative democracy. While many of these nations use the terminology of public participation, as discussed in Chapter 1, the intention and focus are akin to deliberation, with its focus on thicker discourse.

However, in the literature, ‘participatory and deliberative democracy are often confused, equated or at the very least treated as strongly related’ (Elstub, 2018, p. 187). The next section will, therefore, engage with understanding what deliberative democracy is and how it differs from participatory democracy.

3.4 Deliberative democracy

Deliberative democracy, it has been argued, developed from participatory democracy (Pateman, 2012; Elstub, 2018) or what is more often termed the ‘deliberative turn’ discussed in Section 2.2. Unlike participatory democratic theory, which focuses on the sectors or place of participation and emphasises a broadening of areas of participation for the attainment of greater political efficacy, deliberative democratic theory focuses heavily on the mode of participation, that is, how citizens deliberate (Hilmer, 2010, p. 52). Deliberative democracy has numerous definitions. Elster (1998, p. 8) provides an excellent analysis that captures the core of deliberative democracy that is present across the various definitions as follows:

that the notion includes collective decision-making with the participation of all who will be affected by the decision or their representatives: this is the democratic part. Also, all agree that it includes decision-making by means of arguments offered by and to participants who are committed to the values of rationality and impartiality: this is the deliberative part.

The relationship between participatory and deliberative democracy is a frequently contested one, with some scholars conflating the two while others argue that deliberative democracy has subsumed participatory democracy (Pateman, 2012).

Some scholars have argued that methodologically they are indistinguishable, while practically they suffer similar flaws, 'including the failure to achieve consequential input in central decision-making processes' (Elstub, 2018, p. 187). Some see deliberative democracy as a complete departure from participatory democracy, while others view it as a continuation of participatory democracy. Some scholars see deliberative democracy as the 'saviour of the core of participatory democracy', while others see them as 'mutually supportive; incompatible; or that the relationship is agnostic' (see Elstub, 2018, p. 187 for comprehensive references). Despite these diverse positions, this thesis adopts the position that deliberative democracy is indeed a continuation of participatory democracy and as such they are mutually supportive. Elstub (2018, p. 191) argues for a 'participatory deliberative democracy, where citizens deliberate to make collective decisions'. He further argues that this

approach to democracy is conceptually more coherent, and therefore desirable, than either aggregative participatory democracy or liberal deliberative democracy, since participation and deliberation can be mutually supportive. Firstly, participation makes possible the assent of all and the inclusion of all reasons required by deliberative democrats. Secondly, deliberation makes participatory democracy less vague, enhances educative effects, and reduces inequalities by promoting public reasoning.

The emergence of this middle ground between participatory and deliberative democracy may be informed by the gradual transition of deliberative democracy from 'a small, rarefied subfield of political theory' to 'supplementation by a more pragmatic impulse' as more empirical research has emerged that focuses on issues of implementation, institutional design and evaluation (Ryfe, 2005, p. 49). The empirical research has allowed greater scrutiny on what the actual benefits of deliberation are beyond the theoretical arguments. In order to understand the benefits ascribed to deliberative democracy, it should first be understood that, although various scholars

are in concurrence about the core of deliberative democracy, they diverge widely as regards its intentions of what counts as deliberation. Elster (1998, p. 8) provides a comprehensive discussion on this but a summary of intentions will be highlighted. Some scholars define the deliberation intention as an 'outcome' that refers to the 'endogenous change of preferences' arising from communication. Another intention of what counts as deliberation is 'process', which is seen as 'a conversation whereby individuals speak and listen sequentially before making a collective decision'. In this instance, 'deliberation need not have any impact on the outcome'. Others yet focus on the 'setting' of deliberation, which examines 'a set of institutional conditions that promote impartiality'. Despite these varied positions on intentions, Elstub (2018, p. 191) argues that, in acknowledging the mutual compatibility of participatory and deliberative democracy,

most deliberative democrats would consider deliberation leading to consensus not to be the norm, and that majority should still win out when consensus is not reached, they would emphasise the importance of the debate preceding the vote, and in particular how the majority conclusion was reached and the influence of minorities upon the final outcome.

The two theories may be related and entangled in practice; 'they are not the same and aspire to promote related but ultimately different values' (Elstub and Escobar, 2019a, p. 17).

Table 1 below provides a useful way of distinguishing between participatory and deliberative democracy based on the foregoing arguments. The table represents the distinction between the two that the thesis adopts and provides a useful framework to showcase why the form of public deliberation taking place in Kenya and evolving across the continent can be classified as such.

Table 1 Differences between participatory and deliberative democracy

Characteristics of participatory democracy	Characteristics of deliberative democracy
• Focuses on creating broader direct participation of all people in all spheres of society • Focuses on inclusivity of entire population to increase broad political efficacy • Does not privilege informed citizens	• Involves thick discussion • Often involves a degree of purposive selection • Free and open exchange of reasons • Involves bargaining/negotiation in decision-making • Focuses on transforming representative government to make it more participatory • Focuses on a specific democratic innovation • Is premised on informed citizens taking part

The promise of deliberation, despite the differences in definition or intention, is argued to lie in 'its ability to foster the egalitarian, reciprocal, reasonable and open minded exchange of language' (Mendelberg, 2002, p. 153). Deliberative democracy can therefore be said to 'rest on argumentation not only in the sense that it proceeds by argument, but also in the sense that It must be justified by argument' (Elster, 1998, p. 9). The consequences of deliberative democracy based on the premise of argumentation:

are a more empathetic view of the other- even others considered beneath oneself; a better-informed perspective on public problems; and a broader understanding of one's interests. In this way, deliberative democracy can serve the common good where models based on narrow self-interest and negotiation may fail. (Mendelberg, 2002, p. 153)

The positive democratic outcomes associated with deliberation have been exhaustively discussed by various scholars. It is argued that effective deliberation will see citizens become more engaged in civic affairs, increase their tolerance for opposing points of view, increase their understanding of their own preferences and the ability to justify them with better arguments, reduce in adversarial politics, and compromise more in deep conflict, as well as in decision-making, despite tensions in social identities. Increased faith in the democratic process as people become more empowered, and increased legitimacy of the constitutional order as people engage with it and understand it (see Mendelberg, 2002, p. 153 for detailed references), have also been put forward as benefits of deliberation. Mendelberg (2002, p. 153) provides an effective summary of the ascribed benefits of deliberation as follows:

citizens are more enlightened about their own and others needs and experiences, can better resolve deep conflict, are more engaged in politics, place their faith in the basic tenets of democracy, perceive their political system as legitimate, and lead a healthier civic life.

The empirical evidence supporting the benefits ascribed to deliberative democracy has increased significantly in the last decade (Caluwaerts and Reuchamps, 2016; Bächtiger *et al.*, 2018b; OECD, 2020). However, as Ryfe (2005, pp. 49–50) argues, the empirical evidence on the benefits of deliberation is still mixed. He argues that, in certain conditions, 'it appears that deliberation can produce more sophisticated, tolerant, and participated citizens, but these outcomes are not automatic and in fact may be rare'. The costly nature of implementing deliberation (Ryfe, 2005) therefore necessitates that these findings require greater reflection about the design and

institutionalisation of deliberation if it is to succeed. Additionally, greater reflection needs to be made once again about the complexities of implementing deliberation in countries outside of the Global North, from which most current empirical research evidence is drawn.

Some scholars have argued that the idea of deliberation is anchored in an 'elitist white-masculine culture', which is exhibited in the desire for calm and rational deliberation (Gaventa, 2006; Min, 2014, p. 3). Min (2014), however, also presents arguments of other scholars who contend that deliberation and participation is something valued in every culture and only the expression and actualisation of it differs based on cultural contexts, as demonstrated by the discussions on consensus democracy in Section 2.3. A significant proportion of existing research on the theory and empirical effects of deliberation has for many years been conducted in western cultural contexts and with participants who are atypical of the majority of the world's population. The difference in empirical subjects is more harshly highlighted when compared to the majority of the public engaging in deliberation in the Global South (Min, 2014).

Min argues that a majority of empirical studies on deliberation have taken place with people he describes as 'WEIRD' (Western, Educated, Industrialised, Rich, Democratic) (2014, p. 7). These participants when compared to the participants of this research based in sub-Saharan Africa – still one of the regions in the world with the poorest social and economic conditions – highlight challenges that could emerge with analytic generalisations made about the possible effects of deliberation (Azevedo-Harman, 2012; Min, 2014). Understanding how cultural contexts influence engagement in public deliberation is therefore critical to unlocking its true potential and

understanding of what methods work best in which cultural contexts and what effects can they truly achieve.

Finally, deliberative democracy is viewed as a supplement to improve representative institutions through its ascribed benefits of democratic rejuvenation. However, critical pragmatic questions emerge in bringing together deliberative democracy and representative democracy. A key question in the context of this research, therefore, is: what is public deliberation in the context of the legislature? And what true benefit does it hold for representative democracy and legislative institutions in particular? These two questions will be examined further in the next two sections.

3.5 Public deliberation – a pragmatic approach to deliberative democracy

The neat dichotomy between participatory and deliberative democracy as we have established above is an illusion depending on how each scholar views the origins and definition of deliberation democracy. The reality is ‘participatory and deliberative democracy can and do overlap in practice despite theoretical differences’ (Elstub and Escobar, 2019a, p. 17). Definitions of what constitutes deliberation as discussed above are contested and vary widely. Some scholars adopt stricter definitions, and others more pragmatic definitions that allow for practical considerations in its implementation by blending participatory and deliberative principles (Mendelberg, 2002; Elstub, 2010b; Bächtiger *Et Al.*, 2018b; Floridia, 2018; Elstub And Escobar, 2019a). The definitions of deliberation tend to focus on either its outcome or the process, and yet others on the setting (Elster, 1998; Laslett and Fishkin, 2003; Carpini, Cook and Jacobs, 2004). The majority of the normative positions on what constitutes deliberation are based on the political and ethical ideals on which democracies in the Global North are founded.

Deliberation, therefore, defined within these strict confines would preclude most forms of deliberation in the Global South.

The increased focus on the pragmatics of implementing deliberation has led to a broader incorporation of what constitutes deliberation. Mansbridge (2015) puts forward a critical argument, particularly for practitioners of deliberation, proposing that 'deliberation per se should be distinguished from good deliberation' (Sass, 2018, p. 93). She proposes 'defining deliberation in the public sphere minimally and broadly' comprising of two-way communication that involves 'weighing and reflecting on preferences, values and interests regarding matters of common concern' (Mansbridge, 2015, p. 27). She argues that this definition not only improves 'analytic clarity' but also 'makes sense in the field'. Sass (2018, p. 94), building on this definition in the context of how deliberation can manifest across diverse cultures, argues that the focus in two-way exchange may be limiting. Sass argues that it would be preferable to define deliberation in terms of the 'intention motivating a communicative action as well as its concrete effects'. Deliberation, he argues, takes radically different forms across cultures and thus an understanding of 'why other actors engage in deliberation in deliberation in different cultural contexts' is a prerequisite to its normative definition (Sass, 2018, p. 94).

Drawing on a pragmatic approach to defining deliberation, as previously discussed, this thesis proposes a definition of deliberation in the public sphere. The thesis adopts the term public deliberation to encapsulate the form of deliberation in the legislature that is discussed in the thesis. Public deliberation is consequently defined in the context of the legislature as including reasoned argument, strategic bargaining,

experiential testimony, and other kinds of discursive claims that are aimed at ensuring that the public affected by a decision are able to engage in substantive, balanced and civil discussion with legislators. Substantive discussion involves looking at options and giving reasons for preference of one over another; balanced discussion involves allowing for different perspectives, arguments and views; and civil discussion means discussions are respectful and constructive (Nabatchi, 2014; Beauvais, 2018; Elstub, 2018; List, 2018).

The term public deliberation is not new and a simple search for it will bring up numerous articles using the same term. Its adoption in this thesis, however, is based on its use by Bohman (1996) and Hendriks (2012). They both use the term public deliberation to reflect on the relationship between the normative political theory of deliberative democracy and its practical institutional design and implementation in actual democracies. Public deliberation, **as used in the thesis** represents a **pragmatic approach to practicing deliberation**. The term recognises that the best way to design deliberative practices and institutions and how they operate in practice, particularly in mass politics, often requires processes that blend participatory and deliberative principles. The adoption of a pragmatic approach would allow the design of processes address contextual concerns as well as the current elitist Global North focus of deliberative practices.

Legislative environments are peculiar in nature when discussing public deliberation in particular. The majority of the research on deliberation in legislative environments studies debate in the chamber among elected representatives, with public deliberation between representatives and the public receiving very little attention. The pragmatic

approach of public deliberation enables discussions on how best to design deliberative practices for this already deliberative institution. The next section will proceed to discuss the existing gap in this form of public deliberation in legislative environments.

3.6 Global practices of public deliberation in legislatures

The benefits ascribed to both participatory and deliberative democratic theory would in theory address the democratic deficits of representative democracy. The increasing global demand by citizens demanding a greater say in governance decisions may perhaps be offset by the benefits of adopting more participatory and deliberative approaches to decision-making in legislative institutions. Legislatures are seen as important arenas for deliberation by deliberative democrats, but, it is critical to acknowledge that legislatures view themselves as ‘the’ body of deliberation (Cunningham, 2002, p. 168). The legislature by its very philosophical and conceptual foundation is an arena of deliberation and its rules and procedures inform the process of deliberation. Legislators who are elected as delegates in principle represent the beliefs and desires of their electing constituency. Their legislative decisions should therefore be met with broad consensus and acceptance as the general will. Often, however, this is not the case, as evidenced in many countries by the increasing public disillusionment, particularly in the Global North, with legislative institutions.

Citizens in some countries are increasingly calling for the introduction of more direct forms of democracy such as referendums for sensitive legislative decisions or more permanent institutions incorporating citizens in decision-making. The passing of a constitutional amendment in Ireland in 2015 by referendum permitting same-sex marriage presents one such example. In Belgium, the establishment of ‘mixed

deliberative committees' where elected legislators sit alongside randomly selected citizens and are expected to meet several times 'to develop recommendations for the permanent parliamentary committee on a specific issue' was approved by the parliament of the region of Brussels (OECD, 2020, p. 130). There are arguments that political apathy is increasing, public trust in democratic processes is waning, and in even in well-established democracies populist politics is on the rise. There are obviously uneven trajectories for different countries around the world. Survey data from the Afrobarometer, for example, shows that Africans have the greatest trust in their parliaments when compared to other regions of the world (Azevedo-Harman, 2012; Power, 2012). However, in these instances of trust, there still exists a push for increased public deliberation as a supplement to representative democracy so as to rejuvenate it through its ascribed benefits.

Legislative institutions faced with these challenges must reinvent themselves if they are to continue to have value and legitimacy. Interestingly, despite the focus on public deliberation in aiding to address the perceived democratic deficits of representative democracy, Leston-Bandeira (2012, p. 265) notes that 'the relationship between parliament and citizens is one of the least studied areas in legislative studies', despite what she notes as a 'crucial dimension in understanding parliaments and the role they play in our political systems'. There have been very few attempts in the literature to empirically assess the effects of public deliberation in decision-making by legislatures, even though one of the fundamental principles upon which legislatures are founded is to represent the interests of the public. Much of the work done in this area is new and this may be attributed to the fact that the opening up of business of legislatures to the

public is in itself still a relatively a new phenomenon (Kelso, 2007; Leston Bandeira, 2015).

It is instructive to note that even less academic literature is available on the relationship between parliaments and citizens in emerging democracies in Africa, Asia and Latin America (Kurtz, 1997; Azevedo-Harman, 2011). Public deliberation in Africa's legislatures at the national and subnational levels has been largely overlooked, perhaps due to the perceptions of illiteracy, poverty and disease associated with the continent, which sometimes provide the prejudiced illusion that Africans are unable to engage with complex concepts or effectively conceptualise the role of parliament and meaningfully contribute to its deliberations (Azevedo-Harman, 2012). The UK Hansard Society, in its report on parliaments and public engagement, one of the few documents that attempts to draw together comparable information on public engagement from parliamentary institutions around the world, notes that 'parliaments are intrinsically different; what works in one institution and constitutional setting will not necessarily work in another' (Fox, 2011, p. 10). The differences in historical, cultural and political contexts therefore makes it imperative that more comparative empirical research is needed if we are to begin to understand and draw generalisable conclusions about the benefits of public deliberation for legislative institutions.

Leston-Bandeira (2015, p. 499) has argued that legislative institutions have become the 'face of political disengagement' and are therefore under immense pressure to develop new strategies for public deliberation to combat apathy and declining trust. Her argument is supported by the shift in legislatures globally, which, in response to demands for increased public deliberation, have developed innovative initiatives such

petitions, open calls for evidence, online consultations, carrying out outreach through open days and visitor centres and parliamentary broadcasting of debate and committee proceedings (Power, 2012; Leston-Bandeira, 2016). However, a key emerging concern is whether the proliferation of these methods match what citizens expect from public deliberation (Fox, 2009; Leston-Bandeira, 2016). Some of these proposed methods do not provide an avenue for citizens to engage in any form of argumentation or communication with each other or with elected representatives.

It is illuminating, however, that when Fox (2009, p. 683) analysed ways of developing and sustaining a public engagement and participation strategy for the House of Commons, using data from the United Kingdom Audit of Political Engagement, she found that the public want influence but do not 'necessarily expect or want a greater level of involvement'. Critically, she found that the public most prefer methods of engagement that deliver the policy outcome they prefer, with self-interest appearing to be a 'powerful motivating factor for many' (Fox, 2009, p. 683). Her findings appear to negate some of the benefits that public deliberation is touted to offer in addressing the challenges facing representative democracy, which include the need for a greater level of public engagement.

These contradictory findings all point towards an increasing need to examine the methods of public deliberation in legislative environments and their true effects on these institutions. Understanding the meanings and consequent effects of public deliberation methods used in legislatures, particularly within select committees, which are sometimes seen as the arena in legislatures where deliberation is most likely to take place by virtue of their design (Geissel and Joas, 2013; Kelso, Boswell and Ryan,

2016), could hold critical insights for how public deliberation in the legislature can best strengthen them in executing their roles (Gaventa, 2006, p. 23).

Though legislatures are increasingly opening up the conduct and attendance of legislative business to the public, as discussed above, some scholars argue this form of public deliberation practised by legislatures is conventional participation and does not meet the standards that allow for deliberation (Nabatchi and Leighninger, 2015). The next chapter will focus on examining the unique challenges of deliberative law-making. It will focus on the unique environment of the legislature and the possible challenges it poses for successfully institutionalising deliberation.

3.7 Conclusion

Chapter 3 seeks to bridge a significant gap that emerges in the literature by bringing together deliberative democratic theory and the theory of representative democracy. The chapter establishes that, in order to begin this undertaking, a useful definition of deliberation, as applied in the real-world institution of the legislature, should first be arrived at. The chapter proposes public deliberation as a pragmatic definition and approach to developing deliberative practices in real-world institutions engaged in mass politics. The key questions emerging thereafter are what public deliberation is as a mode of deliberation in the context of the legislature and, for something that is so passionately championed despite little empirical evidence of its benefits, what benefit it holds for representative democracy and subnational legislative institutions in particular (Burton, 2009a).

The chapter looks at the emerging practices that legislative institutions globally are undertaking in attempt to address the increasing public apathy and disengagement

that scholars say reflect public sentiment about the deficits of representative democracy. The benefits of public deliberation, which is premised on the associated benefits of deliberative democracy, are expected to address these deficits and inform the global move towards increased public deliberation practices in legislatures. Whether these processes are producing the intended benefits is still a matter for debate. The design of these public deliberation processes often fails to account for contextual realities, as shown in Chapter 2. The processes are frequently simply transferred wholesale by practitioners and international development agencies from one context to another. The key question, therefore, about the empirical benefits of public deliberation and whether it can address the deficits of representative democracy is therefore more nuanced and this thesis will attempt to demonstrate that.

Chapter 4 will now seek to discuss more critically the constraining nature that legislative practice and procedure can have on efforts to introduce public deliberation in representative institutions. Legislative rules of practice and procedure have traditionally been designed with the consideration of the legislature as the ultimate institution of deliberation. The introduction of mandatory public deliberation in law-making processes challenges this assertion and forces a re-examination of how legislative rules of practice and procedure sit in alliance with expectations of public deliberation.

4 PUBLIC DELIBERATION IN LEGISLATURES AND THE INFLUENCE OF INSTITUTIONAL CHARACTERISTICS

4.1 Introduction

Chapter 4 focuses on the unique environment of the legislature and the challenges it poses for successfully institutionalising public deliberation. Chapters 2 and 3 have shown that legislative institutions are increasingly adopting public deliberation as a matter of routine practice in legislative business. Legislative institutions in present-day democracies are faced with challenges of polarisation, decreasing trust and loss of public respect, and accusations of the pursuit of the narrow interests of particular groups of people; debate and decision-making are considered problematic and not reflective of public interest (Caddy and Organisation for Economic Co-operation and Development, 2005; Branislav Dolný, 2011). Introducing public deliberation to legislative decision-making processes, as we have seen in Chapter 3, is seen as one way of addressing the challenges facing representative democracy.

This chapter focuses on drawing out specific peculiarities of legislative environments that may pose a challenge to the institutionalisation of public deliberation. The chapter commences with briefly highlighting why it is important to design public deliberation processes to suit institutional purposes. The chapter then specifically examines how peculiarities identified in legislatures shape public deliberation in the context of committee functions, as well as the behaviour of actors and audiences engaged in public deliberation. Some of the questions that might arise when considering the role institutional mechanisms may have on public deliberation include looking at the possibility of changing traditional relationships within parliament; how institutional practices and procedures can adapt to public deliberation while maintaining the

institutional stability that is their primary purpose; and how physical spaces in subnational legislative institutions affect the scripting and performance of public deliberation. The chapter explores each of these questions. It sets up the framework that informs the critical institutional elements that interact with public deliberation and informs the conceptual and methodological choices in Chapter 5.

4.2 Designing public deliberation for legislatures

There are many empirical examples of deliberation, with different forms of mini-public perhaps being the most common (Goodin and Dryzek, 2006; Smith, 2009; Harris, 2019). Mini-publics, such as citizen' juries and deliberative opinion polls, are often made of small groups of 'ordinary, non-partisan, lay citizens' (Elstub, 2010a, P. 310) identified through random stratified sampling to deliberate and propose non-binding decisions on a specific policy issue. Historically, in the literature on deliberation, one of the main criticisms repeatedly levelled against public deliberation is this focus on mini-publics (Chambers, 2009), which lack of any real influence over policymaking processes (Carpini, Cook and Jacobs, 2004; Papadopoulos, 2012; Hendriks and Lees-Marshment, 2018) and are difficult to scale up for mass public deliberation (Parkinson, 2006a; Chambers, 2009; Curato and Böker, 2016). The majority of the literature on public deliberation in relation to legislative processes focuses on processes antecedent to the law-making process or running parallel to it, such as citizens' juries and deliberative polling (Fishkin, 2018), with the intention of providing information that can supplement parliamentary policy decisions (Davidson and Stark, 2011). The result of this is that there is very little empirical research on how public deliberation interacts with the institutional architecture of the legislature where there is formal integration into

decision-making processes (Bächtiger, Spörndli, *et al.*, 2005; Leston-Bandeira and Thompson, 2017).

Davidson and Stark (2011, p. 158) argue that the dearth of research on public deliberation in representative institutions may be the result of legislatures often 'derided for cultivating an adversarial form of politics that is the antithesis of the deliberative ideal'. Systematic research on this subject for subnational legislatures is even more scarce; some research has, however, been undertaken on the devolved Scottish Parliament (see Davidson and Stark, 2011; McLaverty and MacLeod, 2012). There are a few examples for national parliaments such as the United Kingdom House of Commons (see Leston-Bandeira and Thompson, 2017) and the e-democracy platform for public deliberation in the Brazil Chamber of Deputies (see de Barros, Bernardes and Rehbein, 2016; Faria and Rehbein, 2016).

Critics of public deliberation have argued that the majority of discussions around deliberation are theoretical and more concerned with what deliberation ought to be than with the more detailed task of what is required for its institutional design (Bohman, 1996; Davidson and Stark, 2011). Theorists on deliberation are accused of avoiding discussions about 'what real deliberation looks like on the ground, where real people discuss real issues' (Ryfe, 2005, p. 54). The incorporation of public deliberation is perhaps easier within the context of the executive in discussing the delivery of public services and may explain numerous empirical examples found in the literature (Goodin and Dryzek, 2006; Smith, 2009). Legislatures, however, pose a unique context with a particular set of challenges for institutionalising public deliberation.

4.3 Legislative committee functions and opportunities public deliberation

An examination of the methods of public deliberation in legislative environments and their effects is crucial to understanding what the best methods are and what effects they have on representative institutions. Understanding the effects of the public deliberation methods used in legislatures, particularly within select committees, which are sometimes seen as the arena in legislatures where deliberation is most likely to take place by virtue of their design (Geissel and Joas, 2013, p. 180; Kelso, Boswell and Ryan, 2016, p. 10), could hold critical insights for how deliberative processes in the legislature interact with and strengthen traditional institutions of representative democracy (Gaventa, 2006, p. 23).

Existing global research on legislative committees has primarily centred on national legislatures in the Global North. The few exceptions studying legislative committees in subnational legislatures also focus on legislatures in the Global North, for example subnational legislatures in the United States of America and the Scottish Parliament in the United Kingdom. The existing research, particularly in the case of the subnational legislatures in the United States of America, has not paid attention to the meanings and consequent effects of public deliberation in legislative committees and legislative institutions more broadly.

The research on subnational legislatures in the US has primarily focused on drawing comparisons with committees in the US Congress. The research focuses on testing hypotheses relating to the distribution of power among interest groups and parties or, alternatively, of the power of committees to provide necessary policy information to the full legislature (Downs, 2014). The testing of research hypotheses from the US

Congress on US state legislatures demonstrates, as argued in the introduction, that it is not only logical but completely feasible to apply conceptual ideas used in the study of national legislatures to subnational legislatures.

The existing research on the Scottish Parliament has, however, engaged with the institutionalisation of public deliberation in the legislature and particularly its effects within legislative committees. Public deliberation in the case of the Scottish Parliament has either been ‘a general attempt to promote “engagement” or more specific attempts to facilitate “participation” in the work of committees’ (McLaverty and MacLeod, 2012, p. 459). The focus on facilitating participation in the work of committees is the form of public deliberation this research is concerned with. The institutional design of select committees of the legislature requires that committees engage with various actors in the process of gathering evidence and carrying out their work. The work of legislative committees can be classified into two main categories; the first is the scrutiny of legislative proposals (bills) and the second is the committees’ inquiry work. Whereas in some national parliaments, such as the UK Parliament, these functions are undertaken by different committees, other legislatures combine the functions (McLaverty and MacLeod, 2012).

In the majority of legislatures, legislative proposals (bills), following the first reading in the legislature, will be passed on to the committee within whose remit the bill’s subject matter falls to begin its scrutiny work. During the first reading there is usually no debate on the bill in plenary by legislators. In legislatures with institutionalised public deliberation, once the bill is committed to the committee, the public are in most instances at this stage invited to take part in public deliberation as the committee

considers the general principles of the bill. The committee's work will usually involve hours of public hearings with experts, civil servants, interest groups and ordinary citizens who may have an interest in the issues being canvassed. The committee will generally issue a call for any interested party to give written submissions and/or give oral evidence to the committee.

Legislators have the opportunity during these public deliberations to delve into depth on submissions, if they so wish, and ask questions so as to gain an understanding of the issues at hand prior to aggregating all information collected and making decisions, which are captured in a committee report that is tabled for debate by all members in the plenary. Participants at these meetings are in some jurisdictions, such as Kenya and South Africa, given the opportunity to engage with legislators and civil servants and ask questions as part of the public deliberation process (Kelso, Boswell and Ryan, 2016, p. 11). Whereas in many jurisdictions public deliberation on the bill is not mandatory, in some jurisdictions this is increasingly being mandated by law, such as in Kenya and South Africa, as discussed in Chapter 3.

The public deliberation on a bill by the committee in a majority of legislatures takes a 'standard approach of inviting written comments on legislative proposals before holding oral evidence sessions at the Parliament campus with key stakeholders' (McLaverty and MacLeod, 2012, p. 460). However, the form of public deliberation this research is concerned with is not only about widening the participants of public deliberation. The research is concerned with examining the depth of public deliberation that aims at encouraging debate through consideration of other views and the exchange of reasons, as well as the effort put towards the transformation of

preferences. The stage of committee scrutiny is critical to the process of public deliberation as it is here that the complex relationship between legislators and the public intersect.

Some scholars have argued that recent interpretive research suggests that ‘many elected officials welcome the idea of increased public input, but that the institutions within which they operate can hinder greater public deliberation’ (Ercan, Hendriks and Boswell, 2017, p. 204). The next section examines how legislative institutions and more specifically legislative committees can hinder public deliberation and force it instead to conform to old ‘standard approaches’ that do not widen participation or foster the depth of debate envisioned by public deliberation.

4.4 The constraints of legislative procedure and its intersection with public deliberation

Legislatures are typically governed by formal rules that are found in constitutional provisions and other statutory documents that guide the conduct of parliamentary procedure and make its actions legally enforceable. Additionally, globally, parliamentary conventions also provide a generally accepted guide on how the business of the legislature is conducted in the chamber and in committees. Many formal rules of the legislature originated in earlier conventions of practice and procedure, with reference to the Westminster Parliament, which were then formalised. The rules of practice and procedure have consequently found their way to legislatures around the globe and particularly in former British colonies that adopted a Westminster-style legislature on independence.

The formal rules governing the conduct of legislative work in most jurisdictions can usually be found in the constitution as well as in the standing orders and rules of procedure of parliaments (Wolfgang and Sieberer, 2014). Norton (2001, p. 19), one of the most renowned scholars on legislatures, defines procedures as comprising 'those rules and mechanisms that the house utilises to process its business'. He further notes that legislative procedure is considered the exclusive domain of the House and it is this exclusivity that gives the legislature its parliamentary privilege. Attempts by external bodies, including courts or the executive, to interfere with the procedures of the legislatures would be deemed an infringement on the privilege of the House.

Parliamentary rules typically cover a broad set of themes and understanding them forms a critical foundation for understanding legislative business and processes, as well as the behaviour of actors. Some of the themes that formal rules of parliament cover include how parliamentary business is conducted, while others tend to cover more marginal details such as issues pertaining to parliamentary administration, among others. Muller and Sieberer (2014) point out that parliamentary rules in most instances globally establish institutions such as committees and define the range of their competencies and obligations. The formal rules elaborate how parliamentary committees are set up and run, as well as define their tasks, rights and obligations vis-à-vis other actors in parliament. The rules also fix the 'when', 'how', conduct and end processes of deliberating legislative proposals in committee as well as in plenary. Additionally, parliamentary rules provide presiding officers in chamber and within committees with detailed rules about who is entitled to speak, how long they can speak, the sequence in which they will speak, and the conditions under which debates can be ended before the list of speakers has been exhausted. Finally, parliamentary rules also

tend to fix quorums and majority requirements for making decisions in committee as well as in plenary meetings (Wolfgang and Sieberer, 2014).

Parliamentary rules by virtue of their long and codified history, can often be restrictive in the face of new democratic and institutional developments such as public deliberation. Whereas Ercan et al. (2017) state that elected officials blame rigid institutions for hindering greater public deliberation, Beswick and Elstub (2019, p. 949) argue from their research in Westminster that 'individual committees show variable willingness to deviate from the traditional inquiry model' that does not represent public deliberation. The slow uptake of public deliberation, despite years of increasing public apathy in representative processes, demonstrates that staff and legislators find it easier to stick to the 'the way things are done' than to adapt their rules and procedure to respond to evolving public deliberation processes. The preference for 'the way things are done' may be explained by research that shows most public deliberation processes 'have little impact on policy' and 'parliamentarians are concerned about the challenge it presents to their "traditional representative role"' (Beswick and Elstub, 2019, pp. 951–952). The result, as Beswick and Elstub additionally point out, is public deliberation processes that are primarily public relations exercises to avoid taking responsibility for tough decisions.

The formal rules and procedures are important for maintaining order and stability. They signal to all the way in which the legislature works. Legislatures permitting public deliberation will therefore have rules and procedures that guide the vetting of public submissions on legislative proposals before a committee. These rules are expected to ensure that the legislature is able to arrive at universal agreement that its decisions

are well informed and have taken into account various submissions including an exhaustive examination of other alternative means of achieving the general principles of legislative proposals before the committee. Without these rules it would be difficult for outside observers to anticipate the consequences of specific procedures, as well as know when and how to engage with the legislative process (Wolfgang and Sieberer, 2014).

Public deliberation in this environment can, however, find itself constrained and challenged by the very rules put in place to facilitate it. Public deliberation requires that participants in a public deliberation process feel and believe that they are equal to each other in a public deliberation process. Chapter 3 emphasises the importance of the public deliberation sphere being protected from social and economic inequalities in society. In the context of the legislature, this disparity of social and often economic inequality exists from the outset between elected representatives and the attending public. Legislative rules and procedure can often be elitist in providing formal requirements for giving oral or written submissions. Poor, historically marginalised groups that may face inequalities owing to factors such as illiteracy and lack of access to information can be excluded. These groups then find themselves disempowered by such rules and when engaging in deliberation face internal exclusions that see their views given less weight or even ignored (Beauvais, 2018). The exclusions are often heightened in countries in the Global South, which face higher levels of poverty and illiteracy. Hendriks and Kay (2019, p. 30) point out that often, as some groups are marginalised, other 'well-resourced interest groups' tend to dominate or overshadow the opportunities for committee public deliberation. Legislative procedures will often allow for the invitation of 'particular experts or groups to give testimony to the

committee' (Hendriks and Kay, 2019, p. 30), who can in time by their repeat presence become gatekeepers of the public deliberation process.

Public deliberation, as championed by deliberative democrats, should grant equal consideration to the preferences of all in attendance, as well as provide an opportunity for all in attendance to adequately formulate their preferences on the issue under consideration (Floridia, 2017). Legislative rules and procedure can, however, often be suppressive of genuine public deliberation by 'encouraging passive listening and noting public testimony' by members (Hendriks and Kay, 2019, p. 34). Legislative rules, as discussed above, usually provide the chair of the committee with detailed rules about who is entitled to speak, how long they can speak, the sequence in which they will speak, and the conditions under which debates can be ended before the list of speakers has been exhausted. The procedure and rules often encourage limited to no interaction between committee members and the public, when they should instead encourage more debate as advocated for in public deliberation (Hendriks and Kay, 2019). The public coming into a public deliberation in legislative environments find these rules in place and are not party to their formulation.

The lack of involvement of the public in the formulation of the rules guiding public deliberation is another form of fostering inequality between the public and elected representatives. The power to implement the rules resides solely with the committee chair. The chair can therefore select specific individuals or groups of people and provide them with priority in the speaking order as well as the duration to present their arguments. The power to grant this type of authority to some in attendance challenges the requirements of deliberation that equal consideration should be given to the

preferences of all in attendance. The power to do this becomes solely the responsibility of the committee chair, who may not always exercise it equally. Control over who speaks and for how long may lead to a standard question-and-answer-style format instead of fostering thick discussion as the chair has the power to suppress any submission being given by cutting off the speaker.

Legislative rules and procedures can therefore create constraints on the behaviour of members, but they can also provide opportunities for members who know how to creatively use them. The Scottish Parliament has, for example, adopted the increased use of a roundtable format for its public deliberation events that aims at:

shifting the flow of communication away from the question-answer format...towards a more horizontal mode of communication in which participants deliberate with each other. (Davidson and Stark, 2011, p. 171)

The Scottish Parliament format is designed to encourage the attending public to ask questions of one another, rather than waiting for the representatives to ask questions. The roundtables, in the case of the Scottish Parliament, were introduced into established parliamentary procedure as an inexpensive way to encourage deliberation between elected representatives and the attending public. The roundtables have grown in popularity and encouraged the 'integration of deliberation within the everyday practices of the committees' (Davidson and Stark, 2011, p. 174). However, the integration has come at a cost, with challenges of dilution of these public deliberation events, which appears to be the only way to ensure their sustainability.

This section has drawn significant parallels with national legislatures in considering the constraining nature of legislative rules and procedures. Downs (2014, p. 619), however, highlights that, in subnational legislatures that follow the parliamentary model

of its national parliament, executive dominance on parliamentary practice and procedure is another important factor to consider:

constitutions mapping institutional arrangements in territorial assemblies often organise the fusion of power between the executive and the parliament in different ways.

He highlights that the variation in executive–legislative relations will impact everything, which can be usefully argued to include the consideration of bills in the committees of subnational legislatures. He adds that much of the literature ‘documents apparent trends toward executive dominance mirroring those evident in some national parliamentary contexts’ (Downs, 2014, p. 619). Downs additionally points out that the reality of this, usually more common in subnational legislatures, is a kind of democratic deficit where legislators remain subordinate and answer to the executive instead of the electorate. The governance tradition of a country in this instance becomes significantly important as it will shape the form of executive–legislative relations. Important questions arise about what effects, where present, executive dominance would have on parliamentary privilege, as well as the long-term effects of this on the rules and procedures for public deliberation, particularly in fragile democracies.

Legislators are usually guided in navigating rules and procedure by legislative staff. Norton (2001), with reference to Westminster, points out that legislators are rarely prepared to invest the intellectual resources required to understand the detail of practices or procedure that govern proceedings or the rationale that underpins them. The claim can be abstracted to legislators globally. Very few legislators have an interest in procedure and the majority of them work within existing procedures as a habitual activity without much thought or reflection. This rote working and historical precedence have significant repercussions when new statutory requirements such as

mandatory public deliberation are introduced and do not fit neatly into traditional legislative rules and procedure. The result is a lack of creativity in navigating rules and procedure to respond to the evolving public demands on legislative institutions, leading to a more apathetic public. It further allows those who do understand the rules, such as the committee chair, aided by legislative staff who understand the rules, to serve as gatekeepers as they will in most instances be the ones to inform the chair on what is or is not permissible. The next section looks at the emerging role played by legislative staff as facilitators of public deliberation.

4.5 Legislative staff as facilitators of public deliberation

Legislative staff as public servants are increasingly finding themselves with a new role as regards public deliberation in the legislature. Legislative staff are increasingly called upon to:

engage, empower and support active citizens and stakeholders, provide them with channels to participate and guide them through bureaucratic procedures. They need to manage complex networks, inter-personal and inter-organizational processes, and to develop skills for negotiation, collaboration, mediation and consensus building. (Blijleven, van Hulst and Hendriks, 2019, p. 209)

Current research on the changing role of public servants and their involvement in public deliberation has not specifically studied the unique role played by legislative staff in facilitating public deliberation. The existing research has focused primarily on staff working in the executive arm of government (see for detailed analysis Blijleven, van Hulst and Hendriks, 2019). However, the changing role of legislative staff as facilitators of public deliberation has largely been ignored by research.

Existing research on legislative staff has focused on studying partisan staff in the United States Congress and United States state legislatures. Non-partisan legislative

committee staff, who are the primary focus of this research, have received significantly less research attention. In some legislatures, non-partisan staff, such as those adopting a Westminster style, are tasked with managing the business of legislative committees. The staff will usually perform all the legislative tasks, with the exception of voting, for purposes of facilitating consideration of a bill in the legislature. Staff at a minimum will be responsible for assimilating, condensing and synthesising information for elected representatives (Yin, 2012). In legislatures allowing for public deliberation, their tasks often include organising and, in some cases, facilitating public deliberation through networking with interest groups, reviewing and summarising hearing testimony and other written submissions, meeting with constituents and meeting with representatives of other arms of government.

Non-partisan staff are tasked with a unique role when it comes to facilitating public deliberation as they must straddle numerous political sensitivities while creatively carrying out their duties. Non-partisan staff are often touted as being objective, independent and not subject to political influence (Yin, 2012). They are also often considered to be experienced and the bearers of institutional memory owing to their knowledge of institutional rules of practice and procedure. However, there are instances where non-partisan staff are considered to become as powerful as elected representatives. Some staff, based on their years of experience and relationship with elected representatives, become powerful enough to move beyond advising elected representatives to conceiving, negotiating and helping to implement legislative solutions. Some staff even influence the way in which members decide to vote, which has led to calls by some that there should be term limits on even non-partisan legislative staff owing to their influence over the legislative process (Yin, 2012).

More research on the role of legislative staff in public deliberation and how they navigate their facilitation of public deliberation needs to be undertaken. Mandatory public deliberation creates 'new demands on existing structures and staff as they try to accommodate (or resist)' emerging public deliberation practices in an 'organisation where tradition, convention and elitism abound' (Hendriks and Kay, 2019, p. 43). The effects of governance traditions on legislative staff and the effect that this has on how they execute their facilitation role as public servants is important in understanding the effects of public deliberation in legislative institutions. The next section examines how the institutional architecture of the legislature can symbolically influence how public deliberation is enacted.

4.6 Institutional architecture of the legislature and its symbolic influence on public deliberation

Legislatures are often housed in grand buildings that symbolise the power wielded by these institutions (S. Rai, 2014). Parliaments are grand spaces of performance where representation takes place in both symbolic and literal ways. Waylen (2014) suggests that the material form of parliament buildings and the symbolic role they play has not received sufficient consideration. She, in a similar fashion to Rai, acknowledges that parliament buildings have long been seen as powerful symbols of democracy and provide visible representations of concepts such as legitimacy, choice, representation and inclusion. Waylen (2014, p. 213), argues that, in studying parliamentary buildings as symbolic spaces, we must extend beyond the chamber to other spaces in the legislature such as lobbies and corridors. Committee meeting rooms can be usefully added to this list. In studying these spaces, she suggests we must examine three aspects of civic space. The first is a composition of the space, mainly how it is

organised and divided up. Here we look at the fabric of the buildings, which is the most difficult to alter. The second is the design or semi-permanent fixtures, that is, platforms, railings and furniture, as these can be altered more easily than the composition of the space. Finally, she proposes that we must study the artefacts, that is, the patterns of decoration and object display, including various types of emblems and symbols, which must all be considered. The ways in which artefacts can be strategically placed and used to 'compel participants to act and speak within certain parameters' (Escobar, 2015, p. 276) is an important consideration when studying public deliberation in legislative environments. Artefacts can be used to meaningfully direct social interaction of participants both knowingly and unknowingly and accordingly how they are embedded in the deliberative space should be explored for their scripting power (Molinengo and Stasiak, 2020)

The importance of studying legislative spaces and their composition can once again be demonstrated by the Scottish Parliament. Drawing on the example cited earlier on the increasing adoption of roundtable discussions in the Scottish Parliament for its public deliberation events, intentional changes to the physical space of public deliberation were made. Davidson and Stark (2011, p. 171) point out that:

roundtable discussions deliberately change the seating arrangements in committee rooms so that members of the public and stakeholders are interspersed among parliamentarians, which should, in the words of one committee convenor, 'lessen the possibility of there being an adversarial atmosphere and should facilitate more open and honest engagement'.

Davidson and Stark additionally point out that the change in format was repeatedly emphasised by committee convenors when introducing the roundtable process to the attending witnesses and the elected representatives.

The change in this instance was intended to encourage deliberation while simultaneously ensuring that elected representatives retained the sense of being 'in charge' of the process as well, as roundtables take place in familiar committee room surroundings (Davidson and Stark, 2011, p. 173). The set-up of legislative committee rooms for public deliberation in a roundtable format is a signal that not only affects the perceptions of participants about the equality of the deliberation exercise but also appears to affect the behaviour of participants during public deliberation, encouraging greater interaction and debate among all participants. Davidson and Stark further argue that the change in the set-up of public deliberation appeared to improve the institutionalisation of deliberation in the Scottish Parliament and since its introduction in 2002 has increasingly become the popular mode of public deliberation in the Scottish Parliament. They offer a caveat concerning the dilution of public deliberation with its further institutionalisation but view this as part of the process towards the maturation of a stable deliberative system in the Scottish Parliament.

Public access to legislative buildings is another aspect of legislative institutional architecture that communicates the commitment of the legislature to public deliberation. Parkinson (2006b) has argued that, beyond the examination design of democratic institutions and their procedures, the brick-and-mortar considerations are equally important. The interior and exterior design of parliaments have important 'effects on the behaviour of representatives and public alike' (Parkinson, 2006b, p. 10). The exteriors of parliamentary buildings, Parkinson (2006b, p. 10) further argues, convey messages that can 'inspire and can also intimidate'. Some legislative buildings, he says, such as the German Bundestag and Australian Federal Parliament, are meant to convey egalitarianism.

The focus on these buildings is often on the power they convey, and the importance of decisions taken, as argued by Rai. When the site of public deliberation is the parliamentary campus, it should be acknowledged that for many members of the public the power and elitism that legislative buildings convey can often be intimidating and, in some instances, even discourage attendance. Often legislative buildings are heavily guarded and have rigorous security procedures for access. The process of accessing legislative buildings can often feel intimidating and tedious for the public. Beyond discouraging attendance of public deliberation, the challenge in accessing legislative buildings may on occasion even hinder access to information held in the building and required by the public to usefully engage in public deliberation. The challenges of access to legislative buildings requires that committees innovate new 'sites, modes and opportunities' for deliberation if they are to reach new audiences (Hendriks and Kay, 2019, p. 38).

4.7 Conclusion

Chapter 4 builds on earlier discourse in Chapters 2 and 3 by highlighting specific legislative institutional mechanisms that would need to adapt to emerging public deliberation efforts in subnational legislatures. The absence of constitutionally obligated public deliberation in many countries globally means that there is little systematic research of its effects on legislative institutions and how institutional mechanisms consequently adapt. Subnational legislatures, as discussed in Chapter 2 of this thesis, provide an important arena for public deliberation. They have evolved with the establishment of subnational governance, and in some countries in Africa they are viewed as an important arena for enabling public deliberation in policymaking

processes. They play an important role in the efforts of complex multi-ethnic societies to consolidate nationhood and ensure good governance.

Subnational legislative bodies have not traditionally received the same academic research attention as scholarship has focused on national parliaments. However, as discussed in Chapter 2, it is possible to apply the conceptual ideas used in studying national parliaments to subnational legislatures. Theoretical and conceptual ideas used in legislative studies are applicable as subnational legislatures are not only fully distinguishable from municipal and other local-level councils; they can also be assessed according to the standard functional expectations of a legislature, that is, representation, law-making and oversight (Downs, 2014). Chapter 4, drawing from the literature in the field of legislative studies, provides a critical discussion of important legislative institutional mechanisms that would need to adapt to exogenous shocks posed by constitutionally obligated public deliberation.

Legislative institutions are increasingly adopting public deliberation to address the challenges facing representative democracy such as public scepticism and increasing apathy. Academic interest on the effects of public deliberation in legislative institutions has only really begun to interest scholars in the last decade, as discussed in Chapter 3. The increasing pace of decentralisation, public demand for increased opportunities for public deliberation in legislative decision-making processes and the unique proximity of subnational legislatures to the people make them an excellent arena in which to study the effects of public deliberation. Subnational legislatures, as Downs (2014) argues, are still largely understudied and provide a rich empirical field on which to develop and test theory. Subnational legislatures therefore present an excellent

arena in which to study whether public deliberation does produce the intended effects championed so fiercely by deliberative democrats. Research has, however, focused, as we have seen above, on national legislative bodies and even that has paid almost no attention to legislatures in Africa and the historical, cultural and political complexities associated with that context. The often wholesale transfer of research insights from the Global North to countries in Africa has led to the adoption of rootless public deliberation processes that fail to address contextual realities.

The complex and interdependent relationship between public deliberation and subnational governance in Africa has seen some countries adopt constitutionally obligated public deliberation for subnational legislatures. There has been very little academic research interest on what effects this mandatory public deliberation has had on these legislative institutions. This research, therefore, seeks to examine the meanings of public deliberation in subnational legislatures, in an African context, to observe whether its effects produced the espoused benefits. The research addresses two main gaps identified in the literature. First, through original primary data, the research contributes empirical evidence on the meanings associated with public deliberation in legislative institutions for which there is still minimal empirical evidence. Second, it will provide original primary empirical evidence on the meanings and consequent effects of public deliberation in subnational legislatures in Africa, an area that has received minimal scholarly attention. The continent's unique history makes it an excellent candidate for studying public deliberation as well as the increased use of constitutional requirements mandating public deliberation in some legislative institutions on the continent.

The next chapter sets out the analytical and methodological framework that will be used to address the research questions.

5 METHODOLOGY: AN INTERPRETIVE RESEARCH DESIGN FOR ANALYSING DELIBERATION IN KENYA'S SUBNATIONAL LEGISLATURES

5.1 Introduction

The thesis sits at the intersection of three important literatures, namely deliberative democracy, decentralisation studies and legislative studies. The interaction of these three fields of study sets up the central objective of this thesis, which seeks to explore the meanings of public deliberation in legislative committees in subnational legislatures. In the preceding chapters, the move towards decentralisation and establishment of subnational governance in Africa has been discussed, alongside its conjoined relationship with increased opportunities for public deliberation in government decision-making processes. The adoption of obligatory public deliberation in the business of subnational legislatures is representative of these efforts towards increased public deliberation. Chapter 5 discusses the epistemological and associated methodological choices that the thesis uses to explore the central research objective.

Chapter 5 begins with a discussion of Bevir and Rhodes's interpretivist analytical framework (Bevir and Rhodes, 2010, 2012), which is the analytical framework used in this thesis. The reasons that their analytical framework is ideally suited for addressing the research questions are elaborated upon, as well as how it has been adapted for use in this research. The choice to adopt an interpretivist analytical framework anchored in a constructivist ontology is informed by the decision to take 'meaning' seriously. Interpretivist research generally privileges 'meanings' as providing important understanding of the actions that actors undertake. The research, as has already been established, is taking place not only in a significantly under-researched area – public

deliberation in subnational legislatures – but also in an under-researched context: subnational legislatures in Africa. These two important operating contexts inform not only the choice of a paradigmatic case study research design, which will be discussed below, but also the decision to take meaning seriously through interpretivist analysis, as will be discussed below.

African societies have complex histories with multiple competing identities created by their pre-colonial, colonial and post-colonial experiences. Additionally, most African nations are the result of the random amalgamation of multiple ethnic groups during colonialism. The relationships between these various identities and the influence these identities have on present-day governance in these countries is not easily identifiable or measurable. In adopting an interpretivist approach, the research acknowledges that the only way to understand the complexities of governance in these societies and how people engage with it is by focusing on meanings. People's behaviour and perceptions will be based on their own generated meanings, which are culturally and historically situated based on their experiences and their understanding of them (Yanow, 2006; Marsh, Ercan and Furlong, 2018). In taking meaning seriously within its cultural and historical context, it is possible to begin to understand the perceptions people have about deliberation but also to draw out explanations of why people behave the way they do in engaging with public deliberation.

The use of interpretivism in research on deliberative democracy is also a robust academic field. Interpretivist research can aid understanding of how 'actors themselves make sense of their experiences with deliberative practices' (Marsh, Ercan and Furlong, 2018, p. 196). In the context of a society where there is limited empirical

research on deliberation (Ani, 2018), interpretivism allows for ‘in-depth, close-up, context-specific studies which illuminate a phenomenon or experience that is “in the dark”. It can also assist in bringing excluded or marginalised “voices” into research’ (Ercan, Hendriks and Boswell, 2017, p. 6).

The choice to adopt Bevir and Rhodes’s interpretivist analytical framework for this research enables the capture of lived experiences of deliberators who have been ignored in the literature, as well as illuminating how deliberation is enacted the context of subnational governments in Africa’s emerging democracies, which has similarly been overlooked. The chapter also discusses the adaptation of Bevir and Rhodes’s framework to incorporate the use of ‘performance’. Bevir and Rhodes use narratives to explain that people’s actions can be related to individual beliefs, but they do not provide discuss how these narratives can be recovered. Drawing on the work of Jeffrey Alexander (2006) and Maarten Hajer (2005), this chapter discusses four elements of social performance through which narratives can be interrogated and recovered. Bevir and Rhodes utilise narratives as the forms of explanation that relate actions to individual beliefs and tier situated contexts. However, they do not provide a framework for recovering these narratives. Drawing on performance as an analytical tool it is possible to use it as a lens to recover and structure narratives.

Chapter 5 also examines the paradigmatic case study of the public deliberation process in Kenya’s subnational legislatures by drawing on two embedded cases of county assemblies in Kenya, namely Nairobi City County Assembly and Mombasa County Assembly. The discussion will elaborate why the case stands out as a paradigmatic case, the public deliberation process in the budget process and the

characteristics of these two county assemblies to provide the contextualisation needed for an interpretive analysis. The remainder of the chapter provides a detailed discussion on the methodology choices made and their relevance for addressing the research questions. Data collection and data analysis methods are reviewed. Ethical considerations are also reviewed and include a discussion on the importance of reflexivity in interpretive research owing to the position of the researcher where internal partialities can influence interpretations of how respondents interpret their own experiences or actions (Marsh, Ercan and Furlong, 2018).

5.2 Ontological and epistemological approach for the research

5.2.1 Interpretive framework for analysing public deliberation

One of the most significant concerns in developing an analytical framework for this research is the focus on taking meaning seriously in order to understand how the public, legislators and legislative staff perceive deliberative public engagement. This research is not only taking place in a significantly under-researched area – public deliberation in legislatures – but also in an under-researched context: subnational legislatures in Africa. These two important operating contexts inform not only the case study research design, which will be discussed later, but also the decision to take meaning seriously. The aim of this is to refocus attention away from essentialising methods of public deliberation and their success and redirect focus to understanding the preconditions necessary for successful institutionalisation of public deliberation procedures in legislatures. The research does this by putting people at the centre of the construction of what public deliberation means within the Kenyan subnational legislative context and in the context of the engaging actors' lived reality. The focus on

understanding the ‘world of lived experience from the point of view of those who live it’ (Schwandt, 1994, p. 221) sits at the heart of this thesis.

Interpretivism is anchored in anti-foundationalist philosophy, which acknowledges all knowledge as constructed by how people experience and engage with the world. The thesis through a constructivist ontological approach focuses on how actors understand and assign meaning to their situation within the environment of public deliberation while drawing on their histories, languages and action (Schwandt, 1994). In order to understand and focus on meanings as the centre of individual and collective action, it is necessary to engage in an interpretivist analysis that focuses on the ‘reconstruction of the meanings to actors of the practices in which they engage, and the location of such beliefs and meanings in the context of pre-existing yet dynamic and open-ended traditions’ (Hay, 2011, pp. 167–168). Interpretations are important for two main reasons, as identified by Hay (2011). The first is that interpretations guide the behaviour and conduct of actors. Actors will behave in certain ways because of the beliefs and understandings they hold. Thus, in order to draw out analytic arguments about why actors behave the way they do, it is essential to ‘reconstruct the meanings to actors of the conduct in which they engage’ (Hay, 2011, p. 168). Interpretive analysis will therefore begin with a focus on meanings so as to understand how they shape actions and institutions and thereafter examining the ways in which they do so (Bevir, Rhodes and Weller, 2003; Hay, 2011).

However, as Hay (2011) points out, this is not simply idealism that would fetishise ideas; rather, it is an intentional and systematic approach to understanding and explaining actions, practice and institutions – although to a much lesser extent.

Interpretivism is therefore focused on analysing 'interpretations of interpretations' (Bevir and Rhodes, 2006b, p. 84). Within a constructivist ontology there exist various interpretivist epistemologies (see Yanow, 2006, for different schools of thought; Rhodes, 2018). This research uses Bevir and Rhodes's interpretivist framework (Bevir, 2000; Bevir, Rhodes and Weller, 2003; Bevir and Rhodes, 2006b, 2012), which 'emphasises the embeddedness of political subjects in "traditions" understood as webs of meaning' (Hay, 2011, p. 170). Bevir and Rhodes (2010, p. 78) define traditions as 'webs of belief' and as forming the background of ideas in which agents find themselves. Agents will adopt beliefs from traditions as a starting point but may amend them. These traditions form the ideational background from which actors draw meaning and make sense of the world and orient themselves to encounter challenges to their traditions that they face in the world (Hay, 2011).

The study of deliberative democracy, which started as a normative project with the majority of initial research theoretical, has, however, taken a turn with more practical empirical research being undertaken by scholars. The shift from theory to empirical research on deliberation has:

led to the emergence of methodological discussions about how to translate normative theory into the terminology of empirical social research, how to operationalise deliberation, and which methods are better suited to analyse deliberation. (Marsh, Ercan and Furlong, 2018, p. 195)

Some scholars such as Diana Mutz (2008) in operationalising empirical research on deliberation adopt a positivist position. Some scholars criticise this approach and argue that:

interpretivism is better suited to studying deliberative democracy, because it can capture perspectives of participants in the deliberative process and is sensitive to the contextual and contingent nature of the process. Empirical studies underpinned by interpretivist ontology pay particular attention to the way

actors themselves make sense of their experiences with deliberative practises. (Marsh, Ercan and Furlong, 2018, p. 196)

The focus of this research is on meaning-making that privileges the perspective of participants about public deliberation within their contextual setting of a subnational legislature in Africa. Accordingly, interpretivism is best suited as an ontological choice as it allows an in-depth exploration of how actors assign meaning to the effects of public deliberation through their lived experience. Rhodes (2018a) has pointed out that an interpretive approach does not favour specific methods and does not provide a toolkit for producing data. Instead, the interpretive approach is concerned with 'prescribing a particular way of treating data of any type' (Rhodes, 2018a, p. 7), an argument echoed by Yanow (2006). Data, he argues, should be treated as 'evidence of the meanings or beliefs embedded in actions' (Rhodes, 2018a, p. 7), which is ultimately what links the various methods that can be used in interpretivist research. Existing interpretivist studies of deliberation have used data from 'interviews, focus groups, documents and participant observation to examine the deliberative democratic qualities in particular contexts' (Marsh, Ercan and Furlong, 2018, p. 196) as their focus is ultimately on shared meanings.

The research adopts Bevir and Rhodes's interpretivist approach as it provides an analytical framework that is adaptable to examining individuals' interpretations of how they make sense of their everyday lives and interactions within the context of public deliberation: the legislative environment. The application of Bevir and Rhodes's interpretive analysis to legislative environments has successfully been applied by Geddes and Rhodes (2017) and provides another justification for its selection. The focus on people and the ways in which they make meanings of their lives, in interpretive

analysis, is an important step in not only re-balancing western bias from the study of legislative institutions in the Global South, but also provides an alternative approach to reorienting the research to focus on how actors in those contexts construct their own realities based on how they experience and perceive the world (Geddes and Rhodes, 2017). Bevir and Rhodes's interpretivist approach and its conceptual application to this research are discussed further below. It is important, however, at this point, to restate the research questions as this will prove useful in operationalising the main concepts in Bevir and Rhodes's interpretivist framework.

The introduction highlighted that the key question emerging from this research is whether the effects of public deliberation in subnational legislatures reflect its espoused benefits. On the basis of this overall research question, four research questions, based on a case study of two subnational legislatures in Kenya, were formulated to aid in answering the overall question:

1. How do Kenya's governance traditions affect the enactment of public deliberation in Kenya's subnational legislatures?
2. How does the enactment of public deliberation in Kenya's subnational legislatures shape the behaviour of the research respondents?
3. How do the research respondents **assign meaning** to public deliberation in Kenya's subnational legislatures?
4. What are the implications of the research findings for public deliberation in Kenya's legislatures at the national and subnational levels?

These are the four questions we will seek to operationalise and answer through Bevir and Rhodes's analytical framework.

5.2.2 Bevir and Rhodes's interpretivism

The interpretivist approach, Bevir and Rhodes (2010, p. 42) argue, is an 'anti-foundationalist philosophy' that asserts that none of our knowledge is certain. Anti-foundationalists take as their starting point 'the principle that social (and political) realities are constructed through our experiences of and engagement with what we perceive of the world' (Bevir and Rhodes, 2006b; Geddes and Rhodes, 2017, p. 9). They assert that there is no specified path that leads to knowledge and no special ways that bring on intellectual progress. They further assert that there exists no 'autonomous self' that can 'form beliefs' and act on 'pure experiences or pure reason' (Bevir and Rhodes, 2012, p. 74). They put forward the argument for a 'web of beliefs' from which all experiences and local reasoning occur (Bevir and Rhodes, 2010, p. 74). Their rejection of the autonomous self, they argue, should not be conflated with a rejection of agency of actors, but rather they posit that agency is found only within the situated context of a web of beliefs arising from local reasoning and thus put forward an argument for what they term 'situated agency' (Bevir and Rhodes, 2010, pp. 74–75).

The philosophical assumptions in the foregoing arguments are significant for the understanding of objectivity, facts and truth (see Bevir, 2000; and, Bevir and Rhodes, 2006). Fundamentally, Bevir and Rhodes (2006b, p. 43) assert that 'facts' are not given to people and instead are 'intersubjectively constructed' as they reject arguments that 'ground the foundation of knowledge in either pure experience or pure reason'. This approach holds significant importance for this research as it privileges the meanings that individuals assign to interpretations of their everyday lives while acknowledging the critical role intersubjectivity plays in those interpretations. The research, drawing on Bevir and Rhodes's interpretivism, focuses on the meanings that legislators,

legislative staff and various publics attach to public deliberation in the legislature within the context of their interactions. The research focuses on the meanings they attach to its purpose, their roles in it, its benefits and what informs their actions and inactions while interacting in this context.

The specific concepts that guide Bevir and Rhodes's interpretive approach and which inform the analytical framework that is used in this research are summarised in Table 2 below:

Table 2 Bevir and Rhodes' interpretive approach – definition of concepts

CONCEPT	DEFINITION
Decentring	To decentre is to unpack practices as the contingent beliefs and actions of individuals, challenging the idea that inexorable or impersonal forces drive politics.
Narratives	Narratives are a form of explanation that works by relating actions to individual beliefs and desires that produce them. This allows us to capture how events happened in the past or are happening today.
Situated agency	Individuals are 'situated' in wider webs of beliefs (traditions), which largely shape their beliefs, yet they keep a capacity for 'agency' in that they respond to traditions, beliefs and dilemmas in novel ways.
Beliefs	Beliefs are the basic unit of analysis, in that they are the interpretations of individuals of their world and their surroundings.
Traditions	Traditions are 'webs of belief' and form the background of ideas in which agents find themselves. Agents will adopt beliefs from traditions as a starting point, but may amend them.
Dilemma	A dilemma is an idea that stands in contradiction to other beliefs, posing a problem. Dilemmas are resolved by accommodating the new belief in the present web of beliefs or replacing old beliefs with new beliefs.
Practice	A set of actions that often exhibits a stable pattern across time. Practices are the ways in which beliefs and traditions manifest themselves on an everyday basis.

Source: Geddes and Rhodes, 2017, p. 23

Bevir and Rhodes (2010, p. 78) define 'traditions' as 'the ideational background against which individuals come to adopt an initial web of beliefs'. In essence, traditions 'influence' without limiting individuals' beliefs. Traditions are, however, not static but can be changed and adapted in response to 'dilemmas' faced by the individual (Bevir and Rhodes, 2010, 2012, p. 79). Bevir et al. (2003, p. 15) argue that:

a particular relationship must exist between beliefs and practices if they are to make up a tradition. For a start, the relevant beliefs and practices must have passed from generation to generation. Traditions must be made up of beliefs and practices relayed from teacher to pupil to pupils' pupil and so on. Such socialization may be intentional or unintentional. The continuity lies in the themes developed and passed on over time. As beliefs pass from teacher to pupil, so the pupil adapts and extends the themes linking the beliefs. Although we must be able to trace a historical line from the start of a tradition to its current finish, the developments introduced by successive generations might result in beginning and end having nothing in common apart from the links over time. ...A tradition must consist of a series of instances that resemble one another because they exercised a formative influence on one another.

Bevir and Rhodes (2012) also highlight that establishing traditions can be difficult where there are limited time and resource constraints to undertake a detailed and thorough historical analysis. In their work they draw on traditions found in conventional accounts of British government. They also use available secondary literature such as departmental courts and their associated departmental philosophies. The critical thing they highlight, however, is that, in their interpretive framework,

traditions are flexible vehicles for explaining beliefs, actions, and practices. The problem is that in any society there are many traditions and, still more important, scholars reasonably can demarcate traditions in different ways depending on what they want to explain. If [scholars] are to avoid essentialist accounts of tradition, then [they] have to document afresh whatever set of beliefs or actions happen to be of interest. Traditions are essentially artifacts, always constructed and interpreted by the observer and justified by the claim that they best explain what is of interest to us. (Bevir and Rhodes, 2012, p. 204)

Dilemmas are seen to come about 'when a new belief puts into question an existing belief or web of beliefs' and the situated agent determines that the new belief poses a 'dilemma' or challenge to the existing belief or web of beliefs (Geddes and Rhodes, 2017, p. 9). Geddes and Rhodes (2017, p. 9), in applying Bevir and Rhodes's interpretive approach to legislative institutions, detail three ways the tension between beliefs can play out:

- New beliefs could be discarded as unconvincing;

- New beliefs could be accommodated into the existing web of beliefs; and
- New beliefs could replace older beliefs.

The dilemmas that actors face, they argue, are important for understanding the contingent nature of politics and the central mechanisms that explain political change. Everyday practices are the arena where beliefs and traditions play out as actors resolve competing dilemmas. The ways in which actors can reject new beliefs and by extension resist change can be with subtle practices that see non-decisions or delayed action on new legislative requirements such as public deliberation. Others can be more obvious such as ignoring, blocking or outright attacking new legislative requirements brought on by new beliefs that pose a dilemma. These everyday practices provide a critical entry point from which it is possible to analyse the behaviour of actors as they link intricately with beliefs and traditions that point to contextual factors internally and externally (Geddes and Rhodes, 2017).

5.2.3 Decentred analysis

Drawing on Bevir and Rhodes to develop the analytical framework for the thesis, the focus is on 'recovering stories' (Rhodes, 2018a, p. 5) so as to draw out meanings through the beliefs and practices of actors in a bid to understand in what ways they are contingent on traditions. One of the concepts that emerge out of decentred analysis is the recovering of stories (Rhodes, 2018b). Rhodes (2018b, p. 9) defines policy narratives as 'non-fiction stories with characters and plots'. The plot, Rhodes states, is 'the reasons characters give for their actions' (Rhodes, 2018a, p. 6). This process of recovering stories is a technique of decentring analysis as it allows the focus to move away from abstract institutions and focus attention instead on relevant meanings,

beliefs and traditions that shape those beliefs (Rhodes, 2018a). Bevir and Rhodes highlight in their interpretive framework the importance of decentring. Decentred analysis is at the core of uncovering the intersubjectivity of people's beliefs and practices.

Decentred analysis produces detailed studies of people's beliefs and practices. It challenges the idea that inexorable or impersonal forces drive politics, focusing instead on the relevant meanings, the beliefs and preferences of the people involved. (Rhodes, 2018a, p. 5)

Rhodes (2018b) provides a useful outline, as shown below, of the distinctive characteristics of a decentred analysis in an interpretivist framework:

Decentred analysis

1. It represents a shift of *topos* from institutions to *meanings* in action.
2. Institutions whether a policy network or a prime ministerial office or a policy do not have essentialist features, only *family resemblances* that are *constructed, contested, and contingent*.
3. Decentred analysis explains shifting patterns of policy and policymaking by focusing on the actors' own interpretations of their *beliefs and practices*, not external causes such as a global financial crisis.
4. The everyday practices arise from agents whose beliefs and actions are informed by *traditions*.
5. It explores the diverse ways in which *situated agents* are changing policies by constantly remaking practices as their beliefs change in response to *dilemmas*.
6. It reveals the *contingency* and *contestability* of policy narratives. It highlights both the importance of local knowledge and the diversity of policymaking and its exercise.
7. It provides instrumental knowledge expressed in *stories*.

Source: R.A.W. Rhodes, 2018, p. 6

However, even as Rhodes establishes the idea of a plot, which helps us recover the beliefs and reasons for practices of characters, Bevir and Rhodes do not provide a tangible lens for accessing the plot so as to recover the beliefs and practices of actors. They talk about narratives as the forms of explanation that relate actions to individual beliefs and the desires that produce them. This, however, still leaves the question of how these narratives can be systematically organised and interrogated. What are the structural components of the narratives that enable the plot to be understood?

The analytical framework of performance provides a lens through which to study how a plot evolves and its important structural components. The idea of performance as an analytical tool has previously been applied in legislative studies by Shirin Rai (Rai and Johnson, 2014; S. M. Rai, 2014; Rai, 2016). Rai's research, although focused on national parliaments, can be beneficially applied to the analysis of subnational legislatures which for the purposes of this research are viewed in a similar manner to national parliaments, as discussed in the introduction and Chapter 2. Rai (2016, p. 148) suggests that, for citizens, key parliamentary events such as debates, no confidence motions or opening of the legislature all provide arenas for what she terms 'grand theatre'. Parliaments, she argues, are also usually physically housed in grand buildings that symbolise the power both of the institution and of the nation or are symbols of democracy or democratic aspirations. She further argues that, 'in these buildings, ceremonies and rituals become markers of recognition of us as 'national' subjects or of the distance between ordinary citizens and political elites' (Rai, 2016, p. 149). Rai's focus is primarily on ceremony and the routinisation of ritualised performances and how through these processes 'power becomes invisible, sedimented, "commonsensical" and part of our way of thinking about ourselves as well as those who govern us' (Rai, 2016, p. 153). The introduction of performance into the analytical framework in this research focuses on the pragmatic work of organising and structuring the different parts of the decentred analysis and its associated narratives.

Bevir and Rhodes (2012), in one of their definition of narratives, view them as stories by which the people they study make sense of their world. They additionally add that they found a growing body of literature on storytelling consistent with their use of

narratives and therefore an 'insightful way of analysing the everyday actions of political actors' (Bevir and Rhodes, 2012, p. 205). They therefore

reported how ministers, civil servants, police officers, and citizens use stories to make sense of their world, to gain and pass on information, to inspire involvement, to persuade others to act in certain ways, and as the repository of the organization's institutional memory. (Bevir and Rhodes, 2012, p. 205)

In the argument above, Bevir and Rhodes put forward storytelling as a way of constructing narratives in decentred analysis. However, the choice of storytelling assumes and is located in a very specific type of governance culture and specific type of civil servant. It assumes a governance culture where actors use stories to make sense of their world, and gain and pass on information as well as to influence the behaviour of others. Cultural contexts are numerous and varied and an assumption that all cultures privilege storytelling may become problematic to recovering narratives where fear of factors such as authoritarianism may make actors unwilling to engage in storytelling.

5.2.4 Using performance as an analytical framework to examine narratives

Drawing on the work of Jeffrey Alexander (2006) and Maarten Hajer (2005), the research focuses on four elements of a social performance to establish the thread of the plot for the decentred analysis of public deliberation in Kenya's subnational legislatures. Performance is used to help in recovering and structuring the narratives that constitute the plot. Hajer (2005, p. 624) suggests that we can 'enhance our understanding of the dynamics of policy deliberation by examining the setting in which the deliberation takes place as well as the particular staging of that setting'. Hajer (2005, p. 625) highlights that, aside from a focus on the actual participation and deliberation discourse, to truly understand the conditions under which influence in

decision-making is achieved, it is necessary to also focus on the 'conditions (physical, technical, theatrical)' under which deliberation takes place. He argues that 'settings' have a performative dimension and 'practices of participation construct their participants, and some may construct people as protesters, whereas other practices may create collaborators' (Hajer, 2005, p. 626). He goes on to add that, if the setting can create performative effects, then manipulation of the setting, which he refers to as 'staging', becomes an important factor in understanding deliberative policymaking. His arguments are enhanced by Molinengo and Stasiak (2020, p. 3) who extend the arguments on staging to emphasise the importance of analysing the 'backstage work' where the 'rational, framing and rules operating' in the deliberative space will be defined. The backstage here involves the preparations for staging public deliberation as will be discussed later. The work of Molinengo and Stasiak builds on the work of Escobar (2015) who first highlighted the importance of the 'backstage' work of facilitators in scripting the 'frontstage' deliberative processes. The frontstage here refers to the actual staging of public deliberation.

Developing on from Hajer's arguments about setting and staging, the researcher draws on the work of Alexander (2006, p. 32), which looks at cultural performance as a 'social process by which actors, individually or in concert, display for others the meaning of their social situation'. Alexander argues that, for the performance to be effective, actors must give a plausible performance that will convince the audience of its reasonableness, and through dramaturgy provide communicative signs to the audience. Public deliberation is a cultural performance of deliberative law-making that takes place in a setting that, as Shirin Rai has pointed out, not only provides an arena

for grand theatre but is also a physical manifestation of power, democratic aspirations and ceremonies and ritual that carry theatrical and communicative power.

To provide the lens through which the researcher analyses the performance of deliberative public engagement, four out of five of Alexander's basic elements are used. The four elements are actors, observers/audience, means of symbolic production, and *mis-en-scène*/staging to draw out my decentred analysis of the committee public deliberation process. Alexander (2006, p. 36) argues that 'every social performance, whether individual or collective, is affected fundamentally by each of the elements presented'. These interdependent elements 'provide a framework for the interpretive reconstruction of the meanings of performative action' (Alexander, 2006, p. 36). The recovery of meaning is at the heart of Bevir and Rhodes's interpretivist approach and therefore the performance framework provides the tools with which to structure the plot so as to observe and recover practices and their meanings. Below, Table 3 shows how each of the four basic elements will be applied in decentring the performance of public deliberation within the legislative committee in order to recover the intended narratives. The table is adapted from Alexander's basic elements of social performance and engages the elements of it that are useful for structuring the narratives in the research.

Table 3 Deliberation as cultural performance: concepts

CONCEPT	DEFINITION
Actors [Represented by legislators and legislative staff]¹	The actor represents the performer, and his goal is to make the spectator (audience) 'confuse his emotions with those of the stage character' (Alexander, 2006, p. 34). They do this by attempting to project meaning through emotions and textual patterns as moral evaluations.
Audience [Represented by the public]	The audience of observers for the cultural performance (public deliberation). They decode what actors have coded in variable ways. Observation can be merely cognitive with an audience seeing and understanding without experiencing emotional or moral signification. Observation by the audience can also be active through the experiences of the audience. Critics can intervene between performance and audience.
Means of symbolic production. [Represented by the committee room for deliberation and legislative rules and procedures used to govern deliberation]	Material things that allow symbolic projections to be made by actors. The objects serve as iconic representations to help dramatise and make vivid the invisible motives and morals actors are trying to represent. This can be a physical space to perform and the means to assure the transmission of their performance to an audience.
<i>Mis-en-scène</i> [Represented by the staging and sequencing of deliberation in committees]	Social actors engage in dramatic social action, entering into and projecting the ensemble of physical and verbal gestures that constitutes the performance. Here we shall consider the directing role of legislators and staff in staging the scene of public deliberation.

Source: [adapted from Alexander \(2006, pp. 32–36\)](#)

Alexander (2006, p. 36) highlights that each of these elements, while 'empirically interrelated...has some autonomy', both analytically and empirically. Together, however, they 'determine, and measure, whether and how a performance occurs and the degree to which it succeeds or fails in its effect'.

¹ Legislative staff and representatives are assigned this position as they are the ones responsible for initiating public deliberation.

5.2.5 Analytical framework

In designing the analytical framework for the thesis, it becomes important to establish a more nuanced operationalisation of the terms in Bevir and Rhodes's broader interpretivist framework, as well the elements of performance discussed above. Drawing additionally from the work of Geddes and Rhodes (2017), who applied Bevir and Rhodes's interpretive framework to the study of the UK Parliament, a discussion is presented below on the specific constitutive elements of the analytical framework to be applied in this research. A modular representation of the various elements and their interaction with each other will be presented at the end of this discussion.

The historical 'governance traditions' will be identified through a literature review of other scholarly work discussing governance in Kenya, as well as other available data from government departments. The establishment of Kenya's governance traditions is important in order to establish the ideational context in which the identified actors in this research situate their 'beliefs'. The identification of Kenya's governance traditions will constitute the first findings and analysis chapters. In order to successfully draw out the meanings that actors attach to public deliberation, an understanding of the ideational context is necessary.

'Situated agents' in the context of the analytical framework for this research represents the actors engaged in public deliberation in the subnational legislature. Situated agents in this context are the participants of this research, who are made up of elected legislators, legislative staff and participating public who have taken part in public deliberation, as well as those who have not. In structuring the narrative, Jeffrey Alexander's analytical framework of social performance informs the interactions

between the participants in the course of public deliberation. The participants are referred to as situated agents as their 'beliefs' and 'practices' are situated within the traditions of governance established as supported by the anti-foundationalist philosophy of Bevir and Rhodes's interpretivism as earlier discussed.

The beliefs of actors are situated in the governance traditions that will be established; however, it is important to highlight that this does not negate the agency of participants, who are still able to make decisions that conflict with their traditions in the event that new beliefs challenge their existing beliefs. In order to examine individual beliefs, Geddes and Rhodes (2017, p. 11) caution that 'we cannot assume that parliamentary actors act out of rational self-interest. Rather, they pursue a wide range of practices depending on interpretations of their role.' In order to understand how actors and audiences interpret their role, the research examines interpretations of actors of scrutiny, legislative roles and advisory roles, particularly through their use of symbolic production, while conversely examining interpretations of audiences of their participatory and accountability roles in the staging of public deliberation.

'Dilemmas' arise when new beliefs, in this case the introduction of constitutionally mandated public deliberation in subnational legislatures, stand in contradiction to other beliefs, posing a problem. The introduction of public deliberation into subnational legislatures as examined in this research is seen as a new belief that poses a dilemma both to existing beliefs and to existing institutional arrangements. The dilemma manifests itself in the *mis-en-scène* during the staging of public deliberation. Actors engage in social actions that produce practices that reflect their acceptance or rejection of new beliefs.

Finally, practices represent the ways in which beliefs and traditions of participants manifest themselves on an everyday basis. These everyday practices to be examined will include, among others, social manners and appearances; attempts to follow (or subvert) social cues; the organisation of space in committee rooms; the role of ceremonials and rituals, ways of performing in committees; questioning and response styles; styles of providing (or withholding) committee advice; and the use of language and rhetoric. The change in or stability in everyday practices will represent how participants are confronting the dilemma of public deliberation through the meanings they attach to it. Additionally, the meanings they attach to it will also demonstrate whether public deliberation has any positive or negative effects in the legislative committees of the subnational legislature. The way in which practices reproduce or transform will ultimately lead to changes in traditions as situated actors change their beliefs or keep them.

A figure representation of the analytical framework, adapted from Hay (2011, p. 178), is represented below:

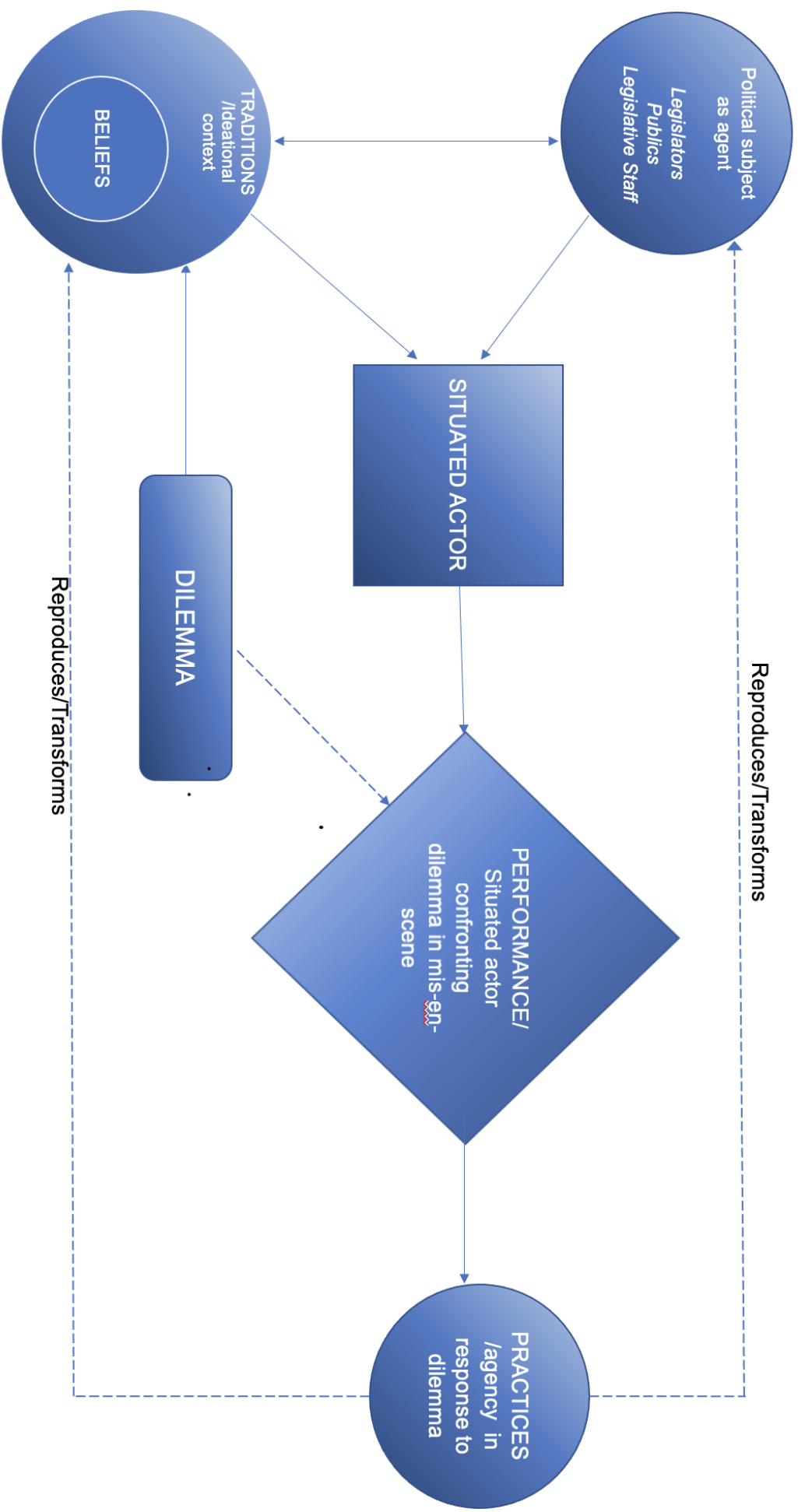


Figure 1 Representation of analytical framework

5.3 Methodology

5.3.1 Methodology selection

The research is carried out as a paradigmatic case study examining the meanings of public deliberation in subnational legislatures in Kenya. Paradigmatic cases, according to Flyvbjerg (2006, p. 232), 'highlight more general characteristics of the society in question'. Paradigmatic cases can therefore serve as exemplars that stand out. Kenya is a country located in sub-Saharan Africa, a region that has traditionally been under-researched in legislative studies broadly, but even more so in relation to research on deliberation. Research on public deliberation in legislative institutions in Africa is close to non-existent despite an increase in the number of legislatures adopting constitutionally mandated public deliberation. The case study examines two embedded cases, which allow a closer study of the meanings of public deliberation in two subnational legislatures in Kenya. Kenya's subnational legislatures were selected as a case study as they fitted the classification of a legislature as used in this thesis, that is, meso-level structures above the level and responsibility of municipal and other urban councils. Kenya's constitution also mandates obligatory public deliberation in its legislative bodies at both the national and subnational levels. The case selection provides the opportunity to investigate empirically a region for which there is currently limited empirical data, and additionally a region that as some scholars argue could draw immense benefit from the effective implementation of public deliberation.

Case studies are generally associated with qualitative research and accordingly a constructivist ontology and interpretivist epistemology owing to the focus on undertaking a detailed and intensive analysis of the data (Bryman, 2016, p. 61). Case studies are important in contributing to the development of research as they allow the

researcher to distil and engage with contextual factors, thereby allowing for intensive examination of chosen cases using multiple sources of data (Easton, 2010; Denscombe, 2014). The use of different sources of data additionally encourages the use of a variety of research methods, which aids a thorough analysis of the case and produces rich data (Yin, 2013; Denscombe, 2014). Rhodes (2017, p. 15; 2018b), supported by Yanow (2006), as earlier discussed, also highlights that an 'interpretive approach does not favour any particular methods'. In adopting a case study approach that uses an interpretivist epistemology, it allows meanings to become the focus of the research. Drawing on Bevir and Rhodes's interpretivism, the methodology is centred on drawing out the meanings that the research participants attach to public deliberation. Public deliberation in legislatures and particularly in subnational legislatures in Africa is a significantly under-researched area, as highlighted above and discussed critically in Chapter 2. The choice to adopt an interpretive case study allows the focus to be on how participants assign meaning to public deliberation. The focus on meanings through case study research facilitates the generation of rich contextual data, using multiple sources of data, that provides critical insights into understanding how public deliberation affects complex and diverse environments such as legislatures that make it difficult to draw generalisable conclusions. A case study therefore provides an excellent opportunity and entry point to generate in-depth findings that can be generalised to the study of public deliberation, as well as providing critical contextual insights for future study on public deliberation in African legislatures.

Some scholars have argued that one of the major challenges with studying public deliberation is the absence of large data sets or comparative studies that compare across a large number of cases (Webler and Tuler, 2002; Burton, 2009b; Richardson,

Durose and Perry, 2019). A significant body of research on public deliberation has indeed adopted the use of a case study methodology. The over-reliance on case studies some argue has skewed the research towards overstated successful outcomes (Richardson, Durose and Perry, 2019) and findings that can only be used as contextual data when subjected to realist analyses (Burton, 2009b). Scholars have argued that one of the weaknesses of case studies and particularly interpretive case studies is that findings cannot be generalised to other situations (Stake, 1995; Ruddin, 2006; Bryman, 2016). Yin (2013) and Denscombe (2014) have, however, argued that case studies allow for generalising to theory. The argument for generalising to theory sees the case study as generating rich data from which theory is generated (Bryman, 2016) and what Yin refers to as 'analytic generalisation'.

5.3.2 Case selection

The research adopted an interpretive case study research design using qualitative research methods. The selection of two subnational legislatures as cases in the research was intended to increase the robustness of the findings through the logic of replicability to see if the findings were the same across the two cases (Yin, 2013). The data collection methods used were focus groups, semi-structured interviews, observation and documentary analysis.

Kenya is one of Africa's leading emerging economies, and one that additionally has made significant strides in advancing democratic ideals. All legislative bodies in Kenya are constitutionally mandated to undertake public deliberation on all legislation they consider. The Constitution of Kenya makes public deliberation a central part of Kenya's governance system and each legislative assembly provides for it in its rules of

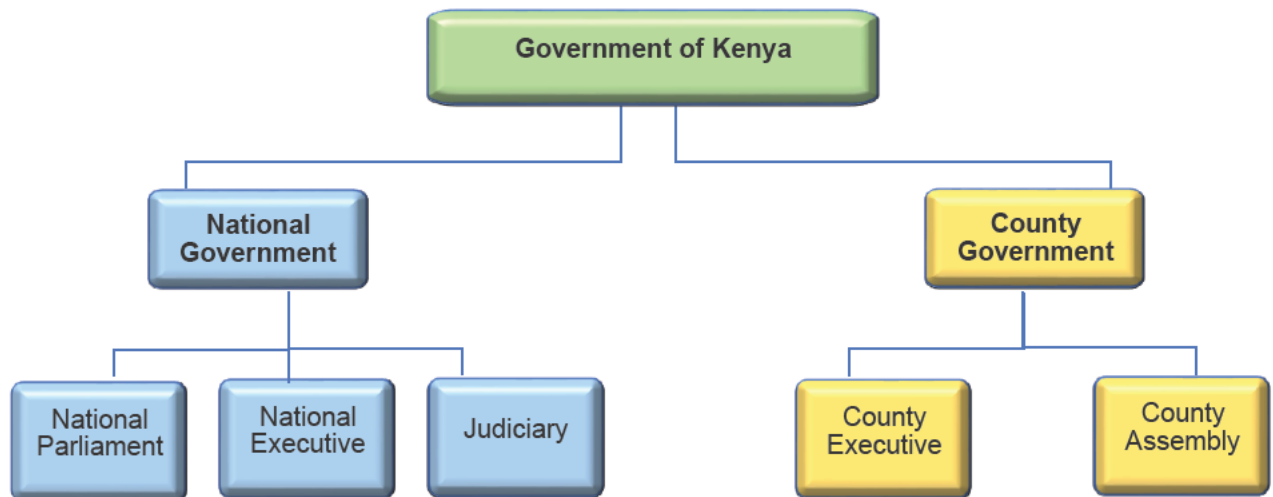
procedure. Article 10, Article 174(c), Article 184(1)(c) and Article 196 of the Constitution recognise public deliberation by citizens as a national value and principle of governance and detail how it should be implemented (Government of Kenya, 2010). Kenya currently has no overarching legislation guiding the enactment of public deliberation. There are attempts to enact an overarching public deliberation law, with three bills – the Public Participation Bill (Sen. Bills No. 4 of 2018), the Public Participation Bill (NA Bill No. 69 of 2019) and the Public Participation Bill (No.2) (NA Bill 71 of 2019) – currently pending in the national parliament. Several counties have enacted their own public deliberation laws including Mombasa and Nairobi counties, whose legislatures were chosen for the research case study. Nairobi County Assembly enacted the Nairobi City County Public Participation Act in the year 2015 and Mombasa County Assembly enacted the Mombasa County Public Participation Act in the year 2017. The objective of the two Acts is to provide for the establishment of a legal framework for facilitating public deliberation in county government (CG) processes.

The case study examined the effects of public deliberation in two of Kenya's subnational legislatures. Kenya's devolved system of government is made up of two levels of government: the national government and forty-seven CGs². The CG that is the focus of this research is constituted of the county executive and county assembly. Figure 3 below provides an illustration of Kenya's national and CG structure. Article

² The 2010 Kenya constitution created a devolved government. The national government in the constitution is assigned primarily policy-making functions. The constitution created 47 sub-national territorial and political units called counties. The county governments are primarily assigned service delivery functions. See 2010 Constitution of Kenya, Fourth Schedule for functions assignment.

6(2) of the Constitution of Kenya establishes the two levels of government as distinct and interdependent.

Figure 2: National and county government structure



The research focused on interpreting the meanings of public deliberation in the finance, budget and appropriations committees (FBAC) of two county assemblies as part of the requirements for undertaking scrutiny of the annual county fiscal strategy paper (CFSP). The two subnational legislatures chosen for the study were the Nairobi City County Assembly and the Mombasa County Assembly. The two subnational legislatures are in relatively similarly sized urban cities with a multi-ethnic population of predominantly young working-age residents. The two assemblies are, however, significantly different in membership size. Nairobi County Assembly has 127 members and Mombasa County Assembly has forty-five members.

5.4 Research methods

The research adopted a multiplicity of research methods. Triangulation of multiple data sources of data is critical in case study research to improve the validity of the research data (Stake, 1995; Yin, 2013).

5.4.1 Interviewing

The researcher conducted a total of thirteen strategic semi-structured elite interviews. The interviewees included the chairs of the FBAC in each county assembly, the secretariats of the FBAC in each county assembly, the CECMs in charge of finance and public participation, and the staff of NGOs working on budget and good governance matters in the respective counties. Appendix V shows interviews that were conducted as a group interview. The group interviews were primarily didactic between the researcher and each individual in the group. The group interview was not interactive between participants and the opinion of each individual respondent was taken on its own merit. The choice to carry out group interviews was informed by the need to maximise availability of legislative staff who were busy and not available for individual interviews within the fieldwork timeframe.

Interviewees were identified based on the researcher's institutional knowledge of the most important government actors in the budget process, and the most influential NGOs working on budget and public deliberation matters in the respective counties. A majority of the interviewees were approached by email and follow-up was made with telephone calls as they were personally known to the researcher owing to professional association. Two of the interviewees were approached through other professional associations, which facilitated introductions by email and telephone calls. All but one

of the approached respondents, namely the chairman of the County Assemblies Forum, accepted to be interviewed. Appendix V, the fieldwork schedule, provides a list of interviewees detailing their roles and codes assigned for purposes of the research. The identity of the interviewees has been anonymised on the schedule for their privacy.

Semi-structured interviews, which are commonly used in interpretive and qualitative research, were identified as a data collection method as they provided the opportunity to conduct exploratory qualitative research that concentrates on the 'distinctive features of situations and events and upon the beliefs and personal experiences of individuals' (Vromen, 2018, p. 246). Interpretive research is focused on drawing out meanings or beliefs that make the actions and practices of individuals possible (Bevir, 2006). In-depth semi-structured interviews are able to recover meanings as they 'provide information on understandings, opinions, what people remember doing, attitudes, feelings and the like' (Vromen, 2018, p. 246), which can all be used to interpret actions and beliefs.

An interview guide, attached as Appendix I, was used to prompt respondents on the key issues to be discussed. Respondents were, however, given significant leeway in giving their responses as is the norm for semi-structured interviews in order to allow in-depth exploration of the issues. The questions in the interview guide were piloted among professional acquaintances working in the national parliament as well as in NGOs supporting democracy and good governance programmes. All interviewees, based on their categorisation, were asked the same questions about their views on public deliberation and their role in executing public deliberation; in most instances further questions were asked of the respondents outside of the interview guide, which

were aimed at clarifying responses given or to prompt respondents to delve further into their responses. Group interviews were conducted for staff of the FBAC secretariats in Nairobi and Mombasa. The interviews were all audio-taped and subsequently transcribed. The transcripts of each interview were then uploaded onto the NVivo qualitative software programme and coding was carried out based on themes.

The themes used in the coding were based on paragraphs of the transcript that were identified based on how respondents spoke of their understanding of public deliberation and how this informed their own beliefs and practices. The themes were identified both inductively and by using concepts from the analytical framework. The broad themes that were identified in the paragraphs drew out the continued existence of Kenya's governance traditions, and the beliefs and practices of actors based on the meanings they attached to public deliberation. Quotations were selected for use in the chapters that follow in order 'to illustrate the thematic categorisations, and to incorporate the voice' (Vromen, 2018, p. 247) of the interviewees.

The researcher aimed to be as transparent as possible in identifying the continued existence of traditions as well as in identifying beliefs and practices based on the respondents understanding of public deliberation and how those are informed by traditions. Some scholars have argued that these kinds of interpretations lack epistemic validity as they are the imagination of the researcher and cannot make any claims to truth. Bevir (2006), however, argues that it is naïve positivism to assume that it possible to have pure perception of facts, a sentiment reemphasised in the argument situated agency (Bevir and Rhodes, 2012), as earlier discussed. Bevir (2006, p. 289) argues that epistemic legitimacy of a form of explanation can be judged by the

‘reasonableness of the theories, concepts, or categories it embodies’. The researcher, based on her experience as a legislative staff member in the Kenyan national parliament, discussed in the preface to this thesis, acknowledged that the identification and interpretation of the themes was informed by her own professional experience but continuously adhered to the rigour of showing reasonableness in the concepts advanced.

5.4.2 Focus groups

Four focus groups were undertaken as part of the data collection. Participants in the focus group discussions (FGDs) were identified through identified through professional and civil society networks. A purposive sample of individuals with prior experience of public deliberation as well those with no prior experience in public deliberation was identified. Gender, age, disability and ethnicity criteria were, however, specifically applied in selecting participants to ensure a diverse sample of the population. The county assemblies did not maintain a register of contact details of people who had previously participated in their public deliberation exercises and therefore participants could not be contacted that way. The effects of failing to maintain records of participants of public deliberation is explored in Chapter 10. The FGD participants identified were contacted by telephone, which was followed up with a text message for those who accepted the invitation to attend the FGD. The text message was used confirm attendance as well as provide details of the date, time and location for their respective FGD. A majority of respondents contacted agreed to take part, which may have been aided by fact that the researcher reimbursed associated transport expenses for those who agreed to attend the FGD.

Two focus groups of nine people were held in each county. Bryman (2016) indicates that the average size of groups is usually between eight and fifteen, a sentiment echoed by Vromen (2018), who cites eight to ten participants in an FGD as common. Bryman (2016) argues for the use of several groups so as to attain data saturation; however, in this study, the data from the two similar groups in each county was deemed sufficient when complemented with data collected through the semi-structured interviews and observation. Vromen (2018, p. 248) argues that, in order to explore the formation of shared attitudes, the participants in the FGD should share some 'commonalities or a pre-existing affinity group'. The participants in the FGDs were therefore separated into two groups. The first group (FGD1) was those who had never taken part in a public deliberation exercise at the county assembly and the second group (FGD 2) was participants who had previously taken part in public deliberation in the county assembly. FGD 1 served as a **comparison** group, with their responses being **related** to those taking part in FGD 2 to examine how engaging in public deliberation may affect people's beliefs and practices. Appendix V details when the FGDs were held, and codes assigned for purposes of the research. Individual participants were not coded but identified according to their assigned group.

Focus groups are particularly useful in identifying, through group interaction, a range of views around a tightly defined research topic and thereby gaining insights and producing data on the issues from the perspectives of the participants in the research (Hennink, 2007; Bryman, 2016; Vromen, 2018). The benefit of focus groups in interpretive research is that it can be used to examine the 'formation of shared attitudes' (Vromen, 2018, p. 248), which are established as the group highlights issues of importance to them through spontaneous discussion (Hennink, 2007). FGDs were

identified for data collection as they provided the opportunity to explore shared public attitudes about the meaning of public deliberation and what they perceived to be its benefits. Joint exploration to assess the similarity of attitudes of respondents who had previously engaged in public deliberation versus those who had never taken part was also something that was best explored through FGDs.

The FGDs were guided by a FGD moderator who had several prompt questions, attached as Appendix II, which he used to prompt discussion among the FGD participants. The prompts were aimed at generating discussions about the meaning's respondents associated with public deliberation and how they perceived their role in enacting public deliberation. The FGDs were targeted at answering RQ2, RQ3 and RQ4, as shown in Table 5 below. The small number of predetermined prompt questions were replicated for similar groups to ensure consistency in the issues discussed. During the FGDs the researcher took down observation notes in a fieldwork reflective diary. The notes provided contextual data about issues like the body language of respondents, observable socio-economic differences between participants and general concurrence of issues among participants. These observations were provided important contextual consideration that were taken into consideration during data analysis.

Each FGD was audio-taped and subsequently transcribed. The transcriptions were then uploaded onto the NVIVO qualitative software programme and coding carried out based on themes from the analytical framework as well as some identified inductively. Similar to the semi-structured interviews above, the themes used in coding were based on paragraphs of the transcript that were identified based on how respondents in the

discussion spoke of their understanding of public deliberation and how this informed their own beliefs and practices. Quotes from the FGDs were used to demonstrate the beliefs and practices of the participants.

5.4.3 Observation of public deliberation

Direct observations captured in a reflective diary were also kept and captured observations were made during the actual public deliberation on the CFSP. No direct extracts from the reflective diary were used in the thesis text. Observation data provides additional useful evidence on the topic being studied (Yin, 2013). The FBAC of Mombasa County Assembly failed to carry out public deliberation on the CFSP while the FBAC of Nairobi County Assembly carried out a public deliberation exercise lasting several hours. In Nairobi, the decision to carry out one public deliberation was justified by the FBAC as sufficient owing to the fact that the county executive had already carried out sufficient and extensive consultation with the public in each ward and their work was simply to ratify those decisions. In Mombasa, no official reason was given for the failure to carry out public deliberation on the CFSP.

The observation of the exercise of public deliberation in the Nairobi County Assembly provided important contextual data about the culture of the county assemblies. Through observation it was possible to draw interpretations of the meanings assigned to public deliberation through the practices of the participants. The observation of physical artefacts used during public deliberation also provided important broader contextual perspectives concerning the enactment of public deliberation (Yin, 2013). The significant behavioural patterns that were noted to ensure consistency in observed data included:

1. Non-verbal communication through body language of legislators, assembly staff and participants;
2. How succinctly different groups of publics articulated their concerns;
3. Language used by legislators, assembly staff and participants;
4. Structure of and organisation of the room used for public deliberation;
5. Process requirements in organising public deliberation; and
6. Prioritisation assigned to different participating groups during public deliberation on the CFSP.

Sample pages from the fieldwork reflective diary are attached as Appendix VI.

5.4.4 Documentary analysis

Prior to proceeding on fieldwork, the researcher developed a list of important documents that would provide important contextual information for the research. The researcher drew on specific documentary information to 'corroborate and augment evidence' (Yin, 2013, p. 107) from the other data sources above. The documents identified were as far as possible downloaded electronically from official Government of Kenya websites or webpages of reputable registered NGOs. The researcher identified and categorised documents based on who produced them and their intended audience. The categorisation was particularly important when it came to analysing the suitability of those documents for facilitating public deliberation.

The researcher carried out documentary analysis of the following documents:

Table 4 List of documents consulted in documentary analysis

No.	Document	Agency	Audience	Access
1.	Finance Budget and Appropriation Committee reports	Nairobi City County Assembly	Public and county executive	Online
2.	The Nairobi City County Public Participation Act, 2016	Nairobi City County	Public and county executive	Online
3.	The Mombasa County Public Participation Act, 2017	Mombasa County	Public and county executive	Online
4.	County Public Participation Guidelines	Ministry of Devolution and Planning and Government of Kenya	Public and county governments	Online
5.	Nairobi City County Assembly Standing Orders	Nairobi City County Assembly	Public and county governments	Online

6.	Final Report of the Task Force on Devolved Government Volume I: A Report on the Implementation of Devolved Government in Kenya	Office of the Deputy President	Public	Online
7.	County Governments Act, 2012	Government of Kenya	Public and county governments	Online
8.	Access to Information Act, 2016	Government of Kenya	Public	Online
9.	National Cohesion and Integration Act, 2008	Government of Kenya	Public	Online
10.	Public Finance Management Act, 2012	Government of Kenya	Public and county governments	Online
11.	Kenya Draft Policy on Public Participation, 2018	Office of the Attorney General	Interest groups and national government	Online
12.	The Constitution of Kenya, 2010	Government of Kenya	Public	Online
13.	2019 Kenya Population and Housing Census Volume III: Distribution of Population by Age and Sex	Kenya National Bureau of Statistics	Public	Online

14.	2019 Kenya Population and Housing Census Volume IV: Distribution of Population by Socio-Economic Characteristics	Kenya National Bureau of Statistics	Public	Online
15.	Final Public Participation Report IGRTC	Intergovernmental Technical Relations Committee	Public and county governments	Online
16.	Ethnic and Diversity Audit of the County Public Service	National Cohesion and Integration Commission	Public	Online
17.	Towards National Cohesion and Unity in Kenya: Ethnic Diversity and Audit of the Civil Service (Volume 1)	National Cohesion and Integration Commission	Public	Online
18.	Ethnicity and Politicization in Kenya	Kenya Human Rights Commission	Public	Online
19.	How to read and use a budget policy statement and county fiscal strategy paper	International Budget Partnership	Public	Online
20.	Various blog posts and newspaper articles on issues of public deliberation and the budget process in the counties	Various	Public	Online

Only Nairobi City County Assembly had on its website and social media pages a repository of some of its reports, budget documents, public deliberation announcements, relevant government policies related to public deliberation and photographs of public deliberation events. The county assembly Hansard was available on the websites of both county assemblies but in the case of Mombasa was incorrectly indexed. The documents were analysed, and inferences drawn on how public deliberation submissions were incorporated into committee reports and decisions; how public deliberation submissions were used by legislators for debate; whether documentation was made accessible to the public for use in public deliberation; and what inferences could be drawn from the documentation about beliefs and practices associated with public deliberation. The inferences drawn from the documentary analysis provided important contextual understanding of the enactment of public deliberation, which were corroborated by the other sources of data.

Analysis of scholarly journal articles was specifically undertaken to establish Kenya's governance traditions, as discussed in Section 5.2.2 above. Through qualitative analysis of the texts and documents, interpretations were drawn to establish a historical sequencing showing the continuity of Kenya's governance traditions in different iterations, while relating it to the present-day continued manifestations in the practices and beliefs of participants.

Table 5 below shows how the various the research methods were applied:

Table 5 Research methods

No.	Research question	Data collection method	Participants	Data analysis
1.	How do Kenya's governance traditions affect the enactment of public deliberation in Kenya's subnational legislatures?	• Semi-structured elite interviews • Documentary analysis	• Chair of the FBAC in the county assembly • County Executive Committee Member for Finance • Secretariat of the FBAC in the county assembly • Leaders of NGOs working on budget and good governance matters	• NVivo – coding • Thematic narrative analysis • Documentary analysis
2.	How does the enactment of public deliberation in Kenya's subnational legislatures shape the behaviour of the research respondents?	• Focus group discussions	• Ordinary citizens resident in the two counties who had never taken part in any form of public deliberation • Ordinary citizens resident in the two counties who had taken part in public deliberation • Leaders of NGOs working on budget and good governance matters	• Thematic narrative analysis • NVivo – coding

3.	How do the research respondents <i>assign meaning</i> to public deliberation in Kenya's subnational legislatures?	• Semi-structured elite interviews • Documentary analysis • Focus group discussions	• Ordinary citizens resident in the two counties who had never taken part in any form of public deliberation • Ordinary citizens resident in the two counties who had taken part in public deliberation • Chair of the FBAC in the county assembly • Secretariat of the FBAC in the county assembly • Leaders of NGOs working on budget and good governance matters	• Thematic narrative analysis • NVivo – coding • Documentary analysis
4.	What are the implications of the research findings for public deliberation in Kenya's legislatures at the national and subnational levels?	• Semi-structured interviews • Documentary analysis • Focus group discussions	• Collation of views from all participants	

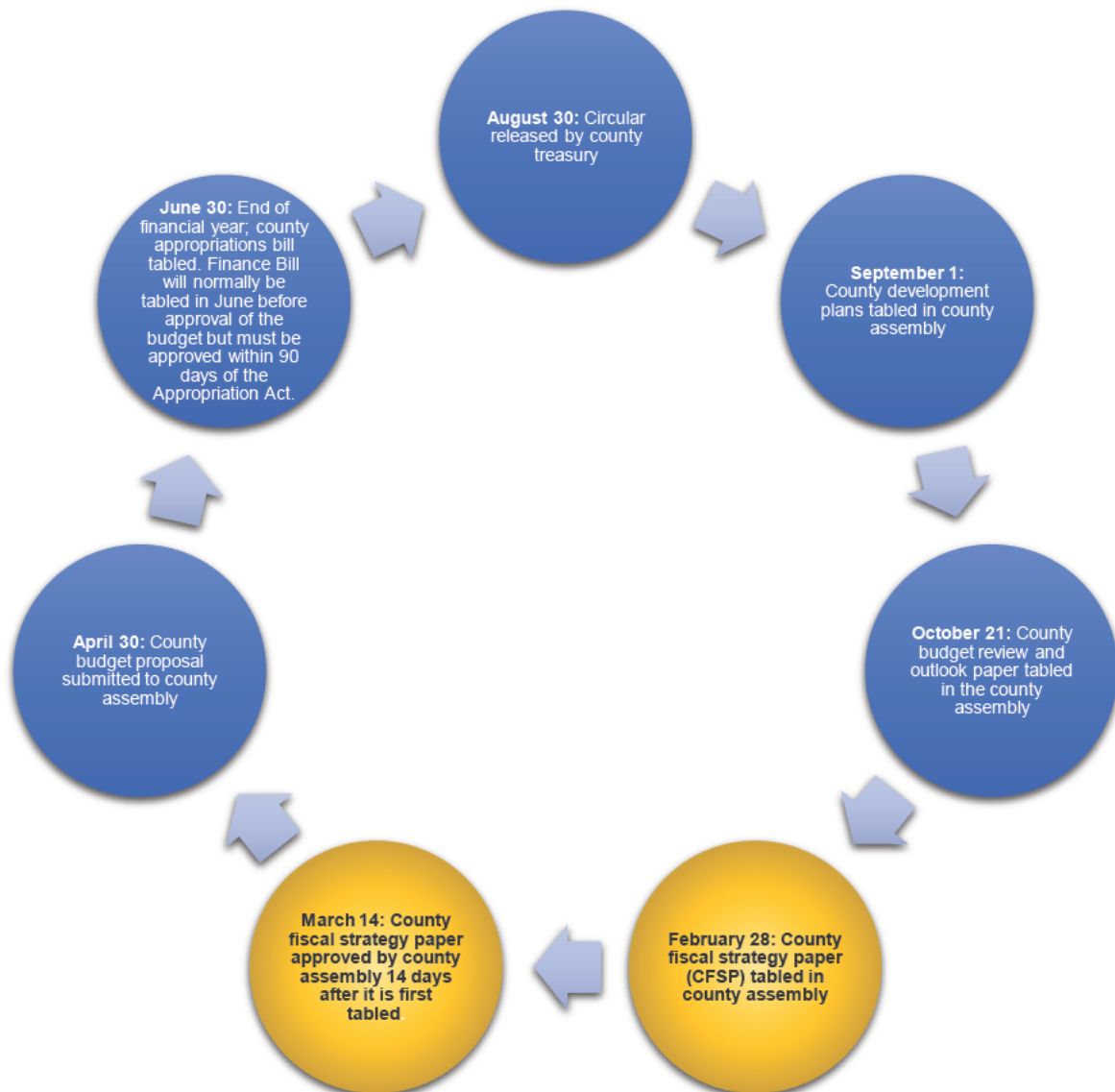
5.5 Contextualising the case: public deliberation in the budget process

The Nairobi and Mombasa subnational legislatures were identified as the case study for the research. The two subnational legislatures provided an embedded case study that facilitated the examination of the research questions on the effects of public deliberation for each subnational legislature. Through this individual examination of data collected for each legislature it was possible to assess the **transferability** of findings between the two cases (Yin, 2013).

The county fiscal strategy paper (CFSP) in the budget-making process was identified for analysis in the case study as it recurs year on year in all county assemblies, with key budget calendar dates provided in law. The budget-making process is a significant event in the legislative calendar as it determines various significant policy and legislative directions that affect people's lives. The research focuses specifically on public deliberation on the CFSP as it is a critical budget document. The International Budget Partnership, a leading NGO working on matters of fiscal discipline in Kenya, highlights in one of its reports that the CFSP addresses 'what share of the budget should go to each of the major sectors (such as health, agriculture, education, etc.)' (Lakin, 2016, p. 1). The process of setting spending per sector is referred to as 'setting the ceilings' and determines the maximum spending each sector should receive in the coming financial year. The establishing of spending priorities has significant effects on both long- and short-term development. Figure 4 below provides a summary of the county assembly budget formulation and approval process. The diagram highlights in yellow where the CFSP falls in the budget cycle. The cycle mirrors the budget cycle at the national level but has slightly fewer steps as county assemblies are not involved in

enacting bills pertaining to the sharing of revenue between the national and county governments.

Figure 3: County budget formulation and approval cycle



Source: Formulated by researcher

The CFSP is a policy document prepared by the county executive and, despite not being a bill, is subjected to the same legislative process as a bill. The CFSP is provided

for in Section 117(1) of the Public Finance Management Act (PFM) of 2012 and every CECM for finance is mandated by law to submit their CFSP to their respective county assembly by 28 February of each year. The priorities of the CFSP are expected to align with the national objectives of captured in the budget policy statement (BPS) and should also specify the broad strategic priorities and policy goals of the county government in preparing its budget for the coming financial year and over the medium term (Government of Kenya, 2016b). The importance of the CFSP in setting out the key policy priorities of the county government, which eventually translate into budget estimates, informed the decision to select it as the part of the budget life cycle that would be the focus of this research. Figure 5 below provides a diagrammatic representation of the legislative process of the CFSP in the county assembly. The diagram highlights in blue the exact stage when public deliberation on the CFSP is undertaken by the committee.

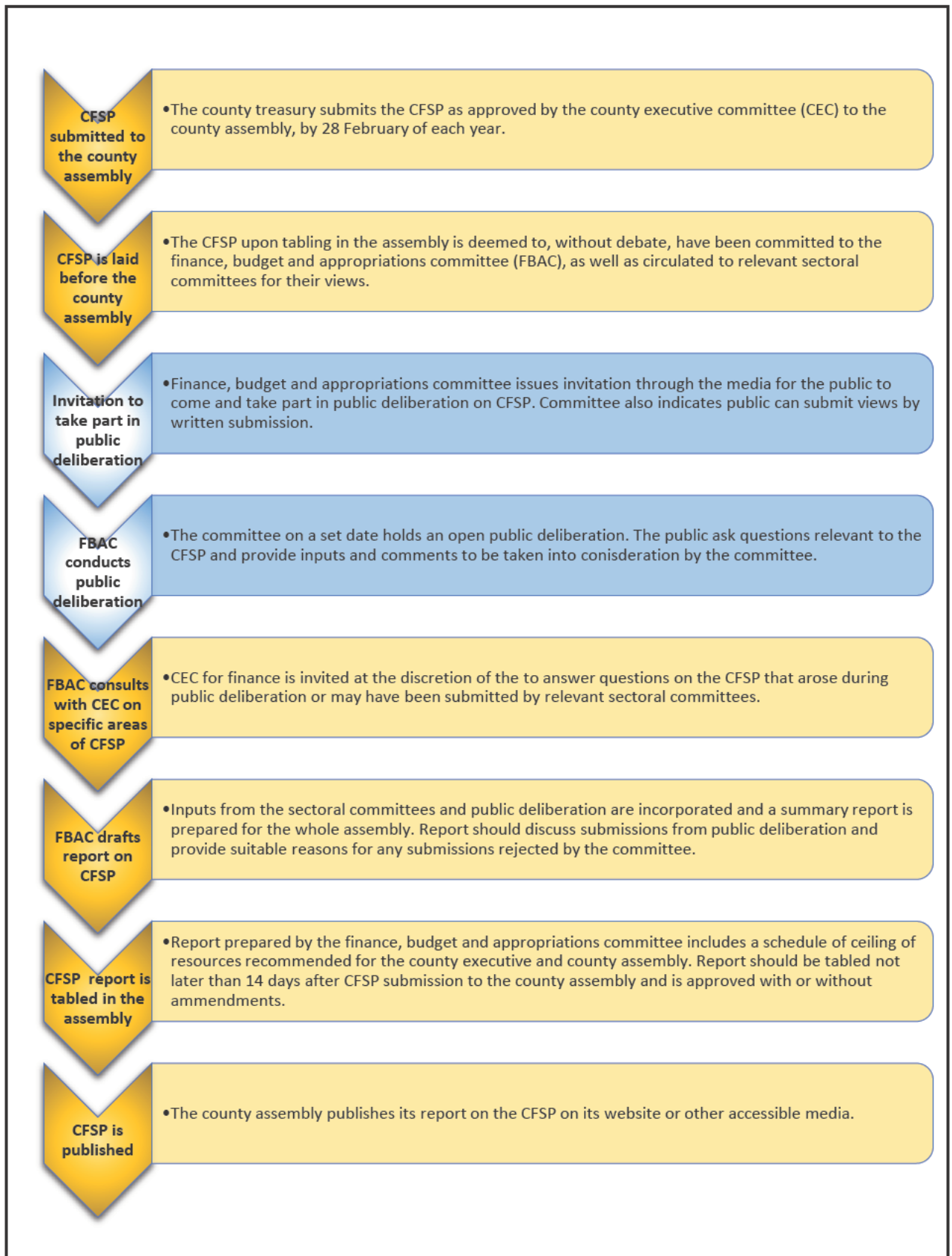


Figure 4: Procedure for adoption of CFSP in county assembly; source: Formulated by researcher

Once the CFSP is tabled in the county assembly, each assembly is legally mandated to hold public deliberation by inviting any interested member of the public to give their views on the proposed priorities and policy goals of the CFSP. The county assembly budget committees, as required by their standing orders and statute, are mandated to consider and table a report on the CFSP and in doing so must take into account the views and recommendations submitted to them during public deliberation (Nairobi City County Assembly, 2013).

5.6 Historical and political evolution of Nairobi and Mombasa counties

5.6.1 Nairobi City County and its contemporary evolution

Nairobi City, which is the capital of Kenya, has a 'complex identity' (Jones, 2020, p. 632). The city has undergone rapid urbanisation, beginning from the colonial period, and with it have come numerous demographic changes that reflect the inequality and insecurity that sit side by side with its evolution as an important regional commercial, transport and development hub (Jones, 2020). The population resident in the city is estimated at 4.3 million (Kenya National Bureau of Statistics, 2019b), of whom it is estimated 60 per cent live in informal settlements. Nairobi is the most populous of Kenya's counties, with a youthful population who come to the capital to seek employment and other opportunities. The 2019 census data indicates that over 50 per cent of the city's population is under twenty-nine years of age and constitute the bulk of the labour force (Kenya National Bureau of Statistics, 2019a). Nairobi also accounts for 21 per cent of Kenya's total gross domestic product (GDP) (Kenya National Bureau of Statistics, 2019c).

The capital is also characterised by a large multi-ethnic population but a majority of its informal settlements 'are characterised by large concentrations of a specific ethnic group' (Jones, 2020, p. 634). The capital's ethnic diversity has made it a hotly contested arena under devolution, with political elites often manipulating ethnic politics in the informal settlements to secure the dominance of one tribal grouping over the city's politics. Consistent population growth since independence without a corresponding expansion of public services has put immense pressure on the city's public services. The improvement of public services particularly to the urban poor, who have historically been denied access, is an important election issue and was one of the challenges expected to be addressed through devolution. Devolution was expected to increase accountability, improve governance and thereby deliver inclusive development to all city dwellers. The 2010 Constitution was expected to increase opportunities for public deliberation that would bridge the gap between the people's interests and policies of government by bringing resources and power closer to the people and involving them in fiscal decisions while driving equality (Jones, 2020). D'Arcy and Cornell (2016) have, however, argued that an early study of the devolution showed that historical challenges of corruption, patronage and exclusion of minority ethnicities have been devolved instead.

5.6.2 Mombasa County and its contemporary evolution

Mombasa County has its origins in what was Coast Province under Kenya's old administrative system prior to the onset of devolution with the promulgation of the 2010 Constitution. Mombasa County, which has a population of about 1.2 million residents (Kenya National Bureau of Statistics, 2019b), developed a vibrant economy as the 'location of the region's only deep water port' (Waddilove, 2020, p. 718). Mombasa,

like Nairobi, is a multi-ethnic city with a significant population of young people. The 2019 census data indicates that 64 per cent of the city's population is under twenty-nine years of age and constitute the bulk of the labour force (Kenya National Bureau of Statistics, 2019a). Mombasa contributes a much lower percentage than Nairobi to overall GDP, at 4.7 per cent (Kenya National Bureau of Statistics, 2019c).

Mombasa, arising from a history of communal divisions among the broader communities of the former Coast Province that can be traced back to the post-independence era, has struggled with resource distribution and sharing of power due to continued communal tensions. Despite popular support for devolution, the existing tensions among the communities have 'facilitated the influence of central government elites' (Waddilove, 2020, p. 722). Similar to Nairobi, Mombasa County residents have been vocal in demanding better service delivery with increased pressures on MCAs to deliver on promises of better public goods. Mombasa, in comparison to its neighbouring counties, has 'fared poorly on improving basic services. ...Perhaps relatedly, Mombasa MCAs are weaker in the shadow of their more powerful governor' (Waddilove, 2020, p. 723). Mombasa's politics was historically dominated by the Arab-Swahili elites. Devolution and the introduction of accountability through public deliberation, which was meant to ensure that minority communities would equitably be allocated resources and political appointments, have failed to materialise. Divisions over nepotism in the allocation of county executive appointments, as well as accusations of corruption in the allocation of county resources, have posed a challenge (D'Arcy and Cornell, 2016; Waddilove, 2020). The historical resentment towards the Arab-Swahili community by the minority Mijikenda community was amplified and played out in the county assembly where divisions led to the formation of alliances by

MCAs based on their ethnic leaning. Similar to the case of Nairobi, it appears that, contrary to expectations of greater accountability expected to arise from public deliberation, historical challenges of corruption, patronage and exclusion of minority ethnicities have been devolved in Mombasa as well (D'Arcy and Cornell, 2016).

5.7 Ethical considerations

In designing the research, the researcher was particularly aware of the potential for bias to substantiate a preconceived position. The researcher, as discussed in the preface to this thesis, had carried out public deliberation in the course of her professional responsibilities. The researcher had worked in the committee secretariats of several committees in the Kenyan national parliament and was aware of the potential to be drawn towards evidence supportive of preconceived notions and away from contrary evidence (Yin, 2013). The danger of this possible bias was made more critical by adopting an interpretivist methodology for the research. Bevir and Rhodes (2012) have, however, argued that no researcher is capable of engaging with research with pure perceptions not affected by their ideational context, and will ultimately interpret their research findings through prior experiences and knowledge of the world. The researcher through adopting multiple data collection methods ensured that the observations presented in the case were as accurate and credible as possible, while simultaneously acknowledging the methodological qualifiers and research limitations.

The research involved working human subjects and accordingly it was important to protect the personal data of those interviewed. A participant information sheet, attached as Appendix III, detailing the purpose of the research and how the data collected would be used was shared with all participants in the research. The informed

consent of all participants was obtained, and a sample consent form is attached as Appendix IV. There were no vulnerable groups identified as participants in the research; however, the FGDs were conducted in English and Kiswahili to allow all participants adequately engage with the discussions. Privacy and confidentiality of participants were guaranteed through anonymisation of responses. Institutional ethical approval was granted by the University of Birmingham and the Kenya National Commission for Science, Technology and Innovation.

5.8 Conclusion

Chapter 5 discusses the ontological research choice and consequent decision to adopt Bevir and Rhodes's interpretivist analytical framework to answer the research questions. Interpretivism is argued to be a well-suited epistemological approach for this thesis as it prioritises meaning by allowing participants to make sense of their deliberation experiences in a contextualised manner. Further, interpretivism is similarly well suited to studying in an in-depth manner the experiences of deliberation in a context that has received little empirical attention as is the case for subnational legislatures in Africa. The adaptation of Bevir and Rhodes's analytical framework by employing performance as an analytical tool so as to provide a lens through which to study plot and recover narratives is also discussed. Bevir and Rhodes discuss narratives as the forms of explanation that relate actions to individual beliefs and their situated contexts. However, their analytical framework does not indicate how these narratives can be recovered. Drawing on the work of Jeffrey Alexander and Maarten Hajer, four elements of social performance are identified that provide a lens through which to recover narratives.

The chapter also provides a discussion on the selected case study for this research and why it is suited to answering the research questions. Further, the chapter also discusses the methodological decisions that were made in carrying out the research as informed by the analytical framework and case study. Finally, important ethical considerations, particularly on the reflexivity of the researcher, are discussed and particularly how these may have influenced the analysis of data. The next chapters will provide a discussion of the findings and analysis of those findings using the analytical framework discussed above.

The remaining chapters will now focus on presenting and analysing the primary data. Chapters 6 and 7 will provide a historical analysis of secondary data to establish Kenya's governance traditions. Drawing on primary data, the chapter will seek to establish the continued transmission of these traditions to the present time. Chapters 8, 9 and 10 will then provide a narrative analysis, drawing on primary data, of the enactment of public deliberation in Kenya's subnational legislatures.

6 KENYA'S BUREAUCRATIC-EXECUTIVE GOVERNANCE TRADITION AND THE CHALLENGE OF PUBLIC DELIBERATION

6.1 Introduction

The preceding chapter discussed the primacy of 'traditions' in the analytical framework. Bevir and Rhodes (2010) see traditions as the starting point from which all experiences and local reasoning occur. They argue that agency of actors is found only within the situated context of their traditions a condition which they term situated agency. Traditions are defined as 'webs of belief and form the background of ideas in which agents find themselves' (Rhodes, 2018a, p. 5). A governmental tradition is 'a set of inherited beliefs about the institutions and history of government' (Bevir, Rhodes and Weller, 2003). Situated agents will adopt beliefs from traditions as a starting point but may amend them when new beliefs put into question existing beliefs or traditions. The actions of agents, which Bevir and Rhodes term practices, are consequently 'the ways in which beliefs and traditions manifest themselves in everyday life'.

Chapters 6 and 7 establish two traditions that are put forward as constituting part of Kenya's governmental traditions. The first tradition, which is discussed in this chapter, is a strong bureaucratic-executive. The second tradition, which is discussed in Chapter 7, is political ethnicity. The starting point of understanding the effects of public deliberation in subnational legislatures is to unearth Kenya's governance traditions. Unearthing the governmental traditions about the history of Kenya's government and its institutions provides the starting point for drawing out beliefs and explaining the practices of actors. A review of a cross-section of the literature on Kenya does not produce any empirical research employing Bevir and Rhodes's interpretivism in an

attempt to establish Kenya's governmental traditions. The research therefore makes a significant original contribution in this regard, not only by employing Bevir and Rhodes's interpretivism framework in a context in which it has not previously been used but also in categorising two important governmental traditions in Kenya.

Establishing tradition, as argued by Bevir and Rhodes, requires historical analysis, as discussed in Chapter 5. The two chapters therefore draw on historical material as well as primary data in order to demonstrate the continuity of tradition as advocated by Bevir and Rhodes in Section 5.2.2. Bevir and Rhodes argue that, in order to establish a tradition, a particular relationship must exist between beliefs and practices. They argue that there should be an intentional or unintentional passing-on of beliefs and practices from one generation to the next. This continuity should be traceable from the start of the tradition to its current state even if its manifestations may change over times as generations adapt their practices. Traditions are therefore identified by a 'series of instances that resemble one another because they exercise a formative influence on one another' (Bevir, Rhodes and Weller, 2003, p. 15). The research makes use of secondary data, drawing on the academic works of other scholars researching Kenya's governance and politics, in a bid to trace a historical line of Kenya's governmental traditions. Limited resources and time constraints made it impossible to carry out an exhaustive and detailed historical analysis in this thesis. However, drawing on secondary literature of published articles and institutional documents as well as data from the primary research, the research establishes a reasonable account of two important governmental traditions. It is imperative to restate, as discussed in Chapter 5, that 'in any society there are many traditions and, still more important, scholars

reasonably can demarcate traditions in different ways depending on what they want to explain' (Bevir and Rhodes, 2012, p. 204).

A strong bureaucratic-executive state is a term that was coined by Daniel Branch and Nic Cheeseman to explain the excessive centralisation of power in the Kenyan state between 1952 and 1978 (Branch and Cheeseman, 2006). The term may have been new but the characteristics it exposed started in the colonial period and can be traced to the present-day Kenyan state. The characteristics of the strong bureaucratic-executive state and its influence, both past and present, on governance in Kenya are referenced repeatedly in academic research as well as in reports and other forms of grey literature on Kenya. The bureaucratic-executive tradition is characterised by the co-option of the administration, the legislature and the executive into an tacit alliance driven by elites to further their own class interests (Branch and Cheeseman, 2006). The acknowledgement in the literature of the excessive centralisation power in the Kenya bureaucratic state and the overshadowing of its legislative institutions is what this chapter intends to establish. Similar to the argument put forward by Bevir and Rhodes about traditions, the bureaucratic-executive tradition has been adapted by actors. The manifestation of it in the present day, although not identical to the colonial era, is traceable through instances that resemble one another. Chapter 6 provides an account of these instances, which show that the bureaucratic-executive tradition is indeed a governmental tradition and informs the behaviour of actors in Kenya's subnational legislatures. Finally, the chapter establishes how public deliberation poses a dilemma to this tradition and its constitutive beliefs.

6.2 Colonial provincial administration

Some scholars contend that the structure of African traditional societies placed an emphasis on the communal good over individual destiny, which in turn made people 'passive, deferential and dependent subjects of external forces' and undermined their agency (Mattes and Bratton, 2007, p. 196). Traditional African consensual democracy, as discussed in Chapter 2, appears to support this argument, with its focus on communalism and decisions by consensus. Matolino (2019, p. 7) emphasises the importance in African society that was attached to 'overcoming individual differences in favour of shared or common interpretations of the best way to act or proceed'. Traditional African societies, prior to the onset of colonialism, appeared therefore to have had a deferential approach to communal governance and decision-making, where kinship needs superseded individual agency. Additionally, African traditional societies were largely paternalistic in their governance and conflated religious, executive and law-making authority (Opalo, 2019). Teffo (2004), as discussed in Chapter 2, argues that in traditional African societies it was often only circumcised adult males in the community who took part in the process of consensus decision-making. African traditional societies, prior to colonialism, can be argued therefore to have been less inclined towards inclusive deliberative dialogue, but expected deference to consensus born out of complex social interactions that governed behaviour (Matolino, 2019).

6.2.1 Patrician attitude towards citizens

Proceeding from the premise, therefore, that African traditional society dismantled the agency of individuals and created a deferential citizenry, colonialism and its ensuing encouragement of authoritarian governance can be argued to have cemented this and

shaped consequent governance traditions and institutions well into the independence era. In Kenya, the autocratic colonial provincial administration was founded in 1900. It was designed as a prefectural administration with the primary function of maintaining law and order and ensuring the implementation of colonial policy (Opalo, 2019). The colonial administration was headed by a governor appointed from London, who exercised absolute discretion in the legislative matters of the colony (Ojwang, 1980). The governor, due to his direct connection with Her Majesty's Government in London, was able to influence any decisions taken by the legislative council (LegCo) through the Secretary of State, who made decisions on behalf of the Crown (Ojwang, 1980). Kenya's first territorial LegCo was established in 1907 to represent the interests of white settlers and constituted both elected and nominated officials.

The governor together with a small group of generalist administrators staffed the secretariat in Nairobi, while the provincial administration was deployed to the field. The administration was structured around the governor, who was the head, provincial commissioners, district commissioners and district officers. They were all employees of the British Colonial Administrative Service. Chiefs and sub-chiefs were below the district officers and this role was filled by Africans, who were recruited based on either 'perceived local chiefly status or specific training in colonial schools' (Opalo, 2019, p. 141). The provincial administration was used to suppress the Africans and stop any ideas of rebellion. The provincial administration held a particularly distinguished position within the colonial government, particularly in non-settler areas, where policy enforcement was specifically targeted at the African population (Berman, 1976). The administration was designed to be prefectural in nature, with a focus on maintaining the status quo and 'ensur[ing] compliance with central directives through the exercise

of authoritarian control' (Berman, 1976, p. 148), Berman (1976, p. 147) paints a picture of the administration as follows:

The structure of the Administration, the attitudes and values of its personnel, and its position within the distinctive socio-economic and political structures of the colony resulted in organisational processes characterised by rigidity, by an inability to deal with internal or external change except through minor incremental modifications of established practice, by a preoccupation with technique over the substance of policy, and by an absorption in the exigencies of short-run control.

It can be argued that the public servants in Kenya continue to exhibit this rigidity in organisational processes and inability to deal with internal or external change. The responses of legislative staff interviewed about the implementation of public deliberation reflected their willingness to only make minor incremental modifications to established practice. During the group interview of legislative staff in Nairobi, when asked if they believe public deliberation is effective, they indicated as follows:

Public participation is that thing that you do to ensure that you comply with the law. Because likely most of the public participation that is done, it's mostly done – because we are not really interested in picking [up] what the public is saying – it is only because...the law says that you must involve the public. (FCSN-01)

Legislative staff appeared to be willing to comply with techniques that meet minimal requirements and comply with immediate legal requirements while ignoring substance that would improve policy outcomes. Legislative staff, for example, when asked about the translation of public deliberation documents to Kiswahili – the national language, which a greater majority of the people speak – casually dismissed this as something too difficult to do. The committee staff interviewed, when asked if there had ever been any consideration to translate budget documents into Kiswahili to make them more accessible to the public during deliberation, casually laughed and said they had not. They additionally dismissed any possibility of this when one of them added, 'How do

you even produce a budget document in Kiswahili?’ (FCSN-01), at which point all the staff being interviewed started laughing at the absurdity of such a consideration.

The resistance to change and marginal compliance by public servants in the execution of their duties has even been noted in official government reports. A report prepared by the Office of the Attorney General on Kenya’s draft policy on public deliberation, which is currently undergoing review, notes that one of the major challenges confronting public deliberation in Kenya is what they refer to as ‘minimalism and “compliance only” attitude’ (Office of The Attorney General & The Department Of Justice, 2018, p. 13). The report (2018, p. 13) additionally indicates that this attitude sees public officers put in only enough effort to ‘ensure compliance with the law without effectively advancing public participation’.

The failure to translate required documentation reflects how legislative processes have been shaped by a bureaucratic-executive tradition characterised by rigidity that does not deal well with change. Legislative rules of procedure in the county assembly specifically provide for proceedings to take place in Kiswahili and the staff, as stated below, acknowledged during the group interview that they had received direct requests from the public to provide documents in Kiswahili:

I remember the first public participation I attended a month ago...another member of the public requested if they could have a Swahili version of the same document, because some of them were saying they can’t understand the language that is being...that is in the document itself. So, they proposed, or they requested [if it can be] be produced in Swahili also. (‘FCSN-04’, 2018)

However, as discussed in Chapter 4, legislative rules are often left to staff to interpret and guide members on their implementation. Legislative staff, as discussed, can easily become gatekeepers, influencing how new rules are implemented, especially where

elected members do not invest intellectual resources in understanding rules and comply by rote as guided by staff. In the case of public deliberation in the county assemblies, the indifference of legislators to public deliberation was demonstrated by a committee staff observation of how committee members evaluate effective public deliberation:

Once the members have been elected, they're not really interested in engaging the public. In fact, the only reason why members take part in these public hearings is because I think we schedule them, and we tell them to come. If you told members that there was no public participation, they'd be very happy. ('FCSN-01', 2018)

The discretionary power that legislative staff have can be argued to be similar to the immense discretionary and elevated power that was enjoyed by the colonial provincial administration. Provincial administration officers were given immense discretionary power as they were viewed as 'impartial, above politics and guided by a sense of "fair play" and justice' (Berman, 1976, p. 152). The administrators consequently only received guidelines and suggestions on their responsibilities, which were communicated from the secretariat in Nairobi, but had great flexibility in how they chose to implement them (Berman, 1976). The discretion given to the provincial administration in implementing policy also meant that they were able to frustrate any directives they did not wish to implement within their areas of jurisdiction and were resistant to dynamic transformation when circumstances changed. The immense discretionary power of public servants can be argued to have originated during this period and continues to date. Legislative staff, as we discussed above, are able to exercise a lot of discretionary power in not only planning but implementing public deliberation. The discretionary power exercised by legislative staff in the implementation of public deliberation is so extensive that often legislators rely on staff

to tell them what decisions they ought to make, particularly on non-controversial issues that will likely have little to no direct effect on their elective politics. The staff justify this power by arguing that legislators are not interested in reviewing numerous submissions made by the public:

We summarize it down. We pick out the issues in the memoranda. Because...if you are going to give the members of committee...you know, members don't like papers. The bigger the papers, the fact is they won't read it. So, you try to put them in short form, you combine them. ('FCSN-02', 2018)

Staff in interviews further indicated that their discretionary power allowed them to make decisions, without consulting legislators, about what written submissions to put forward to the committee for public deliberation. The staff decisions subsequently not only inform the direction of committee discussions and reports but also on occasion completely withdraw certain issues from public deliberation and committee consideration if the staff deem them unsuitable, as shown in the response below:

What we do, we don't give the actual memorandum to the committee...in the summary that we're doing for public participation for the public, we say that these are the issues for the public, and these are the issues for organized groups. For TISA, this is what they raised in health. For Oxfam, this is what they raised on transport. So those issues are able to arise. But even at that point, what we have been able to do, which I don't know whether it is good practice, we have been able to scan through these proposals. Because one of the things also we have noticed over time, is some of these organized groups also don't have capacity to understand the process that we do in the county. So, we don't allow wrong proposals to go to the committee...we check to ensure that the proposals that go to the committee, they are proposals that are feasible, and they are accurate. So that when an organized group is recording something that we think is wrong, we kill it at that point. So that the only things we take to the committee are things that we think the committee can make a decision on. ('FCSN-01', 2018)

Legislative staff are therefore gatekeepers of the public deliberation process and determine how legislative rules of procedure are interpreted and implemented in a manner similar to the flexible and discretionary power enjoyed by the colonial provincial administration within their areas of jurisdiction. The staff mediate the public deliberation

process, providing access to groups and issues they consider relevant, and the extent of changes resulting from new requirements for public deliberation.

The colonial public administration was primarily staffed by men of a similar middle-class background with a bias towards the older, non-commercial middle class represented by the civil service, learned professions, the armed forces and the church. The majority of them were educated at public schools and the highly regarded universities of Oxford or Cambridge, where they were moulded into 'synthetic gentlemen' (Berman, 1976, p. 150). The colonial provincial administrators by virtue of the power accorded to them and their elite education possessed a sense of self-righteousness and importance. The result of this was a rigid paternalistic approach in the way the African population particularly was governed. There was little to no recognition of the value or importance of the participation of Africans in political processes or in governance decisions; they were expected to obey 'for their own good' (Berman, 1976, p. 156). The exercise of control over the passive and dependent African population became the satisfaction that administrators derived from their work, and administration became an end in itself instead of a facilitating means for those it was meant to serve. Legislative staff in Kenya's county assemblies continue to exhibit similar characteristics of self-importance and disparaging the ability of citizens to take part in governance decisions through public deliberation. In the group interview for committee staff in Mombasa, they saw the public engaging in public deliberation as disruptive and used language that denigrated submissions by the public during deliberation:

In most of this public participation forum, you will find that the public who come there, most of them have negative views to give and they don't focus on the documents which is tabled before them, they start to give wild views which are

irrelevant to the forum which has been convened for that purpose. ('FCSM-03', 2018)

The interviews conducted with committee staff facilitating public deliberation also showed staff discounting the ability of the public to understand complex policy issues. The staff in their responses suggested that the public cannot contribute meaningfully to public deliberation and indicated that committee staff were better placed to determine what was in the best interest of the public or what issues should be included in final committee reports:

They give us their views. Basically, we already have something that we want to do, but we can't just do it without engaging the people whom the members are here to represent...it's to allow them to come in, see whatever has been planned for them, and give us their opinions. If there's anything that needs to be changed, if there's anything that needs to be added, we have to listen to what they have. It's not all the time that whatever they have has to be input in whatever we want to do. So, we have to pick whatever we think is going to be the best for them and then put it in whatever document, in whatever program that we have to do for them. ('FCSM-04', 2018)

The absence of clear direct policy guidelines guiding staff on the implementation of public deliberation, and particularly on reporting proceedings and decisions from public deliberation, has seen it evolve without any guidance and increasingly reliant on staff discretion. The county assembly has provided only broad guidelines to staff on how to facilitate public deliberation. Legislative staff have therefore, in a similar fashion to the early colonial administrators, flexibly relied on their own discretion coupled with vague constitutional and procedural provisions when implementing public deliberation and reporting its outcomes. Kenya's subnational legislatures reflect a passing-on of traditions and associated beliefs from one generation to the next, where not only are organisational processes subject to rigidity but adaptation to change is also slow and marginal, subject to staff discretion. The territorial gatekeeping, and power wielded by

public officials, as demonstrated, continued to be identifying features of Kenya's bureaucratic-executive governance tradition.

The transference of beliefs about the discretionary power and self-importance of public servants from Kenya's provincial administration into Kenya's legislatures can be explained by examining their development path. Opalo (2019) has argued that, in order to understand the development path of legislatures in emerging democracies, we must first seek to understand their autocratic foundations. Opalo (2019), who has recently carried out extensive authoritative work on legislative development in Africa examining the effects of the continent's post-colonial legacies on its legislatures, posits that we must examine how African legislatures have evolved from their colonial past that founded them to their new post-colonial contextualisation. The establishment and evolution of Kenya's legislative governance traditions therefore cannot be fully understood, as Opalo argues, without drawing out a full picture of the colonial influence of institutions such as the LegCo and the provincial administration, and their influence on today's legislatures. Opalo's arguments are well suited to Bevir and Rhodes's interpretivism as discussed in the analytical framework in Chapter 5. Bevir and Rhodes's interpretivism argues that traditions are the ideational background from which actors draw meaning and make sense of the world and orient themselves to encounter challenges to their traditions that they face in the world. The colonial institutions and their post-colonial legacies thus form the starting point for understanding the development path of the governance traditions in Kenya's legislatures.

6.3 Post-colonial public administration – the Kenyatta years

In the lead-up to independence, more complexities emerged in managing the bureaucratic state. The provincial administration was increasingly relegated in power and relevance as more technical departments of the central state took over specialist functions. The civil service, however, grew in staff numbers and by 1963, at the time of independence, Kenya had a relatively developed civil service with regard to the number of personnel. The civil service had expanded from 14,000 to 45,000 between 1945 and 1955. In 1965, it had 63,000 personnel with a majority of Africans. Senior civil servants increasingly hired more personnel in a bid to increase their power and control, but also ethnic pressures abounded, with positions created to allow every community a 'slice of the pie' (Bienen, 1977, p. 34).

The colonial administration had not, however, made any true and deliberate effort in the lead-up to independence to ensure that Africans were prepared to take over the administration. Owing to the reticence to prepare Africans to take over at independence, in 1960, when it was determined that African majority rule in Kenya would not be delayed, there were five Africans out of 221 serving as district officers. Only 52 of 178 district assistants were Africans and no Africans served in the central administration. The key colonial administrative institution that had long been used to contain the colony was the administrative service and preparation for Africans to take it over had been disastrous, with no true preparation or willingness by the white ruling class to give Africans power. The solution to the problem was argued to be training people quickly for the administrative service, which was considered the core of government (Schaffer, 1978).

6.3.1 Politicisation of the public service

It was this unreformed and complex administration system – which in the early colonial years had been an all-powerful bureaucracy with established traditions of regulation and expectations all centred on safeguarding the authority of the central state – that Kenya inherited at independence. The independent centralised state did not engage with reforming and retooling the provincial administration to fit in with the new state that did not require the colonial prefectural administration. The independence movement had also campaigned for reforms to the provincial administration to reflect Africans' ability to self-govern, which the prefectural administration had undermined.

The new independence government of Jomo Kenyatta, Kenya's first president, inherited a public administration that, even though reformed in race, had not reformed its purpose and defined new roles for itself. The main aim of the colonial administration had been to exercise authoritarian control, which in turn ensured compliance of the African with centralised directives and suppressed rebellion while maintaining colonial authority. The African civil servants who replaced the white colonial administration were no different in seeing administration as an end in itself. The independent provincial administration was staffed by 'experienced junior people who had served on African district councils or in the colonial provincial administration' (Bienen, 1977, pp. 34–35). These individuals saw themselves as taking over the reins of power and becoming agents of control for the president, much like the former administration staff had been for the governor.

Kenya's independence constitution created a dualist system of governance constituted of a central government and eight regional governments that had power of their

regional affairs (Kanyinga, 2014, p. 207). Immediately after independence, the constitution was amended to create a more centralised state. Bienen (1977, p. 36) points out the following changes as being central to those amendments:

The President's emergency powers were enlarged; the Executive's power continued to encroach on those of the Legislature, and the provincial administration worked directly to the Office of the President and became his primary agent for exerting political control throughout Kenya.

The provincial administration was once again restored to its full power and functioned much like the colonial provincial administration. Some scholars argue that the brief period of regional government prior to the constitutional amendments reinforced among the civil servants in the provincial administration 'feelings of superiority to politicians' (Bienen, 1977, p. 36). The centralised provincial administration, which operated directly from the Office of the President, carried out significantly more functions than other African civil services. Provincial administrators were assigned major responsibilities such as collecting taxes on behalf of local authorities as well as chairing various boards and committees. The provincial administration had a significant say in development plans for the provinces and the districts and were responsible for the coordination of various civil service personnel working on various development plans and their implementation. It would be correct to argue that the training that had been given to the provincial administration prior to independence was successful insofar as ensuring the continuity of administrative authority that had been enjoyed by the colonial administration.

Bienen (1977, p. 37), however, argues that the most important consequence of the centralisation of the provincial administration in the immediate post-colonial period and its attendant power was the 'political power of the commissioners themselves and the

reliance of the president on them'. The Kenyatta presidency built on the already-established colonial legacy of the structural dominance of the provincial administration to control political power. The provincial administration became the 'major agent and spokesman of the Government and it also had to be involved in local politics' (Bienen, 1977, p. 38). The provincial commissioners were powerful, and the most powerful ones could argue for support for their priorities at the centre even though they were not involved in making policy at the national level. The provincial commissioners were able to clearly define their role and power within the context of the Kenyatta presidency. They considered themselves to be powerful in comparison to political party personnel, elected officials, representatives of central ministries and even ministers when working in their jurisdictions. They were the true representation of hierarchy and authority similar to the colonial administration, and they benefited greatly from the colonial institutional legacy of a strong provincial administration.

The government continued to build the power of the political administration and use it as a tool for social control. The public administration became the main way for the public to participate in political life. This significance was established by making it the primary point of contact with the government for the public, giving it social and economic transformation tasks, and explicitly establishing it as a 'channel for local demands' and giving it the power to handle local grievances in an attempt to bypass unruly political party members (Bienen, 1977, p. 39). The provincial administrators were so powerful that even political party members from the ruling party would come to petition them for help. The public administration and the greater civil service were effectively used by the Kenyatta government to establish order and control. The government was not interested in facilitating innovation in its governance, including

greater public deliberation. The public service was accordingly accused of becoming partisan and becoming an interested party in political processes (see detailed discussion in Bienen, 1977, pp. 30–44).

The politicisation of the public service continued to solidify an excessive centralisation of power and thereby forcing the administrative, legislative and executive branches of government into tacit alliances as elites sought to protect their interests. The continued adaptation of this tacit alliance and bureaucratic-executive tradition can still be seen in Kenya's county assemblies, where even powerful committee chairs feel beholden to the executive or believe the only power they have to check the executive is through asking oversight questions. A committee chair, when interviewed about the public perception of legislators arising from public deliberation, indicated frustration that the public do not understand the role of MCAs. He stated:

They don't understand our roles. We are just an oversight. We are an oversight body over the executive. So, we will always go and check. We are not implementers. ('FCC-02', 2018)

Legislators appeared to define their role in narrow terms that appeared to suggest that only the executive had any real power to implement the outcomes of public deliberation. The chairman in his response appeared to view public deliberation as a way for the public to castigate legislators on matters for which they are not responsible, as illustrated below:

So, until there is some civic education that is when they would understand our roles, and that is when we'll have salvation, that is when we'll have, at least, some salvation on all this, because we're crucified on things that we are not able to do. It is not our mandate. ('FCC-02', 2018)

The sense of powerlessness expressed by MCAs and their inability to view their appropriation and legislative powers as means to check failures and excesses of the

executive appear to have solidified the perception even among the public that real power is only held by the executive. The perception, as will be exemplified below, shows the continued centralisation of power in the executive and the tacit alliance between elites that even the public acknowledge exists. A participant in the focus group discussions who had taken part in public deliberation highlighted the powerlessness of legislators by stating how MCAs are often forced to resort to begging county executive committee members to undertake required development project, like building roads, in their wards. Legislators, who are perceived by the public to have more influential political power, are often powerless in the face of executive authority that does not want to cooperate, as indicated below:

You know how the system works, even the MCA goes to the Executive. I was in an office of the Chief Officer of Transport; the MCA came there to look for a tractor. The one for excavating and building the road. The chief officer told him, 'you know the pedals [of the tractor] has mechanical problems, so there is no tractor'. On the ground, the residents are on the MCA telling him the road is bad. So even the MCA is just like the residents you see (group laughter) he is caught in between [with no power]. ('FGD-N2', 2018)

Scholars have argued that Kenyatta in his presidency ruled through the civil service he inherited, which was easier to control than the political party (Bienen, 1977; Opalo, 2019). This situation perhaps could explain the accusations made that top government leaders had 'taken power from the National Assembly (NA) and given it to civil servants and that the administrative officers have in general assumed the role of the party' (Bienen, 1977, p. 59). The provincial administration had significant discretionary powers that they could use to 'monitor, regulate and balance elite political activity' (Opalo, 2019, p. 145). The powers were used to selectively benefit those politicians loyal to the president and harass those considered to be at variance with the leadership. Legislators on several occasions requested the president to subordinate

the provincial administration to the ruling party. Legislators, in a bid to show their frustration with the civil service, moved motions in the assembly to subordinate civil servants to Members of Parliament within their constituency. Kenyatta, however, thwarted these attempts and insisted on the 'principle of bureaucratic neutrality' for public administration officials. He fought the politicisation of the civil service ranks and ensured that the public administration remained loyal only to him (Opalo, 2019, p. 145).

Under Kenyatta's rule, the public administration gained immense power. They were able to, and routinely did, defy elected officials as they were not answerable to voters but derived their delegated power from the Office of the President and President Kenyatta personally (Opalo, 2019). The civil service during the Kenyatta era was able to not only continue along the path of its colonial predecessor by maintaining its ethos of hierarchy and authority but also further reinforce the governance tradition of a strong bureaucratic-executive administration, which was subsequently inherited by President Moi when Kenyatta died in August 1978.

6.4 Post-colonial public administration – the Moi years and beyond

6.4.1 Ethnicization of the public service

Kenya's second president, Daniel Arap Moi, like his predecessor, broadly retained the structure and function of the provincial administration. However, unlike Kenyatta, Moi, in a bid to solidify his control over the provincial administration, intentionally manipulated the ethnic composition, weakened the power of provincial commissioners and explicitly politicised the position of district commissioners (Opalo, 2019, p. 148). Moi was well aware of the district–ethnic nexus as the basis for political organisation and mobilisation that had begun in the colonial era. However, his primary reason for

politicising the provincial administration was to facilitate the staffing of the provincial administration with members of his own tribe (hereinafter referred to as co-ethnics). These loyalist co-ethnics were expected to secure his rule against possible revolt by other ethnic communities. Moi needed to balance the elites in the provincial administration with loyalists to safeguard against his sense of insecurity that certain factions of Kenya's elite class – 'the Kikuyu old guard [loyalists from Kenyatta's presidency], parliament, the judiciary, and the intelligentsia – were against his rule' (Opalo, 2019, p. 148). The idea of political elites, particularly within the executive, replacing administrators with fellow co-ethnics to advance their rule and opportunities for their fellow co-ethnics continues to dominate even in Kenya's devolved institutions. FGD respondents in Mombasa, when asked why they had not engaged with public deliberation in the past, specifically stated, as shown below, that previous officials had privileged their own co-ethnics and disenfranchised other groups. They stated that the governor had now replaced those officials with loyalists who advanced the interests of his loyalists:

When the Governor assumed office, there were people who were changed in the offices of the Governor and we finally had access to opportunities because we had our own people there. These people remember us marginalised people. The people who were there before them used to take forward their own people for opportunities, but now we are proud that we have our own people in those offices and they have given us access. ('FGD-M1', 2018)

The governor of Mombasa, who, as noted in Chapter 5, is very powerful and has significant influence in his county, provides excellent representation of how governance traditions in the devolved county governments are developing along a path advancing beliefs and practices associated with the colonial and post-colonial public administrations. In interviews in Nairobi and Mombasa, the county governors were viewed by both staff and elected officials in the executive and legislature as wielding

immense power. In Mombasa particularly it was completely impossible to meet anyone in either arm of government without directly going through the governor. Attempts, in Mombasa, to contact institutional heads or officials in either arm of the county government to set up meetings for interviews were largely ignored, with a few officers indicating that the researcher should initiate communication through the governor's office. Ultimately this was the approach taken. Once the governor's permission had been obtained, securing meetings sought with the various offices was seamless. The governor personally intervened to set up some of the meetings on behalf of the researcher, thereby confirming Waddilove's (2020) observation about his power, which is backed by family wealth and immense regional influence.

The governors' influence over the county government is further entrenched by the fact that a majority of elected members in the county assembly belong to the same party as the governor. The majority control the governor has over the county assembly has enabled him to create tacit alliances to influence legislative business in his favour to the extent of undermining legal requirements for public deliberation. During fieldwork, the Mombasa County Assembly failed to hold public deliberation meetings on the CFSP as required by law and its own standing orders. Interview questions posed to the committee chairman concerning failure to hold deliberation meetings on the CFSP were either side-stepped or indications made that it was unnecessary as the executive had already carried out sufficient public deliberation and invited legislators to attend. The committee secretariat, when asked why they did not hold the required public engagements on the CFSP, started laughing and simply stated that the committee chairman was best placed to make a reply on issues of public deliberation.

President Moi, just like the governor of Mombasa above, replaced all the provincial commissioners within one year of coming into office and nearly half of the district commissioners. The most significant difference with his predecessor Kenyatta's own governance approach was that Moi intentionally politicised the operations of the provincial administration, 'including by using it as the main mechanism of patronage distribution and influencing elections' (Opalo, 2019, p. 148). In 1982, following a failed coup attempt, Moi became even more intent on securing his power. In an effort to achieve this, in October 1982 he launched what was known as the District Focus for Rural Development (DFRD). The DFRD, despite its alleged focus on taking development planning closer to the people, also served to elevate district commissioners to powerful local patrons while simultaneously curbing the power of provincial commissioners and incumbent Members of Parliament (MPs) with following beyond their constituencies. The decision by Moi to use the provincial administration as a conduit for redistributive patronage had significant ramifications in the politicisation of the provincial administration (Opalo, 2019).

The politicisation of the provincial administration had significant long-term effects on the ethos of hierarchy and authority. With the politicisation of the provincial administration, Moi was now able to control it and do away with the Kenyatta-era bureaucratic neutrality of the provincial administration (Opalo, 2019). The cost, however, was that the hierarchical command that guided the transfer of authority was no longer functional, and provincial administration staff became exposed to political capture as they began to compete for power and influence within and across their ranks. The provincial administration and in particular district commissioners became key players in local politics, with direct protection from Moi with statements made that

‘anyone who attacks a District Officer or a District Commissioner attacks Moi’ (Opalo, 2019, p. 150). The provincial administration at each administrative level was so powerful that ‘literally nothing happened and no decisions were taken without the knowledge and inevitably the consent of these appointed officials’ (Steeves, 2015, p. 460).

6.4.2 Bureaucratic-executive dominance

Under the Kenyatta and Moi presidencies, Kenya increasingly became dominated by the institution of the presidency while ‘the authority of other government organs seriously weakened’ (Hornsby, 1989). Moi’s political manipulation of the political administration and party politics directly undermined legislative authority to the point where in 1986 he declared the political party on which he had been elected president was ‘supreme’ over Parliament (Opalo, 2019, p. 159). The executive accordingly became the focal and singular most effective way for the public to connect to government. The legislature was seen as subjugated in power and authority to the executive and consequently shaped public opinion about its role and power.

One of the single most significant ways the public administration shaped the legislature was in assigning its staff. Legislative staff are a core to the success and performance of legislative committees as they provide both specialised technical policy assistance on committee mandates but also carry institutional memory from one legislative term to the next (Barkan and Matiangi, 2009). The initial committee system of the National Assembly at independence was rudimentary. In borrowing from the Westminster tradition of the colonialist, which at the time did not have a well-established permanent committee system, it was assumed that there was no need for professional or

permanent committee staff. Staff working in the National Assembly were assigned by the public service commission, which was responsible for the staffing of the entire civil service (Barkan, 2009).

Opalo (2019, p. 179) states that 'before 2000, parliament had the administrative status of a department within the executive branch'. The implication of this is that staff who had served in the provincial administration came to the legislature carrying the ethos held within the public administration where not only were the legislature and legislators looked down upon but staff viewed themselves as an authority with final administrative ends. They were the provincial administration staff who during the Kenyatta and Moieras had become so powerful through the discretionary power that 'allowed them to selectively apply rules to buttress machines loyal to the president and harass politicians whose local preferences were at variance with those of the president' (Opalo, 2019, p. 145). The strong bureaucratic-executive governance tradition that centralised power and forced tacit alliances between the administration, executive and legislature was thus transferred to Kenya's legislatures through public administration staff and legislators navigating the political challenges of an overly powerful centralised presidency and a rubber-stamp legislature.

In the year 2000, legislators fought to establish the independence of Parliament and passed legislation the Parliamentary Service Commission Act (2000) to establish the independent Parliamentary Service Commission (PSC). The PSC gave Parliament control over its budget, the hiring of staff (including the clerks of the National Assembly and the Senate) and their remuneration and its capital investments (Opalo, 2019). The independence of the legislature was further ensured by Kenya's 2010 Constitution and

with it the formal administrative autonomy from the executive branch was achieved and consequently shaped the establishment of Kenya's subnational legislatures. The 2010 Constitution, as a means of addressing the excessive centralisation of the bureaucratic-executive state, established forty-seven counties, each with a county government comprising an executive and a legislature.

The research on establishing Kenya's county governments is only now beginning to emerge. However, following the 2013 elections when the first county governments began their establishment, a majority of the elected governors were powerful political figures who had previously held public office rather than the technocrats who were the public preference, as illustrated by public discourse in the run-up to the elections (Cornell and D'Arcy, 2014; Cheeseman, Lynch and Willis, 2016; D'Arcy, 2020). Through the establishment of a County Assembly Service Board (CASB), the 2010 Constitution sought to replicate the PSC and see 'replicated the notional separation of legislative and executive power' (Cheeseman, Lynch and Willis, 2016, p. 16). The reality, as Cheeseman et al. (2016, p. 16) point out, was quite different as 'technocrats found themselves outmanoeuvred by politicians and in some cases senior civil servants with strong political connections'. The elected governors began to 'quickly establish themselves as the central figures in county politics and as the champions and defenders of devolution at the national level' (D'Arcy, 2020, p. 255).

The governors, in a similar way to the Kenyatta and Moi regimes, engaged in 'symbolic power projection at county level' (D'Arcy, 2020, p. 255) such as using the title 'excellency', travelling in motorcades with outriders, adopting specialised numberplates for vehicles, building extravagant residences and flying the national flag

from their vehicles (until national legislation prohibited them from doing so), all of which have traditionally been symbolically associated with the power of the presidency (Cheeseman, Lynch and Willis, 2016; D'Arcy, 2020). Cheeseman et al. (2016, p. 23) point out that these symbolic actions were carried out as an 'assertion of the status of county government itself, a display of the profound difference between the former system of county and municipal councils and the new devolved units'. The county governments, owing to the expanded mandate of the devolved units, were expected to recruit a significant number of county administrative staff.

The Transition Authority (TA), established through the Transition to Devolved Government Act (2012), was responsible for facilitating and coordinating the transition to the devolved system of government. In executing its mandate, the TA issued circulars to county governments directing that they should absorb into the county public administration staff who had previously been working in county and municipal government as well as national government staff performing what were now devolved functions. There were a significant number of staff who joined the county public administration from the former county and municipal councils and the national government civil service. Many new staff were also recruited by the county governments to carry out new established roles (World Bank, 2012; Transition Authority, 2013). Staff from the national parliament were seconded and, in some instances, recruited to work in the county assemblies. The clerk of Nairobi County Assembly, for example, was a former staff working as legal counsel in the national parliament prior to devolution. Several staff serving in various departments of the county assemblies in Nairobi and Mombasa had previously worked in the national parliament or the now-defunct county and municipal councils.

The staff who transferred to the county administration service from the national government and local councils brought with them the beliefs and practices associated with the strong bureaucratic-executive governance tradition. The expectations that devolution would bring about reforms that would reform the public administration culture that had evolved and adapted from the bureaucratic-executive governance tradition in earlier years has not been realised. Legislative staff who had been seconded or employed from national government, staff seconded from the defunct local authorities and new recruited staff were all engaged in extensive training in legislative culture led by institutions of the national government. Following the 2013 Kenyan general elections, international development agencies and the national government through the Senate, Transition Authority, Kenya School of Government and Centre for Parliamentary Studies and Training all became the key supporting agencies in helping set up the inaugural assemblies. The institutions shared template documents, rules of procedure and resources and carried out extensive training for county assembly staff and members, all modelled along the institutional design of the national parliament.

The result of this extensive training, coupled with the mix of staff, many of whom had been socialised in the bureaucratic-executive governance tradition that devolution was supposed to reform, has meant that once again beliefs and practices associated with this governance tradition are being adapted within the context of the county assemblies. The statements that have been analysed earlier in this chapter, made by staff of the county assembly, illustrate that they too have adopted and adapted a public administration governance tradition that privileges excessive staff discretion and a

sense of superiority above the public they are meant to serve. MCAs, legislative staff and the county executive have adopted and adapted a similar tacit alliance that characterised the bureaucratic-executive governance tradition of the Kenyatta and Moi governments. The attempts at using devolution to reform this governance tradition appear to be facing challenges owing to the personal political interests of MCAs as well the difficulties associated with changing an entire personnel structure where skills and qualifications required are in short supply.

6.5 Conclusion

The bureaucratic-executive governmental tradition both directly and indirectly affected Kenya's legislative development. The influence that the bureaucratic-executive tradition had on Kenya's legislative development and its traditions prior to the promulgation of the 2010 Constitution of Kenya, can be traced in the establishment of Kenya's subnational legislatures. The influence is seen in the rules of procedure adopted by the county assemblies that are almost an identical copy of those of the national parliament; it is seen in the culture espoused by legislative staff who were seconded from the national parliament to aid in setting up the subnational legislatures; it is also seen in the central role that staff and legislators both past and present from the national parliament have played in training staff from the subnational legislatures. Finally, it is also been seen in the dominance the county executive attempts to exert over the county assembly in a similar fashion as the national government attempts to do with the national parliament.

The bureaucratic-executive tradition not only undermined legislative authority but sustained the hierarchy of power that established the public administration and

executive as the focal and singular most effective way for the public to connect to government. The legislature was seen as subjugated in power and authority to the executive, which consequently shaped public opinion about its role and power. These beliefs emerge as still present in the beliefs and practices of participants in the case study. Chapter 6 establishes the bureaucratic-executive governance tradition as well as its continued adaptation and manifestation in the present day in the beliefs and practices of actors in Kenya's subnational legislatures. The challenges faced in the process of establishing the subnational legislatures provided an opportunity for county executives to undermine legislative authority and manipulate their political authority to establish themselves as the centre of power in county governments. The beliefs that emerge as most prominent in this tradition within the subnational legislatures are executive superiority over the legislature; powerful bureaucrats; limiting public access to information; and disdaining civic rights.

Public deliberation, however, poses a dilemma to the constitutive beliefs of the bureaucratic-executive tradition. Public deliberation, through its philosophical foundations in deliberative democracy, supports restoring decision-making to the people as well as greater accountability and transparency, as discussed in Chapters 2 and 3. Public deliberation was supposed to be one of the central ways of protecting local democracy and consequently ensuring that the devolved institutions did not engage in the negative governance beliefs and practices that had been characteristic of previous centralised government. Chapter 6 demonstrates that, despite legally mandated public deliberation, the bureaucratic-executive governance tradition has found its way into Kenya's subnational legislatures and continues to inform the beliefs and practices of actors. Chapter 7 will now proceed to discuss the governmental

tradition of political ethnicity by seeking to not only show its justifiable presence but also examine how it informs the beliefs and practices of actors in Kenya's subnational legislatures.

7 KENYA'S GOVERNANCE TRADITION OF POLITICAL ETHNICITY AND THE CHALLENGE OF PUBLIC DELIBERATION

7.1 Introduction

Chapter 7 builds on the unearthing of Kenya's governmental traditions, which commenced in Chapter 6. The chapter seeks to establish the presence and continuity of political ethnicity as a governmental tradition in Kenya. The chapter examines how political ethnicity, through the intentional and unintentional passing on of beliefs and practices, has been inherited in Kenya's history of government and its institutions. The chapter will discuss the pre-colonial roots of political ethnicity and draws a historical analysis to the present day by highlighting its various manifestations and their similarity, as done for the bureaucratic-executive tradition in Chapter 6.

Political ethnicity cannot be separated from any discussions on politics in Kenya. In any attempts to understand Kenya's democratisation and governance, the role of ethnicity as a factor in political competition and national resource allocation is a recurrent theme (Ajulu, 2002; Omolo, 2002; Lynch, 2006a; Bratton and Kimenyi, 2008; Kimenyi, 2013; Shilaho, 2017). Agents in Kenya's subnational legislatures, institutions that can be argued to represent the very apex of politics and governance in Kenya's subnational units, therefore navigate their beliefs and practices within this well-established tradition, as will be shown.

Chapter 7 charts, through historical analysis, various practices and narratives of political ethnicity over time. The chapter simultaneously draws on primary data to establish a continued thread of similarity in beliefs and practices of political ethnicity in present-day Kenya so as to demonstrate its continuity as a tradition. The chapter

examines how participants make meaning of their beliefs relating to political ethnicity and how they manifest their beliefs through their demonstrated practices. The chapter finally concludes by examining how public deliberation poses a dilemma to these beliefs and practices of actors in Kenya's subnational legislatures. Political ethnicity in Kenya has been built on a platform of corruption that disregards transparency and accountability in favour of personal interest. The final section demonstrates, by drawing on primary data from interviews and focus group discussions, how public deliberation demands greater transparency and accountability in decision-making and resource sharing between different ethnic groups thereby posing a dilemma in existing beliefs.

7.2 Political ethnicity in Kenya

The term 'political ethnicity' as used in this thesis with reference to the Kenyan context refers to the 'tendency among political elites to mobilise ethnicity for political ends' (Ajulu, 2002, p. 251). The categorisation is premised on the argument that ethnicity in itself is not a negative phenomenon if viewed primarily in its ordinary usage as the natural condition of 'groups of people sharing common consciousness based on language, culture or common ancestral heritage' (Ajulu, 2002, p. 252). Ethnicity only becomes a negative phenomenon when it is mobilised against those viewed as 'other' or 'outsiders' (Ajulu, 2002, p. 252). Chapter 2 examined the construction of ethnicity within the context of African identity construction and its meaning for the idea of the nation state in the colonial and post-colonial eras (Berman, Eyoh and Kymlicka, 2004). Discussions in this chapter reference arguments drawn from that chapter by specifically examining the construction of ethnic identity in the formation of the Kenyan state and how this has influenced the meanings attached to political ethnicity.

The tradition of political ethnicity in Kenya's political history and its institutions is not new and one can even argue that it is part of Kenyan identity socialisation. In 2016, David Ndii (2016), one of Kenya's leading political economists, in an editorial published in one of the country's leading newspapers, declared that the 'Kenya project' was dead. He was echoing sentiments that had been expressed several years earlier by Bethuel Ogot, a renowned Kenyan historian. In the editorial, Ndii (2016) stated, 'Kenya has never been a more distant idea than it is now at the beginning of the 21st Century. Nationalism is dead, replaced by sub-nationalism. The tribe has eaten the nation' (Ndii, 2016). In Kenya, political ethnicity has proven to be the Achilles heel in the journey to nationhood. The biggest impact this tradition has had on Kenya's history of government and its institutions has been in shaping beliefs and practices about resource distribution. The unequal distribution of resources to favour allied ethnic groups in power over others has led to the politicising of ethnicity right from independence (Adam, Collier and Ndung'u, 2010; Kanyinga, 2014). The unequal distribution of public resources has consistently challenged attempts to build nationhood. Public deliberation in the redistribution of public resources was viewed as a way of ensuring greater transparency and accountability in resource sharing. However, this is not an attempt to reify political ethnicity and imply that agents are unable to act outside of this socialisation. Ethnic identity is a construct and the dilemma that public deliberation poses to political ethnicity, as discussed in this chapter, will ably demonstrate that new practices can be formed by agents despite tradition continuity.

The manipulation of ethnic identity to advance political ends did not, however, commence with the onset of independence. The impact of colonialism in shaping ethnic identities prior to independence, and the consequent effects of this on attempts

to establish a Kenyan nationalism in the post-colonial period form an inexorable part of any discourse on Kenya's governance traditions and it is there that analysis must commence as the starting point of this tradition.

7.3 Ethnic identity in the colonial state and contemporary identities

In order to understand the role of ethnicity in Kenya's governance tradition it is imperative to commence analysis prior to the establishment of what is today's nation state. Kenya as a nation state was the creation of colonialism, with its earliest formation beginning around 1895 with the arrival of white settlers who established the British East Africa Protectorate. Kenya only assumed its present name on 11 June 1920 when an Order in Council was passed annexing the East Africa Protectorate to the British Dominions and establishing the Colony of Kenya ('The Colony and Protectorate of Kenya', 1920; Omolo, 2002).

Kenya has a total population of slightly over forty-seven million people who come from forty-five different ethnic groups (Kenya National Bureau of Statistics, 2019b). Recent data suggests that the exact number of ethnic groups is higher, with the 2009 population census listing 'no less than 111 ethnic groups' (Biegon *et al.*, 2018). The diversity is demonstrated by the 2019 population census, which shows that the Luhya ethnic group is constituted of eighteen self-identifying sub-groups, while the Kalenjin ethnic group is constituted of seventeen self-identifying sub-groups (Kenya National Bureau of Statistics, 2019b). There is no one ethnic group that can be said to be dominant; however, the Kikuyu, Luhya, Luo and Kalenjin ethnic groups constitute the largest percentage of total population composition (Juma, 2001; Kimenyi, 2013). Table

6 below shows how ethnic compositions of Kenya have evolved since the early post-independence period.

Table 6 Ethnic composition of Kenya (percentage of total population)

Ethnic group	1969	2019 estimation³
Kikuyu	20.1	17
Luhya	13.3	14
Luo	13.9	11
Kalenjin	10.9	13
Kamba	10.9	10
Kisii	Not available	6
Meru	Not available	4
Mijikenda	Not available	5
Masai	Not available	3
Kenyan Somali	Not available	6
Smaller communities*	Not available	11

*These individual ethnic groups account for less than 1 per cent of the population

Source: author's compilation with reference to Kimenyi (2013, p. 154) and Biegon et al. (2018, p. 13), for 1969 population data

In order to understand the role of ethnicity in Kenya's governance tradition, it is necessary to examine the evolution of the Kenyan state and ideas of Kenyan nationalism. The impact of colonialism in shaping tribal identities prior to independence, and the consequent effects of this on attempts to establish a Kenyan nationalism in the post-colonial period, form an inexorable part of any discourse on

³ 2019 population estimate drawn from 2019 census data (Kenya National Bureau of Statistics, 2019b)

Kenya's governance traditions. Prior to colonisation, the current tribes that make up the Kenyan state existed independently. Ethnic boundaries were fluid however, and there was intermarriage, occasional warfare and trade between tribes, mainly on an as-needed basis. Scholars suggest that some of these ethnic nations, like the Luo of western Kenya, who belong to the wider community of Jii-speakers, have a shared history that is over four thousand years old. The Kikuyu of central Kenya have a history beginning over five hundred years ago (Atieno-Odhiambo, 2002).

Ethnic communities prior to colonisation practised collective subsistence where the production of goods and ownership of property were based on kinship. Labour was shared among the broader kinship group and long-distance trade was reserved for prestige goods and had minimal societal impact. Rewards from production were shared and redistributed according to need and there were no significant wealth disparities (Juma, 2001; Ndege, 2009). Lonsdale (2004, pp. 76–77) provides a summary of what ethnicity constituted prior to colonialism:

Each ethnicity might have its own tongue; its own institutions; and distinct territory, often suited to one way of living rather than to another – farming or herding or hunting. ...There were few concentrations of power; each ethnic group was internally divided by locality and clan. People lived an ethnicity rather than rationalised it, having little need to defend its ways against outside oppression. It was the culture in which they earned their living, discharged social obligations, resolved disputes, earned reputation and trust as self-realized men or women.

The most important insight to draw is that, in the period leading up to colonialism, these ethnic groups were independent, lived in distinct territories with cultural and economic significance, had their own governance systems – whether complex or simple – and had relationships of a symbiotic interdependent nature (Juma, 2001). The establishment of British colonial rule, therefore, was an attempt to coalesce

independent ethnic groups and the minority white settlers into a nation state. Berman (1998), however, highlights that, in as much as ethnic groups may have been independent, understanding of ethnicity within bounded terms was socially constructed with the onset of colonialism. African societies, he argues, existed prior to this within what he terms 'a reality of multiple, overlapping and alternative collective identities' (Berman, 1998, p. 310).

Colonialism, through the imposition of a centralised state and imposition of arbitrary territorial boundaries, brought together 'over forty previously independent communities into one territorial entity' (Ndege, 2009, p. 3). It was an attempt at creating nationhood or a nation state, but without taking into account the perceptions of the local people (Knight, 2002). This artificial amalgamation of independent communities into tribes to suit colonial interests and attempts at creating nation states confirms the observations made by Mamdani (1992) and discussed in Chapter 2. The establishment of British direct rule and the creation of the Kenya protectorate gave the British settlers power to control the indigenous groups, as well as to acquire land from them. The British acquired territory through conquests in which they pitted one ethnic group against another and rewarded collaborators with property forcefully taken from conquered groups. Colonial rule thus adopted a divide-and-rule policy from the outset, in which some ethnic groups were privileged over others, particularly with regard to the modern economic opportunities presented by the colonial state (Omolo, 2002). The foundations of the nation state was therefore premised on the 'deliberate manipulation of ethnic differences to acquire territory and secure political support' (Juma, 2001, pp. 477–78).

Ethnic identity played a significant role in the way the colonial administration demarcated districts and provinces for administrative purposes. The provinces, eight in number, predictably ended up with a dominant ethnic group that remains the case to date. The association of specific ethnic groups with specified regions is so established that even official government documents acknowledge this association (Biegon *et al.*, 2018). The National Cohesion and Integration Commission (NCIC), established with the 2010 Constitution, is meant to deal with matters of ethnic discrimination yet even it uses the home district of origin, of civil service staff, as a 'proxy for ethnic identity' (Biegon *et al.*, 2018, p. 83). Scholars argue that this process of 'cataloguing, demarcating and administering' (Lynch, 2006b, p. 236) Africans as bounded ethnic groups awakened ethnic consciousness by encouraging 'Africans to think and act ethnically' (Berman, 1998; Juma, 2001; Lynch, 2006b, p. 236; Shilaho, 2017). The colonial administrators had an official policy to amalgamate and classify numerous individual ethnic communities under common labels if they perceived them to have some form of close affinity. The 'Luhya' classification, for example, constituted all Bantu-speaking groups assigned to the North-Kavirondo region, while the 'Kalenjin' constituted all Nandi-speaking groups (Biegon *et al.*, 2018, p. 18).

In the intervening years leading up to independence in 1963, the British manipulated ethnic identity to suit their political interests. Colonial administrators treated ethnic groups differently based on imagined characterisation. Juma (2001, p. 482) highlights how colonial administrators viewed the Luo as 'prudent civil servants', the Kamba as 'flexible and cooperative' and the Kikuyu as 'shrewd tradesmen'. These characterisations informed how jobs were allocated by colonial administrators. The result of this was ethnic hierarchies and categorisations of ethnic identity which created

ethnic cleavages that have persisted beyond independence (Biegon *et al.*, 2018). The communities mentioned above, owing to opportunities the colonial administrators offered them based on the imagined characterisations, were thus placed at an advantage in adapting to and benefiting from the modern settler economy. The same communities would later be at the forefront in the agitation for independence. Smaller ethnic groups found themselves at the periphery of this emerging economy and would later feel threatened by these larger ethnic groups due to what was seen as unequal distribution of opportunity and resources. This disparity in opportunity would later form some of the building blocks of ethnic fragmentation in the modern nation state post-independence.

In the years leading up to independence, the settlers, having realised independence was imminent, sought to ensure that they remained the privileged ethnic group. Entrenching ethnic cleavages to create division among the Africans so as to ensure the emerging nationalist spirit created by the independence movement was dismantled, was the key. The breakdown in nationalist spirit and resulting ethnic cleavages would ensure that minority settlers and their property were protected once a majority African government was in place (Atieno-Odhiambo, 2002). Muigai (2004) highlights how the colonial administration deliberately cultivated the formation of ethnic-based parties in a deliberate effort to undermine African nationalism. In 1957, in response to increased demands by Africans for representation in decision-making, the first elections for African politicians to the LegCo were held.

The elected Africans were expected to represent the interests of the African majority. Once again in manipulation of ethnic identities, so as sustain clear cataloguing and

demarcations between ethnic groups, all constituencies represented by the Africans were ethnically based by colonial design. 'Daniel Moi represented Rift Valley; Oginga Odinga, Nyanza; Bernard Mate, Central (Kikuyu and Meru); James Nzau, Ukambani; Masinde Muliro, Western; and Ronald Ngala, Coast' (Muigai, 2004, p. 208). The colonial government encouraged district-wide parties, which as a result of colonial administrative boundaries were essentially ethnic-based parties. The establishment of a precedence of ethnic-based parties remains a challenge in Kenya's political party system to date (Elischer, 2008; Biegon *et al.*, 2018).

The colonial government, in 1915 through the passing of the Crown Lands Ordinance, had deposed all the indigenous people of their land and made them tenants of the Crown. The independence movement was therefore principally focused on the restoration of land rights to Africans. The British settlers, who were afraid of losing their forcefully acquired large tracts of land at independence to Africans, began 'inventing ethnic rights to land' for tribes they viewed as possible collaborators (Atieno-Odhiambo, 2002, p. 238). The settlers subtly created ethnic cleavages around land rights in an effort to create division among the Africans and secure their own interests (see Atieno-Odhiambo, 2002, p. 238 for a detailed discussion). The settlers turned these collaborator tribes into an opposition faction by capitalising on fears of domination by the larger tribes.

The opposition faction became a political party, the Kenya African Democratic Union (KADU), and was a tribal alliance of the minority tribes supported by the white settlers. Land was the primary issue for KADU and particularly how to preserve settler lands and avoid Kikuyu–Luo domination in the future independent state. Defence of land

became the principal opposition issue, with ethnicity used as the organising principle. There were threats to drive every non-Kalenjin out of the Rift Valley, as well as demands for regionalism to be written into the independence constitution, without which there would be war and consequently no independence. In 1961, there were ethnic clashes in the Rift Valley and Kikuyu, Luhya and other ethnic groups who had lived there for years were labelled as foreigners and their property destroyed rendering them refugees, a phenomenon that has continued to occur during election cycles in the current independent state (Ajulu, 2002; Atieno-Odhiambo, 2002).

The colonial government, in order to stop the ethnic clashes and help address these ethnic boundary problems so as to facilitate the passing of the constitution and consequent independence, established a Boundaries Commission to look into the land entitlements of all tribes. The Commission heard evidence on land claims dating back a full century and half earlier and determined that ethnic differences were so entrenched that the country needed a regionalist (*majimbo*) constitution. The independence constitution, with the backing of the settlers, therefore split the country into eight regions with each representing a 'tribe' of sorts (Atieno-Odhiambo, 2002, p. 239).

Thus, at the onset of independence in 1963 the colonial government had effectively entrenched ethnicity as a mobilising factor in politics, carved up the country into ethnic enclaves to secure regional interests at the cost of the idea of a nation state and entrenched an ideology of majority ethnic domination as a legitimate fear in Kenya's national politics. It can be safely argued that Ekeh's (1975) two publics, as discussed in Chapter 2, had been born and would henceforth shape Kenya's post-colonial

politics. The governance tradition of political ethnicity had been firmly rooted and would continue to adapt for continuity through various political independence administrations, as will be illustrated below.

7.4 Mobilising political ethnicity: the Kenyatta years and contemporary comparison

In 1962, in the lead-up to independence and the inevitable transfer of power, the settlers recaptured Kenya's first president, Jomo Kenyatta, and drew out of him a guarantee of a safe future for them and particularly that he would 'respect and honour their property rights in land' (Atieno-Odhiambo, 2002, p. 239). Kenyatta acquiesced, resulting in making him a firm ally of the settlers and gaining their political support (Atieno-Odhiambo, 2002). In 1963, under the political party of KANU (Kenya African National Union), Kenyatta was firmly established as president with the support of the settlers who had secured their interests. KANU was a broad nationalist coalition of the large ethnic groups, namely the Kikuyu, who included the Embu and Meru, as well as the Luo community (Muigai, 2004). Kenyatta, who had secured an Anglo-Kikuyu alliance with the settlers because of the independence land deal, went on to form a Kikuyu–Kalenjin alliance with Moi of KADU in 1964. This alliance was aimed at securing land in the Rift Valley to settle Kikuyu who had been displaced by the white settlers (Atieno-Odhiambo, 2002). Daniel Moi became his ally in the Rift Valley, having joined KANU from the KADU faction. In return for Moi's loyalty, Kenyatta supported the Kalenjin in acquiring land in Transnzoia and Uasin Gishu in opposition to the Luhya, who saw this as their land (Muigai, 2004). Kenyatta's actions provide an accurate reflection of the arguments advanced by Ekeh (1975) in Chapter 2 whereby the new African ruling class at independence, who arose out of their collaboration with colonial

administrators, in order to retain their positions of power, dignity and trust exploited the colonially constructed ethnic groups to claim power on behalf of the groups they represented.

The alliance with KADU transformed Kenya into a one-party state, as the opposition was absorbed into the ruling party (Odhiambo-Mbai, 2003). The establishment of a one-party political state made it possible for Kenyatta to determine the political future of any politician, and his manipulation of this, centred along ethnic lines, became the hallmark of his presidency (Muigai, 2004). Kenyatta was aware that the Luo were the second most important ethnic block in KANU. He consequently, in order to secure the political support of the Luo, appointed two Luo's to senior positions, with Odinga as vice-president and Tom Mboya to the prestigious office of Minister of Justice and Constitutional Affairs (Muigai, 2004).

The KANU alliance, which had come together in the fight for political independence and been touted as a nationalist alliance, however, disintegrated in 1966. The post-independence struggle over power and resources led to the collapse of the alliance as Kenyatta mobilised the Kikuyu elite around him (Muigai, 2004). Kenyatta mobilised and privileged his co-ethnics. Claims were made that if you had access to the corridors of power it was automatically assumed you could speak Kikuyu (Atieno-Odhiambo, 2002) effectively demonstrating the level of privilege Kenyatta gave his co-ethnics.

The privileged political access and privilege provided by ethnic identity in Kenya even at present was well illustrated during the FGDs. Participants, who had previously taken part in public deliberation stated during the FGDs how they at times disengaged from public deliberation as a result of MCAs refusing to meet them or assist them in

acquiring public services because they come from a different ethnic community than the elected representative:

I will not go [to the MCA] because if you take your concerns there, they just look at it and you are told to come back. When you return you are told your issue could not be resolved. For example, we had a [church] group that my sister said if you go to the MCA you may find he is not available only to discover its actually discrimination. They will tell you it is because you did not elect them. Like for us our MCA said that Kikuyu's did not vote for him, but Kamba's voted in majority for him. So, if you go there, like I did as a leader of my church group to represent them, even if you belong to the same political party, they look at the name on your identification card and [if] it's a different community you immediately start facing challenges and nobody wants to help. Not the M.P. not the MCA. ('FGD-N2', 2018)

The need for political survival in a governance tradition of political ethnicity requires that political leaders surround themselves with fellow co-ethnics who ensure loyalty by fellow co-ethnics, eliminate threats to their leadership and help deliver resources to the leader's ethnic community. Kenyatta was surrounded by an inner group of Kikuyu elite who were from the same region as him. The Kikuyu elite constituted Kenyatta's closest confidants and were part of the elite landed African class who had been allies of the colonial government and served as home guards and administrators in the colonial government. These elites understood well the power of political ethnicity as they had watched the settlers wield it to their advantage. These close confidants began to alienate and marginalise the two Luo leaders, Oginga Odinga and Tom Mboya, who had been not only leading allies in securing Kenyatta's release from prison when detained by the colonial administration but also key proponents of the nationalist movement and the KANU alliance (Atieno-Odhiambo, 2002). In 1966, as a result of continued ideological differences with Kenyatta, Odinga together with other like-minded politicians split from KANU and formed the Kenya Peoples Union (KPU).

The formation of KPU returned Kenya to multiparty politics but was seen by Kenyatta and his inner circle as a threat to the stability of Kenyatta's authoritarian regime. In order to neutralise the perceived threat of KPU, Kenyatta resorted to ethnic manipulation by replacing the Kikuyu–Luo alliance that had been the foundation of KANU with a new Kikuyu–Kalenjin alliance supported through the coalition with the former KADU members (Muigai, 2004). Kenyatta and his supporters, in an effort to destroy the opposition, initiated a series of constitutional amendments. The amendments required members of the opposition to seek a fresh electoral mandate as a result of withdrawing from the ruling party, which was said to imply withdrawal of constituency support. Kenyatta extensively deployed state resources and propagated propaganda styling KPU as a Luo ethnic party thereby tarnishing its national image and effectiveness as an opposition party. Kenyatta also exerted tremendous ethnic pressure to manipulate the election outcome, effectively demonstrating the 'deployment of the ethnicity in a defensive way' (Ajulu, 2002, p. 260). In January 1967, Daniel Moi was appointed vice-president to replace Odinga, demonstrating the importance of consistently maintaining ethnic coalitions to secure the stability and legitimacy of the incumbent (Muigai, 2004).

Kenyatta's faced two more political crisis during his tenure as president, which necessitated his retreat 'into the safety of his ethnic cocoon' (Muigai, 2004, p. 213). The assassination of Tom Mboya in 1969 and the assassination of Josiah Mwangi Kariuki (popularly known as J.M.) in 1975. Kenyatta was ageing and internal party rivalries over his successor were mounting. Mboya, a Luo, was deemed a threat by Kenyatta's inner cabal, who were exclusively Kikuyus from Kiambu, Kenyatta's home territory (Ajulu, 2002). Mboya was viewed as a threat because he was perceived to

have national appeal and appealed to the idea of Kenyan national solidarity that had been the foundation of KANU at independence. Mboya had been consistently been elected in a predominant Kikuyu constituency, which was a testament to the support he enjoyed across ethnic divides. J.M. was a popular Kikuyu MP and former assistant minister. J.M., like Tom Mboya, was the victim of internal party rivalries surrounding Kenyatta's succession. J.M. had a strong populist following from two significant Kikuyu districts and well-known Kikuyu politicians, as well as other populist politicians across the ethnic divide. He was thus perceived, like Mboya, to have a national following, 'but as a Kikuyu he was capable of subverting Kikuyu sub-nationalism from within. ...He thus posed the most serious political threat to the Kenyatta coalition' (Muigai, 2004, p. 261).

The privilege accorded to political ethnicity over any attempts at nationhood had become firmly entrenched in Kenya's governance tradition, with actors even willing to assassinate to secure it. Mboya's assassination, as well as 'increasing resentment by a majority of ethnic groups of the consolidation of economic and political power' (Ajulu, 2002, p. 261) by the Kikuyu elite, rallied other ethnic groups against the Kikuyu. The possibility of an alliance between the Luo and other ethnic groups against the Kikuyu was deemed to be a real threat by Kenyatta's inner cabal (Ajulu, 2002). In order to protect Kenyatta and the hold of his inner circle to power, they sought protection under Kikuyu ethnicity. Kenyatta's inner circle mobilised government machinery to orchestrate an oathing campaign aimed at mobilising the Kikuyu nation under the guise 'that they had to be prepared to protect the presidency in the house of Mumbi [Mumbi is considered the mother of all the Kikuyu people as the wife of Gikuyu, the ancestor to all the Agikuyu people]' (Muigai, 2004, p. 213). The oath, which took place with the

full knowledge and support of Kenyatta, served to demonstrate his opportunistic manipulation of ethnic sentiment to support his political goals.

KPU was banned in the same year in a further effort to weaken the Luo nation (Muigai, 2004). The Luo were classified as 'other', with common degrading identifying references such as 'kinyamu giiki or kihii giiki — little animals or little boys' (Atieno-Odhiambo, 2002, p. 242). The state systematically facilitated this exclusion where, despite being citizens of the Kenyan nation, the Luo 'were subjected to many tacit, uncoded, internalised classificatory schemes and ethno-cultural markers in the political and economic arenas' (Atieno-Odhiambo, 2002, p. 243). Derogatory slurs and the exclusion of entire ethnic groups from political and economic arenas continue to be a means of weaponising ethnicity among Kenya's successive political regimes. The political exclusion and resource imbalances among different ethnic groups was a central concern in the 2010 Constitution and one of the main reasons for the establishment of the devolved system of government, as touched upon in Chapters 1 and 5. Public deliberation was seen as the means of securing equal resource distribution and protection from political exclusion as ordinary members of every ethnic community would have a seat at the decision-making table despite which ethnic community held the presidency.

The ideas of nationalism that had been touted by KANU at independence were forgotten in the Kenyatta years and the arguments for federalism as advocated by KADU returned to the fore once again, highlighting the artificial colonial construction of the Kenyan state (Muigai, 2004). Political ethnicity, which had been initiated and manipulated by the colonial administrators to secure their own interests, had

continually and successfully been adapted in the post-colonial state by Kenyatta and his co-ethnics to secure primordial interests. Political ethnicity as a governance tradition proved resistant to any challenges, with the beliefs and practices of actors executed against this ideational background even as Kenyatta died and was succeeded by President Moi.

7.5 Political ethnicity in the Moi government (1978–2002)

Kenyatta died in August 1978 and was succeeded by Daniel Arap Moi, who had served as his vice-president for twelve years. A coalition of Gikuyu, Embu, Meru and Akamba (GEMA) leaders, in an effort to preserve Kikuyu hegemony, attempted to block Moi from acceding to the presidency when Kenyatta's death seemed imminent. They believed, led by Kenyatta's inner circle (Kiambu coalition) and family, that if they could stop Moi from acceding to the presidency after Kenyatta's death they could organise for 'one of their own to assume power' (Muigai, 2004, p. 215). The result of these ethnic machinations would set the direction of Moi's manipulation of ethnicity to suit his own political ends for the next twenty-four years.

Moi initially had no recourse but to rule through a section of Kenyatta's inner circle who had protected him from the Kiambu coalition (Ogot and Ochieng', 1995; Adar and Munyae, 2001; Ajulu, 2002). The machinations to keep Moi out of power, however, left Moi in a precarious situation and he immediately began to seek out ethnic alliances across the country to protect himself from Kenyatta's inner ethnic cabal. Moi had never been accepted into Kenyatta's inner circle despite being his vice-president. He was a Kalenjin and therefore viewed by the Kikuyu elite as an 'outsider' from a small community with no political sway (Adar and Munyae, 2001, p. 1; Ajulu, 2002). Moi, on

acceding to the presidency, initially tactfully styled himself as a nationalist leader who would accommodate all ethnic groups. He released political prisoners, pardoned the Kiambu coalition, toured the country, meeting ordinary Kenyans and condemning corruption and government inefficiency, and even castigated politicians for their tribalism and corruption (Ogot and Ochieng', 1995, p. 193). The Kikuyu, who had been worried about losing power, appeared to be appeased with one of their own serving as attorney general and another Kikuyu, Mwai Kibaki, as vice-president and minister of finance.

Moi despite appearances was interested in neutralising those whom he saw as a threat to his leadership. He was particularly concerned with the threat from the Kikuyu, who had amassed power during Kenyatta's presidency and controlled a majority of public positions. Kenyatta had filled the public service with members of his ethnic group and were overrepresented relative to their share of the population. Kenyatta had effectively created a strong Kikuyu hegemony and abandoned almost any pretence that his government was for all Kenyans. Table 7 below demonstrates how the cabinet during Kenyatta's regime was consistently dominated by fellow Kikuyus, a situation that was replicated in other key institutions of government and ultimately affected resource distribution in favour of the Kikuyu at the cost of other ethnic communities (Odhiambo-Mbai, 2003; Biegon *et al.*, 2018).

Table 7 Representation of ethnic groups in Kenyatta cabinets, 1966–1978

Ethnic group	1966		1967		1968		1970		1978	
	No.	%	No.	%	No.	%	No.	%	No.	%
Kikuyu	6	28.6	6	28.6	8	31.6	6	28.6	6	28.6
Luhya	2	9.5	2	9.5	1	5.3	2	9.5	1	4.8
Luo	3	14.3	3	14.3	3	15.8	2	9.5	3	14.3
Kalenjin	1	4.8	1	4.8	1	5.3	2	9.5	1	4.8
Kamba	1	4.8	2	9.5	2	10.5	2	9.5	2	9.5
Kisii	2	9.2	2	9.5	1	5.3	2	9.5	2	9.5
Meru	1	4.8	1	4.8	1	5.3	1	4.8	1	4.8
Mijikenda	2	9.3	2	9.5	2	10.5	2	9.5	3	14.3
Other	3	14.3	2	9.5	2	10.5	2	9.5	2	9.5

Source: Kanyinga (2006), cited in Biegon et al. (2018, p. 23)

In his first year, Moi retained Kenyatta's cabinet. However, he was also keen to establish a Kalenjin hegemony and he gradually began centralise power and build his own inner cabal comprised mainly of members of his Kalenjin ethnic community (Ajulu, 2002; Kwatemba, 2008; Biegon *et al.*, 2018). Moi further added to his inner circle members of the old KADU alliance to represent the Masai, Luhya and Coast communities. Ajulu (2002, p. 262) argues that:

by the mid 1980s President Moi had perfected the art of deploying patronage and clientelism to construct and deconstruct his coalition. However, the centre...remained the same, a group from President Moi's inner tribal grouping.

Table 8 below demonstrates the changing ethnic group compositions of Moi's cabinet until the end of his term in 2002

Table 8 Representation of ethnic groups in Moi cabinets, 1979–2001

Ethnic group	1979		1982		1985		1987		1994		1998		2001	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Kikuyu	8	30	7	25	5	20	4	14.2	1	4.2	1	4	1	4
Luhya	3	11	3	11	2	8	3	10.7	4	16.7	5	19	4	14
Luo	3	11	3	11	4	16	5	17.8	1	4.2	0	0	2	7
Kalenjin	3	11	3	7.4	3	12	2	7.1	4	17	6	22	5	17
Kamba	2	7.6	2	7.4	2	8	3	10.7	4	16.6	4	14.8	4	14.3
Kisii	2	7.6	2	7.4	1	4	2	7.1	2	8.3	2	7.4	2	7.1
Meru	1	3.8	2	7.4	1	4	1	3.5	2	8.3	1	3.7	1	3.6
Mijikenda	2	7.6	2	7.4	2	8	2	7.1	2	8.3	2	7.4	2	7.1
Other	2	7.6	3	11	5	20	6	21.2	4	16.6	6	22	7	25

Source: Kanyinga (2006), cited in Biegon et al. (2018, p. 24)

In 1978, when Kenyatta died, there was only one Kalenjin in cabinet and never more than two. During Moi's term that number increased until at one point there were six Kalenjins in cabinet, representing 22 per cent of the cabinet. Kikuyu ministers conversely continued to consistently decrease in number and by the end of Moi's term in 2001 there was only one Kikuyu in cabinet. Biegon (2018, p. 19), citing analysis carried out by Karuti Kanyinga, argues that being a member of Kenyatta or Moi's ethnic community appeared to significantly influence 'appointments into other important and influential public offices'.

The influence of this practice is still visible in the composition of Kenya's current public service, with the Kikuyu and Kalenjin alone constituting '40% of civil service employees' (Biegon *et al.*, 2018, p. 84). The NCIC in its audit of ethnic diversity of the civil service acknowledged that the dominance of the two groups in civil service posts was disproportionate in comparison to their share of the population. The NCIC acknowledged that political dominance was inextricably linked to this variance (National Cohesion and Integration Commission, 2017). The belief that political power translates into opportunities for political appointments or any other public office is well accepted by the public. Several participants in the FGDs acknowledged a wide acceptance of this position. The FGD participants in Mombasa, when asked why they did not engage in public deliberation, stated that public administration officials often only informed fellow co-ethnics or loyalists about existing opportunities for public deliberation, particularly if a monetary reimbursement is involved:

These seminars [public deliberation] when they are called, those who organise them go to the chief's office. Then the chief has his own people. He knows this is the community leader here, therefore if I ever run into any problems, he will support me. He will back me up. Therefore, when seminars come, whether they are on entrepreneurship, business or any other type of seminar, the information

will be with the chief and will not filter down to everyone. The Chief will then reward his own people who he considers loyal to him. Those people he rewards will also bring two of their children or maybe the child of their brother or maybe the chief will even give it to their own child. The Chief knows that when they go for that seminar, they will earn some money. However, those who attend those seminars are not interested in the discussions taking place. Their aim is simply to make money. ('FGD-M1', 2018)

Throup (2020, p. 58) informs us that, during Kenyatta's reign, 'two-thirds of senior positions in the civil service' were held by a Kikuyu. Moi, in consolidating his power base, gradually set about retiring or passing over for promotion Kikuyu civil servants and army officers. Many of these positions were filled by Moi's co-ethnics. Moi also built coalitions with minority tribes to create a new ethnic power base that was loyal to him. Kenyatta had inherited vast amounts of state resources such as land that he gave to loyal clients without attracting too much public attention. Resultantly, by the time Moi took over the presidency these resources had dwindled significantly and, in order to reward his clients and build his power base, Moi resorted not only to looting the resources of state institutions but also to actively diverting resources from the Kikuyu (Ajulu, 2002; Odhiambo-Mbai, 2003; Throup, 2020). Thus, instead of addressing the disproportional development concerns of the Kenyatta era, Moi reinforced the association of control of state power with resource distribution for one's ethnic group (Ajulu, 2002; Throup, 2020), like Kenyatta had done. Moi's actions effectively demonstrated once again the importance of securing a non-political way of securing resource distribution and political decisions-making, namely public deliberation.

In 1982, on 1 August, an attempted coup against Moi was launched which aimed at thwarting his efforts to control the state and solidify his authoritarian rule, which he had gradually been implementing. Moi's rule after that became increasingly autocratic, with legislation enacted by Parliament to limit the independence of the judiciary. Parliament

was already under the control of the executive arm of government and, with the limitations imposed on the judiciary, the Office of the President had absolute power with no control and checks on its excesses as well as Moi's personal authority (Adar and Munyae, 2001). The absence of checks and balances on Moi's power, and his move to consolidate power after the failed 1982 coup, saw patronage and resources concentrated around Moi's own ethnic group. Moi, like Kenyatta, politicised resource allocation, with 'roads, educational infrastructure, and agricultural investments...directed mainly towards Moi's political constituency' (Ajulu, 2002, p. 263). Moi directing resources at his co-ethnics, just like Kenyatta had done, solidified public perception that attaining political power meant securing disproportionate resources for one's ethnic community. The primordial public thrived in this environment and the civic public suffered as political actors engaged in extracting resources from the state.

In 1982, through a constitutional amendment, Moi made Kenya a de jure one-party state. Moi became increasingly authoritarian and pressure mounted from clandestine opposition groups, western countries and the donor community for Kenya to revert to a multiparty state (Odhiambo-Mbai, 2003). In December 1991, due to mounting local and international pressure, Moi conceded to demands to revert Kenya back to a multiparty state (Odhiambo-Mbai, 2003; Mueller, 2020). In the years following the return to multiparty politics, Moi's tendencies for personal rule remained. Opposition parties that had initially attempted to come together under one party, the Forum for the Restoration of Democracy (FORD), fragmented into various factions along personal, ethnic and sub-ethnic lines. The disunity saw them unable to defeat Moi in the 1992 and 1997 elections (Odhiambo-Mbai, 2003; Kanyinga, 2013; Bedasso, 2015; Mueller,

2020). Available data from that period reveals that ‘presidential co-ethnics received more higher-level ministerial, civil service, military, and parastatal appointments than non-co-ethnics in both the one-party state and multi-party eras’ (Kanyinga, 2013; Mueller, 2020, p. 350). The disproportionate presence of co-ethnics in senior positions in both the Kenyatta and Moi regimes created a trickle-down effect to the home areas of those in office (Mueller, 2020, p. 351). Hornsby (2012, p. 257) tells us that co-ethnics benefited from ‘contracts, jobs for clients, and preferential allocation of development funds’, which led to ‘a self-reinforcing structure of privilege that was never fully dismantled’ and fuelled corruption as well as one could almost argue the way of doing things. Political ethnicity was now a firmly set governance tradition that permeated every institution of governance in Kenya including the national parliament, with the appointment of staff who were sent to work there from the public administration prior to the passing of the PSC Act (2000), as discussed in Chapter 6. Through their machinations, Kenyatta and particularly Moi made politics and governance in Kenya a zero-sum predatory game where the winner took all while using ethnicity as political weapon to gain and maintain their wins.

7.6 Political ethnicity in the Kibaki government (2002–2012)

When Moi finally came to the end of his term in 2002, Mwai Kibaki, a Kikuyu, was elected president on a multi-ethnic opposition party ticket. Kenyatta and Moi had, however, set the way of things. Similar to what Moi had done to Kenyatta’s people shortly after taking office, Kalenjins lost their jobs in ministries and the military, as well as in banks that had engaged in corrupt practices under the Moi regime. The political loss suffered by Moi and his preferred candidate became an ethnic material loss for all of Moi’s co-ethnics (Mueller, 2020, p. 349).

Kibaki was elected on a broad multi-ethnic support base with promises of significant reforms, particularly around resource distribution, job creation, ending corruption and the redistribution of power from an all-powerful presidency (Michael Chege, 2008, p. 128). Kibaki was, however, shortly into his administration accused of ethnic marginalisation. Accusations of Kibaki's fellow co-ethnics, referred to as the 'Mount Kenya Mafia', forming a cabal around the president and controlling the government so as to ensure disproportionate benefits by Kikuyu soon emerged (Odhiambo-Mbai, 2003, p. 93; Mueller, 2020, p. 349). One of the most contentious issues that emerged in Kibaki's government was the distribution of public appointments among the various ethnic communities. Kenyans, as part of the reforms expected to address years of Kenyatta and Moi impunity in ethnic appointments, expected any appointments made by Kibaki to reflect the face of Kenya (Michael Chege, 2008).

One of Kibaki's key allies in the National Alliance and Rainbow Coalition (NARC), the alliance of political parties on which he was elected, was Raila Odinga. Raila Odinga, a Luo and son of Kenyatta's former vice-president Oginga Odinga, was the head of the Liberal Democratic Party (LDP). LDP had signed a memorandum of understanding (MoU) with Kibaki's party, the National Alliance of Kenya (NAK), in which they would equally share cabinet positions and other high-level political appointments, as well as engage in consensus decision-making (Michael Chege, 2008; Hornsby, 2012). In 2003, similar to what had happened with Odinga senior between 1963 and 1965, Raila Odinga soon fell out of favour with the so-called 'Mount Kenya Mafia'. Raila complained of ethnic marginalisation and efforts to keep him out of power. Soon key members of the alliance complained that Kibaki's regime, similar to its predecessors, had become

‘corrupt, intolerant and ethnically chauvinist’ (Hornsby, 2012, p. 697; Mueller, 2020). Many different groups of people that had supported NARC increasingly became dissatisfied with Kibaki and his co-ethnics and the party split along ethnic lines. Issues of unfair resource allocation, policy implications for different ethnic groups and issues of constitutional reform were at the forefront of disagreements (Hornsby, 2012, p. 697). Kibaki, like his predecessors, was accused of disproportionately appointing his co-ethnics to cabinet, state corporations and the civil service (Kwatemba, 2008, p. 102). In 2003, Kibaki appointed a leaner cabinet than Moi had presided over, as shown in Table 9 below. Many agreed the ministerial appointments were fairly representative (Odhiambo-Mbai, 2003)

Table 9 Ethnic composition of Kibaki's first cabinet, 2003–2005

Ethnic group	Total no.	Total %
Kikuyu	4	18
Luhya	4	18
Luo	4	18
Kamba	3	14
Kalenjin	1	5
Kisii	0	0
Meru	2	9
Somali	0	0
Mijikenda	2	9
Taita	0	0
Pokomo	0	0
Bajun	0	0
Embu	1	5
Arab/Swahili	1	5
European	0	0
Asian	0	0
Others	0	0
Total	22	100

Source: Republic of Kenya: the Structure of the Government of Kenya 2003, cited in Kanyinga (2013, p. 66)

However, Kibaki's appointment of permanent secretaries (PSs) generated widespread outrage. Kibaki was accused of favouring his co-ethnics in a docket considered particularly critical as PSs played critical decision-making and implementation roles in

their ministries (Odhiambo-Mbai, 2003; Kanyinga, 2013). Looking at Table 10 below, the ‘Mount Kenya Mafia’, comprising the GEMA communities and Kibaki’s co-ethnics, were appointed to ten PS positions.

Table 10 Ethnic composition of Kibaki’s PS posts, 2003–2005

Ethnic group	Total no.	Total %
Kikuyu	6	22
Luhya	2	7
Luo	4	15
Kamba	4	15
Kalenjin	4	15
Kisii	1	4
Meru	4	15
Somali	1	4
Mijikenda	1	4
Total	27	100

Source: Republic of Kenya: the Structure of the Government of Kenya 2003, cited in Kanyinga (2013, p. 66)

Kibaki’s co-ethnics, whom he began to surround himself with, began to acquire large shareholdings in large corporations with government interest. They also took control over the banking and finance sector and effectively crowded out the Kalenjin and Asian communities that had dominated those sectors in the Moi years. The restoration of the economic fortunes of the GEMA community restored their position as the dominant economic and political power, all of which had been destroyed by the Moi presidency (Hornsby, 2012, p. 711). Kibaki also made significant changes to the security services by systematically purging all Kalenjin security service heads and replacing them with

co-ethnics. Resultantly, by 2006, 'the permanent secretary for internal security, and the CID [Criminal Investigation Department], GSU [General Service Unit], Presidential Escort and NSIS [National Security Intelligence Service] heads – all Kalenjin in 2002 – were all Kikuyu, Embu or Meru' (Hornsby, 2012, p. 713). There was a clear influence of trust by ethnicity that was displayed in Kibaki's actions. Heightened ethnic tensions resulted in the collapse of NARC.

The year 2007 saw Kenya's most hotly contested general election. The result was a closely contested, controversial and eventually violent election. Ultimately Kibaki was declared the victor against Raila, the opposition candidate. Immediately, widespread organised and targeted ethnic violence broke out in many parts of the country owing to controversies that the election was rigged during vote tallying (Mueller, 2020). The violence resulting from the elections was vicious, with the ruling party and opposition both refusing to concede defeat. There was intense pressure placed on Kenya by the international community to broker a peace deal as the violence went on for almost three months. Finally, on 28 February 2008, Kibaki and Raila 'signed a power-sharing National Accord by which Odinga would take up the prime minister's post while Kibaki remained president' (Hornsby, 2012, p. 769). One of the conditions of the power-sharing National Accord was that previous attempts to pass a new constitution would be revisited. A new constitution that would devolve power to the local level and bring people into decision-making on resource allocation, instead of the power wielded from the too-powerful centralised presidency, was seen as the only way to avoid a future repeat the violence of the 2007/2008 election.

7.7 The role of public deliberation in restoring good governance

Kenyatta, Moi and Kibaki bequeathed Kenya a political legacy of 'ethnically driven competition for resources, a survival of the fittest where the prize was control of the resources of the state' (Hornsby, 2012, p. 9). The three presidents, through a combination of patronage and mobilising their ethnic community for security in achieving their political ends, created a deeply divided society. A press release from Afrobarometer (2021) on the most recent round 7 country survey data for Kenya demonstrates the continued importance of ethnicity on Kenya's politics. A majority of respondents in the Afrobarometer data on Kenya stated that they believed there was strength in diversity and consequently expressed tolerance towards people of other ethnicities. However, 96 percent of the same respondents stated that you could not trust other people and had to be careful when dealing with them which is underpinned by nuanced ethnic mistrust. Adida et. al (2016) have shown that on questions of ethnicity and trust in co-ethnics in the Afrobareometer survey data, there is a statistically significant difference in respondents answers when interviewed by a non-co-ethnic. Their analysis shows that response bias is most severe for questions related to ethnicity and particularly in countries where ethnicity is politically salient with Kenya being one of the examples demonstrating statistically significant interviewer co-ethnicity effects. The challenges of political ethnicity on good governance and building nationhood has therefore been more difficult to address because it's not easily identifiable or often people deny its salience.

The 2010 Kenyan constitution is aimed at once again trying to build nationhood by transforming Kenya's governance structure and devolving power to forty-seven subnational governments. The subnational governments are given administrative

authority over their territory according to functions assigned to them in the 2010 Constitution of Kenya. One of the most important considerations in establishing these subnational governments is their proximity to the people, which is intentionally intended as a way of restoring governance decision-making to the people as well as addressing years of marginalisation in resource distribution for minority communities.

The devolved institutions serve several purposes. First, they bring decision-making about local issues back to the people and not some far-removed central authority. Second, they enforce ethno-regional equity through fiscal decentralisation and thereby break the tendency of direct spending at the centre at the cost of marginalised communities. Third, they bring about political stability by addressing politicised ethnicity; and, finally, they also address corruption by increasing the accountability of government use of public resources that decades of a strong centralised government had perpetuated (Kanyinga, 2014; Fashagba, McMahon and LeVan, 2015; Shilaho, 2017; Ghai and Ghai, 2018). Devolution is viewed as a way to give both ‘legal and political weight to the colonial principle of ethnic sovereignty’ (D’Arcy, 2020, p. 258). The devolved units as discussed earlier in Chapter 6 are therefore loosely representative of the colonial tribal districts.

Following the first election under the new constitution, governors were immediately faced with pressure from their ethnic communities to deliver patronage. D’Arcy (2020, p. 260) states that an:

ethnic audit by the NCIC found that 29 counties had breached the specific legal requirements on ethnic balance in appointments to entry-level positions, and that 16 counties had mono-ethnic CECs.

In counties with 'significant minorities and/or no dominant community, devolution has triggered debates and even violence arising from conflicting narratives of belonging' (D'Arcy, 2020, p. 260). The politics of winner-takes-all ethnic politics that has dominated since before independence is once again 'reshaping the character of some ethnic identities' (D'Arcy, 2020, p. 261; Mueller, 2020), only now it is at the subnational level. The public appear to have deduced that even at the subnational level, in the legislature, not much has changed. A respondent who had previously attended public deliberation in Nairobi, stated during the FGD that MCAs even in the county assembly are beholden to the governor or political godfather:

We also have a problem when it comes to our MCAs. Some of them are just picked [by political party leaders] when it comes to nomination and all that. And also, these people [MCAs], they questionably enter these positions. ...They steal votes. ('FGD-N2', 2018)

The accusation of 'stealing votes' demonstrates the total lack of trust the public often have in political leaders. They consider them concerned only with personal interests, which begin with them stealing votes so they can have 'their turn to eat' (Wrong, 2009). That MCAs are beholden to the governor or someone else more powerful so that they can have 'their turn to eat' means that they too are able to mobilise ethnicity to achieve their political ends. They withhold support or public service from people who did not vote for them and only act in favour of people whom they perceive to have voted for them, as demonstrated by this respondent during the Nairobi FGD: 'When you come to bring your problem...and they see, "this one didn't vote for me", he was in the other camp; they do not bother it [about solving the problem]. We have seen that' ('FGD-N2', 2018).

The practices and beliefs of the public, governors and MCAs all point to the fact that devolution has not resolved the problem arising from the governance tradition of political ethnicity. Actors have instead adapted it for continuity at the subnational level. The continued intentional and unintentional passing-on of beliefs and practices associated with political ethnicity through Kenya's successive governments gives credence, per Bevir and Rhodes's interpretivism, to the identification of political ethnicity as a governance tradition in Kenya. The manifestation of it may have changed slightly at times as generations have adapted their practices, but it has always been traceable.

7.8 Conclusion

The chapter unveils the various ways in which political ethnicity has manifested itself in beliefs and practices of agents during various phases of Kenya's governance history and in its institutions. However, what is evident is that the governance tradition of political ethnicity is not as easily visible and recoverable when compared to the bureaucratic-executive governance tradition. Respondents referred to it severally, they alluded to it and the influence it has on the beliefs and practices of actors. Discussing Kenya's governance traditions without discussing political ethnicity is therefore a half-baked argument. However, some of the spaces where it may be most evident such as in committee members private deliberations, informal meetings with the governor, closed door committee deliberations, political party caucus meetings among other inaccessible spaces made it difficult for the researcher to observe more direct practices of it. The political sensitive nature of this governance tradition may therefore be best revealed through long term ethnographic research which due to the limitations of a

PhD study the researcher was unable to undertake but presents an opportunity for future research.

The chapter however establishes the beliefs and practices associated with political ethnicity have intentionally and unintentionally been passed on and manifestations of it can be seen in Kenya's subnational legislatures, as shown by the primary data though in a limited way. Public deliberation was seen by the public respondents as providing a smokescreen to protect legislators from scrutiny for decisions benefiting their co-ethnics. Public deliberation was constitutionally mandated as it was viewed by the public as one way of addressing some of the negative beliefs and practices of this tradition such as privileging co-ethnics with public appointments, distribution of public goods, legislating decisions that benefit co-ethnics among others. The specific focus was on how subnational legislatures could be used to advance a deliberative approach to law-making and resource distribution that would address the imbalances attributed to politicised ethnicity. Through public deliberation in law-making not only would there be oversight and transparency on resource distribution; there would also be collaboration between legislators and citizens of various ethnicities in governance decisions. Thus, public deliberation in the legislature was expected to increase not only the legitimacy of decisions but would also contribute to reforming governance traditions that have hindered the establishment of a homogenous national identity.

Chapters 8, 9 and 10 will now proceed to examine how agents in legislative committees of subnational legislatures navigate the dilemmas posed to their beliefs and practices during the process of public deliberation. Chapters 8, 9 and 10 examine three important stages of the public deliberation exercise: the first reading of the bill, which involves

setting the stage and scripting for public deliberation; the bill in committee, which involves the actual staging of public deliberation; and, finally, the reporting of the bill in the county assembly prior to floor debate. Each of these three stages will examine how public deliberation is scripted, enacted and interpreted, thereby establishing the meanings that actors attach to it, how they navigate the dilemmas it poses to their beliefs and practices and what consequence this has for Kenya's governance traditions.

8 PREPARING FOR PUBLIC DELIBERATION: NAVIGATING THE DILEMMA OF PUBLIC DELIBERATION IN THE FIRST READING

8.1 Introduction

The discussion of dilemmas in Chapter 5 proposed that ‘dilemmas’ come about when a new ‘belief’ puts into question an existing belief or ‘webs of belief’. The situated agent must, however, first determine the dilemma by recognising its contention with existing beliefs (Bevir and Rhodes, 2010; Geddes and Rhodes, 2017). Drawing on the analytical framework of performance by Alexander (2006) and Hajer (2005), as adapted for the thesis, this chapter explores the staging of public deliberation and the dilemma it poses to the beliefs of all agents. Chapters 8, 9 and 10 will examine how the beliefs and practices of actors (legislators and legislative staff) and the audience (public) change or adapt, as demonstrated by their practices, to illustrate both their interpretations of public deliberation and resolutions of its dilemma.

Chapter 8 focuses on the first reading of the bill, which constitutes the first part of staging public deliberation. The first reading of the bill is when the bill, in this case the county fiscal strategy paper (CFSP), is introduced and read for the first time without debate in the county assembly. The bill is thereafter committed to the committee for public deliberation. The chapter, drawing on primary and secondary data, examines the preparations for staging public deliberation once the bill is committed to the committee. The chapter focuses on the scripting by actors of how they will communicate with the audience; the conscious messages that the actors wish to project; the important meanings they wish to establish; identifying the audience they wish to engage; and finally the agreement on how the script will be enacted.

Chapter 8 examines how actors, in enacting public deliberation, respond to the dilemmas it poses to their beliefs and practices. The chapter, through examining narratives that show how actors relate their practices to their beliefs, establishes connections that can be traced to the traditions in Chapters 6 and 7 that produce them. The chapter is organised by the key preparatory stages that occur in the committee as it prepares to stage public deliberation once the CFSP is committed to it. The first stage will examine the communication to the public of the proposed public deliberation; the second stage will discuss the preparation and sharing of information scheduled for deliberation with the public; the third stage will discuss the identification and invitation of organised groups to take part in the public deliberation and, lastly, the final stage will examine how committee staff brief and prepare committee members to engage in public deliberation.

8.2 Media and digital engagement: advertising the public hearing

Public deliberation on the CFSP in Kenya's subnational legislatures commences, as required by statute and the standing orders, with an advertisement by the assembly inviting any interested member of the public or organised group to give their submissions on the document to the finance, budget and appropriations committee (FBAC). The Kenyan Constitution, as illustrated in Chapter 5, as well as respective county assembly standing orders, require that every effort is made to make the public aware of opportunities for public deliberation. The most common route observed, during fieldwork, for advertising invitations to public deliberation in the assembly was through newspaper advertisements, as evidenced by the Nairobi City County Assembly (NCCA) advertisement on the CFSP (see Appendix VI). The observation

was corroborated in interviews with committee staff in Nairobi who, when asked how they primarily informed the public about deliberation, indicated as shown that they used newspapers: 'we put in the dailies, we normally use...either Nation and Star or Standard and Star' ('FCSN-01', 2018).

Invitations to engage in public deliberation through newspaper advertisements, however, appears to be part of a well-orchestrated performance by legislative staff with the tacit endorsement of legislators. Members of the county assembly (MCA) and their staff appear to be more interested in adhering to the letter of the law, but with no commitment to its underlying values. One resonant example of this is how late these advertisements for public deliberation are often put out. Many announcements for public deliberation are placed in newspapers a day or a few days before the public deliberation date. The short notice provides potential participants little notice to read documents, which are often bulky and written in complex technical jargon, and thereafter prepare their submissions on the documents scheduled for consideration. Often, the short notice period means that potential participants who fail to see the newspaper advertisement do not have enough time to find out about it through alternative channels.

One participant during the focus group discussions (FGDs) in Nairobi confirmed that, often, many citizens do not have access to the media channels the assembly uses to advertise public deliberation: 'we don't read newspapers. Some of us are not even on Twitter, or even if they put it in the Kenya Gazette, we cannot access those kinds of things' ('FGD-N2', 2018). The FGD participants, as shown below, also indicated their belief that newspaper advertisements are a means of suppressing public deliberation,

owing to the reality of many members of the public not having the financial resources required to purchase a newspaper:

[Newspaper advertisements] are a nice way of hiding [information] rather than exposing the notice to the public. Many people, these days, do not read newspapers. People in the rural areas don't read newspapers as they consider [buying] them a waste of money. ('FGD-M1', 2018)

The respondent above was from the Mombasa FGD and had not previously taken part in public deliberation, which is not surprising considering his view of the process. The forms of communication deployed by the assembly appear to the public to be inaccessible and a waste of taxpayer resources, with no real intention to involve them. The respondent above went on to note that newspaper advertisements for public deliberation were a 'waste of money costing hundreds of thousands despite taking up only one page', whereas 'that money could be used more beneficially' ('FGD-M1', 2018). Legislative rules, however, do not provide detailed guidance on how the public should be made aware of public deliberation. The choice of medium, in the Constitution as well as standing orders, appears to be left to the discretion of legislative staff.

The NCCA in 2016, in response to the vague language on notifying the public about deliberation, passed the Nairobi City County Public Participation Act, 2015. Mombasa County similarly passed its County Public Participation Act in 2017. Section 9 of the Nairobi City County Public Participation Act and Section 19 of the Mombasa County Public Participation Act deal with requirements of notifying the public about deliberation. The sections mandate that any notice to the public about deliberation shall be published in at least two daily newspapers with national circulation; on the official website of the county government or county assembly (for Mombasa); by means of radio broadcast covering the area of the county; or in any other media with wide reach

but not limited to social media platforms. NCCA legislative staff, however, as noted in Chapter 6, appear to be more concerned with ‘minimalism’ and a ‘compliance-only attitude’ and adopted the easiest and most traditional route of newspaper advertisements. The advertisement for public deliberation on the CFSP was also placed on the county assembly website. However, with a majority of people not having access to the chosen media platforms, the effort of notifying the public was a mere performative exercise.

A report by the Intergovernmental Relations Technical Committee, which examines the status of public deliberation in national and county governments, confirms the performative nature of public deliberation advertisements. The report provides an analysis of existing case law, showing emerging trends in jurisprudence on public deliberation. The High Court in 2014, ruling on the importance of public deliberation in the enactment of county legislation, highlighted how public advertisements have become a symbolic action with no value. The ruling stated that:

Whereas the magnitude of the publicity required may depend from one action to another, a one day newspaper advertisement in a country such as ours where a majority of the populace survive on less than a dollar per day and to whom newspapers are a luxury [let] alone the level of illiteracy in some parts of this country may not suffice for the purposes of seeking public views and public participation...having considered the foregoing, the inescapable conclusion I come to is that there was no public participation as contemplated under the Constitution and the County Government Act, 2012. (Mr. Gichira Kibara, 2019, p. 26)

During fieldwork, public deliberation on the Nairobi CFSP was advertised on Wednesday, 21 March 2018. The public were given two days to consider the document and submit written memorandums two days later, on Friday, 23 March 2018. The public deliberation session was scheduled for Monday, 26 March 2018 (see Appendix VI). Several important factors arise for consideration as they highlight the significant

discretion legislative staff have, as well existing tacit alliances between the legislature and the judiciary.

First, the advertisement for public deliberation on the CFSP was issued on a Wednesday, with the public effectively given two working days to read and understand a technical policy document that was only available, in English, on the county assembly website. The advertisement was also only done in English in a country where a majority of people speak Kiswahili which is the national language. The assembly, much like their blasé attitude to translating the CFSP to Kiswahili, as discussed in Chapter 6, appeared to adopt the same outlook in issuing advertisements for deliberation. Second, the CFSP was tabled in the assembly on 1 March 2018. The Public Finance Management Act (2012) Clause 117(6) mandates that, not later than fourteen days after the CFSP has been submitted to the county assembly, it shall be considered and adopted with or without amendments. The county assembly report on the CFSP should therefore have been adopted at the very latest by 14 March 2018. The clerk of the assembly, who is administratively tasked with ensuring compliance with procedure by the legislature, did not issue the advertisement for public deliberation until seven days after the statutory deadline.

In delaying publication of the newspaper announcement on the CFSP, the assembly flouted the legal provisions for its consideration. When the researcher met with senior staff in the assembly, during introductory site visits, they were informally asked if they were worried someone would go to court to contest the legality of the process. They simply laughed it off and made comments suggesting that they were used to court cases and were ready for any legal action. There were no questions raised by the

county executive about the delay during this period, despite being bound by the statutory deadline as well. The executive and the assembly appear to have established tacit alliances that allow them to avoid statutory compliance.

The excessive discretion in how rules are implemented has allowed staff to become gatekeepers of the deliberative process. There is no sense of urgency among staff to adhere to legislative rules and procedures, which they implement, and may explain why minimal compliance to public deliberation appears to be the default approach. Despite the additional time accorded to the assembly by the delay in advertising public deliberation on the CFSP, the newspaper announcement was still made only five days before it was scheduled to take place, with written memorandums required two days from the date of announcement. When assembly staff were asked, during the introductory site visit, why the announcement had been made so late, they shrugged it off, saying they had been busy processing other budget documents and blamed it on the short timelines provided in the budget calendar. The staff, during the group interview, reiterated concerns about the inability to comply with short statutory timelines during interviews where they indicated that the timelines needed to be revised:

The issue that we have with the county assembly, with regard to public participation, is the timelines. The documents come to us so late, and therefore the period we give the public to look at the documents and give us comments is normally very short. ...Let us give the public three weeks to consider and give us [their] views. ('FCSN-01', 2018)

The response above, however, stood in contrast to what senior assembly staff had casually indicated when pressed on the same issue during the first informal introductory site visit. On that occasion, when the researcher had pressed the staff on why they had not provided sufficient time for the public to prepare submissions, they

had laughed it off, saying that the public should have already been prepared as they had been given adequate preparation time by virtue of the delay in calling the public hearing contrary to legislative provisions. The nonchalant attitude by legislative staff towards the constitutional rights of the public reflects the continued prevalence of beliefs and a strong bureaucratic-executive tradition where the bureaucrats **steeped in this governance tradition** are more concerned with preserving their power and the status quo. The immense discretionary power that legislative staff have, and accompanying beliefs of power and superiority, creates an attitude where they believe they can ignore statutory requirements without significant repercussions.

The most extreme form of the foregoing is demonstrated even more acutely in Mombasa, where the county assembly completely ignored its statutory obligations and failed to hold public deliberations on the CFSP. The CFSP was not available on the county assembly website and no explanations were issued by the county assembly or county executive on why they had failed to conduct public deliberation as required by law. It was only several months later, after the FBAC report on the CFSP had been tabled in the assembly and passed, that the brief six-page report was made available on the county assembly website. The report did not acknowledge the failure by the Finance, Budget and Appropriations Committee to hold public deliberation on the CFSP as required in its standing orders (Mombasa County Assembly, 2018a). The failure to conduct public deliberation in Mombasa is perhaps epitomised by the attitude of the committee chair towards public deliberation, where he complained about how costly deliberation was but completely failed to recognise his failure to adhere to statutory requirements. The committee chair stated that public deliberation 'is costly,

but what to do? But it is very expensive. It is very expensive public [deliberation]’ (‘FCC-01’, 2018).

Public administrators, who have been trained in a tradition that commends a rigid, paternalistic approach to governing, as highlighted in Chapter 6, do not easily engage in innovative responses that would enable greater participation of people in deliberation. The beliefs of self-importance and superiority to the public, which come across in the attitudes and responses of legislative staff, showcase why the response to public deliberation dilemmas that demand innovation and accountability are characterised by resistance to change and a tendency to gatekeeping.

Discretionary interpretation and implementation of legislative rules and statutory requirements for public deliberation, in the county assemblies, has provided symbolic means for legislative staff and legislators to outwardly signal their performative commitment to public deliberation. Perhaps more important is how this performative commitment to public deliberation exposes a continuation of a tradition of public servants who do not prioritise citizens or value their contribution in decision-making. The colonial administration, as we have seen in Chapter 6 earlier, established the public service to control the Africans. The continued beliefs of control and power, coupled with continued tacit alliances to reduce or evade compliance to public deliberation among bureaucrats and the political elite, shows that there is a definite resistance to the new beliefs posed by public deliberation. Instead, bureaucrats **emersed in this governance tradition** appear to prefer to hold onto their ‘minimalistic/compliance oriented/performative’ beliefs, as discussed in Chapter 6. The

next section will examine how the public are provided with access to information to be considered during public deliberation.

8.3 Sharing of information: providing information access to the public

Once the notification inviting the public to take part in public deliberation has gone out, the county assembly is mandated to make available to the public the documents to be considered during deliberation. Article 35(1) of the Constitution of Kenya, which is operationalised through the Access to Information Act, 2016, guarantees citizens the right of access to information held by the state. The constitutional provision further states that the state is mandated to publish and publicise important information. The Access to Information Act, 2016 provides, as part of citizens right to information, that any information held by the state will be made available to the public expeditiously and at a reasonable cost. Section (1)(c) of the Act, as shown below, specifically states that information required for policy decision-making or on matters affecting the public must be published prior to making any policy decisions or formulating any law:

Publish all relevant facts while formulating important policies or announcing the decisions which affect the public, and before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles (Government of Kenya, 2016a)

Article 232(1)(f) of the Constitution states that one of the principles and values of the public service is transparency and provision to the public of timely, accurate information that would include information needed for effective engagement in public deliberation. Section 87(a) of the County Governments Act, 2012 provides that one of the principles of citizen participation in counties is ensuring 'timely access to information, data, documents, and other information relevant or related to policy

formulation and implementation' (Government of Kenya, 2012). The Act further provides in Section 96(2) that every county government must designate an office for the purpose of ensuring the public has access to information. There are other Acts of Parliament such as the Public Finance Management, 2012, the Urban Areas and Cities Act, 2012 and the Intergovernmental Relations Act, 2012, which each have various provisions guaranteeing the public's right to timely access of information held by the state and relevant for policy formulation.

The numerous pieces of legislation identified above, which were all passed subsequent to the 2010 Constitution and the establishment of the devolved system of government, demonstrate effectively the value Kenyans place on ensuring information access. Years of discretionary government suppression of state information at all levels, prior to the enactment of the Constitution, meant that ensuring access to information to facilitate meaningful public deliberation was emphasised and prioritised in establishing Kenya's devolved governments. Chapter 2, which discussed the third wave of democracy in Africa, which was anchored among other things on the need for greater public deliberation, demonstrated that greater transparency and accountability was part of important democratic reforms on the continent. Access to information was an important part of the democratic reforms, seeking to ensure meaningful public deliberation. Information suppression was a tool used by the prefectoral colonial administration to dominate Africans and keep them from rebellion. The elite education of the administrators, which gave them a sense of self-righteousness and importance, as discussed in Chapter 5, meant that Africans were expected to obey for their own good. The insinuation was that they could not understand or engage with complex information so as to contribute to governance decisions. Kenya's post-colonial public

administrators, in tacit alliances with political elites in the Kenyatta and Moi governments, not only ratified these beliefs but increasingly used violence and intimidation to suppress efforts of transparency and accountability. The numerous statutory provisions securing the right of the public to access information were therefore a response by citizens to ensure that no bureaucrat or politician could justify withholding state held information from the public.

The reality, however, is that the implementation of the statutory requirements on access to information has been problematic. A leading NGO working on the implementation of Kenya's Bill of Rights noted that access to information, despite 'excellent framework and laws...is still not working' (Gathu and Kahindi, 2015). It went on to add that the problem is at the implementation level, where application of the necessary practices and international standards on access to information have not been implemented. In the case study, following the advertisement for public deliberation on the CFSP by the NCCA, a copy of the CFSP was uploaded on the county assembly website. The CFSP was a ninety-four-page document written in technical and legal jargon. The document was issued only in English and three working days before deliberation was scheduled, despite the assembly having received it much earlier, as previously discussed. The delay in issuing the document meant that statutory provisions requiring that the document be made available in a timely manner had already been flouted by legislative staff. Additionally, uploading the CFSP onto the county website meant that a majority of the public could not access the information and some who could access it could not read it. Legislative staff are well aware that, when they upload documents on to their website, the majority of the public are unable to access them in order to adequately go through them. Committee staff in Nairobi, as

shown below, acknowledged that majority of the public often do not have access to the internet and cannot download the required documents:

The local [citizen], the person who comes from the villages and the person who comes from the estates...they get these documents late because now we tell them document is on the website. Where, I mean, [they do not have] WIFI. ('FCSN-02', 2018)

Kenya's 2019 census data revealed that only 17.9 per cent of households reported having internet access. Urban areas such as Nairobi and Mombasa reported higher levels of internet access, at 35.4 per cent, than rural areas (Kenya National Bureau of Statistics, 2019b, p. 462). These percentages are very low and show that a significant percentage of the population would not be able to access to the CFSP, which had been uploaded online. The use of the internet is also concentrated disproportionately in Kenya's youth population, aged between fifteen and thirty-four (Kenya National Bureau of Statistics, 2019b, p. 449). Afrobarometer data on Kenya as well as data collected during the FGDs indicates that a majority of young people do not attend deliberative meetings. Elderly people are more likely to attend public deliberation and with limited access to the internet, majority of participants will not have access to information published online. The failure to make the CFSP physically available to the public through other forums means that a significant proportion of the population is intentionally denied access to the information they need to engage effectively during public deliberation. There appeared to be no consideration given to how visually impaired people could access the document.

The delay by legislative staff in providing timely access to information can be argued to be a flagrant disregard of the law. However, without precise rules of procedure that give guidance to staff about matters such as timelines for allowing public deliberation

or how documents should be made available to the public, the discretion remains with staff. Chapter 4 highlighted that often legislators are guided by legislative staff in navigating rules and procedure. Statutory requirements for public deliberation by legislative bodies that do not fit into traditional legislative rules of procedure, as highlighted in Chapter 4, have therefore become subject to greater staff discretion about their implementation. The failure by county assemblies to undertake comprehensive contextualised institutional reform of rules and procedure that deliver effective public deliberation confirm disaffection arguments put forward by Baiocchi and Ganuza (2016) about the effects of transference of deliberation without requisite reforms.

The failure of clear, incontestable rules around matters such as how far in advance deliberation should be advertised by committees and in what forms information should be made to the public allows legislative staff to be cavalier about the process. Once again, during the first informal introductory site visit to the NCCA, when senior staff in the assembly were asked why the CFSP document had been made available so late, they shrugged it off, saying they had been busy processing other budget documents, and blamed it on the short timelines provided in the budget calendar. The legislative staff are demonstrating that, absent definitive guiding rules of procedure, which the public are not involved in drafting, coupled with the discretion awarded to them by disengaged legislators (Norton, 2001), public deliberation will only be as effective as they wish it to be and they are effectively turning themselves into gatekeepers of the process. The observation about short timelines around the budget process may be accurate, but the correct argument in this instance is that the legislature needs to

urgently hire (if necessary) and deploy more staff to manage the increased committee workloads arising from statutory obligations for public deliberation.

The nonchalant attitude by legislative staff towards the constitutional rights of the public reflects the continued prevalence of beliefs and a tradition where the bureaucrats are more concerned with preserving their discretionary power and disparagement of the public. The immense discretionary power that legislative staff have, and the accompanying beliefs of power and superiority, has propagated an attitude where staff and legislators believe they can ignore statutory requirements without significant repercussions. Instead, staff selectively use legislative rules and procedures as an important aid in the performance of public deliberation. The adherence to the rules and procedures, and not their spirit, provides a symbolic means for legislators to outwardly represent their commitment to public deliberation without any true institutional reform for effective public deliberation. Bureaucrats **involved in the study**, who have been trained in a tradition that commends a rigid, paternalistic approach to governing, as highlighted in Chapter 6, do not easily engage in innovative responses that would enable meaningful public deliberation. The beliefs of discretionary power, self-importance and superiority to the public, which come across in the practices of legislative staff, showcase a resistance to change in response to the dilemma of public deliberation. The failure by legislatures to ensure non-performative public deliberation through institutional reform has instead stifled accountability and encouraged gatekeeping by staff, which ultimately cultivates an apathetic public.

The performative nature of public deliberation in sharing access to information was also observed in Mombasa. The CFSP in Mombasa, unlike Nairobi, was never

uploaded onto the county assembly website. The failure to upload the document took place even as the committee chairman asserted during fieldwork interviews that all legislative documents are made available to the public online and in printed form well in advance of any public deliberation. The chairman, when asked how the public access committee documents for public deliberation, responded as follows: ‘we [up]load it on our website. Then when we go [for public deliberation] we give them copies’ (‘FCC-01’, 2018). The chairman, when asked how the public are made aware of upcoming public deliberation, indicated that ‘they get the [advertisements] through newspapers...public meetings...and radio’. The assertions of the chairman were patently false in this instance as the CFSP was not uploaded on the assembly website during the fieldwork duration or immediately after. The Mombasa County Assembly, additionally, never held any public deliberations on the CFSP, contrary to statutory requirements and the assembly’s rules of procedure. The committee report on the CFSP was, however, made available on the assembly’s website several months later after all subsequent budget documents had been passed by the assembly. The report vaguely acknowledged the failure by the committee to undertake public deliberation and proposed the need for greater compliance in the future (Mombasa County Assembly, 2018b).

The committee staff, during fieldwork interviews, once again demonstrated in Mombasa how the absence of clear incontestable rules on enacting public deliberation have created a gap between statutory expectations and the performed commitment to public deliberation. The committee staff, when asked why they had failed to carry out public deliberation, simply laughed and directed that the committee chairman was best placed to give a response to the question. The chairman during his interview described

public deliberation as 'very expensive' to undertake. He additionally noted that the committee budget for public deliberation was primarily spent on benchmarking visits, while public deliberation was undertaken jointly with the county executive, which, as he noted, is 'good because when we go with the executive, we don't have to pay anything' ('FCC-01', 2018). The committee chair here demonstrates that committees still prefer to engage with traditional scrutiny methods (Beswick and Elstub, 2019), such as carrying out oversight visits to county executive projects through benchmarking visits, where they can often score political points and feel secure in their representative role, as discussed in Chapter 4.

Public deliberation and its performative implementation raise significant concerns about unconsciously embedding changes in the assembly that entrench executive power over the legislature. The case above, for example, demonstrates the ability of the executive to use its larger spending power to manipulate the independence of the legislature and its role in holding it accountable. The failure by the legislature to make information available to the public in a timely and easily comprehensible manner makes it harder for the public to contribute to transparent and accountable law-making. The continued performative staging of public deliberation, demonstrated through discretionary practices of staff and exacerbated in some instances with tacit alliances with the executive or between legislators and staff, confirms that institutional reform aligned to contextual realities is required if the spirit of public deliberation is to be realised.

8.4 Contacting organised groups to engage in public deliberation

Legislative staff as part of their duties are expected to contact organised groups who may be interested in particular issues canvassed during public deliberation. Often, and drawing on the experience of the researcher as a committee clerk, the discretion to identify and contact organised groups to invite them to take part in public deliberation is left to the committee clerk. Legislative rules do not provide guidance on how organised groups should be contacted and how their attendance should be recorded. The staff interviewed did not maintain a register of organised groups who frequently engage with the committee, which is concerning for the purposes of transparency and accountability. The staff of the NCCA indicated during interviews that they had worked with an international development partner to develop a Nairobi stakeholder assessment report. The report, the staff indicated, gave them a list of all organised groups categorised by their policy area of interest. The report was, however, not available to the public even though the staff indicated that they used it to make those groups aware of ongoing committee meetings of interest and their location. The staff specifically stated that ‘those [organised groups] were informed that if you are interested in [the] water [sector for example] the water committee will be [meeting] in Ruaraka [to collect views]’ (‘FCSN-01’, 2018).

The staff also indicated that they wrote to stakeholders, based on their own discretion regarding who they thought was relevant, to invite them to public deliberation meetings. The decision on which groups were invited was described as subjectively based on who the staff thought were relevant and in some instances those who were thought to make the most noise if ignored, as stated by this staff member:

We wrote to stakeholders, we wrote to a number of them, but we think it was subjective, the ones we think were relevant, like TISA [The Institute of Social

Accountability], because they like making noise, and they are very happy when you invite them. ('FCSN-01', 2018)

The statement above demonstrates two things of concern. The first is the discretionary power staff have in providing certain organised groups greater access to public deliberation because of their organising capability. Second, it raises concerns about whose agenda is ultimately strongly advocated during public deliberation. Ordinary citizens who do not have the lobbying power to 'make noise' or ensure the assembly makes intentional efforts to inform them of scheduled public deliberation, often leads to organised groups becoming gatekeepers of these deliberation processes. Organised groups are coordinated, have paid staff who spend their time examining the issues to be canvassed during public deliberation and finally have the social networks to ensure their issues are considered and taken up, as will be discussed in Chapter 9. One civil society actor interviewed indicated how their social networks and interactions with staff often gave them privileged access to the information they need, information an ordinary member of the public would find difficult to access:

'Parliament staff are very interesting. Those who love us, love us to bits, and even give me ideas of where to go, where the opportunities are...' (CSO Actor - 02)

Mombasa County Assembly staff, however, appeared to take a different approach to informing the public about deliberation. The staff indicated that no specific effort was made to contact organised groups and they received the information about public deliberation in the same way as other interested participants. The reason behind this may be explained by the fact that the staff indicated that public deliberation, in addition to being advertised through the print and social media, was also advertised on local radio stations, as indicated below:

We advertise with at least two mainstream print media and then we use the FM stations ('FCSM-02', 2018)

Another staff person emphasised the diversity of people present during public deliberation which they appeared to attribute to the diversity of communication channels used:

We also advertise through social media on the county Facebook, Twitter etc. Everyone gets the information and they come from different wards and constituencies. We get diversity including organized groups like Haki Africa, MUHURI etc. ('FCSM-03', 2018)

However, even in this case, the attending public were viewed sceptically by the staff, who negatively derided some of the attendees, claiming 'there are those who always love public participation, of course you will see them there' ('FCSM-03', 2018). Other attendees were derided for always coming with a 'negative attitude'. One civil society respondent acknowledged the negative sentiments often associated with organised groups who repeatedly give opinions on almost all bills considered by committees:

'When we wonder [why] we end up being called the evil society? It is because it is the same, same people. You can't be an authority on everything' ('CSO Actor - 01', 2018).

The constant repeated presence of the same civil society actors has led some legislators to view them as having vested political interests and therefore intent on derailing the legislative agenda of elected leaders. One committee chair interviewed indicated how he often felt that civil society members attending public deliberation were often biased in their submissions:

and these people...what do you call[them]...civil society, they are not playing their role the way they're supposed to do it. You know, they are like politicians. They behave like politicians...the leaders go out and collect people, bring people to participate, you see they [will] be there and they [are] the ones who are against you. ('FCC-01', 2018)

The absence of clear rules of procedure or administrative guidelines on how organised groups are contacted means that staff often only do the minimum required to avoid public censure by organised groups. These organised groups, as discussed in Chapter 2, are often associated with larger international development agencies (IDAs) that fund their activities or have trained the professionals who work in them. Chapter 2 highlights how these groups, because of the privileged access granted to them, easily become elite associations of small groups of people seen to possess expert knowledge (Carothers, 1999). These organisations, because of their expert power, easily form tacit alliances with staff and become very powerful in persuading government officials to advance their organisation's interests, thereby effectively serving as gatekeepers to deliberative processes. Organised groups are, however, also aware of this conundrum. One of the civil society actors working with Parliament to increase public attendance of deliberation indicated that over-representation of some organised groups was driven by the failure of the public to respond to committees' calls to engage in public deliberation. The public apathy in turn forced targeted outreach to concerned civil society groups:

There are bills that don't get any response whatsoever. You call for a memorandum and [get] no response. I end up having to do that targeted [thing] where you reach out to an organization, [and ask] 'Please tell us more on what you think [about the bill]'. ('CSO Actor - 01', 2018)

Legislative administrative rules as well as the rules of procedure need to provide well-defined guidance to staff about how organised groups are contacted and a register kept of their attendance. The issues canvassed should be recorded and open to public scrutiny to ensure they do not crowd out the general public. A more transparent process of engaging organised groups would increase transparency around whose views inform the outcome of public deliberation and the extent of their influence.

Additionally, it would become easier to identify groups that are marginalised in public deliberation and empower staff to actively seek out their attendance so as to diversify deliberative discussions.

8.5 Briefing of committee members

Legislative staff in preparation for public deliberation are expected to brief committee members about the issues slated for deliberation. Often members are not particularly interested in these briefings and would prefer not to engage in public deliberation at all, as pointed out by staff of the NCCA:

The only reason why members take part in these public hearings is because...we schedule them, and we tell them to come. If you told members that there was no public participation, they'd be very happy. ('FCSN-01', 2018)

The bulk of preparatory work for public deliberation is often undertaken by the committee staff, who are tasked with coordinating the logistics for setting up the public deliberation. During interviews with staff, they indicated that documents for deliberation are usually shared, via email and print copies, with legislators a few days before the actual day of deliberation. The expectation for sharing this document in advance is for the MCAs to prepare their ward residents to engage effectively during deliberation. The assumption is often that legislators will be in a position to critically engage with submissions made by the public. However, it emerged during interviews with staff in Mombasa that during public deliberation they are often called upon by the committee chair to highlight key proposals in the document being deliberated upon. The staff are often expected to translate and explain in Kiswahili technical terms that the public cannot understand: 'we will be very much involved because we have to highlight what is in the document. We read whatever is in there or explain in Kiswahili' ('FCSM-03', 2018).

Legislative staff are in practice not expected to engage directly in deliberation. Staff are expected to provide advice to the committee chair and members but, as shown above, often find themselves called upon to take on a more active role owing to the disengagement of members. Legislative staff in the NCCA, when asked if members read memorandums submitted to the committee, pointed out that members are often disengaged: 'you know, members don't like papers. The bigger the papers, the fact is they won't read it' ('FCSN-02', 2018). The perception that members do not read is one that the researcher had experience with during her time working in the legislature. Often, briefing sessions for members are poorly attended and take place just prior to the commencement of public deliberation. A majority of the legislators have often not read the document to be deliberated upon and may only be broadly aware of the proposals. Committee staff in some cases will have a research brief prepared on the key issues in the document, but in most instances, members see the brief for the first time on the actual day of deliberation.

There were very few members prior to the commencement of public deliberation on the CFSP in Nairobi. The summary briefing that was issued by the committee clerk and committee chairman prior to commencement of deliberation was missed by a majority of members, who walked in at various times while the deliberation was ongoing. All the committee members, despite having received electronic copies of the CFSP, as the researcher was informed by committee staff, failed to show up with their own copy of the document. Observing the members, it was obvious that many of them were seeing the document for the first time. The same was evidenced in the fact that, with the exception of the chairman, almost none of the members engaged with the

substance of the document in their questions or responses to the public's submissions. The members who responded made generic observations, in contrast to particularly organised groups who had detailed submissions on their issues of concern. The apathetic engagement of legislators often means that the issues they will pursue will be those laid out by staff in the brief as the important issues for consideration.

Once again this demonstrates the important discretionary power legislative staff have in directing the committee agenda, especially where members fail to engage substantively beforehand with policy documents presented to them. Often this means that legislators want engagement with the public to be as brief as possible. They engage in an intricate performance supported by staff where they attempt to create an illusion for the public that they are well versed with the issues that matter to them, while simultaneously finding ways to be as unintentional as possible in engaging in public deliberation. One staff member working in the NCCA captured the sentiments of members best when describing his chair's sentiments about public deliberation as follows:

His view of public participation is where we had very few people, talking very quickly, and leaving...he did not like this over-engagement with the public. You know, the public should not get very used to you. ('FCSN-01', 2018)

8.6 Conclusion

Chapter 8 establishes that, in the preparation of staging public deliberation and its associated scripting, public deliberation poses a dilemma to actors' beliefs about facilitating public access to information, perceived duty to the public, perceived public competence and the role of legislative staff. The narratives given by the participants that relate their practices to their beliefs can in each instance be traced back to a strong

bureaucratic-executive tradition. The response to the dilemma appears to be more skewed towards resistance. There appears to be performed changes in most instances to meet legal requirements without any meaningful institutional or administrative transformation. Public deliberation is perceived as a series of additional administrative tasks to be ticked off to avoid legal repercussions rather than facilitating the public affected by a decision to engage in substantive, balanced and civil discussion with legislators. A report by the office of Kenya's attorney general referred to it as 'minimalism' and a 'compliance-only' attitude. There were occasions where actors seemed inclined to adapt their beliefs and practices to facilitate the requirements of public deliberation; however, even where this was done it was with a focus on how it benefits the actors. Additionally, rigid legislative rules further enabled actors in resisting changes to their practices.

The resistance to change through performative practices of public deliberation shows that the beliefs of actors entrenched in a strong bureaucratic-executive tradition were resilient to the dilemmas of public deliberation. The resistance and hesitant adaptation of beliefs and practices of actors reflect the importance of ensuring administrative and cultural change in implementing institutions. The transference of deliberative practice without due consideration of traditions that inform the beliefs and practices of actors means that it is impossible to know how best to transform institutional administrative and cultural practices for the success of public deliberation. The transference of public deliberation practices without due consideration for the contexts in which they emerge and failure to ensure the institutional administrative and cultural changes that sustain their success in recipient institutions has been argued by Baiocchi and Ganuzza (2016). Kenya's county assemblies present an excellent example of this through vague

and unenforceable institutional changes. Kenya's county assemblies failed to make the requisite institutional administrative reforms or changes to institutional beliefs and cultural practices. The two failings when brought together have allowed actors to silently continue to resist new beliefs brought on by statutory requirements for public deliberation. Chapter 9 will now proceed to examine the staging of public deliberation in committee.

9 STAGING PUBLIC DELIBERATION: NAVIGATING THE DILEMMA OF PUBLIC DELIBERATION IN COMMITTEE

9.1 Introduction

Chapter 9 examines how public deliberation is performed by actors before the audience, who are likewise a part of the performance. Drawing on primary and secondary data, this chapter examines how public deliberation is staged through scripting by staff and legislators, use of space, use of artefacts, use of rules and procedures, building architecture and ceremony. The staging of public deliberation by ‘actors’ is done with the intention of ensuring that the constitutional requirements of public deliberation on all bills is met in a performative sense. Public deliberation, however, poses a dilemma to the beliefs and associated traditions of both actors and ‘audience’ engaged in the enactment of public deliberation in the committee.

Chapter 9, similar to the preceding chapter, examines narratives that show how actors (legislators and legislative staff) and the audience (public) adapt their practices in response to the dilemmas posed to their beliefs by the enactment of public deliberation. The practices of the actors and the audience in response to the dilemmas demonstrate whether they discard old beliefs and replace them with newer ones, accommodate new beliefs in existing beliefs or keep old beliefs, discarding newer ones as unconvincing (Geddes and Rhodes, 2017). The practices of actors in response to the dilemma ultimately lead to a change in governance traditions or enforce their continuity. The chapter focuses on the actual staging of public deliberation once the county fiscal strategy paper (CFSP) is committed to the committee, which constitutes the second part of staging public deliberation. The committee is at this stage expected to facilitate public deliberation and ‘take into account the views and recommendations of the public

when the committee makes its report' (Nairobi City County Assembly, 2013, p. 89). Appendix VIII provides a visual representation of the procedure within the committee when undertaking public deliberation on the CFSP.

The chapter examines the key pillars of the actual staging of public deliberation. The focus is on how access is granted to the public attending public deliberation; the staging of the venue for public deliberation; how access to the information to be deliberated upon is granted on the day; the deliberative capacity of the various publics in attendance; the scripting of deliberative exchanges between the committee and the public; and lastly, the role of the committee staff in facilitating public deliberation. The chapter, through examining narratives that show how actors and audiences relate their practices to their beliefs, establishes connections that can be traced to the traditions in Chapter 6 and 7 and considers whether the dilemmas brought on by public deliberation change or entrench them.

9.2 Providing public access to the venue for public deliberation

Access to legislative buildings is an issue of significant importance as it is the first indicator of the legislature's commitment to greater public access. Waylen (2014), as discussed in Chapter 4, highlights the symbolic importance the material form of legislative buildings conveys to the public. The structure of legislative buildings can signify representations of inclusion, which are an important component of public deliberation. Access to symbolic spaces in the legislature such as lobbies and corridors, according to Waylen, conveys the same important messages of inclusion, legitimacy, choice and representation. Waylen's arguments are vindicated by an observation made by one of the civil society actors interviewed during fieldwork, who

indicated that challenges to accessing legislative buildings increased public decisions not to engage in deliberation:

That's actually one of the most common things that people always write to us about, getting access to the House. Someone will tell you, 'Oh, you know, committees are always open.' But when they get there, and [you consider] the relationship [of the public] with the...police...I get there, I see a policeman, [and] I start thinking, 'I won't get in. I won't even bother...' ('CSO Actor - 01', 2018)

Police officers deployed to guard county assemblies are often viewed with suspicion. The fear stems from a chequered history between the public and Kenya's security apparatus. Since the colonial period, police officers have been viewed as instruments of the state to suppress the public and 'have a well-documented history of human rights violations and impunity' (Halakhe, 2020, p. 422). Moreover, their history and actions mean that their presence is often culturally associated with prohibited or restricted access. Halakhe (2020, p. 423) confirms this by highlighting the existence of an 'institutional culture whereby the police set themselves up in opposition to the citizenry'. Additionally, he adds that a deep culture of impunity within the police has created a trust deficit between them and the public. The Nairobi and Mombasa County assemblies had the county inspectorate offices deployed on their premises for added security, but access to the assembly buildings was granted by the serjeant-at-arms, who were deployed at the entrance to the assembly building. The researcher had no problems accessing either county assembly; however, that was likely due to the national parliament staff identification presented for access.

Access to the NCCA building and committee room designated for public deliberation did not, however, appear to be a challenge for the members of the public. The public were able to walk in unhindered and register their attendance to take part in deliberation. Surprisingly, it was the lack of ceremony surrounding the process of

registration that left respondents feeling dissatisfied and undervalued. Rai (2014), as argued in Chapter 4, highlights that the public often see legislatures as grand spaces of performance. The symbolic and literal ways that this performance takes place signal to the public the power wielded by these institutions and by association the legitimacy their submissions will have by engaging in the performance. The argument is confirmed by research participants who had attended public deliberation in the past and left feeling that they did not receive the appropriate recognition that should accompany attending such an important event in such an important institution:

When we were at the county [assembly], we were elected [to attend] but you get there, and you just write your name. Anyone [can] just go and write [their name]. [Those people] who [were] shouting [their submissions] they were not even elected from their sub-counties some of them. They just got an opportunity to walk in there and ask questions. Some of us who [were nominated] we did not [even] get enough time [to give our submissions]. ...The county [assembly] is not organized [and] they need to improve and get serious... ('FGD-N2', 2018)

Often the cost involved with travelling to attend public deliberation, which frequently means a day of lost wages as well, automatically forces many people to self-exclude, as argued by a participant in Mombasa who had never attended a public deliberation:

With public [deliberation] if there is no compensation paid out, people will not attend. ...Someone would rather stay in their home. ...They prefer to stay at home instead of going to listen to a politician who does not give them any compensation for attending [laughter and many heads nod in concurrence]. ('FGD-M1', 2018)

The public view attending public deliberation as an important event and the issue of compensation for those attending was raised repeatedly. One participant who had attended public deliberation in the past observed that allowances should be paid to unemployed people who attend public deliberation:

some of us who attend public [deliberation] are unemployed but are still the breadwinner in our home. A small allowance should be paid to motivate us and compensate our travel costs. ('FGD-N2', 2018)

The need for compensation while carrying out civic duty may stem back to the challenge of 'bifurcation of publics' (Osaghae, 2006) discussed in Chapter 2, where obligations of citizens to state duties appear to be in direct competition with primordial interests of competing for public resources. Whereas Chapter 2 proposes that public deliberation could perhaps be used to increase political efficacy and with it restore an appreciation for the duties of the civic sphere, the opposite seems to be the case. Some participants attending public deliberation see it as an opportunity to trap their elected leaders and demand a listening ear or material assistance, as stated by one FGD participant: 'when things like public [deliberation] happen, we tell each other "there is money there"' ('FGD-M1', 2018). Public deliberation is viewed by participants as another way of acquiring public resources to advance primordial interests. However, it must also be noted that Socio-economic factors such as high rates of unemployment and poverty also play a big part in this mindset. **Scholars have pointed out that there is emerging evidence from deliberative practices that show that providing compensation or incentives for taking part in deliberation often helps traditionally marginalised groups like women, young people, poor people among others, get involved. The compensation often helps these groups cover the financial cost of taking part such as lost income and transportation and ultimately can help correct the over representation of advantaged groups (Lightbody, 2017).**

Several of the FGD respondents in Nairobi, who as evidenced from their language and demeanour were of a higher socio-economic status than some of the other participants, had never attended a public deliberation. Their reasons, however, were not about monetary concerns but rather about expected recognition, as pointed out by one of the participants:

The biggest thing even as public [deliberation] forums are planned, we can't be treated [just like] numbers. It [is] important for them to create a system where people feel important. So that when [people] come in, [they are] addressed by name and their [identification number noted]. ('FGD-N1', 2018)

Several other FGD participants expressed similar sentiments on the importance of feeling like they matter otherwise they would not attend deliberation. The 'open to all' framework of these public deliberation meetings does not appeal to people who have never attended them and surprisingly served to dissuade them from attending. One respondent argued that there needed to be a change in the advertising of public deliberation, with the adoption of 'smaller public [deliberation] forums' as this would increase 'transparency', as well as help them 'believe that my time or my input is worth it as a citizen...that the MCA actually cares about I have to say' ('FGD-N1', 2018).

Public beliefs about the importance of the legislature, coupled with decades of a strong bureaucratic-executive that the public have always deemed to be in tacit alliance with the legislature, means that public deliberation is as much about restoring public power over bureaucrats as it is about ensuring transparency and accountability in decision-making. Public deliberation is therefore evaluated by citizens **in this study** according to their perception of how much power and importance is assigned to them in its enactment, which commences right from the moment they register their attendance. The all-inclusive nature of public deliberation appears to reduce the value of engaging for members of the public. The introduction of mandatory public deliberation in Kenya was aimed at increasing public political efficacy by addressing beliefs that governance processes were the preserve of the elite or those with access to political leaders. It appears, however, that the elitism that is associated with engaging political leadership is seen by the public as an indicator of having influence. The open and performative

nature of public deliberation exhibited by legislative staff and legislators who are not especially interested in those in attendance but rather in just ticking the box of deliberation does not go unnoticed by the public.

Granting access to public deliberation is only the first step in increasing political efficacy; the behaviour of actors in acknowledging those in attendance is equally important. The public want assurances that they are important and have been acknowledged, perhaps in the belief that doing so means their submissions will be taken more seriously. The sentiments expressed by respondents about needing to 'feel important' signal concerns of inequality from the onset of public deliberation. Ryfe (2005), as argued in Chapter 3, highlights the importance of greater reflection on the design and institutionalisation of deliberation if it is to succeed. Mandatory inclusive public deliberation may be an attempt to challenge beliefs of elitism and gatekeeping in decision-making processes, but its design and enactment appear to maintain the status quo. The result is one section of the public who see it as a signal to abandon their civic duties in pursuit of any primordial interests they can secure from the process, and another section of the public who detach themselves from deliberation altogether owing to feeling of inconsequentiality, thereby failing to advance the numerous benefits associated with deliberation.

9.3 Setting up the venue for public deliberation

The physical institution of the legislature, as well as the set-up of legislative events, such as public deliberation, are an important arena of academic study, as we have established above. The staging of committee public deliberation exerts as much power on the deliberation process as the actors and audience. The staging of deliberation in

both conscious and unconscious practices exhibited by actors and audiences can be used to understand the beliefs they associate with enacting public deliberation. The physical institution and the material elements used in deliberation provide critical symbolic power that can be used by actors to communicate to the audience. Similarly, the directing and coordination of deliberation creates a performance through which actors engage in communicating various verbal and physical cues to the audience. Through this performance narratives emerge that help showcase beliefs and practices of actors and audiences. Hajer (2005), as discussed in Chapter 5, argues that settings influence people's behaviour. He argues that understanding the contextual setting of deliberation can help in understanding the quality of deliberation. This section therefore focuses on examining the staging of public deliberation in Kenya's county assembly committees. The section examines how the practices of actors in setting up public deliberation reflect not only their beliefs about public deliberation but also how those beliefs are communicated to audiences and the effect of this on public perceptions of deliberation.

The set-up of public meetings in Kenya usually has one significant distinction: 'two-tier' theatre-style sitting arrangement. The theatre-style arrangement creates a distinct differentiation between legislators, who by virtue of being elevated on a raised dais are signalled as speakers and have an active role, and the public, who, being the audience and sitting on the lower levels, are signalled as having a passive role and must defer to the leaders with more power if they are to speak. There is always a designated 'very important person' (VIP) area for bureaucrats and a 'public' area for everyone else in attendance. During fieldwork observation of the NCCA public deliberation on the county fiscal strategy paper (CFSP), one of the most obvious and distinct observations

was the set-up of the room intended for the deliberation. The two-tier, theatre-style sitting arrangement was very distinctive, as shown in Figure 6 below:



Figure 2 Public deliberation on the Nairobi CFSP for the Financial Year (FY) 2018/19 at Charter Hall, County Assembly Buildings. MCAs and committee clerk sitting on raised dais⁴

The sitting arrangement plays an important performative element as it constructs and communicates to the audience an 'us versus them' message. Waylen (2014), as discussed in Chapter 4, highlights the importance of studying the symbolic spaces in legislatures such as committee rooms. She argues for examining the composition of the space and particularly how it is organised and divided up. The organisation of committee spaces is important when considered alongside the intended outcomes of public deliberation. The Scottish Parliament, as illustrated in Chapter 4, intentionally uses round tables for public deliberation events so as to 'lessen the possibility of an

⁴ Picture downloaded from the official NCCA Facebook page

adversarial atmosphere' and consequently facilitating 'more open and honest engagement' (Davidson and Stark, 2011, p. 171). The theatre style sitting arrangement of the NCCA communicates from the outset a belief of difference in status and elevates both legislators and bureaucrats to a level where the public are making supplications to them rather than engaging in equal deliberation. The staging of the sitting arrangement is seen by actors as adhering to protocol, but is a practice that is more about showing 'how things are done' while at the same time communicating the difference in importance between the audience (public) and the actors (legislative staff and legislators). The practice, and the beliefs of power it represents, reflects a strong bureaucratic tradition in which Africans in the colonial and post-colonial state have continually had to appeal to the kind consideration of elites in government to have their concerns addressed in decision-making.

Chapters 3 and 4 highlighted, among the key requirements for successful public deliberation is a space in which participants feel they are equal to each other, and socio-economic inequalities are not amplified. Legislatures, as highlighted in Chapter 4, often face the challenge that this disparity is often inbuilt owing to social and sometimes economic disparities between legislators and the public. Legislatures should therefore adapt their rules of procedure to compensate for these inequalities rather than exacerbate them, as is the case in the NCCA. The sitting arrangement highlights in reality the performative nature of deliberation, where both staff and elected representatives, despite the spirit of expectation placed on them by public deliberation, communicate through their practices their own beliefs of power over decision-making and unwillingness to cede any power to citizens through collaborative decision-making.

The committee room for public deliberation was a large hall close to the main entrance of the county assembly buildings. The hall had various pieces of art installed all around the room all in the symbol of a shield drawn from Kenya's official coat of arms. The county coat of arms was at the front of the room, reflecting the power of the county government. All around the room there was paintwork in the colours of the national flag (see Figure 6 and 7). The colours of the national flag and the shield from the national coat of arms were easily recognisable to anyone in the audience. The symbols communicated to the public the power of the national government and the county assembly as exercising the same official state power. The symbols of the national flag and the coat of arms communicate, as Shirin Rai (2016) has stated, an exhibition of power that heralds the legislature as a bastion of democracy.

There were four entrances to the room (see Figure 7). The back entrance, which faced the front of the room, was primarily used by the public to access the committee room. There was a side entrance closer to the front of the room that only the members of the county assembly (MCAs) were permitted to use to access the committee room. The committee room set-up was easily accessible by all including people with special access needs. The front entrance used by the MCAs led directly to the MCAs' open-air lounge, where several other MCAs had gathered for morning tea and were meeting with their visitors who had come to see them at the assembly. The conversations were loud and filtered into the room and every so often a committee staff would walk out to ask the legislators to lower their voices. A representation of the room as described above is captured in Figure 7 below:



Figure 3 Committee room set-up during public deliberation on the CFSP FY 2018/19 at Charter Hall, Nairobi County Assembly Buildings⁵

It is worthwhile to note two distinct observations that stand out in the photographs. The first is the low levels of attendance at these meetings, reflecting the apathy of the public owing to both their performative nature and their lack of monetary compensation for attendance. The other observation was the number of men in attendance compared to women. Public deliberation has roots in a culture that privileges male deliberation as the ideal. Future research could constructively engage with whether gendered barriers in deliberation have been transferred from the Global North to the Global South and the contextual repercussions for public deliberation. Future research could also explore whether the reason is perhaps less about transfer of gendered barriers in deliberation but instead reflects a continuation of the privileging of men in deliberation, as rooted in traditional African consensual democracy (Teffo, 2004).

⁵ Picture downloaded from the official NCCA Facebook page

The noise coming into the room, accompanied by MCAs who constantly walked in and out of the ongoing deliberation to answer their phones, meet their visitors or leave to attend other meetings, communicated to the audience that they were not important and was confirmed by FGD respondents. There was a Hansard reporter attached to the committee secretariat and, prior to the commencement of deliberation, the secretariat had indicated that an audio recording of the public deliberation would be made and would be available for public access. Later, when the researcher contacted the committee clerk to request a copy of the audio recording, it emerged that no recording had been made. The only evidence of the public submissions that had been made on the day was the notes taken by the committee clerk and captured in the committee report. There was no way for any interested member of the public to go back and verify which submissions made by the public had been adopted by the committee and which ones had not. The discretion of bureaucrats is once again demonstrated as they not only capture the submissions but also present them later to the committee for consideration. Without any record of submissions, only what the staff deem important and are able to capture while concurrently managing the deliberation ultimately make it to the final committee report.

The signals sent by the practices of actors are lack of interest, disengagement and apathy. Citizens are thus left to draw their own perceptions about the performative nature of public deliberation. The adversarial set-up of the committee room, where the public are surrounded by symbols of power that emphasise their disparity with their elected representatives, coupled with a disengaged performative attendance, signals to the public that public deliberation serves no purpose. One participant in the FGD in Mombasa, who had not attended a public deliberation meeting, summed it up thus:

You will speak, but they will not take it into consideration. It will appear as if you simply speaking about irrelevant things. We are called to sit together and discuss [issues] only so that it can appear that we have been invited to deliberate when in reality no action will be taken. ('FGD-M1', 2018)

9.4 Access to the information to be deliberated upon

Chapter 8 discussed at length the process of advertising public deliberation to the public and making them aware of the issues to be discussed. Legislative staff and legislators during interviews stated that they made documents to be used during public deliberation available to the public on their websites and social media pages. The CFSPs of both county assemblies were said to be accessible online for anyone to download prior to the scheduled date for deliberation. The reality, however, as stated by one interviewee, is that documents for public deliberation are not:

easily accessible they're not in the public domain, they [are] not on websites, or you have to know somebody who knows somebody who knows somebody who can possibly give you the document. ('CSO Actor - 04', 2018)

Additionally, as demonstrated in Chapter 8, a majority of the public do not have access to the internet and therefore cannot access the document. The public are therefore forced to wait until the actual day of deliberation to access physical copies of the document from the committee. The result is often that members of the public attending deliberation have not read the document and are usually seeing it for the first time on the actual day of public deliberation. The discourse is therefore dominated by organised groups who as earlier discussed have professional staff with the required technical support to access the document and review it in adequate time. One of the participants from the focus group discussion (FGD) in Nairobi, who had taken part in public deliberation before, highlighted this point about access to documents: 'One thing I noted was we that are given the whole bunch, the document [CFSP] that morning' ('FGD-N2', 2018). Not only was it impossible for the public who were seeing the ninety-

four-page document for the first time to go through and understand all the issues therein; it was incredibly difficult for them to deliberate on it. Additionally, on the actual day of deliberation there were still not enough copies made available to the public. Members of the public who walked in once deliberation had started were not able to access copies of the CFSP as few the printed copies quickly run out.

The public are aware that giving out the document on the actual day of deliberation is not acceptable and it once again highlights the disconnect between the spirit of the law and the practices of actors. Legislative staff, beyond the broad statutory guidelines requiring them to make documents available in a timely manner, make no effort to ensure that those documents are accessible and digestible by the public. Some of the attendants at NCCA public deliberation even asked the researcher if she had a copy of the CFSP they could borrow. None of the committee staff present made any attempt to note who did not have a copy so as to print more copies for distribution. Practices like this signal to the public that they are not considered important and their views do not matter to the committee, which in turn increases public apathy about deliberation.

The legislature has failed to innovatively revise its rules of procedure and administrative requirements to live up to the spirit of the law as regards public deliberation. There is room to innovate in repackaging information contained in these bulky documents into an easily distributable form that the public can easily understand and engage with. Additionally, the legislature perhaps needs to identify specific issues or questions that would guide deliberation on the documents thereby producing more focused responses from the public. Some legislative staff recognise that these actions need to be taken. In Nairobi, during interviews with the committee staff, when asked

what they thought could be done to improve public deliberation one of the respondents noted:

Another thing that maybe the County Assembly might change, is to increase the numbers of people who are working in this area, so that [we] able to summarize these documents and make the citizens' copies [ourselves]. ('FCSN-01', 2018)

Committee staff are often overwhelmed with numerous competing responsibilities across departments or committees. The result, as the same committee clerk stated, is that 'the numbers [of staff] cannot allow us to actually dedicate time to summarize a 480-page County Integrated Development Plan (CIDP) for the citizens to understand'. The arguments above once again demonstrate the importance of accompanying the transference of deliberative practices to new contexts with the requisite administrative reforms needed for their success (Baiocchi and Ganuza, 2016).

The use of language in legislative settings is important and another key consideration when discussing access to information. Language is used for debating and drafting policy. Article 7 of the Kenyan constitution recognises Kiswahili as the national language and Kiswahili and English as the official languages. The same article further provides that the state shall protect and promote the development and use of indigenous languages (Government of Kenya, 2010). The Nairobi City County Public Participation Act (2015) provides that the county government will take into account language preferences and usage in the county while making use of the various ways in which public deliberation takes place. The Mombasa County Public Participation Act (2017) provides extensive provisions on the principles and objects of the Act in realising public participation. Among the principles listed in the Act is that the county government in carrying out public participation shall ensure provision of meaningful information in a format and language that is readily understandable and tailored to the

needs of the target groups. Again, it is important to reiterate here that, as established in Chapter 1, although legal texts in Kenya use the terminology of public participation, the objectives and practice of it are akin to public deliberation and therefore it is the terminology adopted for purposes of this thesis.

Legislative documents such as bills, standing orders, Hansard and committee reports in both Nairobi and Mombasa county assemblies were exclusively produced in English for any person who desired to make reference to them. The decision to do so excludes a significant number of people from accessing important documents they need to effectively engage in deliberation. The Mombasa County Assembly surprisingly also produced all its documents and reports in English, despite the fact that the majority of Mombasa residents primarily speak Kiswahili, as evidenced by its Arabic-Swahili history and the fact that the FGDs and interviews conducted in Mombasa primarily took place using Kiswahili. The challenges of mistranslation could be expected to particularly prevalent in Mombasa, where a significant majority of public submissions during deliberation would likely be made in Kiswahili. The two county assemblies, despite direct requests from the public to produce documents in Kiswahili, as highlighted in Chapters 5 and 6, have failed to do so, with each citing the difficulty of translating technical terms from English to Kiswahili. In Mombasa, the committee secretariat indicated during interviews that they are often called upon during public deliberation to read and explain what is contained in the documents in Kiswahili:

The Committee Clerk and Fiscal Analyst will be very involved [in public deliberation]. We have to highlight what is in the document [by reading it or explaining] it in Kiswahili and you know things like [the] budget some of [it is] a bit technical you cannot even translate into Kiswahili some of the terms. ('FCSM-01', 2018)

Surprisingly, despite procedural rules that provide for proceedings to take place in Kiswahili, English and Kenyan sign language, the standing orders are silent on the languages in which legislative documents will be produced. Additionally, legislative documents are not accessible to people who are blind and exclude people who are not literate. Innovation around audio visual representations of key issues to be deliberated upon need to be a key consideration for county assemblies, who are expected to engage more robustly at the local level, where some of these challenges are more visible. Without deliberative administrative and procedural reform to address issues of access, the existing gap between the spirit of the law and the practices of actors will continue to hinder the actualisation of the ideal of deliberation. The county assemblies need to contextualise deliberation requirements for their constituents if they want to not only address apathy but improve the quality of engagement as well. Committee staff appear to be aware of the challenges and what is required to address them. However, broad-brush guidelines on the enactment of public deliberation make it easier to continue with practices that reinforce beliefs of no accountability, extreme bureaucrat discretion and disparagement of the interests of the public.

9.5 Deliberation capacity of the public

One of the issues that repeatedly came up during interviews with staff and during the FGDs was the deliberative capacity of the public. The inability of the public to communicate their concerns and ideas in the requisite policy language more common in legislature often means that staff and legislators alike dismiss their contributions. The legislative staff interviewed often derided members of the public engaging in public deliberation as 'lacking common sense' or being unable to process complex policy issues. In Mombasa, for example, during interviews with staff the dismissive attitude

of staff towards the submissions of the public was illustrated by this response to how submissions were weighted for consideration by the committee:

The issue of sense or common sense that is something which is inborn. ...Let's take an example if we sent the bill to the public [deliberation] forum some of the views that are given there [include a] bloated wage bill or a big workforce [and] that you should reduce it. ...It does not make sense that immediately you...start sacking people because [of the] views [that] have been given by the public...this does not make sense. ('FCSM-03', 2018)

The dismissive attitude that is exhibited in the quote above is surprising considering that deliberation is supposed to foster exactly this kind of debate, which the committee staff cites as lack of common sense. Legislative staff find themselves in an enactment dilemma where they have been thrust unwillingly into the role of facilitator. Chapter 4 highlights how legislative staff are increasingly called upon to engage, empower and support the public (Blijleven, van Hulst and Hendriks, 2019) so they can competently take part in deliberation. However, as the chapter notes, very little research currently exists on how legislative staff, particularly non-partisan staff, are navigating this role.

Yin (2012), who argues that legislative staff are often viewed as being objective and independent in executing their roles may be wrong in relation to legislative staff facilitating public deliberation. The duties of legislative staff have often been well guided by legislative rules of procedure. The statutory introduction of public deliberation is a new phenomenon that legislatures are only now beginning to adapt to. The absence of guiding rules of procedure has left legislative staff with broad discretion on how to interpret and enact their facilitator role. In cases where legislative staff, based on their experience gain the trust of their members and can move into conceiving, negotiating and helping members implement legislative solutions, as discussed in Chapter 4, their views on what is or is not common sense may not be

subject to further scrutiny by legislators. Defining the role of legislative staff as facilitators in this context becomes an issue requiring further research and urgent redress.

Legislative staff who have been pushed into this facilitator role find themselves drawn to organised groups whose submissions are often well researched and captured in written memorandums using the correct policy language. These written memorandums are easily incorporated into committee reports without much refinement, thereby giving these groups privileged access that the public do not have. Evidence of the preference given to organised groups during deliberation is evidenced by the responses of staff during fieldwork interviews. Legislative staff in Nairobi and Mombasa indicated that the most constructive feedback they received during deliberation was usually from organised groups. A committee staff member in Nairobi stated as follows about the submissions from organised groups: 'The kind of good input we get when it comes to public [deliberation] is from organized groups which have got people that make sure they go through these documents [CFSP] and read them' ('FCSN-02', 2018). Once the public realise that their views are not considered or treated with the same importance as those of organised, they begin to disengage from deliberation and, as discussed in Chapter 8, each successive meeting is eventually filled with the same groups of people thereby failing at one of the things public deliberation was supposed to rectify.

The self-interest of the public during deliberation was also brought up several times by staff and the FGD respondents. One of the single most consistent arguments against public deliberation was the alleged self-interest of the public and consequently their inability to make decisions for the common good of others. One FGD respondent in

Mombasa, who had taken part in deliberation before, stated that one of the challenges with the public attending deliberation is their inability to focus and frame broad policy concerns beyond their own concerns, as shown below:

Most of the time when people attend these public deliberations, they do not stand up to talk about issues affecting the public in common. They stand to present their own personal problems; I do not have a job and my child is sick and my area MCA has refused to assist me. Such comments in such a forum do not aid the discussions. ('FGD-M2', 2018)

In Nairobi, an FGD participant who had never taken part in deliberation argued, as shown below, that citizens in developing countries often have a harder time engaging with building consensus around how to address broader social problems owing to the numerous competing needs arising from high levels of poverty and broken public services:

We have not matured to that level. In developed countries you can see that there is community because people actually care about that community. For example, if you go to Umjua III to do public [deliberation], people will fight. ...Someone will hear that there is five million [being] given somewhere and suddenly one person will want to build a primary school, another person will want women to be built for small kiosks, another person will want orphans to be assisted. We have not matured to that level. That is why leaders are making decisions for us. ('FGD-N1', 2018)

His argument was echoed by another participant in the same FGD, as shown below, who said that competing public demands reduced the capacity of the public to effectively engage in public deliberation:

we haven't matured to the level of recognizing the needs of our people. Everyone wants what they want. I want a petrol station near my house and another one wants health, and everyone has what they want. ('FGD-N1', 2018)

While observing public deliberation on the CFSP in Nairobi, the above scenarios did indeed manifest themselves. However, the capacity of the public to deliberate effectively is significantly hampered by the performative enactment of public deliberation by the legislature. The failure to inform the public in a timely manner about

public deliberation and make the CFSP easily accessible to them meant that majority of the attending public had no idea what was being discussed. The attending public appeared to be broadly aware that the document was discussing policy areas that should inform budgeting, but the problems put forward were often too niche for the purposes of the CFSP. Some participants discussed specific county programmes they wanted funded, such as making allocation for a sports ground. Another participant wanted allocations made for building offices dealing with youth affairs at the sub-county level, while another participant wanted funding allocated to specific community-based organisations.

Organised groups were definitely better prepared in their submissions; however, based on earlier discussions this was expected. The frustration exhibited by the committee chairman and staff at the demonstrable lack of understanding from the public about the purpose of the CFSP meant that towards the end the chairman began to rush participants to wind up their submissions. Some participants who wanted to make submissions were cut off as the committee chair declared they had run out of time for further deliberation at around lunchtime, three hours after the deliberation began. The deliberative capacity of the public is not limited but the performative nature of the county assembly's enactment of public deliberation has failed to empower meaningful deliberation. The result of this is participation fatigue and increased public apathy, especially where they believe the submissions they are invited to give are not implemented. The reality is that, with the extent of staff discretion, sometimes those submissions never even make it to the final committee report when they are deemed inappropriate or 'lacking common sense' by staff. The committee chair is additionally frustrated because the specific nature of the requests and questions asked by the

public are beyond his capacity to answer as they fall within the mandate of the executive. One respondent at the Nairobi FGD, who frequently attended public deliberation but indicated she was contemplating not attending any more, captured her frustration like this:

What I really expected is the implementation of things on the ground. In fact, last time we told them we are tired with paperwork. They keep asking for our priorities and for us to put them down in writing. They are treating us like children. ...You write down those priorities but when it is time to pass the budget, it is passed, and you hear they have spent 5 million shillings refurbishing the market. When you visit the market there is no visible work that was done but that money was put in someone's pocket or in the pockets of several people. ('FGD-N2', 2018)

Once again, the glaring need to amend legislative rules of procedure to facilitate engaged public deliberation appears to be the glaring answer to the performative nature of deliberation that leaves both the actors and the audience frustrated and dissatisfied. Once this is done, it will be possible to make a fair assessment about the actual deliberative capacity of the public but as it stands the legislature has set up the public for failure before they even have a chance to succeed.

9.6 Interactive exchanges between participants and the committee

The standing orders of the county assembly provide that the 'procedure in a select committee shall be as nearly as possible, the same as that Committee of the whole County Assembly' (Nairobi City County Assembly, 2013, p. 119). Sittings of the whole county assembly always commence with prayer. The county assembly committees consequently begin sessions with a prayer as well. The prayer, found in the standing orders, is usually written in English and Kiswahili and is recited by the committee chair or appointed presiding officer before the commencement of any official legislative business including public deliberation. Almost all public meetings in Kenya commence

and end with a prayer. The commencing of legislative proceedings with a prayer is such an entrenched part of the rituals of the legislature that no one questions it or the effect it has in the enactment of public deliberation. Some people would probably even argue that it has no effect in how actors and audiences engage in deliberation. However, as discussed in Chapter 4, the consistency in legislative rules and procedure serve as signal to all about how the legislature works. The prayer and its wording communicate to all the 'rules of engagement' when undertaking legislative business. The words when uttered portray the duty of the speaker to the audience to whom he utters them. In the case of the legislative prayer, it communicates the divinely appointed role of elected leaders and further that they receive divine wisdom to carry out their governing role, as captured below:

Almighty God, who in Your wisdom and goodness have appointed the offices of Leaders and County Assemblies for the welfare of society and the just government of the people, we beseech You to behold with Your abundant favour, us Your servants, whom You have been pleased to call to the performance of important trusts in this Republic. (Nairobi City County Assembly, 2013, p. 10)

The prayer, which continues below, appears to be used as a means of symbolic reproduction. Its recitation communicates to the audience that not only do committee deliberations carry divine blessing, but committee decisions are also divinely guided and accordingly just and for the benefit of all:

Let Your blessings descend upon us here assembled, and grant that we treat and consider all matters that shall come under our deliberation in so just and faithful a manner as to promote Your Honour and Glory, and to advance the peace, prosperity and welfare of our Country and of those whose interests You have committed to our charge. (Nairobi City County Assembly, 2013, p. 10)

Religious practices such as the recitation of this prayer and the acceptance of leaders as being ordained and granted wisdom by God reinforces an idea that leaders, even incompetent ones, have been chosen by God to lead. In a society where patrimonial

politics is dominant, the narrative of innate wisdom by virtue of leadership may explain the assumption that leaders know what is best, a concern highlighted below by one of the civil society actors interviewed:

It's countercultural, in the public [deliberation] bit, because we were used to having leadership, historically leadership, which we venerate. ...We don't question whatever decision they make, because we believe that there was also a connection to the gods in some way. ('CSO Actor - 01', 2018)

The mindset that leaders cannot be questioned because they have been spiritually ordained into leadership is an important performative narrative in enacting public deliberation. The cultural connection to spiritual ordination can also be helpfully traced back to consensual democracy. Consensual democracy, as discussed in Chapter 4, was often engaged in by circumcised adult males who were the leaders in the community and seen as having an 'inalienable right' to take part in all community affairs (Teffo, 2004). The perception that leaders are beyond reproach entrenches beliefs of superiority that obfuscate accountability to citizens. Additionally, it means that from the outset of deliberation there is an inequality perpetuated by this spiritual and cultural divide between the public and their ordained leaders. The decisions of leaders are deemed to be beyond reproach or question, which challenges the very foundation of deliberative democracy that gives every person an equal voice in decision-making.

The prayer before the commencement of deliberation sets the tone of how the rest of the deliberative performance shall proceed. The elected representatives listen while the public supplicates for their submissions to be taken into consideration. The beliefs of the superiority of chosen leaders and the fear of embarrassing them are captured in the response below by one of the research participants, who had previously attended public deliberation, explaining why he did not speak during the deliberation:

I was...quiet because the chairman of that committee, happened to be my area MCA [laughter by speaker]...so I just listened to people talking...unaelewa [you understand]? ('FGD-N2', 2018)

The respondent's body language, laughter while responding, and question at the end, where he switched to speaking in Kiswahili, alluding to the 'way things are done', made it clear that it would have been unacceptable to embarrass 'his' MCA, especially while he was carrying out his duty as the committee chairman. The veneration of leadership demonstrated by the sense of unquestioning loyalty of the respondent to his MCA is translated into the practice of not holding an elected representative accountable. The effect of this veneration of leadership is a passive audience engaging with a script they believe they have no power to change and subsequently disengaging.

During the deliberations on the CFSP in Nairobi, it was obvious from my observation that a majority of the legislators in attendance were distracted, as indicated by their behaviour and body language. The legislators who walked in late, in most instances, would immediately begin conversing with the colleague sat next to them. The talking and constant exit and re-entry into the committee room continued to take place for the entire duration of the deliberation on the CFSP. Several of the legislators, as well as some members of the public who sat through the full duration of the deliberations, were predominantly engrossed in their mobile phones. Occasionally some of the legislators who were sitting at the front of the room on the raised dais would show a colleague sitting next to them something on their mobile phone and they would both start laughing and talking. Several of the legislators who had walked in late after sitting down for a few minutes would signal to the committee clerk or a colleague to hand them the attendance registration sheet. The register would be passed or brought to them to sign. The attendance register is what facilitates payment of their sitting allowances. Once

they had signed the attendance register, the majority of them left the committee room and could be seen through the doors sitting in the MCAs' lounge located right outside the committee room.

The performative attendance where representatives show up and pretend they are listening or interested in ongoing deliberation, is accepted and expected by the public as part of public deliberation when dealing with the legislature. During the FGD in Nairobi, participants gave examples, as shown below, of how MCAs show up briefly at deliberation meetings only to leave again, claiming other commitments:

The MCAs came; there were many of them and [the elected] women representatives were not there because they had gone for another meeting. ...So, the men MCAs who came, they came briefly, just said their names and then they had to leave claiming they were going to adjourn another Motion. They left us and didn't come back. ('FGD-N2', 2018)

The conclusion the public draw from this performative behaviour is that legislators attend these meetings not to deliberate with them but to earn allowances, as stated by a participant in Mombasa, who had previously taken part in public deliberation:

Those [deliberation] meetings, I personally don't think they follow up anything. They simply show up there as a showcase to us, so that we see them and they can earn their allowances and then leave to go and take care of their own interests. ('FGD-M2', 2018)

The perceived primordial interest that legislators are seen by the public to exhibit has challenged the expectation that increased public deliberation would increase public efficacy and a stronger commitment to the civic sphere and duties associated with it. The public believe that, if legislators performatively engage in public deliberation to earn allowances, they too should be compensated for their time, thereby creating a basis for eroding the accountability that public deliberation is supposed to entrench. One committee chair during fieldwork interviews argued that the culture of the public

expecting to be paid for engaging in deliberation meant that Kenyans were not ready for statutory public deliberation in the legislature. The irony that legislators often performatively attend deliberation meetings to collect a sitting allowance and the subsequent signals that doing this sends to the public did not appear to occur him, as shown below:

The problem first what we are facing...in the country, it is that people are not ready for things like [public deliberation], because when you ask somebody to come for public deliberation, to come and participate, he will first ask you, 'Am I going to be paid or not?' ('FCC-01', 2018)

The performative tokenistic deliberation that legislators engage in stems from the complex dilemma of fusing together legislative authority with the expectations that accompany public deliberation. The legislature finds itself fighting to exert what it considers to be its constitutionally and spiritually awarded authority while navigating the powers of decision-making awarded to the public by statutory public deliberation. The result of this dilemma is numerous performative events that leave the public feeling like a tokenistic symbol used to satisfy legal requirements. In many instances as raised during the FGDs the public believe that these processes are manipulative and only serve the needs of the legislature at their expense, as expressed below:

These people are not there. ...I am just a public show. Just for the public to know we were involved. ...But you find out that you have attended this public [deliberation] but [what] you have put across you feel like it is [a] waste of time because decisions have already been made. I am just going there to show that we were involved. ('FGD-N2', 2018)

The public become increasingly apathetic to deliberation over time as they see that the actors in the process dominate the outcome. They set the rules of deliberation, the scope of deliberation and the outcome of the process. Legislative staff, however, attribute increasing public apathy to what they view as over-engaging the public. A committee staff member during staff interviews in Nairobi stated:

We need to reduce the number of public [deliberations] we have. I think we over-engage the public. We are tiring the public with too many things. ...In 2017 we passed 44 bills. So, in that year...we had...44 situations where we were talking to the public and disseminating to them, telling them to tell us something about a bill. Even the public can get confused. ('FCSN-01', 2018)

There are two aspects of this statement that are troubling for the enactment of public deliberation. The first is that he views the numerous times that public deliberation has had to be carried out as the main problem and not the quality of that deliberation. The public have become apathetic to the performative enactments of public deliberation that the legislature puts up and expects them to attend. The public are not over-engaged, as he asserts; the inverse is instead true: the public are under-engaged and feel manipulated to meet statutory requirements. The second troubling statement made is that he views public deliberation as the public 'telling' the committee their concerns about whatever it is that is up for deliberation. Public deliberation is about reasoned argument, strategic bargaining and other forms of discursive claims that allow the public to engage with decisions that affect them in a substantive, balanced and civil discussion. The use of the word 'telling' implies a one-way discussion where the public supplicate, and the legislators listen and then retreat to consider what they will grant. Once again, this demonstrates the significant gap that exists in the spirit of the law on public deliberation and the practices of actors in enacting it. Legislative staff who provide the procedural advice to legislators have remained resistant to ceding their bureaucratic power and adapting their beliefs to move beyond a 'compliance-only attitude' to deliberation, as envisioned by the Constitution of Kenya, 2010.

The belief however that minimal or ineffective public deliberation is better than no public deliberation may explain why participants in the focus groups consistently voted

in support of continued opportunities for deliberation. At each of the FGDs, when citizens were asked to indicate by a show of hands if they felt public deliberation should be done away with, the majority in all FGDs consistently voted in favour of retaining it despite their perceptions of its ineffectiveness and feelings of powerlessness. The public are therefore not over-consulted, they are simply fatigued with performative deliberation.

Legislative institutions urgently need to revisit their procedural rules to adapt them and allow public deliberation to have a meaningful effect in decision-making processes. It is worth considering that the rules of procedure in Kenya's subnational legislatures borrow almost word for word from the rules of procedure of the national parliament. The legislative rules of procedure in the national parliament originated from a Westminster tradition that privileges the role of the executive in the legislature. The rules are not made for the legislature but rather with the aim of ensuring that executive conducts its business in a stable manner in the legislature. The introduction of public deliberation poses a dilemma to that belief, which is part of a strong bureaucratic-executive culture that emerged in the colonial period and has continued to entrench itself with successive administrations. The reforms introduced by the Constitution of Kenya, 2010, were supposed to dismantle this tradition but, as one of the civil society actors interviewed noted, this has not been as effective as was hoped:

In as much as what the current constitution and even the legislative environment is saying [that] it is heavily borrowing from the American, we still [have] a heavy tilt towards Westminster, and the practice of it...including the staff...in as much as I know we can't really quite extinguish everything Westminster, but there are things that we need to be more oriented to now, what does Kenya need to make this [public deliberation] work? ('CSO Actor - 01', 2018)

The rules of procedure are currently a reflection of executive dominance over the legislature and need to be reconstructed with a view towards making the legislature a house with rules for the public and in aid of their interest, just like the constitution envisioned.

9.7 Conclusion

Chapter 9 examines how participants assign meaning to public deliberation in its enactment in the committee of the county assembly. Public deliberation poses a dilemma to participants' beliefs relating to information access for the public; gatekeeping by organised groups; political efficacy of the public; roles of committee staff and equality of participants. The narratives given by the participants that relate their practices to their beliefs can be traced back to both a strong bureaucratic-executive tradition and political ethnicity tradition. The research participants all acknowledged the importance of public deliberation. However, all participants were doubtful that it produced any of the real benefits for which it is touted. Legislative staff appeared willing, to a degree, to adapt their beliefs and practices in response to the dilemmas posed by public deliberation. However, institutional rules of procedure were often limiting and not accommodating for genuine public deliberation. The requisite changes to administrative rules must accompany the transference of deliberative culture (Baicocchi and Ganuza, 2016); where institutional rules do not change, there is no room for beliefs, even those that are shifting, to change (Bevir, Rhodes and Weller, 2003).

Public deliberation is therefore challenging traditions even if, as yet, it has been unable to transform them. The result appears to be a gradual change whose long-term impact

is yet to be determined. Long-held beliefs that have been intentionally and unintentionally transferred are seen as shifting by the public despite the resistance of legislators and their staff. The increased political efficacy of the public, may explain why audiences do not want public deliberation done away with despite sentiments that it has no current effect on decision-making. It is, however, possible to confirm that public deliberation does improve political efficacy, as advocated by deliberative democrats (Mendelberg, 2002).

The strong bureaucratic-executive tradition where public servants were powerful and influential in decision-making has made them more resistant to change. Legislative staff, whose discretionary power has often gone unquestioned, appear to be more resistant to change in their beliefs and practices than legislators. Beliefs and practices among staff are passed on from one legislative cycle to the next and, in some instances, staff are even the ones who co-opt newly elected legislators into their beliefs and practices. The lack of turnover among staff may explain why they are more resistant to change than legislators, who are elected every five years and are more likely to be representative of changing societal views. The new emerging roles of staff as facilitators of public deliberation must therefore be considered more critically (Blijleven, van Hulst and Hendriks, 2019). Legislative staff are guided by and employed to protect institutional rules and culture. The failure of institutional rules to adapt in ways that innovate, stimulate, sustain and protect public deliberation can be viewed as a signal confirming the continuation of old beliefs that contradict deliberative ideals. Staff will therefore frustrate or simply hinder efforts towards successful public deliberation. Chapter 10 will now focus on the final stage of public deliberation, that is,

committee reporting on public deliberation and how the beliefs of actors have been challenged.

10 REPORTING THE OUTCOME OF PUBLIC DELIBERATION: THE DILEMMA OF COMMITTEE REPORTS

10.1 Introduction

Chapter 10 examines how the outcomes of public deliberation in the committee are reported for debate in the assembly. Drawing on primary data and secondary data from committee reports and county assembly Hansard, the chapter examines how public deliberation feedback is captured and feedback provided to the public. The chapter examines the transparency and accountability in how decisions in the committee report are made and presented, how the public are made aware of the outcomes of public deliberation and finally how legislators engage with public deliberation outcomes during plenary debates.

Public deliberation poses dilemmas over the beliefs and practices of actors on information sharing, transparency and accountability to the public. Despite numerous constitutional and legislative provisions on public deliberation in Kenya, there is still no single public deliberation law guiding its administrative implementation, as highlighted in Chapter 5. A majority of the existing draft pieces of legislation on public deliberation and respective County Acts on public deliberation include mandatory reporting requirements. The reports are expected to include the summary of submissions given by citizens during public deliberation as well as how elected officials considered and used the public input received. Rejections of public submissions are also expected to be accounted for (Office of The Attorney General & The Department Of Justice, 2018; Mr. Gichira Kibara, 2019). The various existing guidelines on public deliberation that have been produced by the national government (NG) in collaboration with county

governments (CGs) state that county assemblies should provide ‘feedback on how public input has been used, what has been incorporated, what has been left out and the reasons why’ (Ministry of Devolution and Planning and Council of Governors, 2016, p. 11). In the past, legislative decisions by the national parliament, particularly on oversight and resource allocation, were often shrouded in secrecy and lobbying which sustained corruption and the privileging of specific ethnic groups. Public deliberation was expected to bring transparency and accountability to decision-making processes in the newly formed subnational legislatures. Public deliberation would create dilemmas for old beliefs that support practices of corrupt behaviour. The result would be new beliefs supporting new practices that would ensure public involvement in decision-making and transparency of final outcomes.

Chapter 10, similar to the preceding chapters, examines narratives that show how participants adapt their practices to their old beliefs or in response to new beliefs emerging in their enactment of public deliberation. The chapter examines the reporting on public deliberation through interpreting the scripting of feedback on public deliberation. The practices of actors in developing committee reports and debating them in plenary are interpreted to see if they discard old beliefs and replace them with newer ones, accommodate new beliefs in existing beliefs or keep old beliefs, discarding newer ones as unconvincing (Geddes and Rhodes, 2017). The old beliefs about indifference, by actors, to transparency and accountability in committee report writing are challenged by new beliefs that require accountable and considered feedback to the audience on the outcomes of public deliberation. The reports are expected to be anchored on sound reasoning and evidence and the establishment of open plenary proceedings on committee reports. The practices of the actors and

audience and associated connections to their beliefs are traced back to the traditions in Chapters 6 and 7 to examine if transformation is occurring. The chapter concludes by highlighting what change, if any, mandatory public deliberation and the dilemmas posed to the beliefs of participants in its enactment are bringing to Kenya's governance traditions.

10.2 Report writing and incorporation of public submissions

One of the most important documents that are tabled in any legislative body are committee reports. Committee reports cover various issues such as reports on bills, benchmarking visits, investigative reports and committee progress reports among others. Committee reports in Kenya's legislative culture are often drafted by committee staff and validated by members of the committee prior to tabling in plenary. Public deliberation reports are treated in the same way as other committee reports but, more often than not, submissions from public deliberation constitute a section or chapter of larger committee report dealing with a specific inquiry. The discussions that take place during public deliberation are noted down by committee staff to guide deliberations by committee members when they retreat to write the final committee report. Legislative staff in Mombasa stated that they used the views given during public deliberation when preparing reports. They indicated that committee members reviewed public submissions and often referred to them:

...the committee listens to whatever has been presented and then they...weigh [it] and [re]view if they can make sense [of it], and [if they can] they are then taken up. ('FCSM-03', 2018)

In interviews with committee staff in Nairobi and Mombasa, both groups indicated that consideration was given to public submissions based on available resources. Good submissions, they indicated, would not 'find their way into the final report' if the

committee determined that 'resources and the weight of those views' were insufficient ('FCSM-03', 2018). Yet, a committee staff member, when asked how the committee weighted public submissions, simply dismissed it as an issue of 'common sense...which is inborn'. He went on to add that most people who attend public deliberation 'have negative views to give and don't focus on the documents which you give them'. The Mombasa County Assembly Finance, Budget and Appropriations Committee (FBAC), as discussed in the preceding chapters, never undertook public deliberation on the CFSP.

In Nairobi, the committee staff indicated likewise that they were measured 'in terms of which views [are] taken in' ('FCSN-03', 2018) and measured the effectiveness of public deliberation by what submissions were undertaken, especially in budget implementation. The staff in Nairobi saw their role as one of guiding the committee once they received public submissions, 'especially when they are making their reports' ('FCSN-03', 2018). A member of the committee staff also indicated that they recorded public deliberation proceedings, from which they were expected to provide a report to the lead clerk assistant for the committee. When the researcher requested an audio recording and report of the public deliberation on the CFSP, none was made available despite the committee staff indicating during the actual public deliberation that they were undertaking audio recording. Finally, after months of follow-up, the committee staff acknowledged that no audio recording had been undertaken and there was no separate report for the public deliberation. Escobar (2019, p. 190) discussing the work of inscribing work of facilitators has pointed out that 'whatever goes unrecorded during participatory process will likely be lost for policy-making'. Additionally, in failing to record verbatim oral submissions, legislative staff put themselves in the powerful role

of translator without any guidance on how they are to execute this role. The role of translator allows staff the freedom to not only carry over but to take over' (Molinengo and Stasiak, 2020, p. 17)' The powerful role of legislative staff in determining what is carried forward or lost through their inscribing work is one that requires further research as legislative staff can easily become gatekeepers of information.

One of the expectations of public deliberation in Kenya's legislatures was greater transparency and accountability in decision-making. In order to achieve this, as noted in the introduction to this chapter, public deliberation guidelines require that reasons be given for why specific public submissions were rejected. However, in reviewing the available CFSP report for Nairobi City County Assembly, a summary of the public submissions was indicated, but no discussions were made available on how committee members considered and used the public input received. There was no discussion on the merits of the public submissions and accordingly there was no way for the public to track which of their submissions had been incorporated into the committee report. There was also no discussion on submissions that had been rejected and why. The actual procedure of undertaking public deliberation in committees still has no actual procedural guidelines in the standing orders of any of Kenya's national or subnational legislatures. The actual implementation and reporting on public deliberation is therefore largely left to the discretionary power and capacity of legislative staff and the committee chair.

A fundamental aspect of legislative reporting that is often overlooked in the discussion of public deliberation, and yet has a significant impact on the feedback from public deliberation, is the role of legislative staff in the development of committee reports. The

legislative staff culture in Kenya, as discussed extensively in Chapter 6, stems from a strong bureaucratic-executive tradition passed down from the colonial administration. The culture often means that public servants exercise immense discretionary power in decision-making and often look down on the public and instead see themselves as working only in service of elected leaders. Committee staff in Kenya's county assemblies, as indicated by their practices, one can argue 'govern' through the access and power they have to advise by providing specialised technical policy assistance while dually exercising immense discretionary power in committee decision-making, particularly during report writing. The committee staff interviewed, when talking about their role in considering and incorporating public submissions in committee reports, did not appear to be reflexive of the decisive role they played in determining the proposed outcomes in committee reports:

We already have something that we want to do, [but] we can't just do it without engaging the people whom the members are here to represent... [public deliberation is to] allow them to come in, see [what] has been planned for them, and [to] give us their opinions. If there [is] anything that needs to be changed, if there [is] anything that needs to be added, we have to listen to what they have [to say]. ('FCSM-04', 2018)

Committee staff appeared to acknowledge that they must take into account the desires of the public, but the interviewee concluded by highlighting that ultimately the committee staff determine what they think is in the best interest of the public and include only those issues in the final committee report:

[It is] not all the time that whatever they have has to be [included] in whatever we want to do...we have to pick whatever we think is going to be the best for them and then put it in whatever document, in whatever program that we have...for them. ('FCSM-04', 2018)

It is instructive to know that the committee staff being interviewed spoke in the first person when referring to the making of final committee decisions. This was something

the researcher came across often in the interviews with legislative staff. Whereas it may seem innocent, as a simple reference to the work they do for the committee, it is imperative to consider this against a tradition where public servants were for many years more powerful than elected politicians. Public servants had more influence and were from the colonial era and well into the Moi era a powerful force in directing government policy, something elected politicians regularly raised as an issue of concern (Bienen, 1977), as discussed in Chapter 6. The culture has continued, and some staff essentially view themselves as filters for members. They are aware that legislators do not read long documents; they require summaries of submitted documents and rely on them for guidance on decision-making, which may explain why members do not feel the need to attend or really pay attention at public hearings. Legislators are aware that their technical staff will do the ‘donkey work’:

‘I don’t know how to quantify our participation in those kinds of forums because it is a lot. I can say maybe even 80% from the preparatory stage we do most of the donkey work, then when we are there, we also do a lot of work’ (‘FCSM-03’, 2018).

Mandatory public deliberation has failed to address the beliefs that legislative staff have about their discretion and power in decision-making processes. Additionally, the fact that the public are not involved in determining the final outputs of deliberation that make it to the committee report that is tabled in the House means that often their views are ignored, and legislators can still make decisions that serve their own interests. Even though legislators believe and often express that their decisions are guided by the views of the public, many times there is an underlying belief that citizens do not have the intellectual capacity or knowledge to make the right decisions, are frequently irrational, and that those who want to engage do so as a matter of ritual rather than to

make any substantive contribution. These beliefs mean that the outputs of committee reports will often be a reflection of what legislators and their staff think are important. Further, the performed listening to public deliberation submissions and resistance to engaging meaningfully with public submissions during report writing explains the absence of discussions in committee reports about how public submissions were considered and the failure to justify final decisions. The arguments that meaningful submissions could be determined by mere 'common sense' and that committee staff are aware of what is 'best' for the public shows mandatory public deliberation has only succeeded in inviting the public into decision-making spaces. Public deliberation in the context of the legislature has, however, failed at the final hurdle, which requires giving reasons for one preference over another, which is what would ultimately guarantee greater transparency and accountability.

Transparency and accountability of committee decisions have not been greatly influenced by public deliberation. The beliefs of actors about their role in the process is that, ultimately, they have the final say in decision-making and public submissions in reality are simply an exercise in political expediency. The long-term result of this is continued apathy in the public, who disengage as they believe that nothing has changed and their views will not be considered despite requirements for mandatory public deliberation. One of the participants in the focus group discussions (FGD) stated this as the reason he had never attended public deliberation: 'I have [not] attended a public [deliberation]...because I know for a fact that nothing will be done' ('FGD-N1', 2018). Not only do the public believe that nothing will change; they believe that the large all-inclusive forums of public deliberation carried out by the committee are intended to obfuscate transparency:

I feel for it to change it has to start with smaller public participation forums like this...and then [there needs to be] transparency...when you are now doing a larger public participation forum. (‘FGD-N1’, 2018)

The belief that nothing has changed and the process lacks transparency was translated by respondents to mean that their ‘time or...input’ is not ‘worth it as a citizen’ and the Member of County Assembly does not ‘actually care’ about what they have to say (‘FGD-N1’, 2018). Other respondents disengaged because they believe that legislators manipulate the lack of information by the public to ‘pass laws in favour of their own things’ (‘FGD-M1’, 2018). A majority of participants in all FGDs indicated that, even though they wanted public deliberation maintained, they did not trust members of the county assembly despite the increased opportunities for public deliberation. Several respondents indicated how members of the county assembly were only interested in ‘eating with their family’ (‘FGD-N1’, 2018). The belief among many of the FGD participants was that legislators view public office as a ‘family business’ to help their relatives get jobs, ‘get big houses’ for themselves and give educational bursaries to their fellow tribesmen, among a litany of other ethnically driven interests. One civil society respondent interviewed stated that county assemblies had a very weak political culture and members were very ‘self-interested’ (‘CSO Actor - 01’, 2018). The outputs of committee reports on budget documents, such as the CFSP, they indicated, is often driven by a lot of ‘horse-trading’ in legislative environments. In the county assemblies, particularly, they often got feedback that the county executive often heavily manipulates the budgetary decision-making process, as shown below:

the governors come in and the first thing we [are] told is he [has] bought a whole lot of MCAs and [the] opposition leader [has] been bought. Next thing we hear he [has] travelled I don’t know...to where, Israel or wherever, and he’s taken a quarter of the assembly with him. So not only is he flouting the budget wherever, he [is] bribing. (‘CSO Actor - 01’, 2018)

The dominance of the governor over the MCAs supports the arguments by Downs (2014) in Chapter 4 that legislators in subnational legislatures often remain subordinate and answer to the executive instead of the electorate.

The broader association the public has of elected legislators' constant pursuit of personal and ethnic interests, which often intertwine, means that when public deliberation decisions are not justified, the public often translates it as the pursuit by politicians of personal and ethnic interests. Additionally, the public as highlighted by FGD respondents view public deliberation as an intentional effort by legislators to 'blind citizens' to what is happening. They see public deliberation as intentionally designed to keep citizens submitting their views while they make decisions that 'benefit their pockets' and not the larger community.

Chapter 7 has highlighted how the need for political survival in a governance culture underpinned by political ethnicity drives elected leaders to make decisions that ensure they can acquire the public resources they are expected to deliver to their community by virtue of their position. The result is often, as stated by one interviewee: 'you have MCAs who are in there to make deals and that [is] as problem' ('CSO Actor - 01', 2018). Public deliberation was intended to create a dilemma for exactly this scenario, where legislators often used public office for the acquisition of primordial goods, as theorised by Ekeh (1975, 2012). However, it appears that, not only through executive intervention but also primarily through manipulating the performance of public deliberation, no real change to the beliefs of actors about the primary role of pursuing political office has occurred. The interventions by the executive on the decision-making process of the legislature at the expense of public submissions, the failure to justify

committee decision-making in reports and the absence of the public in the development of final committee reports mean that public deliberation often still fails to make any real impact in addressing political ethnicity and its effects in resource distribution. Public deliberation has in effect only added an additional layer of bureaucracy that elected leaders aided by their staff can hide behind to claim that the decision-making process is transparent and accountable.

Legislative settings, as discussed in Chapter 3, are peculiar. Legislative procedure, despite the intentional efforts to increase the role that the public play in committee business, has not been adapted to involve them in report writing, which ultimately guides plenary discussions. Committee reports, as earlier stated, are one of the most important documents produced in legislative environments and an important symbol of the traditional representative and legislative role of elected leaders. Legislative bodies should, however, as they increasingly introduce more direct forms of public deliberation with committees, evolve the procedural design of the entire committee process and not just parts of it. Public deliberation starts when the agenda is set and concludes with the tabling of the report in plenary. The procedural processes of the legislature should evolve and adapt to reflect this reality. The role of staff and the governance culture in which they and elected legislators operate should be taken into account when considering their evolving role in facilitating all aspects of public deliberation.

10.3 Public feedback on deliberation outcomes

Often, following public deliberation, the public have to struggle to access the committee report even after it is tabled in plenary. The Nairobi County Assembly Standing Orders provide in standing order 191(7) that: ‘within forty-eight hours after the report has been

laid on the Table of the County Assembly, the Clerk shall publish the report in the County Assembly website and circulate copies to members' (Nairobi City County Assembly, 2013, p. 121). Forty-eight hours after the CFSP report was tabled in the county assembly the report was still not available on the assembly website. The researcher had to make a direct request to the committee clerk to email the report to her. A majority of the ordinary members of the public who attended the public deliberation would not have had similar access and would not be able to directly request a copy of the report to track the outcome of their submissions. Organised groups are, however, more likely to have the same level of access and could more easily follow up on the fate of their submissions to the committee, once again showing the disparity in access to information between the two groups. The Mombasa County Assembly report on the CFSP was not made available on the assembly website for several months after it had been tabled for debate and the researcher was not able to access a copy despite having direct contact with the committee staff. The public are therefore often not in a position to find out if their submissions have been incorporated into the report until well after debate on the report is over as was widely noted by respondents at the FGD.

The length and bulk of legislative journals and records such as committee reports often makes it prohibitive to print numerous copies. Printed copies of reports are usually ultimately archived in the Journal's/Records Office of legislative institutions. The printed copies are often difficult for the public to access and refer to as not only are they limited but it would also be difficult for more than one person to access at a time. The challenges of physically accessing legislative buildings, due to security procedures, will also dissuade most people. Ensuring online access to these public

documents is therefore an important way of enabling public access and increasing transparency and accountability in the process of public deliberation. The digitisation of documents has significantly contributed to increasing public access to legislative journals. However, the challenging reality is that, even with digital access, in a country where internet access is not readily available, legislative documents continue to be something the public find difficult to access. Often, even where internet access is not a problem, legislative institutions have not made these documents available online for public access. The Nairobi City County Assembly FBAC made no intentional effort even at a minimum to share the final committee report by email to the members of the public who attended the public deliberation despite the fact that the registration sheet often requests attendees to provide their email addresses.

Civil society actors who work on advocacy around public deliberation in Kenya acknowledge that more needs to be done in terms of providing and justifying to the public the outcomes of committee decisions on their submissions. One of the civil society interviewees highlighted the failure by assembly committees in their reports to state at a minimum 'how the public were engaged'. Committee reports only provide the 'decisions of the committee' and ignore the requirement that they are 'supposed to [provide] the basis upon which these decisions were arrived at', as captured in his sentiments below:

where after decisions have been made, the public gets to be given feedback as to, we deliberated these things with you, but we ended up doing A or B, or we shelved B for the following reasons. That last part is the...missing part in our perspective. There [is] no feedback mechanism in which basically the people can get feedback from their own representatives, their MCAs, on what exactly got decided and why it got decided. ('CSO Actor - 03', 2018)

The challenge that committee reports do not substantively address how deliberation took place are certainly well founded; however, staff interviewed also criticised organised groups and the public in general for failing make any effort to follow up on the fate of their submissions. The staff interviewed acknowledged that there needs to be a procedural mechanism for providing feedback to the public but also stated that there was 'no follow-up from the public for that feedback...the public themselves are never concerned about what we do about those things' ('FCSN-01', 2018). Civil society organisations, the interviewee stated, have also failed at ensuring feedback is provided by committees:

I have been in this budget work since 2013, working in this budget committee, I [have] never had even these organised groups coming back to ask us, we came for public [deliberation]. How far [have] our issues been implemented? And give me the report so that I am able to confirm to what extent my issues were implemented. ('FCSN-01', 2018)

Organised groups, as has been revealed, have a greater influence over the public deliberation process than the ordinary public. These groups would likely improve the feedback mechanism of the assembly as well as the quality of committee reports in discussing their consideration of public submissions, if they were all consistent and public with requesting that reports be made available. The glaring reality, however, is the ability of each group to shift responsibility to the other for ensuring that feedback is made available to the public, which can be attributed again to the lack of clear procedural guidelines about enacting public deliberation in the legislature.

The language of committee reports is another area of concern in the provision of feedback to the public on their submissions. Similar to the documents provided for public deliberation, committee reports were only made available in English despite the fact that Kiswahili is Kenya's national language. Many of the participants who took part

in public deliberation on the CFSP made their submissions in Kiswahili and many others who often attend deliberation are not literate and are unable to read and write. The fact that the assembly allows for oral submissions is acknowledgement of the reality that many who may want to give their submissions are not able to do so in writing. Additionally, the public deliberation laws of Nairobi City County (2016, p. 11) and Mombasa County (2017, p. 13) both provide that, in the communication of information to the public, the county government, which includes the county assembly, will take into account 'language preferences and usage in the county' and persons with 'special needs' or people who 'cannot read or write'. The procedures for providing feedback to the public should therefore take all of this into account when preparing and sharing reports but do not in direct contravention of legislation passed by the assembly. The committee reports are only accessible to literate persons who can read English. Once again, the limiting power of legislative rules of procedure mean that staff do the bare minimum as procedural rules are vague on administrative requirements such as the language of committee reports. Additionally, no provisions were made to allow persons with disabilities who are blind and cannot read to have alternative ways to engage with the committee report.

The right to access information and follow up on submissions must include the right to ensure that the public can understand the information made available to them. In a country where socio-economic challenges mean that illiteracy is still very prevalent, as well as disparities in education attainment, making committee reports available only in English is discriminatory to a large percentage of the population. The inclusion in legislative discourses of poor and historically marginalised groups owing to challenges such as illiteracy are what public deliberation is intended to address (Beauvais, 2018).

Legislative rules and procedure therefore need to adapt to ensure that their newly created public deliberation sphere is guarded from the inherent elitism found in legislative bodies and making feedback available in languages and media accessible to all is an important part of ensuring this.

10.4 Plenary debate on committee report

Committee reports are tabled by the committee chair in plenary and all legislators are at this point allowed to make their contributions on the subject of debate as well as on the contents of the committee report. The introduction of mandatory public deliberation in Kenya's legislative bodies included the right for the public to attend all plenary proceedings and listen to members' debate even though they are not allowed to contribute. The standing orders for county assemblies are expected to make provision for public access to the county assembly, which includes attendance in the visitors' gallery to listen to plenary proceedings. The Nairobi County Assembly Standing Orders expressly provide for this, as shown below:

The County Assembly or a committee may not exclude any person, or any media, from a sitting of the County Assembly or of a committee unless, in exceptional circumstances, the Speaker has determined that there are justifiable reasons for the exclusion. (Nairobi City County Assembly, 2013, pp. 152–153)

Plenary proceedings are in some assemblies also broadcast on television and/or radio. The import of making plenary proceedings open to the public is very important in the final stage of public deliberation. The argument for allowing open attendance and broadcasting of plenary proceedings is to ensure transparency and accountability in legislative business. The argument is well founded, particularly bearing in mind Kenya's political history, where presidents and other elected leaders have routinely abused parliamentary privilege and power to achieve their own political ends.

The broadcasting of legislative proceedings, particularly on local radio stations, is very popular, as radios are the form of media that a large majority of Kenyans have access to (Kenya National Bureau of Statistics, 2019b). Walking around the main business district of any town in Kenya, you will usually find groups of people clustered around a

radio listening to the legislative proceedings of either the county assembly or the national parliament as they are broadcast live. Playing to the gallery is therefore very important to legislators and broadcasting rules in the standing orders often demonstrate this with provisions to ensure that shots that can 'embarrass unsuspecting Members of County Assembly' are 'not shown' (Nairobi City County Assembly, 2013, p. 164).

The plenary debate on the county fiscal strategy paper (CFSP) therefore provides a critical opportunity for the committee chair and members to demonstrate how seriously they engaged with public deliberation. The debate provides an opportunity to discuss public submissions, highlight important ones and show how they were taken on board. The debate would also give the committee an opportunity to discuss the procedure the committee used to critically consider public submissions for either incorporation or rejection. The public, as already demonstrated, often find it hard to access copies of the committee report on assembly websites because of internet access challenges, delays in publishing the report or simply because they have physical or literacy challenges. The debate in the chamber would provide an excellent opportunity to legislators to show their commitment to public deliberation by communicating directly with the listening public. Debate in the chamber is not confined to English and many legislators often make their contributions in Kiswahili in acknowledgement of the fact that that is the language the majority of people will understand.

The debate on the CFSP was, however, used as another opportunity to engage in the performance of public deliberation and obfuscate true accountability. Reviewing the debate on the CFSP recorded in the Hansard of the Nairobi City County Assembly of

27 June 2018, the committee chairman made no mention of public submissions the committee received and how it took those views into consideration in developing proposals contained in the committee report. The proposals were listed in a manner that suggested that they were all proposals of the committee and it was impossible to trace which proposals the committee had arrived at due to public submissions and which ones they had proposed themselves. The report did not contain this information either and it would be expected that in his debating notes the committee chairman would have taken the opportunity to elucidate further how public deliberation influenced the committee position, if at all. None of the other members who spoke in support of the report mentioned or asked about public deliberation. None of the legislators contributing to the report mentioned contributions made by the public during public deliberation. However, the printed committee report had a section on the submissions of the public and therefore legally could be argued to have met the legal requirements. Challenging the final committee proposals that are adopted in this instance becomes even harder for the public should they wish to. Legislators are able to hide behind the performed public deliberation and inclusion of submissions in the report, when in actual effect they have completely disregarded its spirit and failed to carry the public along with them in decision-making.

The Mombasa County Assembly website did not have the Hansard for 15 March 2018 uploaded on its website which according the Order Paper is the date the FBAC committee chair tabled the CFSP report. There was no public deliberation undertaken on the Mombasa County Assembly Finance, Budget and Appropriations Committee report, as has been stated in earlier chapters. The report made no mention of public deliberation and neither did the moving notes of the chairman that formed part of the

report. The committee proposals could therefore only be assumed to reflect the position of the committee members, contrary to the requirement of the law. Without the Hansard debate that occurred on the date when the report was tabled, it is impossible to know if any other legislator brought up the anomaly. No mention of the failure by the county assembly to conduct public deliberation on the CFSP 2018/19 could be found in an internet search of Kenya's leading news agencies.

The legality of Mombasa's budget process has faced legal challenges on several occasions, with civil society organisations accusing the county assembly of working with the governor to avoid public deliberation on critical budget documents (Nyamai, 2020). One of the interviewees who works on transparency and accountability issues at a leading civil society organisation in Mombasa stated the frustrations they face working with county assembly who are beholden to the governor:

our engagement with the secretariat, there [are] some of them who are actually very keen. You go to the clerk, you can have a sitting with him, you do a letter he will respond. But now when it comes to the county assembly, it's a different[matter]...I mean, with the MCAs, they have to 'consult'. The clerk doesn't have to consult because he knows his role. ('CSO Actor - 05', 2018)

In stating how the MCAs need to consult when civil society organisations attempt to engage with them, the interviewee was alluding to the control of the governor over the assembly. The need for MCAs to avoid taking an adversarial position and instead consult over any decisions taken, points to the control of the governor over the assembly. This situation may alternatively be understood to reflect a deep-rooted African preference for consensual democracy, where leaders talked over an issue until agreement was achieved, as discussed earlier in Chapter 2.4. (Wiredu, 1995).

The interviewee stated how the CSO had a legal case in court over Mombasa's budget-making process and the constant failure to conduct public deliberation. He also indicated the frustrations organised groups have with accessing documents and reports especially on public deliberation from the Mombasa County Assembly and are often forced to use 'back door' channels to access them:

we get them through the back door...sometimes. We push and push until you [will] even find our colleagues from Nairobi will...share with us our reports in Mombasa. ('CSO Actor - 05', 2018).

Mombasa County Assembly appears even less concerned than Nairobi City County Assembly with the spirit of the law on public deliberation and in most instances did not even pretend to adhere to the letter of the law.

However, the real issue that emerges in the performance of public deliberation is that context matters. A mandatory legal requirement for public deliberation will not on its own disrupt well entrenched beliefs and practices rooted in years of established governance traditions. The definition and design of public deliberation must be adaptable and context specific. The reality, as discussed in Chapter 3, that normative positions of what constitutes deliberation are based on political and ethical ideals of democracies in the Global North has hampered not only its transference to Global South democracies but also efforts to understand how it can be best operationalised. Deliberation, as Sass (2018) argues, takes radically different forms across cultures and therefore an understanding of context is critical. The dismissal, which the researcher has heard several times, that the public deliberation happening in Kenya's legislatures is not true deliberation but simply traditional town hall meetings is based on a myopic western-centric belief that only certain kinds of defined discursive claims can be considered deliberation (Min, 2014). Chapter 2 amply covers this argument and

shows that many pre-colonial African societies engaged in dialogue and privileged the importance of consensus-seeking as ‘the hallmark of traditional political decision-making’ in community decisions (Teffo, 2004, p. 446).

The introduction of mandatory public deliberation in the Constitution of Kenya, 2010, was not Kenya’s first attempt to bring the public into decision-making by legislative bodies. The challenge, as one civil society interviewee put it, is the language in Kenya’s 2010 Constitution, which uses participation in place of deliberation. The language of participation implies that the public simply attended a meeting or a forum ‘and that was it’. The intention of participation in the constitution is about ‘influencing what is happening with government’ and working with government to ensure that public submissions are agreed together, incorporated into budgetary allocations, and implementation communicated back to them (‘CSO Actor - 04’, 2018). The mandatory requirement of public deliberation in Kenya’s constitution was never about increasing the number of town hall meetings, or *barazzas* as they are referred to in Kiswahili; it was about ‘more dialogue...more reason giving...more feedback...more deliberation’ (‘CSO Actor - 03’, 2018). The failure by Kenya’s legislatures and other government agencies to recognise public deliberation for what it is meant to be, and adapt procedural and reporting requirements to respond to the spirit rather than the letter of the law, has led to apathy and continued mistrust of ‘business as usual’ on the part of the public and frustration and ‘business as usual’ on the part of the legislature. A first step, as future constitutional amendments are contemplated, may be to consider changing the language to communicate the intent rather than the activity.

10.5 Conclusion

Chapter 10 examines how respondents assign meaning to public deliberation in their scripting and staging the outcomes of public deliberation. The chapter focuses on the dilemmas faced by respondents whose beliefs and practices about public access to information, incorporating public views in decision-making and transparency and accountability are situated in traditions of a strong bureaucratic-executive and political ethnicity tradition that run counter to those espoused by public deliberation. Respondents once again show that, due to the absence of binding rules and oversight that guide the implementation of public deliberation, there is resistance from legislative staff and legislators to realise the spirit of public deliberation. Committee reports in most instances do not provide justification for why specific decisions were made over others. Public deliberation can only bring about transparency and accountability where administrative and procedural rules reforms allow for non-performative deliberation that supports substantive, balanced and civil discussion between the public and legislators. The legislature's resistance towards public deliberation obfuscates accountability and sustains the tradition of a strong bureaucratic-executive that hollows out the legislature and reduces public deliberation to another administrative tokenistic exercise to appease the public. The governance tradition of political ethnicity continues to thrive as legislators are free to continue 'horse-trading' with little adherence to requirements for the justification of their decisions. The next chapter, which is the discussion and conclusion chapter of the thesis, will bring together an evaluation of the main effects of public deliberation in legislative committees as observed across Chapters 6–10. The chapter will examine the effects of public deliberation in response to the thesis's research questions and provide a summary of important considerations

for public deliberation in legislative committees and implications for legislatures more broadly.

11 DISCUSSION AND CONCLUSION: THE EFFECTS OF PUBLIC DELIBERATION IN LEGISLATIVE COMMITTEES

11.1 Introduction

The relationship between parliaments and citizens has only in the last decade begun to gain significant attention from academic researchers. The increased academic interest has been propelled primarily by increasing public apathy in representative democracy, which is in turn forcing legislatures globally to open up their business to the public so as to stem declining public trust and increasing voter apathy (Azevedo-Harman, 2012; Leston-Bandeira, 2012; Kelso, Boswell and Ryan, 2016; Hendriks and Kay, 2019; OECD, 2020). Despite the prolific rise of public deliberation in the business of the legislature, there has been little empirical scrutiny of its benefits, the extent of those benefits, the meanings the public associate with it, relative to the cost of delivering it. Some scholars have questioned whether there are any real empirical benefits to legislative institutions from these innovations (Burton, 2009b).

The research work in the thesis builds on the nascent literature on deliberation in Kenya, Africa and the Global South more generally. The focus of academic research on public deliberation, whether within the confines of the legislature or more broadly has primarily centred around the experiences of citizens and institutions in the Global North (Azevedo-Harman, 2012; Bächtiger *et al.*, 2018b). The practices and experiences of public deliberation in the Global South have primarily been discredited or ignored. It would however be remiss to fail to acknowledge crowd sourced platforms of deliberation initiatives like Participedia where examples of deliberation in Africa and have approximately seventy (70) entries. However, on closer scrutiny of the cases on the forum some do not relate to deliberation experiences in Africa. Moreover, only two

(2) of the entries were cases organised by academic institutions studying real world scenarios. Additionally, it must be stated that participatory budgeting, one of the most prominent and well-studied deliberative innovations originated in Porto Alegre in Brazil (Baiochi, 2001). However, where the research on public deliberation in the Global South has taken place, it has failed to critically account for the contextual effects of layering deliberation on local cultural contexts. Participatory budgeting provides an excellent example of how international development agencies (IDAs), often from the Global North, transferred participatory budgeting around the world, particularly in Africa, without paying adequate attention to existing cultural contexts leading to its failure or lack of sustainability (Baiochi and Ganuza, 2016; Ferreira and Allegretti, 2019). Pre-and-post colonial experiences shape the governance culture of a majority of Global South nations. Examining public deliberation in those contexts must critically account for these individual experiences and how they shape deliberation's design, meaning and effects.

The dearth of academic research may be explained by arguments that a majority of the Global South's public deliberation experiences are viewed as not conforming to deliberation processes that privilege rational, calm and dispassionate discussions. However, it must also be noted that scholars like Iris Marion Young (2010, p. 49) have come out in the last two decades to challenge arguments that privilege 'polite, orderly, dispassionate, gentlemanly argument'. Young (2010, p. 49) instead joins other contemporary scholars in 'endorsing a more agonistic model of democratic process' that recognises the existence of exclusion and opposition while simultaneously acknowledging the ability of institutions of democracy to bring them together into engaged antagonism within accepted rules.

The terminology of deliberation is only in recent years beginning to gain prominence when studying Global South nations; coupled with its interchangeable use with public participation in the literature and by international development agencies, public participation is often the term used even when thick discursive experiences are envisioned. The literature, however, demonstrates that deliberation, as defined by pragmatists, has roots in the governance of traditional African societies. Additionally, many African nations' colonial and post-colonial experiences, particularly authoritarianism, are producing constitutions and governance arrangements that put people at the centre of all decision-making with expectations for thick discussion between them and their elected leaders. The South African Parliament, the South African provincial legislatures, Kenya's Parliament and Kenya's county assemblies are examples of African legislatures with legally mandated public deliberation in their constitutions. The deliberative approaches aim at fostering more argumentative exchanges, which allow for participant discussions through questions, making comments and allowing for public debate before decision-making (Elstub, 2018; Elstub and Escobar, 2019a).

The thesis, a case study interpreting public deliberation in Kenya's subnational legislatures, contributes directly to the minimal existent academic research on the relationship between parliaments and citizens in Africa and more specifically its subnational legislatures. The thesis demonstrates that the conceptualisation of public deliberation in Africa's subnational legislature and its effects must be studied within its cultural, social and historical context. It is only by doing so that it is possible to understand how people attach meaning to deliberation and its consequent effects. The thesis shows that the historical, cultural and social context of Kenya's subnational

legislatures informs governance traditions that create and sustain performative public deliberation experiences. Constitutional provisions, judicial rulings and legislative provisions on public deliberation in the case study, demonstrate aspiration and commitment towards thick discursive experiences, concomitant with emerging broader and minimalist definitions of deliberation. However, the findings show that contextual factors significantly affect the beliefs and practices of actors with regards to public deliberation which has resulted in it falling far short of aspirational and constitutional commitments.

The thesis demonstrates that legislators and staff engage in an intricate performative staging of public deliberation focused on proceduralism but resists conformism with the spirit of public deliberation. The public is aware of public deliberation's performative nature but values it as progress towards attaining the spirit of public deliberation. Public deliberation falls short of its intention in this context as it is artificially layered on the legislative institutions without adaptation for contextual traditions that shape its meaning and effects. When studying public deliberation in legislatures, the effect of cultural contexts, which are as diverse as parliaments, cannot be ignored. Interpretive understandings of context clarify that public deliberation definitions are not as narrow and procedurally constrained as some scholars argue. The assumption that only forums that conform to Western procedural standards of deliberation can be conceptualised as deliberative is falsely limiting to the study of deliberation and its potential evolution and usefulness in various contexts as demonstrated by the thesis. Africa has largely been ignored in the study of deliberation as practices such as those examined in this thesis are not considered sufficiently deliberative. The thesis shows that allowing for a pragmatist, minimalist and inclusive definition of deliberation

provides the opportunity to examine how deliberation evolves in different contexts, is informed by those contexts and in some instances has roots extending beyond Western constructions of it. The thesis shows that Western conceptualisation of deliberation is only one form that conforms to its context. Allowing for and examining inclusive forms of public deliberation means that proposals to strengthen it and maximise its benefits will be contextually relevant, responsive, and work with existent processes, instead of continually trying to introduce new Western forms of deliberation performatively layered on with no effect.

This research employed a paradigmatic case study examining public deliberation in subnational legislatures in Kenya. Using two embedded cases, the research examined the process of public deliberation in two subnational legislatures, Nairobi and Mombasa. The research undertook an interpretive analysis (using the analytical framework of Bevir and Rhodes) to draw out the meanings associated with public deliberation in the finance, budget and appropriations committees (FBACs) of two of Kenya's subnational legislatures. The primary objective of the thesis was to establish whether public deliberation in subnational legislatures reflected its espoused benefits and how participants assigned meaning to public deliberation through their experiences to demonstrate this. In order to answer the main research question (RQ), four research questions were identified to be empirically examined:

1. How do Kenya's governance traditions affect the enactment of public deliberation in Kenya's subnational legislatures?
2. How does the enactment of public deliberation in Kenya's subnational legislatures shape the behaviour of the research respondents?

3. How do the research respondents **assign meaning** to public deliberation in Kenya's subnational legislatures?
4. What are the implications of the research findings for public deliberation in Kenya's legislatures at the national and subnational levels?

The next sections of the chapter provide a brief discussion on the thesis contents; a summary of the analytical findings that respond to each research question; and a discussion on the thesis's contributions. A discussion on the use of Bevir and Rhodes's analytical framework in the research and the contribution made to it by drawing on the analytical framework of performance (Hajer, 2005; Alexander, 2006) is also undertaken. The chapter concludes with a reflection on the limitations of the research and opportunities for future research.

11.2 Thesis summary

The first four chapters of the thesis provided an overview of the literature on the evolution of public deliberation, particularly in the context of non-western democracies. The chapters addressed how deliberation has been closely linked to the consensus democracy found in traditional African societies. Deliberation is therefore seen to hold potential benefits for post-colonial societies to improve democracy and nation-building. The chapters examined how deliberative democracy evolved out of participatory democracy. The evolution and definition of public deliberation, which emerged as a pragmatic delivery of deliberation in the public sphere, were discussed. The pragmatics of implementing deliberation led to broader incorporation of what constitutes deliberation, which has allowed for the interrogation of emerging deliberative practices in legislative environments. The new practices of mandatory public deliberation in

legislatures, particularly in subnational legislatures in the Global South, formed the anchor of the research thesis. The thesis examined the meanings the public associate with public deliberation in these institutions and ultimately whether there are any associated benefits of increased public deliberation in legislative institutions.

The chapters on methodology and the analytical framework discussed the choice to adopt a constructivist ontological approach, which directed the focus of the thesis to how actors construct and assign meaning to their situation within the environment of public deliberation. A constructivist ontology informed the choice of an interpretivist epistemology for the research and drew on Bevir and Rhodes's interpretivism (Bevir, Rhodes and Weller, 2003; Bevir and Rhodes, 2006b, 2006a, 2010). The thesis, in addition, drew on the work of Jeffrey Alexander (2006; 2006) and Maarten Hajer (2005) to include the analytical framework of performance. A paradigmatic case of the public deliberation process in Kenya's subnational legislatures was adopted and drew on two embedded cases to generate empirical data. The thesis, having adopted a case study research design with an interpretivist approach, allowed for the use of a multiplicity of methods (Yanow, 2006; Geddes and Rhodes, 2017; Rhodes, 2018b), as discussed in Chapter 5.

The first two empirical and analysis chapters provided a historical analysis juxtaposed with primary data to establish Kenya's governance traditions. The two chapters showed how Kenya's governance traditions and its associated beliefs and practices have been passed on from one generation to the next. The chapters, drawing on primary data, specifically showed how Kenya's governance traditions continue to have

an impact on the practices of actors in Kenya's governance institutions and more specifically the subnational legislatures. The final three empirical and analysis chapters examined how public deliberation is enacted in Kenya's subnational legislatures. They established how actors (legislators and legislative staff), who are the initiators of public deliberation, make meaning of public deliberation and consequently through their practices script a performance for the audience (public). The public interpret the enacted script of public deliberation and respond to the actors through practices that convey the meanings they attach to the process of public deliberation and its consequent effects.

The next section will systematically relate the research findings to each research question.

11.3RQ 1: How do Kenya's governance traditions affect the enactment of public deliberation in Kenya's subnational legislatures?

11.3.1 Bureaucratic-executive governance tradition

Kenya's strong bureaucratic governance tradition, which was extensively discussed in Chapter 6, has some specific easily identifiable beliefs. The first is a tacit alliance between the administration, the legislature and the executive. The alliance is primarily fostered by elites, who use it to further their own class interests. The consequence of this in Kenya's governance tradition is 'horse-trading' between elites but it often sees a dominating executive manipulate the legislature to achieve ethnically driven political interest. The manipulation of the legislature leads to the public perception that the legislature is subjugated in power and authority to the executive. The second belief is the strong discretion awarded to administrative staff, which arises from the tacit alliance that has formed with the executive and legislature over time. The powerful

discretionary authority of bureaucrats in Kenya's legislatures is almost equivalent to 'governing' power, where they are often engaged in advising and sometimes leading elites in the direction of their preferred policy expectation.

The introduction of mandatory public deliberation in decision-making was viewed as a way to break the tacit alliances between elites and their consequent manipulation of power to secure their class and ethnic interests. Additionally, the requirements for transparency and accountability were viewed as important for ensuring that decision-making did not fall to the discretionary whims of powerful bureaucrats but would take into reasonable consideration the views of the public and account for them in final legislative decisions. The expectation for Kenya's devolved legislatures specifically, was that they were seen as being more accessible and therefore more accountable to the people than the national parliament. The restoration of decision-making power to the people, through mandatory public deliberation, was therefore seen as the linchpin to ensuring legislative accountability and transparency.

However, the enactment of public deliberation has been significantly hampered by Kenya's governance traditions and the associated beliefs. Public deliberation has often posed a dilemma to actors (legislators and legislative staff) who must contend with new beliefs and practices such as accountability and transparency. These new beliefs often challenge their authority, discretionary power, and unfettered access to political elites. Consequently, the practices associated with new beliefs arising from mandatory public deliberation often face resistance from actors and fail to establish. The new beliefs and practices such as creating public access to information, providing considered responses to public submissions, creating deliberative spaces, among

others, are ignored or manipulated by actors in an effort to retain old beliefs and practices. As a result, legislators, legislative staff and even the public are often engaged in an intricate performance of public deliberation, with each pursuing the letter of the law but falling short of its spirit. The gap between public deliberation practice and what is intended accordingly remains wide and old beliefs are derailing the enactment of public deliberation, as is shown below.

11.3.1.1 Executive influence in legislative decisions

The strong bureaucratic-executive tradition has specifically affected the enactment of public deliberation through continued influence of the executive in legislative decisions. The executive has turned public deliberation into a smokescreen to hide its influence over elected legislators, often offering them public goods in exchange for ensuring that public deliberation is derailed, or the interests of the executive dominate final outcomes. The enactment of public deliberation provides the executive with a legal smokescreen behind which it now uses to hide and justify the decisions of its horse-trading. The public are aware of the manipulation but with weak procedural and administrative guidelines they often find themselves used as pawns in public deliberation and with limited to no legal recourse to change it.

11.3.1.2 Gatekeeping by legislative staff

The beliefs of immense discretionary power enjoyed by bureaucrats in Kenya's legislatures has led to gatekeeping by legislative staff of the processes of public deliberation. Legislative staff, using often inflexible and elitist legislative rules of procedure, have frustrated the enactment of public deliberation. They often engage in performative requirements that meet the letter of the law but not its intent. The

discretionary power that legislative staff enjoy mean that not only do they have a great influence on how access to information is granted to the public, but they also have the power to grant privileged access to some actors to have greater influence over the outcomes of public deliberation. Organised groups are often the beneficiaries of this discretionary privileged access by virtue of the social networks they often form with staff over time but also the resources they have at their disposal that can benefit committee staff in carrying out their duties.

The discretionary power accorded to staff has also greatly affected access to information, a key cornerstone of effective public deliberation. Legislative procedural rules often do not have detailed administrative guidelines on how access to information is granted, thereby giving staff discretionary power in determining how this is to be done. Committee staff often share information for public deliberation late or not at all. They on occasion share the information with only organised groups and the public are left to engage without adequate preparation or knowledge of what issues are to be discussed.

The discretionary power of committee staff, supported by the tacit alliances where they see themselves as working only at the behest of elites, means that many staff see engaging the public as a nuisance, extra work on an often already overworked secretariat and sometimes give themselves the power to make decisions on what should go forward to the committee for consideration or be withdrawn. Public deliberation has therefore become an exercise in proceduralism by elites with no meaningful effect.

11.3.2 Political ethnicity governance tradition

11.3.2.1 Obfuscating accountability in resource allocation

Political ethnicity, although not easily observable, and its associated beliefs of skewed resource allocation, abuse of state power to benefit co-ethnics with public goods, and excessive patronage, has beleaguered the Kenyan state from its foundation. Elites and bureaucrats have consistently politically mobilised ethnicity to secure political ends and created a deeply divided society. Public deliberation and its foundations of discourse and transparency and accountability through the restoration of decision-making power to citizens were expected to disrupt the negative effects and beliefs of political ethnicity. Public deliberation was seen as a way of ensuring that resource allocation was transparent, fair and equitable as it would involve local elites working in collaboration with local citizens to ensure accountability. Public deliberation and its collaborative and discursive nature were also seen as a way of building nationhood as the scramble for public goods for patronage and primordial interests was scuttled in favour of fairness and equity as determined by all.

The unfortunate reality is that the new beliefs and practices that public deliberation was expected to bring about, to increase transparency and accountability, have not materialised. Elites and bureaucrats have instead marshalled their co-ethnics and groups benefiting from their patronage to attend and manipulate public deliberation processes in their favour. **Most legislators, as was observed by respondents, often** pay the public who are frequently their co-ethnics, to attend public deliberation and champion decisions they have directed in exchange for some form of material assistance. Public deliberation in this instance once again provides the smokescreen that elites can use to obfuscate accountability and legally justify their decisions. The

transparency and accountability that public deliberation was expected to bring to resource allocation and governance decisions have not materialised as public deliberation has turned into another 'tool in the toolbox' that political elites use to manipulate decision-making and reward patronage. Public deliberation has failed to create on its own any meaningful effect on committee decision-making and instead obfuscates scrutiny of continued patronage in legislative actions.

Kenya's governance traditions it can be argued, have hampered the effective enactment of public deliberation. Through subtle manipulations, legislators and legislative staff have more often continually exhibited practices that resist any attempts to introduce new beliefs through the enactment of public deliberation. Public deliberation has resultantly become a performative exercise that reinforces and reproduces Kenya's governance traditions and the associated beliefs it was meant to change. The thesis demonstrates that understanding the contextual social, cultural and historical factors informing Kenya's governance traditions is essential for designing public deliberation to obtain the maximum benefit from it. Increased proceduralism in this instance would only serve to further provide a smokescreen behind which bureaucrats and elites can hide from conformity to the spirit of public deliberation. Without the interpretative understanding of context, it is easy to conclude that there is no public deliberation. The reality, however, is more nuanced. Public deliberation is indeed taking place, but it falls far short of the spirit envisioned. The governance traditions, and not proceduralism, are essential for understanding why it has failed in this context.

11.4 RQ 2: What is the evaluation of the public about the effects of public deliberation on legislative functions?

11.4.1 Oversight

The performative nature of staging public deliberation and the continuous failure by legislative committees to provide substantive feedback in their reports or in plenary about their consideration of public submissions have created a sceptical public who see it as an empty ritual. The public involved in the study largely do not believe that public deliberation has any meaningful impact on matters of oversight but believe that political elites are primarily out to secure their own interests. There are instances where the public believe that public deliberation has contributed to greater oversight, which may explain why, even though the public believe the process as currently enacted is performative, they are intrinsically aware of its power when effective in the right conditions. The patronage that committee members engage in with the executive, particularly in FBACs, signals to the public that self-interest remains the driving force of willingness of legislators to conduct oversight.

The gatekeeping done by legislative staff in support of the behaviour of committee members, by either producing tokenistic committee reports or frustrating public access to the information needed to effectively take part in public deliberation, is another signal to the public that public deliberation is not sincerely intended to improve the oversight function of committees.

11.4.2 Representation

The performative and manipulative nature of public deliberation as enacted by legislators has led the public to believe that legislators only engage in public deliberation to serve their own self-interest. The lack of interest shown by legislators

during public deliberation as well as their easy capitulation to demands by the executive signals to the public that public deliberation is not about improving the representative capacity of legislators. The public whom civil society organisations have mobilised and informed about the benefits of public deliberation fail to see legislators advance their interests both in committees and in plenary. Instead, legislators often treat the public as incompetent, ignorant on complex issues and in pursuit of personal material benefits. The slight by legislators and outright dismissal of a majority of public submissions lead the public to believe that public deliberation has no bearing on improving the representative capability of legislators.

11.4.3 Law-making

Public deliberation is seen by the public as a way of manipulating them to rubber-stamp predetermined outcomes. The public view the introduction of mandatory public as means legislators use to justify and support their legislative decisions without critically engaging with and using public submissions to inform said decisions. The failure to provide meaningful feedback to the public about how their submissions were considered and used in committee decision-making, or even substantive reference to public submissions in during plenary debates, reinforces for the public the performative nature of public deliberation. A large majority of the public therefore choose to disengage as they believe that committee decisions are already largely predetermined, and no amount of public deliberation has any significant bearing on law-making.

The thesis demonstrates that legislative rules and procedures allow legislators and bureaucrats to perform deliberation with no actual effect on their functions. In turn, the public is frustrated as they have no way to impact public deliberation rules, an essential

part of designing any deliberation forum and can, therefore, only conclude that the process has no effect. Legislative functions are all anchored around procedural processes that legislators enact with no public input. Legislative procedures are often complicated, ambiguous and designed to address elected legislators' interest and not the public. The thesis demonstrates that legislative proceduralism, when coupled with governance traditions that often manipulate or exclude the public from decision-making, is viewed by the public as ensuring performative compliance by the legislature. Legislatures need to revise their procedural rules, particularly in subnational legislatures where closer access is anticipated, focusing on the primary beneficiaries of public deliberation, the public.

11.5 RQ 3: How do the research respondents assign meaning to public deliberation in Kenya's subnational legislatures?

The performative enactment of public deliberation has had profound effects on the behaviour of committee members and the public as each interprets the symbolic actions of the other group. Public deliberation was intended to interrupt and change negative practices that stemmed from beliefs and governance traditions that inhibited good governance and accountability. The introduction of mandatory public deliberation was expected to lead to new practices that would reflect changing beliefs and the emergence of new governance traditions. The primary data collected during fieldwork, however, demonstrates that the practices of committee members and the public as they interpret the enactment of public deliberation, pointing to a reinforcement of old practices and resistance to new behaviours. A few of the more prominent ones are briefly highlighted below.

11.5.1 Preference for informal channels of influence

The preference for practices that support informal channels of influence and decision-making appear to be reinforced by the realisation that the enactment of public deliberation is a performative empty ritual. The public and even organised groups still prefer to approach either legislative staff or legislators directly if they want to be sure that their concerns will be addressed. Informally approaching legislators or committee staff directly instead of fighting for submissions to be included during public deliberation still appears to be the most successful and therefore preferred channel of influence. Fears about embarrassing elites in public and falling out of favour, resulting in their submissions being discredited, mean that members of the public would prefer to address legislators through informal channels. Informal channels additionally provide an opportunity to secure some personal material benefit by the public, and the assumed debt the recipient of the patronage after that owes the legislator, sustains a mutually beneficial system. Public deliberation was supposed to create equal and transparent opportunities for decision-making and resource distribution; its failure to do so by virtue of empty rituals has instead sustained negative informal lobbying practices.

11.5.2 Apathy in engagement

The interaction of citizens with legislators, during public deliberation, reinforced for the public that their views more often than not were not taken into consideration, but also that legislators did not respect them. The failure by committees to produce reports that show how public submissions have directly influenced final decisions has also signalled to a majority of the public that their views are ignored or the legislature does not have sufficient power to influence final outcomes. The resulting frustration among

the public and the failure of public to meet their intended expectations has led to disengagement and apathy in taking part in public deliberation.

Legislative committees are in turn frustrated that the public are not interested in attending public deliberation when invited to do so. Legislators therefore also disengage and often signal through limited attendance or uninterested behaviour during public deliberation that the entire process is an empty ritual aimed more at fulfilling legal requirements than engaging in any substantive deliberation with the public. The mutual frustration by legislators and the public reinforces the use of informal channels of influence, as discussed above, while simultaneously creating discretionary power for bureaucrats, who are left to design, manage and report as they see fit a deliberation process whose owners and beneficiaries have all disengaged.

11.5.3 Gatekeeping by interest groups

The enactment of public deliberation and failure to critically consider the design of procedural rules that support broad public deliberation has led to gatekeeping of the process by organised groups. Organised groups not only have the social networks and resources to sustain continuous engagement with committee staff and legislators but they are also able to critically engage with the complex and large amounts of data often presented by committees for public deliberation. Organised groups often have staff who not only have the time to read and prepare technical submissions for the committee but are also often trained in lobbying and can provide well-articulated memorandums to committee staff using familiar legislative terminology.

Organised groups are therefore the most likely to repeatedly show up and engage the committee on a multitude of issues and some even become gatekeepers of the

deliberative process. Committee members in turn become sceptical of these organised groups and often see them as hired hands with political interests and intent on scuttling the committee agenda. There are often two implications of this result. Legislators distrust and disengage from submissions made by these groups, while these groups form closer links with committee staff who use their immense discretionary power in influencing committee outputs and discussions to ensure their submissions are taken into account. The submissions by the public are in turn pushed aside by staff in favour of the submissions by the organised groups, who are more vocal and influential.

The failure and consequences of the enactment of public deliberation, as shown above, demonstrate why context is essential in understanding the effects of public deliberation and what interventions would work best to maximise its benefits. Social and cultural factors such as the fear of embarrassing elites in public cannot be resolved simply by adding new procedures. Challenges such as inadequate resources for the public to prepare and engage effectively in numerous public deliberation opportunities as designed in this context requires critical thought on how information is packaged and what items are set out for deliberation. The public and committee members' behaviour during public deliberation must be understood in context before procedural changes are enacted, or practices declared as not deliberative.

11.6 RQ 4: What are the implications of the research findings for public deliberation in Kenya's legislatures at the national and subnational levels?

The case study of Nairobi and Mombasa subnational legislatures show that simply introducing deliberative practices into institutions without considering their cultural context can reduce institutional and decision legitimacy. Understanding the historical,

social and cultural context in which public deliberation is to be implemented as well as how it is conceptualised is critical to delivering on its ascribed benefits. Layering on of deliberative practices without regard for contextual factors is institutionalising failure. Legislatures are additionally peculiar institutions with procedural rules that must also be specifically adapted for public deliberation to ensure that they serve the public as primary clients in the context of public deliberation. The failure to do the foregoing and consequent performative enactment of public deliberation explains why contrary to expectations that mandatory public deliberation would improve public perceptions of institutional and decision legitimacy, public deliberation in the Nairobi and Mombasa county assemblies appears to have had the opposite effect. The deliberative practices instituted by the county assemblies appear to reduce public perceptions of the legitimacy of the county assembly and its committees as well as their decisions.

The creation of the subnational legislatures in Kenya's governance framework was intended to take policy decision-making as close to the public as possible. The objective was that people would have easier access to their elected leaders and play a greater role in decision-making, which would ultimately increase their sense of political efficacy and ability to hold their leaders accountable. The introduction of mandatory public deliberation was viewed as the intervention that would ensure sustained public pressure for accountability from elected leaders, ultimately producing better leaders focused on good governance and resolving the challenges of unequal resource distribution that had plagued the centralist state for years.

The theoretical arguments are sound, but the practical implementation does not conform to theory. The majority of practices by actors and audiences to the dilemmas

posed by public deliberation have been either resistant or half-hearted attempts at adaptation. There were no transformative practices observed that would lead to the attainment of the benefits often ascribed to deliberation. It is possible to argue that actors and audiences will, as a matter of instinct, initially attempt to adapt to dilemmas through practices that sustain the way of doing things. The dismantling of patronage and the excesses of executive-bureaucratic power, which deliver significant political and resource benefits, were not going to easily submit to new accountability processes, as has been demonstrated. The introduction of public deliberation was therefore never simply going to be the panacea for accountability, good governance and inclusion that was intended in the 2010 constitution. The emergence of a politically astute public, holding elected leaders accountable and ensuring more accountable governance that challenges established patronage behaviour, has continued to be elusive.

11.7 Contributions of the thesis

11.7.1 Empirical contribution

The thesis uses original primary data that has previously not been collected on Kenya's subnational legislatures. The empirical data can be further utilised by researchers for secondary analysis or to carry out comparative analysis with other primary data that may be collected on public deliberation in future. The empirical data additionally establishes that public deliberation does not always produce the benefits ascribed to it, as championed by deliberative democrats and discussed in Chapter 3. Public deliberation, when poorly executed, is perceived by the public to be performative and negates positive democratic outcomes associated with it. The empirical data also confirms that contextual considerations in the implementation of public deliberation are critical for its success and must be taken into account when designing public

deliberation processes. The transference of public deliberation processes without contextual adaptation means that public deliberation can be manipulated by existing actors and allows them to claim democratic achievements and processes they are not attaining.

11.7.2 Theoretical contribution

The research contributes to a significantly under-researched area in legislative studies. The contribution of the research is not only in advancing the under-researched area of the relationship between parliaments and citizens globally but narrows its focus to sub-Saharan Africa, in which research on legislatures is extremely scarce. The research therefore makes an important contribution towards the advancement of the study of African legislatures. The research further advances research on subnational legislatures, another significantly under-researched area outside of the state legislatures of the United States of America. Africa's subnational legislatures, much like its national legislative bodies, have also been ignored by academic research. The thesis makes an important contribution to research on Africa's subnational legislatures.

Baiocchi and Ganuza's (2016) arguments, about the importance of ensuring contextual considerations in designing successful public deliberation processes, are confirmed by the thesis. Post-colonial societies have important inherited governance traditions that affect the beliefs and consequent practices of people. International development agencies, often involved in the transfer of democratic innovations from the Global North to the Global South, should pay closer attention to pre- and post-colonial histories and cultures and the effect they have had on governance traditions. Designing successful public deliberation processes requires situational adaptation and may even require the

broadening of previously accepted definitions of what constitutes deliberation. The thesis challenges research that views deliberation in strictly procedural terms. The focus on proceduralism in deliberation addresses a pre-occupation with how deliberation is conducted, its setting ((Elster, 1998); see discussion in Chapter 3.4) or the binding nature of the outcome. The thesis instead contributes to theoretical arguments by deliberative democrats who advocate for more minimalist but broadly inclusive definitions of public deliberation. Such definitions may include, a greater focus on deliberative systems taking place at scale and involving varied interactions in any given society, venue or institution (Mansbridge *et al.*, 2012b; Mansbridge, 2015).

The thesis advances arguments in the literature about the benefits of public deliberation. The increased political efficacy across all respondents, including those who had not engaged in public deliberation but knew they had the opportunity to do so, shows that even knowledge among respondents that public deliberation is legally protected increases their political efficacy. All respondents acknowledged that public deliberation is important and should not be done away with even if current enactment is performative. Additionally, respondents willingly recognised the benefits of public deliberation when correctly enacted, proving that public deliberation can deliver on its benefits with the right situational conditions. The thesis, however, clearly contributes to arguments that situational conditions for public deliberation are an important pillar for its success. Failure to create the right situational conditions for implementing public deliberation will produce or reinforce the negative deficits of representative democracy that it is expected to address.

Finally, the thesis also makes an important contribution to the literature that legislative rules and procedures serve to inhibit the successful enactment of public deliberation processes. Legislative rules encourage staff to develop gatekeeping practices, encourage the preferential treatment of organised groups who take part in public deliberation processes and limit the ways in which committees are able to undertake deliberation. Legislative rules and procedures encourage performative public deliberation as they were not designed to facilitate the involvement of the public in legislative processes. The rules should be reviewed to allow for greater discursive collaboration between elected representatives and the public.

11.7.3 Analytical contribution

The research employs an interpretivist framework to legislative studies and thereby advancing methodological approaches applied to the study of legislatures. Historically, the field of legislative studies has adopted two main approaches. The first has been rational choice approaches, particularly in studies of the United States Congress, and institutionalist approaches in studies of the United Kingdom House of Commons. The application of interpretivism advances new approaches for studying legislatures, which are now only starting to emerge. The use of interpretivism also allows this research to focus on meanings, which allowed for a critical analysis of the importance of understanding contextual factors in the approach to and design of public deliberation processes.

The thesis adopted a qualitative research methodology and drew on the work of Bevir and Rhodes (Bevir, Rhodes and Weller, 2003; Bevir and Rhodes, 2006b, 2006a, 2010) to employ an interpretivist analytical framework. The choice to adopt an interpretivist

approach was informed by the focus on recovering meanings of actions for actors and audiences to help us understand their interpretations of public deliberation. Additionally, the analytical framework drew on the work of Jeffrey Alexander (2006; 2006) and Maarten Hajer (2005), which provided the analytical lens of performance. Performance provides a path through which narratives about public deliberation can be structured and recovery of stories undertaken. Stories are at the centre of Bevir and Rhodes's interpretive analysis.

The research contributes to existing knowledge through the further development of Bevir and Rhodes's interpretivist framework. Bevir and Rhodes establish the importance of recovering stories in carrying out decentred analysis. They however do not provide a path through which narratives can be accessed so as to recover the beliefs and practices of situated agents. How is it possible to look at the various structural components of the narrative so as to understand the plot? Through adopting the use of performance as an analytical tool to look at the main parts of the performance, it becomes possible to chart a path through the plot and determine various components of the narrative. Drawing on the work of Jeffrey Alexander (2006) and Maarten Hajer (2005), the researcher focuses on four basic elements of a social performance to establish the thread of the plot for the decentred analysis of Kenya's subnational legislatures. A diagrammatic representation of the applied analytical framework, as captured in Chapter 5, is presented below and provides an easily applicable and adaptable analytical framework that can usefully be applied to the study of public deliberation in other legislative contexts.

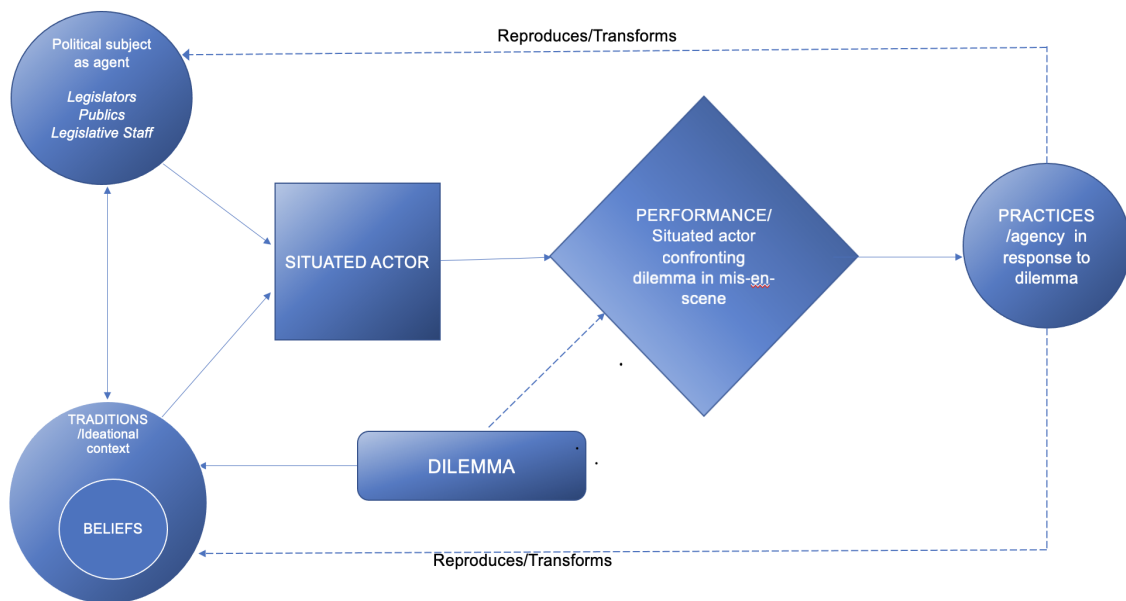


Figure 7 Representation of analytical framework

Performance permitted an examination of public deliberation as a cultural performance of deliberative law-making, with actors and audiences interacting on a stage using various symbols to communicate their messages and their meanings. Performance provides a way to chart the script of the story at the beginning of setting up for deliberation (the scene behind the stage) to the actual enactment of public deliberation (the progression on to the stage) and finally the end of public deliberation and reporting to the public (the postscript). The manner of recovery of stories in Bevir and Rhodes's interpretivism is left to the discretion of the researcher. The ambiguity means that researchers have no locus from which to begin telling the stories and ensure that every facet of it is explored. Adopting performance as an analytical framework for the recovery of stories enables precisely the structure that is missing in Bevir and Rhodes's interpretivism.

11.7.4 Policy contribution

The thesis makes an important policy contribution on the designing of public deliberation in legislatures. Legislatures must develop public deliberation processes that are not easily upended or ignored when faced with restrictive legislative rules and procedures. Providing new spaces for public deliberation that foster greater equality between legislators and the public is an important first step to ensuring effective public deliberation. Reviewing and revising the role that legislative committee staff play in the enactment of public deliberation is another policy area that requires urgent redress. The thesis also highlights the importance of legislatures in post-colonial societies, considering their contextual peculiarities in designing public deliberation processes if they are to ensure their efficacy and sustainability.

The findings from the primary data show that in implementing public deliberation more broadly in Kenya's legislatures the following policy concerns need to be addressed:

1. Legislatures should institute procedural measures that limit the executive's influence on legislative decisions or risk signalling to the public their capitulation to the executive and risk long-term erosion of public confidence in the legislature. Legislative authority has been hollowed out through the executive's continued dominance over its decisions.
2. Legislatures should create new spaces for public deliberation that signal equal power between legislators and the public during public deliberation. Legislative environments by their very nature create a power imbalance between the public and elected legislators. Engaging in public deliberation without instituting procedural measures that attempt to reduce these power imbalances will not only sustain public feelings of inadequacy and disempowerment but also

sustain practices by the public that resort to informal channels to ensure their interests are secured.

3. The urgent need for procedural reform in the enactment of public deliberation, from the preparatory to the reporting stage, should be undertaken. Legislatures need to carefully review how they introduce and enact public deliberation and constantly review what practices should be retained as effective and which ones should be discarded. Legislatures should adopt transformative practices and resist the temptation to switch back to the status quo or unconsciously embed practices that entrench executive power over the legislature at the cost of public accountability.
4. Legislatures need to critically examine and clearly define the role that legislative staff play in facilitating public deliberation. The discretionary power of legislative staff in influencing committee outputs as well as the access to and design of public deliberation is a serious concern that requires further research. Amendments to procedural rules should provide clear guidelines that guide the actions of legislative staff and the extent of their discretionary power at the different stages of public deliberation.
5. Finally, legislatures should ensure that, in designing public deliberation procedures for committees, there is clear communication on what happens at each stage of public deliberation and what the public should expect as outcomes. Managing public expectations is critical to acquiring and maintaining trust in the public deliberation process. The public should be made to understand that in taking part in public deliberation they are not replacing the representative process but supplementing it. The form this takes and how it is

implemented in the context of the legislature should be agreed together between legislatures and the public so as to ensure contextual concerns are considered and addressed in the design of public deliberation.

The recommendations above primarily address procedural changes needed by the legislature to counteract practices shaped by the governance traditions highlighted in the thesis. However, changing the underlying governance traditions themselves would be a far greater and more complex undertaking. The governance traditions highlighted in the thesis are not only politically expedient to the current political culture but would need to be tackled within broader processes of socialisation, including within domestic settings, through which many of the beliefs about political ethnicity and strong leadership are transmitted. Proposing procedural changes may seem counter-intuitive, given many of the research findings, but they provide not only a buffer to practices that will otherwise proceed unhindered but also in some instances an immediate means for alternative redress for citizens which they can legally take up when ignored as evidenced in Chapter 8.2. The culture change in this case may be gradually driven by slow-moving judicial processes. In the face of such a pace of change, that public deliberation is safeguarded by procedural confirmation should provide reassurance. Indeed, this confirmation may explain why despite a near universal perspective of the limits of public deliberation as currently in evidence, not one participant in this research wanted to see it removed altogether.

11.8 Limitations of the research

The number of research respondents, the number of research sites, and the fieldwork period were perhaps the most significant research limitations. The data on the

governance tradition of political ethnicity would have benefited from a more extended fieldwork period and bigger size research respondents because of its nuance. Practices and beliefs of political ethnicity are not something that respondents readily admit to as evidenced by Afrobarometer data discussed in Chapter 7. Therefore, a long period of ethnography and larger sample size would probably be best suited to uncovering beliefs and practices associated with this governance tradition. Various research sites would also have given critical comparative data on counties with a homogeneous ethnicity. However, a PhD's financial and time limitations meant that expanding the variables identified was not feasible. Generalisations to theory due to these limitations is also limited, but the thesis provides important insights for future research and theoretical development.

The practical challenge of access to participants in Mombasa was also faced by the researcher who had to work closely with the office of the governor to successfully conduct the fieldwork. It was not possible to organise the planned interviews or focus group discussions without the approval of the Governor's office. The influence on the governor on the responses of respondents could therefore not be discounted. Finally, working between two different languages posed a unique challenge in carrying out data analysis. The initial hurdle was posed when the researcher uploaded the data into the NVivo software for analysis. The software is intuitively designed to work in English, but a significant portion of the data was in Kiswahili. The first hurdle the researcher faced was deciding whether to use codes in English, in Kiswahili or in both languages. The researcher ultimately decided to work in English, but the result was that the researcher had to make decisions about translations of themes and what coding categories they suitably fell into. The use of thematic narrative analysis in presenting

the data so as to stay as close as possible to the meanings of participants meant that the researcher had to be careful in exercising licence in translation. The reflexivity to ensure that the researcher was not transposing her own biases during translation was a constant tension.

Future research could potentially consider carrying out the research on a larger scale to generate more primary empirical data that would generate similar themes across a larger sample.

11.9 Opportunities for future research

The research has made significant contributions to the still-understudied area of the relationship between parliaments and citizens both globally and more specifically in sub-Saharan Africa. The research has also particularly contributed to the significant gap in the literature on the study of legislatures in Africa, and specifically subnational legislatures on the continent. However, the research findings did highlight some areas that are open for future research opportunities, as highlighted below.

The first area that emerges as a potential subject for future research is examining the role of legislative staff as facilitators of public deliberation. The research findings show that legislative staff play a critical role in facilitating public deliberation, yet insufficient attention has been paid to their role and how it affects deliberative outcomes. The majority of substantive public deliberation on bills in the legislature occurs within the committee system of the legislature. Once a committee is finished with its bill review, bills usually move from committee to the plenary, where legislators vote on committee recommendations. Often members will defer to the committee position even though

major amendments to committee recommendations can be made or the committee report rejected.

The bill consideration process within the committee is often ambiguous and involves numerous participants giving multiple submissions for committee consideration on the matter under discussion. Legislative staffers are usually critically involved in negotiating and refining legislative provisions, which can sometimes be several hundred or several thousand pages of testimony and research. The division of labour between legislators and legislative staff allows committees to process voluminous information, weigh diverse considerations and refine final committee reports. Yet, there has been no systematic analysis of the ways in which the work of refining deliberation inputs is done by legislative staff. There has also been no research on the role they play as facilitators organising and scripting public deliberation in committees.

Existing research has studied bureaucrats working in the executive as well as paid professionals who facilitate deliberation in their professional role; however, there is yet to be sufficient research attention paid to legislative staff acting in similar capacities. The gap presents an opportunity for future research that examines the dynamics of legislative staff working as public deliberation facilitators in the context of their everyday roles.

The second area for potential future research that the thesis raises is the opportunity to carry out this research by applying the analytical framework to other subnational legislatures with similar contextual considerations. South Africa, for example, has elected subnational legislatures similar to Kenya, which are also required to undertake mandatory public deliberation on legislation. A comparative study using the analytical

framework employed in this research provides an opportunity for further research. The implications of South Africa's significant history of apartheid would provide interesting comparisons for how its own governance traditions have evolved and ultimately the meanings this has produced in interpretations of deliberation within its legislatures.

The third area for potential future research is to replicate the research in rural areas of Kenya so as to compare whether respondents in rural areas attach different meanings to public deliberation. Afrobarometer data for Kenya shows that citizens in rural areas engage more frequently than urban dwellers in community meetings. Additionally, a majority of Kenya's rural areas are largely ethnically homogenous. The two factors when coupled could produce interesting results about respondents' interpretations of public deliberation enactment and its consequent effects.

Public deliberation holds great potential for legislatures. Legislative committees, in particular, provide an excellent arena to develop and cultivate responsive public deliberation processes. Empirical evidence indicates that, if legislatures boldly embrace public deliberation and engage critically with evolving their procedural rules to design better public deliberation mechanisms, they will realise its benefits. A performative enactment of public deliberation that fails to account for contextual particularities only further highlights to the public the deficits of representative democracy and increases their apathy regarding legislative institutions. Legislatures should avoid retreating into a 'minimalism' and 'compliance-only' attitude. Instead, they should adopt processes of public deliberation that reflect its true spirit if they are to begin restoring public faith in legislatures and representative democracy more broadly.

~END~

12 LIST OF APPENDICES⁶

12.1 APPENDIX I: Interview questions

<u>INTERVIEW TARGET GROUP</u>	<u>INTERVIEW QUESTIONS</u>
Chairpersons of Budget and Appropriation Committees	1. What is public participation? 2. What purpose does public participation serve in committee business? 3. How does the committee review public participation submissions? 4. What criteria does the committee use to determine public participation submissions to be adopted? 5. How does the committee measure effective public participation? 6. How do you use public participation submissions in your capacity as the Committee Chairperson?
Secretariats of the Finance, Budget and Appropriation Committees in the County Assembly	1. What is public participation? 2. How does the Committee use public participation submissions? 3. How does the Committee measure effective public participation? 4. What role do committee staff play in reviewing public participation submissions? 5. What avenues do you use to invite people for public hearings?
County Executive Committee Members in Charge of Finance	1. How often do you or your staff attend public hearings? 2. Does the county assembly significantly alter budget documents submitted to them? 3. In reviewing county assembly tabled amendments to what degree are public participation submissions incorporated? 4. How often would you or your staff respond to questions raised by the public during public hearings on the budget documents? 5. Has public participation affected your engagement with committee members when discussing budget documents? 6. How has public participation affected public engagement with the budget process?
Non-Governmental Organisations	1. What is public participation 2. How do you as an organisation measure effective public participation 3. What changes have you observed in the conduct of legislative business since the institutionalisation of public participation? 4. In what ways does your organisation work with individuals or organised groups to enable them take part in public participation invitations of the county assembly? 5. In carrying out your work what is the nature of engagement you and your staff have with the members and secretariat of the county assembly committees on issues of interest to your organisation? 6. Has your organisation observed any changes in civic attitudes and behaviour with the institutionalisation of public participation?

⁶ The fieldwork instruments used 'public participation' to align with the Kenyan constitution term for public deliberation as it was easily recognisable to respondents. Public participation is the term frequently used to define citizen engagement in decision-making processes. However, when interrogated, public participation signals a move towards public deliberation through requirements for more discursive processes.

12.2 APPENDIX II: Focus group discussion questions

QUESTIONS FOR FGD 1 (HAVE PARTICIPATED)

1. What is public participation?

- **Moderator prompts**

- a. How do you define public participation?
- b. What made you decide to take part in the public participation exercise?
- c. What did you expect from a public participation exercise?

2. What does public participation achieve?

- **Moderator prompts**

- a. Briefly describe your public participation experience.
- b. What did you personally achieve from taking part in public participation?
- c. What did you think of submissions made by other people at the public hearing?
- d. What were your views of the committee following the public participation exercise?
- e. What were your views of the county assembly following the public participation exercise?
- f. Would you engage in future public participation activities? Why?

3. What is the role of public participation in the county assembly?

- **Moderator prompts**

- a. What is the purpose of public participation in the county assembly?
- b. How would you determine if public participation is achieving its purpose?

- c. How did your engagement contribute to the achievement of this purpose?

QUESTIONS FOR FGD 2 (HAVE NOT PARTICIPATED)

1. What is public participation?

- **Moderator prompts**

- b. How do you define public participation?
- c. What would you expect from a public participation exercise if you were to take part?
- d. Why haven't you taken part in public participation activities?

2. What does public participation achieve?

- **Moderator prompts**

- a. What is the purpose of public participation?
- b. Do you think public participation is important? If yes, why? If no, why?
- c. Have you taken part in other civic engagement activities in the past?

3. Do you think public participation increases public trust and legitimacy of committee's decisions?

- **Moderator prompts**

- a. What do you understand the role of the county assembly to be?
- b. Do you trust your county assembly? If yes, why? If no, why?
- c. Do you trust other arms of government? if so which ones and why?

12.3 APPENDIX III: Participant information sheet

DELIBERATIVE DEMOCRACY IN LEGISLATIVE COMMITTEES: INTERPRETING PUBLIC DELIBERATION IN KENYA'S SUBNATIONAL LEGISLATURES

Participant Information Sheet

Description of the research

The research is supported by the Commonwealth Scholarship Commission and forms part of a PhD study carried out by a postgraduate student at the University of Birmingham.

The objectives of this research are to explore:

- The effects of public participation on the process of legislative decision-making;
- Public perceptions of parliament due to increased opportunities for public participation;
- To investigate and compare the perceptions of participation (objectives and effects) among legislators and the public; and
- To examine the extent to which public participation occurring in legislative contexts can be defined as deliberation

Invitation to participate

You are invited to participate through completing a questionnaire, an interview, taking part in focus group discussion (FGD) and/or provision of further documentation. Individual interviews typically last around 1 hour while FGD's will last about 2 hours. All interviews and FGD will be recorded unless you request otherwise. Questionnaires will take on average 10 minutes to complete.

Participation is voluntary, and you are free to withdraw at any time. In particular, you are free to withdraw after the interview at any point before 30th June 2018.

Please seek further clarification from the researcher if there is anything which you do not understand prior to participating.

Your data will be treated as **anonymous** and held by the researcher. Reporting will be **anonymised** with any quotations used being anonymised, and where necessary details changed to protect anonymity. Identities will only be given where express permission has been given by the participant. In line with the University of Birmingham's Code of Practice for Research, information will be held securely for up to ten years and then destroyed.

All interviewees will on request be provided with a report of the interview transcript within four months of the interviews. Transcripts may be amended and published after consideration of any further feedback. The findings from the research will be used to

inform a further report on key policy implications for legislatures to consider in designing public participation rules, legislation and engagements.

Contact details

Academic supervisor:

Professor Vivien Lowndes, email

Post graduate researcher:

Brenda Ogembo, email

12.4 APPENDIX IV: Participant consent form

DELIBERATIVE DEMOCRACY IN LEGISLATIVE COMMITTEES: INTERPRETING PUBLIC DELIBERATION IN KENYA'S SUBNATIONAL LEGISLATURES

Consent Form

The purpose of this form is to ensure participants understand why they have been invited to take part in the research, and what will happen to the information they provide.

- **Why are we doing the research?** To collect data on citizen engagement processes in legislative contexts which will enable the assessment of the effects of public participation in legislative decision-making.
- **What will happen with the results?** The results will be used to inform analysis of effects and effectiveness of participatory mechanisms in legislatures. Particularly the results provide key insights on the effects of public participation on decision-making, increased trust and institutional legitimacy. Results will also be used to inform a policy report on procedural considerations in designing public participation mechanisms for legislatures.
- **Audio recording:** This discussion will be recorded to make sure we have an accurate record. The recording will be shared with a transcription company who will type it up. It will not be shared with anyone else outside the Research Team.
- **Confidentiality:** This research is anonymous. Findings used in research reports will be anonymous; names will not be included unless expressly consented to.
- **Right to withdraw:** Participation is voluntary. Once you have taken part in this discussion you will be able to withdraw your comments from the research, without providing any specific reason. In particular, you are free to withdraw after the interview at any point before 30th June 2018. Your comments would not then be taken into consideration in the review.
- **Data retention:** In line with the University of Birmingham's Code of Practice for Research, information, including audio recordings and notes discussions, will be held securely for up to ten years and then destroyed.
- **Report:** An interview research findings report will be distributed to all participants within six months of the session taking place.
- **Complaints process:** If you have concerns about the research please contact Prof Vivien Lowndes by emailing

Permission

I give my permission to take part in this discussion. I understand the purpose of the research and agree the discussion can be recorded.

Name (Print):

Signature:

Date:

More Information

If you if have any questions about the research please contact: Brenda Ogembo,
Post-Graduate Researcher, Tel: and Email:

12.5 APPENDIX V: Fieldwork schedule and research participants codes

DATE	ACTIVITY	LOCATION	CODE
28/02/2018	Interview with International Budget Partnership (IBP) staff	Nairobi	CSO Actor-03
07/03/2018	Interview with The Institute for Social Accountability (TISA) staff	Nairobi	CSO Actor-01
01/03/2018	Field visit to Clerk of Nairobi County Assembly	Nairobi	
15/03/2018	Interview with chairperson, Mombasa County Assembly Committee on Finance, Budget and Appropriations	Mombasa	FCC-01
15/03/2018	Interview with secretariat of Mombasa County Assembly Committee on Finance, Budget and Appropriations (GROUP INTERVIEW – 4 participants)	Mombasa	FCSM-01 FCSM-02 FCSM-03 FCSM-04
15/03/2018	Interview with staff of Haki Yetu	Mombasa	CSO Actor-05
15/03/2018	Interview with the County Executive Committee Member for Finance and Economic Planning Mombasa County (GROUP INTERVIEW – 4 participants)	Mombasa	CECF-01
22/03/2018	Mombasa Focus Group Discussion -Have not taken part in public deliberation	Mombasa	FGD-M1
22/03/2018	Mombasa Focus Group Discussion -Have taken part in public deliberation	Mombasa	FGD-M2
28/03/2018	Interview with secretariat of Nairobi City County Assembly Committee on Finance, Budget and Appropriations (GROUP INTERVIEW – 4 participants)	Nairobi	FCSN-01 FCSN-02 FCSN-03 FCSN-04
11/03/2018	Interview with staff of Mzalendo	Nairobi	CSO Actor-02
16/04/2018	Nairobi Focus Group Discussion -Have not taken part in public deliberation	Nairobi	FGD-N1
16/04/2018	Nairobi Focus Group Discussion -Have taken part in public deliberation	Nairobi	FGD-N2

17/04/2018	Attended Nairobi City County Assembly public deliberation on the County Fiscal Strategy paper	Nairobi	
17/04/2018	Interview with chairperson, Nairobi City County Assembly Committee on Finance, Budget and Appropriations	Nairobi	FCC-02
19/04/2018	Interview with the former County Executive Committee Member for Finance and Economic Planning Nairobi County	Nairobi	CECF-02
24/04/2018	Skype Interview with staff of Kerio Centre for Community Development and Human Rights	Nairobi	CSO Actor-07
26/04/2018	Interview with The Institute for Economic Affairs (IEA) staff	Nairobi	CSO Actor-06
30/04/2018	Interview with staff of Uraia Trust	Nairobi	CSO Actor-04

KEY:

FGD – Focus Group Discussion

FGD-M1: Represents all the Mombasa County FGD research participants who have never taken part in public deliberation

FGD-M2: Represents all the Mombasa County FGD research participants who have previously taken part in public deliberation

FGD-N1: Represents all the Nairobi County FGD research participants who have never taken part in public deliberation

FGD-N2: Represents all the Nairobi County FGD research participants who have previously taken part in public deliberation

CSO – Civil Society Organisation

FCC – Finance Committee Chair

CECF – County Executive Committee Finance

FCSM – Finance Committee Secretariat Mombasa

FCSN – Finance Committee Secretariat Nairobi

12.6 APPENDIX VI: NCCA public deliberation advertisement on CFSP

NAIROBI CITY COUNTY ASSEMBLY

Telegraphic Address
Telephone 020 2216151



Email: clerk@nrbcountyassembly.go.ke Web: www.nrbcountyassembly.go.ke

In the Matter of consideration by the Nairobi City County Assembly, of the Nairobi City County Fiscal Strategy Paper 2018-2019.

Article 196(1) (b) of the Constitution provides that "a County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees." Standing order 121(3) states that "the Sectoral Committee to which a Bill is Committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the Assembly."

SUBMISSION OF MEMORANDA/PUBLIC PARTICIPATION

The Nairobi City County Fiscal Strategy Paper 2018-2019 was laid on the floor of the house on Thursday, 1st March, 2018 and committed to the Finance Budget and Appropriation Committee and the sectoral committees for consideration and thereafter submission of a report to the Assembly within twenty days.

Pursuant to Article 196(1) (b) and Standing Order 121(3), the Finance, Budget and Appropriation Committee invites interested members of the public to submit any representations they may have on the County Fiscal Strategy Paper 2018-2019. The representations may be hand delivered to the **Clerk of the Nairobi City County Assembly, P.O BOX 45844 – 00100, City Hall Building, 2nd Floor, Room 273, Nairobi** or by email clerk@nairobiassembly.go.ke to be received on or before, **Friday, 23rd March, 2018.**

There will be an open public participation forum on **Monday, 26th March 2018, at Charter Hall – City Hall from 10.00am.**

Copies of the Nairobi City County Fiscal Strategy Paper 2018-2019 can be accessed from "www.nairobiassembly.go.ke"

JACOB NGWELE
CLERK, NAIROBI CITY COUNTY ASSEMBLY

12.7 APPENDIX VII: Select scans of field work notes

reduced friction and agitation.

led to inclusion. & has an interest.

Greater awareness of govt. activities.

→ The full house of the assembly is in the party of the governor & therefore they work together. Does this blur accountability.

changes made were insignificant.

¹⁻⁰⁵
- Primary, Secondary, Tertiary. public participation.

- Need to educate people in PP.

- Same people participate over and over

- learn about the needs of people

- No guidance or leave to adopt submissions for the committee.

- National govt. should provide an act that will guide how to adopt submission. & people

- Memoranda or public hearing.

- legislators take advantage of too people to pass laws

- Legislators ~~work~~ disappear after they get elected.

- There is an understanding and you understand how it operates.

- Increases civic awareness

- Declaration and recording does not mean that things will be implemented.

- People don't trust the County assembly. They eat money & take care of their interests.

ally participate.

-The County assembly is expensive and expensive things it does that are not there.

-MCA are simply intended in allowances.

-There are private with no follow up

-People don't trust the County Assembly. The power is seen to be within the Executive.

-The County Assembly

dependant on your MCA and how active. Let's see.

It only deals with things that affect them and their families directly.

-Some MCAs are interested in values, others are that it doesn't matter.

-It seems to refer to engage with the MCA and other elected leaders even though they are seen not to have influence part.

-Observable changes is what people use to determine the

documentation being one.

-There is a concern that the raised during the process don't concern the issues being discussed

-Concerns about housing program who will benefit. How will housing projects be involved in the program.

with urban agriculture programs support existing programs or start new program
-Spent ground & allocation for 5m and road has gone through.

The term considerations should be given consistently used

- The members & staff should work to laugh at people during demonstrations who may not be able to communicate effectively.

- Teaching parents so that children do not get caught up in cure.
- Single mothers who are unable to parent their child
- Parents for children & teenagers
- Strengthening communities

Some questions were answered during the public hearing but not all.

- The discussion acknowledged the challenges of PPO efforts to improve lives of people participating

- A lot of the coordinators were community leaders or heads of CBOs and not just any member of the public.

The interdependence of public participation of public hearing. The plan seemed to capture this

you said would be done.

Public Participation Experience

Rubber stamping things. Nobody is listening. Leaders who people expect don't slow up. Failed expectations:

- Limitation of time to speak.
- County government pays people
- Difficulty in reaching your MCAs & other elected reps

- Absence of elected leaders.
- Decisions are already made.
- Final documents don't incorporate views.

- Memos submitted are not

discussed. Citizens views are dismissed.

- No views are considered and they do what they want.
- People don't read newspapers

(posters, local radio, ward admin)

- People don't get a chance to discuss their memoranda

→ Discarded in information documents are given out the day off.

- ~~Area~~ As the Chairman of the Committee is your MCA you don't contribute so as not to embarrass

people to speak.

During public forums don't listen and they laugh & giggle. Madhavan.

- Those who have influence manipulate MCAs & ward administrators

- Corruption.

- People will go for PP to see their MCAs.

PP from the Executive is viewed as more useful because all resources & decisions are held at the Executive.

- The County Executive appears to at least work
- MCAs avoid the public.

- Bureaucratic processes of the County Executive and County Assembly make the CA appear helpless.
- Not enough time to contribute.

- Lack of capacity of MCAs. (no judge because you did not vote for your MCA. MCAs don't understand their role.
- MCAs help only those who they know.

- Committees don't take the views seriously. It's simply for list of participants and photos.

- MCAs avoid public forums
- Attitude towards common man. They select people

- MP send you to your MCA who discriminates based on tribe

Purpose of PP in the County As

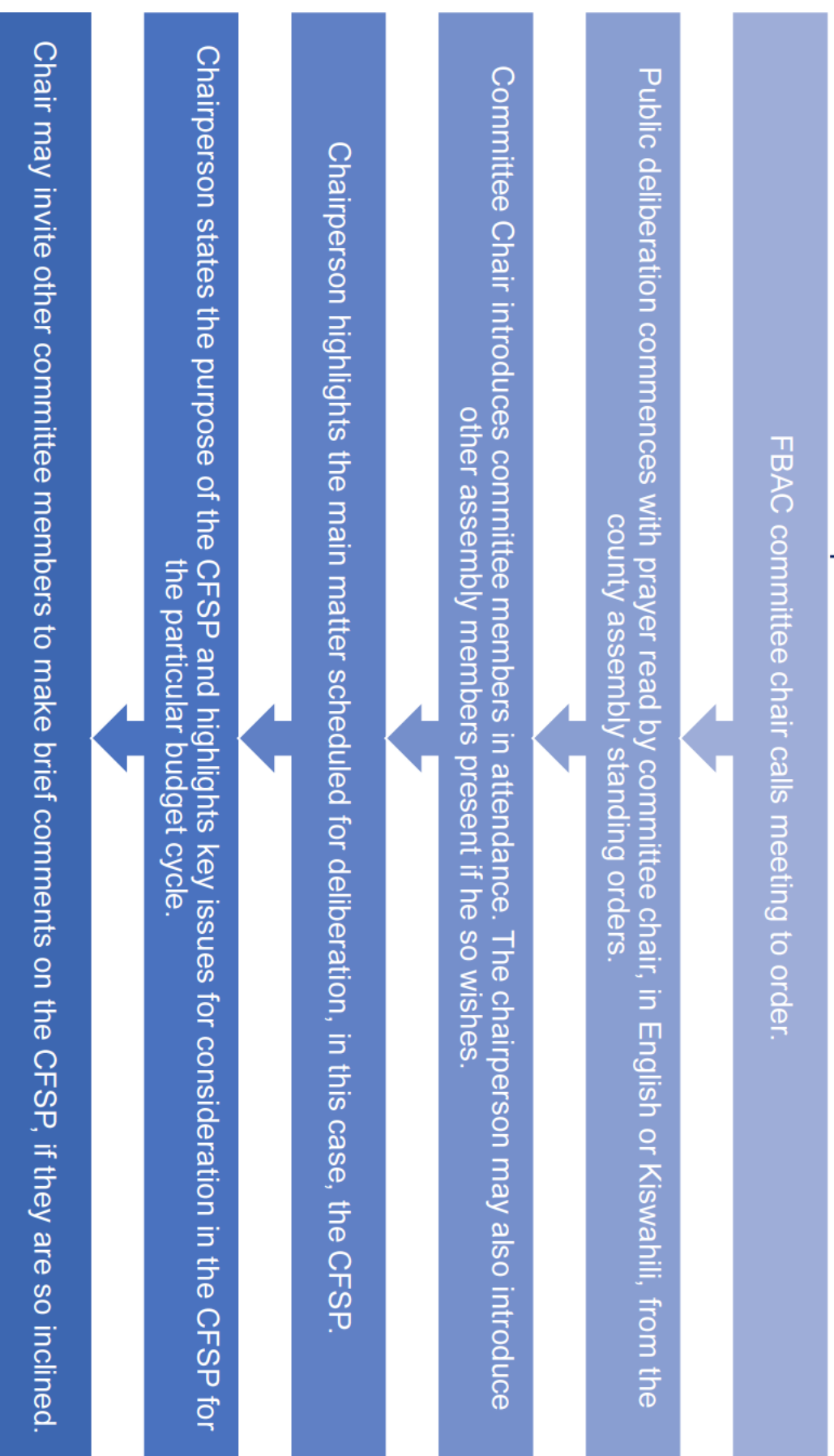
- To inform the MCAs about what the public want
- Helps avoid conflict.

- Works better people are not rebelling. People are willing to work together with govt

PP is being used to blind the public.

The MCA is seen to be powerless due to lack

12.8 APPENDIX VIII: Public deliberation process in the committee



If no committee member wants to make comments or after they have made their comments, the chairperson will open the deliberation proceedings to the public to make their submissions.



The Chairperson, under guidance from the committee clerk, will often invite organised groups to make their submissions first. Committee members may question the person submitting their views. The public can also ask questions and seek clarification on the submissions made by the different groups. All questions must be addressed through the chairperson. The discussions are expected to be limited to the subject of the CFSP.



Ordinary members of the public will often be invited to make their submissions next. They too can be questioned by any committee member on their submissions. They can also use their time to seek any clarifications they want on the CFSP. Other attendees can also ask questions and seek clarification on the submissions. All questions must be addressed through the chairperson.



Once submissions are complete, the chairperson will usually summarise the main issues that were canvassed during the public deliberation. The chairperson may make a commitment that the committee will review all submissions presented and capture their decisions in the committee report.



The public deliberation will then be adjourned if there is no other business for the committee to transact on that day.

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