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Abstract

After Kenya adopted a new constitution in 2010, the country embarked on extensive citizen-oriented reforms targeted at improving the performance of key public institutions and Kenyans’ opinions of it. Much scholarly effort has gone into understanding the effects of these changes. This attention has disproportionately been on state institutions and political elites. The Kenyan public’s attitudes and behaviours have not been sufficiently explored. The few studies devoted to systematically studying Kenyans’ political attitudes employ a quantitative approach, which is ill-suited to unravelling complex realities. This limitation drives this thesis to adopt a qualitative approach to examine Kenyans’ appraisals of institutional performance. Specific institutions studied are the Electoral Commission of Kenya (ECK), the Independent Electoral and Boundaries Commission (IEBC), and election courts. The goal is to determine the extent to which Kenyans’ appraisals reflect the actual performance of institutions.

Questions informed by theories of institutional performance (Mutua 2001; van de Walle 2001; Bierschenk & Olivier de Sardan 2014) and public attitude formation (Southwell & Yzer 2007; Shah 2015; Nyabuga & Ugangu 2018; Orji 2019) guided the investigation. One is, how has the social and political environment within which institutions are embedded shaped ECK, IEBC, and courts’ performance from 2002 through 2017? Another is, how have the internal structures, norms, and processes of ECK, IEBC, and courts affected their performance from 2002 through to 2017? Finally, I ask, how have Kenyans’ sources of information influenced their appraisals of the performance of ECK, IEBC, and courts from 2002 through to 2017? Fieldwork was conducted in Nairobi and Nyamira counties, Kenya. Mixed qualitative methods comprising one-on-one and group interviews of over 150 people of diverse backgrounds, observations, and analysis of the content of organisational, social and traditional media, and scholarly materials were employed during data collection.
Findings from the analysis of election management, electoral dispute resolution, and Kenyans’ appraisals of them enable the understanding of the research problem. The actual performance of institutions and citizens’ appraisals of it are reflective of each other insofar as we consider that: both are characterised by successes/positives and failures/negatives emanating from the fusion of institutional and environmental influences; secondary or peripheral appraisals are rooted in citizens’ unmediated experiences/observations of institutional performance; and citizens can infer their primary or overall appraisals from their own interactions with, or observations of, institutions under the conditions in which they may deviate from their preferred candidates/parties’ stance on an institution’s work.

Since partisan sensitivities primarily direct citizens’ overall appraisals, the thesis asserts that the actual functioning of institutions and the public’s overall appraisals of it are fundamentally unreflective of one another. A shift in a political party/candidate’s position on the overall quality of an institution’s work is likely to induce a corresponding shift in their supporters’ ideas of the quality of that institution’s work. While supporters of election and electoral petition winners tend to judge election management and electoral dispute settlement processes and outcomes favourably, supporters of election and electoral petition losers are disposed to adjudge these contests unfavourably. The thesis concludes that partisan considerations mainly underlie the apparent inability of institutional reforms to uniformly improve citizens’ attitudes towards the work of public institutions.
Lay Summary

Institutional reform is a widely used approach for improving the state’s provision of public goods and services and the public’s views about the state’s work. This was used after the 2007-08 post-election violence in Kenya. A new constitution was promulgated in 2010. That allowed for changes envisioned to enhance the efficiency, effectiveness, and independence of several public institutions, including the police service, electoral commission, and courts. Scholars have devoted a lot of attention to shedding light on the consequences of these changes. This effort has predominantly focused on uncovering how the strengthened institutions function and how political elites experience and navigate the new institutional terrain. How lay citizens engage with the workings of state institutions has not been purposely investigated by the majority of the extant research. The few studies committed to this endeavour rely on statistical approaches. With their eyes on generating generally applicable insights, these studies do not sufficiently explore and clarify context-specific nuances in the public’s understandings of institutional performance. The goal of this thesis is not to simply reveal and explain these complex realities, but to examine the extent to which the public’s ideas of the work of public institutions are consistent with the actual performance of institutions. The central argument of the thesis is that while some similarities exist between institutional performance and citizens’ views of it, the two fundamentally do not reflect one another. That is because partisan considerations, rather than actual institutional functioning, largely motivate citizens to rate an institution’s work positively or negatively. This mainly explains why it appears that institutional reforms are unable to uniformly stimulate the public’s satisfaction with the work of the state.

Because public goods and services are numerous and no research targeted at exploring them in depth can cover all, this thesis only clarifies how elections have been managed and electoral disputes have been settled in Kenya between the 2002 and the 2017 electoral periods, as well as how Kenyans have evaluated these processes and their outcomes. The Electoral
Commission of Kenya (ECK) managed the 2002 and 2007 elections. As part of the post-2010 reforms, the Independent Electoral and Boundaries Commission (IEBC) was founded to permanently replace ECK. IEBC conducted the 2013 and 2017 general elections. Specific courts were authorised to hear and pronounce judgement on disputes associated with elections. For instance, had there been presidential election petitions in 2002 and 2007, a High Court would have resolved them. The newly formed Supreme Court adjudicated presidential election petitions in 2013 and 2017. Kenyans’ appraisals of the delivery of elections and electoral justice before and after 2010 have been polarised. While some see electoral and judicial processes and outcomes as efficient, effective, and fair, others perceive them as ineffective, inefficient, and unfair. Comparing election management and electoral dispute settlement, on one hand, with Kenyans’ appraisals of them, on the other hand, helps uncover the extent to which these sets of realities mirror one another.

I lived in Kenya’s Nairobi and Nyamira counties, where I collected the requisite information for fulfilling the research goal. Groups and individuals from whom information was obtained include electoral and judicial personnel, employees of both institutions’ international and local partners, civil society actors, academics, journalists, political party representatives, and Kenyans unaffiliated with the two institutions. Information was obtained through one-on-one and group interviews, observation of events and people, and analysis of social and traditional media contents and organisational and academic materials. This information gathering methodology enables the thorough exploration of Kenyans and judicial and electoral personnel's actions and views as well as the forces that drive them.

This thesis builds on existing knowledge on how institutions work and how citizens form opinions about it. Political studies often portray implemented public policies in Africa, in general, and Kenya, in particular, as unfairly favouring executive governments and their supporters, to the disadvantage of the opposition. Contesting this, the thesis demonstrates that within and across electoral periods and localities, we can find intricate combinations of (in-
effective, (in-)efficient, and (im-)partial election management and electoral dispute settlement processes and verdicts. For instance, while the 2002 general elections are usually touted as the best-managed elections in Kenya, this thesis shows that the ECK chairperson disregarded the electoral rules and procedures when he declared the presidential election results. That means, no institution’s work can be said to be completely perfect or imperfect. The political studies are inclined to attribute ‘the poor state of affairs’ to executive governments’ manipulation of other institutions’ work to their advantage, but this thesis maintains that executive influence is only one of many forces that shape the delivery of elections and electoral justice. Depending on the context of analysis, these influences, which originate from within and outside of courts and electoral commissions, can promote or undermine election management and electoral dispute resolution.

Through official and unofficial avenues such as financial and technical assistance, logistical arrangements, material resource availability, the threat of and actual violence, recruitment and dismissal of institutional personnel, and employee commitment to institutional and personal means and ends, executive governments, legislators, development partners, businesses, civil society organisations, opposition parties, and party supporters shape election management and electoral dispute settlement in Kenya. To illustrate, the threat of and actual violence to electoral officials and processes had opposing effects in 2007. Threats from the opposition initially deterred ECK’s chairman from declaring acclaimed compromised results, but those from the government apparently later propelled him to proceed with the declaration. Moreover, ahead of the 2017 polls, the judiciary embraced technical support from the International Development Law Organisation (IDLO). Best practices from IDLO-sponsored judicial benchmarking trips to countries such as Ghana and India improved the resolution of electoral petitions. While diverse fears and desires associated with the said influences incited electoral and judicial personnel to act in diverse ways, officials sometimes did what they preferred. The findings lead me to argue that official and unofficial forces internal and
external to institutions combine to complicate institutional performance in different contexts.

Public opinion research, which is dominated by statistical approaches, shows that citizens perceive institutional performance as trustworthy or untrustworthy and satisfactory or dissatisfactory. These binaries come out in Kenyans’ assessments of election management and electoral dispute settlement processes and outcomes. What this thesis adds to the existing studies is that these public attitudes are two-dimensional. Specifically, an individual may express what appears as contradictory assessments of an institution’s work. To substantiate, an individual may express satisfaction with his/her personal balloting experience at a polling station and still proclaim that the overall official presidential election results are rigged. This suggests that a citizen can have primary (overall) and secondary (peripheral) appraisals of an institution’s work.

Scholars have offered different explanations for the public attitudes. Public attitudes are said to be products of social and traditional media (mis-)information, physical interpersonal exchanges, first-hand observations of an institution’s real work, and political parties and candidates’ proclamations. This thesis modifies ideas about how these forces shape opinions. It establishes that while they collectively influence Kenyans’ understandings of election management and electoral dispute settlement, the degree of their effects are not the same every time and everywhere. As an example, in their secondary appraisals, Kenyans with balloting experiences tend to rely more on their observations of the efficiency and effectiveness of ECK and IEBC personnel at their polling stations. Those without direct exposure to, say, electoral courts still provide overall appraisals of the freeness and fairness of these courts’ procedures and verdicts. The thesis traces these appraisals to information about institutions that citizens mostly acquire from their preferred political parties and/or candidates. Since primary appraisals usually supersede secondary appraisals, the thesis argues that partisan influences tend to explain the polar assessments citizens of diverse backgrounds make about the overall quality of an institution’s work. Unlike earlier studies that suggest
an unshakable relationship between citizens and their preferred sides of the political divide, this thesis demonstrates that Kenyans sometimes deviate from their party or candidate’s position on the quality of electoral petition and election procedures and decisions. In such instances, citizens tend to consider more seriously information received from alternative sources such as direct observations of the real work of institutions and news about institutional performance circulated by the mainstream media. These findings point to citizens’ exercise of power as they relate to the ‘determinants’ of their opinions.

Consistencies and inconsistencies can be found between election management and electoral dispute settlement in Kenya and Kenyans’ assessments of these processes and their outcomes. Regarding the similarities, first, both are characterised by complex combinations of successes/positives and failures/negatives mostly attributable to the interaction between institutional and environmental forces. Second, secondary assessments are informed by citizens’ first-hand experiences of an institution in action. Third, when a person deviates from his/her party or candidate’s stance on the quality of institutional performance, he/she may reference his/her personal observations in his/her overall evaluation. With partisan considerations being the main driver of the public’s overall appraisals, the thesis insists that the actual performance of institutions and citizens’ assessments of it are fundamentally disjointed. This is the foundation of the central argument of this thesis.
Acknowledgements

But for the steadfast and generous support of many individuals and groups, I would not have started and completed this doctoral thesis. I, therefore, reserve this space to show my heartfelt appreciation to them.

I would first like to express my utmost gratitude to my supervisors. During the course of my doctoral studies, my supervisory team changed. It initially consisted of Drs Thomas Molony, Sara Rich Dorman, and Zoe Marks. Dr Kevin Donovan later joined when Dr Marks departed The University of Edinburgh. Regardless of the composition of the team, I have always had very dedicated and supportive advisors who have not only generously shared their scholarly knowledge and skills with me but have also provided me with the needed pastoral care for this long, tedious PhD journey. Their influence on my research is so significant that when I read particular chapters, sections, paragraphs, and sentences of this thesis, I can vividly recall how each of them constructively influenced my thinking and writing. Words cannot sufficiently represent the depth of my gratitude to them.

Many thanks to the sponsors of my studies, without whom this thesis would not be possible. I obtained generous scholarships that catered to my tuition and living expenses from the Catto Charitable Trust and the Graduate School of Social and Political Science (GSPS). I would like to thank Drs. Thomas Molony and Barbara Bompani for supporting my attempt to secure these scholarships. Fieldwork grants from the Catto Charitable Trust and the French Institute for Research in Africa, Nairobi (IFRA) enabled me to live and collect data in Kenya. The Catto Scholarship further enabled my attendance of academic conferences, where I received useful feedback on draft thesis chapters, in the UK, Ghana, and Canada. Tutoring jobs from the School of Social and Political Science did not only grant me invaluable teaching experience but also additional funds. This was especially helpful at the latter stages of my studies. I am deeply thankful for these generous funds, which afforded me the privilege of concentrating on my studies.
Advice from other academics in and outside of The University of Edinburgh has been invaluable to my academic journey. I am thankful for the critical role Professor Paul Nugent, The University of Edinburgh played in the design of this thesis. Two chapters of this thesis can be credited to his foresight during his examination of my end of first-year transition board paper. Other Edinburgh faculty members whose support deserve particular mention are Drs Andrew Bowman, Jose-Maria Munoz, and Akin Iwilade. I am also indebted to my MA major research essay advisors, professors Khaled Mustapha Medani and Rex Brynen of McGill University, Canada. They piqued my interest in conflict and state-building. Professor Medani, moreover, persistently encouraged me to look to Kenya for answers to questions I had about democratisation in Africa. Intellectual debates I have had with professors Medani and Aaron Erlich (also of McGill University) have equally shaped my thinking about issues in this thesis. Conversations with the Strathmore University lecturer John Osogo Ambani, the United States International University lecturer Njoki Wamai, the University of Birmingham professor Nic Cheeseman, and retired professors Yash Pal and Jill Cottrell Ghai deepened my understanding of Kenyan politics. Professors Ghai and Ghai and Dr Joost Fontein (formerly with the British Institute in Eastern Africa, Nairobi) particularly facilitated my access to information by introducing me to persons and organisations relevant to my research. Their generosity and care made me feel at home while living in Kenya. Finally, many thanks to my long-time mentors and friends Drs Mohamed Sesay of York University, Canada and Philip Attuquayefio of the University of Ghana, Ghana for continuously boosting my morale and intellectual curiosity.

Furthermore, I would like to thank everyone I came into contact with during my fieldwork. Many thanks to my research participants for their generosity with their time and knowledge, among other resources. These resources actually brought the thesis to life. Organisations that especially advanced my cause include the Independent Electoral and Boundaries Commission (IEBC), The Judiciary of Kenya, the International Commission of Jurists – Kenya (ICJ-K), and the Elections Observation Group (ELOG). Among
the people who deepened my insights into Kenyan affairs, opened many doors for me, eased my stay in Kenya, and sustained my interest in Kenyan affairs are Isaack Otieno, Nancy Chepkoech Muigei, Samuel Olteitia Pere, Ronald Gesore, Roselyn Kang’ara, Regina Opondo, Njonjo Muse, Jane Serwanga, Elsy Sainna, Zeph Aura, Dr Cecilia Rachier, Eric Mugendi, Samwell Muchucha, Tirop Kitur, Syokau Mutonga, Farida Luthando Malala, Mirjam Kuschnitzki, Kadara Swaleh, Mogoria Nyongesa, and Penina Kimani. Because of these people and many others, Kenya now feels like home. As such, I am constantly looking for a chance to return.

Whenever the PhD journey felt endless and difficult, I depended heavily on my family and friends to help me through it. The ultimate source of emotional strength for this study came from my loving family. Persistent prayers, love, patience, and encouragement from my mum, Elisabeth Akyaa Brobbey, and my sister, Irene Ama Brobbey, kept me going. My former and present colleagues Dr Patricio Cuevas-Parra, Robert Nayan, Dena Arya, Kamau Wairuri, Denis Galava, Dr Robert Macdonald, and Patrick Mutahi equally deserve a special mention for their assistance during my design of this research, analysis of data, and expansion of my social network in Kenya. As well, I am deeply grateful for the intellectual and social support given to me by Francis Yaw Brobbey, Francis Kwadwo Brobbey, Nana Professor Edward Ofosu Asante, Nana Yaa Faibille, Kumiwaa Asante, Kwabena Asante, Beatrice Brobbey, Egbert Faibille Jnr, Charlotte Ahwoi, Dr Nathan Andrews, Dr Blair Rourke, Sonia Ella Keza, Naana Efua Halm, Afia Baawa Afriyie, Victor Sam, Richard Ekechukwu, Kristin Fedeler, Denise Eke, Dr Ben Appiah, Aurore Sokpoh, Nana Opoku Agyemang Prempeh, Amit Hossain, Kamya Choudhary, Sulian Lize, Aidan Barlow, Akua Darko, Francis Ansong, Delanyo Quayson, Keskine Owusu Poku, Naa Ayelesa Quaynor-Mettle, Naana Efua Halm, McBen Asamoah, Afua Asantewaa Amoo, Michael Danso Darkwah, Dr Hadija Mwenyango, Cynthia Uwicyeza, Emma Eliasson, Clarine Mukendi, Cheryl Otoo, Wala Adil Salman, Elisa Gambino, Elda Stoupa, Emmauel Oluwole Oni, Julius Kob, Innocent Badasu, Crispin Charles, Robert Stewart, Simeon Koroma, Natasha Dyer, Dr Alex Remond, Camille Maubert, Prince...
Chakanyuka, Dr Hugh Lamarque, Dr Brooks Marmon, Dr Clayton Boeyink, Dr Juliette Kariuki, Dr Pete Kingsley, Dr Alexander Bud, Dr Declan Murray, Dr Maurice Hutton, Dr Steve Kerr, Lorenzo Violani, Arturo Beckles, Dr Monica Trevino, and members of the Moray House School of Education, The University of Edinburgh. I will forever cherish your collegiality, knowledge, recommendations, friendship, and pastoral support.
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<th>Full Form</th>
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<tbody>
<tr>
<td>AC</td>
<td>Africa Confidential</td>
</tr>
<tr>
<td>BAKE</td>
<td>Bloggers Association of Kenya</td>
</tr>
<tr>
<td>BVR</td>
<td>Biometric Voter Registration</td>
</tr>
<tr>
<td>CCK</td>
<td>Communications Commission of Kenya</td>
</tr>
<tr>
<td>CEC</td>
<td>Constituency Election Coordinators</td>
</tr>
<tr>
<td>CEM</td>
<td>County Elections Manager</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CHRIPS</td>
<td>Centre for Human Rights and Policy Studies</td>
</tr>
<tr>
<td>CIPEV</td>
<td>Commission of Inquiry into Post-Election Violence</td>
</tr>
<tr>
<td>CJ</td>
<td>Chief Justice</td>
</tr>
<tr>
<td>CKRC</td>
<td>Constitution of Kenya Review Commission</td>
</tr>
<tr>
<td>CORD</td>
<td>Coalition for Reforms and Democracy</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
</tr>
<tr>
<td>DEC</td>
<td>District Election Coordinator</td>
</tr>
<tr>
<td>DFID</td>
<td>Department for International Development</td>
</tr>
<tr>
<td>DGE</td>
<td>Donors Group on Elections</td>
</tr>
<tr>
<td>DP</td>
<td>Democratic Party</td>
</tr>
<tr>
<td>DPO</td>
<td>Deputy Presiding Officer</td>
</tr>
<tr>
<td>DRO</td>
<td>Deputy Returning Officer</td>
</tr>
<tr>
<td>EACC</td>
<td>Ethics and Anti-Corruption Commission</td>
</tr>
<tr>
<td>ECG</td>
<td>Electoral Commission of Ghana</td>
</tr>
<tr>
<td>ECK</td>
<td>Electoral Commission of Kenya</td>
</tr>
<tr>
<td>EDR</td>
<td>Election Dispute Resolution</td>
</tr>
<tr>
<td>ELOG</td>
<td>Elections Observation Group</td>
</tr>
<tr>
<td>EMB</td>
<td>Election Management Body</td>
</tr>
<tr>
<td>EOM</td>
<td>European Union Observation Mission</td>
</tr>
<tr>
<td>ESRC</td>
<td>Economic and Social Research Council</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EVID</td>
<td>Electronic Voter Identification</td>
</tr>
<tr>
<td>FORD</td>
<td>Forum for the Restoration of Democracy</td>
</tr>
<tr>
<td>FPTP</td>
<td>First-Past-the-Post</td>
</tr>
<tr>
<td>GEMA</td>
<td><em>Gikuyu</em>, Embu, and Meru Association</td>
</tr>
<tr>
<td>GSU</td>
<td>General Service Unit</td>
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<tr>
<td>HRHF</td>
<td>Human Rights House Foundation</td>
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<tr>
<td>IBA</td>
<td>International Bar Association</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICJ</td>
<td>International Commission of Jurists</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ICJ-K</td>
<td>International Commission of Jurists-Kenya</td>
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<tr>
<td>IDLO</td>
<td>International Development Law Organisation</td>
</tr>
<tr>
<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
</tr>
<tr>
<td>IFES</td>
<td>International Foundation for Electoral Systems</td>
</tr>
<tr>
<td>IIBRC</td>
<td>Interim Independent Boundaries Review Commission</td>
</tr>
<tr>
<td>IIEC</td>
<td>Interim Independent Electoral Commission</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IMS</td>
<td>International Media Support</td>
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<tr>
<td>INEC</td>
<td>Independent National Electoral Commission</td>
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<tr>
<td>IPAC</td>
<td>Inter Party Advisory Committee</td>
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<tr>
<td>IPPG</td>
<td>Inter-Parties Parliamentary Group</td>
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<tr>
<td>IREC</td>
<td>Independent Review Commission</td>
</tr>
<tr>
<td>IRI</td>
<td>International Republican Institute</td>
</tr>
<tr>
<td>JCE</td>
<td>Judiciary Committee on Election</td>
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<tr>
<td>JCE</td>
<td>Judicial Performance Improvement Project</td>
</tr>
<tr>
<td>JSCP</td>
<td>Judicial Service Commission</td>
</tr>
<tr>
<td>JTF</td>
<td>Judiciary Transformation Framework</td>
</tr>
<tr>
<td>JWCEP</td>
<td>Judiciary Working Committee on Election Preparation</td>
</tr>
<tr>
<td>KACA</td>
<td>Kenya Anti-Corruption Authority</td>
</tr>
<tr>
<td>KADU</td>
<td>Kenya African Democratic Union</td>
</tr>
<tr>
<td>KAMATUSA</td>
<td>Kalenjin, Maasai, Turkana, and Samburu</td>
</tr>
<tr>
<td>KANU</td>
<td>Kenya African National Union</td>
</tr>
<tr>
<td>KASU</td>
<td>Kenya African Study Union</td>
</tr>
<tr>
<td>KAU</td>
<td>Kenya African Union</td>
</tr>
<tr>
<td>KBC</td>
<td>Kenya Broadcasting Corporation</td>
</tr>
<tr>
<td>KIEMS</td>
<td>Kenya Integrated Electoral Management System</td>
</tr>
<tr>
<td>KNDR</td>
<td>Kenya National Dialogue and Reconciliation</td>
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<tr>
<td>KOT</td>
<td>Kenyans on Twitter</td>
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<tr>
<td>KPU</td>
<td>Kenya People’s Union</td>
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<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
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<tr>
<td>MCK</td>
<td>Media Council of Kenya</td>
</tr>
<tr>
<td>MERC</td>
<td>Media Election Results Centre</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>NACOSTI</td>
<td>National Commission for Science, Technology &amp; Innovation</td>
</tr>
<tr>
<td>NARC</td>
<td>National Rainbow Coalition</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
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<tr>
<td>NASA</td>
<td>National Super Alliance</td>
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<tr>
<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
</tr>
<tr>
<td>NDC</td>
<td>National Democratic Congress</td>
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<tr>
<td>NDI</td>
<td>National Democratic Institute</td>
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<tr>
<td>NDP</td>
<td>National Development Party</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
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<tr>
<td>NLF</td>
<td>National Leadership Forum</td>
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<tr>
<td>NLP</td>
<td>National Land Policy</td>
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<tr>
<td>NMG</td>
<td>Nation Media Group</td>
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<tr>
<td>NPP</td>
<td>New Patriotic Party</td>
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<tr>
<td>NSC</td>
<td>National Steering Committee on Peacebuilding and Conflict Management</td>
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<tr>
<td>NYS</td>
<td>National Youth Service</td>
</tr>
<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
</tr>
<tr>
<td>OHCHR</td>
<td>United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>PNU</td>
<td>Party of National Unity</td>
</tr>
<tr>
<td>PO</td>
<td>Presiding Officer</td>
</tr>
<tr>
<td>PSC</td>
<td>Parliamentary Select Committee</td>
</tr>
<tr>
<td>REC</td>
<td>Regional Elections Coordinator</td>
</tr>
<tr>
<td>RO</td>
<td>Returning Officer</td>
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<tr>
<td>RTS</td>
<td>Results Transmission System</td>
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<tr>
<td>SAP</td>
<td>Structural Adjustment Programme</td>
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<tr>
<td>SERP</td>
<td>Support to Electoral Reform and Processes in Kenya</td>
</tr>
<tr>
<td>SJT</td>
<td>Sustaining Judiciary Transformation</td>
</tr>
<tr>
<td>SPS</td>
<td>School of Social and Political Science</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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1 Introduction

1.1 Statement of Research Problem and Argument

Kenya’s colonial and post-colonial eras have witnessed strained state-citizen relationships that have pushed successive governments to adopt citizen-oriented institutional reforms of varied magnitudes. Aside from strengthening the performance of state institutions tasked to deliver public goods and services, these reforms have targeted improving Kenyans’ opinions of the state’s functioning (Olumwullah 1990; Mueller 2014). Reforms effected after the promulgation of the 2010 constitution to address deep-seated grievances harboured by members of some ethnic and political groupings are the most comprehensive of these changes in Kenya’s recent history. Countrywide violence with an estimated 1,300 deaths and 600,000 internal displacements occurred after the disputed 2007 elections (Cheeseman 2008; ILAC 2010: 7-8; Odote & Musumba 2016: 3). The effort to quell the violence and establish durable peace led to the repeal of the existing constitution and the promulgation of a new constitution embodying popular requests for inclusive state rules and fair and efficacious state machineries in 2010 (Kramon & Posner 2011; Moestrup 2014).

Social scientists have invested much energy in ascertaining the consequences of the new constitutional and institutional dispensation. The majority of scholarly works has a top-down orientation, tending to concentrate on organised systems, big structures, and elite politics (Kramon & Posner 2011; Wolfrom 2013; Mueller 2014; Cornell & D’Arcy 2014; Willis & Chome 2014; Manji 2014; Cheeseman et al. 2016; Chege 2018; Waddilove 2019; Kanyinga & Odote 2019; Mutahi & Ruteere 2019; Cheeseman et al. 2019). The 2010 constitution was intended to reduce the excessive powers wielded by central government, to devolve authority from the central government to newly created subnational administrative units called counties, and to safeguard the social and economic rights of oft-excluded groups, particularly women, marginalised ethnic communities, and other minorities (Kramon & Posner 2011). This is notwithstanding that practical and political motivations spurred elite compromises during the deliberations that brought the constitution to life. That somewhat altered the original expectations for the constitution, especially on the composition of the new counties (ibid.). Inquiries into the effects of devolution have uncovered a chequered
It has stimulated considerable elite interest in county-level electoral offices (e.g. the gubernatorial position), an outcome anticipated to water down the acute desire for national political offices and its attendant winner-takes-all perception and reality (Cheeseman et al. 2016). Regardless, the new political dispensation still echoes ‘existing political dynamics in Kenya more than it changed them, although challenges to the resilience of national elites are clear’ (Cornell & D’Arcy 2014: 173). Specifically, while the 2013 gubernatorial elections saw the victory of some politicians unaffiliated with national political parties, it largely enabled ‘the resilience of the national elites and further entrenched their existing networks of [ethnic] patronage’ in most counties (ibid: 174). Hannah Waddilove (2019) challenges the unidimensional perspective that devolution recentralises power in national-level politicians by arguing that because the effect of devolution on central power is unstable, it may alter across elections.

Also, several public institutions were reformed to strengthen their capacity (effectiveness and efficiency) and autonomy (freeness and fairness), i.e. features of institutions envisaged to revamp the processes and outputs of their work. Embattled reformed institutions include the police, the judiciary, and the Electoral Commission of Kenya (ECK), the election management body (EMB). The newly constituted EMB, the Independent Electoral and Boundaries Commission (IEBC), and the newly formed Supreme Court were first tasked with governing the 2013 general election. This culminated in what Marie Wolfrom (2013: 247) termed IEBC’s ‘competency and professionalism’ deficit and the Supreme Court’s seeming prioritisation of ‘political concerns over legal ones’ (also, Harrington & Manji 2015). This signifies the failure of reforms to ‘bring transparency and credibility to the electoral process in Kenya’ (Wolfrom 2013: 247). Others also proclaim that irrespective of the advances made by the reforms in the police service, policing in the country remains fraught with favouritism towards ruling elites, corruption, extraconstitutional killings, and operational resource shortages (Kivoi & Mbae 2013; Osse 2016; Mutahi & Ruteere 2019). Similar observations led Susanne Mueller (2014) to conclude that Kenya’s past has outlived recent transformations, when she investigated government (in-)actions before and after the 2010 reforms.

Just as Michael Bratton (2013: 1) has seen in his inspection of African politics research, I have noticed that extant Kenyan studies commonly present individual Kenyan citizens, whom public policies and institutions are supposed to serve, as ‘mere bit players in supporting roles to centralized institutions or influential “big men”’. Three
quantitative studies have tried to fill the gap by adopting a bottom-up approach that concentrates on Kenyans’ evaluations of institutional performance. Opalo (2020) researches citizens’ evaluations of subnational governments. With a slight difference in their timeframe of analysis and arguments, Shah (2015) and Erlich and Kerr (2016) both examine the public’s attitudes towards IEBC. These studies emphasise trends in public opinions of institutional functioning that appear consistent with the pre-reform patterns: a considerable proportion of Kenyans remain sceptical about the quality of institutional performance. With its attention on developing generalisable knowledge, the statistical literature is unable to disentangle the complexities of Kenyans’ views about institutional performance and the mechanisms and processes underlying these opinions. Cases in point are when: an individual offers ostensibly inconsistent appraisals of an institution’s work; members of an ethnic community do not act in unison politically; and party supporters deviate from their preferred parties’ political stances.

The lopsided attention given to the behaviour of Kenya’s political elites and institutions and the paucity of insight into the evaluations of the Kenyan public inspires this thesis to employ a qualitative approach to examine Kenyans’ appraisals. This approach is more suitable for unravelling complex realities. The preponderance of political elites and institutions in public affairs cannot be gainsaid, but that does not mean non-elites are uninfluential constituents of the state. In electoral polities such as Kenya, citizens exercise the power to vote to confer political legitimacy on and support for leaders, institutions, and regimes. Outside of elections, citizens can coalesce in public fora to deliberate and act on collective affairs. Their political attitudes and behaviours have instigated civil disturbances and pushed leaders to roll out legal and structural modifications (Bratton & van de Walle 1992; Bratton 2012; Bratton 2013; Nasong’o 2014; Shah 2015; Ghai & Ghai 2019). Hence, it is imperative to investigate how and why citizens make sense of the machineries of the state. The thesis specifically clarifies the puzzle why, despite the citizen-oriented reforms, Kenyans’ appraisals of the performance of institutions appear not uniformly improved? Are their evaluations representative of the actual work of the institutions? Whether or not citizens’ assessments of institutional performance correspond with the actual functioning of institutions remains an issue of contention in the general study of public opinion formation (Licari et al. 2005; van de Walle 2006).
Since the work of public institutions is extensive, analysing how citizens perceive all in a single project is unfeasible, more so when aiming for an in-depth explanation. Therefore, I have placed some boundaries around my endeavour. The attention is on the election administration and electoral dispute settlement activities of electoral governance in Kenya from 2002 through 2017. Electoral governance is the broader group of activities that creates and sustains the general institutional environment that enables voting and electoral competition (Mozaffar & Schedler 2002). ECK and IEBC have managed general elections while courts have wielded the authority to settle disputes associated with elections. The selected timeframe makes it possible to compare the periods before and after the reforms to account for change and stasis.

The character of the research conundrum necessitates not only explicating how Kenyans form opinions about institutional functioning but also how institutions work in reality and what they produce. It is only by matching both realities can their congruence be convincingly established. Thus, the thesis concurrently assesses the actual functioning of electoral governance institutions in Kenya within the stipulated timespan.

I formulated the following main, open-ended questions and melded diverse qualitative methods to steer the study. Essential themes from studies on public attitudes formation (Southwell & Yzer 2007; Kerr 2013; Erlich & Kerr 2016; Nyabuga & Ugangu 2018; Orji 2019) and institutional performance (van de Walle 2001; Bierschenk & Olivier de Sardan 2014) informed the composition of the questions:

1. How have external forces (social and political environment) shaped ECK, IEBC, and courts’ performances from 2002 through 2017?
2. How have the mechanisms (internal structures, norms, and processes) of ECK, IEBC, and courts affected their performances from 2002 through 2017?
3. How have Kenyans’ sources of information influenced their assessments of courts’ settlement of electoral disputes and ECK and IEBC’s management of elections from 2002 through 2017? These sources are direct observation of actual institutional performance, social and traditional media, face-to-face interaction, and political candidates and parties.

I spent roughly eight months in Kenya to engage in data collection. I collected data through formal and informal one-on-one and group interviews and observations in Nairobi and Nyamira counties as well as exploration of the content of organisational,
social and traditional media, and scholarly materials. The interviews were with personnel of the targeted institutions and organisations that work with/on them, and covered Kenyans of diverse socioeconomic and political backgrounds unaffiliated with the institutions. Theoretical, empirical, practical, and ethical considerations influenced my choice of research sites, participants, and data collection methods. The data analysis begins with a description of relevant phenomena, following which information is sorted and classified to form concepts. Concepts are then logically connected to form explanations (Dey 1993).

Comparing electoral governance in Kenya and Kenyans’ appraisals of it unveils the extent of the congruence between institutional performance and citizens’ appraisals of it. The thesis argues that while the two are essentially inconsistent, they have certain commonalities. First, both are characterised by complex combinations of successes/positives and failures/negatives that mostly stem from the merger of institutional, political, and social influences. Therefore, this thesis concludes that the interplay of formal and informal institutions primarily determines the actual functioning of institutions and the public’s appraisals of it. Whereas formal institutions are the rules and procedures of behaviour created, shared, and enforced through officially accepted channels, informal institutions are the rules and processes forged, transferred, and enforced via unofficially sanctioned conduits (Helmke & Levitsky 2004; Bratton 2007). Second, a citizen can express his/her secondary and primary appraisals of an institution’s work. Secondary appraisal is mostly a person’s peripheral assessment of an institution’s work. It often emphasises the noticeable capacity of that institution. It is ordinarily rooted in a citizen’s actual observations/experiences of an institution’s work. Primary appraisal refers to a person’s overall assessment of an institution’s work. It usually concentrates on the institution’s autonomy. It is predominantly informed by one’s preferred political party and candidate. While primary appraisal is usually not determined by a citizen’s first-hand experience/observation of an institution’s actual functioning, under the conditions for deviation from partisan stance on institutional performance, a person may infer his/her primary appraisal from his/her own observation/experience of the institution under consideration. The conditions for deviation are when the bond between an individual and his/her party is weak and when a person does not deem his/her acceptance of information antithetical to his/her party’s claims as politically costly.
Since partisan sensitivities primarily direct citizens’ primary appraisals, the thesis argues that the actual functioning of institutions and the public’s appraisals of it are fundamentally disjointed. A shift in a political party/candidate’s position on the overarching quality of an institution’s work is likely to engender a corresponding shift in their supporters’ ideas of the functioning of that institution. That is why while supporters of election and electoral petition winners tend to judge election management and electoral dispute settlement processes and outcomes favourably, supporters of election and electoral petition losers are disposed to adjudge these contests unfavourably. I therefore conclude that partisan considerations mostly undergird the apparent inability of institutional reforms to evenly improve citizens’ attitudes towards institutional performance.

I now explain institutional performance to delimit the conceptual and operational boundaries of the thesis. Afterwards, I discuss the theoretical contributions of the thesis by invoking the key findings from the research. I then provide a summary of the chapters to come.

**1.2 Institutional Performance Defined and Research Approach**

I now discuss what I mean by institutional performance and how it comes under the scrutiny of citizens. Max Weber, a pioneer of the study of the state, defines the state as a mandatory association with the legitimate power (authority) to use force and make legally binding decisions within a particular territory (Weber 1978; Evans 1995). This conceptualisation distinguishes the state and non-state domains. The latter domain lacks the formal power or authority to enforce its decisions, unless authority is otherwise conferred on it by the state. The state relies on its constituent administrative and coercive institutional arrangements to exercise authority. Starting from the late 1970s, studies that adopt Weber’s organisation-analytic approach to the study of the state saw a steady rise (Vom Hau 2015: 27). They show that the state’s authority exists in theory. In reality, it rests on the state’s ability to implement that authority. This implementation is what some have termed ‘the state’s work’, governance, performance, and ‘what states actually do’ (Bierschenk & Olivier de Sardan 2014: 10;
Olivier de Sardan 2014: 309; Centeno et al. 2017: 3). In this thesis, performance refers to the state’s actual duty of providing or delivering public policies.

The state’s work is plentiful and multi-sectoral, but for practical and theoretical benefits, this research has its gaze on only its electoral governance variant. The state’s work is ‘first and foremost goods and services that are perceived by the vast majority of users as a social necessity, and, either directly or indirectly, as coming under the state’s duties towards these users’ (Olivier de Sardan 2014: 400). Classic among them are ‘war-making’ for ‘survival’, enforcement of law and order, and safeguard of economic, educational, and health wellbeing (ibid; also, Lipsky 2010; Evans 1995). Democratic states additionally prioritise the provision of free, fair, and credible elections (Mozaffar & Schedler 2002; Cederman et al. 2013). I commit all my resources to researching the provision of elections, the process by which qualified citizens express their constitutional right to vote to choose their government representatives from a pool of candidates and political parties (Reilly 2003: 12). The provision of elections is also broad. ‘Electoral governance’ better captures its many facets (Mozaffar & Schedler 2002: 7). It consists of three main mutually dependent levels imagined to ensure the competitiveness, freeness, fairness, and transparency of elections (ibid; Przeworski et al. 1996). These levels are rule-making, rule application, and rule adjudication. Rule-making is the design or formulation of the norms upon which the fundamental structures, procedures, and rules of elections are founded. Rule application is the exercise of ‘an idealized image of bureaucratic routine and mechanical execution of coherent sets of known and tested rules, an image…conveyed by the familiar notions of “electoral administration” and “electoral management”’ (Mozaffar & Schedler 2002: 8). Rule adjudication is the mediation and settlement of contentions resulting from electoral competition (ibid: 10-11). Figure 1.1 captures the essential constituents of each of the three categories. I take the rule-making component as a given and rather concentrate on the rule application and adjudication. My reason is that the designed effects of reform policies are felt and seen only after these policies have been implemented. That is why members of the public’s appraisals often revolve around election management and electoral dispute settlement (Shah 2015; Erlich & Kerr 2016).
Research into electoral governance is ordinarily framed as integrity or manipulation matters (Schedler 2002; Mozaffar 2002; Omotola 2010; Lynch & VonDoepp 2020: 4; Jenkins 2020), but this thesis mainly considers the subject as the state’s work or public service delivery. The state’s work research approach critically looks at the quotidian (in-)activities of street-level or interface bureaucrats to make sense of the effects of the inherent norms, structures, and processes of institutions on the quality of institutional performance (Lipsky 2010; Bierschenk & Olivier de Sardan 2014; Pepinsky et al. 2017). My adoption of this approach stems from the analytical benefits it offers. First, it detects oft-overlooked explanatory factors and mechanisms of electoral governance – the bureaucracy itself. Identifying the vital effects of the administrative and logistical constituents of electoral governance institutions is crucial.

### Figure 1.1: The Three Levels of Electoral Governance

<table>
<thead>
<tr>
<th>Levels</th>
<th>Elements</th>
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<tbody>
<tr>
<td><strong>1. Rule Making</strong></td>
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</table>
| Choosing and defining the basic rules of the electoral game. | - Formula  
- District magnitude  
- District boundaries  
- Assembly size  
- Electoral time table  
- Franchise |
| **(a) Rules of Electoral Competition:** | - Voter registration  
- Party and candidate registration  
- Campaign financing and regulation  
- Election observation  
- Ballot design  
- Polling stations  
- Voting, counting, and tabulating  
- Election management bodies  
- Dispute settlement authorities |
| **(b) Rules of Electoral Governance:** | - Registration of voters, candidates, parties  
- Registration of election observers  
- Voter education  
- Electoral organization  
- Voting, counting, and reporting |
| **2. Rule Application**       |                                                                           |
| Organizing the electoral game. |                                                                           |
| **3. Rule Adjudication**      |                                                                           |
| Certifying election results and resolving disputes. | - Admission of complaints  
- Processing of cases  
- Publication and implementation of rulings |

Source: Mozaffar & Schedler (2002: 8)
to the appreciation of the credibility and legitimacy of democratic elections (Mozaffar & Schedler 2002: 8; 18). Second, my approach makes room for accounting for the impacts of the political and social environment (e.g. elite manipulation of the appointment of judges and electoral commissioners) on election management and electoral dispute settlement, as demonstrated by Thomas Pepinsky and others’ (2017) theoretical examination of the embeddedness of street-level bureaucrats in their social and political environments. With electoral governance institutions being different from the conventional bureaucracies (e.g. schools and hospitals) that students of the state’s work tend to focus on (Lipsky 2010; Bierschenk & Olivier de Sardan 2014), the application of the state’s work approach in this thesis helps modify the extant literature. For example, inferring from evidence on presidential election management, this thesis establishes the mutually dependent relationship between street-level and headquarters-level bureaucrats and its effects on the quality of election results. This strengthens the assumptions of the state’s work literature.

Parts of this thesis place public institutions and their personnel in the limelight. That is because specific public institutions, services, or bureaucracies are the actual entities legally mandated to execute specific public policies (Weber 1978; Lipsky 2010; Olivier de Sardan 2014: 309; Bierschenk & Olivier de Sardan 2014). ‘Political institutions are more than formal-legal structures. They only come alive when…actors breathe life into them’ (Bratton 2013: 3-4). These actors can be their employees; also known as public servants, officers, officials, or bureaucrats. Public servants are supposed to be professional state actors with specialised knowledge. Ideally, the principles of rule-based management, impersonality, hierarchy, efficiency and meritocracy guide their work (Udy 1959; Weber 1978; Evans & Rauch 1999: 749). Police officers, judges, teachers, and nurses are some key public servants respectively authorised to enforce law and order, adjudicate disputes, provide education, and deliver healthcare (Lipsky 2010). Officials of EMBs (e.g. commissioners, returning officers, and clerks) and officials of the judiciary (e.g. judges, magistrates, registrars, and clerks) are the actors respectively charged with managing elections and adjudicating electoral disputes (Mozaffar & Schedler 2002: 7-11; Mozaffar 2002). Although public services and goods can have a countrywide vision, the context of their provision is largely local. At the local level, ‘street-level bureaucrats’ do the work of the state. They are the field-level ‘public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in
the execution of their work’ (Lipsky 2010: 3). Some scholars have used these bureaucrats’ direct engagement with citizens and their influence over implementation to justify studying them to understand the state’s work (ibid; Bierschenk & Olivier de Sardan 2014).

Empirical evidence in my analysis chapters, however, reveals that the work of street-level bureaucrats is inextricably connected to that of their headquarters-level counterparts. Headquarters-level officials seldom interact directly with citizens but the acute bureaucratic authority they possess and the bureaucratic chain of command enable them to exert tremendous influence over public policy delivery on the ground. Moreover, the analysis in this thesis shows that although citizens infrequently engage with headquarter-level bureaucrats face-to-face, they often make conclusions about the overall nature of public services and goods from their conceptions of the behaviours of these bureaucrats. In short, officials at the various levels of courts, ECK, and IEBC are a crucial entity of analysis in this thesis.

The idea of the apparatuses of the state that I have presented thus far is merely an analytical category that cannot be found in reality. In reality, ‘there are different gradients of the existence of bureaucracies and states, ranging from the hypothetical extremes of complete non-existence to complete existence’ (Bierschenk & Olivier de Sardan 2014: 13). Where there are lapses in the state’s ability to fulfil a particular mandate, other state, local, privates, and international actors take over or support the state (ibid; Krasner 1984; Evans et al. 1985; Evans 1995).

Studies on institutional performance have often confused fundamental institutional features – state capacity (effectiveness and efficiency) and state autonomy (independence) – and their connections to institutional performance. This has stirred up debates about the definitions of important concepts, their linkages, and the directions of their association. Centeno et al. (2017: 6) have mapped out competing conceptualisations of state capacity, namely ‘the ability of the state to achieve its own identified goals’, ‘the ability of the state to achieve an ideal set of goals usually determined by an outside party’, ‘the ability of a state to impel citizens and other states to do what they may not have done otherwise’, and ‘the organizational competence of the civil servants’. Using performance outcomes to define capacity risks conflating driver and symptom. To prevent this problem, state research must conceive capacity as ‘something that a state should possess independent of its outcome’ (ibid.). This is a logically unbiased approach to conceptualising state
capacity or ‘the organizational and bureaucratic ability to implement governing projects’ (ibid: 3; 6). This thesis embraces this approach. It is also mindful that capacity can be used to realise normative (desired and unwanted) goals. In other words, capacity can influence the nature of the processes and outputs of the state’s work. Treating capacity as a determining factor allows for examining the effects of high and low capacity on the quality of outcomes. That means, the quality of performance outputs can empirically be inferred from the level of capacity.

Provided that institutions exist within particular political, economic, and social settings, their operations are sensitive to the push-and-pull (politics) of actors occupying these spaces. This supposition brings to the fore institutional autonomy or the independence of an institution from the influence of others in the discharge of its duties (van de Walle 2001). Because politics can condition the utilisation of state capacity, Centeno et al. (2017: 7) admonish the analysis of the state’s work to be done ‘alongside the political actors who seek to deploy it’. This idea subsumes state autonomy under capacity, treating the former as a factor that just conditions the latter. Van de Walle (2001: 45) also observes other implementation studies either using autonomy and capacity ‘synonymously and interchangeably’ or considering ‘state capacity’ as ‘a critical component of autonomy’. Those that capture capacity under autonomy assert that the extent of bureaucrats’ autonomy from external agencies, such as ruling elites, determines their capacity (ibid.). Obviously, both variables are pertinent to performance: while autonomy insulates institutional actors in the discharge of their duties, capacity enables them to function. Thus, both factors combine to shape public policy delivery. Autonomy and capacity can reinforce each other; yet, they are analytically and empirically independent of one another. For example, low institutional autonomy can subvert institutional capacity and vice versa. But, highly independent institutions may lack some or all of the requisite human and material resources for being effective and efficient. Therefore, I inspect them both collectively and individually.

An overview of the institutions whose work this thesis investigates is in order. ECK and IEBC are Kenya’s permanent statutory bodies responsible for the free, fair, and credible administration of elections, referenda, and boundary delimitation from 2002 through 2017 (EU 2008; IEBC 2014a). The judiciary is the organ of government that is mandated to resolve disputes and interpret and safeguard Kenya’s constitution. Its work includes the peaceful settlement of electoral disputes (The Judiciary 2017;
The Judiciary 2017a). Although the institutions have experienced reforms aimed at enhancing their work and Kenyans’ attitudes towards it, many archetypal features of their functioning and Kenyans’ views of it have survived those transformations. Within the timeframe of analysis, the real and perceived executive government manipulation of election management spurred a series of demands for reform. ECK conducted the 2002 and 2007 general elections and the 2005 referendum. The losing and winning candidates of the 2002 presidential election and their supporters welcomed the election results, so there was no presidential election petition (Aywa 2015: 73-75). In 2007, the winner of the presidential election and his supporters accepted the results, while the loser of the election and his supporters criticised it. Rather than petition the judiciary for redress, the losing side publicly protested it. Their decision was informed by their lack of confidence in the impartiality of the judicial system, which was perceived as the executive’s instrument. Kenya subsequently experienced post-election violence that resulted in many deaths and destructions (Cheeseman 2008).

The eroded public confidence in institutions such as ECK and the judiciary necessitated deep citizen-oriented legal and institutional reforms (Majanja 2016: 22; also, Waki Commission 2008: 28-29). This initiated many structural, normative, and procedural changes geared at stimulating the capacity and independence of the judiciary and EMB and Kenyans’ attitudes towards them. When ECK was disbanded in 2008, IEBC was founded in 2011 to permanently replace it. Election technology was also introduced. An empowered Supreme Court was also introduced in 2011 to sit at the apex of the judiciary’s hierarchy. Constitutional timelines were also instituted to ensure the fair and efficient settlement of electoral disputes. Moreover, legal safeguards were provided to guard against the executive’s unwarranted control over the appointment of the heads of both institutions (Wolfrom 2013; Harbeson 2014: 204; Aywa 2015: 78-79; Odote & Musumba 2013: 6-9). Many other reforms will be discussed later in the thesis. The modifications initially increased Kenyans’ confidence in the judiciary and IEBC. After IEBC’s management of the 2013 and the 2017 general elections, unsuccessful presidential election candidates challenged the results in the newly created Supreme Court. In 2013, the court threw out the petition on procedural grounds, but in 2017, it unprecedentedly nullified the sitting president’s electoral victory and ordered IEBC to rerun the election (Harrington & Manji 2015; Chege 2018; Kanyinga & Odote 2019). Analysts have interpreted the court’s ruling as an indication of judicial independence and Kenya’s democratic progress (Signé 2020:119; Ellett
Regardless, petition losers equally criticised and reluctantly accepted the court’s verdicts in the 2013 and 2017 electoral periods (Harrington & Manji 2015; Chege 2018; Kanyinga & Odote 2019). The events that occurred within these electoral cycles contributed to the polarisation of Kenyans’ confidence in the performance of IEBC (ibid; Shah 2015; Erlich & Kerr 2016; Worley 2017; National Super Alliance 2017; Chege 2018; Kanyinga & Odote 2019). The stasis and changes in electoral governance underscore Kenya’s record of democratic reversals intermixed with democratic gains. These themes run through the thesis.

Another unit of analysis in this research is individual citizens: Kenyan voters and non-voters unaffiliated with courts, ECK, and IEBC. The discussion to this point has been attentive to top-down politics. While the scholarship on institutional performance justify their endeavour by referring to the import of implementation to citizens, they fail to systematically interrogate how citizens react to or understand it. This area of study is the foothold of students of public attitudes formation (Moehler 2009). My thesis partly brings into the spotlight the micro-politics that exist below the level of the state and elites. Africans have always reacted to the performance of the state, but the end of the Cold War in the late-1980s incited unprecedented mass protests. Sixteen sub-Saharan African states experienced such demonstrations in their capitals in and around 1990. Spurred by economic suffering and political repression, protesters sought to register their discontentment and push for political and institutional improvements (Bratton & Van de Walle 1992; also, van de Walle 2001: 46-47). Further, the manner in which potential African voters perceive government’s tackling of joblessness, inflation, and income distribution has influenced their opinions of it (Bratton et al. 2013). In many multiparty regimes in the continent, supporters of election losers tend to be less trustful of elections and state institutions and supporters of winners tend to embrace these outcomes and institutions (Moehler 2009). These studies illustrate the capability of African citizens to evaluate public institutions’ workings. That has bolstered the argument that ‘political institutions and political culture tend to coevolve, with the most legitimate institutions being those to which the largest numbers of people voluntarily grant consent’ (Bratton 2013: 4). The power wielded by citizens gives urgency to learning about their political attitudes.
1.3 Contributions of the Thesis

This thesis contributes to on-going debates on institutional performance and the public’s attitudes formation. Their comparison is enabled by researching the interface of politics from above (the objective functioning of electoral governance institutions) and politics from below (the public’s appraisals of electoral governance).

1.3.1 Institutional Performance

This research complements debates on the quality of the state’s work and its determinants. Many analysts describe the works of public institutions in Africa, in general, and in Kenya, in particular, as unfairly privileging ruling elites and their allies over the opposition and its coterie (Bratton & van de Walle 1997; van de Walle 2001; Branch & Cheeseman 2006; Mueller 2014). These ideas portray the state’s work in the continent as fixed and uniform, i.e. generally poor in quality and unfair. Relying on evidence from ECK, IEBC, and courts’ electoral work, I contest this view. Their functioning yields intricate combinations of successes (intended and desirable results) and failures (unintended and undesirable results) across and within space and time, meaning that completely perfect and imperfect implementation are unrealistic. Although the expectation is for public goods and services to be efficiently and effectively done and their distribution to be inclusive of citizens of all social, economic, and political backgrounds (Centeno et al. 2017: 14; 20-24), in reality, they are marked by intricate blends of (in-)effectiveness, (in-)efficiency, and (im-)partiality (Goggin 1986; Bierschenk & Olivier de Sardan 2014: 50). Reference to successful and unsuccessful implementation in this research is, hence, a facile denotation of the position on the perfection-imperfection spectrum towards which an institution’s performance is more skewed.

The thesis also modifies extant perspectives on institutional performance. Kenya-specific and Africa-wide political research tends to attribute the political and economic dilapidation in these contexts to undue influence of the social and political environment, specifically executive governments (van de Walle 2001; Branch & Cheeseman 2006; Mueller 2014). Focusing more on the experiences of ECK, IEBC, and judicial personnel, this thesis refines some claims of the literature. It first confirms
that successive executive governments attempt to ensure that election and electoral dispute resolution decisions do not go against them by manipulating their authority over the appointment and job security of the leadership of ECK, IEBC, and the judiciary as well as their control over the financing of these institutions. The fear of job loss and budgetary cuts and the desire for appointment and funds (both of which affect institutional capacity and autonomy) spur some electoral and judicial officials to uphold the executive’s interests.

Second, the thesis demonstrates that besides presidents, other external actors play critical roles in election administration and electoral dispute resolution. Their effects are mixed. Development partners’ financial and technical electoral assistance, regardless of their limitations, aid ECK, IEBC, and courts’ independence and capacity. Likewise, through legal means such as the appointment of the leaders of the institutions and extra-legal means such as the threat of and actual violence to institutions, political parties and their followers also shape performance. In addition to the aforementioned desires and fears, anxiety from actual and potential harm to personnel and their work makes some electoral and judicial employees reactive to these agencies. The thesis illustrates that personnel are not always powerless in their engagements with these external political and social actors.

Additionally, this thesis refines the body of knowledge that traces institutional performance to the mechanism (intrinsic components) of institutions (Evans & Rauch 1999; Rauch & Evans 2000; Bierschenk & Olivier de Sardan 2014). This analytical lens is largely missing in research on public service delivery in Kenya and electoral governance. The current study employs it. The literature sees performance as a function of intrinsic institutional processes, norms, and structures such as the mode of hiring, competency and remuneration of employees, resource availability, and internal cohesion of institutions. Some scholars maintain that whereas in developmental states bureaucrats are dedicated to bureaucratic interests and able to collectively pursue them, bureaucrats in predatory states are united and driven by their personal and factional interests (Evan & Rauch 1999; Rauch & Evans 2000). They attribute these differences to the opposing hiring principles and practices of developmental (meritocracy) and predatory (nepotism) states. This view presents a direct, lineal association between the mode of hiring and performance. My research affirms the ability of the hiring practices of ECK, IEBC, and courts to alter the relationship among their employees and their obligations, but it also emphasises the absence of uniformity
and finality in the direction of these effects. Put differently, the effects of the hiring approaches on employee relations and performance are multifarious and indeterminate, contrary to the argument of the literature.

Furthermore, the foregoing literature considers adherence to institutional rules and procedures as indispensable to the realisation of institutional goals, yet the data on ECK and IEBC's internal recruitment reveals the utility of jettisoning impractical official hiring rules and procedures. Replacing impractical official agenda with practical unofficial ones can enhance the pursuit of official ends (also, Bierschenk & Olivier de Sardan 2014). This contributes to the complication of implementation processes and outcomes.

This thesis establishes that bureaucratic, practical, personal, and factional considerations drive officials’ behaviours (ibid.). Personal and factional inducements include the desire to secure jobs and enrich one's self. This further attests to bureaucrats’ agency vis-à-vis bureaucratic arrangements. Unlike the literature, this thesis takes the interrelationship between street-level and headquarters-level electoral and judicial officials seriously. That unveils how actor and institutional preferences mutually shape one another.

Moreover, the thesis adds to the debate on the state of democracy in sub-Saharan Africa. While pessimists insist that democracy in the region is declining, optimists stress that the continent’s democracy is progressing. Yet still, others underline the combination of democratic gains and reversals the continent has recorded (Lynch & VonDoepp 2020). First, siding with the final viewpoint, this thesis reveals that across and within time and space, ECK, IEBC, and electoral courts produce outcomes that may drive or hinder credible elections and electoral justice. Credible electoral governance is an indispensable characteristic of democracy (ibid: 3-6). Second, some analysts recommend that the determination of the health of democracy requires perusing the interrelationship among formality, informality, and democracy (Cheeseman 2018; Ellett 2020; Signé 2020). As I have already stated, because of the executive government’s undue influence over the course and outcome of institutional performance, some analysts tend to portray formality as favourable and informality as unfavourable to democracy. Referencing the positive and negative effects that both formality and informality have on election management and electoral dispute settlement, this thesis concludes that the relationship between formality and informality, on one hand, and democracy, on the other hand, is ambiguous (also, see
ibid; Lynch & VonDoepp: 7). In different temporal and spatial contexts, formality and informality help to advance and retard free, fair, and credible electoral and petition processes and outcomes.

Finally, students of the mechanism of institutions and the social and political perspectives speak past one another but, as this thesis highlights, each cannot present a holistic understanding of the intricate processes and outcomes institutions generate. Melding them is the way to attaining that comprehensive insight. The quality and influences of election management and electoral dispute settlement lead this thesis to argue that the merger of formal and informal institutions originating from within and outside of institutions primarily drives institutions to produce varying mixtures of successes and failures.

1.3.2 Public Attitudes Formation

The data and theory I provide on how Kenyans appraise the performance of electoral governance institutions sharpen current thinking about public attitude formation. A noteworthy discovery of this thesis is that the public’s conceptions of the quality of institutional performance are more complicated than students of public opinion formation, predominantly quantitative scholars, present. These scholars examine whether or not citizens regard councillors as ‘unresponsive’ to their needs (Bratton 2012) and perceive the outputs of election management bodies as ‘free and fair’ (Shah 2015) or ‘trustworthy’ (Erlich & Kerr 2016). They create the impression that at any given moment citizens’ conceptions are firmly positioned on either ends of the responsiveness-unresponsiveness, fairness-unfairness, and trust-distrust continuums. They also tend to portray Africans’ perceptions of the works of public institutions as largely unfavourable. From probing the complexity of Kenyans’ ratings of the election management and electoral dispute resolution, I make the contextual nature of these appraisals lucid. Variances can be observed in Kenyans’ opinions about the quality of election results and election dispute settlement verdicts within and across time and space. Different people can give contrasting appraisals, but particular persons can also offer seemingly contradictory appraisals in specific and alternate eras and localities.
Patterns in Kenyans’ conceptions of the quality of election management and electoral dispute settlement led to my categorisation of citizens’ conceptions into secondary and primary appraisals/evaluations. The possibility of an individual simultaneously holding secondary and primary appraisals explains why certain people can make ostensibly incompatible claims about the nature of institutional performance. These findings suggest that citizens’ views about the quality of the state’s work can be diverse amalgams of positives and negatives. Thus, no institution’s work can be said to attract complete citizen approval or disapproval.

The thesis, moreover, supplements extant explanations for the public’s attitudes. Some quantitative scholars maintain that citizens’ views about institutional performance are foremost a function of their experiences or observations of actual institutional functioning (Bratton 2012; Kerr 2013; Opalo 2020). Kenyans’ appraisals of the workings of electoral governance institutions demonstrate that first-hand experiences/observations largely determine citizens’ secondary appraisals, not their primary appraisals. Therefore, I conclude that direct experience/observation plays a peripheral role in individuals’ appraisals.

The thesis also extends insights into the influence of social and political forces on the public’s opinions. Communication and media scholarship attributes citizens’ opinions to how information-creation and -circulation outlets (e.g. social and traditional media) showcase or censor news about the functioning of institutions (Southwell & Yzer 2007; Nyabuga & Ugangu 2018; Orji 2019). These studies are illuminating, but they do not concentrate on the processes through which individuals interact with these channels to collect information and how they examine information obtained. In line with the literature, the thesis illustrates that information these channels produce, share, and/or censor can potentially tilt citizens’ perceptions positively or negatively. In contrast to the literature, the data indicates that these channels play a minimal part in shaping citizens’ attitudes. At best, their main influence is the entrenchment of citizens’ pre-existing beliefs (e.g. partisan) about institutional functioning.

Furthermore, this thesis fleshes out the mechanisms linking the public’s attitudes and their partisan affiliations or preferences. Other Africa-wide and Kenya-specific statistical studies attribute citizens’ perceptions about institutions to their partisan biases. These studies repeatedly confirm the assumption that unfair distribution of public resources causes members of ethnic communities like the Luo and Kikuyu to back political parties and presidential candidates with whom their most
prominent co-ethnics associate (Shah 2015; Erlich & Kerr 2016). The thesis partly confirms this idea. It also insists that not all Kenyans tend to behave this way. Members of some Kenyan ethnic communities, including the Kisii community, often split near evenly along generational lines (younger [notably, 40 and under] versus older [notably, 50 and above] persons) to seek election-related information from competing parties and candidates. This finding points to the limits of the use of ethnicity to explain political attitudes in Kenya, where ethnicity is consistently used to explain many facets of political life (Ajulu 2002; Lynch 2006; 2011; Ghai & Ghai 2013; Nderitu 2018). Therefore, I conclude that partisanship primarily explains the divergence in the public’s primary appraisals.

Moreover, notwithstanding that the literature alludes to the existence of indissoluble bonds between parties and their supporters in Kenya and the rest of Africa (Moehler 2009; Shah 2015), this thesis maintains that under certain conditions, supporters can contradict their preferred candidates/parties: when the bond between a supporter and his/her candidate/party is weak; and when acceptance of information antithetical to one’s preferred candidate/party’s communique does not appear to jeopardise the candidate/party’s political fortunes. The thesis argues that under both conditions, supporters may swap political guidance on electoral governance provided by their preferred side of the political divide for alternative ones hailing from traditional and social media, direct observation, and physical interactions. This attests to citizens’ agency in their attitudes formation.

Additionally, as the present study elucidates the extent of the influences of the various sources of information on the public’s political attitudes, it helps clarify how citizens experience the state. Institutional performance analysts assume that citizens’ knowledge about the state results from their interactions with interface bureaucrats (Lipsky 2010; Bierschenk & Olivier de Sardan 2014; Pepinsky et al. 2017). This thesis shows that the actual (in-)actions of street-level bureaucrats play a peripheral role in citizens’ opinions. Political parties and candidates play the dominant intermediary role. The implication is that the influences of the various information channels is context-dependent. Also, the public’s navigation of multiple information sources echoes their power. This signifies that the social, institutional, and political influences of citizens’ attitudes are not completely deterministic.

Finally, the thesis speaks to the literature on democracy in Africa that focuses on citizens. Robert Mattes (2020) finds that African states with huge dissatisfied
democrats are more likely to experience democratic backsliding. First, this thesis establishes that the public’s attitudes towards democratic institutions are not unidimensional; rather, they are complex (positives and negatives found on two evaluative planes). Second, the thesis adds that dis-/satisfaction mostly does not reflect the real (in-)actions of institutions, but rather citizens’ partisan subjectivities. This is an apparent grim representation of Africa’s democratic reality: institutional reforms cannot stimulate citizens’ confidence in democratic institutions. This is, however, not the case. Provided that Kenyans may express secondary appraisals and exercise agency vis-à-vis their preferred parties/politicians, I maintain that actual quality of institutional performance can sometimes induce or erode citizens’ satisfaction. Hence, to ensure democratic gains, the thesis recommends the simultaneous prioritisation of institutional strengthening and political party/politician accountability. Third, pointing to the joint influences of institutional, social, and political forces on Kenyans’ appraisals of the work of electoral governance institutions, this thesis corroborates studies that assert that the effect of formality and informality on democracy is not unidirectional (positive or negative) (Cheeseman 2018). The data illustrates that under diverse circumstances, formality, informality, and their interaction can hinder or enhance democratic progress.

1.4 Structure of the Thesis

This chapter has outlined the research problem and the conceptual and methodological approaches and theoretical contributions of the thesis. I now summarise the remaining chapters of the thesis.

In Chapter 2, I review the public policy implementation and the public’s opinion formation literature to ascertain the essence of existing knowledge to the study of electoral governance and the public’s appraisals. Provided that forces intrinsic and extrinsic to institutions combine to shape institutional performance and citizens’ views of it, it has been argued that the merger of formal and informal institutions complicate the nature of both phenomena. That means, citizens’ appraisals may not always align with or deviate from the actual workings of electoral governance institutions.
Chapter 3 historicises Kenyan politics, tracing state-society relations from British rule to post-colonial African administrations. Its purpose is to determine aspects of these associations pivotal to the fulfilment of the research objectives. It establishes that the attempt to understand electoral governance cannot overlook the crucial role external (particularly executive) influence plays in shaping the quality of public service delivery. Partisanship plays a decisive role in moulding the public’s sentiments and behaviours about public institutions. These characteristics of the state-society relationship are legacies of Kenya’s colonial past. The chapter contends that these themes continue to be instrumental in Kenya’s and Kenyans’ electoral experiences from 2002 onwards.

Discussing the ways in which the data for this thesis was collected and examined is the aim of Chapter 4. Fieldwork was undertaken in Nairobi and Nyamira counties, ostensibly dissimilar regions that have similar trajectories of partisan alignments. The chapter maintains that the thesis’ reliance on mixed qualitative methods will consolidate extant theories by not only (in-)validating them, but also by unearthing underexplored and unexplored processes and mechanisms that link explanatory factors such as partisanship and executive influence to public opinion formation and institutional performance. Ethical and practical (e.g. time and money) concerns were also factored into the decision to work on these sub-state cases. I contend that interactions between the fieldwork settings and the humans involved in it have implications for the data gathering, data quality, and data analysis.

The thesis has three empirical chapters. Chapter 5 explores election management and electoral dispute settlement in Kenya from 2002 to 2017 using the lens of the mechanisms of institutions. After establishing the effects of structures, processes, and norms intrinsic to ECK, IEBC, and courts on the fulfilment of institutional mandate, this chapter proclaims that official and unofficial institutions inherent within these institutions combine to produce election results and electoral dispute resolution verdicts that are not uniformly (in-)eficacious and (un-)fair across and within time and space. Chapter 6 equally assesses the concrete delivery of elections and electoral justice, albeit through the perspective of the political and social environment within which ECK, IEBC, and courts are embedded. The chapter highlights the multiplicity of agencies (e.g. executive, donor, political parties, and party supporters) that incentivise institutional actors to uphold or abandon their mandates. These observations lead to the conclusion that the fusion of formalities and
informalities extrinsic to institutions complicate the procedures and outcomes of institutional performance. Chapter 7 explains Kenyans’ appraisals of election management and electoral dispute resolution from 2002 to 2017. These appraisals, which fall on two evaluative planes (secondary and primary appraisals), can be positive or/and negative within and across electoral cycles and locales. The sources from which Kenyans obtain election-related information jointly direct their appraisals. However, the explanatory power of the various information sources varies based on the degree of influence and the evaluative plane and conditions under consideration. The chapter concludes that the amalgamation of formal and informal institutions engenders citizens’ evaluative attitudes and behaviours.

Chapter 8 concludes the thesis by mainly aggregating the chief research findings and the conclusions drawn from them. A comparison of ECK, IEBC, and courts’ work and Kenyans’ appraisals of it highlights some consistency between them. Provided that partisanship primarily shapes the divergences in citizens’ overall appraisals, the chapter concludes that partisan issues primarily underlie the apparent ineptitude of institutional reforms to uniformly improve Kenyans’ opinions about the functioning of post-reform public institutions. These observations demonstrate that citizens’ views of the state’s work are an intricate combination of objectivities and subjectivities that varies depending on context. The chapter further outlines broader lessons relevant to the general study and practice of public policy implementation and public attitudes formation.
With electoral governance in Kenya as its case study, this thesis aims to explain the extent of similarity between institutional performance and citizens’ appraisals of it. Institutional performance in this research refers to the state’s duty of actually delivering public goods and services. It is used interchangeably with public service implementation/delivery/provision, the state’s work/functioning, and governance (Bierschenk & Olivier de Sardan 2014: 10; Olivier de Sardan 2014: 309; Centeno et al. 2017: 3). Its electoral governance variant is defined as the wider set of activities that generates and preserves the general institutional environment that permits balloting and electoral competition (Mozaffar & Schedler 2002: 7). The election administration and electoral dispute resolution aspects of electoral governance are the main foci of this thesis. Election management bodies (EMBs) and courts are responsible for delivering them. To realise my research goal, this chapter assesses the literature on the performance of public institutions and the public’s opinion formation. Unveiling how these phenomena have been explained and how these explanations benefit my aim is the purpose of this chapter. Where available, I reference ideas and facts from electoral and African studies.

The following discussion is grouped into three main sections. Section one analyses two distinct approaches for explicating institutional performance. The institutional mechanism approach opens up institutions to trace the inconsistent blends of implementation successes and failures institutions produce to their structures, processes, and norms (Bierschenk & Olivier de Sardan 2014). The alternative approach, the social and political environment tradition, attributes the quality of institutional performance to individuals and groups in the social and political environment within which institutions operate (van de Walle 2001; Centeno et al. 2017). Pointing out that both approaches speak past one another but they can also be complementary, I argue for them to be merged if the disentanglement of the nuances of institutional performance is to be achieved. Section two examines the body of knowledge on the public’s political behaviours and attitudes. Two analytical traditions
– the institutionalist and the socio-political perspectives – are established. The former attributes citizens’ satisfaction and dissatisfaction with institutional performance to the quality of their direct experiences/observations of the empirical functioning of institutions (Bratton 2012; Kerr 2013). For the socio-political perspective, the skewing, framing, and censorship of stories about institutional performance by social and political actors (e.g. political parties and social media users) drive citizens’ opinions towards either ends of the trust-distrust spectrum (Moy et al. 1999; Shah 2015; Orji 2019). While noting the differential impacts of these forces on citizens’ perceptions, I insist that it is only by considering their aggregate effect that the complexity of public perceptions can be unravelled. The third section completes the chapter. It demonstrates the relevance of insights from the existing literature to the study of election management, electoral dispute settlement, and citizens’ appraisals of them. It concludes that these phenomena should be understood through the lens of the interplay between formal and informal institutions (un-related to state agencies. Formal institutions are structures, norms, and procedures created, transferred, and discharged via widely embraced official mediums and informal institutions are those often formulated, shared, and imposed through unofficial channels (Helmke & Levitsky 2004; Bratton 2007).

2.2 Public Institutions Doing Work

2.2.1 Mechanism of Institution Perspective: Intrinsic Structures, Norms, and Processes

Certain studies grounded in Max Weber’s organisation-analytic approach to the state trace the quality of public goods and services to the bureaucratic logic of state action (Udy 1959; Weber 1978; vom Hau 2015). That is, how the administrative and coercive organisations with the monopoly over the authority to exert force within the state make collectively binding decisions. They are useful for interpreting the work of public institutions.

One such study is the anthropological research States At Work, which argues that the mixture of formalities (bureaucratic or official elements) and informalities (practical or unofficial elements) of institutions complicate the quality of institutional
procedures and outputs (Bierschenk & Olivier de Sardan 2014). This study focuses on the everyday functioning of street-level bureaucrats in West Africa to present two ideas about the state’s work. First, states are products of incomplete state-building processes, consisting of “cobbled together” (bricole or gebastelt)’ formalities and informalities (ibid: 2). They are arenas of contention for the multiple competing official and unofficial structures, processes, and norms committed to particular state projects. Their contestations bring about negotiations, compromises, and make-shift solutions that alter the intended procedures and outcomes of institutional performance. This can be understood by knowing the origins of modern African states. Colonialism introduced the state system. The colonial state was repressive and idiosyncratic in its application of rules, unaccountable to the masses, and low on human and financial resources. Hence, it did not resemble Weber’s ideal-typical bureaucracy. Rather, it resembled incomplete building projects. Post-independence African bureaucracies, which are accumulated residues of contradictory state-building plans ‘experimented’ in the continent since the colonial era, operate partially on formal principles and partially on informal principles (ibid; Bierschenk 2014: 224; Cooper 2002: 156; Acemoglu et al. 2002). The hybridity equally displays in institutional outputs, which are varying blends of desirable and undesirable products (Bierschenk & Olivier de Sardan 2014; Bierschenk 2014: 233). This underscores the essence of historicising public service delivery. The second idea of the state is the mundane practices of institutional actors in their daily functions. The incoherent internal logics of bureaucracies that bureaucrats face has made ‘learning to navigate numerous and contradicting reforms’ a crucial ‘part of the professional skills of African public servants’, who combine official and unofficial ways of doing things (Bierschenk & Olivier de Sardan 2014: 5-7; Bierschenk 2014: 226). Together, these ideas of the state cast attention on inferring the outcome of implementation from the internal structures, procedures, and norms of institutions.

This thesis unconventionally considers electoral governance as the state’s work or public service delivery. Electoral research is dominated by political scientists, who usually concentrate on the integrity of an electoral competition by scrutinising the failure or success of political elites (especially incumbent governments) to manipulate these processes and their results to secure their victory. Strategies of manipulation they often accentuate include the appointment of the leadership of electoral governance institutions, financing of these institutions, incitement of violence, spread
of misinformation, and hacking of electoral technology (Schedler 2002; Mozaffar 2002; Omotola 2010; Lynch & VonDoepp 2020: 4; Jenkins 2020). They essentially frame institutional performance as a function of the political environment in which institutions operate. The next sub-section explores this. The state’s work approach focuses on the (in-)actions of street-level or interface bureaucrats to unravel the effects of the procedural, normative, and structural components of bureaucracies on the everyday behaviours of officials (Lipsky 2010; Bierschenk & Olivier de Sardan 2014; Pepinsky et al. 2017). Among these intrinsic institutional components are human and material resource procurement, workload, deadlines, and rules and procedures of tasks (discussed in the next paragraphs). The Political Science approach tends to ignore the bureaucracy itself (Pepinsky et al. 2017: 250), but the analytic usefulness of the public service delivery approach draws this thesis to it. It is widely accepted that elections are not events but interdependent activities and processes that form an electoral cycle (Mozaffar & Schedler 2002; Grömping & Martínez i Coma 2017). The following have been identified as key components of an electoral cycle:

The design and drafting of legislation, the recruitment and training of electoral staff, electoral planning, voter registration, the registration of political parties, the nomination of parties and candidates, the electoral campaign, polling, counting, the tabulation of results, the declaration of results, the resolution of electoral disputes, reporting, auditing and archiving (ACE Electoral Knowledge Network, cited in Grömping & Martínez i Coma 2017: 16).

The elite-centric approach that political scientists employ is ill-equipped to investigate the nitty-gritty of many of these bureaucratic activities and their norms, structure, and procedures as well as their connections with institutional performance. Thus, it tends to obscure these connections. Taking these administrative and logistical factors inherent in electoral governance for granted is to ‘overlook’ their critical function ‘in securing the credibility and continued legitimacy of democratic elections’ (Mozaffar & Schedler 2002: 6; 18). This thesis’ approach is suited to the illumination of the inherent administrative and organisational features of electoral governance institutions and their effects on election management and electoral dispute settlement. Furthermore, some adherents of the public service delivery approach demonstrate its compatibility with the integrity/manipulation approach by embedding the interaction between interface bureaucrats and institutional elements in the social and political environment (Pepinsky et al. 2017). This thesis follows suit. In sum, the state’s work approach
consolidates existing knowledge on electoral governance.

Treating electoral governance as the state’s work also helps modify the public service delivery literature, which ordinarily focuses on conventional public services and goods such as healthcare, education, and policing (Lipsky 2010; Bierschenk & Olivier de Sardan 2014). New insights can be generated from unexamined empirical evidence, in this case, electoral governance. This can augment our understanding of the explanatory links between institutional elements and performance. An example of this thesis’ contribution to the literature is its disclosure of the mutual dependence between street-level and headquarters-level electoral officials. At different stages of an electoral cycle, any of these sets of actors can shape one another’s work and directly engage with citizens or serve as ‘interface bureaucrats’.

The key performance-shaping elements endogenous to institutions include resource availability, personnel competence, and internal cohesiveness (Lipsky 1969; Bierschenk 2008; Bierschenk & Olivier de Sardan 2014; Bierschenk 2014). High and low resources do not necessarily correspond with high and low performance, but a minimum amount of resources is needed for institutions to function. Benin ‘has only just over one third of the number of police officers found in Germany and only 40% of the number employed in France, and only five percent of the number of judges and state prosecutors in Germany’ (Bierschenk 2014: 227). The paucity of personnel, without whom institutions cannot function, appears to have resulted from a dramatic public service salary cuts after the 1970-1980s economic crises. Personnel shortage overburdens and stresses the few employees serving a huge number of clients, thereby undercutting their capacity (ibid; Bierschenk 2008: 107-110; Lipsky 1969: 5). A more dramatic reality in Beninese public sector is that ‘many local officials have de facto no budget whatsoever at their disposal’ (Bierschenk 2014: 228). That hinders their capacity. But those bent on fulfilling their mandate ‘use private resources’, leading to a ‘creeping privatization of public services’ (ibid.). The collaboration between state and non-state agencies (co-delivery/-production) is ‘a consequence of the state’s inability… to ensure this delivery by itself’ (Olivier de Sardan 2014: 423). Since resource shortages can differ across and within institutions (Bierschenk 2014: 228), I take both cross-institution and within-institution variations seriously.

Some studies have widely reported that the technical know-how of institutional actors is vital to performance. From their cross-country quantitative study of the bureaucratic structure of 35 semi-industrialised and poor countries between 1993 and
1996, Peter Evans and James Rauch (1999; also, Rauch & Evans 2000) claim that to achieve the high performance witnessed in developmental states, bureaucracies must be filled with technically competent people. Developmental states are countries (originally authoritarian states of Asia) capable of mobilising their administrative and political resources towards realising their vision of advancing economic development (Mkandawire 2001: 290-291). They challenged neoliberal orthodoxy, which thrived on stressing the failures of state-led development and the development-enhancing ability of markets in the 1980s. Insights from these states serve as ‘a universal paradigm in the sense that a “correct” set of policies adopted by…[a] state can be applied by other states’ pursuing particular ‘developmental goals without regard to contextual realities’ (Mollaer 2016: 5-6). Thandika Mkandawire (2001) demonstrates the applicability of this paradigm to Africa’s democratic states. There are several nested policies within the ‘correct set of policies’ developmental states adopt that are inapplicable to and unexamined by this thesis. Yet, Peter Evans and James Rauch (1999) and others’ (e.g. Chibber 2002) theorisation of the causal relationship between recruitment and performance facilitate this thesis’ examination of the hiring-related empirical evidence obtained during the investigation of electoral governance in Kenya. The thesis, in turn, advances our understanding of link between recruitment and performance. Evans and Rauch (1999) recommend that the recruitment of bureaucrats must, therefore, be merit-based, i.e. target persons possessing relevant technical expertise. That effect can be bolstered by guaranteeing officials career security, performance-dictated promotions, and attractive remunerations. These incentives can motivate officials to work harder and desist from the ‘quick returns available from corrupt individual practices’ (ibid: 752). But some researchers contend that such structured incentives are insufficient conditions for ridding institutions of corrupt practices (Hyden et al. 2003: 8; Rose-Ackerman 2007: 23). Unlike patronage-based hiring or hiring guided by consideration for kinship and patronage ties (nepotism), meritocratic recruitment affords bureaucracies, at least, the minimal required competencies for their jobs and instils esprit de corps that incentivises officials to collectively commit to institutional ends (Evan & Rauch 1999). These insights will be employed in the thesis.

Contrary to the developmental state model, this thesis highlights that sometimes sticking to the open, competitive rules and procedures for meritocratic hiring is unfeasible. Hence, hiring managers aiming to fulfil their mandate prioritise other unofficial, but practical, considerations. This approach complicates the course
and product of performance. The qualitative method I employ is more conducive to unravelling such complexities.

Another success-inducing element the extant literature highlights is personnel cohesion over core institutional goals (Evans 1995; Evans & Rauch 1999; Rauch & Evans 2000; Chibber 2002). Evans and Rauch (1999: 752) insist that meritocratic recruitment fosters corporate coherence and professional solidarity because ‘bureaucrats who see themselves as having joined their confreres in office by virtue of sharing similar abilities are more likely to internalize shared norms and goals than are those who know they owe their office to the favour of a particular kinsman or patron’. That is essential for the creation of ‘internalized intangible costs for corrupt activities that subvert organizational goals and increase the effectiveness of monitoring’ (ibid.). Comparing public services in India and Korea, Vivek Chibber (2002) has validated the internal cohesion argument, but also maintains that owing to interagency relations in states, the commitment to bureaucratic rules can generate outcomes inimical to economic development.

By examining the work of courts and electoral management bodies in Kenya through this perspective, I make the following unexplored facets of the relationship lucid: institutions constituting a state may differ in terms of coherence; institutional fragmentation and coherence have diverse (bureaucratic and personal/factional) drivers; no institution is wholly (dis-)unified; and the direction of the impacts of (dis-)unity on institutional outputs varies depending on context. Therefore, the use of institutional cohesion and fragmentation in this research simply depicts the side of the unity-disunity spectrum that a particular institution leans more towards. All institutions produce complex mixtures of successful and unsuccessful outcomes across and within time and space. This is because the interplay of institutional mechanisms and terrains within which institutions operate creates nuanced operational processes and outcomes that designers of institutions cannot precisely predict and address (Bierschenk & Olivier de Sardan 2014; Lipsky 2010).

Although the above researchers (ibid.) draw their postulations from studying street-level bureaucrats, this thesis illustrates that the causal mechanisms equally affect headquarters-level bureaucrats. For example, notwithstanding that field electoral officers actually administer elections to citizens, the finality of presidential election results is determined by headquarters-level officers (Jockers et al. 2010: 106).
Concurrently examining the independent and joint functioning of different units of an institution is, therefore, important, especially where their works are tightly intertwined.

Constrained by the impracticality of some institutional mechanisms, some state officials sometimes ‘transgress the letter of the public norms but obey their spirit [goals]’ (Olivier de Sardan 2014: 409-410). During Somalia’s 2016 and 2017 indirect elections, Parliament and the National Indirect Election Commission’s lack of capacity and will to execute their mandate necessitated the appointment of the National Leadership Forum (NLF), an extraconstitutional agency, to oversee the elections. NLF-administered elections were far from perfect, but the body has been praised for delivering a peaceful and stable selection of leaders in a fragile setting (Menkhaus 2017: 137). Participation of numerous agencies in institutional performance creates competing structures, interests, and procedures that make coordination towards the realisation of institutional vision difficult. That complicates delivery processes and outcomes (Olivier de Sardan 2014: 422-424).

Augmenting the reasons for the said trade-off, I claim that in other instances, public officers uphold the letter of organisational norms so much so that they forfeit organisational ends. Explaining how Kenya’s reformed judiciary’s dismissal of the 2013 Odinga vs IEBC election petition reinforced the centralisation of state power in the executive, Harrington and Manji (2015: 185) maintain that the verdict was ‘determined by procedural rules regarding time limits on the admissibility of evidence and the operation of devices’.

Fundamentally, States at Work assumes that institutional actors simply react to endogenous forces. Using sedimentation, a path-dependency perspective, Bierschenk and Olivier de Sardan (2014) proclaim that the inconsistent constituent features bureaucracies have developed across time are what spur bureaucrats to act in the diverse ways to produce diverse outcomes. Bureaucrats also affect the structures and preferences of institutions. This can equally alter performance. This agency-structure interaction is explored in this thesis. Studying the reciprocal effects of structure and agency is in line with the historical institutionalist orientation of, say, States at Work, since historical institutionalism bridges cost-benefit calculus and historical legacy approaches in specifying the interrelationship between human agency and structure (Hall & Taylor 1998). The reciprocity underpins the consistent call for historical institutionalists to develop theories that also clarify actors’ capacity to alter the ‘incentive structure in a dialectic interchange between institutions and actors’ (Nørgaard 2001: 30). It is, therefore, imperative to look for non-institutional forces that
induce bureaucrats to substitute institutional means and/or ends for personal or factional ones.

2.2.2 External Environment Perspective: Appointment, Job Security, Financing, Technical Assistance, and the Threat of and Actual Violence

Public institutions exist within particular social and political environments whose actors employ diverse tactics to try to influence institutional performance. That introduces outsider-driven informalities to implementation. That can foster and/or subvert the quality of performance (van de Walle 2001; Bates 2008; Centeno et al. 2017). This idea contrasts with a core claim of States at Work, which affirms that the informality marking bureaucratic processes ‘is at least as much a product arising within the state apparatuses themselves as it is an expression of the cultural logics of an African environment’ (Bierschenk 2014: 223). Informality in public services cannot be entirely explained by environmental influences, yet attention cannot be diverted from those that permeate public services from outside.

State functioning bears different normative and empirical (desirable and undesirable) consequences for different social and political agents. In their interactions with public institutions, these actors exert various influences, to which institutional actors react (Centeno et al. 2017). As such, an examination of institutional performance cannot ignore the motives behind bureaucrats’ definitions of and responses to their environments. This brings to the fore the level to which officials are insulated from or responsive to the social and political (socio-political) groups seeking to deploy their capacity in specific directions. Conventionally, when such groups succeed at unwarrantedly steering an institution’s capacity in their favour, it is assumed that the state has failed at fulfilling its mandate of equitably providing public goods and services (ibid: 21-22).

African politics scholarship is predominated by the idea that neopatrimonialism and patron-clientelism is the channel through which environmental influences fetter institutional actors. Both concepts have been deemed diagnostic characteristics of economic and political malaise, which liberalisation was to correct. The failed attempts to liberalise African economies and politics since the end of the Cold War have also been widely attributed to these concepts (Easterly and Levine 1997; Bratton & van de Walle 1997; van de Walle 2001; Nugent 2001; Gyimah-Boadi 2007; Arriola 2009;
Villalon 2010). The concepts are derived from the patrimonial authority Max Weber used to describe the authority framework of small, traditional polities such as African chiefdoms. Rulers govern through personalised authority, meaning power and prestige are concentrated in them rather than written laws. They provide security and sustain regimes by preferentially giving out material and immaterial resources to their clients or a segment of the population loyal to them. Such societies contrast with Weber’s ideal-typical state, whose foundational authority is rational-legal principles and structures like codified norms and impersonal bureaucratic mechanisms. Furthermore, ideal-typical polities are clearly distinct from the private realm. Notwithstanding that modern African states look like ideal-typical states, political scientists consider them as neopatrimonial or hybrid states carved out of amalgamation of ‘customs and patterns of patrimonialism’ and ‘rational-legal institutions’ (Bratton & van de Walle 1997: 61-62; also, van de Walle 2001: 51-52). Because African states have become presidential – state power is concentrated in presidents with far-reaching clientelistic networks –, their presidents strategically distribute public resources to their clients to preserve their rule. The significance of this is that presidents exercise undue influence over public policy delivery, sabotaging institutions and skewing implementation to their advantage (ibid.).

An oft-cited avenue through which ruling elites assuage institutional independence is the power over public service employments, with which they populate public institutions with their stalwarts (van de Walle 2001: 52; Easterly and Levine 1997; Mutua 2001; Ruteere & Pommerolle 2003: 591; Branch & Cheeseman 2006: 22; Arriola 2009; Villalon 2010; Handley 2017: 238-239). Leonardo Arriola’s (2009: 1340-1341) research involving 40 African countries reveals that to ‘minimize…being overthrown’ between 1970 and 2000, leaders effectively used ministerial/cabinet appointments as patronage resources to ‘make credible their promises to distribute patronage among political elites and the constituencies [e.g. ethnic and religious communities] whom they represent’. This power also affords executive governments control over the dismissal of public servants. Laws that establish democratic institutions provide safeguards against their co-optation, but executive governments have been shown to circumnavigate them. In his study of the subordination of the Kenyan judiciary to President Daniel arap Moi, Mutua (2001: 106) argues that the president’s (in-)direct appointment of all five members of the panel charged with advising on the removal of judges, the imprecision of the legal nature of the advisory,
and the extent to which the advisory was binding on the president, among other legal loopholes put 'pressure on judges to do the [executive’s] bidding’. Self-interested upper-echelon judicial officers, precisely successive chief justices, were the key connectors between the environment and the institution, ensuring that ‘executive wishes were executed by both the superior and subordinate courts without deviation’ (ibid: 118).

Another formal route via which the subversion of institutional independence can be done is control over institutional budget and financing. Studies on North America (Lewis 2003) and Africa (Olowofoyeku 1989; Gazibo 2020; Ellett 2020: 154; Resnick 2020: 405-412) have reported that the budgetary powers presidents possess make it possible to use budgetary cuts to control institutions. This undermines both institutional independence and capacity. Research on election management claims that the majority of African election management bodies are independent in law but not in reality due to the preponderance of executive power over appointments and financing (Gazibo 2020). In Cameroon, presidents used this power to influence successive electoral commissions to sustain their ascendancy. Acting through the Ministry of Finance, presidents made the institution financially over reliant on it. Where an institution is perceived to (or actually) oppose the executive, it was starved financially, thereby eroding its capacity (ibid.). This largely rests on the lack of clarity in the ‘rules for the distribution of intergovernmental [financial] transfers’ (Resnick 2020: 409). Budgetary cuts have debilitating effects, including reductions in judges’ salaries and institutions’ operational funds. That creates financial anxieties that place judicial personnel ‘into a state of servility to the authority responsible for [their] financial fortunes’ (Olowofoyeku 1989: 63).

The thesis maintains that neopatrimonialism engenders corruption that diffuses across the various levels of institutions. In safeguarding their positions, top-level bureaucrats whose employment the executive secured are inclined to use the same approach to hire and retain lower-level officials loyal to them. This practice affords them staff committed to the fulfilment of their unofficial obligations to their external patrons. That extends the reach of the prime node (executive government) in the clientelist network. Connecting the top-down (external environment) and bottom-up (internal features) studies is an original contribution of this thesis.

Despite its analytical usefulness, the neopatrimonialism literature has a number of flaws. It presents a deterministically defeatist outlook on Africa, ‘pushing the
analysis toward ontological despair’ or ‘Afro-pessimism’ (Mkandawire 2015: 602). Furthermore, it overgeneralises Africa’s political realities, overlooking ‘the complexities of the continent’ in ‘space’ and ‘time’ and the multiplicity of competing ‘interests, ideologies, and motivations of social actors’ (ibid.). Its misreading of citizen-leader relationship in Weberian patriominal societies has, for example, caused it to neglect the nuanced reciprocities connecting the public and its government. This ensures that (un-)elected public officials ‘could be held accountable by the collective’ (Pitcher et al. 2009: 125). This thesis aligns with these critiques, contending that the neopatrimonialism lens’ fascination with the relationship between the executive and the heads of other public institutions obfuscates the whole gamut of external actors capable of affecting bureaucrats’ practices, the means by which they do so, and/or the heterogeneity of their impacts. Institutions have direct ties to other social and political actors, including international governmental and non-governmental organisations, other public institutions, civil society organisations, political parties, private enterprises, and citizens (Evans 1995; Pepinsky et al. 2017; Ellett 2020). With varying degrees of success, these actors employ unmediated channels to shape performance. Recounting democratic advancements by Africa’s judiciary, Rachel Ellett (2020) asserts that honest judicial personnel utilise informal institutional insulation mechanisms such as alliances with continental and international support networks to further shield themselves from actors trying to co-opt them. These networks advocate against the persecution of legal professionals, run cross-country best practice exchanges, and provide continual education to legal professionals. ‘These emerging legal epistemic communities become powerful tools in shaping judicial decision-making and empowerment’ (ibid: 156). This signifies that some bureaucrats in the continent exercise agency and pursue institutional goals.

Donor countries and organisations and civil society organisations (CSOs) also support institutional performance. Evans and van de Walle (2020) argue that due to the discretion African governments exercise over aid, donor-provided development assistance reinforces the status quo, but democracy assistance, which is targeted at strengthening democratic institutions, has democracy-enhancing effects. Others paint a less rosy picture of democracy assistance (Elklit 2011; Brown & Raddatz 2014). For Jørgen Elklit (2011: 399), the significant international financial and technical assistance committed to Kenya’s 2007 elections ‘was of almost no avail’ before and during the elections, though it ‘was more useful after the election’. Peter VonDoepp
(2020) proclaims that the effects of CSOs are chequered. They have bolstered democratic consolidation in a myriad of ways. For example, a union of CSOs spurred the formulation of the domestic violence bill by Ghana's parliament and the execution of Liberia's rape laws (ibid: 368). Their records have, however, been marred by instances where they play marginal roles in democratic development, succumb to donor funding priorities, and aid authoritarian projects (ibid; also, Bratton 1994; Gyimah-Boadi 1996; Obadare 2011; Aziz 2019). These works illustrate the complicated effects donors and CSOs have on public service delivery. As well, they accentuate the utility of certain forms of informality. This is another departure from the neopatrimonialism literature, which suggests that informality is inimical public goods and service provision.

Political parties, opposition and government alike, and their supporters are not mere bystanders in all this. Since they represent constituencies and partake in the deliberation of legislations in democratic states, they have high stakes in public policy implementation. This makes them vital forces in the deployment of state capacity (Centeno et al. 2017: 11-12). Therefore, implementation research has to figure out the roles they play. This thesis establishes that through violent and non-violent means, parties and supporters affect the practices of officials. Research on Ghana’s electoral dispensation shows that owing to its inability to unilaterally legitimate elections, the Electoral Commission of Ghana (ECG) founded the Inter Party Advisory Committee (IPAC), a non-statutory body consisting of the ECG and political parties, to help it to attract public confidence and run credible elections (Gyimah-Boadi 2001; Asante 2013). But political parties have their own goals that drive them to try to redirect the course of implementation. A critique of the acclaimed successful 2008 Ghanaian elections depicts how right before the second round presidential election the New Patriotic Party (NPP) deployed roughly 100 of its Accra-based followers ('Macho Boys') to the National Democratic Congress' (NDC) Volta Region stronghold to replace its ECG-accredited agents. Whereas many Presiding Officers overseeing the elections refused these unauthorised agents entry to their polling stations, others admitted them (Jockers et al. 2010: 109). This happening speaks to the discretion and agency bureaucrats exercise when effecting supposed universal policies and the ideas that the actual policy delivery may deviate from their plans (Nakamura & Smallwood 1980; Lipsky 2010; Pepinsky et al. 2017). The ‘Macho Boys’ who were admitted 'later refused to sign the result sheets' (Jockers et al. 2010: 109). This seems like an ‘operative
strategy’ NPP adopted to ‘disturb the election procedures and... hinder the official announcement of the final presidential results, should these not be in’ its favour (ibid: 110).

Violence, real and anticipated, is another means for parties and their supporters to influence implementation. Many studies clarify the interplay of elections and violence in Africa. They state that political elites, predominantly those associated with incumbent parties, and their supporters use violence to coerce voters, repress voter turnout, rally support, and punish victors (Klopp 2001; Klopp & Zuern 2007; Laakso 2007; Mehler 2007; Ferree & Long 2016; Bekoe & Burchard 2017). By showcasing the constraints electoral violence has on voters and parties, these findings illuminate the failure of electoral governance institutions to ensure free and fair elections. Because the literature does not take institutional actors as its object of study, it overlooks the effects violence has on their behaviours and why and how those effects come about. Insights from academic and policy research on judicial independence in Africa (Olowofeyeku 1989: 63; CIJL 2000; OHCHR & IBA 2003: 117; Moyo 2007) enables this thesis to fill this gap. I claim that anxieties stemming from actual and potential violence can cause even honest institutional actors to compromise their mandates and/or exit their jobs. This thesis, moreover, demonstrates that where seemingly co-opted officials face real and anticipated violence, such threats can unexpectedly urge them to act in accordance with their mandates. This requires implementation research to be sensitive to the circumstances surrounding the activation of particular explanatory mechanisms.

2.3 The Public’s Political Attitudes and Behaviours

2.3.1 Institutional Perspective: Direct Experience and Observation

A body of knowledge attributes the public’s attitudes towards political institutions to their exposure to and personal observations of the actual work of institutions. Research on citizens’ trust in institutions has shown that their direct observations and experiences of public institutions stimulate their satisfaction and disillusionment with institutions. Good experiences or observations yield positive appraisals, while bad experiences or observations produce negative appraisals (Newton & Norris 1999;

Citizens reference the capacity and the autonomy of institutions when adjudging institutional performance. They deduce these performance indicators from their views about institutional actors (Pharr et al. 2000: 17; Hall et al. 2009; Rubbers & Gallez 2012; van der Meer 2017: 5). Their appraisals are conducted in light of institutions’ ability to fulfil their mandate (e.g. economic growth and political rights) in a fair and an inclusive manner (Newton & Norris 1999: 7; Freitag & Bühlmann 2009: 1543-1547; Askvik et al. 2010: 419; Kerr 2013). Quantitative inquiry into the American jurisprudence suggests that citizens may either focus on the actual output of an institution’s action or on the procedures for reaching those results (Tyler 1988; Tyler 2001). After examining public perceptions of local government responsiveness in 20 African countries, of which Kenya is one, Michael Bratton (2012) argues that opinions of government responsiveness are predicated on the availability of public goods such as well-maintained roads and transparency in government procedures (ibid: 523-524).

From his statistical inquiry into popular evaluations of election quality in Nigeria, Nicholas Kerr (2013) maintains that the topmost opinion-shaping factor is whether election-related institutions actually enhance electoral freedom and fairness. Ken Opalo (2020) notes that Kenyans’ assessments of subnational politicians are likely to be favourable even where they experience public service deficits, but he argues that their knowledge about the functions of government primarily originates from exposure to government services.

Popular appraisals fluctuate across and within institutions. Per a secondary finding of Steinar Askvik and others’ (2010: 423-424; 430) research on Nepalese citizens’ confidence in institutions, more politically sensitive institutions such as courts and civil service tend to garner significantly less public confidence than less politically sensitive institutions such as schools and hospitals. The reason is, the former are more politically important to citizens, and, thus, more contested (ibid.). In this thesis, I add that citizens’ opinions of an institution can also differ across an institution’s different departments, offices, or hierarchy. The varying political salience of the different branches to citizens explain these variations. While individuals focus on multiple offices/departments/officials, I contend that they tend to be more attentive to those whose work provide finality to pertinent political questions such as presidential election results (Kerr 2013; Erlich & Kerr 2016). The variances necessitate looking out for and
explaining variations in the public’s appraisals of the same and different institutions.

The thought that actual institutional performance determines actors’ attitudes is so pervasive that students of democratic state-building and electoral violence recommend the reform of the normative, procedural, and organisational features of institutions as a remedy for the public’s disgruntlement with institutions (Höglund 2009; Bekoe & Burchard 2020; Gazibo 2020). For instance, justifying their recommendation for institutional strengthening, Dorina Bekoe and Stephanie Burchard (2020: 267-268) insist that ‘appearance of [election management bodies’] incompetence’ fuel ‘electorate’s discontent or decision to protest an electoral process’.

This perspective is illuminating, but its idea that citizens make objective evaluations of institutional performance (Van Ryzin 2007: 1; also, Licari et al. 2005: 365) is not always tenable. At best, this explanation works where citizens have directly interacted with or witnessed institutions; as in, observing or interacting with street-level electoral officers while casting ballots. They are not directly privy to many of the key electoral governance processes they usually reference. For example, many may not partake in or monitor first-hand the counting, tallying, and transfer of election results and the adjudication of electoral disputes, yet they comment on the effectiveness, efficiency, and fairness of these processes and their results. With a different purpose, Tyler (2001: 227) avows that when assessing courts, Americans ‘with prior court experience’ focus more on the ‘quality of [their] treatment’ by institutions and those ‘without court experience focus more heavily on more abstract policy issues related to the courts’, suggesting that citizens need not personally experience institutions to form opinions about them. Additionally, in emerging democracies, financial and human resource scarcity tends to cause electoral irregularities. Supporters of opposition parties often ‘read technical failures as indicators of fraud’ aimed at preserving the status quo (Pastor 1998: 1; also, Mozaffar & Schedler 2002: 9). This signals that while many citizens point to aspects of institutional performance in their evaluations, their overall evaluations might discount perceptible measures.

Finally, underlying the structural/institutional viewpoint is the idea that citizen assessments are entirely rational (Schoon & Cheng 2011: 619; Erlich & Kerr 2016: 683). If this framework were universally coherent, we would find consistent perceptions among people who interact with particular institutions in a locality and a period. That is because structural factors affect all clients/citizens exposed to them equally (Tyler 2001: 217). The inclination of some citizens to disregard their own (or lack of)
experiences and the differing opinions among those who engage with specific institutions in particular areas are indicative of the subjectivity and seeming irrationality of citizens’ appraisals. These inconsistencies urge me to look beyond what institutions actually deliver to augment knowledge on the public’s appraisals.

2.3.2 Socio-political Perspective: Traditional and Social Media, Physical Interaction, and Partisanship

Africa-focused research has repeatedly emphasised that the physical and virtual platforms where citizens convene to deliberate on their shared interests enable societal groups and individuals to influence their perceptions about political matters (Srinivasan et al. 2019; Nyabuga & Ugangu 2018). Traditional or mainstream media (television, radio, and newspapers) organisations and physical and virtual social networks (e.g. political parties, relatives, strangers, friends, and community leaders) are the channels where citizens acquire information. These groups and people’s coverage, censorship, and framing of information about institutional performance polarises different people’s assessments. This makes citizens’ assessments of institutional performance rather subjective:

The indicators [studied by institutionalist theories] merely return the popular image of the administration, rather than actual functioning. Changes in bureaucratic functioning may take a long time to influence perceptions, and factors external to the public administration may influence evaluations. Yet, while subjectivity is a problematic issue for academic researchers, subjective measures are relevant because they are a reality and influence people’s actions (van de Walle 2006: 446-447).

In sum, this analytical lens claims that the social and political environments shape citizens’ evaluations (Sunshine & Tyler 2003; Levi & Stoker 2000; Moy & Scheufele 2000).

Traditional media, also known as the fourth estate of democracy, is mandated to inform citizens and provide them space to engage in constructive deliberations. In actuality, the execution of this mandate results in mixed outcomes. That sways the public’s opinions about social and political actors towards either ends of the positive-negative appraisal spectrum. These effects come about through framing (the format and style of content), coverage, and censorship of information (Moy et al. 1999; Moy & Scheufele 2000; Forgette & Morris 2006; Onyebadi & Oyedeji 2011). Since the transition to multi-party democracy in Africa in the 1990s, private media organisations,
which were envisaged to be more neutral, have sprung up. Notwithstanding the increased media freedom guarantees, the functioning of these organisations and state-owned media firms continue to be constrained by forces endogenous and exogenous to news production and circulation. The concentration of state power in presidents allows them to use tactics such as preferential license issuance, media blackouts, and journalist arrests to censor media firms and journalists. The profit-maximising interests of media organisations cause media firms to tailor (and even misrepresent) information for different audiences, attenuate professional journalistic standards, and use the job security of journalists as leverage to get them to uphold commercial interest. Opposition- and government-affiliated politicians also use bribes and violent threats to influence the media to work in their favour. These pressures, together with some other societal and personal concerns, cause some journalists to compromise their professional and ethical standards when deciding what to report, how to report it, and what to ignore (Kadhi & Rutten 2001; Mfumbusa 2008; Skjerdal 2008; Diedong 2008; Ismail & Deane 2008; Onyebadi & Oyedoji 2011; Ciboh 2017; Lohner et al. 2017; Nyabola 2018; Nyabuga & Ugangu 2018). That allows factual news, rumours, gossips, and propaganda about institutions to be channelled through the media to the public. Depending on how the media biases information about institutions, citizen satisfaction or dissatisfaction can increase (Glaser & Denhardt 2000: 54; Osborn 2008: 148; Mlambo & Zimunya 2016: 152-155).

The preponderance of elites and gatekeepers in the traditional media space has made digital channels (e.g. SMS, Facebook, Whatsapp, and Twitter), which permit citizens to participate in information creation and dissemination, attractive supplementary public spaces. Social media’s ability to quickly distribute bulk information to people living far from one another has also drawn groups such as political parties, state institutions, and civil society organisations to it. Social media research grounded in data from Africa exhibits how these groups and citizens jointly generate and exchange authentic and inauthentic opinion-shaping stories about persons and institutions (Trujillo et al. 2014; Nyabuga & Ugangu 2018; Orji 2019; Diepeveen 2019; Dwyer et al. 2019; Mutahi & Kimari 2020). A case in point is Nigeria’s Independent National Electoral Commission’s (INEC) creation of social media pages (e.g. INEC Citizens Contact Centre) to exchange information with citizens during the 2011 and 2015 elections. This initiative allowed ‘members of the public’ to send their ‘questions and complaints’ directly to the institution and ‘receive rapid response from
the INEC official’s (Orji 2019: 167). In Africa, social media use is concentrated in urban areas (Dwyer & Molony 2019: 3-4; 7). This thesis confirms this finding and adds that social media use is also concentrated among younger people.

Through physical or face-to-face interactions, citizens (e.g. relatives, friends, colleagues, and community leaders) also create and proliferate behaviour-shaping views about people and institutions. Yang and Stone’s (2003) quantitative research in the United States shows that individuals who pay more attention to the media are carriers of the media’s agenda to those who pay less attention to the media. ‘Because the interpersonal reliant do seek news and public affairs information, the media agenda spreads throughout the population, not just to those who attend directly to the mass media’ (ibid: 72). But this channel’s role exceeds the conduit of campaign effect, as it is also an outcome of media effect – media content encourages interpersonal discussions. Finally, it has a moderator of media effect, in that interpersonal agreements and disagreements can either reinforce or dampen the intended aim of media campaigns (Southwell & Yzer 2007).

According to students of social media, the boundary between digital and physical publics are porous. That enables people and groups to share information emerging on one platform on other platforms. Non-digital media users, for example, may be aware of information originating from and circulating on social media platforms (Omanga 2019; Dwyer et al. 2019). These functions of interpersonal communication, be it online or offline, fosters attitudinal change. That makes interpersonal exchanges a precursor of political attitudes and behaviours (ibid; Mcleod et. al 1999; de Vreese & Boomgaarden 2006; Southwell & Yzer 2007: 440; 447-448). These relationships and their effects justify exploring the interactive effects of traditional and social media and face-to-face interaction in research on public opinion formation.

This thesis shows that when searching for information, citizens utilise varied means to try to authenticate information they collect. Their various perceptions of the credibility of different information sources tend to help them differentiate among these sources, filter information they acquire, and decide on the information worthy of acceptance and rejection. In Nigeria, ‘while alternative news sites are expanding, audiences in Nigeria still seek verified news from newspapers’ (Orji 2019: 156; also, Dwyer et al. 2019). Even within the traditional media category, citizens are, to varying degrees, sceptical of information from the various outlets. Their knowledge of the structural constraints on and other contextual happenings around the media’s work
instigate this scepticism (Moy et al. 1999: 150; Mcleod et al. 1999: 329; Glaser & Denhardt 2000).

The literature does not adequately explain why some citizens hold positive views about the works of institutions while others hold negative views. Citizens’ varying scepticisms about the credibility of the information channels indicate that the information they hold (and their effects on appraisals) transcend what these outlets provide. Moreover, the extant studies do not illuminate why people exposed to the same or similar information originating from a communication channel interpret them differently. If these sources determine their opinions, we would not observe divergences in opinions. A study on the spread of rumours attributes people’s propensity to believe or proliferate rumour to their pre-existing beliefs about the rumoured object (Sunstein 2009). Some media studies hint that these pre-existing beliefs stem from citizens’ opposing political predispositions (Moy et al. 1999: 149; Moy & Scheufele 2000: 751; de Vreese & Boomgaarden 2006: 21; 32). These studies, however, do not explore the origins and polarisation of political orientations.

Social Identity Theory provides a starting premise for understanding citizens’ diverging political predilections and behaviours. Angus Campbell and others (1960) accentuated the essence of partisan attachment, likening it to people’s association with other social identities such as race, ethnicity, and religion. Since the 1970s, others have employed this perspective as the foundation for Social Identity Theory (Greene 2004: 136). The principles of the theory are: 1) people hold a self-view whose source is their membership in or affiliation with various social identity groups; 2) people are inclined to identify with other members of their groups (in-group) and differentiate themselves from people they associate with other groups (out-groups); (3) this self-view amplifies people’s evaluative comparisons between essential out-groups and in-groups; 4) and people give preferential treatment to their in-groups and discriminate against relevant out-groups (Tajfel 1978; Greene 1999; Gibson and Gouws 2000; Greene 2004). These studies deem ‘social or group identities’ as ‘psychological attributes of individuals’ that ‘may be grounded in objective characteristics… but… take on political significance only to the extent that individuals are cognizant of their membership in a group and attach value to it’ (Gibson and Gouws 2000: 279). This theory provides motivational and cognitive reasons for analysing the enduring opposing perceptual and behavioural dynamics of partisanship and its effect on political attitudes. ‘Information favoring one’s preferred party is given selective
attention, whereas information favoring the opposition party is not. Stronger partisanship leads to a more exaggerated process of [information] selection and perceptual distortion’ (Greene 1999: 395). Margaret Levi and Laura Stoker (2000) affirm that in the United States, Democrats tend to trust the presidency more if the incumbent is a Democrat and less if the incumbent is a Republican. They additionally found similar partisan attitudes in Western Europe. They associate these patterns to people’s proclivity to extend their trust in their in-groups to institutions led by members of this group. This is because of the belief that in-groups subscribe to common moral norms and values (ibid.).

The argument that people are inclined to gravitate to their parties’ position and reject that of their opponents is a compelling frame for interpreting the inconsistent public attitudes, but the rationale Social Identity Theory proffers for such behaviour is reductionist and unconvincing. The theory treats the ‘bipolar partisan attitudes’ as ‘a natural psychological outgrowth of self-perceived membership in a political party’ (Greene 1999: 395). Informed by studies on political mobilisation in Africa, this thesis contests this notion, stressing that the incentive for aligning with particular parties or politicians is mostly extrinsic to the individual.

Longstanding structural forces push certain identity groups to and away from particular sides of the political divide. Neopatrimonialism and its associated exclusionary and inclusionary policies institutionalise Africans’ sense that the pathway to benefiting from public resources (political and economic) is through control over the state (Nugent 2001; Dorman 2020). ‘Communal readings of local history and associated perceptions of state bias, injustice and achievement have rendered ethnic – or other collective identities – central to evaluative judgments of past and expected party and government performance, and can act as an important basis for claims of differential treatment’ (Lynch & Crawford 2011: 289). Politicians and parties also strategically help nurture this perception through their campaigns and their preferential allocation of public resources to their support bases, thereby making them appear credible to their supporters. Politicians hone their strategy by manipulating ideas of cultural (norms and practices) similarities and differences they share with particular social groups. All these foster the partisan cleavages, which manifest in the tendency of the majority of members of specific social identity groups to support specific parties/politicians and reject others. Fear of marginalisation from and the desire for inclusion in the benefits of citizenship push different groups to different politicians and
parties (ibid; Nugent 2001). The thesis insists that citizens are inclined to believe that their preferred national-level politicians and parties are more interested in their welfare, and as such, more reliable. Hence, they are inclined to look to them for political guidance.

Kenyan studies assert that political parties draw their membership from particular ethnic and regional communities (Ajulu 2002; Lynch 2006; Cheeseman 2008; Cheeseman et al. 2014; Kanyinga 2014; Nderitu 2018). To Ajulu (2002: 251), political parties were formed ‘along ethnic identities and state-power aggressively contested on the basis of mobilised ethnicity’. Political elites use both material incentives and existing ‘conceptions of cultural similarity and difference…as a supportive framework’ to rally certain ethnic groups behind them (Lynch 2006: 237). These studies widely accept the view that Kenyans seek political leadership from parties their most prominent co-ethnics side with.

These studies ignore cases where members of an ethnic community are near even split along political lines, regardless of whether or not their most prominent co-ethnics back any party/politician. This thesis establishes the prevalence of intra-ethnic division along generational (older versus younger generations) lines. Different generational experiences with marginalisation and inclusivity primarily explains this phenomenon. The desire for inclusion and fear of marginalisation still lie beneath the inter-generational fractionalisation, as shown by research on Sierra Leone and Liberia (Richards 2005) and Tanzania (Macdonald 2018). To varying extents, ethnic material and immaterial interests condition the divergent partisan preferences of both generations. I maintain that citizens’ commitment to political parties in such contexts is relatively weak.

Whereas the electoral attitudes of Kenyans have received much academic attention, only few (predominantly quantitative) studies purposely systematically account for Kenyans’ evaluative behaviours (Shah 2015; Erlich & Kerr 2016). Knowledge from Devra Moehler’s (2009) research on 12 other African countries partly inspires the research’s linkage of party affiliation and Kenyans’ assessments of the 2013 elections. While corroborating the fusion of ethnicity and partisanship, these works confirm that supporters of presidential election winners tend to adjudge elections positively (‘free and fair’) and supporters of election losers tend to adjudge elections negatively (‘rigged’). Erlich and Kerr (2016: 683) trace the inconsistent appraisals partly to supporters’ inclination to accept information about the capacity and
impartiality of institutions emanating from their political candidates, who usually disparage electoral processes and outcomes that do not go their way and hail those that do. This may be why even after reform some citizens continue to decry institutional performance.

While this thesis confirms the partisanship-evaluation nexus, it extends certain conjectures of this relationship. First, the abovementioned research explains partisan affiliation only in terms of interethnic competition. This thesis contends that this does not tell the whole story. Substantial divergent partisan preferences can also be found among members of specific ethnic communities (Tonah 2012). Second, aligning with the extant research, this thesis states that partisanship explains citizens’ overall evaluations, which focuses on institutions or aspects of institutions that give finality to questions on state power (e.g. presidential elections results). Nonetheless, citizens are able to simultaneously evaluate their personal experiences and observations of performance, even if they are inclined to discount this evaluation in their overall evaluations. Thus, I place citizen evaluations on two evaluative planes, i.e. primary and secondary evaluations.

Third, unlike the above works and in line with research done on the influence of partisanship on the political attitudes of Beninese (Adida et al. 2020) and European (Ray 2003) citizens, this thesis reveals the two main conditions under which citizens may express appraisals glaringly antithetical to those of their preferred politicians and parties. One is the salience of their evaluations to their parties’ electoral goals. Where an opinion expressed does not appear injurious to one’s party’s present and/or future electoral fortunes, she/he may accept more cogent alternative information. Another is the strength of one’s commitment to his/her party. Where attachment is weak, an individual may be more critical of information from his/her party and deviate from it when given more compelling competing information from alternative sources like traditional media.

Compared with the qualitative method this thesis uses, the quantitative method the existing research utilised is ill-suited to uncovering the complexities of the public’s appraisals. Provided that the literature is limited in (in-)validating well-established assumptions, it is liable to overlook outlier cases, such as rare inconsistencies in the partisan attitudes and behaviours of members of particular ethnic communities. Theory- and empiric-driven qualitative research is necessary for systematically finding such cases and exploring them to consolidate the partisanship argument.
Furthermore, the closed-ended structure of survey questions and the restriction of respondents to an answer can only capture respondents' overall assessments. To illustrate, Seema Shah’s (2015: 50) question on Kenyans' perceptions of election quality is, ‘do you think the recently concluded election was free and fair?’ Respondents were restricted to one of three answers: ‘Yes’; ‘No’; and ‘Don’t know.’ The rigidity of the question and response choices precludes unanticipated views from creeping into the research and shrouds the nuances in opinions. The open-endedness of qualitative questions and the interactive nature of qualitative interviews can enhance the discovery of un-/under-explored dimensions of the public’s appraisals.

### 2.4 Conclusion

This chapter analyses the key theories of institutional performance and citizens’ attitudes formation. Two distinct analytical approaches for explaining institutional performance have been established: the mechanism of institutions (Evans & Rauch 1999; Bierschenk & Olivier de Sardan 2014) and the social and political environment (van de Walle 2001; Mutua 2001; Centeno et al. 2017) perspectives. The public’s behaviours and attitudes can equally be examined using two analytical approaches: the institutionalist (Bratton 2012; Kerr 2013) and the socio-political (Moy et al. 1999; Southwell & Yzer 2007; Lynch 2006; Shah 2015; Orji 2019) viewpoints. The current section illustrates how knowledge from the literature will be employed to develop a useful framework for illuminating the work of electoral governance institutions and the public’s appraisals of it.

Individually, the mechanism of institutions and the environmental approaches can explain single dimensions of election management and electoral dispute settlement, but for a holistic comprehension of these public services, the two must be melded. The roles of the environment on electoral governance are well-established. Interactions between EMBs and courts and actors in the environments in which these institutions are embedded can drive performance towards precise points in the success-failure range. The review of the literature discloses how the mechanism of institutions has not received attention in electoral studies, although the implementation-shaping administrative and organisational elements it stresses are
prevalent in electoral governance. For example, electoral courts and EMBs rely on certain official (meritocratic) and unofficial (practical and nepotistic) procedures, norms, and structures to recruit directors, managers, and/or field staff. Depending on the context, these factors can draw (dis-)honest and (in-)competent personnel into the institutions. Each perspective offers a partial explanation for election management and electoral dispute settlement. Thus, this thesis will fuse them to disentangle the multidimensionality of election and electoral justice delivery.

The institutionalist and socio-political perspectives of citizens’ behaviours and attitudes will be merged for a comprehensive insight into the public’s appraisals of election management and electoral dispute settlement. Voters and election petition viewers can observe and recount their personal encounters with electoral and judicial processes. These observations can inform their thoughts about these processes. Their reasoning about their actual encounters may constitute their appraisals. But not all citizens are privy to the entirety of the multistage election administration and petition adjudication processes. Yet, they may premise their appraisals on these imperceptible happenings. This is a limitation of the institutionalist approach. The socio-political perspective provides an alternative explanation. Through information creation and dissemination channels such as physical exchanges with neighbours and political parties, citizens receive (mis-)information that can affect their opinions about election management and petition processes and outcomes.

Partisanship, which academics understand to drive citizens to political parties and candidates that appear to represent their (e.g. ethnic and religious) interests (Nugent 2001; Lynch & Crawford 2011; Dorman 2020), fundamentally determines people’s political attitudes and behaviours. Nonetheless, a person may reject his/her party or candidate’s assertions about the quality of elections and petitions and welcome competing narratives coming from information outlets like direct experiences, traditional media, and online and physical social networks. This demonstrates that people’s perceptions about the effectiveness, efficiency, and fairness of electoral governance can sometimes stem from their direct experiences/observations and their news from socio-political forces. Nevertheless, the effects of these influences differ within and across contexts. The co-existence of these influences tells that the same person may express seemingly incompatible opinions about the quality of elections and petitions. The varying priority individuals assign to different information sources
and information they offer attests to citizens’ agency, meaning that the said determinants of citizens’ opinions are not completely deterministic.

A comparison of the state’s work and the public’s opinion formation is essential for finding the congruence between election governance and citizens’ appraisals of it. The extant literature highlights how citizens’ views, which are largely determined by partisan considerations, are fundamentally not reflective of actual policy implementation (Moehler 2009; Shah 2015). Notwithstanding, the similarities between the two, including their nature (implementation successes and failures and positive and negative appraisals) and their determinants (forces exogenous and endogenous to institutions), signify some consistency between them. Hence, this thesis will pay attention to the extent to which the features of the real governance of elections and the public’s appraisals of it mirror one another.

Explanations for institutional functioning and citizens’ perceptions of it can be subsumed under the more abstract concepts formal and informal institutions. Formalities and informalities interpenetrate one another in diverse ways to complicate institutional functioning and citizens’ opinions. Inspired by Helmke and Levitsky’s (2004; also, Bratton 2007) research, I conclude that strategic interactions between official and unofficial electoral governance and public appraisal mechanisms can be complementary, accommodative, competitive, and substitutive. Complementary relations are observable where informal institutions fill gaps unaddressed by formal institutions. For instance, EMBs’ inability to print ballot papers can spur them to procure those manufactured by private firms. Accommodative relationships exist where informal institutions create incentives that modify the substantive impacts of official norms without breaching them. For example, to prevent presidents’ misuse of their authority to unilaterally appoint sympathisers as judges, appointment rules can be altered to allow political parties and civil society organisations to participate in the appointment process. Where competitive relationships exist, the incentive structures of informal institutions are irreconcilable with those of formal institutions, causing them to supplant one another. To illustrate, in clientelistic and corrupt locales, citizens harbour the belief that public institutions sustain the executive’s ascendancy. Therefore, electoral governance information offered by political parties often unseat those provided by EMBs and courts. Finally, substitution occurs when informal institutions accomplish the goals of unenforced formal institutions. In-built court and EMB transparency systems like websites can be inactive. Thus, traditional media
report can serve as the avenue for citizens to obtain regular updates about these institutions’ workings. These insights will be applied to elucidate electoral governance in Kenya and Kenyans’ appraisals of it in the following empirical chapters.
3 Reforming the State to Improve its Relationship with Citizens: Stasis Amidst Change in Kenya

3.1 Introduction

Throughout Kenya’s colonial and post-colonial periods, different segments of the populace have campaigned for legal and structural reforms they hoped would make the state responsive to their interests. Under British imperial rule, flagrant suppression and marginalisation of Africans by the British, both government and settlers, gave rise to Africans’ agitation for independence. The colonial government, for example, created a native reserve system that separated Africans geographically and socially to forfend a potential unification of Africans to contest its rule, incentivised appointed chiefs and provincial administration to clamp down on African resistance, and denied Africans direct official representation in the Legislative Council (LegCo). After independence, the belief was that the African-ruled state would foster ‘a national identity’ and ‘political practices and institutions devoid of [the] prejudices’ of their colonial past, but governments’ approach to these tasks was largely ‘dictated by circumstances and institutions inherited from this colonial past’ (Olumwullah 1990: 106; also, Mueller 2014). These institutions and circumstances effectively ensured that despite changes made to the state and its relations with citizens at different epochs in the post-colonial years, remnants of the past continued to influence these relations. These include the executive’s efforts to skew the work of other public institutions to preserve its ascendency, sense of marginalisation by certain ethnic communities, notion of inter-ethnic competition, strong relationship between some ethnic communities and political parties associated with their most prominent co-ethnics, paucity of confidence in the credibility of the work of public institutions (e.g. policing and electoral governance) by opposition parties and supporters, persistent call for reforms by some segments of the public, and elite negotiations and alliance-building.

This chapter provides an overview of state-society relations in Kenya across a longer time span. Its aim is to unveil the characteristics of this relationship that are pertinent to the comprehension of the management of elections by the Electoral Commission of Kenya (ECK) and the Independent Electoral and Boundaries
Commission (IEBC), the settlement of electoral disputes by courts, and the appraisals of these processes and their results by Kenyans – the objectives of this thesis. To realise its purpose, the chapter first lays out an overview of Kenya’s colonial past, describing the genesis, contestations, and transformation of the political system within which public institutions functioned and the public formed varying views about the state’s work. Second, the chapter outlines post-independence Kenyan politics, recounting the relationship between the Kenyan state and Kenyans from the administrations of Jomo Kenyatta, Daniel arap Moi, and Mwai Kibaki to that of Uhuru Kenyatta. The discussion reveals that although Kenya has witnessed significant changes such as the shift in political regimes (from one-party to multi-party state), adoption of a new constitution, devolution of power to regions, and deep reform of public institutions, many quintessential properties of the original state bequeathed to the independent state presently affect the functioning of public institutions as well Kenyans’ ideas of it. An example of these inherited elements that will be especially useful for the assessment of the works of post-2002 electoral governance institutions in subsequent chapters are the attempts of successive governments to co-opt other public institutions. Those that will aid the study of the public’s assessments of the works of electoral governance institutions in the said timeframe include the inclination of Kenyans to assume the postures of their preferred politicians and parties towards public institutions and the perceptions of inter-ethnic competition.

The interplay of this largely persistent political culture and the legal and institutional transformations leads me to conclude that the mere examination of the impact of formal institutions (rules of behaviour created, transferred, and enforced through officially sanctioned channels) on political behaviour is inadequate for understanding the complex political processes the thesis seeks to unravel. Rather, such assessments must focus on the interplay of formal and informal (rules of behaviour that are forged, disseminated, and enforced via official mediums) institutions (Helmke & Levitsky 2003). This approach and the specific variables influencing citizens’ political attitudes and institutional performance will play a significant role in the analytical and methodological considerations to be made in the chapters to follow.
3.2 British Rule: State-Society Relations Onset

The era of British imperial rule in ‘Kenya is key to understanding the country’s political economy today, as many of its features continue’ (Mueller 2014: 335). This period saw the creation of the Kenyan state, its institutions, and its relationship with society. The British developed highly centralised authoritarian institutions revolving around an executive government with expansive control over other state institutions. This system benefitted them and divided and marginalised the African population. Political parties oriented to ethnic groups’ economic and political interests – products of colonial rule – emerged to advance the public’s advocacy for self-government and inclusionary public administration. These issues form the foundation of citizen-state relations not only in this period but also in the post-colonial years.

The claim that the British introduced the Kenyan governance architecture is not a suggestion that before their arrival pre-colonial societies, even if stateless, lacked political authority. Historians who have studied law and order before, during, and after colonialism have confirmed that though the territory was predominated by identity communities with non-centralised authority systems, these communities had varying forms of customary institutions (structures, norms, and procedures) that regulated individual and group behaviours (Olumwullah 1990; Maxon 2009). For example, among the Luhya, councils of elders made salient political decisions at the sub-clan or lineage level. Notwithstanding that the Luhya had no centralised authority (as found in West African kingdoms and the Wanga Chiefdom), a prominent sagacious elder (Omwami) spearheaded affairs often in conjunction with the council. The Omwami performed functions such as the provision of ‘leadership in times of crisis’ and the settlement of ‘disputes’ (Maxon 2009: 97). Such non-state forms of organisations were common, including among the Mijikenda, the Luo, the Abagusii (Kisii), and the Kalenjin (ibid: 98-100; Olumwullah 1990: 92-93).

British administration of Kenya, then the British East Africa Protectorate, officially started on 1 July 1895, following the abrogation of the 1888 ‘the interregnum’ of the Imperial British East Africa Company. That made the territory a British protectorate and set in motion the amalgamation of ‘different ethnic communities together with their systems of government within one large and new area of central administration’ (Olumwullah 1990: 98). This new area was to be divided into three
broad provinces (Ukambani, Jubaland, and Tanaland). In 1897, the British administration passed the East African Order in Council to create Kenya’s judicial system (Ghai & McAuslan 1970: 6-7; Mbondenyi & Ambani 2012: 130). The British had avowed to use these formal structures to protect the indigenous population but, in fact, they meant to use them to advance their extraction of raw materials from and sales of British manufactured goods in Kenya (Olumwullah 1990: 99; 104). Meanwhile, some Europeans and Asians had settled in Kenya. Settlers (predominantly the white population) sought representative government, but Britain, acting through its appointed commissioner and later governor, tried to maintain its centralisation of control over the state. White settler associations united under the name the Convention of Associations to create a unified voice in their pursuit of self-government. At its maiden meeting in February 1911, the convention nominated Charles Eliot to lead its motion for the representation of the protectorate (ibid.). To facilitate governance, safeguard European settler interests, and acquire cheap African labour, the British neatly defined the complex ethnic communities and confined them to sharply delimited native reserves (Parsons 2011). Britain’s need to consolidate its military capacity during World War I caused it to concede to the election of settlers (officials) into its Legislative Council (LegCo), a unicameral legislature (Olumwullah 1990: 103). The other races (Africans, Indians, and Arabs) and women were excluded from the forum. To offset Indian and Arab disgruntlement, Governor General Sir Edward Northey promised Indians and Arabs representation in the form of nominated members after he assumed office in February 1919. He allowed missionaries, who had been advocating against forced African labour, to represent Africans. These conciliations to the white settlers, together with the permission for officials to acquire land and vote freely in the Council, emboldened them to advance their desire for control over the making of government policy (ibid.).

Kenya became an official British colony in 1920. The colonial administration was ordered along a highly centralised and authoritarian institutions (ibid; Ghai & McAuslan 1970: 53-66; Mueller 2014). Acting through a governor, the Colonial Office in London oversaw the colony. The office proclaimed African paramountcy or ‘made virtue out of the idea that the British government was trustee for Kenya’s African population’ (Maxon 2009: 206). Irrespective of the settler community’s opposition to this policy, the Colonial Office issued a July 1923 white paper, commonly referred to as the Devonshire Declaration, to formalise the notion that ‘Kenya was primarily an
African country where the interests of the indigenous people must be paramount’ (ibid.). This somewhat challenged settler aspiration. LegCo continued to play the pivotal role of formulating policies until it was briefly suspended at the onset of the Second World War, when an Executive Council with expansive powers used reserved powers such the Defence Regulations to assume control over it. On paper, the governor, who was the head of the executive, reported to London, but he exercised much discretion in the implementation of colonial policies on the ground. The governor wielded the ‘powers of social leader, prime minister, head of the civil service and speaker of the Legislative Council’ (Olumwullah 1990: 105). Other offices that supported the colonial administration include Chief/Colonial Secretary and departments for public services and goods provision. A Chief Justice, other judges, and magistrates constituted an independent judiciary, which dealt with important cases involving non-African. Africans were required to go for judicial redress from the Native Court. As of 1939, the triadic government (executive, legislature, and judiciary) had been institutionalised. Internal boundaries were demarcated into four provinces, each overseen by a provincial commissioner, in 1946. These provinces were sub-divided into districts, each under a district commissioner. Multiple “native administrations”, Councils of Elders and Native Courts’ were found in these districts (ibid: 106).

Colonial legislations, ordinances, and arrangements repressed growing African opposition to the regime. A native reserve system was created to curtail the unification of ethnic communities against the regime (Parson 2011). The 1930s and 1940s saw overcrowding in many reserves (e.g. Kikuyu land), but the rules restricted movement even geared at easing pressure on overcrowded regions. Unregulated inter-group movement was perceived as an avenue for the ‘break down’ of ‘tribal division’, a ‘vital cornerstone of colonial control and administration’ (ibid: 498). Other rules regulated public meetings and civic associations. Civil servants, including commissioners and appointed chiefs, were the government’s eyes and ears on the ground. ‘They were expected to inform the executive of any “bad hats” who should be detained or subversive groups that should be banned, and they did’ (Mueller 2014: 335). These state officials exploited their positions to amass ‘privileges that matured into land and government jobs’ (ibid: 336). The East African Association, a premier region-wide African group, fell victim to these draconian policies when it was proscribed in the 1920s. Subsequently, African associations were permitted only at the local community level. Africans were also instructed to channel their grievances, including those
associated with land alienation, to the Local Native Councils and their appointed chiefs – instruments that preserved the status quo. Localising public concerns was an attempt to curtail countrywide threats to the regime by forcing people to perceive themselves primarily through ethnic lenses and also view their realities as confined to their localities (ibid.).

The existing races in the country harboured governance-related gripe, at least, until the introduction of multiracialism – a principle that all races should actively participate in governmental affairs – in 1954. Indian settlers called for electoral equality vis-à-vis European settlers, and European settlers agitated for an unofficial majority in LegCo (Ghai & McAuslan 1970: 54). An African, Eliud Mathu, was appointed to LegCo in 1944. His appointment also paved the way for Africans to create a nationwide association, the Kenya African Study Union (KASU), to counsel him. KASU was later renamed the Kenya African Union (KAU) (Mueller 2014: 336). But that could not appease the majority of Africans, who continued to demand ‘greater representation, in particular over representation by Africans themselves and on an elective basis’ (Ghai & McAuslan 1970: 54). They also protested against their marginalisation from and European overweening domination of development. When government’s lack of commitment to addressing these demands became apparent, nationalist movements began to revolt. At the height of it is the 1952 Kikuyu-led Mau Mau uprising, which emanated from diverse dissents: repressive legislations; intergenerational disputes in Kikuyu reserves; and absence of viable avenues for demonstrating against land alienation (Olumwullah 1990: 106; Sifuna 1990: 196; Mueller 2014: 336). The prevailing ethnic cleavage manifested itself in inter-ethnic competition during the revolt. The pastoralist Kalenjin ethnic community considered certain practices of the Mau Mau movement, including the swearing of oaths and the engagement in cattle-slaughtering, as a threat to its lifestyle (Lynch 2011). Together with the perceptions that the revolutionaries are ‘evil savages’ and ‘gangsters’ trying to destabilise the colony, the Kalenjin worldview that they are a ‘warrior race’ caused many to join security forces fighting the insurgency (ibid: 53-54). Moreover, government’s vicious crackdown on revolutionaries meant it was unwise to associate with them. Additionally, some cleavages have been observed even within specific ethnic communities. To illustrate, although the Kikuyu are known to have spearheaded the Mau Mau rebellion, some of them (loyalists/collaborators) sided with the British or simultaneously supported both sides of the contest. Aside from showcasing the ‘the ambiguity of allegiances’ during
the insurgency, Daniel Branch (2007: 291) ‘argues that loyalism was a product of the same intellectual debates that had spawned the Mau Mau insurgency’. This discussion highlights the multifariousness of Africans’ realities and desires during this era. Government’s imposition of a State of Emergency in response to the revolt on 20 October 1952 led to the banning of KAU for allegedly aiding the revolution.

The revolt spurred reforms that would reflect the racial character of the state. Successive reform reports were produced to expand ‘African socio-economic opportunities to create a bourgeois class with strong interests in the existing colonial capitalist economic structure’ (Sifuna 1990: 197). In 1954, the British government promulgated the Lyttelton Constitution to advance multiracialism. It was grounded in ‘recognition of communities as distinct units in society; and therefore in its concern with groups, regardless of numerical strength, rather than individuals, it was in conflict with the basic premise of a true democratic society’ (Ghai & McAuslan 1970: 54). The constitution progressively increased African representation in the ministries and LegCo. For instance, in 1957, Africans had the foremost chance (a qualified franchise) to directly elect their members to LegCo from the newly established eight constituencies (Ogot 1995: 54-61). The elected members continued to campaign against the Lyttelton Constitution and demand independence, because ‘with a powerful Executive’ that controlled a dominant civil service and provincial administration ‘in their way, they did not expect to win’ (Olumwullah 1990: 109-111).

The State of Emergency ended in 1960, following which the Lancaster House Constitution that afforded Africans majority representation in the legislature and Council of Ministers, was adopted. This constitution also initiated a ‘common roll, although it did not propose adult suffrage’ in Kenya (Sifuna 1990: 197-199). These reforms gave additional stimulus to the fight for independence, as they permitted the establishment of national parties.

Political parties presented competing agenda for the governance of post-colonial Kenya (ibid; Olumwullah 1990; Ochieng’ 1990: 207; Anderson 2005). In June 1955, when the 1953 ban on political parties was lifted, the government allowed political parties to form only at the district level, except in the Kikuyu’s Central province. The political marginalisation of the Kikuyu was a ploy to assuage the community’s growing influence. Ethnic and regional political leaders and those of trade unions (typically young, educated, and influential nationalists) founded political parties to champion the interests of their constituencies. Provided that many of them operated
at the grassroots of society prior to the lifting of the ban, the regional parties that
ominated the political scene particularly continued to champion local (mostly ethnic)
interests to consolidate their support bases. The Luo spokesman Oginga Odinga
established the Central Nyanza District Association and the linchpin of the Kalenjin,
Daniel arap Moi, founded the Baringo District Independence Party in 1958. Other
ethnic communities, including the Abagusii (Kisii), the Maasai, and the Taita, also
formed their own local party organisations. A union leader, Tom Mboya, also
established the Nairobi Peoples’ Convention Party in 1956. This arrangement
amplified district consciousness, as it effectively ensured that the district was the
provider of communities’ spokespersons and parties’ followership. The cited studies
note that differential economic and social strengths of the various communities further
stimulated the sense of shared intra-community interests and inter-community
competition, both of which are traceable to domineering, exclusionary colonial policies
like the native reserve system and associated land alienation. Derek Peterson’s (2012)
exploration of the social history of dissent in eastern Africa also indicates that ethnic
entrepreneurs or self-interested ethnic patriots facilitated ethnicity-building by creating
notions of a common ethnic identity and shared cultural norms and values. Although
some group members challenged such cultural heritage, these entrepreneurs
endeavoured to keep them in line. In Kenya, for instance, ‘men like Henry Muoria –
the patriotic Gikuyu [Kikuyu] newspaperman who decried the noisy excesses of the
Revival –’ actively opposed the practices of Christian converts by ‘inventing [ethnic]
traditions’ and ‘consolidating ethnic identities’ (ibid: 13). These patriots ‘claimed to be
defenders of particular fatherlands…whose future was endangered by cultural
amnesia and demographic decline’ (ibid: 16). Intra-ethnic social, economic, and
political cleavages existed, yet when the national parties Kenya African Democratic
Union (KADU) and Kenya African National Union (KANU) were set up in 1960, people
became preoccupied with differences between rather than within ethnic groups
(Olumwullah 1990: 113). The essence of these divisions lies in their provision of the
blueprint for future citizen affiliation with political parties.

Inter-ethnic fissures gained more salience as Kenya approached
independence. The ‘alignment of tribal and economic interests was probably the single
most important factor leading to the division of the Nationalist Movement into [KANU]
and [KADU] in 1960’ (ibid.; also, Anderson 2005: 551-564). KADU is a union of smaller
district parties such as those from Rift Valley and the Coast. This union was possible
because of members’ shared interest in safeguarding their local interests after independence. They advocated for *majimboism* (regionalism), a ‘devolved constitutional arrangement that would protect smaller “minority” communities from the dominance of larger communities’ (Anderson 2005: 547). They envisioned independent Kenya as a decentralised or a quasi-federal state, wherein its six or more provinces would have equal powers. KANU began as a union between the Kikuyu and the Luo, and it distinguished itself by campaigning on ‘an inclusive, nationalist programme that rejected all forms of ethnic particularism, most especially *majimboism*’ (ibid: 549). KANU emerged victorious in the February 1961 general election, which inaugurated universal adult suffrage in Kenya (Aywa 2015: 70). With Jomo Kenyatta, who had been released from detention in 1961, as its head, KANU formed the interim government. The debate between the two sides continued between this period and when Kenya attained independence in 1963. Through Britain-mediated negotiations, KANU accepted KADU’s *majimbo* proposal (incorporated into the 1963 independence constitution), but abandoned it right before Kenya became a sovereign Republic on 12 December 1964 (Ghai & McAslan 1970: 212-213; Olumwullah 1990: 113; Anderson 2005: 557).

### 3.3 Post-Colonial African Rule: One-party and Multiparty Regimes

Many elements of the colonial state were bequeathed to the independent Kenyan state. Successive executive governments consolidated their rule. The far-reaching powers they wielded enabled them to undercut the independence of other public institutions, favour their ethnic and political allies, and marginalise and suppress their opponents. That fostered the pre-existing sense of localism and ethnic differences, patronage politics, party-supporter bond, and clamour for reforms. Many of these features of the original state persisted even after the wholesale structural changes that followed the widely acclaimed progressive 2010 constitution.

#### 3.3.1 Multiparty to One-party State: The Jomo Kenyatta Era (1963-1978)
The Jomo Kenyatta-led KANU administration introduced some improvements to Kenyan politics but also preserved many of the institutional mechanisms that centralised state power in the executive and weakened checks on its actions. In securing its rule, the government also bolstered its ethnic support bases using extensive patronage networks through which public resources were selectively allotted to supporters to the exclusion of opponents. This practice resuscitated the sense of ethnic rivalries and the perception that politicians and political parties are the gateway to inclusion.

Research examining public law and policy provision in the immediate post-independence era maintain, notwithstanding the hope for greater freedom and fairness after decolonisation, Jomo Kenyatta’s government also shrewdly utilised the colonial state architecture and its modus operandi to its advantage (Ghai & McAuslan 1970; Mueller 2014). As was witnessed in colonial times, a chain of legal provisions and amendments between 1964 and 1968 precipitated the preponderance of executive power. The independence constitution replaced the provinces with regions. A proposal Prime Minister Kenyatta presented to the National Assembly (legislature) on 14 August 1964 intended to abolish regional establishments, strip Regional Assemblies of executive authority on several public good and services (e.g. land and economic and social development), and give the executive authority over public service appointments, sanctioning, and conditions of service (Ghai & McAuslan 1970: 211). If the legislature failed to pass the Bill containing these proposals, it was expected to be put to a referendum organised by an Electoral Commission supposedly sympathetic to the government. The defection of many KADU parliamentarians enticed with largesse to join KANU advanced the passing of the bill, which permitted the government to remove regionalism and other important constitutional provisions (ibid: 212). The constitutional amendment that made Kenya a republic also increased the executive’s powers. A President, an office that combined the authority of both the Head of Government and the Head of State, enjoyed ‘the privileges and prerogatives of the Queen in relation to Kenya’ (ibid.). Office of the president assumed control over the police and its operations and abolished the police’s Service Commission and transferred its work to the Public Service Commission, whose representatives the president appointed. It also repealed legislations that granted financial autonomy to the regions, thereby making the administration of these regions completely dependent on the executive. Another amendment in 1965 affirmed the inferiority of the regions
and their assemblies by reverting them to the previous provinces and their councils. ‘All these changes reduced the regional system to a purely nominal one; it became at best a glorified system of local government, deriving its legislative and executive authority from delegation from the Centre’ (ibid: 213). Regions were ultimately repealed from the constitution in 1968. Provisions of the Preservation of Public Security Act, an April 1966 amendment, bestowed on the president the unique powers to detain without trial. Accordingly, ‘members of Parliament who criticize[d] proposed government policy or action’ were detained ‘without trial’. That restricted KANU and ‘Parliament’s ability to question government policy’ (Okumu 1979: 57-58). Thus, Kenya in this period was a carbon copy of its colonial self: a unitary state with public institutions subordinate to a powerful executive.

The executive furthered its amassment of state power. The absence of a strong political party system, a consequence of the colonial policy of only permitting district-focused party formation, partly facilitated that (ibid.). With national parties – African People’s Party (APP), KADU, and KANU – consisting of many district parties with peculiar local interests and representatives, there was a paucity of shared vision and cohesion in their leadership. KANU’s leadership was weakly unified by the ‘desirability to re-establish a unitary state with a strong executive branch, and an effective parliamentary system-the Westminster model’ (ibid: 49). Only the fear of ‘being overpowered by the Kikuyu and the Luo, who supported KANU’ and the desire for ‘decentralized power, including on land’ united KADU’s leaders, who represented ‘smaller’ ethnic communities (Mueller 2014: 337). The KANU government devoted its energy to obliterating the other parties. Internal divisions weakened KADU, but the limited KADU financial resources, the advantage KANU enjoyed from controlling the state bureaucracy or provincial administration (the only public institution with strong connection to the grassroots), and the government’s frustration of regionalism worsened KADU’s political fortunes (ibid; Okumu 1979: 49-50; Hyden 1979). As a result, by November 1964, leading KADU leaders, including Moi, had not only given up but also taken the pragmatic step to commit themselves and their supporters to KANU (Okumu 1979: 56-61; Anderson 2005: 562-563). Moi’s firm and indispensable Kalenjin backing made him ‘the only ex-KADU leader who was rewarded with a portfolio in the Kenyatta Cabinet of 1964’ (Anderson 2005: 563). APP also dissolved and its members absorbed into KANU (Mueller 2014: 337). These events made Kenya a *de facto* one-party state.
Factionalism partially weakened KANU but consolidated the KANU-led government’s position. The factions were the conservatives or moderates, who were more capitalist in orientation, and the radicals, who were more socialist in orientation. The radicals were essentially ‘against the policy of having Kenya’s independent government [moderates] paying Britain to buy back land alienated under colonialism’ (ibid.). They were led by Vice President Odinga Oginga and his backers (e.g. Paul Ngei) from ‘more marginal areas’ and the ‘Luo’ community, ‘who felt that Odinga had been side-lined by Kenyatta’ (ibid.). Daniel Branch’s (2018) historical research on this era has unearthed how the rift between both sides extended beyond the party to shape the political and economic trajectory of post-independence Kenya. Leaders of these factions attempted to machinate scholarships from the eastern and western Cold War blocs to recruit and train Kenyans abroad. These students aspired to return to drive the post-independence state-building agenda. With the moderates dominating government, many returnees from Eastern and Central Europe were earlier excluded from public sector jobs. Their government-favoured contemporaries who studied in Kenya, Uganda, UK, and USA promoted capitalist principles, i.e. the ‘private land tenure, foreign investment, a pro-Western foreign policy, and limited state intervention in society and the economy’ (ibid: 831). Emboldened by the other parties’ defection to KANU and the complete victory by their affiliates in the nine new provincial vice-president office contest, the moderates, led by President Kenyatta and Tom Mboya, assumed total control over KANU (Okumu 1979: 60). The radicals broke away from KANU in May 1966 to set up the Kenya People’s Union (KPU). KANU effectively used legislations and other harassments (e.g. job loss and actual violence) to frustrate KPU and its supporters. KANU, moreover, used incentives such as ministerial and parastatal appointments to entice KPU leaders to re-join it (ibid; Mueller 2014: 337-338). In October 1969, the government outlawed KPU. Pio Gamma Pinto, a radical, was assassinated in 1965. Also, in 1969 and 1975 Mboya and J.M. Kariuki, perceived ‘unwanted contenders for presidential power’, were respectively murdered (Mueller 2014: 338). Citizens joined human rights defenders to protest the political violence, but Kenyatta, acting through the paramilitary General Service Unit (GSU), repressed popular dissent (ibid.).

‘Benign neglect’ also dented KANU’s influence vis-à-vis the President. The self-interestedness of the district bosses ‘who jealously guarded their local bases of power, and manipulated the party branches to gain high offices at the national level
(for example, cabinet ministers)’ allowed the president to disregard the party’s structures, rules, and procedures and create ‘a personal political machine outside the party’ (Okumu 1979: 58). He created an extensive hierarchical patronage network with himself at the top, followed by cabinet ministers, MPs, and local-level officials such as district and town councillors and chiefs. ‘In this game, regional and district political bosses, in exchange for patronage, must demonstrate to the president that their tribesmen support him…, his government, and its policies’ (ibid; also, Hyden 1979: 103-110). Besides facilitating the implementation of governmental policies (e.g. taxation), the provincial administration ‘remained the eyes and the ears of the executive’ on the ground (Branch & Cheeseman 2006: 23), as seen in the colonial era.

The Kenyatta government recorded certain achievements but that was insufficient to taper the prevailing belief of ethnic competition. Relative to the colonial period, in the Kenyatta era, ‘most Africans enjoyed a plethora of post-independent freedoms’ (Mueller 2014: 338). Furthermore, ‘there was economic trickledown effect of prosperity in the distribution of land, civil service and other government jobs, and the opportunity to take part in the agricultural boom of the Kenyatta period that many smallholders enjoyed’ (ibid; also, Maxon 2009: 300-301). But the pro-government GEMA (Gikuyu, Embu, and Meru Association) communities, especially the Kikuyu, disproportionately benefited from these achievements. ‘Kenyans in general’ came to ‘believe that the Kiambu Kikuyus have benefitted most from Kenyatta’ (Hyden 1979: 106; also, Maxon 2009: 301). As an illustration, public service recruitment – from top to bottom –, which considered applicants’ professional qualifications, largely rested on ‘support of an influential tribesman’ (Hyden 1979: 107; also, Branch & Cheeseman 2006). The preferential treatment and exclusion amplified the pre-existing ideas of ethnic rivalry (ibid.).

3.3.2 One-Party through Multiparty State: The Moi Era (1978-2002)

Kenya’s third Vice President, Daniel arap Moi, became the second president following the death of President Kenyatta in August 1978. Moi ruled from 1978 to 2002. He stepped up the personalisation of state power, co-optation of public institutions, intimidation of his political opponents, and the preferential allotment of state resources (patronage) to his ethnic and regional support bases. The favouritism, targeted repression, and exclusionary policies deteriorated inter-ethnic relations, bolstered
citizen-political party connections, and provoked widespread public grievances and calls for legal and institutional transformation.

At the onset of his reign, Moi avowed to follow Kenyatta’s nyayo (footsteps) but was initially more politically tolerant. He eased the tensed political atmosphere by freeing political prisoners and combating graft (Maxon 2009: 302). Additionally, he was ‘keen to accommodate his erstwhile enemies in KANU, including members of the “family” [around Kenyatta] and their clients in the police network who had humiliated him during his time as Kenyatta’s vice president’ (Murunga 2014: 149). When he won the 1979 election that ushered in a new parliament, he selected Mwai Kibaki, a Kikuyu, as his vice president and finance minister. Consequently, he gained sweeping popularity (Maxon 2009: 302).

Moi firmed his hold on power and muzzled critics when acute economic downturn, unpopular state security policies, and governmental corruption scandals fomented dissent in the early 1980s (ibid: 303). A June 1982 parliamentary legislation modified the constitution to make Kenya a de jure one-party state. Citing the dire economic and political situation as their justification, certain purported Luo Air Force personnel staged an abortive coup d’état on 1 August 1982 (ibid; Mueller 2014: 339). Testimonies of some of the rebels implicated Oginga Odinga, his son and Deputy Director of the Kenya Bureau of Standards Raila Odinga, and other civilians and military personnel mostly of Luo background. Raila was charged with treason and jailed for five years, and his father, placed under house arrest (Hornsby 2012: 377). This happening was a turning point in Moi’s rule. The government reverted to amassing state power. It disabled Kenyatta’s Kikuyu patronage network and replaced it with his own network of Kalenjin faithful (Murunga 2014: 149-150; Mueller 2014: 339). He then projected his network by plugging it into the ethnic support bases of politicians representing western Kenya, the coast, and the Asian and the Maasai communities (Mueller 2014: 339; Ajulu 2002: 262). He also emboldened his anti-Kikuyu KAMATUSA (Kalenjin, Maasai, Turkana, and Samburu) ethnic alliance. These tactics did not only undermine Kikuyu economic ascendency but also consolidated Kalenjin capital, which was heavily reliant on government (Ajulu 2002: 262). State surveillance, repression, and corruption peaked. Like previous governments did, this maladministration was carried out through a network comprising the executive, the provincial administration, and the civil service. The executive ‘filled the civil service, the military, parastatals, and banks with numerous unqualified Kalenjin’ and
perpetrated ‘grand and gross corruption...’, which consisted of land grabbing, the proliferation of new banks to launder stolen government funds, and outright theft from the state through various schemes’ (Mueller 2014: 340). Hence, the economy collapsed. ‘Unlike the Kenyatta period, when repression mostly targeted the elite, who were the main beneficiaries of corruption, the Moi era democratized both repression and corruption as it trickled down into daily life and ordinary individuals’ (ibid.).

As Kenyatta did, Moi pursued legal amendments to broaden and solidify his political might (ibid: 339-341; Maxon 2009: 304-305; Murunga 2014: 150-151). He nullified checks and balances by independent institutions. The security of tenure for high court judges, the chairperson of the Public Service Commission, the attorney general, and the controller and auditor-general were removed, allowing the president to relieve officeholders whose work did not favour him of their posts. The existing secret balloting system was replaced with mlolongo or queue voting system. That required voters to openly line up behind a photo of their preferred candidate during the 1988 one-party elections. The queue voting enabled voter intimidation and electoral fraud. After the election, Moi restructured his government, dropping his vice president and other influential cabinet members such as Kenneth Matiba from both cabinet and KANU (ibid.).

From 1990, the international community, civil society organisations, and members of the public intensified their call for democratic reform, which they envisioned would improve the political and economic situation. Among the domestic associations are religious leaders (e.g. Reverend Timothy Njoya), ex-KANU politicians (e.g. Matiba), historic opposition (e.g. Oginga Odinga’s ‘Young Turks’), and professional associations (e.g. Law Society of Kenya). The International Monetary Fund (IMF) and the World Bank bolstered the advocacy. The reintroduction of multiparty politics was at the top of the agenda. At the end of 1991, the mounting pressure forced the government to accede to repealing Section 2(A) of the constitution that established the one-party state (ibid.). This paved the way for the establishment of a number of opposition parties, notably the Forum for the Restoration of Democracy (FORD) and the Democratic Party (DP), to contest KANU in the December 1992 presidential and parliamentary elections. An Election Laws Amendment Act was passed in 1991, following which a new Electoral Commission (Electoral Commission of Kenya [ECK]) was established (Burchard 2015: 56).
Fissures within parties continued to weaken them. Parties ‘split along ethnic and sub-ethnic lines[,] almost as a throwback to the colonial period… Leaders failed to unite both because of ethnic divisions and personal squabbles over leadership’ (Mueller 2014: 341). Kibaki formed DP after leaving KANU. The run-up to the 1992 elections saw division within FORD, with Matiba leading FORD-Asili and Oginga Odinga spearheading FORD-Kenya (ibid; Maxon 2009: 305). Coupled with the government’s obstruction of opposition activities, the divisions rendered the opposition incapable of successfully challenging Moi’s KANU in both the presidential and the parliamentary contests (ibid.). Between the 1992 and the 1997 general elections, the economy had nosedived, the tension among ethnic groups had worsened, insecurity had increased, and the unfairness of public institutions had remained. Yet, Moi beat the fractured self-interested opposition comprising of Kibaki, the National Development Party’s (NDP) leader Raila Odinga (his father died in 1994), and FORD-Kenya’s new leader Michael Wamalwa. KANU acquired the majority of the parliamentary seats (ibid: 306).

Throughout Moi’s 1992 and 1997 terms, state institutions, which he had co-opted, continued to favour the presidency and its allies (Hornsby 2012: 552-555). For example, in the aftermath of the 1992 elections, the police, together with other armed groups, executed a coordinated series of attacks on perceived opposition supporters, mainly members of the Kikuyu (Branch 2011: 214). The president’s power to appoint judges in an acting capacity and unilaterally appoint electoral commissioners forced both institutions to preserve the status quo. A significant number of ECK’s early decisions perceived to favour the government were contested in court. The court, however, resorted to technicalities rather than the merits of the cases to dismiss them (Aywa 2015: 75; Akech 2010: 29; Hornsby 2012: 596). Among these cases are the 1992 Matiba v Moi and the 1997 Kibaki v Moi presidential election petitions that sought to reverse Moi’s electoral victories. They were thrown out on technical grounds (ibid; also, Odote & Musumba 2016: 11).

Besides the unifying role ethnic entrepreneurs played in forging ethnic identities, political elites’ politicisation of ethnic concerns entrenched the popular ideas of ethnic similarities and difference that drove ethnic communities apart. Kikuyu’s economic superiority during colonial and Kenyatta’s rule, Kenya’s economic growth under Kenyatta, and Kenya’s economic collapse under Moi further stimulated the Kikuyu progressive self-view and their perception of the Kalenjin as backward (Lynch
A number of people belonging to other ethnic communities like the Kalenjin and the Luo also held positive self-views and negative views of others. Elites manipulated these beliefs and perceptions of ethnic favouritism, discrimination, and competition to garner support. Witnesses of the Meteitei farm clashes that preceded the 1992 polls recalled politicians urging 'the Kalenjin to remove madoadoa ["stains" – Kikuyu] from the [Nandi district]' (Klopp 2001: 474). Referencing historical land disputes between the Kikuyu and the Maasai, KANU candidate William ole Ntimama showcased himself as a defender of Maasai interest (majimbo) and his opponents Lempaka and Tiampata as champions of Kikuyu interest (land grabbing). This tactic earned KANU and ole Ntimama a huge Maasai followership (Klopp & Zuern 2007: 138). It also degenerated the relationship between the two communities. Their brutal clash in Narok North Constituency on 10 June 1992 substantiates this point. KANU politicians deployed ‘violence specialists’ – the administrative police, the military, and their own militia – to level violence against opposition supporters (ibid: 136). This is similar to the divide and rule approach earlier governments employed to conserve their rule. What set Moi’s administration apart from the others is its ‘use of extra-state violence [ethnic gangs and militias]’ (Mueller 2014: 341).

Ahead of the 1997 elections, it had become more apparent that ‘if the struggle for democracy were to succeed, it had to insist on restructuring the state and the political system and to place a premium on sharing and checking power, both at the centre and between the centre and the regions’ (Murunga et al. 2014: 6). Pro-democracy and anti-government groups and the international community, therefore, pressed for thorough constitutional and institutional changes in the run-up to the 1997 elections. Instead, the government granted some minor reforms (Hornsby 2012: 596; Kramon & Posner 2011).


The December 2002 elections ended KANU’s rule and brought Mwai Kibaki and his National Rainbow Coalition (NARC) to power. In defiance of the agreement that enabled NARC’s formation and in line with previous governments’ practices, Kibaki centred state power in the executive and created his patronage networks through which resources were shared. This heightened the notion of exclusion among the
disenchanted opposition and its supporters. The bad relations between the government, the opposition, and their supporters degenerated into an intense countrywide violence in 2007. The need to forge lasting peace brought about the long-awaited constitutional and institutional reforms. Though that advanced monumental structural and normative changes, it could not phase out several of the properties of the pre-reform state-society interaction. Uhuru Kenyatta and his Jubilee Alliance party inherited that relationship when the 2013 elections ushered them to office. These themes are pertinent to the discussion in subsequent chapters.

Political parties’ longstanding practice of using ethnic issues to rally support remerged ahead of the December 2002 general election. The opposition’s unsuccessful attempts to force constitutional amendments aimed at addressing ethnic and political grievances and defeat KANU in the 1990s motivated several parties to unite under NARC (a multi-ethnic anti-KAMATUSA political party) for the polls (Kramon & Posner 2011: 89-103; Murunga 2014: 154-156). On 22 October 2002, NARC’s members presented Mwai Kibaki (a Kikuyu) as ‘their joint presidential candidate’ (Commonwealth Secretariat 2006: 5). NARC constituted of ‘old Kikuyu capital coalescing around Kibaki’ and a ‘splinter group from KANU led by [Vice President] George Saitoti [mixed Maasai and Kikuyu]’ and long-term opposition leader Raila Odinga (a Luo) (ibid; also, AC 2001: 42[11]; AC 2002: 43[21]). For the KANU defectors, many of whom had presidential ambitions, outgoing President Moi’s unilateral nomination of Uhuru Kenyatta (a Kikuyu and son of Kenya’s first president) as his successor incited their desertion (Murunga 2014: 156; Commonwealth Secretariat 2006: 5). The common displeasure with Moi and the agreement to amend the constitution were fragile unifiers for NARC members (ibid; AC 2002: 43[21]). It is believed that while canvassing for votes for Kenyatta, ‘Moi, [William] Ruto and Henry Kosgey [assured] their Kalenjin kinsmen that only the Kikuyu [Kenyatta] can be trusted to keep their word and protect the Kalenjin against persecution after Moi departs’ (AC 2002: 43[21]). Their backing made Uhuru Kenyatta President Moi’s ‘project’ (Branch 2011: 248). The opposition reacted by selecting Kibaki ‘to undercut Uhuru’s ethnic appeal’ or to split Kikuyu votes (ibid.). Official election messages of both parties centred on change. The youthful Kenyatta promised ‘a fresh start’, while Kibaki asserted himself as the only actual ‘agent of change’ (Commonwealth Secretariat 2006: 16). Results the ECK announced had Kibaki as the clear winner of the presidential election and NARC as the winner of the majority of parliamentary seats.
After the largely peaceful elections, Kibaki succeeded Moi as Kenya’s third president.

Kibaki’s political and economic records are mixed. NARC promised to revive the ailing economy, deliver free primary education, and fight corruption in the public sector (Branch 2011: 251-265; Lynch 2006: 240-242). Right after assuming office, the government declared ‘the abandonment of fees in state-run primary schools’, thereby encouraging the admission of ‘1.3 million new pupils’ (Branch 2011: 251). An August 2007 World Bank report confirmed the administration reversed decades of economic underdevelopment (cited in ibid: 264). The government also forced the resignation of alleged corrupt civil servants and judges. However, this policy targeted those deemed sympathetic to Moi’s government (ibid: 252; AC 2003: 44[22]). In filling up the vacancies in these public services, Kibaki’s government also favoured those connected to it, mostly his Kikuyu support base (Branch 2011: 252). The government also utilised some of the repressive strategies of the past governments to hush its critics, including media houses that continually reported on alleged government improprieties (Mueller 2014: 343-344).

Before forming NARC, Kibaki pledged to reduce executive power through the enactment of a constitutional reform that would devolve power to the regions and create a two-pronged executive government, but he reneged on these promises after assuming office (Lynch 2006: 240-242; Branch 2011: 249-250). It is rumoured that Odinga and Kibaki had a Memorandum of Understanding that involved creating the office of the Prime Minister for Odinga and sharing cabinet positions 50-50 between him and the president. These assurances encouraged the Kibaki-Odinga pact. But the government made a U-turn, replacing the Bomas draft constitution that covered NARC’s pledges with the Wako draft that centralised executive powers in the presidency and watered down devolution (Lynch 2006: 240). Further, Kibaki marginalised Raila from his inner circle and formed new alliances with opposition (Ford-People and KANU) MPs. Ford-People’s Chairman, Simeon Nyachae (a Kisii), ‘became one of Kibaki’s key allies in government’ (ibid: 242).

The government’s actions compounded relations between its ethnic and regional supporters and those of the opposition. Favouritism towards the Kikuyu revived other ethnic communities’ perceptions of their marginalisation. That became a crucial component of deep-seated ethnic narratives, which supported the cohesion of particular ethnic groups and the division of different ethnic communities. Moi’s Kalenjin
community perceived the forced resignation of public servants ‘as vindictive acts by a Kikuyu president’ towards it (Branch 2011: 252). ‘The Luo’s view was that the Kikuyu were behaving according to type, marginalizing Raila Odinga just as Jomo Kenyatta had done to his father, Oginga Odinga’ (Mueller 2014: 342). They interpreted Odinga’s alienation as ‘their economic and political marginalization’ (ibid.). The Kikuyu felt unjustly vilified by the other ‘jealous’ ethnic communities for their hard-earned success (ibid.).

There was ‘extremely public…feelings of frustration and betrayal’ that irreparably fractionalised NARC before the 21 November 2005 constitutional referendum (Lynch 2006: 242). This referendum gave Kenyans the chance to vote for or against the Wako draft constitution. A banana symbolised support for the draft constitution and an orange symbolised its rejection. President Kibaki supported it and well-known ministers such as Odinga and Kalonzo Musyoka (a Kamba) campaigned against it. Uhuru Kenyatta, the ‘official leader of the Opposition [KANU]’ and a ‘frontline member of the orange team’, was also against it (ibid: 234). This balloting exercise assumed an ‘ethnic logic’, as ethnic groups took the positions of ‘their prominent “ethnic spokesmen”’ (ibid: 233). The ‘banana’ side drew significant support from the president’s Kikuyu constituency and the ‘orange’ side drew similar support from Odinga’s Luo community (ibid: 233-234). Fifty-seven percent of Kenyans voted against the draft constitution; thus, stalling the enactment of a new constitution (ibid; Burchard 2015: 74). ‘Ethnic spokesmen’ such as Simeon Nyachae, Mahmud Mohammed, and John Koech, all of ‘whom Kibaki had poached from the opposition…to bolster his government’, failed to mobilise their home regions for the government (AC 2005: 46[24]). This is indicative of the fact that, as discussed in further detail in Chapter 7, not all ethnic communities coalesce to offer the majority of their support to parties associated with their prominent co-ethnics. With sitting ministers opposing the draft constitution, the referendum’s outcome denoted a lack of confidence in Kibaki’s leadership. As a result, he dismissed his entire cabinet and formed a new one, which remained ‘dominated by the same clique of Central Kenya [euphemism for Kikuyu] loyalists whom he reappointed’ (AC 2005: 46[25]).

Ethnic and political (ethno-political) alliances resurged ahead of the December 2007 general elections. President Kibaki partnered with KANU, Ford-Kenya, and other smaller parties such as Safina and New FORD-Kenya to form the Party of National Unity (PNU) (Cheeseman 2008: 173). Compared to NARC, PNU was a weaker ethno-
political alliance because, among other reasons, the Raila Odinga, Kalonzo Musyoka, and Charity Ngilu’s breakaway detracted from Kibaki’s appeal (ibid: 173-174). Kibaki’s main contender, Odinga, transformed the Orange Democratic Movement (ODM) that opposed the draft constitution into a political party. ODM became ‘a stronger and more unified’ and the most promising opposition party (ibid: 175). William Ruto, who took his massive Kalenjin followership from KANU, joined Odinga. Others who committed their local support bases to ODM were Musalia Mudavadi (Luhya), Joseph Nyagah (Embua), Charity Ngilu (Kamba), and Najib Balala (Coast) (ibid; Lynch 2008: 545). The Commonwealth Secretariat (2008: 6) observation mission for the 2007 elections noticed that the ‘political manifestos of the major political parties appeared to be very similar in content’. Their central messages, however, differed: PNU campaigned for ‘continuity of economic success and development’; and ODM insisted it was “time for change” (ibid.). As part of the change, ODM promised to deliver ‘a new Constitution in six months’, fight corruption that the incumbent was unwilling to root out, and deliver majimbo or devolution (ibid: 5). Questionable ECK official presidential election results had Kibaki marginally winning the overall votes but dominating Kikuyu votes and those of the ethnic communities of nearly all of his allies (Cheeseman 2008; Appendix I). Interestingly, as had happened during the 2005 referendum, the powerful Kibaki ally Simeon Nyachae could not unite his Kisii community behind Kibaki (Cheeseman 2008: 168). This evidence calls for more interrogation of the citizen-partisanship nexus in Kenya. It is unclear why constituents of certain communities (e.g. Samburu, Kisii, Garisa, and Wajir) are disposed to diverge on partisan preference, especially when their ethnic spokespersons appeal to them to back a specific party (Appendix I). Their political attitudes are largely missing from the literature on Kenyan politics. Chapter 7 elucidates this conundrum when it examines the relationship between political parties/candidates and their supporters from both the politically dominant ethnic groups and the Kisii ethnic community to ascertain Kenyans’ appraisals of the work of electoral governance institutions before and after the reforms. Accusing the ECK of electoral fraud and the judiciary of being biased towards the executive, Odinga and his supporters publicly protested the results. Nationwide ethnic-based post-election violence that claimed over 1000 lives and displaced many other Kenyans ensued. The search for durable peace brought about the constitutional change that Kenyans so desired. A mediation process known as the Kenya National Dialogue and Reconciliation (KNDR) sought to address the longstanding socio-political grievances
underlying the post-election violence. The mediation outcomes embodied a four-point agenda: ‘1) a ceasefire agreement to end the violence; 2) an agreement to support and allow for humanitarian access; 3) a political agreement to amend the constitution for power-sharing; and 4) an addressing of the structural causes of the conflict through long-term measures such as implementation of a new constitution’ (Wamai 2014: 67-68; also, Nderitu 2018: 61; 67-83). The international community brokered a power-sharing agreement that made Kibaki the President and Odinga, the Prime Minister. A 2010 referendum led to the adoption of a new progressive constitution. Due to elite negotiations and compromises grounded in their self-interests, this constitution did not institutionalise the dual executive system (Kramon & Posner 2011; Moestrup 2014). Nonetheless, it guaranteed the devolution of executive and legislative powers to newly created 47 sub-national administrative units called counties, the rights and liberties of all Kenyans, and the strengthening of public institutions (Kramon & Posner 2011; Cornell & D’Arcy 2014: 175-176; D’Arcy & Cornell 2016: 254-259; Waddilove 2019: 341).

Research on the impacts of the reforms have revealed that while outwardly the formal structures and rules of the state transformed markedly, many of the past informal arrangements survived. Devolution has somewhat achieved its intended goal of ameliorating the acute desire for national political offices by diverting public attention to county-level political positions (Steeves 2016; Cheeseman et al. 2016). This was to reduce the over-competitiveness of national-level elections. The growing interest in county politics stems from the realisation that County Governors are vested with real, desirable political powers (Steeves 2016). Governors control county resources and functions. These include counties’ development and service agenda, e.g. infrastructure, health, agriculture, and local development. The fear of losing support can persuade governors seeking re-election to serve their constituents’ interests, rather than those of the central government (Cheeseman et al. 2016).

However, the matters that necessitated devolution have taken roots in county elections. There is ‘a new set of local controversies that have the potential to exacerbate corruption and fuel local ethnic tensions in some parts of the country’ (ibid: 2). To some degree, devolution has realised its goal of insulating counties from the national government’s control. The 2013 gubernatorial elections introduced some new elites or powerful locals unconnected to national politics to county administration. Nevertheless, the continuous direct affiliation between the majority of elected
governors and national-level politicians and parties maintains the status quo (Cornell & D'Arcy 2014), a fact Waddilove (2019) has partially corroborated. Besides, county governments have adopted the patronage techniques and networks that characterised the pre-reform national administration. Therefore, minority ethnic groups in some counties (e.g. members of politically relevant ethnic groups residing outside of their ‘native’ territories) are often marginalised (or perceive their marginalisation) from accessing public resources in their host counties. This revived the past public grievances and competitions, albeit at the sub-state level (D’Arcy & Cornell 2016; Waddilove 2020).

The executive’s circumvention of many of the checks the new constitution placed on it preserves the centrality of national politics in Kenyans’ lives. As already discussed, land was a contentious issue among different ethnic communities and a core elite campaign message (also, Jenkins 2012; Boone 2012; Manji 2014; Willis & Chome 2014). The new constitution allowed the ratification of a National Land Policy (NLP) to check government’s control over land and politicians’ politicisation of land disputes. Although NLP is promising and widely welcomed, pessimism surrounds its potency at resolving unfair land distribution. The short timeframe allotted to the deliberation of the final bill, the failure of parliamentarians to scrutinise the bill in a manner that would streamline it with the aspirations of the constitution, the failure to consult Kenyans during the bill formulation process (Manji 2014), and the continuous sabotage of the transformations enshrined in the constitution and the NLP by corrupt national government bureaucracies (Manji 2015) militate against equal land distribution. This sustains the land-driven bitterness and tensions that detract from citizens’ confidence in the state’s commitment to their concerns. As the case of the Kenyan Coast portrays, that encourages citizens’ dependence on non-state agencies, including the Mijikenda Council of Elders Association, the Coast Professional Forum, and Mombasa Republican Council, to represent their interests (Chome 2013).

The post-election violence gave urgency to the call for reforming the police, whom the executive had historically appropriated. The complicity of the police in the violence necessitated the launching of a ‘National Peace Accord’ to restructure and reconstitute it (Cheeseman 2008; Usalama Reforms Forum 2015). This was intended to boost police capacity, accountability, independence, and public image. Out of these reforms came the 2011 professional National Police Service, an institution envisioned to embody the reform goals (Government of Kenya 2011a; Osse 2016). Despite the
achievements of the reforms, the institution’s (and the entire penal system) work is still characterised by corruption, extra-constitutional killings, and limited logistical resources (Kivoi & Mbae 2013; Usalama Reforms Forum 2015; Ayiera 2015; Price et al. 2016). Anneke Osse (2016) argues that the stasis amidst change is due to two main reasons: the unwillingness of the executive government, chaired by the president, to promote reforms that would erode its power; and the unavailability of a clear, shared vision directing the reform’s implementation. Another explanation states, because actors within the service remain cognisant of power structures in the country and do not want to lose their material privileges, they are fearful of advancing reforms that would bring them into confrontation with the executive (ibid; Hassan 2015). This derails the intended purpose of the reforms. These explanations suggest that: the internal components of institutions, which are underexplored in the Kenyan literature, may be influential in the implementation of reforms; and the external environment within which institutions operate, which is consistently applied in the literature, is crucial in influencing the actualisation of reform policies. Chapters 5 and 6 respectively adopt these perspectives to explicate the management of elections and the settlement of electoral disputes in the pre- and post-reform eras. While Osse (2016: 913-917) did not have citizens’ attitudes formation as her object of study, she suggests that the return of the past can diminish the public’s confidence in and support for the service and counterbalance Kenya’s democracy.

The pervasive belief that ECK was at the executive’s beck and call, a notion that shrunk the public’s confidence in it, prompted its reform (Wolfrom 2013; Harbeson 2014). ECK was disbanded and all its personnel dismissed in 2008. Two interim commissions were formed to undertake its election management and boundaries delimitation functions. Its permanent replacement, the Independent Electoral and Boundaries Commission (IEBC), was founded on 9 November 2011 to perform both functions. IEBC’s design was geared at making it professional, independent, and competent – features envisaged to enhance its performance and public image (ibid.). The first polls it managed were the 2013 general elections.

As seen in earlier periods, the attempt to attract wide support drove the parties in the 2013 elections to side with ethnic communities. The new constitution sought to undo the parochial focus of parties by making them nationally oriented. It amended the presidential election rules, changing it from First-Past-the-Post (FPTP) to the Qualified Majority rule (Oloo 2011: 2-5; Cheeseman et al. 2019: 221). Unlike FPTP
that guaranteed presidential election victory when a candidate simply acquired a minimum of 25 percent of votes cast in half of the erstwhile provinces, a winning candidate under the Qualified Majority system is required to attain at least 50 percent of all votes cast plus one vote, in addition to a minimum of 25 percent of votes cast in more than half of the counties. The new system sought to ensure that presidents enjoyed support across regions and ethnic communities, something conceived to engender fairness in public resource distribution. This new rule has, however, reintroduced the weak, transient unions among ethnic patrons, according to Cheeseman and colleagues (ibid.).

The leading parties in this election were the Jubilee Alliance (Jubilee) and the Coalition for Reforms and Democracy (CORD). A comparison of CORD (2013) and Jubilee’s (2013) manifestos highlights negligible differences between them. Jubilee promised opportunity and prosperity for all and CORD promised inclusive democracy and social justice (Lynch 2014). The Kibaki-backed Jubilee was spearheaded by Uhuru Kenyatta and Odinga’s estranged ally William Ruto. Kenyatta and Ruto had been indicted by the International Criminal Court (ICC) for organising ‘violence against each other’s support bases and ethnic communities’ during the 2007-08 post-election violence (ibid: 94). This unlikely alliance was possible because of the two leaders’ enjoyment of government protection and enormous financial resources as well as their skilful exploitation of existing ethnic narratives to rally their Kikuyu and Kalenjin ethnic communities (ibid; Mueller 2014: 345-346). This success is despite the antagonism between the two communities that had previously pushed them to different political parties. Using fear-laden and chauvinistic Kalenjin and Kikuyu ethnic discourses, Kenyatta and Ruto vilified CORD’s leader Odinga and convinced members of their communities that Odinga’s presidency would marginalise them. Meanwhile, CORD leaders simultaneously directed similar discourses towards the Jubilee camp. While Odinga’s campaign, which emphasised tackling ‘the issue of irregular and illegal land allocations… and historical injustices’, won him tremendous Luo (and other ethnic communities whose prominent leaders allied with CORD) support, the Jubilee camp ensured that this campaign was ‘regarded (especially by Kikuyu) as irresponsible, but also (by both Kalenjin and Kikuyu residents) as a battle in which they might be targeted’ in the wake of Odinga’s victory (Lynch 2014: 109). After balloting, IEBC announced Kenyatta as the winner of the presidential election (Appendix I).
Irrespective of the electoral reforms, IEBC’s work and how citizens have reacted to it largely mirror what was witnessed before 2010. For the 2013 elections, IEBC digitised its work to make it cleaner, efficacious, and transparent. Contrary to expectation, the ‘state-of-the-art election technology’ IEBC used experienced many administrative shortcomings that caused its failure throughout the country; to the extent that the process had to be reverted to the former, discredited manual system (Harbeson 2014: 204; also, Wofrom 2013; Harrington & Manji 2015). Going into the elections, IEBC commanded a record high public confidence. Quantitative research into Kenyans’ evaluations, however, uncovered a significant dip in confidence after the polls (Shah 2015; Erlich & Kerr 2016). The research maintains the decline in confidence was primarily along ethno-political lines, in that those disenchanted with the polls were particularly members of the opposition’s ethnic support bases. These studies are illuminating, but they fail to show and clarify the complexity of Kenyans’ assessments of institutional performance. As an example, they do not shed light on the assessments of Kenyans from ethnic communities that do not act in unison politically. Using a qualitative approach, Chapter 7 fills these gaps in our understanding of Kenyans’ attitudes towards public institutions. Aggrieved parties interpreted the system failure as electoral fraud aimed at preserving the status quo, and they petitioned the newly constituted Supreme Court to nullify the results. This assessment reflects their pre-reform assessments, though it did not generate intense violence.

The attempt to forestall future electoral violence also dictated overhauling the judiciary, yet assessments of the effects of the improvements illustrate that much has changed but a lot remains. The reforms focused on fostering the institution’s openness, capacity, and autonomy (Akech & Kameri-Mbote 2012; Wofrom 2013; Harrington & Manji 2015; Odote & Musumba 2016; Mutunga 2016). Kenya’s new Constitution created a Supreme Court in 2011 and vested it with the exclusive jurisdiction over presidential election disputes. This body threw out the 2013 presidential election petition. The opposition half-heartedly accepted that verdict. Certain legal scholars and practitioners have attributed the relative peace in 2013 to the strength of the institution and the high public confidence it commands (EU EOM 2013: 40; Odote & Musumba 2016; Majanja 2016; VOA 2017). Harrington and Manji (2015) offer an opposing view: that by relying on technical (evidential and procedural) reasons rather than the persuasiveness of the case brought against the IEBC, the
Supreme Court precluded the demand for IEBC’s accountability. By so doing, the court continued to preserve the executive government’s ascendancy (ibid.).

Continuous demands for thorough institutional amendments marked Uhuru Kenyatta’s administration, which began in 2013. The government and its Jubilee affiliates in county governments had the advantage of incumbency. ‘This included the use of state resources and officials and interference with media freedoms’ (Cheeseman et al. 2019: 218). Informed by reminiscences of their loss in 2013 and in previous years, Odinga and his supporters vehemently maintained that IEBC favoured the presidency. This spurred them to push for IEBC leadership change after the 2013 polls (Standard Media 2016; IFES 2017: 5). Referencing their perceived unjustified defeat in 2013 and the procurement scandals in IEBC, they got civil society to join their advocacy for the removal and replacement of IEBC commissioners in January 2017 (ibid.). The new commissioners managed the 2017 polls.

As usual, to strengthen their support bases, the competing political parties in the 2017 polls formed strategic ethnic and regional alliances. Up until 45 days to the 8 August elections, politicians were seen defecting from their parties to join others (Daily Nation 2017a). This was made possible in February 2017, after a High Court suspended an existing elections law barring them from switching parties 120 days ahead of an election. Some people welcomed this ruling, seeing it as an opportunity to join another party on whose ticket they would likely win. But others saw it as inimical to elections, claiming that it would further heighten its competitiveness (ibid.). Jubilee Alliance transformed into an institutionalised party called Jubilee Party (Jubilee) and retained President Kenyatta and his deputy, Ruto, as its leaders. It, therefore, retained its vast Kikuyu and Kalenjin backing (Kuoppamäki 2017). In January 2017, a number of opposition parties united to form the National Super Alliance (NASA) party, a successor of CORD (Daily Nation 2017b). Odinga led NASA, which had other principals such as Kalonzo Musyoka, Musalia Mudavadi, and Moses Wetang’ula. These principals were expected to pool their Luo, Kamba, and Luhya support (ibid; Kuoppamäki 2017). Jubilee’s manifesto emphasised the continuity of infrastructural development for economic growth and NASA’s manifesto focused on the fulfilment of the unimplemented aspirations (socioeconomic and political inclusiveness) of the 2010 constitution (Jubilee Party 2017; NASA 2017; Brobbey 2017).
After the 8 August elections, the opposition and IEBC and Jubilee were embroiled in running tussles that the reformed judiciary could not give finality to. IEBC announced Jubilee candidate Uhuru Kenyatta as the presidential election winner and Odinga as the runner-up (Appendix I; Owino & Misiko 2017). They both had resounding victories in their strongholds and those of their allies. But, as had happened in 2013 and earlier elections, the vote shares of the two candidates in regions such as Wajir (98.7 percent Somali Kenyans), Garissa (79.6 percent Somali Kenyans), and Nyamira (97 percent Kisii) were either almost 50-50 or a reversal of the 2013 trend (Appendix I; Wiesmann et al. 2016: 56). Drawing parallels between this election and previous ones, Odinga and his supporters discredited the electoral outcome, labelling it ‘computer generated’ – a phrase alleging that IEBC’s election results transmission technology was manipulated to grant Kenyatta victory (National Super Alliance 2017; Owino & Misiko 2017). Contrarily, Kenyatta and his followers lauded the institution’s work. Unprecedentedly, NASA successfully petitioned the Supreme Court to nullify the results. Analysts have interpreted the historic nullification of an incumbent president’s election as a demonstration of the judiciary’s independence from the executive (Chege 2018: 159; Kanyinga & Odote 2019: 235-236; Cheeseman et al. 2019: 228). Based on the court’s order, IEBC administered a repeat presidential election on 26 October 2017. Although Kenyatta and his supporters had denounced the verdict, they participated in the election, which Odinga boycotted (Worley 2017). Kenyatta re-emerged victorious, even though the voter turnout was below 40 percent. This ushered him to his second term. The months following the elections saw the opposition use many unofficial tactics, including the threat of secession, the formation of a People’s Assembly, and the inauguration of Odinga as the People’s President, to contest the legitimacy of Kenyatta’s re-election. Congruent with previous administrations’ tactics, government deployed the police to repress opposition demonstrations (Mutahi & Ruteree 2019). This produced some fatalities and injuries. Consistent with the longstanding elite practice of holding negotiations and making compromises, it took an informal truce or ‘handshake’ between Odinga and Kenyatta in March 2018 to restore normalcy (ibid: 265; Cheeseman et al. 2019: 222).
3.4 Conclusion

This chapter provides a historical overview of state-society relations in Kenya, with the intention of illustrating the relevance of this history to the discussion to follow the current chapter. It demonstrates that though Kenya has experienced minor and major transformations since its founding under British rule, certain impactful characteristics of the original state have persisted over time. Chief among these elements are the executive’s far-reaching powers, influence over other state institutions, employment of formal (e.g. laws) and informal (e.g. patronage resources and networks) tactics and norms to consolidate its position, and favouritism towards supporters (mostly ethnic communities) in public resource allocation as well as the opposition’s sense of marginalisation, demands for reforms to undercut executive control and ensure inclusivity, and creation of ethnic and political party alliances to pursue change. The interaction of these factors has produced a complicated state-society relationship predicated on control, struggle, negotiations, compromises, coalitions, betrayal, and reforms. At the same time that these features of the relationship provide a pivotal background to the discussion in the following chapters, they illustrate the centrality of forces outside of institutions in affecting the course and outcomes of reform policies as well as the influence political parties and candidates have on the political attitudes of citizens. These findings bespeak the salience of researching not only these factors to clarify electoral governance institutions’ workings in Kenya and Kenyans’ assessments of it but also the impacts of the interrelationship of formalities and informalities on these political processes.
4 Methodology: Data Collection and Analysis

4.1 Introduction

This chapter discusses the procedures for acquiring and analysing information needed to clarify the research problem – determining the extent of the congruence between citizens’ appraisals of institutional performance and the actual performance of institutions. I conducted qualitative fieldwork in Kenya’s Nyamira and Nairobi counties, with the intention of learning about how elections are managed, electoral disputes are resolved, and how Kenyans assess these processes and their outcomes. These regions have marked differences, but similar patterns of partisan preferences. Comparing data from these regions can improve existing knowledge on institutional performance and citizens’ attitudes formation by (in-)validating theories and unveiling un-/under-explored causal mechanisms (Przeworski & Teune 1970). I also focused on the functioning of the former and present permanent electoral commissions (the Electoral Commission of Kenya [ECK] and the Independent Electoral and Boundaries Commission [IEBC]) and courts. Theoretical, ethical, temporal, and pecuniary considerations influenced my demarcation of the research settings.

I employed various qualitative methods to collect data. I formally and informally interviewed people of diverse backgrounds (un-)affiliated with the institutions of interest. They include individual Kenyan citizens and representatives of relevant civil society, state, regional, and international organisations. I obtained supplementary data from these individuals and groups’ online and offline materials. Themes from the theoretical literature on the public’s attitudes formation and institutional performance facilitated my data analysis, which begun with the description and categorisation of the data. This yielded concepts. I later established associations among these concepts to form explanations.

The institutional, social, and political contexts within which the fieldwork was conducted and the humans involved in it – both products of my research design – collectively influenced my fieldwork. That is because they presented theory-related,
practical, and ethical opportunities and challenges that had to be addressed. This, in turn, has ramifications for the data quality and data analysis.

4.2 Research Design

Since I seek to unravel the complexities of institutional functioning and citizens’ assessments of it, I adopted a qualitative research design, which is ideal for the exploration of actors’ attitudes and behaviours in their temporal, regional, and institutional contexts (Bogdan & Biklen 1992). The advice that actors and their environments have to be studied in tandem because they are co-constitutive (Asher 2005; Geertz 1973: 49) drove me to spend roughly eight months in Nairobi and Nyamira counties to gather data. Table 4.4.1 and Appendix II respectively provide my fieldwork activities and information sources.

4.2.1 Methods

The qualitative approach offers vital tools for interrogating people’s everyday norms, opinions, practices, procedures, and interactions. I acquired data from formal and informal one-on-one and group interviews, observations, and social and conventional media, academic, organisational, and institutional publications. I combined these qualitative methods to access different kinds of information and circumvent different barriers to information. The comparison of information from the different sources, moreover, increased information veracity (Torrance 2012: 113).

I interviewed 155 people (see Appendix II). This relatively high sample size facilitates the robustness of explanations (Robinson 2014: 29). The ultimate determinant of the number of interviews was empirical and theoretical saturation, when no novel information that will impact the development of the theory is found (ibid: 31). My interviews were semi-structured, meaning they comprised of a series of pre-determined but open-ended questions that were flexibly worded to allow for a range of responses (Davies 2008: 105-106). This allowed me to explore informants’ opinions, feelings, actions, and habits without derailing from the research aim (Arskey & Knight
This interactive interviewing style equally enabled my collaboration with my interlocutors to construct knowledge of their worlds (Davies 2008: 94-116).

Guided by theoretical literature (see Chapter 2), I formulated the following main and follow-up questions to advance the inquiry. Rubin and Ruben’s (2005: 140) ‘tree-and-branch’ interview structure inspired my formulation of the interview questions. That is, I combined a small number of main open-ended questions and a number of relatively more specific follow-up questions:

- How have Kenya’s electoral commissions and judiciary respectively managed elections and settled electoral disputes from 2002 through 2017?
  - What is the nature of election management and electoral dispute settlement processes and outcomes?
  - How do the internal mechanisms of the institutions affect those processes and outcomes?
  - How does the social and political environment within which these institutions are situated influence those processes and outcomes?
- How have Kenyans appraised election management and electoral dispute settlement from 2002 through 2017?
  - What are Kenyans’ understandings of the mandates and performance of the electoral commissions and judiciary?
  - Where (social and mainstream media, interpersonal relationships, direct experiences, and political parties and candidates) do Kenyans obtain information about election management and electoral dispute settlement?
  - How does information from these sources shape Kenyans’ confidence in election management and electoral dispute settlement outcomes?

Juxtaposing the answers to these questions is useful for ascertaining the extent to which citizens’ appraisals reflect the actual functioning of institutions. Open-ended questions can raise suspicion (Vorath 2013: 66), so I pre-emptively informed interviewees that this structuring is indicative of my interest in all kinds of responses. I remained neutral, refrained from leading questions, and minimised my interference.
throughout interviews. Knowing that complete silence can be interpreted as disinterest or inattentiveness – notions that can trigger participant silence (Bryman 2008: 447) –, I employed probes and prompts to moderate the discussions. That entailed sometimes asking specific follow-up questions to explore particular answers during each interview. Doing so, moreover, kept us on course (ibid: 480-481). The average time for the formal interviews is an hour. I recorded interviews by taking notes. Despite being intrusive and disruptive of the natural flow of narrations, note-taking enabled me to record the non-audio features of the interviews (Davies 2008: 126). Right after each interview, I recorded issues surrounding it and filled gaps in my notes. I later transcribed them.

I gathered supplementary data from traditional and social media, organisational and institutional reports, and academic publications. Regarding social media, I analysed Facebook and Twitter posts and comments from members of the public, social media influencers, and private, international, and public organisations. Whatsapp is another popular social media platform that I did not research, owing to its restrictive privacy policies. Nevertheless, that does not detract from my purpose, since Facebook and Twitter usage is widespread in Kenya and information tends to move across platforms (Pew Research Center 2016: 21-24; Makinen & Kuira 2008). I applied various combinations of keywords (e.g. Kenya, elections, judiciary, courts, IEBC, ECK, rumours, fake news, and social media) and popular hashtags (e.g. #PostelectionGrief, #ElectionKE2017, #PeoplesPetition, #OdingaVKenyatta, #PresidentialPetitionKE, #Decision2017, and #NMGLeadershipForum2017) in Google, Facebook, and Twitter’s search engines to retrieve information. I sorted and archived suitable results.

I used Google Alerts to create daily notifications for online publications containing the aforesaid keywords. In addition to data, these sources made me aware of relevant events and potential informants (Bowen 2009; Altheide & Schneider 2017). I also used information from these sources to contextualise, spatially and chronologically, data from other sources; thus, strengthening my case study (Ragin 1987: 34-52).

Finally, I attended relevant civil society and academic events. Interactions between speakers and audience were frequently inquisitorial, thereby unravelling the association of events and reasons underpinning them.

In filing data on institutional performance, I categorised them into data on institutional capacity or/and independence, after which I sub-categorised them into positive, negative, and mixed performances. In each sub-category, I tried to capture
the factor(s) that brought about those outcomes. I used a similar categorisation system for the public’s appraisals, establishing whether these appraisals (positive/favourable, negative/unfavourable, and mixed) referenced institutional capacity and/or independence.

4.2.2 Research Site and Participant Selection

The main sampling technique or criterion for selecting my research subjects and sites is purposive sampling, a non-probability sampling method based on certain characteristics of the population being studied and the objective of the study (Devers & Frankel 2000: 264). Partisanship, which chapter 3 has highlighted as very influential in Kenyans’ political attitudes and behaviours, is the fundamental criterion for choosing my research sites and subjects. It helped me target cases that ‘provide the greatest insight into the research question[s]’ (ibid.). Practical and ethical concerns played additional roles in the selection.

Arend Lijphart’s (1971: 692) ‘theory-confirming’ case studies typology best describes the Kenya case. That is because Kenya is characterised by the general propositions for explaining public opinion formation (e.g. partisanship [Moehler 2009]) and institutional performance (e.g. external influence [van de Walle 2001]). These relationships have been explored thoroughly in Chapter 3 (also, see Mutua 2001; Erlich & Kerr 2016). Kenya, therefore, offers the empirical evidence needed to assess those ‘proposition[s], which may turn out to be confirmed or infirmed [or refined] by it’ (Lijphart 1971: 692).

With the understanding of the public’s attitudes as my primary goal, I picked counties and constituencies that evince the main partisan divides in Kenya. Election results in the electoral periods under consideration indicate that all regions fit this profile (Appendix I). Nonetheless, particular parties overwhelmingly dominate certain regions. With such areas (strongholds) having limited partisan diversity, I anticipated difficulty in finding respondents with diverging partisan preferences. As a result, I chose election battlegrounds or ‘swing’ counties. These counties exhibit one or both of the following features: their electorate tend to split nearly even between the two leading parties or presidential candidates; and second, electoral victory in such areas tend to alternate between the main contending parties or presidential candidates across elections. The paucity of time and funds made me opt for two swing counties.
I decided against prospective regions such as Tana-River, Lamu, Garissa, and Wajir because of looming security threats (Foreign and Commonwealth Office 2017). I ultimately settled on Nyamira and Nairobi counties (Figure 4.1).

Figure 4.1: Map of Kenya Showing Research Counties

Notwithstanding their shared partisanship trends, Nairobi and Nyamira differ. Kenya’s sub-national administrative boundaries and units have changed over time. Prior to 2010, the largest subnational administrative unit was the Province, which encompassed several districts. There were eight provinces (Barkan & Chege 1989; Hassan 2013; 2017). Below these provinces were districts, which, according to Mai
Hassan (2013: 12), President Moi made ‘the most relevant administrative tier’. Nyamira County was Nyamira District, a sub-unit of Nyanza Province, until Kenya adopted a new constitution in 2010 (ibid: 32; IIBRC 2010; IEBC 2012). Nairobi was then a province (ibid.). After the constitutional change, the provinces were replaced by 47 counties. Nairobi Province became Nairobi County and Nyamira District became Nyamira County (IIBRC 2010; IEBC 2012). The two counties contrast demographically (NSC 2014a; b). While Nairobi is considered urban, Nyamira is considered rural (Wiesmann et al. 2016). Nairobi has a surface area of 695.1 km², a population size of 3,138,369, and a population density of 4,515 people per square kilometre (NSC 2014b: 9). Nyamira’s surface area is 899.3 km², population size is 598, 252, and population density is 665 people per square kilometre (ibid. a: 9). The poverty rate in Nyamira (46.6%) is more than twice that of Nairobi (22.5%) (ibid. a; b). Regarding formal education, residents of Nairobi are considerably more advanced than their counterparts in Nyamira (ibid.). Ethnically, Nairobi is more heterogeneous while Nyamira is more homogenous. The largest ethnic community in Nairobi is the Kikuyu, who comprise less than 30 percent of the county’s population (Wiesmann et al. 2016: 56). The largest ethnic community in Nyamira is the Gusii or Kisii, who constitute over 97 percent of Nyamira’s population size (ibid.).

Still guided by diversity in partisanship, I narrowed down my research sites to constituencies within counties. Whereas Nairobi has 17 constituencies, Nyamira has four. I drew research participants from all four constituencies in Nyamira: Kitutu Masaba, West Mugirango, North Mugirango, and Borabu. Temporal and financial limitations prevented me from covering all 17 Nairobi constituencies. To meet people of diverse partisan leanings here, I had my Research Assistant and experts from IEBC and the governance team of the UK’s (erstwhile) Department for International Development (DFID) help me demarcate suitable constituencies.¹ Since participants would collectively help me understand the dynamics of opinions and actions, we agreed on combining strongholds of the main political parties and swing areas. Referring to voting patterns in Nairobi, I settled on 11 constituencies: Jubilee Party’s strongholds (Dagorreti South, Roysambu, Kasarani, and Starehe); National Super Alliance’s (NASA) strongholds (Westlands, Dagoretti North, Kibra, and Mathare); and

¹ Informal conversations with Manasseh Kiptoo (Nairobi, 8 January 2018); Samson Leboo (Nairobi, 10 January 2018); and Doris Maiyo and Linda Odong (Nairobi, 9 March 2018).
swing constituencies (Kamukunji, Makadara, and Embakasi West) (also, see IEBC 2017).

The side-by-side examination of Nairobi and Nyamira is theoretically valuable. Though both counties are starkly different, their inhabitants commonly have opposing partisan preferences. Logically, their differences cannot cogently explain their shared reality. Rather, this reality is explicable by their commonality (Przeworski & Teune 1970: 35), e.g. partisanship. Comparing them, thus, makes a strong case for the partisanship explanation for citizens’ appraisals of institutional functioning.

Students of Kenyan politics who maintain a causal relationship between the two variables also claim that co-ethnics are inclined to form political alliances (Shah 2015; Lynch 2006). The ethnic makeup of the counties suggests this may be the case in Nairobi but not Nyamira. Therefore, at the same time that Nyamira and Nairobi corroborate the partisanship viewpoint, they instruct its further examination. Data from Nyamira, a ‘deviant case’, is particularly crucial for discovering ‘relevant additional variables [and/or mechanisms] that were not considered previously’ (Lijphart 1971: 692).

Another reason for choosing Nairobi is its status as Kenya’s capital. It serves as the headquarters of relevant institutions and organisations. I needed to be there to collect data and obtain official permissions to access informants. Nairobi is also a convenience sample or a sample selected because it provides immediate and geographical accessibility to cases (Miles et al. 2014: 32).

Convenience sampling again underpins the judiciary and IEBC’s offices I engaged with, i.e. both institutions’ headquarters and Nairobi and Nyamira county offices. From them, I learnt about institutional structures, practices, norms, and interactions with the public. Institutional documents especially offered Kenya-wide experiences that cut across time. That allowed me to compare and contrast local and national experiences within and across electoral periods. This permits inferences that transcend Nairobi and Nyamira counties. Knowledge of institutional work in both counties is particularly key for gauging the extent of the congruence of their residents’ views about them and their actual performance.

I interacted formally and informally with a diverse cross-section of individuals with opinions on Kenya’s elections, including women, men, and people of different ethnic, age, national, and linguistic backgrounds. I acquired information from current and former affiliates of state, societal, regional, and international organisations and
members of the public (see Appendix II). State agents are public and civil servants, more so those that have worked in the targeted institutions. They possess first-hand knowledge of institutional functioning. Societal agents comprise of Kenyans (citizens unaffiliated with the targeted institutions) and indigenous non-state organisations that interact with the institutions and Kenyans. For the purpose of this study, I consider ‘Kenyan’ citizens to be adults of legal voting age (18 years) and over. Due to their enfranchisement, they are more inclined to interact with the institutions and form views about them. Regional and international agents are representatives of non-Kenyan (non-)governmental organisations that work on electoral governance in Kenya.

A myriad of strategies underlies how I accessed research participants. Relative to my recruitment of Kenyan citizens, I had less control over the recruitment of the other research participants. I recruited them from public and private spaces, including transport yards, markets, shopping centres, workplaces, residences, and social media platforms. Many of the other participants were selected by institutional and personal gatekeepers. Upon meeting the research participants, I got to know them, disclosed my purpose to them, and fashioned permissibly close relationships with them. These actions were necessary for creating enduring relationships, dismissing potential notions of exploitation, and forging rapport and trust. They, in turn, facilitated information access (Hammersley & Atkinson 2007: 41-42).

Participation was voluntary. That had implications for the research. As Judith Vorath (2013) experienced while interviewing political elites in Burundi, I experienced comparatively more resistance when I attempted to access information from institutional and organisational actors. I adopted Vorath’s (ibid: 59-64) strategy of relying on my strong networks of local and international experts to ameliorate this challenge. I also tapped into publicly available data and satisfied organisational/institutional requirements for accessing information. Since some prospective participants refused participation, my research is liable to self-selection bias. Although that would ordinarily restrict me from even making localised generalisations (Robinson 2014: 36), my multiple data sources afforded me insights beyond what my interlocutors offered.

The diversity in cases (people, regions, and institutions) ensures case heterogeneity, which heightens the robustness of the research (ibid: 27-28; Miles et al. 2014: 29-30). The logic is that if a finding holds in one setting, and given its profile,
holds in a comparable setting… the finding is more robust’ on conceptual grounds (Miles et al. 2014: 29-30). This allows for cautious localised generalisations.

4.2.3 Data Analysis

To pre-empt the critique that qualitative data relies on researchers’ impression and intuition, I discuss the systematic process through which I analysed data (Dey 1993). The ongoing data analysis process gave order, structure, and coherence to the wealth of information I obtained (Asher 2005: 79; Hammersley & Atkinson 2007: 158). This enabled the clarification of my research problem.

The process required being engrossed in the data, with the intention of finding consistencies, inconsistencies, and surprising/unusual occurrences within and between the research groups (Sesay 2016: 46; Hammersley & Atkinson 2007: 158-190). Themes drawn from theories on institutional functioning and public perceptions formation (Chapter 2) guided the analysis. Different lenses offer alternative ways of looking at data. Therefore, with the help those lenses, I assigned related data to associated themes and examined them to confirm, infirm, and/or extend existing knowledge.

My analysis followed Dey’s (1993) three-pronged approach for examining data: description, classification, and connection. I first provided ‘a thorough and comprehensive description of the phenomenon’, placing it in the immediate and distant contexts within which behaviours and the rationales and processes underlying them are situated (ibid: 31). Embedding the data in personal, temporal, and spatial contexts was essential because ‘if we ignore’ them, ‘we are in danger of drawing the wrong conclusions’ (Hammersley & Atkinson 2007: 179). This is because of limitations in our ability to accurately infer intentions from research subjects’ behaviours and research subjects’ ability to fully rationalise their intentions (Dey 1993: 38).

Next, I sorted and grouped data based on related characteristics. This is ‘a more rigorous analytical phase that requires iteration between data and ideas’ (Sesay 2016: 47). This facilitated the development of data categories or concepts.

Finally, I logically linked the different concepts to produce holistic explanations. I relied on continuities, disjuncture, and singularities found between/among concepts. This yielded hierarchies of concepts. Less abstract concepts were subsumed under highly abstract ones. The latter formed the overarching chapter arguments.
The act of forming hierarchies of categories and assigning data to appropriate ones ‘is not a neutral process – it is always for a purpose’ (ibid: 48). I did this to clarify the research problem posed in each empirical chapter. These chapters were divided based on higher level concepts explicating institutional performance, on one hand, and the public’s appraisals, on the other hand. That allowed for their comparison. With the explanations formed in the empirical chapters, I refined the analytical framework.

4.3 Reflexivity: Context and Positionality

Notwithstanding the measures taken to heighten the objectivity of my research, my involvement, the involvement of my research subjects and assistants, and the data collection environment (possibly) presented certain challenges and opportunities to the data collection and analysis processes and the data’s quality (Wisker 2001; Davies 2008). A good practice is for researchers to be conscious of this and inform the reader about it without deviating from the core aim of the work (Fife 2005). This section has been dedicated to that discussion.

4.3.1 Formal Institutional Context

The formal rules for conducting research in Kenya affected my entry. Kenya’s colonial and post-colonial national and subnational laws oblige all researchers to obtain official permissions to conduct research. With government officials regulating and controlling these permits, they are able to check field research in Kenya (Sheely 2016: 942). I obtained this permit from the national and county governments (See Appendix III).

After fulfilling its requirements, the National Commission for Science, Technology & Innovation (NACOSTI) issued me with the national level permit. With that, I obtained authorisation from the Nairobi and Nyamira County commissioners and directors of education. Without these permissions, my undertakings would have been illegal and caused, at least, the relevant institutions to deny me access. Even with these clearances, I experienced inconsistent degrees of access to information.

I submitted the national and county government permits, an abridged version of my research proposal, an introductory letter from my university, and a formal letter
requesting access to the judiciary and IEBC, who afforded me differential levels of entry. That was influenced by the manner by which these permissions were issued and the nature of the institutions. IEBC’s Chief Executive Officer (CEO) approved my request. The Director of Research and Development then sent an internal memo to relevant county offices directing them to support my endeavour. When a manager of the Nyamira County office introduced me to his team, he remarked, ‘we’ve been expecting you. Your big bosses in Nairobi have sent you here…we will give you all the assistance you need’. This is akin to the welcome I received from the Nairobi County office. Concerned that ‘your…bosses’ would create the impression that I worked for with IEBC – an idea that could undermine the quality of the information I gathered –, I immediately and politely clarified that this academic research was independent of IEBC’s work. IEBC’s permit gave me full access, to the extent that its staff readily offered me desks in their offices. Hanging out with them enabled informal conversations, which I had not earlier considered. The trust and rapport this fostered made it easy to follow up on and obtain answers for sensitive topics. After extensively debating with myself on whether to use data from informal conversations, I have settled on doing so. My reasons are: (1) informants were aware that I was there purposely to study their work; (2) they had expressed interest in learning from my research. Some had officially reported such information, yet their bosses failed to act. I believe they saw my work as a medium for relaying their concerns; and (3) some of the information had been captured (even if vaguely) in institutional and non-institutional publications. Regardless, I have concealed informants’ names and their departments to curtail potential backlash.

IEBC’s permit did not offer much access to information on pre-2010 election management. Because of its complicity in the 2007-08 post-election violence, ECK, IEBC’s predecessor, was disbanded and all its personnel dismissed in 2008 (Opiyo 2008). ECK did not properly hand over to its successor. Consequently, IEBC personnel lacked first-hand insights into ECK’s internal practices, norms, and procedures. Tracking ECK personnel was nearly impossible. When I initially inquired about them, IEBC officials expressed no knowledge of their whereabouts. Later, when rapport and trust had been developed, some IEBC officials directed me to five of them (one in Kisumu and two in Nyamira and Nairobi each) within and outside of the

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2 Informal conversation with Daniel Tonkei (Nyamira, 24 January 2018).
institution. I am not confident in relying solely on these people’s accounts to reconstruct knowledge on ECK’s work. Although their collective view is valuable, few among them actually worked in the targeted research sites and none directly administered elections. As well, significant discrepancies exist in their answers on standard ECK structures and procedures. Therefore, when writing about the ECK era, I refer to relevant journalistic, academic, organisational, and institutional materials to supplement and validate interviewee responses. These materials often provide more aggregate or state-level than local-level data. Nevertheless, this does not obstruct inferences about ECK’s functioning.

My attempt to access the judiciary is different from that discussed above. Even after the Chief Registrar gave her approval, I had to actively negotiate access at stations/courts. I was handed an authorisation letter to send to unspecified stations. Station heads, registrars, and individual officials scrutinised it before speaking to me. Many officials ‘silently’ refused participation: they agreed to be interviewed but kept evading me. ‘Silent refusals’ are surreptitious tactics research subjects use to decline participation without severing the ties linking them and the researcher (Kamuya et al. 2015). I think they did not want to share their thoughts on ongoing petitions without being seen to be flouting directives. In Nairobi, no official took part. In Nyamira, a court granted me access to its personnel and facilitated my interview with another court’s staff. Even here, many employees evaded me. Access to the judiciary was also restricted to interviews. That restricted strong rapport and informal conversations. Thus, interviewees’ responses seldom deviated from the generic, official narratives. Probing them was difficult. Interviewees also generally avoided discussing election petitions resolved by other courts and/or judges. I believe that stems from the sensitivity of their positions and the expectation to strictly adhere to internal hierarchies and policies. Hence, I only reference interviewees from Nyamira’s courts. I extend the geographical scope by incorporating data from the institution’s publications, partner organisations, and the media.

My attempt to leverage the research permits to access officials of regional and international organisations proved futile. I attached them, my ethics approval, and an introductory letter from my university to emails requesting access, but I got no replies. I followed up with phone calls and more emails, but those did not work. When I rang the UNDP, they advised, ‘the UNDP cannot give you access to its information on
elections. It’s against our policy’. In his anecdotal discussion on the link between his identities and access to information, Gino Vlavonou (2021: 20) reports a similar barrier to expatriates, specifically international civil servants and foreign humanitarian aid workers. He speculates that this is ‘probably because there was no interest in talking to, or learning from, a young black African guy, or maybe they were also too busy to spend an hour with a young researcher’ (ibid.). Some of these reasons, if not all, possibly underlie my inability to gain access, even after having met official requirements for carrying out research in Kenya. Regardless, the publicly available reports and my interview with some past employees of these organisations enable me to capture their official and unofficial perspectives.

Certain Kenyans requested to see my research permit and student identification documents prior to being interviewed. I noticed uneasiness among some opposition supporters who saw the government-issued permits. Therefore, I refrained from emphasising those permits. I generally used assurances of anonymity and confidentiality to neutralise such concerns.

In many instances, my gatekeepers – influential Kenyans within my online and offline networks – enabled me circumvent the restrictions associated with research permits. They brokered trust on my behalf, especially at the inception of the fieldwork when I was completely unknown in Kenya. That allowed me to bypass many of the formal requirements I was subjected to when I attempted negotiating entry myself. Their efforts saved me time and reinforced data quality.

4.3.2 Socio-Cultural Context

Consistent with Davies’ (2008) experience, the socio-cultural expectations and behaviours in my research sites affected my access negotiations and informants’ answers. These forced me to alter my research plans.

As many residents of Nairobi declined to being interviewed as those who participated in it. This limited the number of daily interviews. Contrarily, in Nyamira, almost every prospective interviewee agreed to participate. It seemed normal for them to welcome and assist strangers.

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3 Phone call to UNDP (Nairobi, 2 March 2018).
As well, in Nyamira, women tended to call their relatives and neighbours to join in interviews. This caused me to attune my data collection methods to include group interviews, which I had not earlier considered. Doing so afforded me multiple perspectives in particular interview sessions. Indigenes of the county argued, women possibly did this to pre-empt suspicion for privately hosting males unrelated to them.\textsuperscript{4} Research on household gender relations at the coast of Kenya stresses respecting existing social-cultural norms and practices (Kamuya et al. 2015). I learnt this first-hand during group interviews in Nyamira. I observed that the society grants more power to males than females, as the Anthropologist Iona Mayer's (1975) research among the Kisii shows. While interviewing Mr. Mokaya and his family, he insisted, ‘my wife agrees with all my views’.\textsuperscript{5} To get his wife’s ideas on a question he had already answered, I directed the question to her. With a flinty stare, he interrupted, ‘I have already told you she agrees with what I say. I do this [politics], not her. She follows what I say’. Consequently, I felt addressing her directly would engender an overt or a ‘silent’ refusal.

Despite witnessing some instances when women offered responses different from their male counterparts, it appears men heavily shaped women’s attitudes toward electoral governance institutions; at least, in group environments. Thus, data from female interviewees, especially those interviewed with their husbands, may not be their actual views. There is, however, no means of ascertaining and changing that.

The lopsided gender power relations probably explain why many women hesitated to participate. I occasionally encountered this also in Nairobi, even though the majority of my interviews here were one-on-one and in public spaces. Perhaps, women who hesitated assumed politics is a preserve of men. Nevertheless, those I successfully convinced to participate offered useful insights.

\textit{4.3.3 Political Context}

Furthermore, I encountered five political watersheds that impacted the data gathering exercise. These events have implications for those involved in the research and my data and its analysis.

\textsuperscript{4} Conversations with Tony Musuti (Nyamira, 25 January 2018); Lydia Kirongo and Jacob Muthuri (Nyamira, 17 March 2018).
\textsuperscript{5} Interview with PN Mokaya (Nyamira, 19 March 2018).
First, my preliminary fieldwork took place amidst the 8 August 2017 general elections. Kenya’s history with electoral violence and the competitiveness of the 2017 elections amplified concerns about the recurrence of violence. Qualitative researchers working in violent and difficult situations task researchers to determine the threshold of risk they are willing to take (Mertus 2009; Martin-Ortega & Herman 2009: 236). For my safety, I remained indoors during and right after the elections. I also stayed away from courts, where party supporters often converge, for the same reason. These decisions prevented me from observing how IEBC and judicial personnel actually work.

Second, the Supreme Court annulled the 8 August 2017 presidential election results and ordered a fresh election. Cautious of the implications of the heightened stakes for my safety, I stayed away from Kenya until several weeks after the election. This interrupted my fieldwork schedule (Table 4.4.1). But I continued gathering online data. The participant responses I obtained were, therefore, after the fact. I treat these responses as such. Variances in individuals’ responses, both across and within electoral periods, also necessitate this approach. For instance, responding to my question on why they continuously voted despite expressing disenchantment with successive electoral commissions, some interviewees cited the hope that reforms would improve institutional performance. This suggests that pre-election views sometimes deviate from post-election views.

Related to the issue of time and changes in opinions is the varying depths in responses. The timeframe under study is 2002 through 2017. The further back in time we went, the more general respondents’ answers became. While all respondents were able to express their broader opinion(s) on specific periods, many could not furnish me with examples from 2002. My analysis of that period is, therefore, short of personal examples. I resolved that by also referencing primary and secondary textual data.

Third, election petitions caused undue delays to my request for access to political parties. To demonstrate, when I first visited the Jubilee Party’s headquarters, the security guards locked me behind the gates for close to an hour. While waiting, they ushered other visitors in. I suspect my use of ‘petition’ to communicate my attempt to beseech the party to grant me access alarmed them. Davies (2008: 125-128) highlights the essence of language in interviews. My experience reveals discourse can also affect access to research participants. At the time, political parties and candidates were wary of being served petitions. The guards, who I suspect thought I intended
serving a court summon, escalated my request to the head of security. Had a senior party official conversant with academic research not intervened, I doubt I would have been allowed in. He challenged me to provide ‘documents for conducting research in Kenya’ if I truly were a ‘student’. After inspecting my passport and research permits, he confirmed my identity as a ‘student researcher’ and arranged my meetings with his colleagues. I observed a significant decline in security checks at political party offices after the mandatory conclusion of election petitions in February 2018.

Fourth, on 30 January 2018, Raila Odinga, an unsuccessful presidential election hopeful, unconstitutionally swore himself in as the ‘People’s President’ – a title denoting he was the true winner of the presidential election. The Government of Kenya’s response to this included arresting and deporting Miguna Miguna, the Kenyan-born Canadian lawyer who administered Odinga’s oath. These events escalated apprehension, especially among government’s critics: it was risky to openly oppose government. They appeared reluctant to share their political views with me, a stranger. While negotiating my interview with Victor Otieno, an Odinga supporter, he suspiciously asked, ‘are you sure you’re a student? Even if you’re not, me, I don’t fear [the government]. You can go and tell them’. After the interview, he emphasised that he agreed to be interviewed because he ‘trusted’ me. He then worriedly cautioned me to ‘make sure this information does not go anywhere apart from [my] schoolwork’. Such interviewee apprehension is justified, since in fragile settings, authorities that misconstrue politically-sensitive research for political mobilisation crackdown on those involved in it (Paluck 2009). I reassured such participants that my work was solely for academic purposes.

The widespread apprehension also made interviewees reject my use of an audio recorder, causing me to resort to only hand-written notes. Mr. Otieno apprehensively said, ‘you know tape recorder, you cannot delete the things you say. But book, you can’. This restates interviewees’ agitation with an audio recorder that Mothibe (1996: 15) witnessed while conducting interviews in Zimbabwe. In view of the incriminating remarks critics made about the institutions, I have no reason to think the prevailing circumstances had a serious negative bearing on their answers. I admit, however, that the anxiety might have deterred some from participating in my research.

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6 Conversation with Khalid Suleiman (Nairobi, 23 February 2018).
7 Interview with Victor Otieno (Nairobi, 6 February 2018).
In consideration of the physical and emotional ‘wellbeing of research participants and how involvement in [my] research may affect them’ (Martin-Ortega & Herman 2009: 238), I stopped interviewing Kenyans during this period and focused on actors with international and local organisations. The latter group was more at ease, perhaps, because they are more familiar with academic research.

Fifth, tensions eased following the ‘handshake’ resolution of the impasse between Odinga and President Uhuru Kenyatta in March 2018. Since then, the apprehension that might have earlier discouraged participation abated. People appeared more comfortable accepting my invitation. I believe that if the tensions discussed impinged on the quality of my initial data, then the improvement in situation enhanced the quality of the data.

4.3.4 Identity: Race, Nationality, Status, and Age

‘We are all raced, classed, and gendered [and aged and nationalised]’, meaning our self-identification with and/or ascription to these labels affect our work (Townsend-Bell 2009: 311). These identities presented actual and possible opportunities and challenges to my data collection and data veracity.

I am Ghanaian, but I consistently heard that I looked Kenyan. For example, during an interview with a General Manager of the Nation Media Group, his colleague greeted me in Swahili. I responded in Swahili. He then uttered a few more sentences that I did not comprehend. The interviewee laughingly asserted, ‘you know you’ll pass for a Kenyan? You even look like one, and your Swahili doesn’t give you away’.\(^8\) I believe this perception is mainly because of our common Black African race – a sense shared by Gino Vlانون (2021:17-18), an African who researched another African country. Those who later learnt about my nationality deemed my appropriate use of certain rudimentary Kenyan pleasantries impressive and polite.\(^9\) That likely prompted them to give the germane assistance they offered me.

The assumption that I am Kenyan was concurrently beneficial and detrimental. Because of my skin colour, I did not attract much attention. That enabled me to enter many non-politicised spaces, including civil society events and offices, without being questioned. They possibly presumed that I belonged there. That was not the case

\(^8\) Interview with George Koinet (Nairobi, 19 February 2018).
\(^9\) Ibid; Doris Simiyu (Nairobi, 20 February 2018).
when I attempted to enter political spaces, such as party offices. The ethno-political cleavage galvanised by elections fostered suspicion among Kenyans. Political parties were concerned about infiltration by opponents. This contributed to their inordinate inspection of my documents. I strongly feel my Ghanaian passport partly convinced political parties that my endeavour was purely scholarly. This experience rehashes the perspective that citizens can encounter obstructions to access at home (Mandiyanike 2009).

Another race and nationality were also ascribed to me. That might have had implications for my research. The news editor Doris Simiyu admitted that prior to meeting me, she assumed I was a *muzungu* (White).\(^1\) Her reason is, my surname, which was in my introductory SMS to her, sounded White. During our chat, she decided to guess my nationality, and she confidently uttered ‘Nigerian or, at least, a West African’. I repeatedly heard this during my fieldwork. Her justification for that answer was my accent and personality. She added that her answer might have been further informed by the numerous Nigerians in Kenya. I learnt many Kenyans were prejudiced against Nigerians, owing to stereotypes that they are ‘quarrelsome’, ‘loud’, and ‘deceptive’. To forestall that from hindering my access and as an ethical obligation, I always declared my nationality.

Unlike Mothibe’s (1996) experience as an African researching another African country, my Ghanaian identity advanced my work. Many of my conversation partners curiously sought my reason for studying Kenya.\(^1\) My answer centred on the salience of Kenya to my research. They then broached Kenya and Ghana’s affinity, alluding to Kofi Annan and Kwame Nkrumah’s roles in Kenyan and African affairs and lessons Kenya has learnt or can learn from Ghana’s democratisation. Some prominent legal practitioners referenced the mentorship they received from Ghanaian legal experts Professor Akilagpa Sawyer and Justice Fred Apaloo.\(^1\) A civil servant gave me so much logistical support.\(^1\) Her farewell to me is, ‘have a safe trip…and when you go back to Ghana, say hello to our people there’.\(^1\) These experiences differ from those of Gino Vlavonou, whose interactions with political elites informed him that his ‘skin connection, let alone [his] other identity attributes, were not enough to establish trust

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\(^{10}\) Interview with Doris Simiyu (ibid.).
\(^{11}\) Ibid; Stella Nyagarama (Nyamira, 18 January 2018).
\(^{12}\) Conversations with Bari Gadaa (Nairobi, 22 April 2018); Donald Makau (Nairobi, 23 April 2018).
\(^{13}\) Conversation with Stella Nyagarama (Nyamira, 18 January 2018).
\(^{14}\) Ibid.
and access’ (2021: 20). He reasoned that ‘probably these elites did not see [him] as competent or they disregarded such competence because of [his] skin connection’ (ibid.).

Concerned that the positive perceptions about Ghana might cause some to withhold distasteful information, I showcased some commonalities between Ghanaian and Kenyan politics. This was to demystify the former. On many occasions, I noticed doing so put interviewees at ease while talking about all aspects of Kenyan politics. That, I believe, enhanced data quality.

My status as a PhD student also promoted my attempt to acquire information. I implored the few contacts I had in Kenya to connect me to prospective informants. While doing so, they emphasised the said identity. Rationalising why a senior public servant drove his colleague to meet with me, my Research Assistant maintained, ‘one thing that will help your work is, we have people who will do everything to help your education’. I especially leveraged this identity when I encountered PhD holders and students, many of whom could appreciate the difficulties of collecting data. That might have morally obliged them to support my work.

My age and status as a student also came to the fore. Some persons simply expressed fascination with my pursuit of a PhD in my 20s. But it seems to have influenced others’ perceptions of me. An elite articulated scepticism in my ability to clarify the complexity of Kenyan politics. I sensed this is because of the intersection of my ‘foreigner’, ‘young’, and ‘student’ identities. To prevent that from hampering my research, I demonstrated my ability to systematically examine politics, in general, and Kenyan politics, in particular. Afterwards, his tone became cordial. An approach in qualitative interviewing states, interviewer knowledge sharing with research participants is an ethical and a practical necessity (Davies 2008: 112-113). From my experience, that could also mar data acquisition and data quality. Carried away by a pre-interview conversation meant to equalise the power imbalance between a university lecturer and me, I divulged my position on certain political issues. Throughout the interview, he made statements such as ‘as you already know’. This appears informed by his awareness of my familiarity with Kenyan politics and the

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16 Including Doris Simiyu (Nairobi, 20 February 2018).
17 Conversation with John Wekesa (Nairobi, 24 April 2018).
18 Interview with Jared Omusoti Avugwi (Nairobi, 5 March 2018).
limited time available for the interview. Therefore, I could not press him for more information and clarification. Some of his utterances could have also been shaped by mine. I subsequently reverted to limiting my pre-interview disclosures to the short, descriptive information driving my research.

Consistent with earlier research, my identities and social network created undue expectations (Townsend-Bell 2009; Mandiyanike 2009; Vorath 2013; Sheely 2016). Certain informants implored me to advance their search for jobs and partnerships.\(^\text{19}\) My identity as a UK-based PhD student and links with organisations they were interested in possibly gave the impression that I am influential. Obliged by ethics, I advanced requests within my reach and, unequivocally but respectfully, turned down those that are not (Vorath 2013). Save for one instance\(^\text{20}\), research participants who made such requests did not base their participation on my ability to help.

4.3.5 Language: Articulation, Intelligibility, and Accent

My limited proficiency in local Kenyan languages hampered conversations with some Kenyans, especially those with education levels below high school. Despite the availability of multiple languages, English and Swahili are used, albeit at different rates, throughout the country. Swahili relatively has a more widespread usage. Swahili was popular in Nairobi. Residents of Nyamira preferred using Ekegusii, their native language.

To promote egalitarianism, I allowed interviewees to pick the interview language (Mothibe 1996: 14). Those with high school and above education levels tended to prefer English. My distinct accent dissuaded some interviewees from opting for English. Some individuals with limited proficiency in English also selected it. This might be partly because of the prestige attached to being learned. Choosing English seemed like a way of asserting that. For others, the choice was to ease my work.

It was common to find interviewees mixing English and local languages. Any time I noticed an interviewee’s expressiveness constrained by English, I entreated him/her to allow us switch to a local language. This could have been embarrassing for some, so I based my request on the need for my research assistants to work.

\(^{19}\) Informal conversations with Tony Musuti (Nyamira, 25 January 2018); Jake Andrew Odek (Nairobi, 12 April 2018).

\(^{20}\) Interview with Catherine Misonga (Nyamira, 2019 March 2018).
4.3.6 Research Assistants

I employed a resident of each research county to assist me. ‘The inherent danger…is that the person(s) found may not be appropriate for the role’ (Molony & Hammett 2007: 294). Aiming to bridge the communication gap, I made fluency in appropriate languages (Swahili, Ekegusii, and English) the topmost employment criterion. Other criteria are the person’s understanding of the dynamics of the research community, gender (male), commitment, and analytical and interpersonal skills. These qualities were to help fend off scepticisms about our relationship, militate against employee turnover, safeguard security and data, aid data analysis, and facilitate relationships with research communities. I met suitable candidates within my network and at an academic conference.

Collaboration with the assistants was ‘a transactional relationship of employment’ (ibid: 295). Before procuring their services, I offered them details of the job: research goal, intricacies of the role, and wages and allowances. Although both assistants accepted my offer on the spot, I demanded this and other major transactions be done digitally. Digital footprints foiled confrontations. For example, an assistant later claimed that we agreed to a fee higher than what I was paying. We resolved the issue when we revisited email transcripts.

I incentivised the research assistants to keep them committed. I paid for each day’s work and transportation. Knowing that their wages were not at par with their services, I additionally offered to support their job and school applications. Moreover, I outlined the advantages of this position for their career and academic aspirations.

Once we reached an agreement, I formally trained them using my end of first year transition board paper. The training covered the methodological (and ethical) and theoretical considerations of my research. The goal was to impart them with the knowledge and skills needed for fieldwork.

Working with research assistants was beneficial. They helped me resolve the communication gap. I initially assumed assistants could independently conduct interviews, so I offered the Nyamira-based assistant the chance to directly interview participants. Transcripts generated from these interviews lacked depth. Consequently, I made them translate the interviews instead. Notwithstanding being time-consuming, this enabled me to adequately probe interviewee responses. Generally, they were
effective in this role, even if they somewhat altered the exact words of informants. I have no reason to suspect they falsified information. From their expressions and those of participants and patterns in interviewee responses, it was possible to ascertain the credibility of translations. Since assistants mediated my conversations with non-English speakers, I do not quote these interviewees verbatim in my analysis.

The language requirements for selecting assistants were insufficient. A great number of Somalis, many of whom have no or limited command over English and Swahili, inhabit Eastleigh, a field site in Nairobi. My assistant and I were largely ineffective in this neighbourhood. In one instance, an interviewee insisted her sister, who is more competent in English, serves as the translator. I transformed the one-on-one interview into a group interview, thereby collecting more opinions in that session.

Beyond translation, my assistants leveraged their ‘local and tacit knowledge’ to ‘locate [and access] people and places’ (ibid.). They enhanced my trustworthiness by using shared identities (e.g. ethnicity) and pleasantries and gestures. After a group interview, the participants told my Nyamira-based assistant they would not have spoken to just me. Assistants also helped demarcate safe neighbourhoods and routes and find suitable transportation. They, further, advised on meeting scheduling, pointing out secular and religious holidays. That saved me time. Finally, during our post-interview debriefs, they helped analyse participant behaviours and responses. This unveiled plausible meanings of the data.

Notwithstanding, some issues emerged from the inclusion of assistants. The Nyamira-based assistant introduced societal gender relations into the research. He tended to challenge female participants’ answers that did not resonate with him. An example is when an elderly woman claimed she preferred Mwai Kibaki to Raila Odinga in the 2007 elections because Kibaki is more mature. He retorted, asking how she would feel if her child competing with an older person was denied a position for the same reason. Elderly men had previously provided similar answers, but he did not contest them. His proclivity to challenge female participants seems rooted in the society-wide patriarchy. Had I not intervened, his action would have affected the level of comfort of interviewees as well as data credibility. I adopted measures others have

21 Interview with Fauziya Melaika (Nairobi, 15 February 2018).
22 Group interview with Dan Omenge; Henry Momanyi; Zack Maraga (Nyamira, 22 March 2018).
23 Tony Musuti (Nyamira, 21 March 2018).
recommended to introduce parity in the relations among assistants, participants, and researchers (Deane & Stevano 2015). On the spot, I politely interrupted suggestive remarks and reminded assistants and participant(s) that participant responses were the only valid views. This reverberated my pre-interview participant information. The aforesaid assistant’s conduct eventually improved.

4.4 Other Ethical Considerations

I consistently identified and adequately addressed potential risks to all humans involved in this work (Devers & Frankel 2000). The project underwent the School of Social and Political Science (SPS) Ethics self-audit. Cognisant that legal liabilities associated with failing to safeguard those involved might cause SPS to overly scrutinise and delay my ethics application (Hemming 2009), I applied for the approval long before commencing my fieldwork. The fieldwork began after the approval.

In line with the ESRC’s (2015: 27-28) counsel, I offered participants information sheets and consent forms that unequivocally communicated my expectations, participant rights and obligations, and the voluntariness, benefits, and possible risks of participation (Appendix IV). I always ensured participants understood and consented to them prior to beginning conversations. To avoid superimposing any form of consent, it could be given textually or verbally (King 2009: 30).

I treated the data as private and confidential. I anonymised it by delinking personal information and research-relevant data and storing them in separate password-protected drives. My research notes were also secured to prevent third parties from accessing them. Furthermore, I replaced all real names with pseudonym corresponding with participants’ gender, ethnic, and religious identities. I, moreover, concealed other information that makes tracing data to a participant possible. While these measures were to protect participants, they encouraged participation by assuaging participant concerns.

Remuneration can facilitate access to participants (Bachmann 2011: 366), yet compromise data quality and voluntary participation (Robinson 2014: 37). Therefore, I did not offer ‘payments’ for participation. I upheld this commitment by mostly going to participants. Thus, they incurred no obvious participation (monetary) costs. I,
however, reimbursed the transportation and refreshment costs of the few that came to me. Another way I incentivised participants is promising to share their interview transcript and my thesis with them.

Ethical decisions I made when engaging other information sources are as follows. Online forums, despite being public, may feel private and intimate to some users, so I did not collect every data I found on social media (Orton-Johnson 2010: 3). In cases where the researched possibly assumed the online environment is private, as in private posts/comments, I sought the author’s consent, treated the information as confidential, and anonymised the information (ibid: 4; Ess & AoIR 2002: 7). Where the author is aware that his/her information is public, as in comments on posts by public figures and organisations, I feel less obliged to protect individual privacy (ibid.). I also applied this rationale while using information from academic, organisational, and journalistic materials.
4.5 Conclusion

I factored several research-inducing and research-hampering contingencies in my fieldwork design. Regardless, the actual data collection process presented opportunities and challenges that simultaneously aided and hampered my work. These emerged from my presence and that of my research assistants in the research sites as well as the formal and informal practices, norms, and events specific to the research communities and Kenya.

My experience holds lessons for the conduct of fieldwork and application of data. While it is a good practice for field researchers to anticipate issues they are likely
to face ahead of fieldwork, they should also keep a lookout for those that come up
during fieldwork and respond to them accordingly. This requires being reflexive
throughout the research. Responding to such issues is not only imperative for data
collection, but also for the trustworthiness of the data obtained and its analysis.

The reverse is that data cannot be compellingly interpreted and examined in
isolation of circumstances surrounding it and its acquisition. This restates the point
that the social world is closely interconnected, so the attempt to effectively understand
one part requires understanding the whole (Asher 2005; Geertz 1973).

5.1 Introduction

Election management and electoral dispute settlement in Kenya have frequently proved controversial. Apart from the 2002 presidential election results that were not contested, subsequent presidential election results have been contested through constitutional and/or extraconstitutional means. The Electoral Commission of Kenya (ECK) managed both the 2002 and the 2007 elections. In 2007, instead of petitioning the judiciary, the losing presidential candidate and his supporters publicly protested the results. The subsequent nationwide violence claimed over 1,000 lives and displaced an estimated 500,000 others (Cheeseman 2008: 170; Burchard 2015: 75; Odote & Musumba 2016: 10; Majanja 2016: 20-22). The attempt to forge lasting peace led to the adoption of a new constitution in 2010 (Kramon & Posner 2011). This constitution sought to strengthen culpable state institutions. Government dissolved ECK and permanently replaced it with the Independent Electoral and Boundaries Commission (IEBC), an election management body (EMB) intended to be more efficacious and independent (Wolfrom 2013; Aywa 2015). The judiciary was also reformed. A Supreme Court was created to head the judiciary. Legal provisions were also put in place to enhance the judiciary’s capacity and independence (Wolfrom 2013; Odote & Musumba 2016; Majanja 2016). IEBC managed the 2013 and 2017 elections, whose presidential election results were contested in court by the losing party. Losers of the petitions also criticised the court’s rulings (Harrington & Manji 2015; Chege 2018; Kanyinga & Odote 2019). The controversies surrounding the works of these institutions prompt the current chapter to explain how Kenya’s EMBs and judiciary respectively managed elections and settled electoral disputes from 2002 through 2017. Clarifying this question will illuminate the quality of the works of the institutions, the factors that engender the institutions’ performance, and the extent of the impact of the reforms on their performance.

This chapter employs the mechanism of institution framework to examine electoral governance. This perspective considers the nature of institutional performance as a product of internal institutional features. States at Work, a research...
programme on public service delivery in West Africa, points to the structures, norms, and processes of institutions when accounting for the complex combinations of implementation successes and failures institutions produce. Among these institutional components are material resources, rules, and working procedures (Bierschenk & Olivier de Sardan 2014; also, Lipsky 2010). Some analysts trace the quality of performance to the hiring practices of institutions and the cohesion of officials towards institutional goals (Evans & Rauch 1999; Rauch & Evans 2000; Chibber 2002; Zang 2017). Whereas meritocratic recruitment is said to foster officials’ collective adherence to institutional means and ends, nepotistic hiring is said to encourage officials’ substitution of institutional agenda with personal and factional ones. Meritocratic hiring is founded on the prioritisation of open, fair, competitive rules and procedures for employing personnel with relevant technical competencies. Nepotistic or patronage-based hiring prioritises prospective employees’ personal (e.g. kinship and friendship) ties to powerful individuals (ibid.).

Based on that literature, this chapter asks the following specific questions. How have Kenya’s judiciary and EMBs been managed since 2002, and what does that mean for their performance? How have the structures, norms, and processes associated with electoral governance in Kenya affected the actual management of elections and settlement of electoral disputes from 2002 through 2017? Answers to these questions are important for theorising about institutional functioning, a crucial insight for realising the thesis’ goal of determining the compatibility of the public’s assessments of and the actual workings of institutions.

This chapter builds on certain postulations of its predecessors. From how the judiciary, ECK, and IEBC are managed, it is clear that the manner by which hiring is done can affect internal cohesion, efficacy, fairness, and outcomes of institutional performance. This evidence helps revise some existing conjectures linked to these effects. By categorising countries on the basis of the coherence of their public institutions, certain scholars assume the homogeneity of institutions in particular states (e.g. Evans & Rauch 1999). The current chapter, however, uncovers differences between institutions in a state across and within time and space. Strong bonds founded on patronage-based hiring largely exist among personnel on different levels of the organograms of the pre-reformed judiciary and ECK. This solidarity appears to originate from loyalty to a particular institutional head (e.g. ECK Chairperson and Chief Justice) whom most headquarters- and street-level institutional personnel are (in-
directly connected to. Underlying that connection is the centralisation of the powers and functions of the institutions in their leadership, who tend to exploit them by handpicking persons in their personal and professional networks (e.g. relatives and co-ethnics) to occupy various positions. The shared values, norms, and expectations of the solidarity networks apparently reinforce the bonds.

The reforms engendered by the 2010 constitution had contrasting consequences for the recruitment norms and practices of the judiciary and EMB. The data indicates that nepotistic hiring continued in IEBC. In contrast with ECK, the diverse political allegiances of IEBC’s leadership glaringly divided its heads and the staff connected to them. Subordinate staff displayed loyalty to particular top officials. Although that could create pockets of commitment to institutional goals, it mostly ruptured relations among personnel who tended to serve particular personal and factional ends such as partisan aspirations, job security, and personal enrichment. The reforms largely empowered and shielded the leadership of the post-reform judiciary, thereby increasing its commitment to official/bureaucratic agenda. The institution has, therefore, witnessed more success at using the competency-based approach for recruiting and safeguarding other employees. Owing to their shared dedication to professional values, norms, and expectations, many of these officials are inclined to show mutual respect towards and cooperation with one another, as suggested by Evans and Rauch (1999).

Additionally, some researchers treat the direction of the relationships among hiring, coherence, and quality of performance as fixed (ibid.). This chapter demonstrates the complicatedness and indefiniteness of these relationships. Whereas many ECK personnel are inclined to serve personal/factional ends, the marked variance in the institution’s work attests to the inconclusiveness of the causal effect proposed by the literature. Also, it indicates that the determinant of performance is multifactorial. For example, unlike its 2007 performance, ECK’s 2002 performance was considerably more efficacious and fairer. Similarly, while the meritocratic mode of hiring mostly enhanced the post-reform judiciary’s capacity and fairness, the quality of this institution’s work differs across and within regions, courts, departments, and periods. Finally, in IEBC, where corruption and inefficacy are prevalent, the lack of togetherness is capable of preventing any particular internal faction from manipulating the institution’s overall work.

Moreover, the extant research claims that only nepotism (informality) and
meritocracy (informality) drive recruitment (ibid.), but evidence from electoral governance in Kenya indicates that practical considerations (informality) equally feature significantly in recruitment. Formality refers to the codified institutional features ‘created, communicated, and enforced through channels widely accepted as official’, and informality is the unwritten institutional features ‘created, communicated, and enforced outside of officially sanctioned channels’ (Helmke & Levitsky 2004: 725-727). When official hiring channels fail to attract the requisite number of election support staff, hiring managers often circumvent recruitment rules and procedures to procure personnel from their own networks. Likewise, such recruitments often prioritise applicants from localities to which they will be deployed, even though all qualified citizens ought to be given equal consideration. Pragmatic reasons such as the urgency in filling vacancies, prevention of high employee turnover, and need for officials to vote on election day necessitate this approach. This demonstrates the utility of certain informality.

Further, observations made in this chapter complement the States at Work research programme, which insists that institutional personnel’s (in-)actions are dictated by a combination of bureaucratic, practical, and personal/factional motives (Bierschenk & Olivier de Sardan 2014). The actual management of elections and settlement of electoral disputes make these motivations apparent. The majority of IEBC personnel I interviewed complained about how the record-high elections (six) they administer under pressure in a brief timespan causes fatigue-induced errors. This is a practical influence on personnel (in-)actions. Courts’ settlement of electoral disputes displays how the attempt to uphold technical rules such as those related to the filing of petitions and payment of security of cost deposits push certain judicial officers to throw out cases without considering their merits. Justice delivery is, therefore, substituted for technicalities. That exemplifies bureaucratic constraints on officials’ behaviours. Finally, venal officials in the judiciary, ECK, and IEBC compromise their work for personal and factional reasons. These findings make the multiplicity of intentions driving officials obvious. More importantly, they underscore the fact that structure and human agency intermingle in diverse ways to shape policy implementation.

I infer from this evidence that public institutions produce intricate combinations of successes and failures that vary within and across time and space. The chapter argues that the interplay of formal and informal norms, structures, and processes
inherent in institutions generate these outcomes. A central conclusion of this chapter is, for a holistic understanding of public policy implementation, researchers and practitioners should pay attention to agency-structure interactions occurring at all levels of bureaucracies.

For in-depth insight into the topic, I conducted qualitative fieldwork in Nairobi and Nyamira counties, Kenya. The data collection methods included one-on-one and group interviews, analysis of documents and media reports, and observations. Three judicial, five ECK, and 23 IEBC employees and three past and present employees of the judiciary’s strategic partners were interviewed. When referencing interviewees, I substitute their real names with pseudonyms to conceal their identities.

5.2 ECK, IEBC, Courts, and Their Work: Mixed Democratic Record

To facilitate the reading of the empirical discussion, this section provides an overview of the judiciary, ECK, and IEBC and their work. ECK and IEBC are Kenya’s permanent statutory bodies mandated to administer elections, referenda, and boundary delimitation in a free, fair, and credible manner (EU 2008; IEBC 2014a). The judiciary is the organ of government with the general responsibility of resolving disputes and interpreting and safeguarding Kenya’s constitution. Its work includes the peaceful settlement of electoral disputes (The Judiciary 2017; The Judiciary 2017a). The section demonstrates that across time, the judiciary and the EMBs have undergone a series of reforms, yet certain elements of their pre-reform functioning have remained in the post-reform period. Specifically, both institutions have collaborated in the governance of elections, attracted inconsistent public appraisals, and experienced diverse reforms and executive government interference. The changes and stasis in electoral governance bespeak the democratic advances and backsliding recorded by Kenya.

Since their establishment, the judiciary and EMBs have evolved. The British colonial administration’s promulgation of the East African Order in Council in 1897 marks the origin of Kenya’s judicial system (Mbondenyi & Ambani 2012: 130). In 1950, the colonial government passed the African Courts Ordinance that introduced a new judicial system headed by a Chief Justice (ibid.). Kenya’s first Electoral Commission was founded in 1963 (Aywa 2015: 69-70). Like other public institutions, the judiciary and the Electoral Commission were expected to be efficacious, fair, and impartial, but
their performance has been found to have favoured ruling elites and their racial and ethnic support bases during the colonial and immediate post-colonial eras (ibid; Ogot 1995: 54-61). As discussed in Chapter 3, popular disgruntlement with the functioning of state institutions incited several demands for institutional change. Following the repeal of Section 2A of the constitution that made Kenya a one-party state, the enactment of the Election Laws Amendment Act in 1991, and the dissolution of the office of the Supervisor of Elections, the Electoral Commission of Kenya (ECK) was founded to impartially and competently administer elections and delimit boundaries (Aywa 2015: 73). The judicial system had earlier been reformed to enhance its mandate of providing efficacious, free, and fair administration of justice (Mbondenyi & Ambani 2012: 131). Regardless, these changes failed to erode the widespread scepticism about the independence and fairness of both institutions ahead of and in-between 1992, 1997, and 2002 general elections (Aywa 2015: 75; Aywa & Grignon 2001; Akech 2010: 29). This stemmed from the belief that officials of the institutions did the executive’s bidding and the failure of the government to implement the deep reforms civil society had demanded. As such, several of ECK’s early decisions were challenged in court because they allegedly favoured the President. The judiciary’s decisions maintained the executive’s ascendency, thereby further undermining public confidence in it (Aywa 2015: 75; Akech & Kameri-Mbote 2015: 25; Hornsby 2012: 596; Odote & Musumba 2016: 10).

There was an ephemeral rise in confidence in the functioning of the judiciary and ECK the years after the 2002 general elections, which ended the long-term rule of the Kenya African National Union party. ECK managed the 2002 and 2007 general elections and the 2005 referendum. Between 2002 and 2007, the public’s trust in ECK gradually rose, only to dip again right before the 2007 elections, when the president bypassed the conventional multi-stakeholder appointment of electoral commissioners to single-handedly (re-)appoint all the commissioners (Aywa 2015: 75). The diminished confidence delegitimised the 2007 elections (Burchard 2015: 74). Similarly, between 2002 and 2007, public confidence in the judiciary saw some improvement, but by 2008, it had slumped considerably. A reason for this is that ‘a few days before the [2007] elections’, President Mwai Kibaki appointed new judges; thus, eroding Kenyans’ trust in the judiciary (Odote & Musumba 2016: 4). Those dissatisfied with the 2007 presidential election results viewed the judiciary as not ‘independent of the Executive and [as] lack[ing] [the] integrity’ needed to resolve their concerns (Majanja

The occurrences led to a successful call for overhauling public institutions such as the judiciary and the EMB. ECK was disbanded and its duties were temporally performed by the Interim Independent Electoral Commission and the Interim Independent Boundaries Commission. While spearheading electoral reforms, these interim commissions established a professional secretariat to administer future elections, compiled a new voters' register, provided proposals for boundaries delimitation, and introduced digital technology for the administration of elections, among other modifications. These efforts enabled the enactment of the new Constitution of Kenya on 27 August 2010. This paved the way for the promulgation of the Elections Act, 2011, The Independent Electoral and Boundaries Commission (IEBC) Act, 2011, and the Political Parties Act, 2011. These legislations sought to create a conducive legal and administrative environment for electoral competition (Musila 2013: 1; Aywa 2015: 78; Odote & Musumba 2016: 5). On 9 November 2011, IEBC was inaugurated to permanently replace ECK by assuming the combined powers and functions of the interim commissions. That is, managing elections, referenda, and boundary delimitation freely, fairly, and efficaciously. ‘Unlike the ECK, the IEBC was not limited only to the conduct of elections, but its mandate also included the peaceful settlement of [pre-election] disputes’ (Odote & Musumba 2016: 6-7). Breaking from its ECK past, the reform of IEBC introduced many measures meant to stimulate the capacity and independence of the commission. They include the: clear delineation of the powers and functions of the institution’s commission and secretariat; dismissal of all ECK personnel; establishment of an open, competitive, multi-stakeholder process for the appointment of IEBC commissioners; provision of clear guidelines for the employment of other electoral officers; and introduction of election technology (Wolfrom 2013; Harbeson 2014: 204; Aywa 2015: 78-79). IEBC managed the 2013 and 2017 general elections. Presidential election winners and their supporters embraced the results of both elections, while the losers contested the credibility of the results in the newly established Supreme Court (Shah 2015; Erlich & Kerr 2016; Owino & Misiko 2017; Chege 2018).

The new constitution also induced judicial reform targeted at improving the work of the judiciary and the public’s confidence in it (Mutunga 2016). Among the changes are the: introduction of constitutional provisions to protect the judiciary’s financial
independence; establishment of a Supreme Court in 2011; improvement of the case management system; introduction of constitutional deadlines for resolving electoral disputes; and the establishment of the Judicial Working Committee on Elections Preparation (JWCEP) (Akech & Kameri-Mbote 2012; Odote & Musumba 2013: 6-9). The Supreme Court, which has exclusive jurisdiction over presidential election petitions, dealt with the 2013 and 2017 presidential election petitions. In a historic ruling, the court unprecedentedly voided IEBC’s declaration of the incumbent president as the victor of the 2017 presidential polls. As had happened in 2013, the petition winner and his supporters welcomed the ruling and the petition loser and his supporters criticised it (Wolfrom 2013; Harrington & Manji 2015; Worley 2017; National Super Alliance 2017; Chege 2018; Kanyinga & Odote 2019; Signé 2020: 119; Ellett 2020: 149). These events illustrate that while much has changed in Kenya’s electoral politics, much has remained the same. This points to the democratic advances and losses that Kenya has witnessed across time.

**5.3 Management of Institutions: Organisational Set-up, Recruitment, and Coherence**

This section clarifies how Kenya’s election management bodies (EMBs) and judiciary have been managed since 2002 and what that means for institutional performance. It achieves this goal by examining the organogram of both institutions, with the intention of unravelling the expected and the real relationships among institutional actors in various geographical locations, departments, and positions. The evidence demonstrates that institutional actors evaluate these relationships through three main perspectives associated with how they perceive the recruitment of workforce. These are the meritocratic, nepotistic, and practicality perspectives. Meritocratic recruitment prioritises the professional competency of potential employees and the objective, transparent, official criteria for recruitment. Nepotistic hiring prioritises the personal (ethnic and kinship) ties between a would-be employee and senior institutional actors. Practical recruitment prioritises the area of residence of a prospective employees and the pragmatic advantages it offers the attainment of institutional goals. The first two hiring considerations, which have been well-studied (e.g. Evans & Rauch 1999), tend to predominate recruitment practices. I note that where any of these hiring
considerations have been effected, we are likely to find (varying blends of) strong or weak bonds among institutional personnel. That may have diverging consequences for the norms, practices, and goals institutional actors advance while on the job. These practices, norms, and goals may be official (formal: bureaucratic) and/or unofficial (informal: personal, factional, or practical). They have inconsistent (positive and/or negative) impacts on the realisation of institutional ends.

5.3.1 EMBs

ECK and IEBC’s mode of hiring, which the data suggests is considerably dictated by kinship and ethnic ties, sheds light on the (dis-)unity in and work of both institutions. Unlike ECK, which exhibits a more centralised power and interest structure, there appears to be several competing nodes of power and interests within IEBC. That explains the apparent coherence within ECK and the noticeable friction among different IEBC sub-groups. But kinship and ethnic ties are not the only determinants of employment. Practical considerations such as a prospective street-level electoral officer’s knowledge of and proximity to the area she/he is to be posted to is factored into her/his employment. All these considerations have significance for the quality of the processes and outcomes of election management.

The inordinate power and influence of Kenya’s second and longest-ruling president Daniel arap Moi, even after multi-party democracy was introduced in Kenya in 1992, prompted the popular call for constitutional change meant to check the presidency (Ghai & Ghai 2019: 7). This history has been well-documented in Chapter 3. Successive national meetings were organised by non-state groups such as religious organisations, trade and professional unions, and political parties for the discussion of the content of the constitutional reforms. These meetings culminated in the formation of a People’s Commission, whose work was to consult citizens and draft a new constitution. ‘Fearing that he might lose control over reform, Moi set up a state sponsored commission Constitution of Kenya Review Commission (CKRC) in 2000’ to lead the constitutional review agenda (ibid.).

A presentation ECK’s Chairman Samuel M. Kivuitu (2001) gave at the CKRC’s ‘Workshop on the Interpretation of CKRC’s Mandate’ in Mombasa on 15 September 2001 illuminates the structure and composition of ECK. While advising the CKRC on how to facilitate ECK’s work, Kivuitu described the institution’s setup as consisting of
22 commissioners (including its chairperson) and a Secretariat comprising of ‘an Administrative Secretary and a Deputy and heads of departments[,] namely Finance, Supplies, Public Relations, Computer and Cartography’. Election matters were a key mandate of the ‘Deputy Administrative Secretary’, who was assisted by a ‘personal secretary’ and ‘one other officer’. During elections, ECK contracted election officials ‘it calls District Election Coordinators (DECs)’. They were mandated to serve as ‘Registration officers’ in districts by supporting the returning officers (ROs). Three ‘junior officers’ helped the DECs execute their mandate (ibid.). This commission administered the 2002 general elections.

The European Union’s election observation mission’s account of the 2007 elections suggests no significant change in the organisational makeup of the commission in 2007 (EU 2008: 14-17). The mission had observers in each one of the erstwhile eight Kenyan provinces. They conducted a holistic examination of the electoral process. The number of electoral commissioners remained the same as in 2002, but the Secretariat’s personnel increased to 530. ‘ECK appointed 71 district election coordinators (one per district), 210 Returning Officers (one for each constituency) and approximately 245 polling staff for the 27, 555 polling stations’ (ibid:16). DECs and ROs recruited polling station officials, including presiding officers (POs). A theoretical study on the everyday functioning of street-level bureaucrats (Lipsky 1969: 5) and an empirical study of the same subject in the context of Benin’s legal system (Bierschenk 2008: 107-110) illustrate that increasing the number of personnel lessens their workload and facilitates their effectiveness and efficiency. This did not materialise in Kenya’s 2007 elections, as ECK’s work was fraught with significant delays and errors (IREC 2008). As I discuss in the next section, the internal makeup of the institution, including the relationship among electoral officials and the goals these officials pursued, played a significant role in these outcomes.

According to Mr. Kivuitu (2001), harmony existed among ECK personnel. Past ECK employees I interviewed confirmed this reality, which they traced to the hiring of electoral officials.\(^{24}\) In the next chapter, I examine the politics of appointing electoral commissioners. I argue that because political parties in parliament influenced their appointment, they were partisan, yet, they managed to balance political interests in

\(^{24}\) Interviews with Francis Nyabuti (Nyamira, 2 April 2018); Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018).
This election saw the opposition party, the Mwai Kibaki-led National Rainbow Coalition (NARC), defeat the incumbent party, the Uhuru Kenyatta-led ruling Kenya African National Union (KANU) (also, Mueller 2014: 342). To presumably pre-empt defeat in the 2007 polls, the Kibaki government unilaterally appointed the commissioners. That seems to have tilted political interest within the commission in its favour.

In this chapter, I assess the recruitment of officials below the commissioners and their relations with one another and their bosses. Gregory Okoth and Timothy Munene, IEBC headquarters employees who also worked for ECK, stressed that the cohesion in ECK was a product of the hiring procedure. They worked at ECK’s headquarters in Nairobi from 1991 till ECK was disbanded after the rigged 2007 elections. When IEBC was formed, they were rehired. Serving in both commissions offered them in-depth, comparative insights into both commissions. They reconstructed their experiences with ECK, contesting, building on, and corroborating each other’s assertions. Timothy Munene maintained that DECs and registration officers were ‘all casuals’ (contract staff), who were seconded from the civil service ‘three months to elections’ and ‘recalled afterwards’. Gregory Okoth emphatically added, by 2007, ECK had ‘started employing permanently young, not retired, DECs and registration officers’. As if advocating for the recruitment of electoral staff from the civil service, Mr. Okoth proudly argued that because these officials and the commissioners (senior civil servants) worked together in the civil service, they shared strong personal ties that promoted internal cooperation. Mr. Munene shared his knowledge on the recruitment of the junior-level officials that administered elections on the ground, stating that though the DECs and Registration officers ‘were under oath [to be fair], we heard that some new recruits [were] related to some big men; that’s how they got their jobs’. Gregory Okoth interjected, ‘nepotism was widespread’, a perspective that supports Olivier de Sardan’s (1999) research on routine corruption in West Africa. The practice of giving preferential treatment to members of one’s social network in Kenya dates back to Kenya’s colonial past, when the colonial government deliberately employed new administrators who were products of the British public school and Oxbridge education (Berman 1990: 98). Such selective recruitment ensured that senior officials had dependable subordinates on the ground. ‘The actions

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25 Ibid.
of administrators in the field possessed a basic stability and consistency derived' not only from 'explicit direction from above' but also ‘from a common’ vision nurtured over time (ibid: 104). Others have also confirmed the sustenance of this practice in top- and bottom-level public service recruitment in post-colonial Kenya (Hyden 1979; Branch & Cheeseman 2006). They assert that in this period, members of ethnic communities whose co-ethnics were in power received the preferential treatment.

An Office Administrator who worked in the Nyamira District ECK office from 2000 to 2009, Francis Nyabuti, clarified the relationship among personnel sent from the headquarters to work on the district office.26 He mentioned, the district office, which was permanently constituted, had few employees: a head and 3 support staff (Clerical Officer, Secretary, and a Messenger). The district office’s role in election management, per Mr. Nyabuti, was to simply ‘ensure that every PO [Presiding Officer] and RO [Returning Officer] had all they needed’. They ‘were not hands on in the elections’, he emphasised. Regarding their relationship with officials sent from the headquarters to manage elections, he replied, ‘the relationship used to be good, because’ he ‘didn’t see anywhere [they] clashed’. The interviews with Gregory Okoth and Timothy Munene particularly made it clear that lower- and middle-level employees’ loyalty to internal ‘big men’ stemmed from and helped centralise power in the commissioners.27 This mirrors the running of the Kenyan state before the reform. Research on the functioning of the Kenyan state before and after colonial rule claims the power of the state was concentrated in successive governments, who strategically used appointment, re-assignment, and dismissal to keep loyal officials in strategic state apparatuses such as the Provincial Administration and the security services (Chapter 3; also, Barkan & Chege 1989; Branch & Cheeseman 2006; Hassan 2017; Ghai & Ghai 2019: 5-7). Through appointment, the loyalty of ECK commissioners mostly resided in the appointing agencies. That has negative ramifications for officials’ commitment to institutional means and ends.

Patronage-based recruitment fosters an internal network of patrons and clients founded on mutual support (Anders 2014: 334-335). The expectation of mutual support is an archetypal element of the solidarity networks that give rise to corruption. Each network comprises of solidarities and analogous pressures (reproach) that

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26 Interview with Francis Nyabuti (Nyamira, 2 April 2018).
27 Group Interview with Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018)
guarantee members’ conformity to expected reciprocities (Olivier de Sardan 1999). While patronage-based hiring can target competent prospective officials, evidence from public service hiring in Kenya under Moi’s rule (Mueller 2014: 340) and Togo, Argentina, the Philippines, and Malawi shows it often allows ‘people without training or experience’ to get public service jobs (Hyden et al. 2003: 8; 19-20). The primary criterion for hiring is the kinship, ethnic, or partisan ties to the top-level institutional actors. That can instigate ‘a sense of unfairness and discontent’ not only outside of institutions (ibid.) but also among institutional personnel who owe allegiance to different internal ‘patrons’. The different allegiances translate to actors’ pursuit of different ends. That is a reasonable explanation for electoral officers’ contrasting application of electoral rules and procedures in the 2002 and the 2007 elections. A comparison of reports on the 2002 and the 2007 elections shows that relatively, there was more uniformity in ECK’s performance in 2002 than in 2007 (Carter Center 2003; EU 2008; IREC 2008). The uniformity might explain Uhuru Kenyatta’s unreserved acceptance of the 2002 presidential election results that went against him as well as Raila Odinga’s denunciation of the 2007 presidential election results that went against him (ibid.). At the end of the 2007 elections, the Odinga-led Orange Democratic Party (ODM) argued the ‘election was rigged by the [ruling Party of National Unity] PNU’ (AC 2008: 49[25]). This allegation, which is predicated on an entrenched sense of executive co-optation of state institutions, sparked a nationwide protest that resulted in many deaths and internal displacements.

Consequently, the government appointed the Independent Review Commission (IREC) to investigate all aspects of the management of the 2007 elections. The commission’s findings ‘excoriated the Kenyan electoral system’s registration, polling and tallying of results, and blamed the ECK’ (ibid.). IREC (2008) subsequently recommended ECK’s immediate dissolution and replacement. The international community brokered a power-sharing agreement that made PNU’s presidential candidate Mwai Kibaki the President and ODM’s Raila Odinga, the Prime Minister (Ghai & Ghai 2019). Parliament reacted to IREC’s recommendation by ‘disbanding the ECK, and establishing the Interim Independent Electoral Commission (IIEC)….and the Interim Independent Boundaries Review Commission (IIBRC)’ to temporarily perform ECK’s two principal functions, i.e. managing polls and reviewing electoral boundaries (IIEC 2011: 2). Kenyans believed that the strengthening of institutions and resolution of other public discontents was possible if a new constitution
is adopted (IREC 2008: ix-xi; Ghai & Ghai 2019). The CKRC tried this when it formulated a draft constitution premised on the devolution of executive powers to districts and the distribution of executive powers to a Prime Minister and a President before 2010. Despite having earlier supported these arrangements while in opposition, President Kibaki withdrew his support for the proposal after he won in 2002. Attorney General Amos Wako altered the Bomas draft constitution the CKRC had proposed by creating a unitary executive in his Wako draft constitution. He then presented the Wako draft to Kenyans to vote on it in a 2005 referendum that saw 3.5 million rejecting it and 2.5 million supporting it (Ghai & Ghai 2019: 15). This stalled the constitutional change process. But the 2007-08 post-election violence gave momentum to the advocacy for a new constitution (ibid: 16). In 2009, a Committee of Experts (CoE) was established to draft a new constitution. It took insights from earlier draft constitutions. IIEC managed a referendum that led to the promulgation of the 2010 Constitution of Kenya on 27 August 2010 (IIEC 2011; Musila 2013: 1; Aywa 2015: 78). IIEC (2011) also put in place the legal and structural framework for the Independent Electoral and Boundaries Commission (IEBC), the permanent replacement of ECK.

IEBC (2015: 34) says its objectives are to conduct ‘elections that are efficient, effective, and credible’ and foster ‘trust and participation of Kenyans in the electoral process’. Similar to ECK, IEBC comprises of a Commission (but this commission is constituted by a Chairperson and eight commissioners) and a Secretariat, which is led by a Chief Executive Officer (CEO). The commission’s core task is to ‘provide oversight and policy direction’ for the institution, whereas the Secretariat is to perform the actual functioning or implement the policies of the commission (ibid: 9). Eight directorates, each headed by a Director, perform the functions of the Secretariat. Toeing the new constitution’s vision of taking public service delivery to local communities (Ghai & Ghai 2019: 17), IEBC (2015: 9) also ‘decentralized’ its ‘operations’ by initially demarcating the electoral areas into 17 broad regions. A Regional Elections Coordinator (REC) managed each of these regions. RECs oversaw the 2013 elections, which saw the Jubilee Alliance’s flagbearer Uhuru Kenyatta defeat the Coalition for Reforms and Democracy’s (CORD) Raila Odinga in the presidential poll (ibid; Mueller 2014: 345). The devolution component of the constitution came into full effect that year, with the creation of the new administrative territories called counties (Ghai & Ghai 2019: 16). Therefore, going into the 2017 elections, IEBC also created 47 county offices to replace the 17 regional offices (IEBC 2018: 58). Each
county had an IEBC County Elections Manager (CEM) heading it. After two rounds of presidential polls in 2017, Jubilee Party’s Uhuru Kenyatta trumped the National Super Alliance’s (NASA) Raila Odinga.

Mr. Douglas Tongu, a former REC-turned-CEM whom I interviewed in the early hours of 28 March 2018, informed me that CEMs served as links between the headquarters and the ‘field people’. During our conversation, he described the vast area under his supervision as a REC. They ‘covered several counties’. As an example, he stated, in ‘Nakuru’ region, ‘there were four counties’. For him, this massive electoral area made it difficult for one person to efficaciously oversee elections. He, therefore, welcomed the reduction of the number of electoral areas under each CEM’s supervision. To him, that enables them to be more hands-on in election administration.

Under the ‘CEM are several constituencies [that are] overseen by Constituency Election Coordinators (CEC)’. These field officers are permanent. Unlike their ECK predecessors, IEBC permanent field officials did not only execute the institution’s day-to-day functions but they additionally managed electoral activities. During elections, they also hired non-permanent personnel to serve as presiding officers (PO) and clerks, although some electoral officials maintained that IEBC employed more personnel, the majority of whom were permanent. As we will see in the next section, this did not stimulate employee effectiveness and efficiency, contrary to Bierschenk’s (2008: 7) discovery in Benin’s legal system.

Some officials stationed at IEBC’s headquarters I interviewed were critical of IEBC’s current composition, terming it as ‘bloated’ or what they ‘call inverted pyramid’. In Timothy Munene’s words, ‘there are many top-level officials but very little small or no staff [working] underneath them’. Glaringly repelled by it, he attributed the ‘corruption’ to top officials deliberately creating offices for their people. ‘It happens also in the counties, where people are being paid, but they don’t go to work’, he added. Mr. Munene’s delineation of corruption domains and condemnation of the practice endorse the argument that the phenomenon is a stigmatised but ‘common and routine element of the functioning of the administrative and para-

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28 Interview with Douglas Tongu (Nyamira, 28 March 2018).
29 Ibid.
30 Interviews with Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018) and Francis Nyabuti (Nyamira, 2 April 2018); Informal Conversation with Jacob Muthuri (Nyamira, 3 April 2018).
31 Interviews with Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018) and Zaria Wamuyu (Nairobi, 5 February 2018).
32 Interview with Gregory Okoth and Timothy Munene (ibid.).
administrative apparatus, from top to bottom' of African states (Olivier de Sardan 1999: 28-29). Contributing to the discussion, his colleague Gregory Okoth whispered, 'ghost workers, basically!' He accused senior officials of knowing that the current ‘system is not working’ but turning a blind eye to it. While it appears he deemed it virtuous to advocate for change, he asserted that it is expedient not to ‘talk’ about it ‘because someone [critics] will lose their job’. Earlier research on this phenomenon states, corruption in Africa tends to go unpunished because of the network of solidarity among complicit individuals and the complicity of those charged with punishing culprits (ibid: 30-31). Mr. Okoth and Mr. Munene’s explanations for corruption in the institution echo Gerhard Anders’ (2014: 335) finding on the same in Malawi’s civil service: (1) ‘most heads of departments and other high-ranking civil servants in the department exploited their authority to…provide clients and kin with jobs and social security’; and (2) ‘the salaries paid for the ghost-workers were pocketed by rackets of senior civil servants in the departments’. Nepotism cannot only foster patronage networks within the institution but also preclude the most competent candidates from securing jobs in the commission, and, in effect, subvert the effectiveness and independence the commission. Some IEBC personnel informed me that the relationship between senior officials and the subordinate staff whose hiring they facilitated caused them to mutually support one another’s careers and enrichment.

I read and heard about cleavages along partisan lines within IEBC during my fieldwork. As discussed in the next chapter, this is because both the opposition and incumbent parties’ members in parliament have backed the appointment of different institutional heads. Africa Confidential claimed that right before the 2013 polls, IEBC looked ‘less rosy behind the scenes’ (AC 2013: 54[3]). There was discord between ‘the Chairman, Ahmed Isaack Hassan, and the CEO, James Oswago’. Rumours linked the bad blood to their preferences for the main competing political parties in the 2013 elections: ‘Hassan leans towards Jubilee, Oswago towards CORD’ (ibid.). Resultantly, the former unsuccessfully tried to dismiss the latter. I heard similar accusations of senior IEBC personnel serving partisan interests during the 2017 elections. Dr. Roselyn Akombe (2017), a former IEBC Commissioner, presented this as her central

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33 Ibid.
34 Interview with Zaria Wamuyu (Nairobi, 5 February 2018), Daniel Osodi (Nairobi, 5 February 2018), Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018); and Informal Conversation with Jacob Muthuri (Nyamira, 3 April 2018).
justification for quitting her position right before the repeat 2017 presidential election. She bemoaned the phenomenon while insisting that working in an environment where ‘senior Secretariat staff and Commissioners are serving partisan political interests’ had made it difficult for her and other staff to execute their duties (ibid.). These interests culminated in the growth of opposing camps in the commission. Hence, subordinate electoral officers linked to particular senior officials assumed their positions. The 2017 IEBC chairperson Wafula Chebukati (2017) confirmed this reality in his address to the nation after Dr. Akombe’s resignation and before the repeat presidential election. Following his acknowledgement of the fissure, he urged ‘all the Commissioners and staff’ to ‘truly commit to serving the country rather than partisan political interests’. But this admonishment might not have made a difference as personnel at different levels of the institution’s hierarchy might have already formed partisan preferences. These happenings and assertions can deepen scepticisms about the impartiality of the institution and its work.

The relationship between Zaria Wamuyu and some colleagues instantiates the effects of factionalism on staff relations.35 The 50-year old Ms. Wamuyu, who had about 26 years of experience in both the public and the private sectors, expressed disenchantment with working in IEBC. When she accepted her IEBC job offer, she ‘thought [IEBC] would be more robust’ because of the reform, but later found that ‘it is not’. Around the time of our interview, there was infighting between the CEO, Ezra Chiloba, and the Chairperson, Wafula Chebukati, that eventually led to the CEO’s dismissal. The other commissioners appeared divided, with some apparently backing the CEO and others, the Chairperson. One of Ms. Wamuyu’s reasons for her disappointment is, ‘[Officials] do not cooperate; there is no teamwork.’ Below the heads, ‘the directorates are manned like dynasties’, with each director protecting his/her territory. Throughout the interview, she lauded Ezra Chiloba, the CEO, for being resourceful and for advancing her outfit’s work, which she accused some directors of trying to undermine. She narrated instances when she had to bypass the institutional hierarchies and communication channels to share sensitive information directly with the CEO. She sadly admitted that because of her relationship with the CEO, she has ‘been called names’, such as the CEO’s protégé. Detractors of the CEO ‘even say to’ her, ‘CEOs come and go, so [she] should not think [she is] protected

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35 Interview with Zaria Wamuyu (Nairobi, 5 February 2018)
Ms. Wamuyu’s admissions signal a strong relationship among people of the same camp and friction among people of different camps. This evidence also portrays a continuum of unity and disunity in organisations. Absolute unity and disunity are ideals that cannot be found in any institution. As I will demonstrate in the next section, the disunity among people of different camps generally does not bode well for institutional fairness, efficiency, and effectiveness. Nonetheless, the dispersed power and the intra-agency competition might stave off the complete capture of the entire institution by any particular group seeking to deploy the institution’s capacity to its advantage. That is to say, in such a context, disunity can play a utilitarian role in institutional performance.

But ECK and IEBC’s hiring practices are not only dictated by personnel’s preferences. The ends of the institutions also constrained hiring managers’ behaviours. There are formal guidelines that require both institutions to consider hiring any Kenyan who meets clearly laid down standards, including professional qualifications (IEBC 2018: 58-59; Carter Center 2003: 38; 43). Carter Center’s (ibid.) observers for the 2002 elections noticed that ECK hiring officials exercised discretion in their application of these rules; some even sidestepped them altogether. From my interviews, I learnt ECK and IEBC hiring officials anticipated that posting employees living in faraway areas to manage polls in other areas can have adverse consequences on their electoral mandate and budget.36 In navigating these hurdles while trying to fulfil their duties, these officials adopted the common strategy of prioritising locals for the job, according to my interviewees. This is particularly the case for hiring temporary election support staff. As part of his obligations as a IEBC Constituency Elections Coordinator (CEC), Dr. Edward Ogola directly procured temporary staff.37 He narrated the recruitment process, saying IEBC’s human resources department advertised vacancies for POs, Deputy POs, clerks, and ICT support staff. According to the PhD-holder who has ‘worked for IEBC in Busia, Kakamega, and Nairobi’, the law does not debar any Kenyan from applying for these positions anywhere in the country, but hiring managers preferred and selected

36 Interviews with Edward Ogola (Nairobi, 16 April 2018); Michael Situmo (Nairobi, 19 April 2018); Douglas Tongu (Nyamira, 28 March 2018).
37 Ibid.
‘locals’. Interviewees’ reasons for this practice centred on safeguarding elections. For Dr. Ogola, this practice is ‘not law’, but ‘we believe the need to employ locals who know the area’, ‘can attend training’ without incurring much cost, and can exercise their civic responsibility of ‘vot[ing] on election day’. This practice further ensures the inclusion of locals in election delivery. As seen in the 2007 elections, especially in particular parties’ strongholds, some locals exhibit partisan biases that can subvert institutional impartiality (IREC 2008). That can also introduce cross-regional variations in the quality of election processes and outcomes. This discussion bespeaks the challenges institutional actors face in trying to actualise institutional ends.

Speaking proudly of how his recruitment strategy facilitated his job, James Murithi, another IEBC senior field official who superintended the hiring of temporary electoral staff when he worked as a Deputy PO in places such as ‘Western and Eastern Kenya and Nairobi’, maintained that because ‘petitions may come out of recruitment’, he ‘goes for persons who are qualified and from the area’. This strategy has ensured that ‘any constituency I have worked, I’ve never had a petition…Even in [the present constituency], it’s historical that they’ve never had a petition’. Mr. Murithi, however, admitted that the reality is, ‘at times, locals don’t have capacity or they don’t apply’ for advertised jobs. To substantiate, the 48-year old who has been with the IEBC since 2010 remarked, in 2017, ‘we couldn’t find enough clerks’. In exercising discretion to get his job done, he had ‘to look outside of the constituency’ and ‘source’ for clerks from his colleagues in ‘other constituencies’. This anecdote suggests the lack of uniformity in how local-level hirers exercise their discretion over hiring. It also indicates that the diversity in the application of discretion can result in diversity in application of electoral policies.

Some hiring managers prioritised other criteria over competency during recruitment. Andrew Alex, a Master’s degree-holding trained teacher who has worked as a casual staff for both ECK and IEBC, discussed the ethnic and kinship considerations in constituency-level hiring. Speaking about the challenges with election management in Kenya, he stressed that ‘most of the Returning officers…picked their family and friends’. For instance, the Returning Officer for his constituency

38 Also, interviews with Douglas Tongu (Nyamira, 28 March 2018); Francis Nyabuti (Nyamira, 2 April 2018); Edward Ogola (Nairobi, 16 April 2018); Michael Situmo (Nairobi, 19 April 2018); Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018).
39 Interview with James Murithi (Nairobi, 13 April 2018).
40 Interview with Andrew Alex (Nairobi, 12 April 2018).
'was a Kalenjin', and 'he hired POs and Voter Educators who were Kalenjins [and] are also his family and friends'. Mr. Alex seemed to be hinting that the Kalenjin ethnic community was favoured because its member, Deputy President William Ruto, was with the governing political party. When I asked how he knew about the ethnic biases in recruitment, he replied, 'we know because we interact a lot'. His opinion matches the already discussed view that certain officials at the ECK and IEBC headquarters expressed. Spotting that Mr. Alex is from the Luo ethnic community, the group that predominantly backed the opposition, but was hired for a job allegedly reserved for the Kalenjin, I inquired about his employment. His response was, they did not have many people to fill the openings, so 'I decided to apply, and I got it because of my long experience and education'. Ethnic favouritism may influence some hiring managers’ decisions, but Mr. Alex’s inclination to interpret his employment as merited and others’ as undeserved might have originated from the schema people in neopatrimonial settings tend to employ to make sense of their realities. In these contexts, state power is concentrated in chief executives, who personalise it and apply it selectively in a manner that benefit their supporters (e.g. ethnic communities) (van de Walle 2001). In Africa’s neopatrimonial states, including Kenya, access to public resources is predominantly through the executive. This instigates and entrenches the notion that access to public resources, including public sector jobs, is through powerful elites. This idea is a dominant framework through which perceived marginalised groups reason about the distribution of public resources (Lynch & Crawford 2011: 289). The veracity of Mr. Alex and the others’ claims aside, the perception of an ethnic competition is another hint of the suspicions, tensions, and divisions among individuals who are expected to collaborate to drive common institutional ends. The lack of unity among personnel can have debilitating implications for institutional capacity, fairness, and outputs.

5.3.2 Judiciary

Within the timeframe of analysis, the judiciary has also undergone reforms that have not only altered its organisational structure but also the relationships among its personnel. Before and after the inauguration of the 2010 constitution, the judiciary enjoyed internal unity founded on dissimilar mechanisms. Because of the centralisation of power in a Chief Justice in the pre-reform period, he, acting through
his wide internal network, was able to influence the careers of other judicial personnel. That fostered an internal cohesion revolving around the Chief Justice. The post-2010 reforms, however, devolved the powers of the Chief Justice and brought more transparency and objectivity in the recruitment of subordinate judicial personnel. That weakened the pre-existing nepotistic mode of hiring. Both approaches to personnel recruitment and their differential effects on inter-personnel relationships largely have contrasting (not definite) impacts on judicial fairness and capacity.

The judiciary’s organisational structure changed markedly after Kenya’s independence in 1963, but it remained largely intact before the 2010 constitutional change (Mbondenyi & Ambani 2012: 129-152). Right after independence, the Court of Appeal was established and the existing Supreme Court was renamed the High Court (ibid: 131). Professors of Law Migai Akech and Patricia Kamari-Mbote’s (2012) inquiry into Kenyan courts establishes that the immediate post-independence judiciary was under the public service until 1989, when it was separated and a Chief Justice became its head. Information I obtained from interviewing a senior judicial administrative staff and two senior employees of the International Commission for Jurists, Kenya (ICJ-K)42, the judiciary’s strategic partner, shows the preservation of the said judicial organogram until after 2010 reforms. George Moraa holds a Diploma in Human Resources Management.43 He joined the judiciary in 2001 as a Junior Clerk. He has since been promoted to different positions in multiple regions in the country. His academic background and extensive experience as an administrator make him knowledgeable on the administration of the judiciary. He categorised pre-2010 courts into superior, consisting of the Court of Appeal and the High Court, and subordinate, including Magistrates and Kadhis courts. He also divided judicial employees into judicial officers (e.g. judges, magistrates, and kadhis) and judicial staff (e.g. executive and human resources officers and clerks). He distinguished between judicial officers and staff, claiming that whereas the former adjudicates disputes, the latter provides administrative support.

On 29 May 2009, the government established a Task Force on Judicial Reforms or the Ouko Task Force (2010: iii; 5) to investigate and enhance the judiciary’s work. This effort was to bolster the judiciary’s capacity and impartiality, both of which the

41 Interview with George Moraa (Nyamira, 19 March 2018).
42 Group interview with Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
43 Interview with George Moraa (Nyamira, 19 March 2018).
institution had been widely criticised for lacking. According to the task force (ibid: 61), the judiciary in the pre-2010 era was ‘administered by the Chief Justice, Registrar of the High Court, and the Chief Court Administrator’. At the local level, these officials were ‘assisted by the Resident judges, Deputy Registrars, magistrates-in-charge of court stations and Executive Officers’ (ibid: 61). The Chief Justice presided over the judiciary. The task force learnt that ‘while the Presiding Judge of the Court of Appeal, the Principal Judge of the High Court, Heads of the High Court Divisions and Resident Judges assist the Chief Justice in the administration of the courts, the Chief Justice remains inundated by mundane matters which can be dealt with by the Registrar, Presiding or Principal Judges’ (ibid.). For instance, the Chief Justice assigned Court of Appeal and High Court judges cases to work on. Thus, the adjudicatory and administrative powers and functions of the judiciary were centralised and concentrated in the Chief Justice and judges (ibid: 63; also JTF 2012: 17).

The data illustrates that the far-reaching powers and functions enabled the Chief Justice to influence the work of other judicial personnel. In Chapter 6, I discuss how presidents’ unfettered influence over the appointment and dismissal of judicial officers, including the Chief Justice, subordinated judicial officers to them. Hence, prospective judicial officers that were seen as sympathetic to the executive tended to get the job (also see ibid: 26; Akech 2010: 29-30; Akech & Kimari-Mbote 2012: 11; 29). The belief is that filling the judiciary with the executive’s sympathisers (not necessarily qualified individuals) increased corruption, which manifested in judicial (especially during electoral petitions) decisions favouring the status quo (Ouko Task Force 2010: 4; Akech 2010: 20). This notion drove the CKRC to propose a constitution that would also reform the judiciary. However, the institution’s leadership obstructed ‘the realisation of a new constitution’ in 2002, when ‘a section of judges sought judicial orders to stop the discussion and adoption of provisions relating to the judiciary in the Draft Constitution’ (Ouko Task Force 2010: 3). These judges argued that ‘the judges would be adversely affected by the proposal’. To the task force, ‘the judges’ application was not founded on a policy of the judiciary’. This behaviour reinforced popular opinion that the institution was an unfair and ineffective ‘arbiter in the process of constitution making’ (ibid.).

President Mwai Kibaki appointed Justice Aaron Ringera to head the Kenya Anti-Corruption Authority (KACA) tasked to investigate corruption in the judiciary in 2003 (AC 2003: 44[22]). A speech Justice Ringera gave at the World Bank acknowledges
that there is acute corruption in the appointment of judges. He traced it to factors such as the ‘non-meritocratic recruitment and promotion practices...protection of corrupt officers by their “Godfathers” and superiors’ (Ringera 2007: 11-12). As of 7 November 2003, 23 of the 56 senior judges who were implicated had been suspended (AC 2003: 44[22]). The World Bank (2012: 3) claims this radical ‘surgery’ compelled more than 70 magistrates and almost half of the judges of the High Court and Court of Appeal to retire. The ‘surgery’ has been criticised for trying and convicting judicial officer ‘in the media without being given the opportunity to defend themselves’ (AC 2003: 44[22]). These dismissals have also been labelled selective, as they targeted judicial officers the Kibaki administration perceived as sympathetic to its predecessor (ibid.).

Contrary to the expectation that the Kibaki government would fill the vacancies in the judicial system with professionally qualified individuals employed in a transparent and an objective manner, it also relied on its patronage networks to replace the judges. The president eventually made Evans Gicheru, ‘a Kikuyu and old friend of Mount Kenya Mafia members’, the new Chief Justice (ibid.). The ‘mafia’ is a powerful network of Kikuyu (the president’s ethnic community) politicians connected to the president. That is notwithstanding that prior to the 2002 elections Kibaki is believed to have promised to give the position to Bernard Chunga, a Luo (ibid.). The International Commission of Jurists’ investigation into judicial appointment in the Kibaki era labelled the process ‘ethnic tribalisation’, a phrase denoting how the process advantaged the Kikuyu and ‘disadvantage[d]…other tribes in Kenya’ (ICJ 2005: 29). For members of the marginalised communities, in and outside of the judiciary, this mode of appointment likely heightened their belief that public resources were reserved for communities whose members were in power (see Chapter 3).

Nepotistic appointment encouraged a web of patrons and clients founded on loyalty to the Chief Justice (ibid; Akech 2010: 30). The shared ethnic identity translated to mutual political interest. The Ouko Task Force’s (2010: 2) investigation uncovered that ‘patronage took hold at different levels of the institution’. ‘Internally, patronage became a means of rewarding or punishing targeted judicial officers and staff, through selective deployment, recall or transfers, as well as stationing of judicial officers or staff in strategic positions, otherwise known as “gate keeping”’ (ibid: 2-3; also see Akech 2010: 30). The nepotism ensured that competency was not the basic criterion for career advancement, as seen in the case of ECK. It also compounded the existing opinion that the institution lacked fairness and capacity. This belief has become a
normally cited reason for the opposition’s decision to publicly demonstrate against the 2007 presidential election results rather than petition the court – a decision that culminated in the post-election violence (Ouko Task Force 2010: 3; Judiciary 2012: 9). When the feuding political factions signed the Kenya National Dialogue and Reconciliation (KNDR) agreement to ‘stop the violence, restore human rights, establish a power sharing Government and implement a wide range of legal, constitutional and institutional reforms’, they made ‘judicial reform…a key component of this agreement’ (Ouko Task Force 2010: 4). As part of the reform process, the CoE that worked on the new constitution recommended the resignation of all judges following the new constitution’s promulgation. The Judiciary (2012: 10) has named it a ‘radical suggestion’ that failed to materialise. In its place, ‘Kenyans…chose to subject all judicial officers to a vetting process’ or ‘perish’ (ibid.). Vetting of prospective candidates was to help attract competent judicial personnel and make judicial appointment candid and fair.

The reform somewhat modified the judiciary’s structure. The distinction between superior and subordinate courts remained (Mbondenyi & Musumba 2012: 136). Kenya reintroduced the Supreme Court that existed under the colonial regime but was removed right after independence. Other superior courts are the Court of Appeal, High Court, and specialised courts of High Court status. A Chief Justice presides over the Supreme Court, the apex court of the land. In addition to the Chief Justice, five judges and a Deputy Chief Justice constituted the Supreme Court. Subordinate courts include the Magistrates and Kadhis courts, Courts Martial, and tribunals (ibid: 131-137).

In the bid to sustain the transformation of the judiciary, the constitution decentralised judicial powers and functions. It emphatically delineated the adjudicative and administrative functions and powers of the institution, placing the former under the leadership of the Chief Justice and the latter under the leadership of the Chief Registrar (Judiciary 2012: 16; Akech 2010: 30). It also created the office of the Deputy Chief Justice to check the Chief Justice and introduce gender parity in the judiciary’s leadership. Finally, the constitution dictated that judges elected by the Court of Appeal and the High Court should preside over those courts. These reforms were meant to attenuate the Chief Justice’s overreaching powers and functions (ibid.). These changes are also consistent with the country-wide devolution effort.
Personnel of the judiciary and its key partners I interviewed expressed that the reforms introduced competence-based hiring and clear terms of service that diminished favouritism in the institution. An interviewee who reported all of these changes is Elena Kiptoo. She is an Advocate of the High Court and a senior employee of the Kenyan branch of ICJ, where she has worked for 12 years. Through her employer, she directly supported Kenya’s judicial reform processes. Owing to her background, she has a thorough understanding of the state of the judiciary before and after the reforms. Regarding employment, Ms. Kiptoo maintained that the institution now employs judges with proven records in diverse fields. Those employed come from ‘academic, civil society, and banking sectors’. The Master of Laws degree holder assessed the import of the diversity, arguing that it ‘enriches the diversity and knowledge base of the judges, and it is reflected in the judgments they give: many are experts in the fields they work in, so their judgments are not just generic’. When she compared this to the performance of their forebears, she said, ‘previously, judges were straightjacketed [insular]. So were their judgments’. Ms. Kiptoo and certain judicial personnel interviewed have observed that the current mode of hiring and firing, which are largely guided by clearly stated professional requirements and objective rules and procedures, shields judicial officers from their superiors’ influence.

Independence can advance not only professionalism but also mutual respect and harmony within the institution. Peter Evans and James Rauch have argued that meritocratic hiring instils coherence towards institutional goals, in that ‘bureaucrats who see themselves as having joined their conferees in office by virtue of sharing similar abilities are more likely to internalize shared norms and goals’ (1999: 752). These norms and goals are those of their employer. Ms. Kiptoo, further, asserted, ‘the terms of service now are better than before’. Judicial personnel have ‘better pay’ and ‘housing allowance and insurance’, among others. These can discourage corruption among institutional actors (ibid.). In the past, heads of the judiciary used transfer policies to punish opponents and reward supporters, but now, they are used more

44 Interviews with Daniel Omanga (Nairobi, 25 April 2018); Stanley Wamache (Nyamira, 28 March 2018); Alberta Wamukota (Nyamira, 3 April 2018); George Moraa (Nyamira, 19 March 2018); Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
45 Group interview with Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
46 Interviews with Stanley Wamache (Nyamira, 28 March 2018); George Moraa (Nyamira, 19 March 2018); Alberta Wamukota (Nyamira, 3 April 2018); Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
fairly and objectively, said Ms. Kiptoo. All the changes can boost the capacity and impartiality of the institution as well as the morale and confidence of its officials.

5.4 Actual Election Management and Electoral Dispute Settlement: Processes, Norms, and Structures

This section examines how electoral and judicial personnel actually do their work. It scrutinises the series of interdependent activities associated with elections and electoral disputes, including voter verification, vote tallying, and case and records management. The section demonstrates that, to different extents, official and unofficial practices, norms, and structures drive the actions of institutional personnel. That causes them to generate outcomes that are neither wholly perfect nor imperfect.

EMBs

5.4.1 Deployment and Number of Elections

Electoral commissions are supposed to deploy electoral officials and materials to their polling stations early the day before elections, but this is not always the case (Commonwealth Secretariat 2006; IEBC 2017). The Commonwealth mission sent to observe the December 2002 polls witnessed some electoral officers and materials deployed ‘later than anticipated’ (Commonwealth Secretariat 2006: 21). In total, the mission was present in 137 polling stations in 38 constituencies across Nairobi, Mombasa, Nakuru, Nyeri, Kisumu, and Eldoret (ibid: 2; 36). Similarly, the European Union’s (EU 2008: 30-31) mission that observed electoral activities in ‘a total of 752 polling stations on election-day in all eight provinces of Kenya’ in 2007 reported ‘30 per cent of polling stations’ experienced late deployment. This problem persisted even after the 2010 institutional transformation. While narrating his experience with election management, Mr. Paul Maina, who worked as a Polling Officer (PO) in Nairobi in 2013 and 2017, established that they ‘were deployed very late’ the ‘night’ before Election
This is despite having made themselves available for deployment as early as ‘10 am’ on that day. Late deployment undercuts the efficiency and effectiveness of electoral officials. As Carter Center (2003: 29) found in the 2002 electoral period, delays could cause electoral officers to take ‘a long time to organize their polling station layout and materials’. As witnessed in 2007, that can, in turn, force ‘most Presiding Officers’ to extend ‘the opening hours in polling centres’ (EU 2008: 31). These incidents could foment suspicions and ‘tension amongst voters’ who wait for several hours to vote (ibid.). This evidence supports the argumentation derived from a study of the U.S. – that electorate’s experiences of street-level poll workers shape their confidence in the quality of elections (Hall et al. 2009).

Delayed deployment, further, interacts with other structural and procedural factors to subvert elections. While Carter Center (2003: 28) and Commonwealth Secretariat (2008: 24) portrayed the aforesaid issues as generally not alarming, the IEBC officials I just referenced opined its effects transcend the disruption of election schedule. When fused with the number of and the workload associated with elections, late deployment causes physical and mental fatigue that threatens election credibility. The 39-year old Mr. Maina, who applied for his temporary IEBC position because he saw it as ‘a source of income’ and ‘a contribution to society’ did not anticipate the laboriousness of the job until ‘election days’.48 If you’re deployed late, you don’t get much time to rest and be fresh for the polls’, he complained. This is because they ‘sleep outside’ the night of their deployment and after the long hours of voting, counting, and tallying of results. His use of ‘sleep outside’ is both literal (sleeping at designated polling stations) and allusive (unpleasantness of their working conditions). Comparing the realities of different poll officials, Mr. Maina maintained, though all officials experience fatigue, ‘POs and DPOs have it the roughest’, because they ‘have to come back [after elections] and queue’ to submit results at constituency tallying centres and deposit election materials at warehouses. Mr. Maina’s statement illustrates variation in the experiences of electoral officers.

Fatigue merges with the number of elections to diminish officials’ capacity.49 During one of our many casual conversations, Jacob Muthuri, an IEBC Constituency  

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47 Interview with Paul Maina (Nairobi, 17 April 2018). Also, interviews with Jacob Muthuri (Nyamira, 3 April 2018) and Edwina Kerubo (Nyamira, 22 March 2018).
48 Ibid.
49 Interviews with Michael Nyabasa (Nairobi, 16 April 2018), Zaria Wamuyu (Nairobi, 5 February 2018), and Jacob Muthuri (Nyamira, 17 March 2018)
Elections Coordinator-cum-Constituency Returning Officer, likened their sleeping arrangement to ‘being in a prison’.\textsuperscript{50} They ‘slept for approximately one hour’ at a time, and ‘someone had to wake [them] up’. He described the experience as ‘difficult’. Notwithstanding being ‘fatigued’ during the August 2017 elections, Mr. Muthuri had to execute his reserved PO function of declaring election results. ‘At one point, while with the microphone announcing the results, [he] dozed off. Someone had to poke [him] to wake up’. What compounds the difficulty is the ‘six elections’ they manage ‘on the same day’ and their associated ‘paperwork’. ‘In the attempt to fill [all forms] and still meet deadlines’, electoral officers ‘rush through them’. ‘Sometimes, they fill some documents incorrectly or even fail to fill others’. Such irregularities ‘affect everything’, asserted the self-proclaimed professional with high integrity who has been with the electoral commission since 2010. Based on these electoral problems, he recommended elections be ‘staggered’ or divided into manageable numbers that are run on different days.

Even in 2002, ECK personnel, who managed only half the elections IEBC staff conducted, also experienced fatigue (Carter Center 2003: 33). ‘The challenge of fatigue on the part of [ECK] election officials’ generated ‘only minor irregularities during the counting process’ (ibid.). If managing three elections in a day can bring about some performance-hindering fatigue, then managing six elections within the same time period can increase fatigue-induced irregularities. The ‘minor irregularities’ are possibly why an unsuccessful presidential hopeful, Uhuru Kenyatta, did not contest the presidential election results (ibid: 8).

5.4.2 Voter Verification and Voting

At 6am, electoral officers are required to open polling stations for voters to queue to vote (Carter Center 2003: 28; Commonwealth Secretariat 2006: 19-20; IEBC 2017: 96-97). Where the opening is delayed, the closing time for voting was extended past 5 and 6pm, the official closing times (ibid.). At the onset of voting, officials verify the eligibility of voters by crosschecking their identification documents against voter registers and inspecting their hands to ensure that they have not already been marked with an indelible ink (Carter Center 2003: 28; EU 2008: 31; IEBC 2017: 98).

\textsuperscript{50} Ibid.
Voter identification has been problematic throughout the timeframe of analysis. Some eligible Kenyans could not vote because electoral officials: prevented them from registering during voter registration periods and voting on election days; or could not identify them in the voter registers (Carter Center 2003: 18; 21; EU 2008: 18; IREC 2008: 8; IEBC 2018: 83). Explanations for this problem are legion. One reason that cuts across all elections is potential voters’ inability to acquire the requisite identity cards for registering (ibid.). Would-be voters rely on the Registrar of Persons for ID cards (EU 2008: 18.). Delays some prospective voters, especially religious minority groups (Muslims and Hindus) living in Busia, Kisii, and Wajir districts, encountered at the Registrar of Persons obstructed their timely acquisition of the cards. That automatically disqualified them from voting on election day (ibid: 29). Another reason is EMBs’ failure to effectively communicate electoral policies with prospective voters. ECK, for instance, gave contradictory directives regarding whether to allow only registered voters to vote in 2002. Because of that many potential voters failed to register by the time the voters list closed (Carter Center 2003: 11). That prompted election observers to urge ECK to implement the rolling or continuous voter registration the amendment of the constitution brought prior to the 2002 elections (ibid: 18; EU 2008: 18).

Financial limitations also blighted the implementation of continuous voter registration. IREC (2008: 79) described the 2007 exercise as ‘outrageously expensive’. ECK was cash-strapped. As discussed in the next chapter, the paucity of funds is partly due to budgetary reduction by government. But audits of ECK expenditure between 1991 and 2007 also reveals that ‘field offices’ colluded with ‘the head office’ to cause ‘excessive financial malfeasance’ (AfriCOG 2009: 29). This finding corroborates the idea that a tight connection existed between upper-echelon and lower-echelon ECK officials, and that hurt the institution’s capacity. It, moreover, highlights the close linkage of the works of upper-echelon and lower-echelon officials. Regarding voter registration right before and after the 2002 elections, Kenya’s Controller and Auditor General found ‘doubtful and unsupported’ payments to ‘registration officials’ in Mandera and ‘77 Security personnel’ in Kilifi and for the hiring of vehicles in Mombasa, among other cases (ibid: 42-43; 47). These ‘financial indiscretions were not the preserve of the ECK’ but of the whole public sector (ibid: 34). The logic of redistributive accumulation appears to underpin such graft. That is, public officials face the expectation to make a fortune from their prestigious positions.
and share the benefits with those in their networks (Olivier de Sardan 1999: 43-44).

The registration problems aside, the voter registers ECK and IEBC produced were questionable. This issue is common in Africa, as research on Ghana and Cote d'Ivoire has shown (Piccolino 2016). In the 2007 electoral cycle, certain Kenyans registered more than once and deceased persons remained in the register (IREC 2008: 18). Since this marred the integrity of the elections, Parliament repealed that register (IIEC 2011: 36). To pre-empt the recurrence of these issues, post-reform EMBs replaced ECK’s manual registers with electronic register (ibid.). Regardless, IEBC’s (2014a: 24) 2013/4 annual report indicates that the new register it compiled for the 2013 elections still contained ‘deceased voters’. Ahead of the 2017 general elections, IEBC (2018: 88-89) hired the audit firm KPMG to verify and recommend means of boosting the register’s integrity. Among the problems KPMG uncovered were ‘92, 277 deceased persons’ and ‘264, 242 records’ with duplicate IDs or passports (ibid.).

These issues emanate from ECK and IEBC’s reliance on the Registrar of Persons for data for cleaning their registers (EU 2008: 18).51 ‘The Registrar of Persons’ does not ‘have a structural method for removing deceased persons from the register and relie[d] solely on the records from the Registrar of Births and Deaths’ (ibid.).52 Errors in any of these third-parties’ information made its way into the EMBs’ registers. Timothy Munene, who worked for both ECK and IEBC, asserted that the commissions were aware of the problems but they could not help it.53 He despairingly added that for as long as voters obtain identity cards from the ‘Registrar of Persons’, IEBC cannot implement KPMG’s recommendations. He justified his opinion, saying it is the registrar who ‘issued the same ID number to multiple people’. To him, that is why certain people who are alive appear deceased and some people who are deceased appear alive in registers. That makes it unfeasible to remove deceased persons from the register, since doing so risks disenfranchising those who are actually alive, the veteran electoral official concluded.

Moreover, at times, registered voters could not be found in registers. ECK used multiple registers to counter this (Commonwealth Secretariat 2006: 21; EU 2008: 31). ‘Any voter whose name was not found in the list that was organised in alphabetical

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51 Interview with Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018).
52 Ibid.
53 Ibid.
order, but was included in any of the other three lists could vote if not registered more than twice’ (EU 2008: 31). EU’s observers reasoned that ‘the existence of multiple voting lists’ was inimical to fair elections, in that it ‘increased the risk of multiple voting’ (ibid.).

Commonwealth Secretariat (2006: 22) asserts, in 2002, ‘voters without National Identity Cards or passports were not allowed to vote, even when they were on the register’. At a polling station, it ‘found several soldiers who had Army ID cards were not allowed to vote because the Army – which takes in their National Identity Cards when they join up – had not returned the National Identity Cards to them in time’ (ibid.). The behaviour of polling officers was ‘in line with the law’ (ibid.). This supports Olivier de Sardan’s (2014: 422-424) assertion that contrary to the conventional depiction of African bureaucracies as generally informal and dysfunctional, they sometimes adhere to professional codes and standards. In this instance, the strict adherence to the law disenfranchised qualified voters. It appears ECK addressed these ‘legal shortfalls’ by providing ‘limited amendments’ to election regulations ahead of the 2007 polls (EU 2008: 11). The EU’s appraisal of the ‘patchwork of election-related laws’ that enable the participation of ‘electoral officials’ and ‘soldiers on duty’ is that it ‘provides a workable basis for holding elections’ (ibid.). This is evidence of implementation success in even widely discredited elections.

Kenya’s attempt to break away from its troubled electoral past urged the transition to digital technology-run elections in 2013. Nic Cheeseman and colleagues (2018) have outlined certain ‘fallacies’ that occasioned the incessant call for digitising elections not only in Kenya but also other countries in the continent: it can consolidate electoral processes by boosting the capacities of EMBs; and it can produce fairer and open elections. Research on South African and Chadian governments’ respective adoption of biometric identification schemes for social welfare programmes and elections have uncovered the exploitation of these ideas to sell digital technologies, which do not always work as conceived (Donovan 2015; Debos 2018; also, ibid.). For the 2013 Kenyan polls, IEBC (2014b) introduced the Electronic Voter Identification system (EVID). Data gathered during voter registration was fed into EVID. On election day, the EVIDs malfunctioned. Two hundred and thirteen Returning Officers whose experiences IEBC documented admitted that ‘EVIDs worked throughout the day in only 7.5% of polling stations’ (ibid: 79). The malfunction caused officials to revert to ‘using the printed [manual] version of the register’ (ibid: 80). That could have
jeopardised the attempt to root out the longstanding multiple voting challenge. Polling staff whose EVIDs malfunctioned also expended time on trying to resolve the issue, an act that further delayed the balloting process (ibid: 78-79; 81).

Reasons for EVID’s failure revolve around procurement and deployment. ‘The [procurement] process which started in April 2012… took almost 1 year to complete’ (ibid: 79). Because of that ‘much of the equipment arrived immediately prior to Election Day, and was deployed to the polling centers without time for checking, testing or technical preparation’ (ibid.). This did not allow the commission to foresee and fix its problems and train electoral officials on its operation ahead of the elections (ibid: 79-80). The proud Constituency Returning Officer Jacob Muthuri conceded that they did not know how to operate the EVIDs, when he informed me about the pervasive knowledge deficit he observed during those elections.54 His reason is, ‘when we came in, everybody in ECK had been pushed out of the system. There was not even one person to help us learn’ about election management. ECK’s disbandment was accompanied by the sacking of ‘all’ or ‘over 600 ECK staff together with the commissioners’ (Opiyo 2008). This is because several subordinate officials ‘aided the commissioners in bungling the [2007] elections’ (ibid.). Mr. Muthuri, however, strongly argued that, regardless, the EVIDs were bound to fail. From observation at his ‘local office’, ‘the machines Safran Morpho provided were substandard’. These machines were laptops that were not ‘portable’ or ‘mobile’: they ‘could not be operated without being hooked up to charge, because their batteries were so weak that you could not even use them when they were not being charged’. Additionally, ‘they were very fragile’. He took ‘one home’, ‘and while holding it,’ he heard ‘a crack’.55 When he checked, ‘the screen had broken’.56 He, further, ridiculed their storage capacity, asking ‘how can you have a 60GB device for [six different] elections? What data can it take and save?’ Indeed, it later came to be known that the off-grid server linked to this system also collapsed as a result of its inability to contain the ‘volume of data that was being transmitted’ (quoted in Cheeseman et al. 2018: 1406).

Mr. Muthuri concluded on the note that ‘assuming they could be operated, there’s also no way we could have used them’. This is because of Kenya’s EMBs’ utilisation of schools and classrooms as polling centres and stations. ‘Many of these

54 Informal Conversation with Jacob Muthuri (Nyarora, 17 March 2018).
55 Ibid.
56 Ibid.
classrooms do not have electricity sockets where they ‘could power these devices. Even those that had, there was no power in them’. Had IEBC planned, procured, distributed, and tested EVID earlier, it would have possibly caught and addressed many of these technical issues ahead of the elections. The delays stemmed from infighting between the commission’s Chairman, Ahmed Issack Hassan, and CEO, James Oswago (AC 2013: 54[3]). Owing to the ‘tensions’ between the two, IEBC ‘failed to take quick and decisive action’ (ibid.). That explains why by 1 February 2013, ‘even the use of electronic poll books’ was ‘in doubt’ (ibid.). The use of election technology is not the only activity that suffered from these delays (ibid.).

Lessons from the 2013 helped IEBC revamp its use of technology in future elections. The 2013 technological fiasco, which evaded the Elections Act, prompted calls for the law’s reform. That brought about the Election Laws (Amendment) Act, 2016 that established the Kenya Integrated Electoral Management System (KIEMS) (IEBC 2018: 138). KIEMS is an information technology that amalgamated and housed the Biometric Voter Registration (BVR), electronic voter identification (EVID), electronic candidate registration management system (CRMS), and electronic Results Transmission System (RTS). Since the amended law mandated IEBC to ‘test, verify, and deploy technology at least sixty days before a General Election’, IEBC conducted two open technology testing/simulations ahead of the 2017 elections (ibid: 142). Right before this election, the mutilated corpse of IEBC’s senior manager of information technology, Chris Msando, surfaced on the outer reaches of Nairobi. Referencing Msando’s murder, political parties and their supporters intensified allegations that their opponents sought to manipulate electoral technologies to secure victory. Consequently, existing tensions and anxieties escalated (Wrong 2017).

Notwithstanding the changes, the infighting within IEBC persisted, and it surfaced especially in the ‘procurement of KIEMS kits and other election materials’, according to National Assembly’s Public Accounts Committee that scrutinised IEBC’s financial statement for the 2016 through the 2018 financial years (Republic of Kenya 2019: 10). The conflict was ‘in the functions of the [new] CEO and that of the [new] Chairman’ (ibid.). According to the committee, IEBC Chairman Wafula Chebukati ‘presided over a Commission that allocated [election petition] cases to a law firm to which he was a founder partner without prior disclosure of that fact’ (ibid.). During the procurement of the KIEMS, ‘the other commissioners…[also] voted in favour of their preferred suppliers’ (ibid.). The CEO, Ezra Chiloba, ‘signed contracts worth Kshs.
4,312,046,372.00 without contractors providing performance guarantees’ (ibid: 11). All these improprieties, which are the same as those witnessed during ECK’s era, contravened existing public procurement and the commission’s rules (ibid.). This means, suppliers who won tenders were not necessarily the ones that either charged less or promised the best goods and services. The data displays some officials serving their personal rather than the public’s interests.

Despite the controversies, IEBC (2018: 141-142) largely succeeded in using election technologies in 2017 to biometrically identify the majority of registered voters. The amended electoral regulation must have engendered this. In few instances, however, the technology did not achieve the intended results. Factors IEBC (ibid.) has proffered for this occurrence are: the ‘poor quality of the [voters’] fingerprints, exposure of KIEMS kits to weather elements, and technical failure of some the KIEMS kits’. These findings further the claim that perfect implementation success (and failure) is unrealistic (Goggin 1986: 331; Bierschenk & Olivier de Sardan 2014: 50). Where a voter could not be identified electronically, designated Presiding officers were to call party ‘agents and candidates in the stations to witness’, after which they used ‘the Complimentary mechanism’ or printed voter registers to identify the voter (IEBC 2017: 106-107). Hence, the transition to digital elections could not obliterate manual practices. Once a voter was cleared to vote, electoral staff issued him/her stamped ballot papers for the various elective positions, after which he/she could vote (ibid: 98; 106-107; Commonwealth Secretariat 2006: 20; 2008: 23).

5.4.3 Counting, Tallying, and Declaration

Voting officially closed at 6pm in 2002 and at 5pm in 2007, 2013, and 2017 (Carter Center 2003: 28; Commonwealth Secretariat 2006: 23; EU 2008: 32; IEBC 2017: 109). The counting and tallying of ballots and the declaration of results followed that. In 2002, ‘votes were counted at the polling station’ and the results ‘were transported to Returning Officers at each of the 210 constituency centers for tabulation to produce a constituency result’ (Carter Center 2003: 28). The Returning Officer declared the winner of the National Assembly and Local Council (civic) elections but relayed the provisional constituency results for the presidential election to ECK’s headquarters in Nairobi, where ECK officials combined and declared all constituency presidential results. To ensure transparency, they counted in the presence of political
party agents and domestic and international election observers. Election observers termed the 2002 vote tabulation process ‘well-managed’ (Carter Center 2003: 34-35; also Commonwealth Secretariat 2006: 24-25). ‘By December 28, it was clear that [opposition leader] Mwai Kibaki was headed to victory’, prompting his opponent Uhuru Kenyatta to publicly concede defeat even before ECK declared the winner (Carter Center 2003: 34-35). Later on 29 December, the commission confirmed the victory using unofficial results. The official results were announced on 3 January 2003.

By using provisional results to declare the president-elect, ECK flouted electoral law obliging it to make such declarations only after it has received official forms from all 210 returning officers (ibid.). ECK Chairman Samuel Kivuitu acknowledged this irregularity, conceding the commission’s action ‘was a political rather than a legal decision’ (ibid.). In his defence, he stated the commission faced ‘a great deal of pressure from [the opposition] NARC leaders and their supporters that the declaration of the results be made nevertheless’ (ibid: 35). He added, ‘between the demands of the law and those of the people, the ECK chose to obey the latter’ (ibid.). Considering Kivuitu made these utterances after the official results confirmed Kibaki won over 60 percent of the votes cast, it can be argued that his justification is post hoc. The empiric here illustrates that even in lauded elections, there are instances institutional actors do not follow official rules because of their impracticality. It also somewhat contrasts ‘the standard theme in the literature on African states that public officials’ disregard the interests ‘of the public’ (Hyden et al. 2003: 7-8). In this instance, the wishes of the majority of the electorate did not align with the dictates of electoral law.

According to the International Republican Institute (IRI 2008: 37), who also deployed a mission to observe the 2007 polls in 33 constituencies across the erstwhile eight provinces, the measures of transparency ECK was expected to work with in 2007 did not differ from that of 2002. However, in 2007, the commission sidestepped those measures. Once polling station results have been collated and given to the Returning Officer, s/he announced winners of the parliamentary and civic elections and sent the results of the presidential elections to the national tallying centre (IREC 2008: 117-118). Electoral officials obscured the counting and tabulation processes at the polling station and the constituency and national tallying centres in 2007 (ibid: 121-127; EU 2008: 32-33). Contrary to existing electoral policies, ‘agents of rival political parties were expelled from polling stations, in some cases at the time of counting’ (IREC 2008: 121). At the constituency level, ‘some returning officers did transfer constituency
results (presidential as well as parliamentary) to the national tallying centre before they had established their correct results’ (ibid: 123). Furthermore, they prevented party agents from accompanying the results being transferred (ibid.). Senior ECK officials continually locked party agents and domestic and international election observers out of the national tallying centre (EU 2008: 33). IREC (2008: 127) suitably appraised the transfer of results across the three levels as low quality and unacceptable.

ECK officially declared Kibaki the president-elect long before it ‘received the original result forms and supporting documentation from more than 20 constituencies’ (EU 2008: 33). The presidential election results, which were fraught with ‘considerable discrepancies’, saw President Kibaki emerge victorious (ibid: 34; IREC 2008: 124). With many of these discrepancies happening in the president’s strongholds and favouring the president (ibid.), it can be reasoned that lower- and upper-rung electoral officials teamed up to preserve the president’s ascendancy. There were also instances when some of these groups of officials unilaterally altered results (EU 2008: 34). This data illustrates institutional actors’ ability to alter institutional goals.

IEBC’s (2017: 111) election manual for the 2017 polls states categorically that in addition to electoral staff, a Presiding Officer would allow ‘a person nominated as a deputy to the candidate’, ‘accredited political party/independent candidate agents(s)’, and ‘observers and representatives of the media duly approved or accredited by the commission’ into polling station counting rooms. This contrasts what ECK officials did in 2007. After counting, IEBC obliges presiding officers to ‘announce the results of the respective elective positions’ at the polling station prior to sending them electronically to returning officers at the constituency and national tallying centres (ibid: 115). As part of the effort to enhance transparency, ‘election results transmitted from the polling stations are projected on a big screen placed inside and outside the tallying centre’ (ibid: 120). The Returning Officer at the constituency applies the same procedures and mechanisms (ibid: 119-123).

Notwithstanding that the new result transfer protocols are promising, their rollout has produced disparate outcomes. In 2013, the Results Transmission and Presentation System (RTS) IEBC used failed to work to expectation: ‘not all polling stations were able to transmit results’ (IEBC 2014b: 83). Table 5.1 displays the success rate of RTS in the different elections. Even where it was most successful, it failed to transmit more than 45 percent of the results. Where it was least successful, it failed to send up to 22 percent of the results.
IEBC’s reasons for RTS’ breakdown is the same as that of EVID: delayed procurement (ibid.). The commission abandoned the successful Electronic Vote Transmission System IIEC used for the 2010 referendum because of security reasons. In June 2012, IEBC began the procurement process for ‘a more enhanced system’ (ibid: 82). In January 2013, few months to the elections, it halted the process. ‘IEBC instead adopted an RTS system developed by the International Foundation for Electoral Systems (IFES)’. Since elections were scheduled for March 2013, ‘there was little time left for testing’ and training officials on using it. Indeed, some ‘saw the phones for the first time on the polling day’. As a result, ‘not all the [RTS] phones received the correct software for use in the capture and transmission of results’, ‘polling station coordinates to assist in the mapping of coverage for mobile networks were not made available on time’, and ‘most of the positioning data was inaccurate’. Furthermore, some of the phones had not been configured and others were incompatible with the service provider’s network (ibid.). The abortive electronic transfer process caused constituency returning officers to hand-deliver the results to officials at the Bomas of Kenya, the national tallying centre (ibid: 83-84).57

Ms. Zaria Wamuyu’s account of her experience with working at the Bomas

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57 Also, interviews with Douglas Tongu (Nyamira, 28 March 2018), Edwina Kerubo (Nyamira, 22 March 2018), and Zaria Wamuyu (Nairobi, 5 February 2018).
illuminates the structures, processes, and practices there as well as their effects on the quality of electoral processes and results. In her words, only ‘permanent staff [the CEO selected] from the IEBC headquarters manned the National Tallying Centre’. Non-permanent staff were not employed there because of the belief that they are ‘just not serious’, meaning ‘they could be bought or promote the interest of candidates they supported’. The commission had a systematic workflow layout and procedures targeted at amplifying the authenticity of transferred results, she divulged. These structures and processes are common to the 2013 and 2017 elections. From what she witnessed, the manual transfer of results in 2013 made it easy for self-interested officials to tamper with electoral outcomes. According to Ms. Wamuyu, she and some of her colleagues observed ‘some officials… hiding the hand-delivered election result sheets and stepping on some’. She suspected that these officials ‘came with their own agenda and interests’. Such practices ensure that valid votes are not added to the overall tally, she reasoned.

As if she has memorised the results management procedure, Ms. Wamuyu swiftly described it as beginning with the authentication of results, followed by the assignment of unique serial numbers to each one, and then ending with the filing of the serialised results. Before work begun at the Bomas in 2013, ‘it was assumed that the same people would do the job the whole day’, she recounted. However, ‘at the start of the tallying processes’, they ‘discovered that was not possible’. The reason is, the tediousness of the work made it unfeasible for the same people to work throughout the day. Therefore, ‘they had to create day and night shift workers’. This was to forestall fatigue-induced errors in their performance. Her assessment of the re-structuring is, although it lessened the burden on individual officials, it ‘was not well coordinated’. That culminated in ‘double serialisation’; that is, the day verification team ‘serialised documents in the day’ and ‘the night crew redid it at night’. Hence, certain documents had multiple serial numbers. That made it difficult, if not impossible, to later search for and probe the results, she recalled. Ms. Wamuyu expressed suspicion about the true motive behind the ‘double serialisation found’, claiming ‘it is difficult not to suspect’ it stemmed from ‘political motivation’.

At the same time that the seemingly coordinated technological failure in 2013

58 Ibid.
59 Ibid.
supports the claim that logistical problems at one phase of elections cascaded to systemic breakdown, it demonstrates that self-interested officials used those technical/administrative problems to cover up a ploy to rig the elections. A comparison of the results of the various elections reify the latter viewpoint. IEBC declared Uhuru Kenyatta winner of the presidential elections. Compared with the other election results, ‘IEBC found that a million more votes were cast in the presidential election’ (AC 2013: 54[13]). Whereas Kenyatta’s supporters maintained ‘it is natural that voters were more worried about selecting the national president than candidates for other positions’, critics deemed it ‘far-fetched that over a million Kenyans would queue for several hours to vote and then ignore all of the ballots apart from the presidential one, especially since there was great excitement about the contests for new, powerful positions such as Senator and Governor’. Such discrepancies, which could undermine the institution’s credibility, might have prevented IEBC from disclosing ‘the full set of results for all six elections contested on [4 March 2013]’ (ibid.). The information substantiates the claim that regardless of the promise that election technology would safeguard elections’ integrity, human application of the tool can permit its politicisation and manipulation (Cheeseman et al. 2018).

The IEBC (2018: 125-145) made a conscious effort to correct the 2013 shortfalls. To a large extent, that induced result transmission. For instance, for the general elections, RTS succeeded in transmitting 92 percent of the presidential election results (ibid: 128). The ‘few’ unsuccessful cases resulted from the fact that the polling stations did not have the needed 3G connectivity. IEBC relied on network private entities (Airtel KE, Safaricom PLC, and Telkom KE) provided (ibid: 144). In some of the troubled polling stations, these providers’ 2G connection was still available. That created suspicion among electorate who could make phone calls from these polling stations. IEBC tried to absolve itself from blame (ibid: 128), but these shortfalls point to the commission’s failure to adequately align its technology’s design and available network services across the country.

After the IEBC announced the results for the general elections, 299 petitions came out of them (ibid: 155). Among them is the first presidential petition, which the NASA coalition filed on 18 August 2017. The Supreme Court gave a historical ruling by nullifying the presidential election results on 1 September 2017. This ruling was the first of its kind in Africa and the fourth in the world. The court’s reason is, the election did not comply with legal principles and requirements of elections (ibid.). Certain
electoral officials I interviewed confirmed the issues the Supreme Court found, and partially traced them to their burdensome workload. They argued that because of fatigue, some electoral officials on the ground failed to stamp the ballot papers they issued to voters and properly scan the result forms they transmitted to the national tallying centre. To them, these are breaches of electoral regulations, even if they are not geared towards rigging the elections. Provided that IEBC's workload on election day has not reduced, this problem may recur. The administrative challenges perspective is convincing, but the fact that some officials appear to deploy institutional capacity to advance partisan goals demonstrates that it is equally plausible that the issues the court raised can be interpreted through the lens of electoral fraud.

After annulling the presidential election, the Supreme Court ordered IEBC to conduct fresh presidential polls within 60 days. IEBC chose 26 October 2017 for the repeat election, which Raila Odinga and his National Super Alliance (NASA) boycotted. Their reason is that the process and its result will be undermined by the failure to: dismiss certain senior IEBC officials they accused of favouring President Uhuru Kenyatta; and implement the stipulated minimal reforms they claimed would safeguard the integrity of the polls (ibid: 155; Burke 2017). The elections came on as scheduled, and Kenyatta was declared the winner. The opposition agitated for the nullification of Kenyatta’s win, claiming that the less than 40 per cent voter turnout recorded means the majority of Kenyans do not prefer Kenyatta (ibid.). The judiciary’s nullification of a sitting president’s victory and order of the rerun of the presidential election is unprecedented. Aside from signifying the increased autonomy of the judiciary, this event illustrates Kenya’s democratic gains under the new constitution. Landry Signé (2020: 118-119) reasons that the Kenyan Supreme Court ‘held the country’s electoral commission to account but, in making a ruling that went directly against the interests of the incumbent president, also underscored (very publicly) the limitations of executive power and interference’ (also, see Chapter 7; Chege 2018: 159; Kanyinga & Odote 2019: 235-236). This is indicative of ‘the critical role that horizontal accountability mechanisms play in facilitating the consolidation of democracy and counteracting the prevailing “Big Man syndrome”’ (Signé 2020:119). Rachel Ellett (2020: 149) adds that the ruling, which will likely have ‘regional judicial

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60 Interviews with Zaria Wamuyu (Nairobi, 5 February 2018); Edwina Kerubo (Nyamira, 22 March 2018); Douglas Tongu (Nyamira, 28 March 2018); Jacob Muthuri (Nyamira, 3 April 2018).
contagion effect’ by increasing presidential election petitions in the continent, is a ‘judicialization of elections’; in that ‘every aspect – from interpretations of law to procurement contracts – [is] queried through the courts in the run up to the polls’. The belief in the integrity of judicial review of elections may ‘encourage opposition support in the next election cycle’ (ibid.), but I also think that the opposition’s boycott of the rerun presidential election can potentially detract from support for IEBC, another state agency whose work is envisioned to contribute to the strengthening of Kenya’s democracy. This showcases Kenya’s mixed democratic gains and reversals.

Judiciary

5.4.4 Filing Petitions

Once EMBs declare election results and gazette them, aggrieved groups and persons can petition the judiciary to nullify the results. The process of seeking judicial review begins with petitioners paying the security for cost deposits that are meant to cover costs incurred throughout the process (Owuor 2008: 119; Thiankolu 2013: 69-71). Failure to make this payment in time caused courts to dismiss petitions (Judiciary 2017a: 70-72). That can marginalise the poor from filing election petitions; thus, limiting the extent to which all Kenyans can utilise the judicial system.

Between 2002 and 2017, different courts have dealt with different kinds of petitions, but the manner by which judges are assigned to these courts has varied. Under the old constitution, a three-judge High Court resolved presidential petitions, a one-judge High Court settled parliamentary election petitions, and a Magistrate’s Court dealt with Councillor or Ward-level election petitions (Owuor 2008: 119). The Chief Justice wielded unchecked powers to ‘constitute a bench to determine’ cases (ibid.). Provided the political interests of the Chief Justice, he was inclined to pick judges likely to promote those interests. Such actions erode judicial independence and fairness. The new constitution brought more transparency to the constitution of courts that work on petitions. With the number of elections doubling, the types of petitions also doubled (Thiankolu 2013: 60). Presidential election petitions went to the Supreme Court, gubernatorial and parliamentary election petitions went to the High Court, and County Assembly election petitions went to the Resident Magistrate’s Court. Opposed to how the pre-reform judiciary constituted its courts, in this era, only ‘election courts’ could
decide cases. These are courts whose judges or magistrates were already cleared and gazetted to preside over petitions (ibid.). This introduced more transparency to the selection process.

5.4.5 Case and Records Management and Proclamation of Decisions

Regarding the actual settlement of cases, certain interviewees and the commission of inquiry into the post-2007 election violence or the Waki Commission (2008: 461) noted, the judiciary’s work prior to 2010 was characterised by delays.\(^{61}\) The delays resulted from the lack of legal timelines for concluding petitions, weak case management systems, and paucity of judicial personnel. These factors produced backlog of cases (ibid.). In 2009, the Judiciary (2012) commissioned a strategic plan targeted at revamping its delivery of justice. The plan also traced the backlog to the absence of legal deadlines for disposing cases. With no timelines for both ordinary and electoral cases, magistrates and judges exercised discretion in assigning priority to cases (ibid: 19). Indeed, petitions could go on ‘for a very long time, often until the next general election’ (Thiankolu 2013: 71). The superfluous and unmanageable case backlog compounded that. Corrupt judges could also use it to stall cases whose defendants they preferred (ibid.). The case backlog and delays reinforced each other.\(^{62}\)

Without adequate personnel, it was difficult for the judiciary to effectively and efficiently settle and track cases (Judiciary 2012: 19; 2014: 12). Social scientific study of the everyday functioning of public services shows that personnel shortage overburdens and stresses the few employees serving a huge number of clients. This assuages employee capacity, causing them to employ unconventional means to execute their mandates (Bierschenk 2008: 107-110; Lipsky 1969: 5). In the Kenyan case, it compromised the judiciary’s performance and detracted from the public confidence it enjoyed. It underlies the opposition’s decision to take to the streets to challenge the 2007 presidential election results (Judiciary 2012; 2014: 12; Waki Commission 2008).

The judiciary’s weak case and records management systems in this period

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\(^{61}\) Interviews with Alberta Wamukota (Nyamira, 3 April 2018), Stanley Wamache (Nyamira, 28 March 2018), Daniel Omanga (Nairobi, 25 April 2018), and Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).

\(^{62}\) Ibid.
compounded the delays (Judiciary 2012: 19). Anecdotal evidence from Stanley Wamache animates these weaknesses.\(^{63}\) When he ‘was employed by the judiciary in 2008’, he noticed that ‘files and their covers could not be found’. According to this administrator, that made it difficult to follow up on cases. ‘In Kisumu’, where he was first stationed, they ‘had about 160 plus staff [who] had to share 12 computers, which were in secretaries’ offices’. To get anything done, everyone had ‘to go to the secretaries’. The effect of this is that ‘nothing was moving’.

The absence of effective and transparent case management and tracking systems made it possible for unscrupulous judicial staff and officers to corrupt justice delivery. ‘Files could go missing due to corruption. Rich people paid for these files’, the young administrator narrated. To shroud their practices, such ‘staff members deliberately mixed up files to delay or spoil cases’.\(^{64}\) Recounting his committee’s findings while giving his speech at the World Bank, Justice Aaron Ringera (2007: 10) distinguished between ‘petty or survival’ and ‘grand’ corruption. The former is practised ‘by lowly-paid employees to supplement their emoluments’ and the latter is common among ‘well-paid employees’. His team ‘found that gratifications to judicial officers were either in cash or in kind’ (ibid.). These findings reaffirm the perspective that generous remuneration is not the silver bullet against corruption (Fjeldstad 2006). Officials who were found complicit were not punished; rather, they were protected by their internal patrons (Ringera 2007: 11). Such practices derailed justice delivery.

The Ouko Task Force’s (2010: 33-59) recommendations for strengthening the judiciary consisted of redressing corruption, case backlog, lack of timeframe for cases, staff shortages, and technological deficiencies, among others. The Judiciary (2012) used the Judiciary Transformation Framework (JTF) to operationalise those recommendations. For instance, the reforms introduced strict deadlines for concluding petitions (Fourteen days for presidential and six months for other election petitions) and introduced Pre-Trial Conference to ensure timely and effective petition conclusion (ibid; Thiankolu 2013: 71-72). The reforms, further, erected two committees whose mandate is to ‘design and execute a Judiciary programme to build the capacity of judicial officers and staff on electoral matters, and suggest ways of working with other stakeholders’ (Judiciary 2014: 12; Judiciary 2017: 8). They are the Judiciary Working

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\(^{63}\) Stanley Wamache (Nyamira, 28 March 2018).

\(^{64}\) Ibid.
Committee on Election Preparation (JWCEP) and the Judiciary Committee on Election (JCE).

In 2013, JWCEP aided electoral dispute settlement by pioneering the training of most judicial officers and staff on electoral laws and processes, the development of ‘comprehensive petitions and administrative rules’, and the conclusion of ‘petitions in a short period’, among other achievements (Judiciary 2014: 51). JWCEP was a temporary body whose lifespan was coterminous with the 2013 elections. In August 2015, Chief Justice Willy Mutunga inaugurated JCE, JWCEP’s permanent replacement (Judiciary 2017: 8). JCE experienced some setbacks, including the breakdown of the electronic case management system it jointly developed with the international organisations IFES and International Development Law Organisation (IDLO) (ibid: 36-39). Nevertheless, JCE’s efforts facilitated the completion of election dispute resolution within the constitutional deadline (ibid: 27; 36).

Other reforms contributed to the timely adjudication of petitions in 2013 and 2017. For Alberta Wamukota, who has personally adjudicated election petitions, the current process is more effective, efficacious, and impartial. She traced the improvement to ‘when the reforms begun [and they] had the JTF’. JTF sped up their work by providing ‘vehicles to convey officers’ and ‘computers’ and by hiring ‘more staff’, said the veteran judicial officer who had earlier conceded that these resources were in short supply before the reforms. In her view, the increased vehicles facilitated their movement during vote recount, and the ‘computerisation of the petition process’ also helped ‘fast-track’ proceedings. Another ‘thing that improved the work of the superior courts is the research assistants the judges there got’. These assistants do not merely quicken the process, but the ‘good research and advice’ they offer to ‘those judges’ largely improved ‘the quality of the… judgements they delivered’, she asserted. Ms. Wamukota criticised the marginalisation of the ‘Resident Magistrate courts’ from the research assistance policy. Her reason is, these courts tend to have ‘the same timeframe to complete petitions as the other levels of courts’. This evidence highlights the lack of inclusivity of certain productivity-enhancing policies of the judiciary. That means the benefits of such policies may not be realised in some quarters of the institution, the consequence of which is diversity in the quality of the

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65 Interview with Alberta Wamukota (Nyamira, 3 April 2018).
66 Ibid.
work of the various stations of an institution.

Regarding corruption, the veteran judicial officer cautiously admitted certain people try to influence their decisions, ‘but it’s not easy for them now’. One of her reasons is the availability of stringent rules against corruption. ‘If you don’t follow them, you’re kicked out as an officer’, she mentioned. Even though petition deadlines are primarily meant to enhance the efficiency of judicial officers, Ms. Wamukota argued it has the secondary function of not allowing ‘the parties in court cases enough time to influence officers and staff’. Moreover, because ‘all officers and staff are now well remunerated[,] there is no interest in bribes’. George Moraa and Stanley Wamache, both of who work on court finances, expressed a similar opinion when they informed me about the extra remuneration judicial personnel working on petitions get.67

Notwithstanding their optimism, corruption is possible, and has indeed occurred, under the new regime. In 2013, the Judicial Service Commission (JSC), the body that recruits and sanctions judicial personnel, dismissed Chief Registrar Gladys Shollei ‘over allegations that she misused [K]Sh. 2.207 billion’ (Ngirachu & Wanzala 2013). Chief Justice Dr. Mutunga saw this case as the return of ‘graft…to the Judiciary’. He subsequently invited the Ethics and Anti-Corruption Commission (EACC) to probe it (ibid.). The Chief Justice and JSC’s responses to the scandal contrast how graft was dealt with in the pre-reform period, during which ‘godfathers’ protected venal officials. That is an attestation of the zero tolerance for corruption in the current era, something that can credibly deter corrupt practices.

But the improvements have not always achieved intended goals. Legal scholars’ examination of the 2013 presidential election petition revealed the case was ‘determined by procedural rules regarding time limits on the admissibility of evidence and the operations of devices such as judicial notice, the presumption of regularity, the definition of the standard of proof, and the allocations of the burden of proof. The emphasis on adjectival law precluded any more profound consideration of issues at stake in the case’ (Harrington & Manji 2015: 185). My interviewees also mentioned similar behaviours occurring in petitions in lower courts.68 The act of prioritising technicalities over the substance of cases is akin to the colonial and pre-2010 judicial

67 Interviews with George Moraa (Nyamira, 19 March 2018) and Stanley Wamache (Nyamira, 28 March 2018)
68 Interviews with Alberta Wamukota (Nyamira, 3 April 2018), Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018), and Stanley Wamache (Nyamira, 28 March 2018).
practice of suppressing ‘its constitutional role as the ultimate instance for scrutiny of executive action and for upholding the supremacy of the constitution’ (ibid.).

The technicality-driven adjudication stems for the judiciary’s under-preparedness for petitions of that magnitude. Recounting difficulties she encountered while adjudicating electoral disputes, Alberta Wamukota hesitantly replied, ‘maybe, the time for completing election petitions is too short. Advocates come up with many prayers that we must deal with’. The bid to meet the deadline forces desperate judicial officers to use these technicalities to lessen their workload. Stanley Wamache contended that the constitutional timeframe for completing petitions has not changed since 2013 but the issue of technicality-based ruling was more profound in 2013 than in 2017. His core explanation is, ‘in 2017, courts were better prepared for petitions in terms of administration than in 2013’. For instance, in 2013, they maintained their regular work schedules during the adjudication of petitions. That slowed their pace, acknowledged the administrator. Contrarily, in 2017, ‘staff worked day and night’. They ‘were [also] given a notice [before the elections] that [they] can’t go on leave until petitions had concluded’. The benefit of the changes is, judicial officers had adequate time to carefully assess the merits of cases before delivering judgment in 2017.

5.5 Conclusion

To understand how Kenya’s EMBs and judiciary respectively manage elections and settle electoral disputes, I open up the ‘black boxes’ of both institutions to unpack the influences of their official and unofficial structures, processes, and norms on their functioning and outputs. I argue that the interaction between these internal features contributes to institutional actors’ production of complex mixtures of implementation successes and failures. The following observations particularly stood out as vital for the research and practice of public policy delivery.

The relationship between internal cohesiveness and the productivity of public services is more nuanced than existing research postulates (Evans & Rauch 1999:

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69 Alberta Wamukota (Nyamira, 3 April 2018).
70 Interview with Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
71 Stanley Wamache (Nyamira, 28 March 2018).
They emphasise the need to use meritocratic recruitment, professional advancement, and ex-ante and ex-post sanctioning policies to foster employee commitment to institutional interest, which is a prerequisite for institutional productivity. This idea materialises in the work of the post-reform judiciary. But this institution’s performance in 2013 demonstrates that the relationship is not straightforward and conclusive, since inadequate preparation forced many judicial officers to prioritise the judiciary’s means (institutional timelines) over its end (ruling cases on merit). The data on the pre-reform judiciary and ECK shows cohesion towards personal and factional agenda. That mostly undermines institutional capacity and impartiality. Both findings emphasise the essence of defining not only the type of coherence but also their effects on the different indicators of institutional performance. Even within ostensibly disunited institutions (e.g. IEBC), united camps committed to personal and factional ends exist. These findings are telling: no institution’s employees are utterly united or disunited in their pursuit of particular goals; and no institution’s work is completely perfect or imperfect. Within highly fractured or compact institutions, we may find groups that do or do not promote institutional interests. That stresses the need to not look at institutional cohesion and performance as all-or-nothing variables but as inconsistent blends of perfection and imperfection.

Scrubinising institutions as a whole is imperative to unearthing the motives underlying employee behaviours. The co-existence of multiple official and unofficial preferences makes it challenging to see the fundamental sources of institutional weaknesses. What seems structural, normative, or processual issues may be personnel issues. For example, the technological failures IEBC recorded in 2013 appear as practical challenges stemming from the late procurement and deployment of materials. Upon a closer look, we find these issues partly rooted in headquarter-level contestations between the commission’s CEO and Chairperson. This tasks students of institutional performance to study institutions not only segmentally, as students of street-level bureaucracies do (Lipsky 2010; Bierschenk & Olivier de Sardan 2014), but also holistically. It also underscores the need to chronologically and spatially contextualise data to fully make sense of it.

The connectedness of the works of lower- and upper-echelon bureaucrats, further, suggests that recruitment is perhaps the most important ‘element of bureaucratic structure’ for ‘improving bureaucratic performance’ (Rauch & Evans 2000: 52-53; Chibber 2002; Rothstein 2015: 540; Zang 2017: 218).
Prior to 2010, it played a considerable role in the corruption of the works of ECK and judicial officials at all levels. It has also contributed immensely to the improvement of the work of post-reform judicial personnel. As well, it appears to be a significant reason IEBC does not perform to expectation even though it has been reformed. Hence, recruitment is an avenue through which reformers can get a lot out of their policies.

Moreover, the effects of informality and formality on performance is more ambiguous than the scholarship often assumes. Mainstream studies on political institutions privilege formality over informality (Helmke & Levitsky 2004). Nevertheless, since the failure to pay security for costs in time allows for petitions to be thrown out, it is clear that formal rules could block honest judges from considering the merits of petitions. Also, although the collaboration between ECK and IEBC, on one hand, and other agencies (e.g. KPMG and Registrar of Persons), on another, is uncodified and far from perfect, it enables the institutions to fulfil their mandate of enfranchising qualified citizens. Thus, experts need to be critical of both formality and informality and exploit the benefits each presents.

Finally, the discussion suggests iteration is essential to institutional reform. The judiciary and IEBC improved their performances in 2017. Lessons from errors they committed in 2013 enabled this. Besides showing that it takes time for reforms to achieve intended results, this observation indicates that institutional design and implementation are mutually dependent. Depending on the willingness of employees, through learning, past implementation lessons can improve performance. This evidence underlines the essence of both human agency and structure in public service delivery.

6.1 Introduction

Public institutions are embedded in social and political environments that are capable of affecting their performance. In explaining the failure of donor-imposed Structural Adjustment Programmes (SAPs) and the pervasiveness of economic crisis in Africa, Nicholas van de Walle (2001) indicts executive governments for failing to promote the SAPs and undercutting institutions tasked to advance growth. The neopatrimonial character of African states – the merger of impersonal and personal structures, rules, and procedures – is both the enabler and the consequence of the economic malaise (ibid; also, Bratton & van de Walle 1997). The idea that executive governments debauch institutional performance in a manner that profits them is endemic in the literature on the functioning of Kenyan institutions (Hyden 1979; Olumwullah 1990; Mutua 2001; Branch & Cheeseman 2006; Mueller 2014). The far-reaching powers of consecutive governments have enabled them to manipulate other state agencies, laws, and procedures to their advantage. Thus, executive interference has impeded the free and fair provision of public goods and services. Even institutional reforms aimed at checking the preponderance of executive control and improving the capacity of institutions have largely been unsuccessful. As such, public policy implementation in this context is often portrayed as deficient (Boone 2012; Mueller 2014; Kivoi & Mbae 2013; Manji 2015; Harrington & Manji 2015; Osse 2016).

This chapter continues the discussion from Chapter 5. It equally investigates the actual course and products of institutional functioning. In contrast with the previous chapter, this chapter employs the environment perspective to elucidate data. It precisely answers the question, how has the social and political environment within which courts, the Electoral Commission of Kenya (ECK), and the Independent Electoral and Boundaries Commission (IEBC) are situated impacted the quality of election management and electoral dispute settlement from 2002 through 2017? ECK managed the 2002 and 2007 general elections. Whereas the losing presidential candidate welcomed the 2002 election results, the losing candidate in the 2007
presidential election cast aspersions on the results. A High Court was mandated to resolve presidential election petitions. Citing a lack of confidence in the fairness of the court, the losing 2007 presidential candidate incited his supporters to publicly demonstrate against the results (Cheeseman 2008; Burchard 2015: 75; Majanja 2016: 20-22). Intense countrywide violence followed this event. The need for durable peace gave urgency to the ongoing call for a new constitution that would address popular grievances about institutional performance, among other concerns (Kramon & Posner 2011). Consequently, institutions such as the judiciary and the electoral management body (EMB) were reformed. IEBC was founded to permanently replace ECK, which was disbanded for complicity in the 2007 troubles. IEBC managed the 2013 and 2017 general elections whose presidential election results were contested in the newly created and highly empowered Supreme Court (Wolfrom 2013; Aywa 2015; Chege 2018; Kanyinga & Odote 2019). Insights into the functioning of the judiciary and EMBs are pertinent to figuring out the extent of the match between the actual functioning of institutions and the public’s appraisals of it.

I employed a qualitative approach to gather the requisite information for clarifying the topic. Data was derived from formal and informal interviews and observations mostly conducted in Nairobi and Nyamira counties. An interview took place in Kisumu County. The interviewees are three judicial employees, three past and present employees of the judiciary’s strategic partners, five ECK and 23 IEBC employees, and a member of the Parliamentary Selection Committee for appointing electoral commissioners. When referencing the interviewees, I substitute their real names with pseudonyms to protect them. Complementary information was retrieved from media reports, organisational documents, and scholarly publications.

Findings from my assessment of election management and electoral dispute settlement contribute to the literature on environment—institutional performance interrelationship in Kenya (e.g. Mutua 2001) and the rest of Africa (e.g. van de Walle 2001) by making explicit the variations in the outcomes of institutional functioning, agency of institutional actors, and multiplicity of environmental forces affecting performance. Exploring the appointment and job security of ECK, IEBC, and courts’ leadership, the official financing of these institutions, the financial and technical support these institutions receive from donors, and the threat of and actual violence to institutional actors and functioning, I uncover that the exogenous forces that shape institutional processes and outcomes are manifold. Besides the executive, donors,
legislators, political parties, and party followers are found to influence election management and electoral dispute settlement.

A key logic of the *neopatrimonialism* viewpoint is that external influence undermines the independence of institutions, thereby causing them to produce undesirable, ineffective, inefficient, or non-inclusive public goods and services (ibid.). This chapter demonstrates that across and within time and space, external influences simultaneously hamper and enable institutional autonomy and efficacy. The executive’s manipulation of its authority to appoint and remove judges and electoral officers in the 1990s engendered career-based desires and fears among judicial and electoral personnel. That caused many to produce outcomes beneficial to the executive and its coterie. Political parties in parliament’s involvement in the appointment of ECK commissioners helped boost the integrity of the 2002 polls. The unofficial 1997 Inter-Parties Parliamentary Group (IPPG) agreement between parties and the executive enabled this inclusive appointment process, which balanced political interests in the commission and stimulated the credibility of the elections. This shows that official and unofficial provisions have no inherent qualities that guarantee implementation success or failure. Their effects are rather context-dependent.

Furthermore, budget-cut-induced apprehensions among electoral and judicial personnel, to varying extents, subverted the independence and the capacity of the judiciary and EMBs before and after 2010. That contributed to instances of ineffectiveness, inefficiency, and unfairness in election management and electoral dispute settlement. Electoral and judicial officers’ ability to attract donor financial and technical assistance, which is neither enshrined in law nor foolproof, have been found to ameliorate the adverse effects of the financial deficit they face. This evidence evinces the power of public servants and the usefulness of unofficial arrangements. Finally, while anxieties stemming from the opposition’s threat of violence appear to have momentarily deterred ECK’s chairperson from announcing compromised results in 2007, threats from the government seem to have ultimately driven the chairman to make the declaration. This illustrates within-time variations in institutional outcomes. Threat of and actual violence, whose seriousness differ from locality to locality, produced mixed outcomes in and across post-2010 electoral cycles. For example, I found that electoral tensions were more likely to escalate in Nairobi than in Nyamira counties. That translates into inconsistent violence-induced disruptions to electoral governance. As well, although the Supreme Court exhibited high levels of
independence and impartiality in its handling of the original 2017 presidential election petition, it glaringly cowered when it failed to raise quorum to hear a subsequent petition after the shooting of the Deputy Chief Justice’s bodyguard.

These findings contest the broad-brush portrayal of public services and goods delivery in Africa as poor. Rather, delivery is better understood as an intricate combination of successes and failures that vary across and within time and space. Therefore, I conclude that the complicated quality of institutional performance can be understood through the lens of the inconsistent interplay between formalities and informalities originating from outside public services. While formalities are the rules and procedures of behaviour formulated, disseminated, and enforced through officially sanctioned channels, informalities are those whose formulation, dissemination, and imposition occur through unofficial avenues (Helmke & Levitsky 2004).

Mechanisms connecting institutions to the social and political world in which they operate are employed to structure the following discussion. The first section examines the appointment and job security of electoral and judicial officers, the second assesses the official financing of ECK, IEBC, and courts, the third explores donor financial and technical interventions, and the fourth investigates the threat of and actual violence. The final section summarises my main findings and highlights lessons relevant to policy and research.

6.2 Appointment and Security of Tenure

Information I obtained while examining institutional performance demonstrates that political elites attempt to use their control over the employment and the retention of electoral and judicial officers to push them to produce outcomes that suit their political ambitions, as earlier studies have contended (Mutua 2001; Golden 2003; Penfold-Becerra 2007; Hassan 2015: 604). The following discussion reveals that employing the constitutional and extraconstitutional rules and procedures guiding the appointment and the dismissal of electoral and judicial personnel, politicians from across the political divide can influence the work of electoral governance institutions. In different instances, either sets of rules and procedures may compel judicial and electoral officials who desire appointment and/or dread dismissal to adhere to and digress from delivering credible elections and electoral justice. Whether these rules of
behaviour impinge on or promote the work of institutional actors is conditioned by whether or not the agency controlling the appointment and job security seeks (re-)election.

ECK’s relative success in administering the 2002 elections can be traced to the rules that governed the appointment of its commissioners. This rule is the Inter-Parties Parliamentary Group (IPPG) agreement, a 1997 ‘gentleman’s agreement’ or an unwritten agreement reached among political parties. It temporarily replaced the constitutional provision that gave presidents the exclusive authority to appoint electoral commissioners (Kanyinga 2014: 119). By giving the president such powers, the law facilitated the executive’s co-optation of ECK. A president could unilaterally appoint those sympathetic to government’s interest, meaning official norms can be deployed to corrupt the work of state machineries. This has been used to explain President Daniel arap Moi and his KANU party’s 1992 and 1997 electoral victories (ibid.). After the 1997 elections, civil society organisations and political parties realised that without constitutional changes, there was little or no prospect of wrestling power from KANU. They, therefore, saw the need to loosen the executive’s grip on ECK and other public institutions by clamouring for constitutional reforms (ibid: 126-127). Although the government did not yield, it allowed for minimal reforms, of which IPPG is one. IPPG permitted opposition parties in parliament to partake in the appointment of ECK officials. Its apologists argue it reduced the executive’s influence over the 2002 electoral processes and outcomes, yet some do admit that it contributed to stagnating durable, formal constitutional change (ibid: 119; 126-127; IEBC 2014b: 5). IPPG supporters reference the unprecedented opposition party’s (NARC) resounding victory over KANU in the 2002 parliamentary and presidential elections as evidence of IPPG’s influence. NARC acquired 125 of the 210 elected seats in the 224-member National Assembly, while KANU got 64 (Burchard 2015: 61-62). The constitution debarred Moi from contesting in the 2002 presidential election; thus, paving the way for Uhuru Kenyatta, a purported Moi protégé, to lead KANU. NARC’s leader Mwai Kibaki defeated Kenyatta, winning approximately 62 percent of votes cast countrywide (ibid.). The data suggests that the consensus in the appointment of electoral commissioners balanced political interests in ECK, thereby stimulating the commission’s fairness. That might partly explain why, unlike earlier electoral periods, the losing presidential candidates in the 2002 elections and their supporters did not cast aspersions on the electoral process and results. They possibly believed their appointees worked to
ensure they were not cheated. The data further evidence the utility of informal arrangements in the realisation of institutional mandates.

Events following the 2002 elections set the stage for successive changes to the norm and procedure for appointing electoral commissioners. NARC was a grand coalition made up of 15 opposition parties (Kramon & Posner 2011: 89-103; Burchard 2015: 74). In its account of the political context within which the 2002 elections took place, the Commonwealth Observer Mission that monitored those elections claims that leaders of these parties included top KANU politicians whom Moi’s selection of Kenyatta alienated: Secretary-General Raila Odinga, Information Minister Kalonzo Musyoka, and former Vice-President Professor George Saitoti (Commonwealth Secretariat 2006: 4-5). Among the issues that unified these politicians and political parties is the desire for a new constitution, which would abate the far-reaching executive influence by creating and sharing executive powers between the offices of the President and the Prime Minister (Kramon & Posner 2011: 89-103). NARC’s leaders agreed to the implementation of the proposal for constitutional change within the first 100 days of Kibaki’s administration, after which Odinga would be appointed the Prime Minister (Burchard 2015: 74). Upon assuming office, Kibaki reneged on the agreement by altering the provision for a two-pronged executive government in the proposed Bomas draft constitution (ibid; Kramon & Posner 2011). He replaced that with the Wako draft constitution, another draft constitution that sought to preserve the concentration of executive powers in the presidency. This move caused some NARC leaders such as Odinga to part ways with the government.

ECK organised a referendum in November 2005 to allow Kenyans to decide on the Wako draft. Odinga allied with KANU’s flagbearer Kenyatta through the Orange Democratic Movement (ODM) to oppose it. With 58 percent of voters rejecting it, the opposition won. The president reacted to the loss by dissolving cabinet, an act that alienated other prominent allies (Lynch 2006). The failure of the sitting government to win the referendum further attests to the possible inability of the executive, which had historically been more successful at getting other public institutions to protect its interests (see Chapter 3), to undercut ECK’s independence.

Many of my interviewees who worked in ECK and IEBC described the 2007 election results as flawed, and they blamed this on undue influence the president
exerted on it. They traced explanations to the Kibaki government’s reversion of IPPG. To them, the government reinstated the constitutional means of appointing commissioners to regain control over the commission. This is similar to what Kenya’s colonial and early post-colonial governments had done to state institutions (Olumwullah 1990; Hyden 1979; Branch & Cheeseman 2003; Mueller 2014). Gregory Okoth and Timothy Munene, ECK-cum-IEBC officials who have worked on electoral issues since 1991, helped clarify this point. According to them, when the commission was disbanded for complicity in the botched 2007 elections, all ECK employees were also dismissed. They said the dismissals left a gap in the knowledge on election administration in IEBC, so IEBC rehired them and other former ECK personnel experienced in running elections and delimiting boundaries. The knowledge they accumulated under both regimes is vital to understanding electoral management in Kenya before and after the reforms. I interviewed them at a time that IEBC faced several controversies, particularly allegations of procurement malpractices and electoral fraud and disunity within its leadership. They pointed to these controversies to establish that ECK was fairer than IEBC. Nevertheless, they apologetically admitted ECK’s downfall, which they attributed to the executive’s removal of IPPG ahead of the 2007 polls. After Mr. Munene traced the success of the 2002 elections to IPPG, Mr. Okoth expressed wistfully that ‘the only problem is that IPPG was just a gentleman’s agreement and not put into law’. He explained the problems it posed, saying ‘the Commissioners had a term limit of five years. The term of some had expired before [the] 2007 [elections]. Martha Karua was the Minister of Justice. When they needed to replace the commissioners who were going out, the minister said it was a gentleman’s agreement and not in law, so she allowed the president to unilaterally appoint the commissioners whose time had expired’. The defeat the government suffered in the 2005 referendum might have prompted Kibaki, who sought a second term in the 2007 presidential election, to repudiate IPPG. After reintroducing the constitutional appointment procedure, President Kibaki appointed his sympathisers to fill the vacancies. One of these appointees is the president’s friend and personal lawyer Kihara Muttu, who became ECK Vice-Chairman (Aywa 2015).

72 Interviews with Lydia Kirongo (Nyamira, 17 March 2018); Francis Nyabuti (Nyamira, 2 April 2018); Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018).
73 Group interview with Gregory Okoth and Timothy Munene (ibid.).
74 Ibid.
The reversion to the unilateral appointment of commissioners advantaged President Kibaki, whom ECK eventually declared winner of the presidential election. Mr. Okoth and Mr. Munene proffered different combinations of the following explanations to justify their claim. Mr. Okoth maintained, ‘the delay of the declaration of the presidential results meant it was tampered with. The media had already projected that the opposition won but when it came to the announcement, it had been changed that the president won’. This delay does not definitively showcase electoral malpractices, but in Mr. Okoth’s opinion, it allowed the commissioners enough time to alter election results sent from different constituencies. This style of reasoning is perhaps anchored in the belief among Kenyans that successive executives have rigged public service appointments to sustain their rule (see Chapter 3). Mr. Munene buttressed his counterpart’s assertion, insisting that even ECK’s Chairperson Samuel Kivuitu later admitted he was unsure whom the actual winner of the presidential election was (also, Kanyinga 2014: 120). Karuti Kanyinga (2014: 120; 129) has established, suspecting that some ‘of their colleagues’ might have ‘tampered with the presidential election results before they were announced’, ECK commissioners ‘Jack Tumwa, David Alfred Ndambiri, Samuel arap Ng’eny and Jeremiah Matagarro’ requested for an independent inquisition into it. It is based on such issues that the commission of inquiry into the 2007 elections, the Independent Review Commission (IREC 2008: 8-9), did not authenticate the presidential polls.

Other sources suggest that the rigging of the presidential elections was coordinated, a stratagem ECK’s leadership used to ensure Kibaki’s victory. Revelations by the International Republican Institute’s (IRI) observer mission for the 2007 elections portrays how networks of electoral commissioners and field officers might have perverted ECK’s performance. The institute points to two instances of rigging, one at the constituency level and the other at the national level (IRI 2008: 32). First, commissioners deployed returning officers to their respective provincial strongholds. These officials interfered with the vote counts before relaying to the national tallying centre inflated results for their preferred candidates and deflated ones for their opponents. Opposition candidate Odinga also benefitted from it, but this was more pronounced in Kibaki’s strongholds (ibid.). Second, occurrences at the national

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75 Ibid.
76 Ibid.
tallying centre, where the commissioners were mainly stationed, further affirms that Kibaki was the targeted beneficiary of the manipulations. At this centre, ‘the results were arbitrarily changed to give President Mwai Kibaki a 230-000 vote victory’ (ibid.). IRI referenced such issues when it compared the 2007 to the 2002 elections to argue that though the two elections were managed with similar rules, structures, and procedures, yet their outcomes were stark opposite. The only game changer it identified is human agency. For IRI (2008: 37), in 2007, corrupt electoral officers compromised ‘technology [and other methods] used in the 2002 elections to contribute to the transparency of the polling exercise’. These officials misreported and miscomputed results on a centralised basis, after which they absconded and ‘turned off their cell phones’ so they could not be tracked (ibid.). In the preceding chapter, I have established that upper echelon electoral officers tended to employ lower rung officials they can trust. Based on this information and the one put forward in this paragraph, it can be argued that certain street-level electoral officials advanced the partisan interests of their internal patrons. This proves that the discretion lower rung officials exercise over implementation that students of street-level bureaucracies report (Lipsky 2010; Bierschenk & Olivier de Sardan 2014) cannot always be disassociated from the preferences of upper rung officials.

Following ECK’s declaration of the dubious Kibaki re-election, losing candidate Odinga and his supporters registered their displeasure. Protests they held in various regions triggered an intense ethnic-based violence involving them, pro-government supporters, and security forces (Cheeseman 2008). That urged the government to appoint IREC to inquire into all aspects of the elections, especially the presidential election. To fulfil its mandate, IREC sought the views of diverse stakeholders comprising of foreign donors, ECK, non-governmental organisations (NGOs), political parties, and members of the public. When IREC (2008: 118) inspected the counting, tallying, and declaration of results in a sample of constituencies, ‘it detected many errors’. It found different electoral officers (commissioners, senior staff, IT manager, and table team leaders) dealt with the errors, ‘even more serious mistakes’, differently: some corrected them in ‘the database more or less immediately’, some did not, and others corrected but ‘changed [them] back between the announcement of the presidential winner and 8 or 9 January 2008’ (ibid.). The sense IREC made of this is, ‘some of the results announced on 30 December 2007 or published on 9 January 2008 do not correspond with those on the original forms’ (ibid.). Dedication to the president,
their appointer, likely played a role in electoral officials’ compromise of the polls.

Election losers publicly protested the results rather than petition the judiciary. One may wonder why. Answers for this question can be found in a report released by the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission (2008), which was tasked to investigate the matters underlying the post-election violence. Overall, the commission linked the incident to longstanding structural issues such as the pervasive feeling of marginalisation among Kenyans of specific ethno-geographic backgrounds and the unfairness of security and justice systems. It showed that losers of the presidential election might have decided against petitioning the High Court because of ‘the perception…that Government institutions, and officials, including the judiciary, were not independent of the presidency, were not impartial and lacked integrity’ (ibid: 28-29; 460-461).

Links exist between the bias of the pre-reform judiciary towards the government and the far-reaching control the government had over the appointment and dismissal of judicial officers. This power enabled the president to exert undue influence over judges and other officials connected to them. Section 61 of the 1963 constitution gave presidents the power to appoint judges in an acting capacity, following the recommendation of the Judicial Service Commission (JSC). JSC was composed of the Chief Justice, Attorney General, Chairman of the Public Service Commission, and a judge from both the Court of Appeal and High Court, all of whom were (directly or indirectly) the president’s appointees (ibid.). Some officials of the judiciary and its strategic partners informed me that the legal provision that accorded the president the power to appoint JSC members allowed him to fill JSC with individuals who would nominate judicial officers he preferred. In the absence of consistent, transparent procedures and rules guiding JSC’s identification and vetting of prospective judicial officers, appointed judges were not ‘necessarily the most deserving’ but rather those sympathetic to the government’s interest (Akech 2010: 32). Further, per Section 62 of the constitution, upon the recommendation of an ‘impartial tribunal’, the president could remove the Chief Justice and other judges if they were found incapable of executing their mandates or involved in misconduct. The constitution, however, failed to establish clear, consistent, and fair rules and procedures for applying this provision;

77 Interviews with Stanley Wamache (Nyamira, 28 March 2018); Daniel Omanga (Nairobi, 25 April 2018); Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
hence, making it possible for the executive to exploit the law (ibid.). It can be reasoned
that the executive’s grasp on employment and dismissal of judicial officers made
judges and magistrates vulnerable to pressures to do its bidding.

The executive’s hold on the jobs of judicial officers was observable in the 1990s
and early 2000s. To advance the argument that the judiciary has been submissive to
the executive, Mutua (2001: 99) asserts, the KANU government ‘acted swiftly and
expeditiously to discipline or dismiss individual judges and magistrates who
occasionally have failed to carry out its wishes’. Resultantly, ‘the judiciary has ruled
consistently in favour of the KANU elite and its supporters in cases involving their
corrupt practices and political interests’ (ibid.). The biases of the institution led to a
‘radical surgery’, government-sanctioned investigations aimed at dismissing and
replacing alleged corrupt judges and magistrates. After the political changes
introduced by the end of Moi’s and the beginning of Kibaki’s administration, the
International Commission of Jurists (ICJ) – a global network of judges and jurists –
commissioned a fact-finding mission to investigate the state of judicial independence
and accountability in Kenya. In 2004, ICJ (2005: 3) solicited information from
stakeholders in government, the judicial and legal system, civil society, and the media.
Its report states that the surgery had a marginal improvement on corruption in the
judiciary (ibid: 17-18). The report criticised the mode of dismissing implicated judicial
officers: ‘the individualized public naming of judges and magistrates as corrupt, without
them having been first notified of the charges and heard, as well as various
subsequent forms of pressure to force these judges and magistrates to resign from
office, violated international standards of due process and security of tenure’ (ibid.).
Aside from undue ultimatums, ICJ emphasised that implicated judicial officers had
their salaries and benefits quickly severed. This was done in ‘accordance with the
terms and conditions of service applicable to public servants under the Services
Commission Act’, but it should not so, since the judiciary is not part of the executive
branch of government (ibid: 19-20).

An Africa Confidential (AC) article insists that the purge also worried judges and
magistrates because it was politicised. What Kenyans have dubbed the ‘Mount Kenya
Mafia… [.] a powerful clique of Kikuyu politicians’ associated with Kibaki’s government,
used it to punish judicial officers who opposed the government and reward amiable
ones (AC 2003: 44[22]). For instance, six Appeal Court judges were suspended during
the ‘radical surgery’ purportedly for their rejection of ‘a petition filed by Kibaki
challenging Moi’s election victory in 1997’ (ibid.). The exercise subsequently eroded institutional fairness, because many judges and magistrates ‘conveyed…a distinct and continuing sense of insecurity about their tenure, which was affecting the way they carried out their judicial functions…[That] lowered the general esprit de corps of the judiciary as a whole’ (ICJ 2005: 19-20).

The radical surgery opened up vacancies in the judiciary. In October 2007, the Miscellaneous Amendments Bill was ratified. That ‘created 57 judicial vacancies in the High Court and 17 in the Court of Appeal’ (AC 2007: 48 [23]). President Kibaki was eager to fill these positions before the 2007 elections. This was to ensure that judges who would safeguard the president’s victory in the event of a petition were on the bench, as Moi did while in office (ibid.). Collins Odote and Linda Musumba (2016: 4) have insist that President Kibaki went through with the scheme, when he appointed new judges a few days to the 2007 elections. The supposed inclination of these judges to back their appointer, a presumption rooted in historical favouritism of the judiciary, explains why the opposition opted against petitioning the judiciary to address its grievances (ibid: 10; Majanja 2016: 20-22).

After a truce was reached between the competing parties in the post-2007 election violence, several job-related reforms meant to enhance the independence of EMBs were effected. As part of the peace agreement, Kibaki and Odinga reached a power-sharing pact that made Kibaki the President and Odinga, the Prime Minister (Hornsby 2012: 769). Also, ECK was demobilised, and the Interim Independent Electoral Commission of Kenya (IIEC) was formed to temporarily take over its balloting functions in May 2009 (Wolfrom 2013: III). IIEC’s first functions included cleaning the voter register, conducting voter registration, and testing biometric voter registration and identification systems (ibid.). The commission then successfully administered the referendum that led to the adoption of the 2010 constitution. The new constitution targeted enhancing the independence and capacity of the electoral commission. To realise the goal of the constitution, the legislature passed the IEBC Act in June 2011 (Government of Kenya 2011b). That enabled the formation of IEBC and sought to diminish executive influence over the appointment of electoral commissioners. The Act requires prospective commissioners to be nominated, interviewed, and selected by a committee (ibid.). The committee that selected the maiden commissioners consisted of two sets of two committee members (each nominated by the President and the Prime Minister) and three members nominated by representatives of JSC,
Kenya Anti-Corruption Commission, and the Association of Professional Societies of East Africa (Wolfrom 2013: II-III). These commissioners managed the 2013 general elections, which was fraught with several technical and procedural breakdowns. Presidential election loser Raila Odinga publicly denounced IEBC’s declaration of Uhuru Kenyatta as winner of the election, which he described as ‘another biased election’ whose results are as questionable as that of 2007 (ibid: VIII).

According to the domestic Elections Observation Group (ELOG 2017), the opposition embarked on a series of demonstrations aimed at disbanding IEBC. The group has monitored Kenyan elections since 1992, and thus is conversant with issues pertaining to the elections of interest. In its description of the electoral atmosphere ahead of the 2013 elections, ELOG (ibid: 11) maintained that the Odinga-led Coalition for Reform and Democracy (CORD) party mobilised weekly countrywide demonstrations against IEBC, particularly pushing for the dismissal of its commissioners. One of these protests is the Okoa (Save) Kenya initiative, which initially demanded a constitutional review to increase county government budget but later came to include a call for IEBC’s dissolution. Consistent with how previous governments responded to unfavourable protests (see Chapter 3), Kenyatta’s government banned these protests and sanctioned aggressive police response that led to some deaths and injuries (ibid.). The government and the opposition brokered a political settlement, which ultimately allowed for the National Assembly to amend the Elections Laws Act and replace the commissioners (ibid: 12-13).

Nine members, four of whom were nominated by the Parliamentary Service Commission, constituted the committee that picked the IEBC commissioners who managed the 2017 elections, says The Presidency (2016) website. The Kenya Conference of Catholic Bishops, the National Council of Churches of Kenya, the Evangelical Alliance of Kenya, and the Hindu Council of Kenya had one nominee each. The Supreme Council of Kenya Muslims, the National Muslim Leaders Forum, and the Council of Imams and Preachers of Kenya jointly nominated one member (ibid.). Per the IEBC Act, the committee is to recommend qualified individuals to the head of state, who then nominates the IEBC chairman and the eight commissioners for the National Assembly’s approval. By making the appointment process a multi-stakeholder endeavour, the post-2010 legal changes can be said to be trying to balance political interests in IEBC and formalise the spirit of IPPG.

Although the legal provisions somewhat diminish the executive’s influence over
IEBC, it has not succeeded in terminating employment-related political influence over the institution (Wolfrom 2013: IV). At the end of the 2017 elections, I witnessed fragmentation within IEBC. Two camps purported to side with the opposition and the government sprung up within its leadership. Dr. Roselyn Akombe accentuated this when she abdicated her position as an IEBC commissioner and sought refuge in the United States ahead of the 2017 repeat presidential election. In a press statement she gave shortly after stepping down, she referred to her observations as an electoral commissioner to elucidate why the IEBC could not manage the repeat election: ‘Senior Secretariat staff and Commissioners are serving partisan political interests…and legal advice is skewed to fit partisan political interests’ (Daily Nation 2017). She insisted, that had and would undercut IEBC’s effectiveness, efficiency, and fairness. Her admissions partly corroborate Raila Odinga and his National Super Alliance’s (NASA) accusation ahead of the repeat presidential election; that the ‘election scheduled for 26 October will be worse than the previous one’, if electoral officials he alleged served executive interest were not removed and minimal reforms were not done (Burke 2017). He subsequently boycotted it.

For several electoral officers I conversed with, the said politicisation of the commission originates from IEBC commissioners’ selection. This subject also came up in my interview with Maxwell Kimani, a senior representative of the National Council of Churches of Kenya. He served on the 2016 committee that selected IEBC commissioners. Pointing to this politicisation to question IEBC’s integrity, he recounted his experience on the selection committee, where he witnessed ‘people from ODM and Jubilee…giving high marks…to interviewees/applicants they preferred’. With a look of disappointment, he termed the ‘selection’ process ‘politicised’ not only because politicians wanted to have their people in the commission but also because the aspiring commissioners ‘were seeking the political support…needed to go through that process’. Resultantly, he denounced these commissioners for having ‘political leanings that were known to everyone’ even before they assumed office. To him, that is why they could not work towards the common goal of ensuring free, fair, and credible elections. Gregory Okoth, the mid-level IEBC employee stationed at the headquarters, also referenced the selection process to explain the fragmentation in the IEBC, which,

78 Interviews with Jacob Muthuri (Nyamira, 17 March 2018); Martin Nyaduse (Kisumu; 30 March 2018); Gregory Okoth and Timothy Munene (Nairobi; 3 May 2018).
79 Interview with Maxwell Kimani (Nairobi, 2 May 2018).
to him, gives some credence to claims of electoral fraud in the 2017 elections.\(^{80}\)

Since political parties in parliament had representatives in the post-2010 selection committee, I argue that: (1) the existing knowledge on external actors’ exploitation of appointment to influence institutional functioning (Mutua 2001; Branch & Cheeseman 2006) is inadequate. The appointment of IEBC commissioners underlines the fact not only presidents but also opposition attempt to deploy the power of appointment to gain a competitive edge; and (2) provided that the balancing of political interests in the selection committee had the potential to inject fairness into the post-2010 electoral processes (as seen in the 2002 electoral period) but did not, the attempt to bring political parties into appointment processes to ‘balance interests’ is not inherently fairness-maximising. Rather, its success may be conditioned by the realities surrounding it. For example, IPPG came into force when President Moi, who had led KANU and Kenya from 1978 to 2002, had completed his term of office (Mueller 2014: 338-346). Therefore, Moi probably did not perceive much threat to his position, even if KANU lost the 2002 presidential election. As such, he might not have been motivated to interfere with the IPPG arrangement, as Kibaki did when he sought a second term in 2007 and the incumbent and opposition did when they wanted electoral victory in 2017. That is to say, the desire for (re-)election could persuade elites to manoeuvre available means of selecting institutional actors.

After 2010, the judiciary also experienced employment-related legal changes meant to safeguard its independence and fairness. Article 166 of the Constitution (Government of Kenya 2010) checks the president’s appointment of the Chief Justice and other judges. It emphatically subjects the process to JSC’s recommendation and National Assembly’s approval. Migai Akech (2010: 30) contends, it further makes the processes of appointing judicial officers and JSC members more objective and transparent and fairer. Together with this, the legal means of picking JSC members can ameliorate presidential influence over the committee. Contrary to the pre-2010 period, when the president solely selected JSC members, diverse members representing multiple interests (both political and civic) partake in the selection of post-2010 JSC members (ibid.). Contemporary JSC is to consist of a Court of Appeal and a High Court judge elected by judges of their respective courts, a Magistrate elected by magistrates, two individuals elected by the Law Society of Kenya (LSK), a

\(^{80}\) Group Interview with Gregory Okoth and Timoth Munene (Nairobi, 3 May 2018).
representative of the Parliamentary Select Committee (PSC) nominated by the president, two representatives of the general public appointed by the president, and the Attorney General (Mbondenyi & Ambani 2012: 152). The appointment of the seven Supreme Court judges in 2011 was rigorous and transparent: JSC vetted them on live TV; the vetting was transcribed in newspapers; both Kibaki and Odinga consented to the appointment; and Parliament eventually confirmed their selection (Wolfrom 2013: IX). Regardless, the process was enmeshed by controversies. The desire to realise ethnic and political equilibrium occasionally ‘overshadowed a careful examination of competencies’ (ibid.). Since this court unanimously threw out the 2013 presidential election petition (ibid.), this issue does not seem to have counteracted coherence within the court. Moreover, the religiosity, sexuality, and dressing of Willy Mutunga, who was tipped to be the Chief Justice, raised public concerns. After Mutunga addressed these concerns, legislators gave their approval (ibid.).

Article 168 of the constitution also provides unambiguously fair procedures for dismissing judges. It states that the process of removing judges (and the Chief Justice) must be initiated by JSC, and that affected judges be given a hearing. It continues that upon establishing satisfactory grounds for removing a judicial officer, JSC should send the plea to the president, who is required to set up a tribunal to inquire into it. After the tribunal’s inquiry, a president can dismiss a judge. Akech (2010: 31) evaluates the process and argues, ‘save for the fact that the power of the president to appoint [some] members of the tribunal is unregulated, the new constitution introduces due process and certainty in the exercise of the power to dismiss judges; this may enhance security of tenure and independence of judges’.

Judicial officers and staff and employees of the judiciary’s partner organisations I interviewed were of the view that the legal changes to the laws governing the appointment and dismissal of judicial officers emboldened them to function without fear or favour.81 They often asserted that the confidence the majority of Supreme Court judges exhibited when they nullified the election of a sitting president in 2017 evinces the career-related independence they enjoy. Stanley Wamache, a 27-year old employee of the Nyamira High Court’s Registry, for instance, made this statement when he contrasted the state of the judiciary before and after the constitutional

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81 Interviews with Stanley Wamache (Nyamira, 28 March 2018); Alberta Wamukota (Nyamira, 3 April 2018); Daniel Omanga (Nairobi, 25 April 2018); Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018)
He admitted that he had not experienced much of the previous era first-hand because he only started working with the judiciary in 2008. He, however, insisted that having worked in ‘different Registries in the judiciary’ in Kisumu and Nyamira, he has acquired knowledge about the previous era through reading about Kenneth Matiba’s abortive attempt to get a High Court to overturn Moi’s victory and interacting extensively with colleagues who had worked in the judiciary much longer. He vehemently argued, ‘the High Court didn’t overturn [Moi’s victory] on procedural grounds’ because factors such as appointment and job security made judges loyal to the government. While the court’s resort to technicalities appear to uphold the judiciary’s means of doing work, analysts stress how it was a stratagem for sidestepping the judiciary’s goal of impartially delivering justice (Odote & Musumba 2016: 10; Aywa 2015: 75). This led Stanley to the conclusion that, contrary to the current era, ‘by 2002, justice was for sale [to the powerful]…courts were not the place to seek justice. Rarely would ECK decisions be overturned’. By this, he implied that both ECK and the courts ensured the executive’s ascendancy.

6.3 Financing

This section demonstrates that financing is another factor that affects Kenya’s EMBs and judiciary’s independence. That is, the extent to which another agency misuses its control over these institutions’ budgets and funds. Studies focusing on North America (Lewis 2003; Moe 1985) stress how presidents try manipulating their budgetary powers to skew the course and outputs of institutional workings to their advantage. Research on Nigeria in the 1980s reports that executive-impelled ‘financial anxieties’ place institutional actors ‘into a state of servility to the authority responsible for [their] financial fortunes’ (Olowofoyeku 1989: 63). As this section demonstrates the fear of budgetary cuts and the desire for funds make some electoral and judicial employees susceptible to the sway of agencies controlling their finances, it builds on the foregoing studies. It shows that financial cuts can emerge from a deliberate attempt to assuage institutional independence and/or a response to economic and social demands. The section further illustrates that both the executive and the legislature attempt to utilise

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82 Interview with Stanley Wamache (Nyamira, 28 March 2018).
their power over institutional budgets to realise their material interests. Irrespective of the motive underlying the deployment of budgetary control, financial reductions can obstruct institutional capacity and/or fairness.

Prior to 2010, the process of funding was a vital tool for the executive to inordinately control EMBs, but that appears to have subsided after the constitutional changes. During its investigation into the 2007 elections, IREC (2008: 38-39) discovered that ECK was financially challenged, and this stemmed from its mode of financing, which was established in 1998. ECK was required to prepare and present a budget proposal containing contingency and routine costs (such as staff emoluments and transport) to the Treasury each financial year. Treasury had the power to revise the entire budget or segments of it. Afterwards, it included it in the Ministry of Finance’s financial estimates sent to Parliament for scrutiny. IREC (ibid.) indicated, despite having the powers to amend the requested funds, Parliament never made any change to it. Upon approval, money was sent to Treasury, which deposited it into ECK’s account either on a monthly basis or in lump sums. This means of funding posed certain difficulties. ‘Treasury officials sometimes slash[ed] budgets’ (ibid.).

Several reasons explain the budget cuts. Treasury’s excuse was, “there is no adequate funding” (ibid.). Considering the patterns of growth of Kenya’s economy, the government’s justification is more sound in the 2002 electoral cycle than in the 2007 cycle. The country experienced a downward annual GDP growth (from two to one percent) in the last years of Moi’s rule (Hornsby 2012: 637). A historical inquiry into Kenya’s economic performance uncovered that by 2000, the country experienced its ‘worst economic performance since independence, and 2001 and 2002 were not much better’ (ibid: 638). Provided this reality, the government might not have been in the position to provide all the funds needed for the 2002 elections. Going into the election, the Kibaki-led NARC promised to fix the economy, a pledge it honoured. ‘After a slow start in 2003-4, the economy coughed into life, with improved resource efficiency and better performance in most sectors…By 2006, Kenya was in a mini-boom’ (ibid: 697). Government and its supporters referenced this achievement to campaign for re-election in the run-up to the 2007 elections. ‘Statistical evidence supported that argument’ (Branch 2011: 264). This casts doubts on the government’s assertion that it did not have sufficient funding for ECK’s 2007 activities. As seen in the discussion on the financing of the judiciary below, budget reductions are also a means through which government asserts control over an institution. That can be done to punish an
institution whose work does not favour the executive (as in the results of the 2005 referendum) or to simply curtail the capacity of an institution (also, see Kanyinga 2014: 118-119). Both motives ensure that institutions produce outcomes favourable to the executive.

To abate the debilitating ramifications of inadequate funds on future elections, IREC (2008: 51) posited suggestions that would guarantee the electoral commission’s financial independence. Several of the recommendations were implemented. IEBC has evaluated its performance in the 2013 and 2017 elections. Its report admits that it also relied on Treasury for funding its personnel and activities (IEBC 2014b: 89-90; 2018: 15). Nevertheless, the sense I got from my comparison of IEBC’s budgetary requirement and allocation (Figure 6.1) is that IEBC is better funded. This is notwithstanding that owing to the post-election violence, global economic crisis, and drought, Kenya’s economy nosedived in 2007-08 (Kimenyi et al. 2016: 2-3). The economy showed signs of recovery in 2009 and 2010, only to take another downturn from 2011 through 2014. Throughout this period, Kenya’s growth rate was subpar, relative to other sub-Saharan African states (ibid.). The improvement in IEBC’s funding situation is likely because of the new constitution’s attempt to enhance its independence.

**Figure 6.1: Budgetary Allocation for the 2013 and 2017 General Elections**

<table>
<thead>
<tr>
<th></th>
<th>2015/16 KSHS Million</th>
<th>2016/17 KSHS Million</th>
<th>2017/18 KSHS Million</th>
<th>Total 2017 GE/FPE KSHS Million</th>
<th>Total 2013 GE KSHS Million</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Budgetary Requirement</strong></td>
<td>4,879</td>
<td>23,061</td>
<td>33,886</td>
<td>61,826</td>
<td>24,710</td>
</tr>
<tr>
<td><strong>Allocation</strong></td>
<td>4,767</td>
<td>15,739</td>
<td>33,024</td>
<td>53,530</td>
<td>24,266</td>
</tr>
<tr>
<td><strong>Variance</strong></td>
<td>112</td>
<td>7,322</td>
<td>862</td>
<td>8,296</td>
<td>444</td>
</tr>
</tbody>
</table>

Source: IEBC (2018: 16)

Similar to ECK, however, IEBC experienced some reductions in its proposed budgets (Figure 6.1). None of the IEBC and former ECK personnel whom I spoke to and the documents I reviewed referred to budget slashing as a government ploy to
erode ECK and IEBC’s independence. This is contrary to what I learnt about the judiciary’s funding. Where underfunding was mentioned in relation to ECK and IEBC, it was associated with institutional actors siphoning allotted funds or engaging in bribery. Chapter 5 has analysed this subject.

Other data sources and ways of looking at the data, however, unearth the financial deficit engendering some adverse effects on ECK and IEBC’s work. Francis Nyabuti, a former Clerical Officer who worked at the ECK Nyamira District office for 10 years, made this point lucid.83 Mr. Nyabuti participated in the office’s meetings and the formulation and review of the office’s budget and documents. These duties exposed him to issues pertaining to the institution’s finances. While discussing why ECK, unlike IEBC, relied more on non-permanent staff to run elections, he remarked, ‘the commission couldn’t afford too many staff employed permanently’. To him, this was not problematic, since ‘elections were also every five years. So, there was no need to keep [staff] permanent’. Irrespective of this assertion, a case he narrated illustrates that the reliance on non-permanent staff might have had far-reaching negative consequences for electoral integrity. In 2002, he said, ‘[certain] POs [Presiding Officers] were compromised…We had the information that [two POs] were having a night meeting with the political parties…[but] during their training, they were asked not to be meeting candidates’. His use of ‘night meeting’, though literal, also implies a secretly held meeting. But for the intervention of the Returning Officer who ‘dismissed and replaced’ them ahead of the elections, these POs could have bungled the process and outcomes and disappeared. The tendency of ECK staff to manipulate elections and disappear without a trace was widely reported in the data. Electoral officials insinuated this was especially true of temporary staff, who were more difficult to track down after elections.84 If underfunding necessitated the reliance on non-permanent employees (who could easily be bribed), then Treasury’s reduction of ECK’s budget indirectly interfered with the quality of ECK-administered elections.

Corruption was not peculiar to ECK, as it was endemic throughout the public service. The Moi administration was engulfed in multiple graft charges, prominent among them is the 1990 Goldenberg Scandal that ‘revolved around exploiting the bonus payment and the export credit schemes for the benefit of [Goldenberg

83 Interview with Francis Nyabuti (Nyamira, 2 April 2018).
84 Interviews with Lydia Kirongo (17 March 2018); Jacob Muthuri (Nyamira, 17 March 2018); Martin Nyaduse (Kisumu, 30 March 2018).
International’s] owners and, importantly, their friends in government’ (Branch 2011: 219). Through this scheme, the state lost billions of Kenyan Shillings (Sh.), which were rechannelled to KANU’s 1992 election campaign (ibid.). Kibaki’s campaign in 2002 touched on addressing such issues, which had adversely impacted the economy. Investigations took off, but by 2005, it had become clear that the government could not tackle corruption. Key KANU politicians implicated in the scandal, including Nicholas Biwott, had, for instance, become Kibaki’s stalwart allies (AC 2005: 46[9]).

Public sector graft was also rife in the period after the constitutional change. As an example, according to a news report, in June 2014, Uhuru Kenyatta’s government floated the Eurobond on the Irish stock exchange, claiming that it was to raise money for infrastructure development. This move yielded Sh. 250 billion. Contrary to the government’s claim that it had allotted these funds to some ministries, the Auditor General, in 2016, declared that Sh. 215 billion could not be traced (Wafula 2016). ODM leader Raila Odinga emphasised how the ‘Eurobond theft’ orchestrated by Jubilee leaders had contributed to the country’s ‘debt of about Sh3.3 trillion’ when he met with over 1,000 ODM delegates in Kakamega after the Auditor General’s report had been publicised (The Star 2016).

Certain cases of corruption have also surfaced in IEBC’s work. This is despite the fact that permanent staff manned its elections (See Chapter 5). Corruption does not appear motivated by the funding allotted to the institution. As Figure 6.1 shows, IEBC received more of its requested funds, implying its employees are better remunerated. But Gregory Okoth’s assessment of the management of the 2017 elections criticises ‘some guys from ICT’ for receiving bribes to tamper with the results.85 When I inquired about how he knew this, he and Timothy Munene, who appeared to share this opinion, mentioned their stationing at the IEBC’s headquarters, where the ICT department is located, allowed them to observe dramatic changes in the ‘lifestyles’ of these officials. Mr. Okoth depicted these officials as suddenly ‘living extravagantly… [, even though] we all work here [and] our salaries haven’t changed; but it seems theirs have.’ At the same time that this charge might have been informed by election losers’ resounding accusations of technology-enabled electoral fraud in 2017 (Chege 2018: 159-161), it gives some validation to the opposition’s allegations.

Besides, the disparity between required and allocated funds is another logical

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85 Group interview with Gregory Okoth and Timothy Munene (Nairobi, 3 May 2018).
explanation for other shortfalls in institutional work. Certain ECK personnel whom IREC (2008: 39) interviewed admitted that the paucity of funds engendered ‘severe operational limitations’ in 2007. These include the retrenchment of funds allocated to voter education and the delays the commission experienced in getting ‘sufficient funds…in good time…for effective management of its operations’ (ibid.). This reason also possibly underlies the little funding IEBC committed to certain operations, including voter education (discussed in Chapter 5), an integral aspect of credible elections.

Funds allocated to the judiciary to carry out its duties also varied considerably before and after the constitutional change. The Kenya National Dialogue and Reconciliation (KNDR), the agreement reached after the post-2007 electoral violence to establish durable peace, obliged the Kenyan state to implement a gamut of constitutional and institutional reforms (Ouko Task Force 2010: 4). Reservations surrounding the impartiality and independence of the judiciary made it an institution targeted for reform. This pursuit spurred the appointment of the Ouko Task Force on 29 May 2009 to research the judiciary and advise on how to sustainably reinforce its autonomy (ibid: 5). Through hearings, meetings, and the 22 April 2010 National Stakeholders’ Workshop on Judicial Reforms, the task force got information from stakeholders such as the judiciary (e.g. The Chief Justice and Magistrates), other public institutions (e.g. Kenya Anti-Corruption Commission), civil society organisations (e.g. Law Society of Kenya), and development partners (e.g. Democratic Governance Donor Group). Regarding the insufficiency of government-allocated funding prior to 2010, the task force (ibid: 19-20) wrote that compared with parallel institutions, the judiciary’s funds were considerably less (Figure 6.2). The judiciary’s gross under-funding and under-prioritisation is ‘despite its functions and the fact that it is a substantial revenue earner to the Exchequer’ (ibid.). Furthermore, the task force insisted that it ‘was informed that whereas the optimal expenditure of the Judiciary is KSh. 6 billion per annum, over the years, the allocation has been between KSh. 800 million and KSh. 1.2 billion’, meaning the funds the judiciary ‘received’ did not ‘commensurate with its needs’ (ibid.). The Judiciary Transformation Framework (JTF), the policy instrument with principles, goals, and methods for strengthening the judiciary, confirmed the historical government underfunding of the judiciary and the improvement of the situation following the constitutional change (The Judiciary 2012: 19-20). Figure 6.3, which is from the Judiciary’s 2016/7 annual report reveals that
compared to parallel institutions, the judiciary received the least funds. Regardless, the report also shows that from 2013 to 2017, the institution received more than half of funds it budgeted for its work. In the 2016/17 financial year, for example, it was given 73 percent of its required budget, i.e. KShs 17.109 out of 23.366 Billion. Simply juxtaposing this amount and that seen in the 2009/10 financial year may lead to the misleading conclusion that the contemporary judiciary is well off as a result of government’s allocation of funds.

![Figure 6.2: Recurrent and Development Allocation to the Judiciary 2009/2010](source: Ouko Task Force (2010: 20))

The old constitution gave the executive complete control over the judiciary’s finances, but the new constitution has accorded the institution this control (Odula 2019). As part of her response to my question on forces that affected the independence of election courts before 2010, Alberta Wamukota, a Nyamira-stationed judicial officer, attested to ‘funding’ being ‘a problem’. Having worked in the judicial system since 1997, risen through the ranks, and had a first-hand experience in adjudicating electoral disputes, the 50-year old Mrs. Wamukota possessed institutional knowledge. Reflecting on her experiences in the period preceding 2010,

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86 Interview with Alberta Wamukota (Nyamira, 3 April 2018).
the self-professed Christian remarked, ‘before the constitutional change, …We used to get money from the Treasury’, who ‘locked the funds’. She continued, then ‘Parliament used to debate and send the budget to the Minister of Finance, and the Minister frustrated us by changing it, depending on if we’re in good terms with the executive’. Judicial personnel’s frustration evinces the viability of budgetary and financing cuts as an instrument for keeping the institution in check, a perspective others also shared.

Figure 6.3: Finances

A: Recurrent and Development Allocation in Kshs. Million

<table>
<thead>
<tr>
<th>Year</th>
<th>Executive</th>
<th>Parliament</th>
<th>Judiciary</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/13</td>
<td>Rec</td>
<td>696,794.20</td>
<td>12,675.50</td>
<td>10,221.40</td>
</tr>
<tr>
<td></td>
<td>Devpt</td>
<td>409,538.10</td>
<td>1,563.10</td>
<td>1,936.10</td>
</tr>
<tr>
<td>2013/14</td>
<td>Rec</td>
<td>635,361.00</td>
<td>22,649.00</td>
<td>11,651.10</td>
</tr>
<tr>
<td></td>
<td>Devpt</td>
<td>446,115.00</td>
<td>2,435.00</td>
<td>4,048.40</td>
</tr>
<tr>
<td>2014/15</td>
<td>Rec</td>
<td>703,267.70</td>
<td>22,395.00</td>
<td>10,732.00</td>
</tr>
<tr>
<td></td>
<td>Devpt</td>
<td>689,324.20</td>
<td>4,075.00</td>
<td>3,093.00</td>
</tr>
<tr>
<td>2015/16</td>
<td>Rec</td>
<td>776,700.23</td>
<td>24,813.00</td>
<td>11,684.03</td>
</tr>
<tr>
<td></td>
<td>Devpt</td>
<td>720,050.74</td>
<td>2,100.00</td>
<td>3,115.00</td>
</tr>
<tr>
<td>2016/17</td>
<td>Rec</td>
<td>884,914.21</td>
<td>27,433.74</td>
<td>12,956.16</td>
</tr>
<tr>
<td></td>
<td>Devpt</td>
<td>794,227.58</td>
<td>3,150.00</td>
<td>4,153.00</td>
</tr>
</tbody>
</table>

B: Budget Requirements versus Allocation

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Requirement (Billion KShs)</th>
<th>Allocation (Billion KShs)</th>
<th>Percentage Allocation</th>
<th>Percentage Shortfall</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013/14</td>
<td>22.075</td>
<td>15.699</td>
<td>71%</td>
<td>29%</td>
</tr>
<tr>
<td>2014/15</td>
<td>26.211</td>
<td>14.163</td>
<td>54%</td>
<td>46%</td>
</tr>
<tr>
<td>2015/16</td>
<td>26.609</td>
<td>14.799</td>
<td>56%</td>
<td>44%</td>
</tr>
<tr>
<td>2016/17</td>
<td>23.366</td>
<td>17.109</td>
<td>73%</td>
<td>27%</td>
</tr>
</tbody>
</table>

Source: The Judiciary (2017: 161)

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87 Interviews with Stanley Wamache (Nyamira, 28 March 2018); Daniel Omanga (Nairobi, 25 April 2018).
Provided that judicial personnel relied on allotted funds for their emoluments and operations, it is logical that many judicial officials would be cautious not to antagonise the executive and its associates. Not having financial autonomy contributed to the judiciary’s subservience to the executive (ICJ 2005: 39-40; Mbote & Akech 2011: 79-80). This phenomenon is not limited to the judiciary. Clarifying the prevalence of high police violence and low ethnic and gang violence in the 2017 electoral cycle, Mutahi and Ruteere (2019: 254; also, Hassan 2015: 595) recalled the state of the public sector prior to the reforms, stating that ‘the flow of funds’ rested ‘on being in the good books of the president’.

Talking about the increased independence of the judiciary after 2010, Mrs. Wamukota keenly divulged how it is now ‘easy to operate’ as mandated. She attributed that to the fact that ‘we are no longer at the mercy of Treasury like before’. The main change from how the institution’s financing was done in the past, according to the 50-year old judicial officer, is that ‘the Chief Registrar [of the Judiciary] presents our budget to parliament…when approved, Treasury can’t change it’. That makes sense, given that the multi-partisanship of the National Assembly, the institution that can alter the judiciary’s budget in the current era, can make it relatively difficult for the executive to arbitrarily starve the judiciary of funds.

Financial independence of the judiciary has increased in recent times, yet self-interest-driven budgetary cuts have not ceased. Legislators reduced the judiciary’s funds supposedly as retribution for a February 2015 High Court verdict that did not favour them. The court declared the Constituency Development Fund for financing local development programmes as unconstitutional and recommended its amendment (Gainer 2015). Likewise, ‘as the government sought to raise money for the fresh presidential election and enhanced free day secondary education’ in 2017, ‘the Judiciary and a number of Independent Offices and Constitutional Commissions faced budget cuts’ (Mueni 2018). Regardless of the official justification for the reductions, the slashing of the judiciary’s budget in the 2017-2019 financial years has been viewed as an attempt to undermine its independence (ibid; Odula 2019). Chief Justice David Maraga, for example, lamented these cuts, questioning why ‘other arms of government’ were ‘interested [in] and interfering with our affairs’ if their intention is not to continue making ‘the judiciary…a puppet’ (quoted in ibid.). These remarks should

88 Interview with Alberta Wamukota (Nyamira, 3 April 2018).
be read against the backdrop of President Uhuru Kenyatta’s threat to ‘fix’ the judiciary, which he angrily accused of being run by a bunch of ‘crooks’, after the Supreme Court nullified his re-election in 2017 (ibid.).

Funding affects the quality of (electoral) justice delivery. According to the Judiciary (2017: 162), it requires funds to dispense justice, i.e. to facilitate the public’s access to justice and its administration and support services. Before 2010, budget cuts curtailed the judiciary from having adequate employees and vehicles, computerising and digitising its processes, properly remunerating judicial officers, and constructing courts across the country, among other challenges (KNDR 2011). Ameliorating these lapses is necessary for the fair, effective, and efficient functioning of the institution. Daniel Omanga, a democratic governance expert with over 20 years of experience, illuminated these problems.\(^{89}\) In his capacity as a senior employee of the Ministry of Justice and other international organisations with election and justice delivery mandates, Mr. Omanga actively worked on Kenya’s judicial reform process. He, thus, has deep insights into the functioning of the judiciary before and after the constitutional change. At our interview, he strongly argued that owing to the paucity of funds available to the pre-reform judiciary, its employees were poorly remunerated. To him, that encouraged some to trade justice for bribes. He also indicated that this played a partial role in why ‘election petitions could go on for more than five years, if the defendant was in government’. The rationale behind this delay, in Mr. Omanga’s opinion, is, it allowed venal judicial officers to ensure defendants completed their tenures before a verdict was given. He concluded, based on that prior to the reforms, the ‘mantra in Kenya was, “why hire a lawyer when you could buy a judge?”’ Alberta Wamukota also made a similar point. Regarding the state of the post-reform judiciary, her opinion is that ‘all officers and staff are now well-remunerated so there is no interest in bribes too.’\(^{90}\) Although she had not personally heard of any such incidents, she admitted there ‘may be…few [judicial officers] out there who may take bribe’.

Chapter 5 examines a graft case in the reformed judiciary. The opposing revelations on the impacts of remuneration on corruption in the post-reform judiciary and electoral commission indicate that poor remuneration is a necessary but not a sufficient condition for corruption. Based on the evidence, I

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\(^{89}\) Interview with Daniel Omanga (Nairobi, 25 April 2018).

\(^{90}\) Interview with Alberta Wamukota (Nyamira, 3 April 2018).
conclude that ‘if pay and working conditions are poor, [institutional actors] may be relatively easy to corrupt’ (Rose-Ackerman 2007: 23), but ‘it is not clear...how far better pay makes a difference when it comes to...less corruption’ (Hyden et al. 2003: 8).

6.4 International Financial and Technical Assistance

At the height of the Cold War, Kenya’s aid donors were less concerned about pitfalls in the country’s governance, including human rights abuses and corruption (Branch 2011: 185). However, after the Cold War, their foreign policy objectives shifted. Acting with the International Monetary Fund (IMF) and the World Bank, the US, UK and other European donors made political reform predicated on ‘good governance’ a prerequisite for future aid (ibid.). They successfully used financial aid as leverage to persuade the Moi government to dismantle its one-party state and introduce multiparty politics on 3 December 1991 (ibid: 196). They have since continued using this strategy and providing financial and technical assistance to support election and electoral justice delivery – the topic under scrutiny in this section. Donor assistance has been shown to compensate for some of the lapses in election management and electoral dispute settlement in Kenya. But the quality of donor-government relations, mechanics of government financial systems, timelines of donor funding, and the interests of electoral and judicial personnel and donors can militate against the gains from donor intervention.

Donors retrenched financial aid to the Kenyan government in the late 1990s and early 2000s because of misappropriation of public funds (Hornsby 2012: 638-640). They began emphasising the strengthening of institutions and eradication of patron-client politics, i.e. enablers of corruption (ibid: 639). However, the United Nations and World Bank pledged to back the Kibaki government’s free primary education campaign policy (AC 2003: 44[15]). The United States also committed financial assistance to the government’s war against Islamist militants, who bombed the US embassy in Nairobi in August 1998 and Israeli tourists in Mombasa in November 2002 (ibid.).

While pressing for institutional and structural transformations envisaged to support economic growth, donors have also rendered financial and technical assistance to election governance institutions. At a Donors Group on Elections (DGE)
meeting I attended at the Canadian High Commission in Nairobi on 24 April 2018, I witnessed representatives of several international organisations and embassies discuss the group’s input in the 2017 elections and previous ones. DGE is ‘a sub-group of the Donor Group on Democratic Governance’ that unites ‘development partners that have programmatic and strategic interest in democratic governance in Kenya’ (Odote et al. 2014: 3). Donors that were represented at the meeting include the United States Agency for International Development (USAID), United Nations Development Programme (UNDP), Department for International Development (DFID), and German Embassy. At the DGE meeting, I heard that these partners pooled monies into a UNDP-managed basket fund, from which they financed some activities relating to the 2007, 2013 and 2017 general elections. This does not include uncoordinated grants that individual development partners provided to earlier electoral governance processes. Odote et al.’s (2014: 29) research on donor financial assistance to election management in Kenya illuminates such bilateral funding. The Judiciary’s (2015; 2017) committees on elections also acknowledged that DGE, its individual members, and other international organisations like the World Bank and the International Development Law Organisation (IDLO) offered a gamut of support to electoral justice delivery.

Donor funding helps alleviate the problems that government’s financial cuts created for institutions. Odote et al. (ibid: 20) pegged donor financial assistance at 10 percent of election budget, meaning that the election governance financing largely remained the work of the state. Inquiries into election management in Kenya have established that ahead of the 2007 polls, ECK received US$ 4,424,367 donor contribution that aided its ‘extensive voter education programme’ (IREC 2008: 87-88; ibid: 29). The fact that government’s cut of ECK’s budget led to the underfunding of voter education must have informed this intervention. Voter education in this instance also particularly targeted increasing marginalised groups’, especially women, participation (ibid.). For the 2002 elections, The Carter Center (2003: 11-12) deployed a 27-member delegation to 212 polling stations across seven of the erstwhile eight provinces. They observed election-related activities before, during, and after the 27 December polls. Overall, they rated this election positively. But they also noticed certain drawbacks, one of which is, ‘nearly all women voters claimed illiteracy, requested assistance, and received assistance from the presiding officer’ (ibid: 30). This problem, which could engender spoilt ballots and voter apathy, must have
informed donors’ prioritisation of the voter education of women in 2007.

Donor support also came in the form of technical assistance. IREC (2008) has documented a gamut of such support ECK received in the 2002 and 2007 electoral periods. Among them are the: US-based International Foundation for Electoral Systems’ (IFES) technological support to ECK’s communication and ballot counting and tallying in 2002; Kenya Election Assistance programme aimed at bolstering ECK’s overall capacity in 2007; and Media Election Results Centre (MERC) at the national tallying centre that helped dispense information about the 2007 elections to the media and other stakeholders (ibid: 102-104). These interventions were geared at enhancing ECK’s effectiveness and efficiency and ensuring transparency in the elections.

IREC, moreover, reported that in the run-up to the 2007 elections, IFES and UNDP proposed to design computer programmes that would improve results transmission, and to deliver laptops for tallying constituency-level results, but certain ECK officials rejected these offers (ibid.). A testimony that IREC (ibid: 134-136) received from Margie Cook, a UNDP Project Manager, illuminates not only the interaction between donors and institutional actors during technical assistance but also the extent to which institutional actors might have compromised the integrity of the 2007 balloting. Ms. Cook confessed she had promptly ‘authorized the expenditure of some hundred dollars to buy internet access for the ECK and have it installed’ but when they got to the national tallying centre on Election Day, they witnessed ‘the ECK had not arranged for internet access[,] even though this was one of their responsibilities’ and the UNDP had ensured its procurement. They also discovered that ‘ECK failed to facilitate the links from the ECK results database to the graphic interface at any stage’. Therefore, ‘no results were displayed on the screens in the [national tallying centre] and the equipment was not used for the purpose for which it was brought’. Hence, IREC reasoned that the 2007 elections were flawed, because officials largely ignored ‘adequate advice’. Considering technical arrangements had been made to make the process more transparent, the refusal of ECK officials to utilise election technologies signify a ploy to manipulate the election process and results. This reiterates my argument that vested interests played a pivotal role in sabotaging the 2007 elections. This evidence also signifies that the success of donor intervention rests on institutional actors, echoing the findings of research on abortive donor intervention in public service reform in Kenya in the early 1990s (Cohen 1993). Institutional actors hold the power to effect or jettison donor-recommended reforms,
thereby subverting the quality of outcomes they produce.

In the bid to quell the 2007-08 post-election violence, international actors took more assertive stance in their interventions. Kibaki’s government rejected an earlier effort by a delegation of four former African heads-of-state, Ghana’s President John Kufour, and South Africa’s Archbishop Desmond Tutu to mediate the conflict’s resolution (AC 2008: 49[4]). The attempt to broker a power-sharing agreement between Odinga and Kibaki’s factions took off only after the Former UN Secretary General Kofi Annan began structured mediation (ibid.). That was aided by Western sanctions, including visa bans, asset freezes, and criminal investigation, against individuals who tried to obstruct the talks (ibid.). As well, the European Union halted disbursement of its US$ 500 million post-election reconstruction aid until the two sides could form a coalition government (AC 2008: 49 [8]). That was eventually achieved.

Two UNDP (2013a; 2013b) documents on the donor project Support to Electoral Reform and Processes in Kenya (SERP) shed light on the range of support offered to safeguard the integrity of the 2013 elections and curtail the relapse into violence. In the run-up to the elections, the environment was tense. This was partly because the International Criminal Court (ICC) had indicted Uhuru Kenyatta and William Ruto – the main politicians leading the Jubilee Alliance party – for complicity in the 2007-2008 post-election violence (AC 2013: 54[5]). ‘Britain and the United States [had] also made it clear that they would prefer Kenyans not to elect leaders charged with crimes against humanity’ (ibid: 2). Kenyatta and Ruto consistently retorted, accusing the ICC process of being ‘an infringement of Kenyan sovereignty orchestrated by [their contender] Raila Odinga’ (ibid.). These leaders used this allegation to draw support from their ethnic support bases, says UNDP (2013b: 7).

Since IEBC was a new institution with no experience in managing elections, most donors harmonised and coordinated their efforts using SERP to ‘reduce the IEBC management burden’ (ibid: 8). SERP was planned to last between January 2012 and December 2013. It focused on ‘increasing the freeness, fairness and credibility of the [2013] elections’ by strengthening IEBC’s capacity and facilitating its operations and civic participation and engagement (ibid: 10). By 23 May 2013, the expected overall contribution to SERP was over $34.5 million. Figure 6.4 outlines the individual contributors. Additionally, IFES received DFID and USAID funds to give IEBC technical support (ibid: 8). The monetary and technical assistance covered the periods before, during, and after the elections. A case exemplifying such interventions is the
use of election technology. To safeguard against electoral fraud by making the electoral process more transparent, IREC (2008) recommended technology be employed in future elections; thus, mandating IEBC to adopt biometric registration technology for both voter registration and identification (UNDP 2013b: 22). Chapter 5 assesses the political economy of such claims – *technofixes*. IEBC led the procurement of the Biometric Voter Registration (BVR) kits. Nevertheless, SERP ‘planned to co-finance’ it and ‘UNDP hired an expert in ICT and elections to participate in the technical evaluation of the various bids…[and] participated as an observer during the various site visits of potential suppliers of the BVR kits as part of quality assurance process’ (UNDP 2013a: 6). ‘Political pressure and external vested interests’ led to IEBC’s cancellation of the tendering process, thereby jeopardising voter registration (ibid.). The Government of Kenya subsequently took over the process. It brokered a deal with Canada to supply the BVR kits. Disagreements surrounding the process forced the donor group to withdraw and reallocate funds it had offered (ibid.). This action highlights another downside of donor intervention: when embroiled in local controversies, donors trade off their election-enhancing interventions to protect their reputation and/or access to beneficiary states.

Figure 6.4: Chart of Contributions to SERP

Source: UNDP 2013a: 10
The justice system equally benefited from donors financially and technically. In its examination of the shortage of officers and staff in the judiciary, the Ouko Task Force (2010: 35) reported, as of July 2010, ‘population to Judge ratio [stood] at 603,448 persons per Judge in Kenya’, meaning that judges were overburdened and justice dispensation delayed. The task force partially traced the inadequacy of personnel to ‘the lack of physical facilities to accommodate them’ (ibid.). My personal fieldwork experience corroborates this claim. At the Nyamira law courts in 2018, I requested documents on pre-2010 parliamentary election disputes to locate election cases and their parties. Judicial employees I spoke to apologetically declined my request. One of the reasons they cited is, such cases that came up in that era in Nyamira were heard in High courts in Kisii and Kisumu because Nyamira did not have a High Court. During my fieldwork, however, I noticed a Nyamira High Court, whose personnel I interacted with. The Ouko Task Force (2010) maintained, the judiciary responded to this challenge by constructing courts in multiple stations throughout the country. Nonetheless, this effort was ‘delayed due to the Government of Kenya’s practice of not providing all funds that are needed to complete work in time’ (ibid: 35).

A case the task force used to substantiate this assertion is the ‘conversion of the Income Tax Building to the Milimani Law Courts [in Nairobi] Project’, whose tendering process began in 2004 (ibid.). It delayed because instead of releasing the funds for it within the recommended two years, ‘Treasury opted to spread’ it ‘across four financial years’ (ibid.). One of the suggestions the task force made for facilitating access to justice is, ‘construction projects should be allocated adequate finances to enable finalization within reasonable time’ (ibid.). Donors stepped in to help. In its *State of the Judiciary and the Administration of Justice* annual report, the Judiciary (2017: 54) wrote, out of the needed Sh. 5.9 billion for constructing courts, donors provided Sh. 2.4 billion. Through the World Bank-funded Judicial Performance Improvement Project (JPIP), 19 new High Courts were constructed and 11 Magistrate Courts refurbished (ibid: 172). Provided the international community contributed to the construction of new courts, it can be credited for facilitating the employment of more judicial officers and staff and reducing the temporal and financial costs associated with travelling to other town/cities to seek justice. The latter is particularly important for petitioners with limited financial resources. These contributions advance Kenyans’ access to justice.

As it justified its formation, the Judiciary Working Committee on Election Preparations’ (JWCEP) final report stated, in instances when elections are ‘perceived
as not being free and fair, as was the case after the 2007 polls...the judiciary is expected to provide an avenue where dissatisfied contestants in the electoral process can seek relief...To a large extent, it was the Post-Election Violence (PEV) over the 2007 Presidential election results that revealed the poor public confidence...in the Judiciary and gave rise to the calls for its transformation’ (The Judiciary 2015: 10). To exemplify that, the report maintained, ‘in the past, some election petitions would be determined just a few months to the next General Election, making EDR [election dispute resolution] an academic exercise’ (ibid: 11). The adoption of a new constitution in 2010 made it possible to overhaul the judiciary. Therefore, going into the 2013 elections, the institution endeavoured to deliver electoral justice efficaciously. On 10 May 2012, Chief Justice Honourable Dr. Willy Mutunga inaugurated JWCEP, whose broader mission was to ‘design and execute a Judiciary programme, to build the capacity of judges and magistrates and staff on electoral matters, and [to] suggest ways of working other stakeholders’ (ibid: 11; 13). This initiative was the first of its kind in Kenya. The judiciary’s self-assessment of the JWCEP uncovered that although the initiative suffered from certain challenges in readying the institution for the record 188 election petitions filed after the 2013 elections, it succeeded in, for the first time, training ‘judges and magistrates and administrative staff...[on] electoral laws and processes’, developing ‘comprehensive petitions and administrative rules’, engaging ‘stakeholders and the public in an open and transparent manner’, and completing ‘petitions in a short period [within the stipulated six months constitutional time limit]’ (ibid: 53). These achievements can facilitate the rule of law and justice delivery.

High Court Judge David Majanja’s (2016: 41) research on the resolution of electoral dispute in 2013 mentions, JWCEP ‘was not fully funded because by the time it was established, the proposed budget [US$6 million] could not be factored into the Judiciary budget’. Financial assistance from development partners (and other stakeholders) helped circumvent this impediment to JWCEP’s setup (ibid.). It can be inferred that had it not been the assistance donors offered, an informal intervention in the state’s work, Kenya could have missed out on JWCEP’s contributions to its democratic development. The work of JWCEP might have contributed to Raila Odinga’s (loser of the original 2017 presidential election) decision to petition the court in 2017, despite losing his 2013 petition. The sense I got from my fieldwork engagements is that the ICC trials also likely discouraged the use of coordinated, large-scale violence for electoral redress. But it is also possible that the efficiency of
the court and the transparency of the 2013 EDR process gave Odinga’s side (and other petitioners) the hope that it could use the judicial system to achieve its ends.

The Judiciary Committee on Elections (JCE) has stated in its report that JWCEP was a provisional body, but its successes and the periodic nature of elections necessitated its institutionalisation (The Judiciary 2017). In August 2015, retired Chief Justice Willy Mutunga launched JCE to assume JWCEP’s mandate (ibid: 8). In 2017, under the leadership of new Chief Justice David Maraga, the judiciary launched the Sustaining Judiciary Transformation (SJT) framework to guide its ‘service delivery to all Kenyans’ (ibid: 5). While functioning under SJT, ‘JCE engaged stakeholders to ensure that under EDR, the pillars of the SJT would be achieved’ (ibid.). A total of 388 petitions followed the 8 August 2017 general elections (ibid.). The high number further support the claim that, perhaps, JCE’s influence on the judiciary’s performance had stimulated hope of electoral justice among petitioners. Per the report, ‘despite the politically charged atmosphere that came with the elections, JCE achieved most of the activities that it had set out to achieve’, including training of judicial officers and staff and attending benchmarking trips to find useful lessons (ibid: 36). As a result, within six months, the judiciary had resolved all original petitions.

Donors helped improve institutional capacity. JWCEP had legal researchers and interns who monitored developments in election petitions across the country, conducted research, and supported the administrative work of the committee. IDLO hired and paid these personnel (The Judiciary 2015: 36). Ahead of the 2017 elections, IDLO also took 22 judicial personnel on benchmarking trips to Ghana, South Africa, India, and Mexico to ‘learn from the comparative experiences of other electoral systems and use the lessons learnt to improve Kenya’s EDR processes and systems’ (ibid. 2017: 29). In the same period, UNDP and the IFES offered trainings and materials such as laptops to JCE’s Secretariat to aid its work (ibid: 34).

Nevertheless, there are some challenges with the reliance on donor funding. As witnessed in the pre-2010 period, donor funds can be suspended ‘as a result of poor relations between the government and development partners’ (Ouko Task Force 2010: 121). Furthermore, the difficulties with securing donor funding in 2013 reveals that government’s financial systems, which donor funding went through, can delay it; thereby affecting the operational timelines of institutions (Majanja 2016: 42). Finally, from the lifespan of the JPIP (December 2018), it is clear that without ‘alternative funding’, ‘the progress made from donor funding can be reversed’ (The Judiciary 2017: 34).
IV). These shortcomings bespeak the unsustainability and unreliability of donor funding.

6.5 Violent Threats

Violent threats to electoral governance processes and outcomes and institutional actors are another mechanism that impacts the works of electoral and judicial personnel. The effects of threats of and actual violence on elections have been widely studied, although the analytical focus has often been on electorate and politicians rather than the personnel of electoral governance institutions. Quantitative studies focusing on sub-Saharan Africa, in general, and Ghana and Kenya, in particular, have confirmed violence as a tool political elites employ to intimidate voters, discourage voter turnout, galvanise support, and punish victors (Ferree & Long 2016; Bekoe & Burchard 2017). Scholarly and policy research studying the broader performance of the judiciary from across the globe, however, throw some light on violence and judicial performance. They portray how the threat of violence and actual violence shackle institutional independence and subvert judicial performance (Olowofeyeku 1989: 63; CIJL 2000; OHCHR & IBA 2003: 117; Moyo 2007: 36-37). At the same time that the following discussion confirms this argument, it establishes that the threat of and actual violence by political elites and their followers can stimulate the realisation of institutional ends in certain contexts. The potency of violence is grounded in its ability to stoke behaviour-shaping anxieties within electoral governance officials. These threats and their effects on actor behaviour are potent across institutions, eras, and regions, although sometimes at different rates. Institutional reforms have minimal effects on these influences.

Political groups, both incumbent and opposition, are capable of shaping the actions and inactions of institutional actors. Between 27 and 29 December 2007, after the electorate had cast their votes and the results were being counted and tallied, Kenyans were engulfed by fear of violent protests (Branch 2011: 269). Government supporters in opposition communities particularly feared ‘they would be the target of violent protests against any rigging’ (ibid.). Electoral officers must have also had similar concerns. ECK’s Chairman Samuel Kivuitu postponed his (initial)
announcement of the election results when ODM leaders at the tallying centre tried to stop him on the grounds that results from the constituencies being announced were rigged (ibid: 270). ‘These constituencies, it later turned out, were those from which European Union observers’ had reported irregularities (ibid.). In so doing, the chairman altered the commission’s schedule. The responsiveness of the commissioner to the opposition’s demand in an election widely criticised as unfair also points to the pockets of fairness of institutions even where partiality is rife. Mr. Kivuitu eventually disregarded the opposition’s pressures to declare the results on 30 December. This was after the government had placed a security cordon around ‘key government buildings and the building where the results were being announced’ (ibid.). The United Nations High Commissioner for Human Rights (OHCHR 2008: 8), who investigated human rights violations in the post-election violence, reported that the eventual declaration was done in a secure room heavily guarded by a ‘paramilitary police’. The declared results had President Kibaki as the winner. While the security forces, whom the government deployed, might have guaranteed Mr. Kivuitu some sense of security, one might speculate that they could equally have intimidated him to announce the results. Memories of successive Kenyan executive governments’ (including the Kibaki administration’s) deployment of state security apparatuses to repress their allies and opponents seen to be challenging them (see Chapter 3; also, Olumwullah 1990; Mueller 2014; Klopp & Zuern 2007: 134; Osse 2016) likely deterred Mr. Kivuitu from acting in a manner that might be perceived as injurious to the president’s ascendency. Mr. Kivuitu’s decision not to halt the declaration despite not being ‘too happy about the situation’ (IREC 2008: 135) also signals the ‘pressure’ that compelled him to make the declaration (quoted in HRHF 2008). Moreover, he is quoted to have later conceded that he presented the Presidential election winner’s certificate to the seat of government, where he met Chief Justice (CJ) Evans Gicheru, after ‘some people threatened to collect it’ (ibid.).

Under the watch of security forces, state-owned media, and a few top government officials and aides, the CJ hurriedly and covertly swore the President Kibaki ‘at dusk in State House for his second term’ (Kimutai 2012). The swiftness of the inauguration suggests that the ceremony was done to preclude the opposition’s contestation of the results. That caused reformers to establish transparent, systematic guidelines and processes for challenging election results before swearing-in is done (ibid; also, Chapter 5). As with the ECK Chairman, the heavy security presence likely
was an impetus for the CJ to bypass the conventional, elaborate, transparent means of inaugurating president-elects. By sidestepping conventions to swear-in a president-elect whose victory was being contested, the CJ shunned his legal obligation to adjudicate electoral disputes freely and impartially.

Such pressures have persisted in the post-reform electoral cycles. While interviewing Martin Nyaduse, he stated that as part of the effort to make elections transparent, IREC (2008: 140) recommended technology be used for balloting. He added, in fulfilling this obligation, in 2013, IEBC procured the Electronic Voter Identification kits (EVID) for voter identification. At the time of the interview (30 March 2018, Kisumu), Mr. Nyaduse had retired from IEBC as a supervisor of regional elections, a position he held from 2009 through 2017. Therefore, he was privy to high-level deliberations on the transformation of the electoral commission. His overall assessment of the use of EVID is, it failed to function (details in Chapter 5; also, Cheeseman et al. 2018). He referred to the commonly cited technical explanations for EVID’s failure to disclose an oft-overlooked overarching explanation. He mentioned, ‘EVID failed not [only] because it was of poor quality’, but because the failure ‘was unanticipated’. ‘The reason it was unanticipated is that we didn’t plan for it; politicians pushed for it…less than seven months before the elections’. He explicated the effect of the timeline, contending that ‘it was too short to get all the features right…Even the last equipment arrived on the same day of election’. Considering the tight timeline, EVID was also ‘not [adequately] tested’ and electoral officers using it ‘had no adequate training…on how to handle it’. Therefore, IEBC officers failed to optimise EVID, leading to its breakdown on Election Day.

When I inquired about why IEBC commissioners succumbed to the wishes of politicians even when they had earlier ‘protested’, Mr. Nyaduse disclosed how recollections of the role of electoral officers in the post-2007 electoral violence made them more reactive to politicians' demands. As experienced in 2007-08, politicians could denounce the electoral process and results and urge violent protests (Branch 2011: 269-284). In the words of the current member of a county governor’s advisory committee, being ‘scared that 2007 can happen again if they politicians were not heard’ prompted IEBC commissioners to overlook the potential effects of the paucity

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91 Interview with Martin Nyaduse (Kisumu, 30 March 2018).
of time during the procurement of the technology.\textsuperscript{92} Provided the role that the apprehension about violence played in the adoption of election technology, a centrepiece of contemporary Kenyan elections, echoes of past electoral violence can be credited for activating a core pillar of the post-conflict reform agenda.

The ubiquity and cross-regional variation in the intensity of politician-induced threats can be inferred from the data. Specifically, it appears more accentuated in Nairobi than in Nyamira. The most serious threat electoral officers I interviewed in Nyamira reported are altercations with political parties’ representatives, but some of their counterparts in Nairobi reported actual physical attacks. Jacob Muthuri, a Nyamira-based IEBC Deputy Returning Officer (DRO) whom I interacted with (formally and informally) at least once a week during my fieldwork, narrated his worst ordeal administering elections in 2013 and 2017. During one of our conversations, he acknowledged his experience had taught him that the post-2010 reforms have improved their work but ‘certain challenges’ remained.\textsuperscript{93} He grumbled, one of these difficulties is ‘political parties’, especially ‘coalitions’ such as ‘NASA’, ‘who send more agents than permitted [to polling stations]…By law, each party and independent party is permitted to send only one agent’. He described the process of resolving this problem as tending to generate altercation between electoral officials and parties and their supporters. ‘We try to stick to the rule’ or ‘send the excess party agents away’, but ‘trying to work strictly according to the law is impossible in such instances’. His reason centres on not only the aspersions parties would cast on the credibility of the elections but also how that can incite party supporters to cause mayhem at the polling stations. To him, ‘the rules are there’; ‘you can show it to the wananchi [literally, people or nationals, but in this sentence, party supporters]’; but, regrettably, ‘they will never even try to read for themselves’. Rather, they would ‘believe what their leaders have told them: that we are working for Jubilee’, complained the Kisii resident who boasted about being a top regional performer in the national secondary school exams.\textsuperscript{94} Studies conducted by the National Steering Committee on Peacebuilding and Conflict Management between November 2012 and June 2014 to understand the dynamics of and proffer solutions for peace and conflict challenges in Kenya’s 47 counties make the cross-regional variations in the seriousness of electoral tensions apparent (NSC

\textsuperscript{92} Ibid.
\textsuperscript{93} Informal conversation with Jacob Muthuri (Nyamira, 17 March 2018).
\textsuperscript{94} Ibid.
2014a; 2014b). NSC (2014a: 6) is Kenya’s ‘inter-agency committee’ that aims to strengthen ‘local level responsiveness and capacity in handling conflict situations’. Regarding political trends, NSC writes, notwithstanding the competitiveness of politics in Nyamira, ‘rarely’ does the county experience ‘violent disagreements or acrimonious disputes. Whenever a candidate feels aggrieved by one political grouping, he/she often seek[s] opportunity in another party instead of resorting to political violence’ (ibid: 14).

The evidence reveals escalated tensions in Nairobi. NSC (2014b: 18) claims ‘Nairobi has continued to be the centre of the quest for supremacy between presidential candidates’, and as such, ‘the culture of political violence seems to have taken root’ there. A violent incident in Dagoretti North Constituency in the August 2017 elections particularly came up in some interviews. The Daily Nation (2017) news agency published a video of the incident. In the roughly two-minute video, Simba Arati, the ODM parliamentary candidate for the constituency, defended the attack. He accused the IEBC Returning Officer (RO) of ‘intentionally’ wanting ‘to create chaos and disorder’ by allowing his Presiding officers, ‘who had been beaten’, to insert ‘[marked ballot] papers [into sealed ballot boxes]’ (ibid.). Provided Simba’s political affiliation and support for the mayhem, he was insinuating that the supposed rigging was done to favour the ruling Jubilee Party. The video also shows the accused RO wearing a blood-riddled shirt, bleeding in-between his teeth, trying to hold back tears, and speaking about the allegation and the attack. Wahome Mugendi, a mid-level IEBC county officials who was present, recounted the ordeal to me, bitterly asserting that ODM politicians who fairly lost elections in their stronghold brought ‘goons to intimidate’ electoral officials. Describing the situation, Mr. Mugendi referred to the RO as a ‘victim’ of ‘allegations and harassments’. ‘POs were attacked and furniture were broken’ before security reinforcement arrived. He seemed to have pondered over the attack to find answers, deconstructing the effect of the interplay of the RO’s ethnicity and his assigned constituency on the occurrence. To him, ODM politicians and their supporters might have felt cheated. His reason being, ‘we [Kenyans] are polarised on ethnic lines. In an area where you are from the wrong ethnic group and their candidates don’t win, they become suspicious and begin accusations’. He meant

95 Interviews with Wahome Mugendi (Nairobi, 13 April 2018); Michael Nyabasa (Nairobi, 16 April 2018); Paul Maina (17 April, 2018).
96 Interview with Wahome Mugendi (Nairobi, 13 April 2018).
because the RO is Kikuyu (the ethnic group perceived to support Jubilee Party or government) and Dagoretti North is predominated by the Luo and Luhya (the ethnic groups perceived to support ODM or opposition), he was wrongfully accused of manipulating the elections for Jubilee Party. Mr. Wahome summed up his account by hinting that the wrong attention the RO’s ethnicity attracted in Dagoretti North, not rigging, urged his transfer to another constituency. If other electoral officers view events through the ethnic lens, as Wahome did, then it could introduce biases in how they relate to one another and members of the public as well as how they perform their duties in areas predominated by their non-/co-ethnics. All of these could skew the integrity of electoral processes and results.

The proclivity to interpret reality through an ethnic lens is grounded in the prevailing sense of inter-ethnic competition over public resources that often degenerate into election-related violence. I have explored that in chapters 3 and 7 (also, Atieno-Odhiambo 2002; Ajulu 2002; Klopp & Zuern 2007; Cheeseman 2008; Shilaho 2018). Shilaho’s (2018: 40) thought that ‘Kenya’s rural areas tended to be inhabited by members of the same tribe and so the question of competition for resource that pitted members of tribes against one another, could not easily arise’ might explain the differing intensities of electoral tensions in Nairobi and Nyamira. Wiesmann et al.’s (2016: 56) socio-economic atlas of Kenya classifies Nairobi County as an ‘urban’ area that is more ‘ethno-linguistically mixed’ and Nyamira as a ‘rural’ area that is less ‘ethnolinguistically mixed’. To put this into perspective, whereas the dominant ethnic community in Nairobi (Kikuyu) constitutes less than 30 percent of the county’s population, the dominant ethnic community in Nyamira (Kisii) constitutes more than 97 percent of the county’s population (see Figure 6.5). These findings were derived from data collected during the 2009 population census.

Three judicial personnel, two senior ICJ-Kenya staff, and a former IDLO senior official I interviewed expressed that the post-2010 judiciary is largely independent, but threats of and actual violence against judges and magistrates enable politicians to continue influencing judicial officers’ behaviours.97 These interviewees often referred to the Supreme Court’s failure to raise quorum to hear a petition geared at postponing the fresh presidential election scheduled for October 2017 (Chege 2018). Chief Justice

97 Interviews with Stanley Wamache (Nyamira, 28 March 2018); Alberta Wamukota (Nyamira, 3 April 2018); Daniel Omanga (Nairobi, 25 April 2018); Elena Kiptoo and Tina Wanjira (Nairobi, 8 May 2018).
David Maraga gave the nod for the election to proceed. His reason was that only two out of five judges required to form a quorum were available for the hearing (Burke 2017). He explained that one of the judges failed to show up because unidentified gunmen had shot her bodyguard the eve of the hearing. Behind this occurrence is the fact that the president had earlier threatened judges of the court whose decision nullified his victory (Cheeseman et al. 2019: 228).

**Figure 6.5: Ethnic Distribution in Counties**

<table>
<thead>
<tr>
<th>County</th>
<th>Largest community</th>
<th>Share of largest community in total population</th>
<th>Second-largest community</th>
<th>Third-largest community</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi</td>
<td>Kikuyu</td>
<td>29.4%</td>
<td>Kamba</td>
<td>Luo</td>
</tr>
<tr>
<td>Mombasa</td>
<td>Mijj Kendi</td>
<td>30.1%</td>
<td>Kamba</td>
<td>Luo</td>
</tr>
<tr>
<td>Kisii</td>
<td>Mijj Kendi</td>
<td>82.7%</td>
<td>Luo</td>
<td>-</td>
</tr>
<tr>
<td>Kilifi</td>
<td>Mijj Kendi</td>
<td>86.5%</td>
<td>Kamba</td>
<td>Swahili</td>
</tr>
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<td>Pokomo</td>
<td>27.5%</td>
<td>Orma</td>
<td>Wardeci</td>
</tr>
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<tr>
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<td>Toita</td>
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<td>Taveta</td>
</tr>
<tr>
<td>Garissa</td>
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<td>Other Afr. Origin</td>
<td>Kamba</td>
</tr>
<tr>
<td>Wajir</td>
<td>Somali</td>
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<td>Goba</td>
<td>Other Afr. Origin</td>
</tr>
<tr>
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<td>Gobra</td>
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<td>37.0%</td>
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<td>93.7%</td>
<td>Kikuyu</td>
<td>Kamba</td>
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<td>54.8%</td>
<td>Tharaka</td>
<td>Mbeere</td>
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<tr>
<td>Embu</td>
<td>Embu</td>
<td>50.4%</td>
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</tr>
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<td>Kitis</td>
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<td>Trans. Nkia</td>
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<tr>
<td>Uasin Gishu</td>
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<tr>
<td>Homa Bay</td>
<td>Luo</td>
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<td>96.5%</td>
<td>Luo</td>
<td>Kenyan Kenyan</td>
</tr>
<tr>
<td>Nyantra</td>
<td>Kisii</td>
<td>97.2%</td>
<td>Luo</td>
<td>Kenyan Kenyan</td>
</tr>
</tbody>
</table>

Source: Wiesmann et al. (2016: 56)
Speaking to Elena Kiptoo and Tina Wanjira of the Kenyan Chapter of the International Commission of Jurists – Kenya (ICJ-K), they referred to these mishaps to shed light on how politicians could still assuage judicial independence. They are high court advocates whose employment with ICJ-K obliges them to support the design and administration of programmes meant to facilitate judicial performance. Almost throughout the interview, they maintained that the post-2010 reforms have actually insulated the judiciary from political interference. Getting to the end, however, Ms. Kiptoo argued that ‘executive influence is still likely’ because of the representation of executive interest in the JSC. Ms. Wanjira begged to slightly differ, contending that ‘to me…99 percent of executive interference has been stopped…but personal threat is a loophole available to be exploited by the executive. The threat that worked was like the shooting of [the bodyguard of] the Deputy CJ and accusation that one judge is the in-law of Odinga: political persecutions. The first threat worked so much so that the court could not raise quorum to decide an election matter that the opposition had raised. The second also cast concerns over the partisan affiliation of one of the judges’. They both explained the effectiveness of the latter threat, saying politicians used it to convince their supporters that judges ruled along political lines. Since judges also desire high public confidence in their work, these threats could make them refrain from executing their mandates as expected.

6.6 Conclusion

This chapter provides additional explanation for how electoral and judicial personnel respectively manage elections and adjudicate electoral disputes. It shows that Kenya’s judiciary and EMBs have seen significant reforms intended to enhance their workings after the promulgation of the 2010 constitution. I compare the functioning of these institutions before and after the reforms to understand how they have executed their electoral mandates. The study establishes that forces exogenous to institutions affect institutional performance and outputs. These forces come in numerous forms. The means of appointing and dismissing electoral and judicial personnel is one. Specifically, the desire for appointment and the fear of being

98 Group interview with Elena Kiptoo and Tina Wanjira (ibid.).
dismissed make many electoral and judicial officers vulnerable to pressures to serve partisan rather than common interests. Likewise, the control over the budget and finances of EMBs and judiciary make their personnel susceptible to pressures from the executive and the legislature. But assistance from donors ameliorate the financial and technical burden caused by the shortfalls in the judiciary and EMBs’ funding, and thus facilitate institutional performance. Finally, threat of and actual violence to electoral governance processes, results, and actors serve as a source of pressure on election and electoral justice delivery. Anxieties from such threats effectively influence officials’ performance. All of these forces, to varying extents, simultaneously advance and subvert election management and electoral dispute settlement. Hence, I argue that external or environmental influences have considerable effects on judicial and electoral officials’ behaviours: they largely drive them to produce a complex mixture of desirable and undesirable outcomes.

The data reveals certain key lessons regarding the interrelationship between environmental forces and institutional performance. The first is, despite election management and electoral dispute settlement being particular mandates of the state, several stakeholders (through different means) participate in it. That produces nuanced, unintended outcomes. Among these partners identified are other institutions (e.g. executive), members of the public, and international players. Interactions between these actors and institutional actors is what complicates the quality of outcomes (intended, unintended, positive and negative) resulting from election management and electoral dispute settlement. In their literature review on service delivery in the developing world, Pepinsky and others (2017: 262) posit that the ways stakeholders ‘interact with bureaucracies vary, with implications for understanding both how bureaucracies function and their political and economic effects’. But how judicial and electoral officials navigate their environments speaks to their agency, signifying that environmental influences on their performance are not completely deterministic.

In line with Pepinsky et al.’s (ibid.) recommendation, I scrutinise the products resulting from the interrelationship between judicial and electoral officials and the aforementioned actors. The results emanating from institution-environment interaction vary within and across dimensions. One can observe variations in institutional performance within and across time. For instance, while ECK appears to have managed the 2002 elections well, its performance in 2007 was poor. There are also
variations across and within institutions. After 2010, the judiciary became more independent and fairer than IEBC. The Supreme Court’s 2017 unprecedented ruling that nullified the election of an incumbent president is a manifestation of this. However, threat of violence seems to have successfully intimidated members of the same court, who stayed away from the petition to postpone the repeat election. Spatially, variation can be seen in the impacts of external influences on institutional performance. Even though threat of violence is ubiquitous, it appears more severe in urban than in rural areas. These variances explicate the differences and changes in institutional performance.

It is tempting to attribute the differing effects to formal institutional (written and codified norms) changes, but the evidence prompts us to also pay attention to the impacts of informal (unwritten or un-codified norms) institutions. Some studies bespeak friction between informality and formality, often: (1) according the latter the moral high ground; and (2) maintaining that the former supplants the latter (Helmke & Levitsky 2004; Mueller 2014). In the current chapter, I demonstrate that ‘formal and informal institutions do not always compete, and [there] are times [they] are complementary’ (Cheeseman et al. 2019: 229). The data from the pre-2010 era illustrates how the formal rules for appointment, dismissal and financing enabled the government to co-opt ECK and the judiciary. But when the rule for appointing ECK commissioners was replaced with IPPG, a 1997 informal elite agreement, ECK’s performance in 2002 improved. Contextual factors such as presidential term limit conditioned IPPG’s success. This argument is not to discount the potential deleterious effect of informality. Indeed, executive interference has clearly been shown to subvert institutional independence and fairness. What is being emphasised is the performance-inducing capabilities of informality, which could easily be overlooked.

To conclude, this chapter notes that the complexities of the relationship between externally driven informality and formality explain the nuanced outcomes electoral governance institutions produce. This explicates why some reforms succeed but others do not, some elections and electoral dispute resolutions are properly done but others are not, and why these processes and their outputs vary across and within time, space, and institutions. This implies that ‘drawing inferences about bureaucratic policies from cross-national comparisons…may be less productive than drawing inferences that exploit variation within countries’ (Pepinsky et al. 2017: 263). This tasks reformers to locate the vulnerabilities and opportunities available to particular localities.
and factor them into programme design and implementation (Rose-Ackerman 2007: 24).

7.1 Introduction

Mr. Confidence Situmo is a 39-year old Kenyan – a citizen unaffiliated with the public institutions under consideration – employed as a bank supervisor in Nyamira town. Like many other Kenyans, he has views on the quality of election management and electoral dispute settlement from 2002 through 2017. He is from the ‘Bukusu sub-tribe’ of the ‘Luhya’ ethnic community. When we spoke at the Borabu Country Inn, Nyamira on 26 March 2018, he recounted his own balloting experiences in 2002, 2007, 2013 and 2017, saying they were ‘good’ and the local election results were ‘fine’. His positive account of his 2013 experience came despite having observed electoral ‘systems fail’ on the election day in Bungoma County. Regardless, the consistent opposition supporter claimed that apart from the 2002 elections, he did not ‘trust the results’ subsequent electoral management bodies (EMBs) ‘gave us’. He argued that the Electoral Commission of Kenya (ECK) and the Independent Electoral and Boundaries Commission (IEBC), whom he described as ‘cursed institutions’, rigged these elections to preserve incumbent presidents’ rule.

While Mr. Situmo has neither been to court nor keenly followed election petition proceedings, he confidently examined the judiciary’s performance. In his analysis of the 2013 presidential election petition, the bank supervisor remarked, although Chief Justice ‘Willy Mutunga tried to push out some corrupt justices and officials who had formed cartels in the judiciary, he couldn’t do it… So they undermined the ruling’. He, however, lauded the 2017 Supreme Court verdict that nullified the re-election of the sitting President Uhuru Kenyatta. He attributed the ‘justice served’ to ‘the confident, fearless, [new Chief Justice] Maraga-led court’s performance’. He offered these assessments knowing fully well that the EMBs and the judiciary have undergone reforms meant to enhance their capacity (effectiveness and efficiency) and

99 Interview with Confidence Situmo (Nyamira, 26 March 2018).
independence (freeness and impartiality) since the promulgation of a new constitution in 2010 (Akech & Kameri-Mbote 2012; Wolfrom 2013; Majanja 2016).

Meanwhile, the assessments of Njeri Ngoroje, a member of the Kikuyu ethnic community, mostly contrasted those of Mr. Situmo. As I interviewed her in front of her ‘mboga [vegetable] store’ in Dagoretti South constituency, Nairobi, she divulged she was not a registered voter in 2002. Notwithstanding, she backed the opposition and welcomed the presidential election results. Although her candidate and co-ethnic Mwai Kibaki won the 2007 presidential election, the Bachelor of Arts holder conceded the election was rigged. She perceives all elections since 2007 to have been conducted as expected, i.e. ‘freely and fairly’. She would not comment on whether the pre-2010 judiciary worked as mandated, because there was no presidential election petition. For the 30-year old, because ‘there was no rigging [and] everything was all right’ in the 2013 elections, the Supreme Court ‘ruled well’ when it upheld her candidate and co-ethnic Uhuru Kenyatta’s presidential election victory. She castigated the judges who annulled Kenyatta’s 8 August 2017 re-election, arguing that they ‘were bought’ (bribed) to favour the opposition. Ms. Ngoroje had both positive and negative personal experiences with balloting in the said electoral periods, but she did not believe they affected the overall quality of the elections.

Other Kenyans I later introduce appraised the performances and outputs of the judiciary and EMBs in ways similar to those of the individuals discussed above. While some provided positive appraisals of institutional performance, others provided negative appraisals. Sometimes, even the same person offered apparently inconsistent appraisals of an institution’s work. This chapter examines these trends. To achieve this, I ask: how and from where have Kenyans obtained information they hold about post-2000 election management and electoral dispute settlement; and how does the information from the source(s) affect their evaluations of the quality of those elections and election petitions?

As this chapter answers the research questions, it modifies extant explanations for the public’s attitude formation. First, literature on this topic, which is predominantly quantitative, oversimplifies the public’s appraisals of institutional performance by characterising them as either positive or negative (Moehler 2009; Bratton 2012; Shah 2015). The qualitative approach this chapter employs confirms these forms of

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100 Interview with Njeri Ngoroje (Nairobi, 13 February 2018).
appraisals, but also highlights that they are multidimensional. Kenyans’ assessments of electoral governance are on two levels: secondary and primary appraisals/evaluations. The former is usually their peripheral assessments, and it often stresses the nature of institutional capacity. The latter is often their overall assessments. It tends to fixate on institutional independence. Primary appraisals usually take precedence over secondary appraisals. That explains why people like Mr. Situmo sometimes appear to offer conflicted assessments. Citizens’ evaluations also tend to oscillate across and within electoral cycles, except when previous and current election and petition results converge. The conclusion drawn from this evidence is that at no period can an institution boast of working to the complete (dis-)satisfaction of citizens. Depending on the context of evaluation, an individual may give satisfactory or unsatisfactory appraisals.

Second, the chapter contributes to theories of citizens’ opinion formation. The extant literature provides mono-causal explanations (e.g. Shah 2015; Nyabuga & Ugangu 2018). But Kenyans’ statements about how they form opinions about election management and electoral dispute settlement exposes the multiplicity of forces (traditional and social media, face-to-face interactions, direct experiences, and political parties and candidates) that combine to shape their attitudes. The impacts of the various sources differ in strength/intensity, under diverse circumstances, and on different levels of citizens’ evaluations. This chapter, moreover, largely challenges institutionalists’ postulation that direct exposure to the actual workings of institutions mainly determines the public’s attitudes (Bratton 2012; Kerr 2013; Opalo 2020). The declarations of my research participants point to the validity of that viewpoint insomuch that we focus on secondary evaluations. Kenyans with voting experience are able to recall their observations of the effectiveness and efficiency of electoral officers they engage with. Noticing that some Kenyans interpret perceptible institutional capacity flaws as autonomy derelictions, discount their personal experiences, appraise institutions (especially election courts) that they have not directly encountered, I affirm that first-hand observations do not fundamentally determine citizens’ primary evaluations.

The chapter also revises certain conjectures of research that suggests that media and other communication channels determine the public’s views (Mcleod et al. 1999; Southwell & Yzer 2007; Nyabuga & Ugangu 2018; Orji 2019). I confirm that through news framing, censorship, and circulation, communication channels (social
and traditional media and physical interactions) that Kenyans engage with when searching for election-related information may tilt opinions about institutional performance towards particular sides of the trust-distrust continuum. From how Kenyans relate to these outlets, we see that citizens exposed to the same/similar information may rate institutional performance differently. Furthermore, Kenyans report inconsistent degrees of trust in these channels, even those many find more reliable, and news they share. Apart from demonstrating the constricted influences of these sources on citizens’ views, the evidence signals the pre-existence of beliefs with which citizens judge the credibility of the sources and their news and the quality of institutional performance.

I trace the antecedent beliefs citizens harbour to their partisan preferences. That improves existing understanding of the relationships between citizens’ evaluations and partisanship. The extant literature deems inequalities in the distribution of public resources as a reason that binds and drives members of particular ethnic communities to follow parties perceived to represent their communities. To them, that explains the polarised views about election management professed by supporters of election winners and losers (Shah 2015; Erlich & Kerr 2016). I confirm that the desire for inclusion and fear of exclusion tend to motivate the majority of members of politically dominant ethnic communities such as the Kikuyu and the Luo to collectivise and seek political guidance from specific sides of the political divide. Among ethnic communities such as the Kisii, who are equally driven by the aforementioned motives, this is not the case. They are more likely to divide their political followership almost 50-50 between competing parties/candidates in national elections. The fracture is largely founded on different generational experiences. Younger (notably, 40 years and below) and older (notably, 50 years plus) Kisii are inclined to respectively embrace the opposition and government’s positions on the quality of election and petition processes and results. Ethnic stereotypes and tropes, to varying extents, add to the partisan preferences of members of the various ethnic communities. These findings accentuate the limits of the reference to ethnicity as the stimulus for Kenyans’ partisan behaviours.

Finally, unlike the existing studies that portray a resolute bond between citizens and their parties/candidates, this chapter underscores conditions under which citizens may digress from their parties’/candidates’ stance. One is when a person is weakly attached to her/his preferred party/candidate. The other is when an issue appears not
to be salient to the political fortunes of one’s party/candidate. Under both conditions, Kenyans may unexpectedly substitute information from their parties/candidates for more convincing alternative information from information sources like traditional media. The sophistication in Kenyans’ acquisition and utilisation of information about election management and electoral dispute settlement underlines citizens’ agency.

Based on these findings, this chapter argues that citizens’ sources of information mainly cause them to form inconsistent mixtures of positive and negative opinions about the quality of institutional performance. However, these effects occur on different evaluative planes, at different rates, and under diverse conditions. This observation substantiates the supposition that the interpenetration of formal (e.g. actual institutional performance) and informal (e.g. political parties and social media) institutions direct political attitudes and behaviours (Helmke & Levitsky 2003; Bratton 2007). Among the information outlets, citizens’ preferred political parties and candidates, whom they are inclined to perceive as more trustworthy, have the most impactful influence on their overall appraisals. This is why while supporters of presidential election and petition winners are inclined to rate electoral governance more favourably, supporters of losers do the opposite.

The chapter relies on data from group and one-on-one semi-structured and informal interviews I conducted in Nairobi and Nyamira counties. The interviews involved 77 Kenyans, 13 media personnel, and 13 representatives of two political parties. I have replaced interviewees’ names with pseudonyms to protect them. Additional information was obtained from social media, observations, and journalistic, organisational, and academic sources.

### 7.2 Gathering Information: Traditional and Social Media and Physical Interaction

From my inquiry into how Kenyans learn about election management and election disputes, I argued that they interact with individuals and groups in their virtual and physical spaces. These interactions produce virtual and physical publics, ‘where citizens come together to discuss matters of common interest’ (Srinivasan et al. 2019: 3; also see Nyabuga & Ugangu 2018: 190). At the same time that traditional media
organisations educate Kenyans, they skew information either by misrepresenting or omitting it. Social media users also do this. Individuals that obtain information from these sources are inclined to share them with people in their online and offline networks. That allows information to move across platforms (Dwyer et al. 2019). With news production and dissemination being politicised, information moving around can shape Kenyans’ evaluations of elections and electoral disputes. Nevertheless, the fact that Kenyans come into contact with similar information but interpret them or rate their trustworthiness differently is proof that these sources have narrow effects on their evaluations.

Research participants, irrespective of their social, economic, and political backgrounds, tended to first mention traditional media as their source of information about election management and electoral dispute settlement.101 These media outlets range from print (e.g. newspapers and magazine) to broadcast (radio and television). Specific channels interviewees often mentioned include Daily Nation, Standard, Citizen TV and radio, K24, KTN, NTV, *Milele, Egesa, Minto*, Kenya Broadcasting Corporation (KBC), and Radio *Maisha*. The Media Council of Kenya’s – an independent public institution that regulates the media and disciplines journalists – survey on the status of the media uncovered that radio (85 percent of Kenyans), TV (83 percent), and newspapers (68 percent) are Kenyans’ main sources (MCK 2012: 39).

Traditional media has played a crucial role in Kenya’s democratisation (Abdi & Deane 2008; Ogenga 2008; Kanyinga 2014: 98-113). Since the 1990s and early 2000s, assurances of media freedom increased, but media freedom in actuality whittled down. It has been a space that concurrently enables and blocks the deliberation of (certain) politics. In 1997, together with civil society, the media successfully pushed for legal amendments to enhance the freeness and fairness of elections, the equality of political parties in accessing the media, and the removal of unconstitutional detentions (The Carter Center 2003: 15-16). Moreover, it educated Kenyans about elections and exposed political abuses in elections. Regardless, international missions that observed the December 2002 elections uncovered that not

101 Interviews with Hilda Odunga (Nairobi, 5 February 2018); Julian Akunle (Nairobi, 12 February 2018); Suzy Wanjiku (Nairobi; 12 February 2018); Alice Kenmunto (Nyamira; 20 March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Confidence Situmo (Nyamira, 26 March 2018); Joyce Moraa (Nyamira, 9 May 2018).
all parties could utilise the media to communicate with their followers (ibid; Commonwealth Secretariat 2006). The leading parties in this contest were the governing Kenya African National Union (KANU) party, which was led by the youthful Uhuru Kenya (son of Kenya’s first president), and the chief opposition party the National Rainbow Coalition (NARC), which was led by the veteran politician Mwai Kibaki. The numerous urban private broadcast stations made political debates possible. However, their contribution to liberalisation was restricted, since they were not given frequency licenses to cover the entire country (Commonwealth Secretariat 2006: 17). This underscores the view that government can use legal restrictions to control the media space (Ismail and Deane 2008: 325). KANU personalised the state-owned Kenya Broadcasting Corporation (KBC), the only broadcaster with a country-wide reach, to drive its campaign and undermine that of NARC (Commonwealth Secretariat 2006: 17). That enabled the incumbent party to retain control over the national and local political arenas, a move envisaged to preserve its ascendancy. With the opposition, winning massively in nearly all provinces, it can be argued that the media’s influence on the public’s attitude was limited. This statement does not overlook the preferential treatment the opposition obtained from the private Nation Media Group (The Carter Center 2003: 23; 45).

In spite of the expectation that the end of KANU’s long-term rule would amplify freedoms and fairness, Lydia Kuguru, an award-winning journalist, contended that ‘after 2002, when we had the second hakietu [liberation], [she] felt betrayed by the new government because it was a softer version of KANU’.102 The former news editor with The Star and Daily Nation newspapers’ reason is that the Kibaki administration used extra-legal means to subvert media freedom. Many such incidents have been recorded between 2005 and 2006 (AC 2006: 47[11]). Prominent among them is the infamous raid on the ex-president’s family’s television network KTN and The Standard newspaper in March 2006. After initially denying allegations that government sanctioned the attack, Security Minister John Michuki confessed he ordered it because of ‘national security’ concerns. The media organisations’ obsession with government’s scandals is alleged to have spurred the raid (ibid.). Siguru Wahutu (2019: 130) has established that the 9/11 world has seen a steady rise in African governments’

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102 Interviews with Lydia Kuguru (Nairobi, 13 February 2018).
invocation of ‘national security and charges of promoting terror’ against ‘denizens turning their gaze inwards’.

The disenchantment with Kibaki’s administration culminated in its failure to prevent the breakdown of NARC and attract public support for its preferred draft constitution (see Chapter 3; Lynch 2006). Popular ministers of state, including Raila Odinga and Kalonzo Musyoka, parted ways with the NARC government and campaigned against the government-backed Wako draft constitution that Kenyans voted on in a 21 November 2005 referendum. They rejected it. Consequently, Kibaki dissolved his cabinet and formed new alliances. He spearheaded the newly founded Party of National Unity (PNU) to compete his arch-contender Odinga and his Orange Democratic Movement (ODM) in the 2007 general elections. Questionable election results ECK declared gave Kibaki victory in a presidential race that Odinga was tipped to win. Public demonstrations against the results and historical grievances about injustice resulted in a countrywide post-election violence that claimed over 1000 lives and displaced many others (Cheeseman 2008).

Ahead of the 2007 polls, the media actively educated voters. That improved the voter turnout (Abdi & Deane 2008: 7; Kanyinga 2014: 104). The privately-owned media also conducted comprehensive and effective election monitoring (Abdi & Deane 2008: 7). Nonetheless, the entrenched media bias persisted (Kanyinga 2014: 104). Audits of the media during the elections exposed KBC’s bias towards the government and its allies. Vernacular radio stations also favoured parties and candidates ethnically and politically connected to their audiences (ibid.). Soldiers at the ECK press centre locked out all but KBC journalists attempting to observe the vote counting process (Abdi & Deane 2008: 8). A group of non-governmental organisations whose work is to advance press freedom sent a fact-finding mission to study the Kenyan media in 2007 (IMS 2008). It noticed that when the post-election violence began, the vernacular radio stations in particular used their networks to advance ethnic and partisan interests by openly advancing the positions of their preferred candidates and circulating hate speeches. On 30 December 2007, the first day of the chaos, the government banned live media broadcasts, accusing privately-owned media for fomenting the disturbances. The ban attracted local and international criticisms (ibid: 4-5).

The ban also increased Kenyans’ use of short messaging service (SMS) to exchange information with people in their social networks. The government blocked this avenue too, paving the way for ‘social media tools such as wikis, blogs, Facebook,
Flickr, YouTube, Twitter and mashups’ to become ‘convenient alternatives for sharing information about the events that were unfolding across the country’ (Nyabuga & Ugangu 2018: 196). In contrast to traditional media that has gatekeepers controlling the production and the circulation of information, these technologies enable citizens to actively participate in the information creation and distribution processes (ibid: 190; 195; MCK 2016: 19). For more information on the mechanics of weblog/blog, Facebook, Whatsapp, and Twitter, see studies on recent use of social media in East Africa (Srinivasan et al. 2019) and Kenya (Brinkman 2019; Diepeveen 2019; Omanga 2019; Ogola 2019).

Attempts to quell the violence brought about the Kenya National Dialogue and Reconciliation (KNDR) mediation process, which focused on addressing longstanding socio-political grievances (Wamai 2014). Among the mediation outcomes are the adoption of a new constitution that guarantees more freedoms and social justice and the international community-brokered power-sharing agreement that made Kibaki the President and Odinga, the Prime Minister. A 2010 referendum resulted in the promulgation of a new constitution (Nderitu 2018: 61; 67-83; Kramon & Posner 2011).

To cite Ms. Kuguru, although ‘the 2010 constitution guarantees more media freedom now’, ‘vernacular media are still ethnic-based and owned by politicians’, and ‘mainstream media, due to their failures in 2007, are not scrutinising the authenticity of opposing political narratives…they put out’.103 This self-censorship began right after the post-election violence ended. Media organisations like The Nation and The Standard became so enslaved by the fear of aggravating the situation that they ‘did not properly investigate what happened after the voting’ or ‘push… to find out the truth after it was clear the [presidential election] results were rigged’ (an Editorial Director of The Standard, quoted in IMS 2008: 7; also, see Onyebadi & Oredeji 2011). Ms. Kuguru bemoaned how ‘the media has sacrificed its role of reporting objectively’ in the advent of the new constitutional dispensation. A Standard newspaper reporter, Jim Atwoli, explained how the ‘money-making interest of media organisations’ additionally dictates the stories they cover and how they frame them (also, see Rusbridger 2016).104 One avenue by which this interest brings to bear on journalism is the Government of Kenya’s strategic use of its massive advertisement funds to control the

103 Ibid.
104 Informal interview with Jim Atwoli (Nyamira, 17 March 2018).
press. Alan Rusbridger (2016) has traced the genesis of this phenomenon to acute government sensitivity to criticism that was instigated by the International Criminal Court’s 2010 prosecution of Uhuru Kenyatta and William Ruto. Kenyatta and Ruto led the Jubilee Alliance to a presidential election victory in the IEBC-managed 2013 elections. They defeated the Coalition for Reforms and Democracy’s (CORD) flagbearer Odinga. Odinga unsuccessfully challenged the results in the newly created Supreme Court of Kenya (Lynch 2014; Harrington & Manji 2015). The prosecution appears to have increased President Kenyatta and his deputy’s intolerance. Though violence, threats, and legislations were equally used to muzzle the media, that could attract unwanted attention. Hence, the government also opted for the subtler approach of not paying huge fees it owed media organisations that criticised it. That pressured many to desist from scrutinising government business (Rusbridger 2016).

Sales is another avenue through which the commercial interests of media organisations affect journalistic standards. Mr. Atwoli disclosed that different editions (with distinct headlines) of the same day’s newspapers are marketed and sold in different regions.\(^{105}\) Pointing to the front page of a 14 March 2018 newspaper, the editor stated, ‘the four stars on this Daily Nation release means it is to be circulated in Western and Luo-Nyanza areas’. That is because ‘a heading that vilifies the President [Kenyatta] will, for example, not sell in Central [his Kikuyu ethnic community], so we don’t send those there’. The young journalist divulged how his ‘employer also does this’. By the time of our interview, President Kenyatta, Jubilee Party’s presidential candidate, had retained his seat after two dramatic 2017 presidential elections that ultimately resulted in an Odinga defeat. Odinga led the National Super Alliance Coalition (NASA), an offshoot of CORD, in these elections (see Chapter 5; 6; Brobbey 2017). From Mr. Atwoli’s admissions, we can infer that since stories of particular nature are captured by or omitted from media content circulated in particular regions, denizens of given territories tend to be exposed to similar media content. Yet, as I have established in the sections preceding and following this section, Kenyans in particular regions, even specific households, may offer contrasting appraisals of election management and electoral dispute settlement. Thus, it can be argued that the media is not the main determinant of the public’s appraisals. If it were, we will observe inhabitants of particular regions’ assessments of institutional functioning tilting in the

\(^{105}\) Also interview with Nzoka Wambua (Nairobi, 28 February, 2018).
direction of the media’s framing or censorship of an electoral news (Moy et al. 1999; Moy & Scheufele 2000; Forgette & Morris 2006).

In other instances, reporters and editors ‘kill stories’ because of the need to safeguard their jobs and lives, said Drake Nyamisa, a 28-year old KBC reporter. He stressed that this is more pronounced during elections. Narrating his experience ‘at KBC’, where journalists ‘can’t even report anything against the government [because] he is [their] employer’, he reiterated KBC’s tendency to skew its reportage to benefit ruling parties. Mr. Nyamisa believes ‘it is easy’ for journalists with private media organisations ‘to fight’ the status quo. But this is not necessarily the case. On 30 January 2018, opposition leader Raila Odinga held a personal inauguration to challenge the legitimacy of Uhuru Kenyatta’s October 2017 re-election. The government pulled independent broadcasters, including Nation Media Group’s (NMG) NTV, that intended to air the event off-air (Mercer 2018). NMG fired NTV’s General Manager Linus Kaikai for purportedly speaking against “collusion between” the government and NMG to censor the mock swearing-in’ (BBC 2018). This and other politically-motivated dismissals, such as the earlier expulsion of Daily Nation’s Managing Editor Denis Galava for ‘an editorial critical of Uhuru Kenyatta’s presidency’, incited eight top NMG columnists to resign. This was to protest the ‘loss in editorial independence’ (ibid.). Mr. Nyamisa further conceded that honest journalists are wary of physical assault. The ‘2009 gruesome murder of a Citizen Weekly journalist [Francis Nyaruri]’ for exposing ‘corruption relating to procurement of mabati [corrugated roofing sheets] for police houses here in Nyamira’ constantly haunts him (also, see Rhodes & Derrick 2011). Because ‘some big people in power’ get away with such attacks, ‘I don’t go so hard on them, but especially in election periods’, said the young journalist. Biasing information along partisan lines can affect citizen (dis-)satisfaction with the individual(s) or entity that the information concerns (Glaser & Denhart 2000).

The period following the 2007 elections saw a surge in the use of digital technologies. Reasons such as the increasing realisation of the usefulness of digital technologies in elections, the affordability of SMS and internet, and the expansion of smartphone ownership have stimulated the rapid increase (Trujillo et al. 2014; Pew Research Center 2016: 21; Nyabuga & Ugangu 2018: 196). Additionally, this surge ‘is

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106 Interview with Drake Nyamisa (Nyamira, 27 March 2018).
107 Also, interview with Jim Atwoli (Kisii, 17 March 2018).
considered an outgrowth of the violence of the 2007 elections’, in that the belief that conventional media was partisan during that period created the desire for people to search for information elsewhere (Trujillo et al. 2014: 116). Digital technologies gave citizens and groups with digital technologies and cameras control over capturing and sharing their realities. By 2013, social media had become an essential part of reporting. Informed by how mobile phones facilitated the spread of violent messages in 2007-08, strict guidelines and scrutiny were installed ahead the 2013 elections. Guidelines governing election campaign messaging via SMS were issued by the Communications Commission of Kenya (CCK). Mobile service providers were also obligated to ‘register all SIM cards and to allocate unique internet protocol addresses to all phones on their networks, to make it easier to track down culprits’ (Commonwealth Secretariat 2013: 18).

The 2013 electoral cycle saw the media, citizens, political parties and candidates, public institutions, and civil society organisations leveraging the power of ICT-enabled networked spaces to create, disseminate, and obtain election-related news (Trujillo et al. 2014; MCK 2016: 21-22). For instance, a year before the elections, IEBC collaborated with Sisi ni Amani Kenya (SNA-K), PopTech, PeaceTXT, CCK, the police service, and the National Cohesion and Integration Commission (NCIC) to relay peace-laden SMS messages to targeted persons. Trujillo and colleagues (2014) argue that this and others efforts were effective at fostering ethnic cohesion and tapering electoral violence. Traditional media houses also tapped into the growing access to and use of the internet to disseminate election-related information to the over 30 million Kenyans who owned mobile phones. Parties and candidates used SMS to invite members of the public to rallies. Their manifestos, news, and other information were also communicated on their websites and social media (Commonwealth Secretariat 2013: 19-20). Most political elites set up Facebook and Twitter accounts for their communication, to which they allotted huge budgets. They had vibrant teams of bloggers whose jobs were to strengthen their engagements with their followers. Whereas the interrogation of citizens’ opinion formation was not the main object of their study, George Nyabuga and Wilson Ugangu (2018: 197)

108 Interviews with Suzy Wanjiku (Nairobi; 12 February 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Kelvin Bitange (ODM Party Executive, Nyamira, 28 March 2018); Catherine Misonga (ODM Member of County Assembly, Nyamira, 29 March 2018); Six members of Communication Team (Jubilee Party, Nairobi, 9 May 2018).
postulate that the net effect of the interactions over wireless communication networks and the internet is ‘the emergence of a new sense of urgency among the public to participate in political debate as well as to make the counterargument, expressing what they perceive to be the interests of the citizenry during electoral processes’.

By 2014, the number of social media users were roughly four million, of which 3.8 million were on Facebook and 650,000 were on Twitter (MCK 2016: 22). A Bloggers Association of Kenya’s (BAKE; cited in Mutahi & Kimari 2020: 3) survey says, as of September 2017, Whatsapp, Facebook, Instagram, and Twitter respectively had 12 million, 7.1 million, 4 million, and 1 million active users. That is a notable increment. These more open communication platforms empowered citizens to engage in social media activism, e.g. through groups such as Kenyans on Twitter (KOT). KOT have consistently used this space to take on Kenyan politicians and organisations involved in improprieties (Nyabuga & Ugangu 2018: 197-198). Political elites react by pointing to national security discourses to justify their crackdown on social media influencers, including Robert Alai and Cyprian Nyakundi, critical of their activities (Wahutu 2019).

Social media came to the fore again in the 2017 elections. Its ability to speedily disseminate large volumes of information to people living in distant regions (NDI 2019) had become obvious. Cognisant of this, ‘politicians and political parties, more than ever, in 2017, made use of…websites, blogs, and WhatsApp, Twitter, Telegram and Facebook accounts’ (Mutahi & Kimari 2020: 6). They procured the services of social media influencers. Well-resourced political parties/coalitions such as the governing Jubilee Party and the opposition NASA went further to contract the data mining companies Cambridge Analytica and Aristotle Inc., respectively, to help them devise data-backed strategies to target and influence voters. The advanced political communication also propelled voter education and mis-/dis-information. Mutahi and Kimari (ibid: 9-10) state that the fake news that political elites proliferated during the 2017 elections partly sought to ruin the reputations of the judiciary and IEBC. Figures 7.1, 7.2, and 7.3 substantiate this. Figure 7.1 is a video NASA leader Raila Odinga posted on Facebook to ‘expose’ IEBC’s manipulation of the electronic votes transfer system to facilitate Kenyatta’s victory. This post was shared more than 1,109 times and it elicited the reactions of over 3,500 people. Figure 7.2 consists of two out of 99 election-related Twitter posts from Kenyans that Code for Kenya and Kenya’s domestic Elections Observation Group (ELOG) fact-checked. Owners of the posts used them to share negative stories about IEBC’s work. These posts, one of which is
false and the other true, prompted multiple reactions. The content of Figure 7.3 originates from a pro-Jubilee social media influencer. It celebrated the verdict of the second presidential election petition that paved the way for Uhuru Kenyatta’s second term in office.

Figure 7.1: Criticisms of IEBC’s Performance in the 8 August 2017 Presidential Election

Source: Odinga (2018)
Figure 7.2: False and True Twitter Posts on the Fresh Presidential Election

Variances in social media usage exist between regions and age groups. Noticeably more of my Nairobi-based informants admitted to using social media than their Nyamira-based counterparts. In a presentation by Noah Miller, Sochin Limited’s Managing Director and Founder, he affirmed that the analysis of geotags to social media posts traces about 85 percent of Twitter and Facebook posts to Nairobi. Sochin Limited is a communication and reputation management advisory firm. I attended the said presentation in Nairobi on 29 January 2018. It was part of the Centre

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109 Interviews with Hilda Odunga (Nairobi, 5 February 2018); Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018); Tony Musuti (Nyamira, 14 March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
for Human Rights and Policy Studies (CHRIPS) and the Institute of Development Studies’ (IDS) workshop on the 2017 general elections. While Nairobi is urban, Nyamira is rural (Wiesmann et al. 2016). Research from other parts of Africa confirms the rural-urban disparity in social media usage (Dwyer & Molony 2019: 3-4; 7). The few individuals who claimed to patronise it in Nyamira are younger people (mostly below 40 years). Jacob Kerubo has never owned a social media account because he does not have a ‘smartphone to connect’, but he ‘uses [his] friends’ phones to see what’s happening on it’. That means, the consumption and generation of social media content is not always contingent on ownership of a digital technology and an account. Similarly, Douglas Kahenda, who has never been on social media, maintained that he heard of the rumour ‘***vifaranga vya kompyuta***’ or computer-generated results during the 2017 elections. Raila Odinga first used and popularised this phrase on social media to assign Kenyatta’s victory to hacking, rather than voting (Too 2018). I observed Kenyans and traditional media houses engage with this narrative during my fieldwork. The septuagenarian must have heard this from his other information sources, such as his neighbours, ‘Citizen’, and ‘Egesa’. His comment is an attestation that the boundary between online and offline platforms is porous, allowing information to move across platforms (Omanga 2019; Dwyer et al. 2019: 115).

Other interviewees also reported exchanging information with individuals in their physical networks. I also observed this while in group settings, where I witnessed conversation partners collectively constructing narratives, imposing particular perspectives on one another, and contesting one another’s ideas. Considering that aspiring influencers were not always successful at changing the minds of their interlocutors, I maintain that Kenyans are selective in their information consumption. They appear to have pre-existing measures for judging an information’s authenticity. For instance, the Kenyatta supporter Mr. Kahenda was aware of the hacking allegation, yet he contended the presidential election was not compromised. The conflicting comments in figures 7.1 and 7.3 serve as additional proof.

110 Group interview with Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018).
111 Group interview with Juliana Kahenda and Douglas Kahenda (Nyamira, 21 March 2018).
112 Ibid.
113 Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Tony Musuti (Nyamira, 14 March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Joyce Moraa (Nairobi, 9 May 2018).
114 Group Interviews with Juliana Kahenda and Douglas Kahenda (Nyamira, 21 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
The first step to ascertaining why the same news provokes inconsistent public reactions is understanding the extent to which people perceive these sources as trustworthy. From their perceptions of the trustworthiness of the sources, Kenyans try to estimate the credibility of information emanating from each communication channel.\textsuperscript{115} An opinion poll that GeoPoll (a global mobile survey platform) and Portland (an international communication consultancy) conducted to understand the pervasiveness and effects of ‘fake news’ in Kenya’s August 2017 general elections validates this claim. Figure 7.4 encapsulates their findings. Traditional media is the most widely used and seen as credible by Kenyans, followed by social media, and then interpersonal interaction. My 25-year old interviewee Julian Akunle, for instance, ‘go[es] to social media’, but he ‘know[s] social media can bring a lot of propaganda’.\textsuperscript{116}

The same way that Sierra Leoneans use informal norms (traditional forms of documentation) to verify election-related stories circulating on social media (Dwyer et al. 2019), the professional teacher and other Kenyans crosscheck social media stories with ‘information from newspapers’.\textsuperscript{117} As captured in Mr. Akunle’s words, they believe traditional media ‘are a bit more true, although some also bring propaganda’.

The preceding quotation denotes Kenyans’ trust in traditional media is not absolute, but relative to social media and physical networks. They also do not perceive traditional media as a monolith, so they attempt to distinguish the trustworthiness of its various outlets. Opposition supporters particularly referenced the January 2018 selective government shutdown of TV stations to illustrate the fairness of the affected stations and the biases of the ‘Serikali’ (government-affiliated) stations (KBC and K24), who remained on air.\textsuperscript{118} They expressed that news from the latter is unreliable. Some also do not have total confidence in the private channels. Pro-government supporter Njeri Ngoroje and pro-opposition supporter

\textsuperscript{115} Interviews with Hilda Odunga (Nairobi, 5 February 2018); Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018); Tony Musuti (Nyamira, 14 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Confidence Situmo (Nyamira, 26 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).

\textsuperscript{116} Interview with Julian Akunle (Nairobi, 12 February 2018).

\textsuperscript{117} Also interviews with Tony Musuti (Nyamira, 14 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Confidence Situmo (Nyamira, 26 March 2018).

\textsuperscript{118} Interviews with Hilda Odunga (Nairobi, 5 February 2018); Tony Musuti (Nyamira, 14 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
Figure 7.4: Use Versus Trust of Key Channels

Source: GeoPoll and Portland (2017: 10)

Julian Akunle cited the Daily Nation’s false publication of Jimi Wanjigi’s (a prominent NASA financier and strategist) obituary in 2018 to corroborate why they do not fully trust private media. In the course of my fieldwork, I heard Kenyans criticising the Daily Nation for this publication. For some, it was a mere editorial capacity flaw, but for others, the newspaper was being manipulated by the ruling party to undermine the opposition at a period it challenged Kenyatta’s re-election (also, see Mercer 2018; Mukinda 2018). The disparate confidence in the various media outlets supports media ecologists’ assertion that in spite of communication mediums’ ability to fulfil tasks for which they were designed and deployed, many of their consequences are unexpected and unpredictable. That is because the realisation of intended effects ‘involves a multitude of social, economic, political, and cultural factors…[as well as] human

119 Interviews with Julian Akunle (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018).
perceptions, motivations, and emotions that are in the main hard to predict’ (Lum 2014: 144). Therefore, the understanding of the extent of the effects of mass communication mediums requires studying users in their environments.

If Kenyans are exposed to similar information but interpret them differently and if they tend to be sceptical of stories from outlets they relatively have more confidence in, then whose information do they eventually accept, and why? The next section elucidates this question.

7.3 Gathering Information: Political Parties and Politicians

From political science research, we know that Kenyans are very loyal to their preferred political parties (Lynch 2006; Shah 2015). This also manifests in their tendency to be more trustful of information about election management and electoral dispute settlement from them. Gabrielle Lynch and Gordon Crawford (2011) have maintained that ethnic communities’ readings of local histories and associated beliefs of state unfairness ignite the desire for economic and political inclusion and fear of exclusion from same. That pushes them to back political parties their co-ethnics are affiliated with. Modifying this argument, this section demonstrates that supporters’ reliance on their candidates and parties is rooted in both interethnic and intergenerational struggles for political and economic inclusion as well as against exclusion from these spheres. Politicians and parties whose campaign assures particular ethnic and generational groups these things win the group’s confidence. That makes supporters more inclined to welcome information from them and rebuff those from their political opponents.

There is a long history to Kenyans’ tendency to find their preferred politicians and parties as more reliable when it comes to political guidance (Chapter 3). In the effort to shield itself from potential indigenous insurrection, the British colonial administration applied a divide and rule policy that separated ethnic groups geographically and socially. This policy also involved using public resources (land and jobs) to buy the allegiance of certain groups (e.g. Kalenjin) while marginalising others (e.g. Kikuyu) (Klopp 2001: 476-447; Lynch 2011: 53; Biegon 2018: 15-16). This was to prevent ethnic communities, especially the Kalenjin, Kikuyu, and Luo, from uniting
against the regime (ibid; Good 1976; Elkins 2008; Biegon 2018: 15-16). These policies largely created a sense of intra-ethnic sameness and solidarity and interethnic differences and competition. The colonial policy of permitting political parties to form only in regions did not simply bolster these perceptions but also engendered a close-knit relationship between particular ethnic communities and parties originating from their regions. Associated with the localism is the institutionalisation of the sense that political parties are the pathway to realising local political and economic interests in public resource distribution. The biased, domineering, divisive colonial arrangements were bequeathed to the post-independence state. The perceptions that defined ethnic relations were also sustained. Political elites continued forming parties ‘along ethnic identities and state-power aggressively contested on the basis of mobilised ethnicity’ (Ajulu 2002: 251). Parties in power continued to favour their ethnic and regional support bases and marginalise those of their opponents (ibid: 259-265; Boone 2011: 1322-1323; Hornsby 2012: 554-555; Wamai 2014: 68). An audit of the ethnic composition of the civil service before 2008 highlights successive governments manipulating public service employment. That made the Kikuyu, who had two co-ethnics as presidents before 2010, ‘the largest and most dominant ethnic group in all ministries and departments’, followed by the Kalenjin, who produced one president (Nderitu 2018: 352). After the 2008 power-sharing, President Kibaki’s control over civil service hiring sustained Kikuyu dominance in the ministries, while Odinga’s control over hiring in the Office of the Prime Minister ensured Luo (21.87 percent) dominance in his office (ibid: 353; also, Figure 7.5).

Interaction between the public’s perception that elites safeguard the economic and political interests of their co-ethnics and the objective state bias have prompted many Kenyans to think that: the state controls ‘the benefits of modernity and development’; members of particular ethnic communities share interests and compete with others; and accessing public resources requires allying with particular presidential candidates (Biegon 2018: 16-18; also, see Klopp 2001: 477-483; Wamai 2014: 68-69). In Sara Dorman’s words (2020: 460), these ideas can shape citizens’ ‘own political attitudes and norms’. In the Kenyan case, these presumptions have reinforced the sense that trusted politicians (for some, these are co-ethnics) are more trustworthy (Nderitu 2018: 353-354).
Concerning the acquisition of information, Kenyans, regardless of their political preferences, listen to the different sides of the political divide. However, they tend to only embrace information from the side they prefer or trust most.\textsuperscript{120} This can be inferred from scrutinising their assertions and inspecting their social and political backgrounds. From these exercises, we see inter-ethnic cleavages, which students of Kenyan elections have widely reported (Lynch 2008; 2014; Wairuri 2017), and intra-ethnic/inter-generational cleavages, which have been unexplored. The following paragraphs performs these exercises to illuminate these divides.

Except for Van Kipruto, my interviewees of all ethnicities, gender, regions, and ages, maintained they looked to the opposition party NARC for information or political guidance in the 2002 electoral period.\textsuperscript{121} A combination of NARC’s popularity and my

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure7_5.png}
\caption{Ethnic Representation in Parastatals}
\end{figure}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|l|}
\hline
Parastatal & Staff & Estimates (Kshs) & Largest ethnic group & % & CEO ethnicity \\
\hline
1. Kenya Ordnance & 223 & Unknown & Kalenjin & 49.8 & Kalenjin \\
2. KPLC & 10,648 & Unknown & Kikuyu & 26.5 & Kalenjin \\
3. NTSA & 536 & 4,315,487,127 & Kikuyu & 32.5 & Maasai \\
4. KEMRI & 937 & 1,799,462,265 & Kikuyu & 26.8 & Maasai \\
5. KAA & 1,936 & Unknown & Kikuyu & 23.8 & Kikuyu \\
6. KCAA & 674 & 356,000,003 & Kikuyu & 27.3 & Kikuyu \\
7. KRA & 4,442 & 15,358,008,761 & Kikuyu & 30.7 & Kikuyu \\
8. KSG & 207 & Unknown & Kikuyu & 39.1 & Luhya \\
9. KICD & 411 & 1,083,724,600 & Kikuyu & 38.9 & Luo \\
10. Kenya Roads Board & 53 & 26,178,000,000 & Kikuyu & 34 & Luo \\
12. Kenyatta National Hospital & 4,541 & 8,667,461,541 & Kikuyu & 32.9 & Kalenjin \\
13. Moi Teaching and Referral Hospital & 3,118 & 5,544,676,867 & Kalenjin & 68.1 & Kalenjin \\
\hline
\end{tabular}
\footnote{Estimates are for 2016/17 financial year}
\end{table}


\textsuperscript{120} E.g. interviews with Julian Akunle (Nairobi, 12 February 2018); Njeri Ngoroje (13 February 2018); Peter Ondari, Mailori Ondari, and Moraa Osiemo (Nyarira, 19 March 2018); Jacob Kerubo and Van Kipruto (Nairobi, 24 March 2018).

\textsuperscript{121} Ibid.
research method explains the lack of diversity in partisan preferences. Aside from the Kalenjin, ‘each of the main ethnic groups and regions was represented in [NARC’S] leadership… The breadth and unity of the opposition movement convinced many that NARC represented an opportunity for real change’ (Branch 2011: 249). NARC won 132 of the 222 seats in the National Assembly while KANU secured only 64. Kibaki won ‘nearly two-thirds’ of the total presidential election votes (ibid: 250; Appendix I). Uhuru Kenyatta, Simeon Nyachae, James Orengo, and David Waweru shared the remaining votes (The Carter Center 2003: 36). NARC and Kibaki’s domination makes it difficult to find their opponents, more so in a research that involves a relatively small number of the population. This does not, however, detract from our understanding of the subject. The 25-year old Kalenjin was ineligible to vote in 2002. Had he qualified, he ‘would have selected Uhuru Kenyatta’ for both the ‘presidency and information’.122 In justifying his preference, the young man from Ainamoi in Rift Valley readily admitted, ‘people from my area supported him’. Truly, because of Moi’s backing, Kenyatta received an overwhelming support from Rift Valley (Appendix I; Branch 2011: 249). This indicates that a leading ethno-regional leader can help a non-co-ethnic attract the trust of her/his ethnic community.

Dr. Joyce Moraa, an avid ‘supporter of [successive] opposition’ parties, informed me that she ‘listened to Kibaki and NARC more, [because she] trusted them’.123 She is a ‘47-year old Omogusii [a Kisii person]’ woman married in ‘Luoland’. She distrusted Kenyatta because she believed he was ‘Moi’s project’ (pawn), whose purpose was to preserve the outgoing president’s rule. This opinion was pervasive in Kenya (ibid: 248). She wanted ‘change’, since ‘Moi’s government’ had ‘underperformed’, ‘was corrupt’, and ‘favoured only the Kalenjin’. This illustrates how a candidate can also lose ‘trust’ because of his/her affiliation with another prominent politician. She ‘trusted’ Kibaki more than the other presidential aspirants, including her co-ethnic Simeon Nyachae, because NARC appeared dedicated to ensuring economic and political inclusivity.

In her response to the question about her most trusted source of information, Suzy Wanjiku bluntly admitted, ‘we all tend to have different political affiliations…I will always have good information from my party and bad [information] from the other’.122

122 Interview with Jacob Kerubo and Van Kipruto (Nairobi, 24 March 2018).
123 Interview with Joyce Moraa (Nairobi, 9 May 2018).
She is a staunch supporter of her Kikuyu co-ethnics Kibaki and Kenyatta, although in 2002, her displeasure with KANU made her gravitate to the former. Chapter 3 has shown that during the Moi era, many Kikuyu especially felt marginalised by the state. Ms. Wanjiku sees nothing wrong with relying on her preferred candidates because ‘everyone else is doing the same’. My other interviews corroborate this. For example, while interviewing the Mokaya family, Catherine Mokaya maintained that after the 2002 elections, she and her parents gravitated to different political parties. From 2007 through 2017, she ‘supported Baba [title of endearment for Odinga]’ and ‘trusted what he said’. Her reason is, opposed to ‘Kibaki [who] broke his promises after 2002’, Odinga could be trusted because he ‘was for equality in the country’. Whereas Kibaki is credited for fulfilling his 2002 campaign promise to revive the ailing economy, deliver free primary education, and fight corruption in the public sector, he is criticised for deploying public sector appointments and dismissals to punish opponents (notably the Kalenjin) and favour supporters (notably the Kikuyu) and abandoning a pact between he and Odinga to enact a new constitution that would reduce the excessive powers of a president, among other pledges (AC 2003: 44[22]; Lynch 2006: 240-242; Branch 2011: 249-265). Flagrantly annoyed by his daughter’s choice of candidate, Mr. Mokaya chastised her for calling ‘a mere person Baba’ or ‘a name reserved only for God’. For the ‘Standard Seven’ education holder, he did not like Odinga because ‘he was too combative’ and willing to plunge Kenya into chaos to secure the presidency. The sexagenarian has always ‘trusted the government’ (Kibaki and Kenyatta) for political leadership. Research shows that Odinga’s majimbo (regionalism/devolution) campaign message in 2007 engendered fear among PNU supporters (mostly Kikuyu), who understood it as a call for ODM supporters to use targeted violence to purge their territories of ethnic others. Thus, they compared his prospective presidency to the rule of Uganda’s Idi Amin (Cheeseman 2008: 175).

Interviews that Al Jazeera conducted in Nairobi ahead of the 2017 Kenyan elections confirms the tight connection between the dominant ethnic groups and parties led by their prominent co-ethnics (Mohamed 2017). An interviewee, Anne Wanjiru (a Kikuyu), noted this is the third election she is participating in and she has ‘never’ followed ‘someone from another tribe’. Similar to Odinga supporters (notably

124 Interview with Suzy Wanjiku (Nairobi, 12 February 2018).
125 Group interview with PN Mokaya, Feris Nyawusi, and Catherine Mokaya (Nyamira, 19 March 2018).
the Luo) interviewed, Anne followed Kenyatta (and Kibaki) because ‘he is [their] son’ or co-ethnic. Interviewees’ preference for ‘candidates from their own tribe’ stems from the “fear” of someone other than their own taking office and lack of “trust” in candidates from other ethnic groups’, Al Jazeera concluded (ibid.). The foregoing discussion illustrates that citizens actively pick sides they believe would include them in and reject those they think would marginalise them from public resources. Two broad patterns worth analysing can be seen. For members of ethnic groups such as the Luo and Kikuyu, they coalesce to back parties led by prominent co-ethnics. But the Kisii do not toe the same partisan lines or rally behind co-ethnics.

Besides using public resource distribution, political candidates are able to appeal to their co-ethnics by employing existing ‘conceptions of cultural similarity and difference… as a supportive framework for multi-ethnic political alliances’ (Lynch 2006: 237). Such conceptions emanate from shared value-laden communal practices and stereotypes transferred through structured and unstructured socialisation. They manifest in political behaviour, in the sense that these practices and associated values and tropes can facilitate close political bonds among groups that share them and rivalries between them and others (ibid; Fearon & Laitin 2000; Kaufman 2006). Popular stereotypes about and biases towards and against in- and out-groups emerge from such practices and values.

In the array of stereotypes, slanders, and tropes that influence Kenyans’ partisan choices are circumcision (Atieno-Odhiambo 2002: 243-244) and wealth (Cornell & D’Arcy 2014: 175-178). Circumcision especially stands out in my data. Many of my Kisii and some of my Kamba and Kalenjin interlocutors broached conversations about the symbolic value of circumcision in the political preferences of their ethnic communities.126 Anthropological and political research that have examined circumcision among different ethnic communities in Kenya and my interviewees maintained that male circumcision or the cutting of the foreskin of the penis marks the transition from boyhood (immaturity) to adulthood (maturity). It is accompanied by elaborate traditional initiation ceremony that spells out communal political values (e.g. bravery and sound judgement) and practices (e.g. interethnic alliances) (Mayer 1953a; Mayer 1953b; Atieno-Odhiambo 2002; Lynch 2006; Lamont 2018). The Kisii

126 Interviews with Tony Musuti (Nyamira, 14 March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Ted Nyagarama (Nyamira, 4 April 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
ceremony, for instance, discourages alliance with their Luo neighbours because the
Luo do not traditionally circumcise. They perceive them as ‘Abaiisia’ or uncircumcised
boys unfit for political leadership (Mayer 1953a).\textsuperscript{127} Some Kisii associate popular
stereotypes about the Luo – ‘arrogant, aggressive and strong-willed’ (also, see Lynch
2006: 248) – as indicators of their childishness.\textsuperscript{128} As Lynch’s Kalenjin interlocutors
told her (ibid.), so too did my Kisii interviewees inform me that because of such views,
certain members of their community, particularly the elderly, are unwilling and unable
to seek political guidance from Odinga, the Luo spokesman. Instead, they prefer and
trust the guidance of politicians from circumcision-practising ethnic communities (e.g.
Kalenjin and Kikuyu).

These cultural values have no independent effects. Their potency rests on the
ability of chauvinistic ethnic entrepreneurs and politicians to exploit them. Traditionally,
the Luo do not circumcise, yet the Kalenjin allied with them for the 2007 elections. Both
the Kikuyu and Kalenjin traditionally circumcise, but they brutally fought each other
during the 2007 post-election violence (Cheeseman 2008; Lynch 2008). Notwithstanding the brutality, the two communities united for the 2013 and 2017 elections. Researchers have clarified the roles organic intellectuals and politicians play in (re-)defining, (re-)negotiating, and contesting (inter-)ethnic sentiments, stereotypes, histories, discourses, and concerns to forge and divide political alliances (Peterson 2012; Lynch 2014). Political parties I interviewed informed me that knowledge of the public’s interests causes them to tailor their messages in a manner that would appeal to them.\textsuperscript{129} These are proofs that ethnicity and its associated values and interests are products of social construction (Fearon & Laitin 2000; Lynch 2014).

The split in the Kisii’s trust in and preference for politicians from the different
sides of the political divide reconfirms Kenyans’ agency in information gathering.
Younger Kisii were inclined to find the opposition more trustworthy than their elderly
counterparts.\textsuperscript{130} This divergence is likely because compared to the other Kenyans the
Kisii have a weak attachment to political parties. A comparison of the colonial
experiences of the Kisii and other Kenyans, including the Kikuyu and Kalenjin,

\textsuperscript{127} Ibid.
\textsuperscript{128} Ibid.
\textsuperscript{129} Interviews with ODM County Executive (Nyamira, 28 March 2018); ODM MCA (Nyamira, 29 March
2018); Jubilee’s Communications Team (Nairobi, 9 May 2018).
\textsuperscript{130} Interviews with Alice Kenmunto and Vane Nyanchera (Nyamira, 20 March 2018); Juliana Kahenda
and Douglas Kahenda (Nyamira, 21 March 2018); Eunice Onyancha and Jane Momanyi (Nyamira, 21
March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Ted Nyagarama (Nyamira, 4 April 2018).
bespeak the lack of political activity among the Kisii prior to 1940. That is because of how these communities reacted to colonial rule. First, the Kisii were ‘very slow’ to accept ‘western education’, unlike the other ethnic communities where ‘political associations’ mainly constituted by ‘mission-educated Christians’ existed (Maxon 1981: 114). It was not until the 1930s that any semblance of educated elites emerged among the Kisii. The intense sense of cultural nationalism (the desire to prevent the replacement of their culture and religion) contributed to the disinclination to embrace western education. Even when education made inroads into the community, the kind of education provided did not foster ‘political skills’ (ibid: 116). Second, the ‘pressing issues which led to the formation of political associations in other parts of Kenya were not very seriously felt in the Gusii [Kisii] highlands’ (ibid.). These issues include alienation from land ownership and commercial coffee farming (ibid; Good 1976; Parsons 2011). Marginalisation spurred other Kenyans to form and rally behind political associations to contest alienating colonial policies, as discussed in Chapter 3. That was not the case among the Kisii, who did not experience the same magnitude of marginalisation and domination (Maxon 1981; Parsons 2011). The endurance of some of these grievances, especially unequal land distribution, in contemporary Kenya is a motive for the self-perceived excluded communities to continue unifying behind particular parties (Klopp 2001; Boone 2012; Manji 2014; Willis & Chome 2014; Waddilove 2020). The differential colonial experiences of the various ethnic communities appear to have left legacies that continue to shape political attitudes and behaviours in the post-colonial era, e.g. the varying commitment/attachment of members of the various communities to particular parties. That is a plausible explanation for the tendency of ethnic communities like the Kikuyu and the Luo to rally behind particular parties and the proclivity of communities such as the Kisii to divide their support near evenly between political parties.

The lack of such deep-seated concerns that the other ethnic communities harbour seems to counteract political elites’ efforts to make particular candidates appear more trustworthy to the different Kisii demographics. Despite the Kisii linchpin Simeon Nyachae’s attempt to rally support for specific political parties in the 1992, 1997, 2005 and 2007 electoral periods, the Kisii divided their support among the competing parties (Hornsby 2012: 504; 615; 617; Cheeseman 2008: 168). During my fieldwork, I learnt that Simeon Nyachae is the son of the wealthy and influential Kisii
Colonial Chief Musa Nyandusi (also, see Parsons 2011; Maxon 1981). My interlocutors asserted that Nyachae’s wealth and influence are an extension of those of his father. Some of the parties Nyachae backed in 1997 supposedly lost Kisii support because of him (Hornsby 2012: 615). When he ran for president in 2002, he placed third in the overall presidential race, but he and his FORD-People party won all 10 Kisii constituencies (Throup 2003: 2; 4). In campaigning for Kibaki during the 2005 referendum, Nyachae ‘openly questioned the rationality of following the advice of an “uncircumcised” man (i.e. Raila Odinga)’ but was unsuccessful at securing the needed Kisii support (Lynch 2006: 233). His campaign for Kibaki in his home area in 2007 was again futile (Cheeseman 2008: 168). After Nyachae’s retirement from active politics, another close associate of his, Dr. Fred Matiang’i, debatably became the most prominent national-level Kisii politician. Matiang’i is the Jubilee government’s Interior Cabinet Secretary and a self-styled member of the ‘Chinkororo’, an outlawed ‘group of Kisii warriors…associated with former powerful Finance Minister Simeon Nyachae’ (Daily Nation 2017; Mbula 2017). The group claims to protect the Kisii against neighbouring aggressors. Regardless of Matiang’i and Nyachae’s efforts, the younger Kisii tended to perceive Odinga as more trustworthy than Kibaki and Kenyatta.

Nyachae’s electoral dominance in his home area in 2002 suggests that perhaps when their co-ethnic competes in a presidential election, the Kisii unite behind them. Since a Kisii has not competed in other presidential races, that cannot be cogently affirmed. What this discussion confirms are as follows. First, like other Kenyans, the Kisii have a keen interest in the presidency. Second, there is no consistency in the Kisii’s reliance on their prominent co-ethnics Nyachae and Matiang’i for political leadership. As the preceding paragraphs, Chapter 3, and other studies (Atieno-Odhiambo 2002; Lynch 2006; Branch 2011: 249; Lynch 2014) demonstrate, where ethnicity-driven partisan affiliation is at play, prominent co-ethnics, even non-presidential candidates, largely succeed at convincing the majority of their ethnic communities to unite behind non-co-ethnic presidential candidates and their parties. The intergenerational divide seems to originate from differential generational experiences (Richards 2005; Macdonald 2015), which reinforce the elderly’s and

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131 Interview with Tony Musuti (Nyamira, 14 March 2018); Ted Nyagarama (Nyamira, 4 April 2018).
132 Interview with Ted Nyagarama (Nyamira, 4 April 2018).
weakens the young's stereotypes about the two side of the political divide. Some of my elderly interviewees recounted their interactions with the Luo and Kikuyu to corroborate their opposing perceptions about the political maturity and leadership abilities of the two groups.\textsuperscript{133} Douglas Kahenda, a mason-cum-farmer, claimed that because he has lived and worked with the Kikuyu, he knows they are loyal, hardworking, and trustworthy.\textsuperscript{134} He continued, for a very long time, the Kikuyu, many of whom recently moved to ‘Central [Province]’, lived and farmed on Kisii land. Not only did the Kikuyu teach the Kisii their farming practices but they also taught them how to do business, according to the 74-year old. Because of these relationships, Mr. Kahenda turns to Kikuyu presidential candidates for political guidance. To illustrate the length and strength of the relationship, Mr. Kahenda recounted his childhood experience of hearing that the cordiality between the Kisii and the Kikuyu urged ‘Chief Musa Nyandusi’ to illegally harbour ‘Mzee [Jomo] Kenyatta’ and other Kikuyu revolutionaries when the ‘Wazungu [White people or colonial administration]’ pursued them at the height of the 1950s ‘Mau Mau’ uprising.

A study on Kenya’s ethnic geography during colonialism reveals that as part of its divisive policy, the colonial administration altered the existing regional arrangements by assigning the various ethnic communities to specific native reserves (Parsons 2011). Overpopulation on Kikuyu reserves pushed scores of them to illegally settle among the Kisii. To prevent deportation, ‘a larger number of Kikuyu migrants did in fact become adopted Gusii’ (ibid: 492; 503). The Kisii’s inclination to ‘incorporate outsiders from groups that also practices circumcision’ facilitated this adoption (ibid: 505). Jomo Kenyatta’s fight against colonial injustice drew considerable support from the Kikuyu living among the Kisii. The colonial government singled out and ‘detained all the adult Kikuyu men’ on Kisii land in November 1953 (ibid: 515), when Mr. Kahenda was about 9 years old. Other elderly people who fondly recalled benefitting from the Jomo Kenyatta government’s 1960s water and food distribution welfare programmes (Mogaka et al. 2006; UN-Water 2006; Nyanchaga 2016) maintained that, unlike the Luo, the Kikuyu have a leadership track record.\textsuperscript{135} This is their subtle way of asserting

\textsuperscript{133} Group Interviews with Alice Kenmunto and Vane Nyanchera (Nyamira, 20 March 2018); Juliana Kahenda and Douglas Kahenda (Nyamira, 21 March 2018); Eunice Onyancha and Jane Momanyi (Nyamira, 21 March 2018).

\textsuperscript{134} Ibid.

\textsuperscript{135} Interviews with Alice Kenmunto and Vane Nyanchera (Nyamira, 20 March 2018); Eunice Onyancha and Jane Momanyi (Nyamira, 21 March 2018).
the political maturity of the Kikuyu. Hence, they could rely on Kibaki and Kenyatta for political guidance. To buttress their argument, they referenced Kibaki’s provision of free primary school education and Kenyatta’s remittance of Ksh 2,000 monthly allowance to older people, among other public welfare programmes (details in Mwaniki 2018; Gelders & Kidd 2018).

The elderly is the first generation of Kenyans socialised to base their political choices on slanders and stereotypes like those associated with circumcision. During the 1966 Little General Election, ‘KANU campaigners in Kalenjin areas not only decried Oginga Odinga’s KPU [Kenya People’s Party] as a communist party manipulated by foreigners, but also declared that the Kalenjin had more in common with Jomo Kenyatta’s Kikuyu community, who practiced male circumcision, than with the uncircumcised Luo’ (Lynch 2006: 237; also, Atieno-Odhiambo 2002: 243). The circumcision-infused ethnocentric othering persisted through the 1992 and 1997 elections, when Oginga Odinga and his son Raila Odinga respectively unsuccessfully contested the presidency (Atieno-Odhiambo 2002: 243). When it comes to the elderly’s search for political guidance, the political ascendency of Kikuyu and Kalenjin politicians, their delivery of social welfare promises, the Odingas’ lack of electoral success, and the symbolic values associated with circumcision-related stereotypes and tropes appear to mutually reinforce one another.

Many younger Kisii interviewees also endorsed these stereotypes, particularly when discussing their selection of sexual partners, but they unreservedly admitted that, unlike their elderly counterparts, the circumcision-laden prejudices did not define their political preferences.136 The inability of their prominent co-ethnics to woo them for successive governments and the programmatic reasons they offer for their partisan choices demonstrate the relevance of their experiences to these preferences. Similar to the other Odinga supporters, Bernice Kemuma, a 34-year old Nairobi-based Kisii, accused the Kalenjin and Kikuyu of personalising the presidency.137 She decried inequality in the country, avowing that ‘since I knew politics’, presidents Moi, Kibaki, and Kenyatta have ‘been bringing a lot of development to [their] Kalenjin and Kikuyu’ communities. She deemed these leaders interested only in their communities. ‘Raila

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136 Interviews with Doreen Mbeche (Nyamira, 23 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Ted Nyagarama (Nyamira, 4 April 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).

137 Interview with Bernice Kemuma and Felix Mutuku (ibid.).
Odinga is the only one who is fighting for the rights of the common *wananchi* [ordinary Kenyans], the Form Four graduate insisted. Specific reasons interviewees mentioned for Odinga’s trustworthiness include his: advocacy for democratic changes ‘like 1997 IPPG [Inter-Party Parliamentary Group Agreement]’ (details in Chapter 6) and the ‘2005 and 2010 constitutional referenda’; and revelation of public sector graft such as the *Chickengate*, the Eurobond, and the National Youth Service (NYS) scandals (details in The Star 2016; KBC 2016; Wafula 2016; Standard Media 2016). These make them confident that political information from Odinga is more reliable.

Others also stressed that younger people’s attitudes towards the Luo is shifting, and that is somewhat informed by witnessing increasing Luo circumcision. Recapping her justification for aligning with Odinga, Ms. Kemuma, for instance, stressed that ‘but nowadays, the Luos have started circumcising’. This view can be attributed to the government-donor HIV/AIDS intervention. The Kenya National AIDS Control Programme (2010: 5) notes, due to male circumcision’s ability to inhibit HIV risk, in 2007, Kenya’s Ministry of Health rolled out the national Voluntary Medical Male Circumcision campaign. After initial resistance, traditional authorities of non-circumcising communities (Teso, Turkana, and the Luo) ‘supported the initiative’, thereby encouraging ‘young men…to undergo male circumcision in government and private hospitals and clinics’ (ibid: 5; 8). The media extensively covered this phenomenon (ibid; Kanyinga 2014: 102). This might have created awareness among some informants. This happening must have to some extent undermined the perception of Luo otherness among the younger Kisii.

In his study of the 2007 elections, Nic Cheeseman (2008: 168) termed ethnicity as ‘the main story’ and ‘generational competition as a crucial sub-plot’. Among the Kisii, the reverse is more accurate. Unlike members of ethnic communities such as the Luo and Kikuyu, different generational experiences do the heavy lifting in pushing older and younger Kisii to rely on opposing presidential candidates for information. In line with Paul Nugent’s (2001: 6) conclusion when he debunked the ethnic interpretation of Ghana’s 2000 elections, I argue that affiliation with parties in Kenya is ‘better viewed as the working through of competing discourses of marginality’ and inclusivity. This allows for capturing the political realities of communities that tend to

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138 Interviews with Tony Musuti (Nyamira, 14 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Ted Nyagarama (Nyamira, 4 April 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
unite and those that tend to divide when searching for political guidance from competing parties and candidates.

7.4 Public Appraisals: Partisanship or Direct Observation?

How does the information Kenyans have obtained affect their evaluations of election management and electoral dispute settlement processes and outcomes? Their assessments appear to be on two levels: primary and secondary. The latter assessment often focuses on their direct experiences of institutions, and it emphasises their observations of the capacity (effectiveness and efficiency) of institutions. Where the experience is good, Kenyans laud the relevant field office’s performance. Where the experience is bad, they criticise it. These appraisals are, however, not their primary or overall assessments. Their overall assessments emphasise the independence (freeness and impartiality) of top-, national-, or headquarters-level judicial and electoral officials. A juxtaposition of these assessments and those of their preferred political parties and leaders reveals that truly these entities tend to have enormous influence on Kenyans’ appraisals of the integrity of election and election petition. Just like their preferred parties and candidates, Kenyans tend to evaluate institutions whose work advances their overarching electoral wishes positively and those whose work hampers these wishes, negatively (Shah 2015; Erlich & Kerr 2016). Where Kenyans have weak attachments or/and find alternative information to be politically inconsequential to their parties, their evaluations can differ from those of their candidates or parties.

Before ECK declared Mwai Kibaki winner of the 2002 presidential race, election loser Uhuru Kenyatta reportedly ‘accept[ed] the choice of the people and concede[ed] that Mr. Kibaki will be the third president of the Republic of Kenya’ (Rugene 2002; also, The Carter Center 2003: 34-35). This suggests that Kenyatta accepted the outcome without reservation. Kenyans I interviewed unanimously agreed that the 2002 elections are the only free and fair election Kenya has seen.139 In spite of not voting this year, the Kenyatta supporter Van Kipruto agreed with his colleague Jacob Kerubo

139 Interviews with Tony Musuti (Nyamira, 14 March 2018); PN Mokaya, Feris Nyawusi, Catherine Mokaya (Nyamira, 19 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018); Joyce Moraa (Nairobi, 9 May 2018).
(a Kibaki supporter) that ‘ECK did what the people voted for’ in 2002. To Mr. Kipruto, ‘the margin between the opposition and KANU was so huge that even if someone wanted to manipulate the results, he couldn’t’. Indeed, NARC’s overwhelming popularity and victory left KANU and its supporters ‘no scope for…disput[ing] the results’ (Branch 2011: 250). That uncharacteristically ensured relatively peaceful elections (ibid.). The fact that Mr. Kipruto’s lack of experience with voting this year did not preclude him from evaluating ECK’s performance illustrates how citizens’ overall evaluations are not necessarily informed by their personal experiences.

Since 2007, political elites and their supporters’ reactions to elections and election dispute settlement have been polarised. ECK ignored the profound irregularities ODM and the European Union’s observer mission uncovered to declare Kibaki as the winner of the 2007 presidential election (Cheeseman 2008: 175; 176). ODM’s spokesperson Salim Lone described Kibaki’s re-election as a ‘blatant robbery’, while Kibaki proclaimed that ‘he won the election fairly’ (quoted in Branch 2011: 271). The judiciary subsequently swore Kibaki in as President in a quick, secretive ceremony (ibid; Gettleman 2007). Contrary to that seen after the 1992 and 1997 elections, the opposition and its supporters decided not to petition the court. This decision stemmed from their scepticisms about the effectiveness and impartiality of the judicial system (Akech & Kameri-Mbote 2012: 25; Odote & Musumba 2016:10; Majanja 2016: 22). All ODM and some PNU supporters I interviewed gave appraisals of Kibaki’s re-election and inauguration that corresponded with those of their parties. Surprisingly, some PNU faithful’s appraisals matched those of ODM.

Odinga and CORD petitioned the newly created Supreme Court to annul the presidential election results the newly founded IEBC announced to confer victory on Kibaki in 2013 (ibid.). They reportedly contended that ‘the catastrophic scale [of the collapse of the election technology] on the polling day… fundamentally changed the system of polling and the number of votes cast’ to favour Kenyatta (Jorgic & Malalo 2013). In his election acceptance speech, Kenyatta acknowledged the need to revamp future electoral processes, while affirming that the election was ‘free and fair’. Right before filing his petition, scores of Odinga’s backers, many of whom donned T-shirts

140 Interview with Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018).
141 Interviews with PN Mokaya, Feris Nyawusi, and Catherine Mokaya (Nyamira, 19 March 2018); Doreen Mbeche (Nyamira, 23 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018); Joyce Moraa (Nairobi, 9 May 2018).
142 Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018).
branded ‘democracy on trial’, clashed with the police outside of the Supreme Court. Contrary to 2007, Odinga admonished them to be calm and trust the law (ibid.). In delivering the Supreme Court’s unanimous decision, Chief Justice Willy Mutunga proclaimed that Kenyatta and Ruto had been ‘validly elected’ in a ‘free, fair, transparent, and credible’ manner (quoted in BBC 2013). Odinga begrudgingly accepted the verdict, and then wished Kenyatta well.

Members of the public’s opinions about the quality of the 2013 election and electoral dispute settlement were finely split along partisan lines.\textsuperscript{143} Similar to other Kenyatta-cum-Kibaki and Kenyatta supporters, right after denouncing the 2007 elections, Ms. Ngoroje noted she ‘believed the 2010 constitution had brought about good changes’\textsuperscript{144}. This caused Ms. Ngoroje, who had sworn to ‘never vote again’ after the 2007 turmoil, to rescind that decision. These ‘changes’, according to her, ensured that ‘in 2013, there was no rigging’. As we sat in front of her boutique the afternoon of 12 February 2018, Ms. Suzy Wanjiku, another Kenyatta-cum-Kibaki supporter, talked about the performance of election management bodies, saying that after the 2002 elections, ‘ECK… the Kivuitu commission…had many issues. They were not free, they were not independent, and they were not fair. They leaned on the side of the [Kibaki] government’\textsuperscript{145}. She referenced this to explain ‘why we had all those problems [post-election violence], even in 2007’. The 32-year old entrepreneur further used these allegations to justify ECK’s disbandment. Right afterwards, she insisted that ‘all commissions that have come [after ECK] have been fair and independent’. Her final remark is, apart from the 2007 ECK, she has ‘always been confident in the electoral body’. The Kibaki-cum-Kenyatta devotees who denounced the 2007 elections appear to have done so to strengthen their argument that the electoral system has since been overhauled. Statistical analysis of the influence of political parties on European voters’ support for European integration confirms that one of the two crucial factors that condition voters to side with their parties is the salience of an issue to the party (Ray 2003). Another quantitative evidence from Benin confirms the ability of issue salience to influence citizens’ electoral behaviour (Adida et al. 2020). A number of commissions were charged with studying the 2007 elections and the post-election violence to

\textsuperscript{143} Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018); Doreen Mbeche (Nyamira, 23 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).

\textsuperscript{144} Interview with Njeri Ngoroje (Nairobi, 13 February 2018).

\textsuperscript{145} Interview with Suzy Wanjiku (Nairobi, 12 February 2018).
understand their underlying causes. Their reports, which unveiled extensive electoral malpractices, were widely publicised (Waki Commission 2008; IREC 2008). Considering that Kibaki had reached his presidential term limit in 2013, the Kibaki-cum-Kenyatta followers probably did not find embracing the commissions’ findings to be politically costly. After all, using that as a springboard to emphasise the credibility of the victory of their current political candidate is more politically rewarding.

The judiciary’s decision to uphold the 2013 presidential election results provoked ‘an angry mood’ among Odinga’s followers in his Kisumu and Kibera strongholds (BBC 2013). Police effectively deployed tear gas to disperse ‘people protesting the ruling’ outside of the Supreme Court (ibid.). Together with the 2007 protests, these happenings point to Kenyans’ devotion to the political goals of their preferred politicians. There was relative peace throughout the election cycle (Harbeson 2014). In June and July of 2014, the Kenyatta government refused to meet with the Odinga-led opposition to discuss unrealised constitutional aspirations regarding graft, devolution, electoral integrity, and national security and cohesion. The opposition reacted by launching the Okoa (Save) Kenya campaign, which sought a constitutional referendum aimed at reconstituting IEBC, allotting more funds and powers to counties, and ensuring more transparency in vote-counting and more ethnic equality in executive appointments (Chege 2018: 165-166). Claiming that the opposition failed to gather the required voter signatures, IEBC turned down the call for a referendum. In April 2016, Odinga called for weekly protests aimed at getting the commission’s Chief Electoral Officer and commissioners to vacate their posts. Demonstrators clashed with the police. Mediation by religious groups yielded the replacement of IEBC’s leadership in January 2017 (ibid.).

While Kenyatta welcomed the original 2017 presidential election results, Odinga decried and contested it in court (ibid.). Odinga’s allegation of electoral fraud, again, sparked short-lived protests in his Kisumu and Nairobi strongholds (Aglionby 2017). He maintained that his unsuccessful presidential bids since 2007 resulted from rigged elections. He cited his abortive 2013 petition to question the impartiality of the judiciary. He, therefore, initially ruled out petitioning the court. Following domestic and international pressures, he petitioned the judiciary. This petition constituted ‘a second chance for the Supreme Court… to redeem itself, or, like in 2013, it can compound the problems we face as a country’, Odinga challenged the court (ibid.). Four out of six judges invalidated the election. The NASA coalition touted the court’s decision (ibid.;
Kanyinga & Odote 2019: 235-236). This demonstrates that, depending on whether or not institutional performance advances their cause, elite opinions can alter, even within the same electoral period. On the other hand, Kenyatta discredited the court’s ruling, describing the judges as ‘crooks…[who] sat and decided that they are the ones with a bigger power than the 15 million Kenyans who woke up, queued in lines, and voted for their preferred presidential candidate’ (quoted in Worley 2017). Jubilee functionaries continued threatening and demanding the resignation of the judges constituting the majority in this case (Kanyinga & Odote 2019: 245).

The court ordered IEBC to administer fresh presidential polls. Arguing that the failure of IEBC to implement its proposed minimal reforms would compromise the fresh elections, Odinga successfully called on his supporters to boycott it (ibid: 241; Chege 2018: 159; 166). The boycott attests to supporters’ proclivity to follow their preferred politicians. IEBC carried out the court’s order. The voter turnout was very low (below 40%), yet Kenyatta was declared victorious (ibid.). Some civil society activists unsuccessfully petitioned the Supreme Court to nullify the results (Kenya Law 2017). Kenyatta welcomed the court’s decision. He was subsequently sworn in for a second term. NASA used extrajudicial means to contest the legitimacy of Kenyatta’s re-election until 9 March 2018, when Kenyatta and Odinga made a truce or ‘the handshake’ (Burke 2018; AFP 2018).

The evaluations of individuals I interviewed largely reverberated those of their preferred politicians.146 Similar to her candidate Odinga, Dr. Joyce Moraa indignantly argued, ‘since 2007, we’ve never had genuine election results: they’ve always been rigged… by favouring Kikuyus’.147 I asked why she has voted in subsequent elections. She replied, ‘because of hope for change’ of institutional behaviour and government.148 This hints at temporality in citizens’ assessments. From Nicholas Kerr’s (2013: 830) quantitative study of Nigerians, we have learnt that ‘some citizens make their evaluations of [institutional] performance before election day’, but pre-election evaluations ‘are distinct and less driven by citizens’ perceptions of election quality’. Dr. Moraa’s statement portrays that, especially among opposition supporters,

146 Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018); Doreen Mbeche (Nyamira, 23 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
147 Interview with Joyce Moraa (Nairobi, 9 May 2018).
148 Interviews with ibid; PN Mokaya, Feris Nyawusi, and Catherine Mokaya (Nyamira, 19 March 2019); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
when an institution’s current output mirrors its past output, citizens’ current evaluations consolidate their previous evaluations and vice versa. This means, the degree of connectedness of evaluations before and after institutional performance is contingent on the consistency of the outcomes of the last and current institutional performances. For the ‘2017 repeat [presidential election], my candidate opted out, so I felt no need to vote… Myself and others called the elections a sham’, the mother of three quickly added.\(^{149}\) Although Dr. Moraa’s thought that ‘in 2013 [and previous years], judges were compromised’, in 2017, she praised their work, saying ‘we welcomed [Chief Justice] Maraga’s overturn of the presidential election’. She and other opposition supporters buttressed this point, stating that because the Chief Justice is a Christian of high integrity, he ruled without fear or favour.\(^{150}\) The attention on ‘Maraga’ validates the argument that citizens’ trust in institutions and their works is a reflection of their perceptions about institutional personnel (Pharr et al. 2000: 17; Van der Meer 2017: 5).

Jubilee supporters were also inclined to assume their party’s positions, but the intensity of that differed depending on the institution being assessed and the ethnic background of assessors. My Kikuyu and Kalenjin interviewees particularly praised IEBC’s management of the two presidential elections and the Supreme Court’s validation of the repeat presidential election.\(^{151}\) Though Njeri Ngoroje had earlier contended that in the first petition ‘we saw the four Supreme Court judges take [NASA’s] sides’, she applauded the court’s performance in the second presidential election petition.\(^{152}\) She did not ‘trust’ the first ruling but saw it as beneficial to ‘mwananchi’, in that ‘if they had decided not to call the first election null and void, we would have been in worse trouble than we saw in 2008’.\(^{153}\) Seema Shah’s (2015: 56) quantitative assessment of Kenyans’ appraisals of the 2013 elections revealed the ‘prioritisation of “peace” to be the third most powerful influence’ on their views. Individuals who tended to prioritise peace also tended to find elections as ‘free and fair’ (ibid.). Ms. Ngoroje’s assertions confirm peace is a priority, but it does not substitute for citizens’ views of the quality of institutional work. In line with Erlich and

\(^{149}\) Interview with Joyce Moraa (ibid.).
\(^{150}\) Interviews with Tony Musuli (Nyamira, 14 March 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018); Bernice Kemuma and Felix Mutuku (Nairobi, 4 May 2018).
\(^{151}\) Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Njeri Ngoroje (Nairobi, 13 February 2018); Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018).
\(^{152}\) Ibid.
\(^{153}\) Ibid. Also, interview with Eunice Onyancha and Jane Momanyi (Nyamira, 21 March 2018).
Kerr’s (2016: 694) finding about critics, she concluded our interview on the note that ‘the old judges’ should be retired and the ‘Chief Justice’ be replaced by ‘someone like Njoki Ndung’u’. She stressed that ‘Ndung’u will do a great job’. Unsurprisingly, the Chief Justice is among the judges who nullified the first presidential election and Justice Njoki Ndung’u is among those who opposed the judgment (Kanyinga & Odote 2019: 244). Ms. Ngoroje’s appraisals highlight how depending on whether an institution’s performance suits them, citizens can also alter their appraisals even within the same electoral cycle.

Similarly, seemingly puzzled by the Supreme Court’s decision to annul the results of the original 2017 presidential election because of ‘a few problems in elections in which almost everything was [done] right’, the Jubilee Party supporter Van Kipruto somewhat questioned the ruling.\textsuperscript{154} The young man, however, ‘accept[ed]’ the verdict, arguing that ‘the courts are looking for perfection’ so ‘I cannot use my candidate’s failure at the court alone to judge them’. Our conversation occurred after Kenyatta had won the 2017 repeat presidential election and had been sworn into office for his second term. Mr. Kipruto’s ‘accept[ance]’ of the court’s ruling, whose logic he disagreed with, may be attributed to the fact that the ruling no longer threatened the electoral fortunes of his preferred candidate/party. With delight, Mr. Kipruto wrapped up his point on the note that the ‘successful repeat election’ has shown the ‘the whole world…that Uhuru’s win is true; not because of rigging… Raila has lost again’. Some Kisii Jubilee followers’ appraisals of the judiciary and IEBC’s works followed this trajectory.\textsuperscript{155}

However, a noticeable number’s appraisals of the different institutions were rather closer to those of the opposition.\textsuperscript{156} Relatively, many examined the judiciary’s work more favourably than IEBC’s work. For instance, although Mr. Mokaya had earlier maintained that he ‘trust[ed]’ ECK and IEBC’s results because his ‘candidates have always won’, he conceded that the presidential election’s annulment bespoke the judiciary’s impartiality. It is tempting to attribute the praise and support the Supreme Court received from many Kisii pro-government supporters to the Kisii’s shared ethnicity with Chief Justice Maraga. Karuti Kanyinga and Collins Odote (ibid:

\textsuperscript{154} Group interview with Jacob Kerubo and Van Kipruto (Nyamira, 24 March 2018).
\textsuperscript{155} Interviews with Alice Kenmunto and Vane Nyanchera (Nyamira, 20 March 2018); Henry Momanyi, Dan Omenge, and Zack Maraga (Nyamira, 21 March 2018).
\textsuperscript{156} Interviews with PN Mokaya, Feris Nyanwusi, and Catherine Mokaya (Nyamira, 19 March 2019); Juliana Kahenda and Douglas Kahenda (Nyamira, 21 March 2018).
247) contend that Kenyatta’s vitriolic attack on the Supreme Court justices spurred ‘elected leaders’ in Nyamira and Kisii to organise ‘demonstrations to defend one of their own’ ahead of the repeat election. But an inspection of the demographics of the demonstrators shows the demonstrators were chiefly driven by partisan, rather than ethnic, interest. News reports reveal that the so-called elected Kisii leaders are also ODM/NASA affiliates (Odhiambo 2017; Ayega 2017). A short video of one of the protests indicates that these Kisii protesters are ODM/NASA devotees (Figure 7.6).

**Figure 7.6: Pro-CJ David Maraga Demonstrations Held in Kisii**

![Pro-CJ David Maraga Demonstrations Held in Kisii](image)

Source: NTV 2017

They are younger people. Moreover, one had a ‘NASA’ sticker on his motorbike. Furthermore, in an interview Wilfred Gisore, one of the protesters, granted NTV, he did not only defend the Chief Justice, but he also expressed that the government is using Jubilee’s Kisii representatives whom they had already rejected to try to appeal to them. The representatives he mentioned are unsuccessful gubernatorial candidate
Chris Obure and Charles Nyachae. Other demonstrators present seemed to agree with him, with one shouting ‘Matiang’i’ as one of those they have rejected. Information from The Presidency (2017) website and a news report (Ayega 2017) portrays another group of elected Kisii ‘leaders’ reassuring President Kenyatta of Kisii support going into the repeat election.

As found among European voters (Ray 2003), the Jubilee Kisii supporters that approved the presidential election’s nullification might have done this because of their weak attachment to their party. Because the Kisii do not have strong allegiance to political parties, they are inclined to be more: critical of information from politicians; and receptive of cogent alternative evidence. Therefore, the Jubilee followers likely meant it when they reported the following reasons pointed to the reliability of the verdict. First, they have seen the executive co-opt the judiciary in the past, so the nullification means the judiciary is indeed independent. Second, the IEBC internal rift that led to the resignation of Commissioner Dr. Roselyn Akombe and the falling-out of the CEO and the Chairman reveals partisanship and partiality in its work (Daily Nation 2017; Burke 2017). The happenings were widely discussed in mainstream and social media and physical conversations.

With some scholars stressing the relevance of direct experience or observation to citizen appraisals (Tyler 1988; Bratton 2012), I inquired about this from my interlocutors. Their responses reveal no congruous differences among Kenyans of different political backgrounds. Many had neither experienced courts nor ECK first-hand, yet they either passed negative or positive comments about their works. Others also categorically discounted the quality of their direct experiences. While recounting his voting experiences under ECK and IEBC, Jacob Kerubo, who had earlier slurred the credibility of the 2013 and 2017 elections, confessed that IEBC’s introduction of election technology ‘made voting very fast’. By 5pm, we were done with the elections in many polling stations. During the manual voting process in the years before, it took a long time to identify voters and even allow them to vote’, he added. The man from West Mugirango Constituency has also observed improvements

157 Interviews with Suzy Wanjiku (Nairobi, 12 February 2018); Peter Ondari, Mailori Ondari, and Moraa Osiero (Nyamira, 19 March 2018); Alice Kenmunto and Vane Nyanchera (Nyamira, 20 March 2018); Joyce Moraa (Nairobi, 9 May 2018).
158 Interviews with Njeri Ngoroje (Nairobi, 13 February 2018); PN Mokaya, Feris Nyawusi, and Catherine Mokaya; Jacob Kerubo and Van Kipruto (Nyamira, 24 March, 2018); Joyce Moraa (Nairobi, 9 May 2018).
159 Interview with Jacob Kerubo and Van Kipruto (Nyamira, 24 March, 2018).
in IEBC’s functioning: ‘we started electronic voting in 2013, but… [from what] we saw, even here in Nyamira, electronic voting failed. So, we went back to the manual voting in 2013’. Widespread technological failures and missing names from voter registers are among the gamut of irregularities voters experienced this year (Shah 2015: 52). Consistent with Erlich and Kerr’s (2016: 694) finding among opposition supporters, Mr. Kerubo believes outgoing President Kibaki influenced IEBC to revert to manual voting so as to ‘steal the elections for Kenyatta and Kikuyus’. This is a confirmation that in fledgling democracies, it is common for citizens to conceive capacity issues as autonomy deficits (Pastor 1998: 1; Mozaffar & Schedler 2002: 9; Gazibo 2020: 182). ‘But in 2017, electronic voting was done well’, the consistent opposition follower proclaimed. These admissions highlight Kenyans’ awareness of reforms. But for supporters of election and petition losers, these improvements are to institutional capacity, not independence.

Despite having had ‘ok [orderly]’ experiences with ‘voting from 2002 to now’, Dr. Moraa disappointedly remarked, ‘our votes don’t count’. Her reason is, ‘there is rigging’, which occurs ‘not at the polling station but at the national tallying centre’.160 This implies that citizen evaluations of the works of field officers are delinked from their evaluations of the works of national officials. Their overall appraisals are grounded in their perceptions of national level officials’ functioning, a process citizens are not directly involved in. Hence, they rely on their preferred politicians for information about the ultimate outcomes of elections and petitions.

### 7.5 Conclusion

Kenyans appear polarised in their examinations of election and electoral dispute settlement processes and outcomes following the 2002 general elections. Elucidating these assessments drives this chapter. The main finding is that Kenyans’ sources of information about elections and electoral disputes shape their evaluations, albeit on different levels, at different rates, and under diverse conditions. These sources are traditional and social media, face-to-face interactions, direct experiences, and political parties and candidates. Of all these sources, their preferred political

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160 Interview with Joyce Moraa (Nairobi, 9 May 2018).
parties and candidates, whom they trust most, have the most impactful influence on their overall evaluations. This is why whereas supporters of presidential elections and petitions winners are inclined to rate these processes and outcomes favourably, supporters of losers do the opposite. This research is significant to the practice and research of public service delivery, public attitude formation, and institutional consolidation.

Students of public policy delivery often assume that citizens infer the work of the state from their interactions with public institutions (Bierschenk & Olivier de Sardan 2014). The current research illustrates that is only partially true. National-level political parties and leaders, not ‘street-level bureaucrats’, predominantly mediate the relationship between citizens and institutions. That is not to say that public officials do not matter. Electorate’s experiences of them shape how they evaluate the capacity (effectiveness and efficiency) of election management and electoral dispute settlement on the ground. Electorate’s proclivity to disregard their personal observations, or the lack thereof, when providing their overall appraisals of the quality of institutional work (presidential elections and petitions) suggests their appraisals are on two levels – secondary and primary –, but it is the latter that matters most to them. This is a setback to the new Kenyan constitution’s aspiration to taper the acute public interest in national politics by redirecting it to county politics (Cornell & D’Arcy 2014; Waddilove 2019).

The two-tier appraisal indicates that context matters to Kenyans. Citizen assessments of presidential elections and petitions may vary from their assessments of other elections such as Gubernatorial and Member of County Assembly elections and associated petitions. Therefore, students of Kenyans’ attitudes should not be quick to estimate one from the other and generalise. Even though Kenyans are not inclined to readily discuss the other elections (creating the impression that their assessments of those match their overall assessments), subsequent research should endeavour to investigate Kenyans’ ideas about these elections and their petitions. That can unveil the varying opinions particular individuals and groups have about the quality of the various elections and their petitions.

The study of citizens’ attitudes should also treat Kenyans’ delineation of institutional capacity from independence seriously. Their primary appraisals emphasise independence, whereas their secondary appraisals stress capacity. So, in their assessments of particular county-level elections and petitions, they may again
discount their own experiences or observations of institutional capacity and concentrate on their perceptions of institutional independence.

How Kenyans acquire the knowledge they possess is also revealing. Individuals’ ideas about the pathways to inclusion in the distribution of public resources make their preferred national politicians and/or parties the most trustworthy/reliable information source. The existing literature on Kenyan politics is preoccupied with using ethnicity to explain citizen alliances with political elites (Lynch 2006; Ghai & Ghai 2013; Shah 2015). That seems like the case for ethnic communities such as the Kikuyu, Kalenjin, and Luo. But among the Kisii, the ethnic interpretation does not stand up to close scrutiny. The Kisii consistently split near evenly to ally with either sides of the political divide. Notwithstanding that Africa- (Bratton 2012) and Kenya-wide (Shah 2015) statistical studies find no relationship between the public’s assessments and age, the Kisii case instructs us to attend to the experiences of people of different generations. For a holistic understanding of the political attitudes of Kenyans, regions with particular ethnic groups numerically dominating but appear divided in partisan affiliation have to be studied thoroughly alongside those that appear united behind particular parties. Apparently, the juxtaposition of the ethnic composition and the voting patterns of counties such as Wajir (98.7 percent Somali Kenyans), Garissa (79.6 percent Somali Kenyans), and Samburu (78.8 percent Samburu) places them within the former category (Wiesmann et al. 2016: 56; Appendix I; Waddilove 2019: 349).

The notion that citizens’ engagement with democratic institutions such as election management bodies dictates their attitudes and behaviours towards these institutions drives peacebuilding efforts to recommend reform as the remedy for the public’s displeasure with institutional performance (Olivier de Sardan 2014: 426; Gazibo 2020; Bekoe & Burchard 2020: 267-268). This chapter demonstrates that this solution largely misses the problem. So long as political elites, whose information their supporters find most reliable, continue to denounce the work of (even reformed) institutions, we can expect to find some citizens disgruntled with the institution’s work. Indeed, ‘how parties choose to interact with voters and what they communicate with voters’ is pertinent to ‘how citizens experience democracy’ (Kramon 2020: 217). But this chapter indicates that citizens are not passive consumers of information from their parties. Where they have weak allegiances to their parties and where an evaluation is politically not costly to their parties, citizens may disregard the utterances of their
preferred politicians and/or parties and embrace more convincing information from the other information sources. That means, they at times focus on the actual functioning of institutions. This signifies citizens’ agency, an information previous studies on the interrelationship between parties and their supporters do not emphasise (Ajulu 2002; Lynch 2006). The implication of this paragraph is that although it is good to strengthen institutions while trying to improve popular confidence and legitimacy in their performance, the attainment of this goal primarily rests on making political elites more accountable and responsible in their engagements with both institutions and citizens.

Finally, this chapter gives voice to the debate on the relationship between institutional performance and citizens’ appraisals of it by maintaining that although both phenomena share several characteristics, they are fundamentally disconnected. Some analysts maintain that citizens’ appraisals represent the actual functioning of institutions, while others contend that these appraisals ‘merely return the popular image of [an] administration, rather than actual functioning’ (Licari et al 2005: 365; also, van de Walle 2006: 446; Van Ryzin 2007). Chapters 5 and 6 reveal the characteristics of institutional performance, arguing that ECK, IEBC, and courts produce intricate blends of successful and unsuccessful electoral and petition outcomes that vary within and across time and space. This stems from the complex combinations of forces intrinsic and extrinsic to the institutions. In the current chapter, we have learnt that Kenyans’ appraisals of ECK, IEBC, and courts are equally diverse combinations of positive and negative ratings that vary temporally and spatially. These appraisals also originate from the inconsistent merger of influences internal and external the institutions. Furthermore, from Kenyans’ secondary appraisals, we know that citizens sometimes evaluate their personal experiences and observations of institutions in action. Additionally, the current chapter portrays how Kenyans sometimes substitute electoral information from their preferred political parties or candidates for those emanating from alternative information sources like their personal experiences and observations.

From the commonalities between institutional performance and citizens’ appraisals, it is tempting to conclude that appraisals are rooted in the objective functioning of institutions. However, Kenyans’ primary appraisals of ECK, IEBC, and courts’ work challenges this conclusion. When expressing such appraisals, people’s partisan subjectivities, not objective institutional functioning, primarily influence them. This is why while a person whose party/candidate loses an election or a petition is
inclined to criticise these processes and their results, those whose party/candidate wins are inclined to do the reverse. This attests to the subjectivities of the public’s opinions about institutional performance. Based on this finding, the chapter claims that citizens’ appraisals largely do not mirror the reality. In sum, the differences and commonalities I have discussed instruct us not to consider the relationship between performance and appraisals as absolute (objective or subjective) but as relative (diverse mixtures of objectivity and subjectivity). This results from the mutually reinforcing and undermining interactions between formal and informal institutions.
8 Summary, Conclusions, and Recommendations

8.1 Introduction

Kenya embarked on deep citizen-oriented institutional reforms in the aftermath of the 2007-08 post-election violence that claimed several lives and displaced many others. A longstanding public confidence deficit in the Kenyan state warranted these reforms. The reforms were targeted at fostering the state’s work and the public’s confidence in it. The promulgation of a new constitution in 2010 set the ball rolling by prodding the government to act on popular request for legal and institutional modifications. Among the reforms were the ratification of the National Land Policy (NLP) that was meant to promote equal land distribution, the devolution of executive and legislative powers to counties, and the enhancement of the capacity and independence of public institutions such as the police service, election management body (EMB), and the judiciary. Research on the effects of the reforms have disclosed how certain quintessential elements of the pre-reform era, namely unfair institutional performance and disillusioned citizenry, have resurfaced in the post-reform era (Wolfrom 2013; Chome 2013; Harrington & Manji 2015; Chege 2018; Mutahi & Ruteree 2019). The seeming ineptitude of the reform to feed into Kenyans’ perceptions of the state basically drove this thesis to ascertain why, despite the institutional strengthening, citizens’ perceptions of the functioning of institutions appear unimproved? Are individuals’ views of the work of institutions informed by the actual work of the institutions or by something else? Studies have not sufficiently investigated this conundrum (Shah 2015; Erlich & Kerr 2016). This thesis, therefore, makes this problem its preoccupation.

To realise the research goal, I carried out a qualitative case study of Kenyans’ appraisals of the performance/functioning of electoral governance institutions before and after the reforms (2002-2017). That entailed formal and informal one-on-one and group interviews and observations in Nairobi and Nyamira counties and analysis of organisational, scholarly, and social and mainstream media publications. Institutional performance in this research is conceptualised as the state’s duty of actually delivering or implementing public policies. Features of institutions that affect the quality of implementation processes and outcomes are institutional capacity (effectiveness and
efficiency) and autonomy (independence and fairness). Public policies are collective goods and services widely perceived as a social necessity that the state is directly or indirectly responsible for making available to citizens. As exemplified by the reform policies in the foregoing paragraph, public goods and services are numerous and diverse. The search for a thorough understanding of the relationship between Kenyans and the Kenyan state required narrowing the topical focus of this thesis to electoral governance, ‘the wider set of activities that creates and maintains the broad institutional framework in which voting and electoral competition take place’ (Mozaffar & Schedler 2002: 7). The rule application (election administration) and the rule adjudication (electoral dispute settlement) facets of electoral governance are at the heart of this research. Institutions respectively charged with election administration and electoral dispute settlement are EMBs and the judiciary. The Electoral Commission of Kenya (ECK) and the Independent Electoral and Boundaries Commissions (IEBC) constitute Kenya’s permanent EMBs. IEBC was created to replace ECK, which was disbanded for complicity in the shambolic 2007 polls (Wolfrom 2013). The judiciary consists of courts, including Supreme and Magistrate courts (Mbondenyi & Ambani 2012). Unravelling how Kenyans of diverse social and economic backgrounds reason about the performances of these state machineries has been the fulcrum of this thesis. For the purpose of verifying whether the public’s understandings of election management and electoral dispute settlement reflect the reality, I also perused how electoral governance institutions have executed their mandates in reality within the same timeframe.

Diverging from the usual approach of treating electoral governance as just integrity or manipulation issues (Schedler 2002; Mozaffar 2002; Omotola 2010; Lynch & VonDoepp 2020: 4; Jenkins 2020), this thesis considers the subject as the state’s work or public service delivery. In doing so, the thesis brings new insights into the research on electoral governance and public service delivery. It reveals how the bureaucracy of electoral governance institutions itself shapes the credibility and legitimacy of election management and electoral dispute settlement. Moreover, it enables the exploration of the relationship between institutional performance and the social and political environments within which institutions are situated (Pepinsky et al. 2017). Lastly, it extends extant knowledge on the state’s work (Lipsky 2010; Bierschenk & Olivier de Sardan 2014) by, for example, by unveiling the
interrelationship among street-level bureaucrats, headquarters-level bureaucrats, and public service delivery.

Themes from the literature on public attitudes formation (e.g. Bratton 2012; Kerr 2013; Moehler 2009; Erlich & Kerr 2016; Nyabuga & Ugangu 2018; Orji 2019) and public policy implementation (e.g. van de Walle 2001; Bierschenk & Olivier de Sardan 2014) guided my formulation of the research questions for the investigation. I asked: how have external forces (social and political environment) shaped ECK, IEBC, and courts’ performances; how have the mechanisms (internal structures, norms, and processes) of these institutions affected their performances; and how have Kenyans’ sources of information (direct experience of the actual functioning of institutions, social and traditional media, face-to-face interactions, and political candidates and parties) influenced their assessments of courts, ECK, and IEBC’s delivery of elections and electoral justice? Comparing the works of the institutions and the public’s examinations of them makes the extent of the congruence of the two lucid.

This chapter is primarily aimed at outlining the key findings of the thesis and the conclusions made from them. The experiences of the personnel of ECK, IEBC, court and organisations that work with/on these institutions demonstrate that the works of both the pre-reformed and the post-reformed institutions are intricate combinations of successes and failures that oscillate across and within contexts. Forces endogenous and exogenous to institutions merge to produce these results. The endogenous forces are the norms, structures, and processes found within institutions. They include human and material resource, recruitment rules, employee cohesiveness, and workload and its associated deadlines. In some instances, they are practical, but in other instances, they are not. In the latter case, judicial and electoral officials dedicated to institutional goals replace unfeasible standard institutional approaches with unofficial, but useful, approaches to doing work. At other times, self-interested officials jettison institutional means and/or goals to foster their personal or factional aspirations, among which are partisan causes and self-enrichment. Through the appointment and the job security of electoral commissioners, judges, and magistrates, the financing of their affiliate institutions, and the threat of and actual violence to the institutions and their employees, external actors (opposition and incumbent parties, their supporters, and donors) create incentives (fears and desires) for institutional actors to shirk or uphold their mandates. The effects of the intrinsic elements of institutions and the environment
in which institutions operate are inconsistent across settings. That explains the spatial and temporal variations in institutional performance.

The opinions of individual Kenyans who participated in this research highlight different mixtures of positive and negative views the public holds about the course and results of particular election management and electoral dispute adjudication. These views evince the bi-level citizen appraisals, i.e. secondary and primary appraisals. The myriad of channels from and through which information about electoral governance originates and reaches citizens jointly shape these assessments, but at disparate degrees, on different levels, and under diverse circumstances. Empirical electoral governance, traditional and social media, physical social networks, and political parties and candidates constitute the information sources. Secondary evaluations stem from individuals’ direct observations of the perceptible effectiveness and efficiency of electoral governance institutions and primary evaluations emanate from information about the independence and fairness of these institutions that Kenyans receive from their preferred parties and candidates. The credibility political parties and candidates have in the eyes of their followers when it comes to securing the social and economic wellbeing of their support bases make them the most reliable source in the chain of information acquisition. Primary appraisals are people’s overall assessments, whereas secondary appraisals are their peripheral assessments. Where an individual’s loyalty to his/her party is weak and where admission of alternative information is not politically costly to one’s party, that person may embrace more cogent opposing information from sources other than his/her party or candidate. The dynamics of the amalgamation of the institutional and the social and political forces in different localities complicate the public’s evaluations.

Noticing that the interplay between official (institutional) and unofficial (social and political) factors engenders both the performance of institutions and the appraisals of citizens, the thesis concludes that both phenomena are determined by formal and informal institutions. Formal institutions are the rules and procedures of behaviour formulated, disseminated, and imposed via officially accepted avenues and informal institutions are those whose creation, communication, and enforcement occur through unofficial channels (Helmke & Levitsky 2004; Bratton 2007). These forms of institutions simultaneously sanction the actions of public institutions and citizens.

Placing the actual electoral governance in Kenya and its examinations by Kenyans side-by-side illuminate the degree to which the public’s appraisals represent
the reality. We can claim consistency between the two only to the extent that: they are marked by nuanced blends of successes/positives and failures/negatives predicated on the interaction between institutional and environmental forces; secondary appraisals are informed by citizens' first-hand experiences of institutions in action; and where the bond between a person and his/her party is fragile and where one's contradiction of his/her party/candidate’s assertions does not appear politically damaging for that party/candidate, that person may reference his/her direct observations when asserting overall evaluations. With partisan considerations being the main driver of the public's overall examinations, the thesis argues that the two are fundamentally disjointed. Party supporters' prime perceptions of election management and electoral dispute settlement are highly susceptible to changes in the postures of their parties and candidates on these issues. The inclination of supporters of election and election petition losers to repudiate these processes and their results and the propensity of their counterparts on the winning side to do the reverse only reflect the polarity in the stances that losing and winning parties and candidates assume. Thus, the thesis concludes that partisanship underlies the apparent inability of institutional reforms to uniformly stimulate the public's views on institutional functioning.

The present chapter consists of two main sections. In its demonstration of how the research questions in this research have been answered, the first section recaps the key findings of the thesis, takes stock of new insights generated by the chapters, and emphasises the proximate conclusions derived from the empirical analysis. The final section teases out the broader implications of the research findings as they pertain to the general study and practice of public policy implementation and public attitudes formation. Its purpose is to consolidate approaches to knowledge generation and policy innovation.

8.2 Summary and Conclusions

This section summarises the key findings of this research in light of the ongoing theoretical debates in the fields of public attitudes formation and public policy implementation. While doing so, it accentuates the conclusions drawn from the findings. The dynamics of actual electoral governance in Kenya and the forces that
spur it give the impression that it is analogous to Kenyans' overall examinations of electoral governance. Kenyans’ appraisals are characterised by complex combinations of positives and negatives, and electoral governance is characterised by complex combinations of successes and failures. Societal, political, and institutional forces interpenetrate each other to complicate institutional performance and citizens’ opinions of it. Based on these findings, it is tempting to conclude that the public’s assessments equal institutional functioning. That is the case for Kenyans’ secondary appraisals but not their primary appraisals. Upon a closer look, it is clear that partisan concerns, not the actual workings of electoral governance institutions, fundamentally direct Kenyans’ primary appraisals. The influence of other information sources – namely, actual institutional functioning, social and traditional media, and physical social networks – on these evaluations is scant. Regardless, they cannot be downplayed. Under certain conditions, they may take precedence over partisan considerations. The main conclusion from these findings is that the determinants of the multifaceted institutional performance and citizens’ appraisals of it are legion, even if the extent of their impacts are not the same every time and everywhere. Each explanatory factor can shed light on bits and pieces of the phenomena being explored. The search for comprehensive insight into each phenomenon, however, requires knowing their collective effect.

8.2.1 Institutional Performance

As seen in Chapter 2, two main analytical positions exist for the study of public policy implementation. One is the neopatrimonialism viewpoint, which emphasises executive governments’ deployment of institutional capacity to their advantage. That is to say, implementation processes and outcomes are neither fair nor inclusive (Bratton & van de Walle 1997; van de Walle 2001). This is a dominant frame through which implementation in Kenya and broadly in Africa has been explained. The other frame stresses the mechanism (internal structures, norms, and processes) of bureaucracies in complicating implementation. It is in its infancy in public service delivery studies in Africa (Bierschenk & Olivier de Sardan 2014). In clarifying how Kenya’s judiciary and EMBs have governed elections, some of the empirical chapters draw on the experiences of judicial and electoral personnel to help modify certain conjectures constituting both perspectives. The combination of both perspectives, an act that offers
a holistic insight into the sources of the state’s capacity and autonomy, in a single research is another original contribution of this thesis.

The neopatrimonialism school of thought maintains that particularistic features of African states (e.g. personalisation of power by executive governments, clientelism, and corruption) pervert public goods and services delivery (van de Walle 2001; Mueller 2014). A finding from inspecting how ECK, IEBC, and courts in Kenya work (chapters 5 and 6) is that none of these institutions produces a completely imperfect or perfect outcomes. Specifically, these chapters maintain that across and within time and space, the institutions produce varying mixtures of successes (intended or desirable outcomes) and failures (unintended or undesirable outcomes). Spatially, variations can be seen in the practices and outputs of the institutions’ departmental, local, regional/county, and national offices. For instance, electoral officers spoke of the different applications of electoral rules in political party strongholds and electoral battlegrounds, arguing that it is done more fairly in the latter territories than in the former. Variances also exist in institutions’ work across and within periods. Employees of the reformed judiciary and its strategic partners whom I interviewed asserted that the institution’s performance in 2017 was better than in 2013. Others added, the Supreme Court’s unprecedented annulment of the 2017 presidential election results attests to its independence and fairness, but its inability to raise quorum to hear a subsequent petition signals a breach of that independence. The fact that no institution’s (even reformed ones) work can be said to be wholly perfect or imperfect supports the claim that public policy implementation is not an all-or-nothing variable, but rather a continuum of perfections and imperfections (Goggin 1986: 331; Bierschenk & Olivier de Sardan 2014: 50). Totally perfect or imperfect delivery are ideals that cannot be observed in reality. The description of an institution’s work as either successful or unsuccessful is, therefore, only a simplistic reference to the side of perfection-imperfection continuum it leans more towards. Underlying such descriptions is the admission that implemented policies are a gradation of expected and unexpected qualities.

This thesis throws more light on the roots of the nature of the course and products of institutional performance. Political and economic malaise in Africa (Bratton & van de Walle 1997; van de Walle 2001), in general, and in Kenya (Mutua 2001; Branch & Cheeseman 2006; Mueller 2014), in particular, has often been attributed to neopatrimonialism. This anomaly manifests in rent-seeking and ethnic patronage. The
executive manipulates its unfettered powers to direct institutional workings in a direction that preserves its ascendancy vis-à-vis its opponents (ibid.). In its outline of the Kenyan political context and a justification for this research, Chapter 3 demonstrates that to assert control, the British colonial administration used the neopatrimonial logic to form the Kenyan state. State power was centralised in the executive, other state institutions deferred to the executive, and public resources (e.g. land and public sector jobs) were shrewdly distributed through the executive’s extensive patronage network that projected its influence beyond the centre. Many features of the original state, including executive influence in other state institutions’ work, outlived colonialism and became prominent components of the African-rule one-party and multiparty states. While interrogating ECK, IEBC, and courts’ performances in contemporary Kenya, Chapter 6 confirms the persistence of executive interference in election management and electoral dispute settlement. One way that has been made possible is through the executive’s official powers over the careers (e.g. appointment and dismissal) of judicial and electoral actors, officials who participated in this research contended. They claimed that these powers enabled presidents to preserve their rule by appointing sympathisers, notably co-ethnics and political allies, to lead these institutions. Officials who resisted were threatened with dismissal. Another avenue my interviewees divulged is the executive’s use of its powers over the institutions’ budgets. They further argued that the fear of job loss and budgetary cuts and the desire for job security and funds insured that certain institutional actors safeguarded presidents’ rule. All these undermined institutional capacity and autonomy, according to the interviewees. These findings highlight the relevance of historical legacies in current affairs.

Chapter 6 augments the extant knowledge on the external influence-performance nexus by establishing that other environmental agencies contribute to institutional functioning, institutional actors have agency, and external influence can simultaneously facilitate and hamper implementation. Institutions rely on donors for financial and technical support. As an example, employees of the judiciary and the EMBs and their strategic partners whose opinions I sought admitted that despite its limitations, donor financial and technical assistance has helped courts, ECK, and IEBC to cope with the attendant strain of government’s reduction of their budgets. That has induced their capacity and autonomy, according to them. Finally, I found that through constitutional (e.g. appointment) and extra-constitutional (e.g. threat of and actual
violence) avenues, affiliates (candidates and supporters) of all sides of the political divide sway institutional performance. As an example, the attempt to lessen the president’s control over ECK brought about the 1997 Inter-Party Parliamentary Group (IPPG) agreement – an unofficial gentleman’s agreement among political elites that suspended the legal provision allowing presidents to unilaterally appoint ECK commissioners and permitted opposition parties in parliament to participate in the appointment process. The data shows that IPPG balanced political interests within ECK. That played a crucial role in stimulating the institution’s fairness in the 2002 elections that ended outgoing president Daniel arap Moi’s reign. Furthermore, even though my interlocutors trusted the Supreme to have exhibited acute independence when it unprecedentedly annulled a sitting president’s election in 2017, many of them perceived the court to have cowered in terror when it failed to raise quorum following the shooting of the Deputy Chief Justice’s bodyguard on the eve of the hearing of a petition aimed at halting the repeat 2017 presidential election. From these findings, I conclude that the social and political environment within which institutions are embedded affect the character of their works.

The thesis furthers implementation studies that look within institutions for answers. From their collaborative research with others in West Africa, anthropologists Thomas Bierschenk and Jean-Pierre Olivier de Sardan (2014) trace the complexity (inconsistent mixtures of successes and failures) of public service delivery to the fluctuating fusion of the formal and the informal norms, structures, and processes constituting institutions. Research based on cross-continental research into the performance of bureaucracies across the developing world deduces the quality of institutional performance from the internal recruitment practices of institutions (Evans & Rauch 1999: 751-752; Rauch & Evans 2000: 52-53; Chibber 2002; Rothstein 2015: 540; Zang 2017: 218). It maintains that where technical know-how and rule-based considerations (meritocratic mode of hiring) are prioritised over personal (kinship and patronage) ties (nepotistic mode of hiring), institutions’ technical competency and cohesiveness improve. These improvements heighten capacity and independence (ibid.). Notwithstanding its explanatory potentials, the application of the mechanisms of institutions is largely missing from Kenyan and electoral studies. Noticing that, Chapter 5 analysed the relationship between it and implementation. This exercise bolsters the current knowledge on implementation in Kenya and the general comprehension of the institutional mechanism perspective.
The chapter found that though the modes of hiring (meritocratic and nepotistic) can affect performance, the relationships between them and outcomes are more inconclusive and nuanced, even in the same state, than analysts believe (ibid.). The recruitment practices of ECK and pre-reform courts and their attendant personnel relations and motivations reveal close-knit, centralised networks of employees who share values and expectations of reciprocity revolving around particular internal patrons’ agenda. Officials in these institutions tend to replace institutional preferences with personal and factional ones, including political preferences, personal enrichment, and job security. The data reveals that through nepotistic mode of hiring, internal ‘godfathers’ or self-interested upper echelon judicial and electoral officials filled lower-level vacancies with their relatives and co-ethnics, who, as per convention, requited the favour with loyalty. This practice frequently perverted the works of both institutions, since venal upper echelon judicial and electoral officials used their positions to advance the interests of the wealthy and powerful. My analysis of the relationships within the post-2010 judiciary shows that it is predominantly characterised by cohesiveness predicated on common interest in and pursuit of institutional goals. As with the bureaucrats in the ‘developmental state’, judicial personnel in this institution perceive ‘themselves as having joined their confreres in office by virtue of sharing similar abilities’ and were ‘more likely to internalize shared [institutional] norms and goals’ (Evans & Rauch 1999: 752). That commonness seems to have engendered mutual respect among judicial officials and employee-initiated internal capacity monitoring. That promoted the judiciary’s capacity and fairness, but even so the institution did not function as impeccably as the literature projects. A comparison of the reformed judiciary’s capacity in 2013 and 2017 reveals that courts across the country underperformed markedly in 2013 because of their lack of preparation for dealing with huge unprecedented quantity of petitions within a short constitutional time limit. That means, there is more to understanding performance than the recruitment and cohesiveness thesis puts forward. Employee relations within IEBC, where nepotistic hiring loom large, particularly disclosed the institution’s apparent lack of cohesion. However, islands of unity founded on personnel commitment to the competing power nodes within the institution exist. While the lack of cohesion predominantly subverted IEBC’s capacity and autonomy, the competition among the various factions is capable of safeguarding against the complete capture of the institution’s work by any group. A striking insight from these findings is, every institution
can concurrently display signs of coherence and incoherence. These characteristics may also have changeable effects on institutional performance. Both highly cohesive and fractured institutions may have subgroups that defend or reject institutional means and/or goals. The use of institutional (in-)coherence should, thus, be a mere reference to the most striking appearance of an institution. Since varying blends of disunity and unity exist within given institutions, an institution that mostly displays any of these features may still produce outcomes bearing traces of the other.

As well, the examination of ECK and IEBC hiring practices also uncovered the utility of sometimes sidestepping meritocratic recruitment rules and procedures. To illustrate, electoral officers participating in this study confessed, staff are needed to do work but in some cases official hiring approaches fail to attract the requisite number of employees needed to administer elections. Compelled by such a happening, officials who claimed to be committed to their work admitted to discarding official hiring rules and procedures to source for employees from their personal and professional networks. Put together, the aforementioned incentives for nepotistic hiring and the finding here unearth three motivations for the introduction of informality into institutional performance: bureaucratic, practical, and personal/factional considerations (also, Bierschenk & Olivier de Sardan 2014). These motives became apparent when Chapter 5, unlike the existing research, thoroughly interrogated the interrelationship between street-level and headquarters-level officials. While discussing the effects of the intrinsic components of institutions on officials’ (in-)action as well as officials’ navigation of these structural controls, these findings underscore not only the context-contingency of the impacts of structural elements on the behaviours of institutional actors but also the power of bureaucrats to mutually affect institutional preferences.

Finally, the thesis speaks to the literature on the relationship between institutions and democracy in Africa. Gabrielle Lynch and Peter VonDoepp (2020) have classified conversations surrounding democracy in sub-Saharan Africa into optimistic, pessimistic, and complex viewpoints. Pessimists give a grim picture of the region’s democratic experiences and trajectories, even where pro-democracy movements and transitions to multiparty politics exist. Contrastingly, optimists have a ‘bias for hope’ by concentrating on the actual changes that occur as well as the possibilities they offer (ibid: 1). Those who subscribe to the complex viewpoint emphasise that the region has recorded a hybrid of democratic gains and reversals
that can be unearthed by scrutinising ‘histories, contexts, and interactive dynamics’ (ibid: 2). This thesis sides with the last perspective. Regarding institutional performance and Kenya’s democracy, Chapters 5 and 6 unveil how irrespective of the temporal and spatial differences in the electoral work of courts, ECK, and IEBC, no institution can boast of completely advancing or hampering the credible, constitutional selection of the leadership of Kenya – a crucial feature of democracies (ibid: 3-6). For instance, many of my interviewees comparatively rated the performances of the 2002 ECK and the 2017 judiciary as the best, followed by the 2013 IEBC and judiciary, and then the 2007 ECK and judiciary. Nonetheless, Chapter 5 establishes that even the 2002 ECK went against electoral law when it referenced provisional results to declare the winner of the 2002 presidential election. Similarly, from Chapter 6, we know that the 2017 judiciary, which was lauded for exhibiting high independence when it nullified a sitting president’s election, cowered in terror when it failed to raise quorum to examine another presidential election petition. This chapter also shows that even in 2007, when electoral malpractice was widespread, some ECK officials swiftly corrected mistakes in election results. This evidence confirms that depending on the context, every institution, both weakened and strengthened ones, may concurrently ensure democratic progress and backsliding. Context is, thus, important when examining the contributions of an institution to democracy, as some analysts contend (ibid; Ellett 2020).

Other analyses on the relationship between institutions and democracy stress the need to investigate ‘the great variety of relationships that exist between formal and informal realm’ as well as ‘the informal foundations of formal structures, and the ways in which the official rules of the game shape informal processes’ and vice versa (Cheeseman 2018: 373; also, Ellett 2020; Signé 2020). Chapters 5 and 6 conduct this investigation and reveal that informality and formality affect democracy by undercutting or advancing elections and petitions. None can be said to be intrinsically inimical or beneficial to democracy. As an illustration, IPPG, an informality, contributed to the strengthening of Kenya’s democracy in 2002 by balancing the political interests in the ECK and ensuring relatively peaceful elections. Also, the formal means of appointing judicial officers respectively had negative and positive effects on the electoral work of the judiciary in 2007 and 2017 (Chapter 6). In 2007, the president’s manipulation of his constitutional power to appoint judges enabled him to saturate the judiciary with his sympathisers right before the elections. Impacts of this on Kenya’s democracy are
that it detracted from confidence in courts and conditioned the 2007-8 post-election violence. In 2017, the post-2010 reforms’ watering down of the executive government’s influence over the appointment of judicial officers insulated and empowered these officers. This manifested in the Supreme Court’s unprecedented annulment of the sitting president’s election. To borrow the words of Lynch and VonDoepp (2020: 7), these findings collectively highlight how the link between formal and informal ‘institutions and democracy is far from clear-cut, and how many of the common presumptions that have characterized the study of African politics [the neopatrimonialism perspective] are misguided or overly simplistic’. They further illustrate ‘how much more attention still needs to be given to local realities, the informal institutions that operate within those contexts, the relationship (in practice) between formal and informal institutions, and the role and experience of various groups of people’ (ibid.).

The chapters on state performance underline the salience of forces exogenous and endogenous to institutions in shaping the processes and outcomes of implementation. In their effort to secure power, political elites and their supporters use a myriad of means to tilt electoral and judicial outcomes in their favour; thus, undermining institutional independence. Electoral and judicial officials also form capacity- and autonomy-enhancing alliances with other state, civil society, private, and international organisations. Moreover, the very official norms, structures, and procedures of institutions are applicable in some instances but not others. Where they are impractical, officials committed to institutional ends substitute them with practical ones. Others also do these substitutions to advance their personal or factional benefits. This portrays the agency of institutional actors in also shaping the preferences of institutions. Together, the internal and the environmental factors drive institutions, even reformed ones, to produce complex mixtures of successes and failures. These findings lead me to the conclusion that the fusion of the formalities and the informalities originating from within and outside of institutions affect the quality of implemented policies.

8.2.2 The Public’s Appraisals of Institutional Performance

Implementation studies signal the import of public policy delivery to citizens but they do not take how and why citizens form specific opinions about it seriously. With
citizens’ attitudes being vital to the legitimacy and support the state enjoys, democratisation and media studies have assumed responsibility for clarifying various dimensions of it. As discussed in Chapter 2, for some scholars (Institutionalists), the actual properties of the works of institutions determine citizens’ satisfaction and dissatisfaction with their functioning (Bratton 2012; Kerr 2013). Others trace citizens’ satisfaction, or the lack thereof, to social and political (environmental) forces: traditional media organisations (Moy et al. 1999; Nyabuga & Ugangu 2018), members of virtual and physical social networks (Southwell & Yzer 2007; Orji 2019), and politicians and parties (Shah 2015; Erlich & Kerr 2016). To them, the public’s opinions are consistent with the kind of news (positive or negative) these sources provide. Empirical Chapter 7 helps qualify many of the earlier explanations. It, moreover, establishes that notwithstanding the differing analytical abilities of the individual perspectives, they collectively provide a superior lens for elucidating citizens’ appraisals.

Research on the public’s appraisals, the majority of which utilises the quantitative method, obscure the intricacies of citizens’ ideas of the state’s work (e.g. Bratton 2012; Shah 2015; Erlich & Kerr 2016). It is commonly assumed that a confidence deficit exists in Africans’ relations with their states. As such, the literature provides a fixed, dyadic – either positive (trust) or negative (distrust) – conceptualisation of the public’s perceptions of institutional performance. Chapter 7 of the current qualitative study reaffirms citizens’ proclivity to provide such ratings but also insists that citizens’ examinations are not as simple as conceived. Answers individual research participants provided to the question on their appraisals of electoral governance indicate that citizens perform what I have dubbed secondary and primary appraisals. Secondary appraisal, which is often an individual’s peripheral assessment, is mostly synonymous with his/her views about institutional capacity. Primary appraisal, which is usually one’s overall assessment, mostly represents perceptions of institutional independence. Provided individuals’ propensity to prioritise primary evaluation, it tends to be the kind that close-ended statistical research is adept at capturing. The co-existence of secondary and primary appraisals is the reason particular persons may offer what appears to be contradictory views about institutional functioning. The deduction from this observation is, public opinions about institutional performance can be on two evaluative planes. Furthermore, the quality of these evaluations differs across and within periods and space. To illustrate, although
Kenyans’ opinions about the judiciary’s functioning has never been perfect, their assessments of the post-reform judiciary is far better than that of the pre-reform judiciary. Likewise, some Kenyans expressed that field ECK and IEBC officials executed their mandates better than those of their headquarters counterparts. Hence, no institution enjoys a wholly positive or negative public appraisals. That connotes the theoretical advantages associated with contextualising conversations about the public’s attitudes towards state institutions.

What explains citizens’ appraisals, how, and why? Institutionalists explain the public’s appraisals with citizens’ direct observation/experience of actual institutional workings (Bratton 2012; Kerr 2013). My examination of Kenyans’ assessments of election management and electoral dispute settlement in Chapter 7 affirms this position only in so far as Kenyans are able to recount and rate their own encounters with ECK and IEBC. This is often their secondary appraisals. These appraisals centre on institutional effectiveness and efficiency. For example, many of my interviewees who voted before and after the 2010 reforms reported that since the reforms and (especially in 2017), vote-casting has become much easier and faster. They credited this improvement to IEBC’s adoption of election technology, which, to them, quickens balloting. A significant number of those who made such remarks discounted their positive experiences in their overall assessments, nonetheless. Some interpreted capacity challenges as autonomy breaches. Those without first-hand exposure to certain institutions, notably courts, still appraised their works. As a result, the chapter insists that the empirical work of institutions does not inform citizens’ overall opinions. The attempt to understand individuals’ primary appraisals, therefore, required unravelling the effects of the social and political forces Kenyans engage with.

Media and communication studies claim that by providing platforms via which citizens discuss collective concerns, mainstream and social media and face-to-face fora shape the public’s opinions (Southwell & Yzer 2007; Nyabuga & Ugangu 2018; Orji 2019). They do so through information framing, dissemination, and censorship. My review of this position vis-à-vis the data in Chapter 7 highlights the following. Considering that election-related information produced on and circulating through these channels can be biased in favour of or against ECK, IEBC, and courts, the chapter affirms the possibility of these information outlets to incite public contentment or discontentment with institutions. Regardless, I also encountered a noteworthy proportion of Kenyans, even relatives, exposed to the same/similar electoral
governance-related news who reasoned about them differently. Additionally, Kenyans, irrespective of their backgrounds, expressed varying amounts of scepticism and confidence in the credibility of the different channels, even those they asserted were comparatively more reliable. This evidence hints at Kenyans’ possession of pre-existing beliefs with which they adjudge not only the sincerity of the channels but also the work of institutions. Therefore, I have posited that these outlets have restricted effects on citizens’ reactions towards institutional functioning.

Where do the pre-existing notions individuals hold emanate from? Another strand of research into how Africans (Moehler 2009), in general, and Kenyans (Shah 2015; Erlich & Kerr 2016), in particular, examine elections has traced the polarity in assessments to diverging partisan preferences. To this group of scholars, political biases, which emanate from the high-stakes politics in neopatrimonial states, drive supporters of election losers to reject electoral results and supporters of winners to welcome them. The observation that the public’s appraisals are on two levels is not the only addition my thesis makes to this literature. The examination of state-society relations in Chapter 3 illustrates how Kenyans see their parties and candidates as the pathway to enjoying public goods and services. This sense has been institutionalised over time. While corroborating the relationship between partisanship and citizens’ assessments, the qualitative approach Chapter 7 adopts helped unravel the details of that relationship. First, for the partisanship literature, ruling elites’ unfair distribution of public resources in neopatrimonial states motivates ethnic communities who desire inclusion and fear exclusion to regard presidential candidates and parties their prominent co-ethnics affiliate with as more reliable, and thus adopt their political deportments (ibid; Ajulu 2002; Lynch & Crawford 2011). The evidence in Chapter 7 depicts that while members of ethnic communities such as the Luo, Kikuyu, and Kalenjin tend to behave this way, those from the Kisii ethnic group, whose younger (mostly 40 years and below) and older members (mostly 50 years and above) assumed opposing political identities, tend to act differently. Contrasting ethnic and generational experiences with inclusion and marginalisation commonly drive the diverging partisan preferences in both sets of communities. Symbolic cultural practices of identity (ethnic and generational) communities and their attendant association of political maturity to specific communities serve as another reason why people from some communities are inclined to take political guidance from parties whose main leaders ‘represent’ them. The fears, desires, and symbolic myths help Kenyans to
tactically select their preferred candidates and parties from among the bunch. Politicians and parties’ manipulation of these sentiments to draw support and diminish that of their opponents is central in the alliance formation. Within the timeframe of analysis, the 2002 electoral period is the only era when the majority of members of the identity groupings, save the Kalenjin, concurred that The National Rainbow Coalition (NARC) party was the most trustworthy information source. These findings demarcate the limits of the profound use of ethnicity to explain Kenyans’ political preferences and underscore the temporal and spatial dimensions of citizens’ political attitudes.

Second, the chapter has stipulated the conditions under which followers may deviate from their candidates and parties’ positions on institutional performance. Compared to interviewees from the ethnic communities that displayed more inclination to unite, the Kisii research participants displayed less commitment or attachment to particular parties. They also exhibited more tendency to be critical of their parties and candidates’ postures on election management and electoral dispute settlement. With regards to the widely criticised 2007 elections, a remarkable number of staunch presidential election winner Mwai Kibaki supporters, including some of his Kikuyu co-ethnics, berated ECK for performing poorly. It looked as if they gave such appraisals because their candidate was out of active politics. These findings contrast the extant research’s explicit and implicit supposition that supporters are unflinchingly loyal to their parties (ibid.). From these findings, I make the following conclusion. When one’s attachment to his/her preferred side of the political divide is weak and when one’s admission of opposing political positions is not politically costly to his/her party, that person can embrace unfavourable information originating from the other information sources, even political opponents. This counterintuitive behaviour echoes the import of context in citizens’ assessments.

The analysis of Kenyans’ appraisals of the performance of ECK, IEBC, and courts also offers insight into the democratic gains–reversals debate by maintaining that the record is mixed. Students of democracy emphasise that the relationships between citizens and democratic systems of the state are very important since the popular support these systems enjoy and the public’s attitudes towards and expectations of these systems can influence political life (Lynch & VonDoepp 2020: 9). While determining the source of Kenyans’ information about election management and electoral dispute settlement, Chapter 7 establishes the complexity of Kenyans’ appraisals. The fact that people’s positive and negative ratings can be found on two
evaluative planes (primary or secondary appraisals) suggests that every democratic institution’s work may attract some public satisfaction or dissatisfaction under various circumstances.

Also, the finding that partisanship fundamentally shapes Kenyans’ primary appraisals is telling. Specifically, political parties, not the actual first-hand experiences/observations of institutions in action, basically polarise citizens’ attitudes towards democratic institutions. It has been argued that ‘the proportion of [Africans] who demand democracy by providing consistently pro-democratic responses is less than one-half of all [survey] respondents’ (Mattes 2020: 346). These candidly dedicated democrats ‘express satisfaction with the performance of regimes that are only partially democratic’ (ibid.). This means, ‘the size of the proportion of dissatisfied democrats is too small in many places to push for the expansion of democracy, or to safeguard its erosion’ (ibid.). Chapter 7 partially corroborates this, asserting that ‘how parties choose to interact with voters and what they communicate with voters’ is vital to ‘how citizens experience democracy’ (Kramon 2020: 217). This may seem like a dire outlook on democracy in Africa – i.e. reforms for improving institutions may be meaningless –, but the findings that Kenyans have secondary appraisals grounded in their own experiences/observations and Kenyans may exercise agency vis-à-vis their preferred politicians/parties offer hope. Citizens sometimes concentrate on the actual, perceptible characteristics of democratic systems. I, therefore, conclude that the attainment of democratic gains is predicated on concurrently consolidating democratic institutions and holding political parties and candidates responsible and accountable in their dealings with the state and the public. Finally, the combined role of institutional, social, and political forces in shaping Kenyans’ appraisals of electoral governance confirms the interpenetration of formality and informality in shaping the quality of citizens’ experiences and views. Given the diverse effects that formality and informality have on Kenyans’ attitudes, the thesis joins scholars of democracy (Cheeseman 2018) who insist that neither is intrinsically pernicious nor beneficial to citizens’ attitudes towards the democratic systems of the state.

When combined, the answers on the public’s appraisals supplement earlier insights on public opinion formation. A core proposition of the existing research that has stood up to scrutiny in Chapter 7 is, partisanship lies at the crux of citizens’ assessments. Hence, I have argued that the diverging citizens’ overall evaluations of the state’s work is fundamentally determined by the competing partisan preferences
in states. Citizens are inclined to accept information about institutional functioning that emanates from their preferred side of the political divide and reject those from their political opponents. That means, contrary to the claim of students of institutions (Lipsky 2010; Bierschenk & Olivier de Sardan 2014; Pepinsky et al. 2017), political candidates and parties, not street-level bureaucrats, are essentially the interface between citizens and the state. That is not to say the other influences (traditional and social media, actual institutional performance, and physical interaction) are irrelevant. Indeed, they are relevant, but their import is seen when we consider the evaluative plane, the scale of influence, and the conditions under analysis. That is, the public's attitudes towards institutions and their determinants are also context-dependent. The selectivity of citizens in the use of information from the various sources bespeaks their agency, a factor that suggests that the institutional, social, and political influences outlined are not completely deterministic.

8.2.3 Juxtaposing Institutional Performance and Citizens' Appraisals

The debate in the literature boils down to whether citizens' understanding of institutional performance is subjective or objective. For Licari and others (2005: 365; also, Van Ryzin 2007), 'citizen assessments of service quality can be valid' or is reflective of the reality. But for Steven van de Walle (2006: 446), these assessments 'merely return the popular image of the administration, rather than actual functioning'. By comparing the public's assessments with the empirical functioning of institutions, this section provides clarity to this debate. Various commonalities exist between the two, yet they essentially do not match. So, rather than asking whether citizens' views reflect the reality, we should be asking how much dis-/similarity exists between them.

To some degree, citizens' appraisals resemble the processes and outcomes institutions produce. Just as implementation yields a complex combination of successes and failures that vary within and across time and space so do the public express context-sensitive blends of positive and negative opinions about implemented policies. Moreover, both dynamics are influenced by an intricate interplay of institutional and environmental forces. Additionally, where citizens directly interact with an institution or observe it in action, they are able to perform secondary appraisals of that institution's capacity. Finally, in instances where a person's loyalty to his/her preferred candidate or party appears shaky and/or a person seems to presume that
his/her contradiction of his/her candidate or party’s position produces no detrimental effects for that candidate or party, that person may make conclusions founded on his/her personal observations of institutional performance. These similarities give the erroneous impression of total congruence between the two phenomena.

The way citizens acquire information about institutional performance and the incentives that spur them to gravitate to information from particular sources tells the subjectivities in their assessments. Citizens basically rely on their preferred politicians and parties for election-related information, and they tend to regurgitate partisan evaluations in their overall appraisals. Empirical institutional work witnessed by citizens plays a minimal role in these assessments. We already know that ‘stronger partisanship leads to a more exaggerated process of [information] selection and perceptual distortion’ (Greene 1999: 395). Considering the facts presented in this thesis and the inclination of parties and politicians to repudiate institutional outputs that do not benefit them, we can assume that citizens whose side of the political divide loses out would criticise institutional performance while those whose side wins would praise it. This is indicative of the fickleness and the subjectivity of their evaluations. It also implies that regardless of the institutional reforms made, certain groups of citizens would be disgruntled with institutional performance while others would be contented with it. Therefore, I conclude that citizens’ appraisals mostly do not tally with the reality.

In sum, although for the most part citizens’ assessments are not determined by the objective functioning of institutions, the parallels between them cannot be ignored. Hence, the congruence between the public’s assessments and the real work of institutions should not be understood in absolute terms (objective or subjective) but rather in relative terms (a subjectivity-objectivity spectrum). At any given moment, the public’s appraisals would be a differing mesh of objectivity and subjectivity that originates from the mutually reinforcing and undermining intertwinement of formal and informal mechanisms.
8.3 Resetting the Research and the Policy Agenda: Broader Implications and Recommendations

After comparing electoral governance in Kenya and Kenyans’ ideas of its quality, this thesis argues that though the two share certain commonalities, they are fundamentally unrelated. That is because instead of Kenyans’ overall assessments being informed by their own observations of election management and electoral dispute settlement, they are mainly dictated by stories their preferred parties and politicians peddle. While the attention of this thesis has been on electoral governance in Kenya, its findings and conclusions bear meanings and lessons that can be cautiously applied to the research and the practice of policy implementation and public attitudes formation beyond this case.

The thesis makes a strong case for refining how the quality of implemented public goods and services in Africa is conceived. The view that ‘state resources’ are deployed for the ‘individual enrichment’ of ‘state elites’ who weaken institutional building and functioning to safeguard their rule is rife among Africans and African politics analysts (van de Walle 2001: 283). This idea has instigated ‘the general feeling that public services [in the continent]…are blighted by inadequate delivery and poor quality’, and that has prompted persistent calls for institutional reforms (Olivier de Sardan 2014: 424). However, this thesis portrays that no institution, both reformed and unreformed ones, has inherent properties that guarantee perfect and imperfect implementation (also, ibid.). In reality, every institution produces intricate combinations of successes and failures observable not only across time and space, as street-level bureaucracy theorists predict (Pepinsky et al. 2017: 263), but also within time and space. This finding cautions against generalising institutional performance. Conceiving implementation quality this way would enable researchers to uncover the achievements and the failures of specific institutions, its individual offices, and reforms policies before, during, and after given periods. Being attentive to temporal and spatial differences within a country is vital for tracking changes in implementation and the factors and conditions that spur or inhibit them. A case study research design with in-built spatial and temporal sensitivities that disaggregates, monitors, and compares institutions, their offices, and their works is better suited for this task. Focusing on particular dimensions of institutional performance can also advance practitioners’
determination of policies that work as intended, those that do not, and the context-specific forces that influence success and failure. That information can help them to engineer reform designs in a manner amenable to specific circumstances.

Unifying the competing analytical lenses in the field of public policy delivery has proven to be the most viable approach to elucidating implementation quality. The neopatrimonialism variant of the environmental framework has gained a foothold in policy delivery research focusing on Kenya and Africa broadly (Hyden 1979; Bratton & van de Walle 1997; van de Walle 2001; Branch & Cheeseman 2006; Mueller 2014). This thesis has revealed that the preoccupation with neopatrimonialism shrouds the gamut of external agencies involved in public policy provision and the diversity of impacts they make. The institutional mechanism approach, a burgeoning perspective in African studies, is championed by scholars of West African bureaucracies (Bierschenk 2008; Bierschenk & Olivier de Sardan 2014). These academics focus exclusively on street-level, orthodox public services, e.g. police, health services, and courts. By applying this perspective to the study of election management bodies in Kenya, the current research points to the need to expand our scope of public services in states, especially in those operating on democratic principles, at least on paper. Besides, the Kenyan case has modified the conjectures of the perspective. These observations instruct non-West African and election researchers to problematize their investigations using this analytical approach. As evidenced by this thesis, bridging the two approaches in a research project ensures a comprehensive appreciation of the influences of the course and consequences of the state’s work.

Another observation made in this thesis is the mutual dependence of structure and agency in public policy implementation. Chapter 5 makes lucid the fact that the expected consequences of election and electoral dispute resolution reforms were less felt when they were first administered in 2013. In 2017, the judiciary and IEBC rectified many of the administrative flaws they had previously recorded. I traced the progress to the evidence-based learning that upgraded the extant modes of operations and the willingness of officials to effect the lessons learnt. The first implication of this is that reforms take time to take full effect, so to detect their corollaries, researchers should adopt an extensive timeframe. The second lesson is that implementation goes through a feedback loop to bolster reform policies originally meant to enhance it. Therefore, policy design and execution should be considered as co-constitutive. Third, the salience of employee will and implementation outputs to fostering policy effects
underline the dialectic relationship between agency and structure. That is to say, attempts to understand policy delivery or improve it should not overlook the interdependence of humans and structure.

As with institutional functioning, the contextual overtones of the public’s appraisals of institutional performance hold lessons for how we think of citizens’ attitudes towards the state. The extant literature’s (e.g. Bratton 2012; Shah 2015) depiction of the public’s views as simply positive or negative obscures its complexity. This thesis establishes citizens’ two-pronged (primary and secondary) appraisals. Each tier centres on negative or positive assessments of the main concepts linked institutional performance, i.e. autonomy and capacity. These evaluations also display temporal and spatial variances, which are illustrative of the possible heterogeneity of people’s opinions. These findings necessitate the clarification of the concepts embodying any form of evaluation and the delineation of the conditions surrounding it. As well, the findings urge the thorough scrutiny of both forms of evaluations, even if the primary strand tends to trump the secondary variation. That would illuminate the multidimensionality of citizens’ outlooks on the state.

Related to this point is the need to begin inquiry into the public’s appraisals of understudied elections such as gubernatorial and senatorial elections. I found that in Kenya, where the interest in the presidency is paramount, ideas about presidential elections form the public’s overall or primary appraisals. This is a plausible reason for the scholarship’s neglect of citizens’ ideas about other elections. To foster theory development, future research should endeavour to solicit answers on how citizens perceive not only the governance of presidential elections but also the governance of underexplored elections. The comparison of the two may reveal uncovered angles in citizens’ behaviours towards the state.

How Kenyans acquire and utilise information about election management and electoral dispute settlement is also instructive. The prevalent belief that members of ethnic groups act in unison has culminated in the fixation on ethnicity as a driver of political affiliation in Kenya. While that has allowed researchers to make general claims about Kenyans (Klopp 2001; Lynch 2006; Ghai & Ghai 2013; Erlich & Kerr 2016), it has obscured insights into the political attitudes of groups whose members noticeably diverge on partisan preferences. What is to be learnt from the inter-ethnic (e.g. between the Luo and the Kikuyu ethnic communities) and intra-ethnic (within the Kisii ethnic community) partisan cleavages is the theory-consolidation benefits associated
with studying in depth the political attitudes of members of the two sets of identity groups. Other underexplored Kenyan communities whose members glaringly split their partisan affiliations include the Samburu and the Somali Kenyans. They should be studied in tandem with those whose members appear to converge politically. Such research should account for the centrifugal and centripetal forces that push various identity groups to and away from certain sides of the political divide.

Secondary appraisals, which represent citizens’ personal experiences of institutions in action, should not be underrated, even if they are peripheral assessments. They must be explored in their own right, but also because in the face of the conditions that diminish partisanship effects, the real work of institutions may serve as the basis of citizens’ evaluations. Bearing in mind that under those conditions citizens’ appraisals may also be contingent on stories from traditional media channels and individuals and groups in their virtual and physical networks, it goes without saying that the influences of these information sources on citizens’ postures towards institutions should be concurrently probed. To summarise, with the determinants of the public’s evaluations being legion, the more critical question researchers should endeavour to answer is not which of the forces determines citizens’ attitudes but rather to which extent and under what circumstances do each affect attitudes.

Recalibration of the practical tactics to boost harmony in settings where contention over institutional functioning has broken down or threatened the social fabric is in order. Underlying the contemporary approach to peacebuilding is the supposition that people pay attention to actual institutional performance, so institutional strengthening can stimulate their contentment with the state. That is why institutional reforms have been widely recommended by public service delivery and conflict and peace experts (Olivier de Sardan 2014: 426; Gazibo 2020; Bekoe & Burchard 2020: 267-268). Nonetheless, this thesis has proven the unsuitability of this remedy. Citizens’ reactions are more sensitive to partisan concerns than discernible institutional practices. That is to say, regardless of the thoroughness of institutional reforms, we cannot expect all citizens to be satisfied with the overall workings of institutions. Depending on the stance their parties or candidates assume, segments of the public would decry the work of given institutions while others hail it. This makes the makeup of the interaction (e.g. messages communicated) between parties and their supporters focal in how citizens experience the state. Policies and programmes aimed at improving the public’s confidence in institutions should, therefore, chiefly
target how political elites engage with their backers and state institutions. In view of the public's seldom prioritisation of alternative information sources, the effort to improve their perceptions about the state should not write the actual effects in institutions, traditional and social media, and physical social networks (e.g. relatives and friends) have on the citizenry's views off.

Furthermore, this thesis contributes to the lively debate on the comparative essence of formal and informal institutions. These are cross-cutting themes uncovered in the examination of the works of Kenya's electoral governance institutions and the public's reasoning about them. Mainstream comparative institutional research regard informal institutions as playing second fiddle to formal institutions, although the confluence of the two is what determines institutions' workings (Helmke & Levitsky 2004). Looking at particularistic traits of neopatrimonialism (e.g. corruption, patronage, and clientelism), Michael Bratton (2007) proclaims that informal institutions explicate Africans' assessments of democracy. Obsession with these traits gives the impression that informal institutions are subversive of officially established ways of doing things (ibid: 109). Yet, this thesis has illustrated the interpenetration of formal and informal institutions to connect explanations to outcomes. None is innately pernicious or benign to citizens' political postures or the state’s work. Each can play any of these roles in different instances. As an illustration, the informal 1997 IPPG diminished the president’s personalisation of its official power to appoint persons sympathetic to its cause as ECK commissioners. That helped foster the credibility of the 2002 polls by harmonising political interests within the commission. Even the threat of violence, an informality that often forced electoral officials to relax electoral rules' enforcement, initially proved effective at preventing a glaringly compromised ECK from announcing widely acclaimed rigged results in 2007. The superiority of the partisanship explanation of the public's appraisals confirms the argument that 'informal values and patterns of behaviour continue to shape Africans' orientations toward their respective polities' (ibid.), but the concerted impact of the diverse information sources denotes that the interaction between informality and formality guides Africans' views in varied ways. Sometimes, they educate citizens. Other times, they misinform them. The actual election management and electoral dispute settlement successes and failures Kenyans have witnessed and the dual functions traditional media (an educative and a political tool) in Kenya has played are cases in point. They show that based on the situation under consideration, formality and informality can complement,
accommodate, substitute, and compete one another, as Gretchen Helmke and Steven Levitsky (2004) have theorised. By acknowledging the advantages and disadvantages of formal and informal institutions, this thesis calls on public policy implementation and public opinion formation researchers to accord both the same degree of analytical inspection. The majority of practitioners also undervalue ‘the impact of the informal realm’ by focusing ‘only on formal institutions’ (Bratton 2007: 96-97). It is clear from this thesis that this bias is unwarranted. Indeed, policy designers and implementers have a lot to gain from being critical of both and harnessing the advantages each has to offer.

Finally, the shortcomings of the extant perspectives for studying public policy implementation and public attitudes formation inspire me to present synthesis or synergy – uniting top-down and bottom-up approaches – as a powerful approach for studying both topics. Individually, each of the approaches is insufficient for elucidating the entirety of these topics. Amalgamating them in this thesis has proven more potent. Future research should, therefore, follow suit. This can be achieved by beginning from the starting premises of each of the theoretical perspectives. That is, map the relationships within institutions and between institutions and the social and political environment, on one hand, and the relationships between citizens and institutions and citizens and the social and political environment, on the other hand. The main purpose should be the identification of the actors involved in these relationships, the roles they play, and the impacts they have. The bottom-up approach can be thought of as mapping backward and the top-down approach, mapping forward. For institutional performance, mapping backward should start with learning the experiences of street-level officials and mapping forward, the experiences of headquarters-level officials. The networks of actors that partake in the work of institutions, officials’ motivations for collaborating with unofficial actors, the extent of influence of the unofficial actors, and officials’ own agency in these collaborations should be accounted for. Regarding the public’s attitudes toward institutions, forward mapping should begin with inquiring about how various information sources influence citizens’ behaviours or try to do so, while backward mapping should start from how citizens seek and treat information from various sources. Ascertaining the range of channels from which citizens learn about institutional performance, the magnitude of influence of these sources, the justification citizens offer for embracing or rejecting information from particular outlets,
and the agency citizens display vis-à-vis these sources should be of utmost importance when carrying out this exercise.
## Appendix I: Geography of Election Results

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<td>Uhuru Kenyatta (Kenya African National Union [KANU])</td>
<td>Mwai Kibaki (National Rainbow Coalition [NARC])</td>
<td>Raila Odinga (Orange Democratic Movement [ODM])</td>
<td>Uhuru Kenyatta (Jubilee Party [JP])</td>
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<td>90.21%</td>
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<td><strong>Total % of Provincial Votes Obtained</strong></td>
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<td><strong>Coast</strong></td>
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<td>Kilifi</td>
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<td>Taita-Taveta</td>
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<td><strong>Total % of Provincial Votes</strong></td>
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<td>Province</td>
<td>Obtained 65.6%</td>
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<td><strong>Total % of Provincial Votes Obtained</strong></td>
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<td>90.73%</td>
<td>8.25%</td>
<td>90.58%</td>
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<tr>
<td><strong>Total % of Provincial Votes Obtained</strong></td>
<td>23.6%</td>
<td>75.4%</td>
<td>54.7%</td>
<td>6.4%</td>
</tr>
<tr>
<td></td>
<td>50.34%</td>
<td>44.40%</td>
<td>56.39%</td>
<td>40.53%</td>
</tr>
<tr>
<td><strong>Rift Valley</strong></td>
<td>53.6%</td>
<td>42.1%</td>
<td>28.7%</td>
<td>70.3%</td>
</tr>
<tr>
<td>Uasin-Gishu</td>
<td>74.26%</td>
<td>21.09%</td>
<td>78.21%</td>
<td>21.23%</td>
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<tr>
<td>Elgeyo-Marakwet</td>
<td>92.07%</td>
<td>4.85%</td>
<td>94.66%</td>
<td>4.81%</td>
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<tr>
<td>Nandi</td>
<td>81.52%</td>
<td>8.70%</td>
<td>86.81%</td>
<td>12.57%</td>
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<tr>
<td>Baringo</td>
<td>87.93%</td>
<td>9.41%</td>
<td>84.87%</td>
<td>14.56%</td>
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</table>

**Note:** The table presents the percentage of votes obtained by provinces within different regions (North Eastern, Eastern, and Rift Valley) in an election. The data includes the specific percentages for each province within these regions.
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<tr>
<th>Province</th>
<th>Provincial Votes Obtained</th>
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<tr>
<td>Kericho</td>
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<td>6.59%</td>
<td>92.85%</td>
<td>6.45%</td>
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<td>Bomet</td>
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<td>87.05%</td>
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<td>Samburu</td>
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<td>Trans Nzoia</td>
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<td>West-Pokot</td>
<td>73.33%</td>
<td>22.95%</td>
<td>64.78%</td>
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<td>Total % of Provincial Votes Obtained</td>
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<td>Western</td>
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<td>Busia</td>
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<tr>
<td>Total % of Provincial Votes Obtained</td>
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<td>Kisii</td>
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<td><strong>Total % Provincial Votes Obtained</strong></td>
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<td>14.6%</td>
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<td>11.46%</td>
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Combined Sources: IEBC (2013); IEBC (2017); Kireev (2007-2013); Brinkhoff (2017)
### Appendix II: Data Sources

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<td>• Press Releases</td>
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<td>• Interim Independent Electoral Commission (IIEC)</td>
<td>• News</td>
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<td>• Interim Independent Boundaries Commission (IIBC)</td>
<td>• Facebook &amp; Twitter Pages</td>
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<td>• Independent Electoral and Boundaries Commission (IEBC)</td>
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<td>• Clerks (6)</td>
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<td>• Regional Elections Coordinator (1)</td>
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<td>• Clerical Officer (1)</td>
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<td>• Messenger (1)</td>
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<td>• Clerical Officer (1)</td>
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<td></td>
<td></td>
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<td>• Facebook &amp; Twitter Pages</td>
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</table>
| 3 | Presidency | • Online and Offline Statements and Reports  
|   |           | • News |
| 4 | Legislature | • Online and Offline Statements and Reports  
|   |           | • News |
| 5 | Independent Agencies:  
|   | • National Steering Committee on Peacebuilding and Conflict Management (NSC)  
|   | • Independent Review Commission (IREC)  
|   | • Waki Commission  
|   | • Ouko Task Force  
|   | • Kenya Anti-Corruption Commission/Ethics and Anti-Corruption Commission  
|   | • Media Council of Kenya (MCK)  
|   | • Kenya Broadcasting Corporation (KBC)  
|   | NSC and MCK: Department Heads (2)  
|   | KBC: Reporters (3) | • Online and Offline Statements and Reports |

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| 1 Orange Democratic Party (ODM) | • Department Head (1)  
|   | • Legal Team (1)  
|   | • County Chairs (2) | • Party and Candidates’ Facebook and Twitter pages  
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<td>• Secretary General (1)</td>
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<td>• Department Heads (1)</td>
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<td></td>
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<td>• News</td>
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<td>• International Commission of Jurists-Kenya (ICJ-K)</td>
<td>• Facebook and Twitter pages</td>
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<td>• Human Rights Defenders Africa Centre for Open Governance (AfriCOG)</td>
<td>• Website</td>
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<td>• Katiba Institute</td>
<td>• Reports</td>
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<td>• Centre for Human Rights and Policy Studies (CHRIPS)</td>
<td>• Meetings and Symposia</td>
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<td>• InformAction</td>
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<td>• Election Observation Group (ELOG)</td>
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<td>• Researchers (3)</td>
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<td>• Centre for Governance and</td>
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<td>Development</td>
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<th>5 Academics:</th>
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<td>• Moi University</td>
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<td>• Strathmore University</td>
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*NB*: These are only those I directly interacted with. It excludes many institutions whose academics I referenced.

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<td>• Afrobarometer</td>
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<td>• Nation Media Group</td>
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<td>• The Elephant</td>
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<td>• Kenya Editors Guild</td>
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<td>• Kenya Union of Journalists (KUJ)</td>
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<th>8 Citizen Journalists/Bloggers:</th>
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<td>• Cyprian Nyakundi</td>
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<td>• Patrick Gathara</td>
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<td>• Pauline Njoroge</td>
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<td><strong>Boniface Mwangi</strong>&lt;br&gt;<strong>Neo Musangi</strong>&lt;br&gt;<strong>Donnis Itumbi</strong>&lt;br&gt;<strong>Muthoni Njogu</strong>&lt;br&gt;<strong>Edith Fortunate</strong>&lt;br&gt;<strong>Wandia Njoya</strong>&lt;br&gt;<strong>Ory Okelloh</strong>&lt;br&gt;<strong>Richard Oduor Oduku</strong>&lt;br&gt;<strong>Edwin Kiama</strong></td>
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<td>9</td>
<td>Muthomi &amp; Karanja Advocates</td>
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<td>10</td>
<td>National Council of Churches of Kenya</td>
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<td>Grassroots Kenyans</td>
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**REGIONAL & INTERNATIONAL**

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<td>Institut Francais de Recherche en Afrique (IFRA), Nairobi</td>
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**NB**: These are only those I directly interacted with. It excludes many institutions whose academics I referenced.

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<td>Portland</td>
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| • Pew Research Center  
| • Privacy International  
| • Sochin Limited | 

Source: Researcher
Appendix III: Research Permits
Patrick Kazui Basuki
University of Edinburgh
SCOTLAND,

Dear [Name],

RE: ACCESS TO PERSONNEL AND ARCHIVES FOR RESEARCH

I refer to the above subject.

The Commission does not have any objection to your request to access information for purposes of your doctoral thesis on: Understanding public perceptions of the leadership of elected governance institutions: a case study of Kenya. Study done with Derick Mwajusa, Director Research and Planning at IEBC.

I hope that you will maintain high ethical standards as you undertake your research and that the thesis report will be a great knowledge document.

Yours sincerely,

[Signature]

COMMISSION SECRETARY/GEO

P.O. Box 3142

Source: Researcher
Appendix IV: Participant Information Sheet and Consent Form

PARTICIPANT INFORMATION SHEET

PROJECT TITLE
Understanding Public Perceptions of the Functioning of Electoral Governance Institutions: A Case Study of Kenya

INVITATION
You have been invited to participate in a study that attempts to clarify how Kenyans’ electoral governance perceptions (the Electoral Management Bodies (EMBs)) and the institutions that oversee them influence the perceptions of electoral competitiveness, which in turn, influence the perceptions of the effectiveness of EMBs and the institutions that oversee them. This study seeks to contribute to the understanding of the perception of the effectiveness of EMBs and the institutions that oversee them.

I am Patrick Zhao, a PhD Candidate at the Centre of African Studies, School of Social and Political Sciences, University of Edinburgh.

This research project is part of my doctoral thesis. Dr. Thomas Moloney, Zoe Mark, and Sue Roth Doss are supervising this study. The project has undergone ethical scrutiny and has been subsequently approved by the School of Social and Political Sciences Ethics Committee, University of Edinburgh.

WHAT WILL HAPPEN?
In the course of the interview, you will be asked to provide the following: 1) Your views on your background information. 2) How naïve your perceptions are. 3) How you feel about the perceived electoral process. 4) How willing you are to provide reasonable feedback. 5) How willing you are to provide reasonable feedback. 6) How willing you are to provide reasonable feedback. 7) How willing you are to provide reasonable feedback. 8) How willing you are to provide reasonable feedback. 9) How willing you are to provide reasonable feedback. 10) How willing you are to provide reasonable feedback. 11) How willing you are to provide reasonable feedback. 12) How willing you are to provide reasonable feedback. 13) How willing you are to provide reasonable feedback. 14) How willing you are to provide reasonable feedback. 15) How willing you are to provide reasonable feedback. 16) How willing you are to provide reasonable feedback. 17) How willing you are to provide reasonable feedback. 18) How 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You are encouraged to give detailed explanations for every opinion you voice and bring out alternative opinions. Also, provide examples to support your explanations. The more information you give, the better.

When an opinion is not clear, the researcher will ask you for clarification. You should also seek clarification on questions that you do not understand. Where you are uncomfortable answering a particular question, feel free to address the researcher that you do not want to or cannot answer it.

This interview will be recorded in your notebook and on a audio recorder. It will also be transcribed. If you are uncomfortable answering a particular question, feel free to address the researcher that you do not want to or cannot answer it.

TIME COMMITMENT
This is a one-time interview, and it is scheduled to last about 1 hour. However, if a particular opinion you raised needed further exploration after the interview, the researcher will contact you to request you.

PARTICIPANTS’ RIGHTS
1. You may withdraw from participating in this study at any time, without offering a justification. You will not be penalised for doing so.
2. You may also seek reimbursement from interviewing participants without providing an explanation. You will not be penalised for doing so.
3. You possess the right to request that all information you provided, as requested part of the information that is provided. You will not be penalised for doing so.
4. You have the right to obtain further information about any of the procedures associated with this study, except in cases where such information undermines the research results. Any concerns arising after making this document should be brought to the attention of the researcher before the study begins.

BENEFITS AND RISKS
While I do not have any definitive reason to think that participating in this exercise will endanger you, I have taken precautions to prevent any such accidents. I have obtained permission to release the research grant used to undertake this exercise.

COST, REIMBURSEMENT, AND COMPENSATION
Your participation in this study is voluntary. Therefore, you will not be remunerated for your contribution. However, you can offer a transcript of this interview or a copy of the research report used in this exercise.

CONFIDENTIALITY AND ANONYMITY
The data of your interview will be collected with your identifying personal information that is obtained from the interview will be used only for academic purposes. The data you provide will be used only for academic purposes.

For further information about the interview, please contact Dr. Thomas Moloney. He will be glad to answer your questions about this study. You may contact him through the following address: 3346 University of Edinburgh, UK.

For information about the final outcomes of this study, please contact at 12345678@outlook.com.
INFORMED CONSENT FORM

PROJECT TITLE: Understanding Public Perceptions of the Functioning of Electoral Governance Institutions: A Case Study of Kenya

PROJECT SUMMARY:

The aim of this research project is to understand the impact of reforms on the actual functioning of Kenya's electoral governance institutions (i.e., the Electoral Management Bodies [EMBs] and the Independent Electoral and Boundaries Commission), on the one hand, and Kenya's approach to the functioning of these institutions, on the other hand, from 2012 to present.

In order to understand the said issues, I, through this exercise, would like to know your background information, knowledge of the reforms made in Kenya's electoral governance institutions from 2012 to date, and examination of sources of information about election management and electoral disputes settlement from 2012 to date.

By appending your signature on this sheet, you agree to: (1) have read and understood the above Participant Information Sheet; (2) have been thoroughly informed about your role and rights in this interview; (3) have understood (noted all potential risks; (4) and know that your participation is voluntary (without any coercion).


Source: Researcher
10 Bibliography


Odinga, R. (2018, January 26). *The Open Server #NASABigExpose #Resist #NRM*. Retrieved January 26, 2018, from Facebook: https://www.facebook.com/RailaOdingaKE/videos/1347853431986716/?hc_ref=ARSgrZ1JWV21kEIkCnGFB-a98NSeeG5QIT40L7JGifwQvwtKVCUB4RIABFisT5u4wwU&__xts__[0]=68.A R4yb408nFP-ZZxn5E5wSTUX-85NHpMwpD-IWxkl4nmnLDMb9ERElQgupwEFlerOaXP802fnD1je06GdhQYZPpEVGWfTnNryq0qC-56UDYHJBwtriO6DxwSjO6KMQOP5RGiizr5DUWMu1r8u43JPNY7D6fGpb iPdCrCitrXbldJ7hLgLjHyTmAy9_toA3I1cH2odQHrB7wVTT01JPU2mdkgjm-3iJImwBoMF0e9pzOez11QWghveyrDJ05VxeAbpXjuez_GrQmveP717KGQh XJoLJ5Un8hdGYeppDA75icZR6hRXd5uDUbxt4UFmtTk0IV6Fk34XPWZO8r9KfkVEwLBV9T2Nw&__tn__=FC-R


The Star. (2016, September 09). *Tell Kenyans where the Sh215bn Eurobond cash is, Raila urges Jubilee.* Retrieved April 4, 2019, from The Star: https://www.the-


