



**Unraveling the Role of Parliament in Developing Network Industries:
Comparative Case of ICT Sector Reform in Kenya and South Africa**

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DECLARATION

I declare that this thesis/dissertation is my own, unaided work. It is submitted in fulfilment of the requirements of the degree of Doctor of Philosophy at the University of the Cape Town, Graduate School of Business. It has not been submitted before for any degree or examination in any other university.

Cecilia Rudo Matanga

15 February 2016

DEDICATION

This thesis is dedicated to my family: my daughters, Taurai Tadzoserwa Moyo, Tanyaradzwa Chelsea and Matipa Martha Manike, for the outstanding patience throughout the time of my study. My partner and husband Tawanda Manike, who encouraged and cheered me on, more often than I can remember, not allowing me to give up. Your reminders that it would be worth it continuously ring in my head, Tawanda you and my daughters are the best cheerleaders.

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ABSTRACT

Several scholars have identified institutional and regulatory conditions under which Information Communication Technologies (ICT) reforms can accomplish positive public policy outcomes. This literature pays little attention, however, to the role of parliaments in these reforms. The institutional factors determining the degree and nature of parliamentary participation in ICT sector reforms in Africa is what this thesis examines.

Drawing from the political economy tradition, this thesis explores the interplay between the executive, the parliament and the various sectoral interests that determine ICT sector reforms in developing countries. It does so by placing parliament in a conceptual framework that combines the concept of ICT as a complex ecosystem with that of a constellation of institutions. The gathered empirical evidence is studied through this conceptual lens to build the cases of parliamentary participation in Kenya and South Africa - two of the most dynamic ICT markets in sub-Saharan Africa - which are then analysed comparatively. Some of the information is gathered through a self-assessment survey by members of the ICT parliamentary committees and complemented by high-level interviews with the main sector players. The findings are triangulated with those from an extensive document analysis.

This thesis contextualises institutional analysis in specific political circumstances of the two countries in order to understand the relevance of parliament in sector reforms. The findings have important implications for our understanding of structural and institutional constraints on parliaments in developing countries and nascent democracies. Parliaments lack capacity to simply fulfill their legislative and oversight roles, let alone creating an enabling environment for innovative public policy, sector investment and public interest outcomes as required by this dynamic sector in any modern, globalised economy.

Systematic coding of the data revealed national governance and institutional arrangements as key determinants of an ICT ecosystem that adapts to local and international conditions, confirming parliament as not simply a neutral legal structure but a significant power broker, reflecting

competing interests at play. The formal legal system in both countries is uneven and underutilized, ineffective in achieving robustly-contested public interest outcomes. In order to manage political interests, parliament structures and serves principal agent-relationships, vetoes ICT policy and decision-making processes, links interest groups to government and party agendas, resolves conflicts and, sometimes, builds consensus among key players. The examination of institutional designs of both parliaments identifies critical capacity deficits that are at the heart of the negative outcomes in national legislative and oversight processes. In South Africa, the reason for these deficits is primarily that the parliamentary system promotes political party and executive dominance, which undermine multi-party and participatory structure of parliamentary processes to achieve party preferences and control outcomes. In Kenya, whilst the combination of distinct separation of powers and a constituency-based electoral system provides a legal basis for greater parliamentary accountability, the highly fragmented sector arrangements compounded by lack of internal capacity to utilize parliamentary instruments and mechanisms constrain parliament's participation.

These weak institutional arrangements and designs, in both Kenya and South Africa, limit independence of parliament from the executive and sometimes industry, compromising the parliamentary oversight and visionary leadership expected from specialized portfolio committees. This calls for a transformation of arrangements to uphold and reinforce constitutional mandates that give parliament the power and ability to fulfill its role in policy reforms.

Keywords: *Parliamentary participation, Institutional arrangements, Sector reforms.*

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LIST OF ABBREVIATIONS

API	-	Africa Parliamentary Index
CSO	-	Civil Society Organization
ICT	-	Information and Communications Technology
IDA	-	International Development Association
IT	-	Information Technology
ITU	-	International Telecommunications Union
MP	-	Member of Parliament
NRA	-	National Regulatory Authority
PSA	-	Parliament of South Africa
SA	-	South Africa
SADC	-	Southern Africa Development Community
SADC-PF	-	Southern Africa Development Community - Parliamentary Forum
WTO	-	World Trade Organization
WIPO	-	World Intellectual Property Rights Organization

Chapter 1

INTRODUCTION

1.0 General introduction and background

In the context of economic growth and development and achieving universal access to basic services, infrastructure industries such as water, transport, energy and telecommunications, have been the focus of public policy in developing countries. The convergence of information technology (IT), broadcasting and telecommunications sectors, known as ICTs, have created a new network industry. New Internet-based products and services are delivered to final consumers via a telecommunication infrastructure comprised of many different elements linking upstream supply with customers lying downstream (Romesh, 1998). ICT services normally come at high costs, affecting to a great extent their affordability and access. As aptly observed by McNamara et al.,(2008) the realisation by most governments that the absence of an enabling legal and regulatory environment increases the cost of ICT services, widening the digital divide, has influenced ICT sector reforms globally.

At the start of the reform process in Africa in the 1990s, less than 2% of the population connected to the fixed line network. Fifteen years into the 21st century (ITU 1995, 2015), these numbers have grown but are still below global averages with less than 10% of the populace in Africa connected to the Internet. The mobile communications scenario looks very different of course, with largely private investments in networks driving the rapid uptake of voice services as they do for broadband now.

With increasing evidence (Kenny, 2002, 2003) of far higher social and economic returns on investments in the information infrastructures, telecommunications shifted from being a second tier public utility to a strategic resource in the emerging global information economy. Digitisation and the Internet Protocol layer have made this shift much more possible than with enabled voice and fixed services as has been the case with broadcasting and telecom services than any other infrastructures. The liberalisation of markets enabled the entry of mobile

communications which drove connectivity across the global south becoming the clarion call of multilateral and donor agencies development agendas (Gillwald 2009). Before the turn of the millennium, ‘orthodoxy’ had developed around the telecommunications reform agenda.

Infrastructure regulation has received much attention based on a framework that realises three accepted stages of operation: enactment of the law and arising institutional arrangements, development of a regulatory administration framework, and monitoring and enforcement of the legal framework (UN-ESCAP, 2001). Successful implementation of the framework depends on an enabling environment and supportive institutional arrangements that ensure clarity of roles and responsibilities of each key player and the play out of the decision-making processes within each sector. Often these orthodox policy measures, of which there is evidence of success in OECD countries, when applied in a different context result in market failure, inefficient and anti-competitive regulation and at times continued and undesired government ownership (Gottinger, 2003).

The increase in democratic practices in Africa in recent years has brought with it greater parliamentary involvement in the policy-making processes. Wang (2005) narrows down this participation to two important parliamentary functions of legitimation¹ and decision/influence², which in themselves are highly dependent on the presence or absence of some internal and external conditions. Externally these conditions determine the relationship between parliament and other stakeholders within governance processes and parliament’s capacity and ability to influence the policy process, while internal factors reinforce this capability.

In this thesis, I analyse the determinants of effective parliamentary participation in ICT sector reforms to understand its relevance in developing the ICT sector. The analysis is achieved through the lens of a conceptual framework that combines the concepts of the ICT sector as a complex ecosystem with that of an institutional constellation in which parliament is centrally located. The idea to study the effectiveness of parliamentary participation in ICT sector reforms

¹ See Copeland and Patterson (1998) describes legitimation as the recognition and acceptance by key stakeholders within the sector, of the right of parliament to act in some manner, placing an obligation on stakeholders to abide by the action.

² Influence reflects on-going bargaining with multiple veto players.

arose during the period 2005-2012 when I provided technical assistance to parliaments in the area of ICTs through SADC and United Nations initiatives. I observed that while it is accepted that parliament has a role to play there is much ambiguity about how this role is achieved. Furthermore, there are structural issues relating to how this perceived role fits in with the constitutional mandate of parliament. Parliaments respond to sector policy requirements by establishing specialised committees responsible for ICT. However, there is still a gap in developing inclusive institutional arrangements within the broader ICT governance arena. In the thesis, I, therefore, critically examine engagement patterns, relationships and processes within the sector to gain better insights of parliamentary involvement in setting ICT policy objectives, in overseeing implementing agents and in contributing to the achievement of policy outcomes.

To highlight diverse contextual and institutional factors that challenge parliament's role within the ICT ecosystem and institutional constellation, I use the case studies of parliaments in Kenya and South Africa. In each selected parliament I evaluate the existence of certain internal capacity elements based on a value judgment arrived at through an established and accepted parliamentary self-assessment. The Africa Parliamentary Index³ (API) follows a self-assessment methodology widely used within the parliamentary context to measure performance. According to the SADC-PF (2012) a self-assessment confirms the presence and or absence of critical capacity elements and dimensions against international standards. Furthermore, SADC-PF (2012) observes that a self-assessment allows parliament to self-assess, measure performance and prioritise areas for reform and strengthening. Self-assessment is, however, based on value judgments and is best done by a diverse group of people to counter any biases emanating from the self-evaluation.

The research in this thesis takes the form of a cross-country comparative analysis of Kenya and South Africa as leading ICT markets in East and Southern Africa, respectively, to identify critical elements of parliamentary participation in sector reforms. The two countries have swapped position as the African continent's ICT leaders in the second round of reform (broadband) from the first, which South Africa led to the turn of the century. Both countries practice parliamentary

³ See www.parlcent.org / www.parlcentafrica.org for detailed methodology on the Africa Parliamentary Index. The API Reports cover seven countries in Africa of which Kenya is a part of.

democracy but follow different legal and political systems, and while committed broadly to the same public policy objectives, the two countries have to a certain extent witnessed different reform outcomes within the last two decades.

This chapter highlights the historical and theoretical context and trends exposing key regulatory and institutional factors for reforming infrastructure industries and more specifically the ICT sector. The chapter presents the motivation for parliamentary participation as well as some of the key concepts that inform policy debates. It provides the rationale and context for the examination of parliamentary participation in ICT sector reforms in the following chapters. The chapter concludes with the problem statement and research questions which are answered by the thesis.

1.1 Sector reforms: Trends and Debates

1.1.1 Regulating infrastructure industries

Infrastructure industries are an indispensable element of the economy, providing essential services to all other sectors and requiring regulatory scrutiny much more than in any other (Ilzkovitz, Meiklejohn and Mogensen, 1999). Regulation is central to their reforms, especially as it supports the evolution of roles of regulatory and competition authorities to match the degree of liberalisation. Many countries have implemented far-reaching reforms in the past two decades, in recognition of the importance of infrastructure for service delivery (Kessides, 2004). The reforms take the form of restructuring, de-monopolisation, introducing competition policies, and encouraging private participation, among other strategies (Romesh, 1998). The result is new regulatory requirements and regulatory reforms in the provision of infrastructure facilities and services, as well as the establishment of new approaches to regulation (Melody, 2005).

Regulatory systems are designed to respond to natural monopolies and market failures associated with infrastructure industries such as electricity, gas, water, telecommunications, and transport (Eberhard, 2007). They combine the laws, processes and institutions to give government control over decisions of the enterprises that supply infrastructure systems (Brown et al., (2006). As aptly observed by Gottinger (2003) public service objectives especially in these industries were initially guaranteed using public ownership mainly, and not through, regulation due to their

technical and systemic nature. As such, national laws and rules that were applied were designed to create public utilities. The regulation allows the state to take direct responsibility for the provision of infrastructure facilities and service or to nationalise infrastructure companies to accrue the benefits arising from the economies of scale (from the heavy fixed cost) and demand externalities associated with monopoly provisioning.

The regulation wave which started in America and Britain in the 1980s and 1990s and spread to Europe in the 1990s has greatly changed the market structure and brought with it changes in the nature of supportive legal frameworks (Gottinger, 2003). Ultimately resulting in a constellation and accumulation of different institutions with the capacity to intervene and make decisions in a complex regulatory policy undertaking.

Despite the claims of deregulation of the ICT sector over the last three decades, in what Hancher & Moran (1998) refer to as the 'paradox of regulation', there has been increased regulation of the ICT market with the shift from public utilities to competitive markets. Infrastructure markets, with their high sunk costs, sustained natural monopoly elements and associated barriers to entry, and asymmetries of information, can never be perfectly competitive (Gillwald 2005, 2010). Furthermore, the shift from monopoly regulation to competition regulation has increased the focus to constraining dominance of market players and ensuring fair competition (Gillwald, 2009). Accordingly, the infrastructure markets are unlikely ever to become totally free of regulation or oversight since governments must continue to ensure that there is a level competitive playing field and deal with market failure about universal, affordable access (Gottinger and Takashima, 2000).

Gillwald (2009) provides a useful overview of the rationale behind the regulation of the ICT sector, highlighting issues of universal service, standardisation of tariffs, and management of scarce resources such as spectrum as important policy outcomes worth pursuing. The results of regulating infrastructure industries are varied and uneven. Deregulation has meant that while responding to competitive signals and incentives infrastructure industries still have to deliver their essential services with reasonable security and consistency. As observed by Romesh (1998) the introduction of liberalisation has challenged the continued existence of vertical integration,

especially in the light of technological advances experienced since the 1980s. Furthermore, while deregulation in Europe introduced competition in some countries, for most regulation remained central, creating tensions between new competitive environments and legacy monopoly elements in them - giving rise to many policy and regulatory challenges and problems (Li et al., 2000; Majone 1997; Roller and Waverman, 2001).

Technological advancements have influenced the emergence of new African models of regulation as new forms independent states to start to appear (Majone, 1996; 1997). However, none is yet an accomplished model. Nation states still have the leeway to organise infrastructure, as delivery of services and national regulatory authorities (NRAs) are still considered relevant and sovereign (Klimenko and Cowhey, 2001). As such similar challenges to those affecting the EU, frameworks are prevalent in Africa. African countries continue to battle with the history of monopoly control and entitlements of the incumbency; subsidies; lack of standardization, coordination and integration; public-service objectives; and patronage when reforming the network industry.

Parliament is a key political institution in ensuring that the regulatory outcomes are achieved (Norton, 1998). The regulatory accountability in a broader setting starts with parliament establishing the appropriate legislation and ends with the effective parliamentary scrutiny of both process and outcomes (House of Lords, 2004). These are then the processes that contribute to building the legal frameworks required to set up the institutional arrangements and engagement models as well as accountability procedures in any policy arena.

1.1.2 Reforming the ICT sector

The last two decades have witnessed ICTs radically changing economic activity. Communication is now much cheaper, easier and faster, profoundly affecting economic development and national competitiveness (Kessides, 2004). ICTs have facilitated an unprecedented high level of global interconnectedness and interdependence, accelerating the process of globalisation that represents a significant shift in the socio-economic and cultural aspects of people lives. Developing countries look to ICTs as critical tools in their efforts to eradicate poverty, enhance human development and achieve the UN millennium and sustainable development goals.

Within the ICT industry, the efficiencies of digitisation, in particular, has resulted in reductions in the cost of production. Reduction in production costs has led to removing natural monopoly elements in many parts of the network, particularly services, making them economically feasible to reproduce. Faced with competition, incumbent monopoly operators respond by privatising with the intention of creating productive efficiencies that would make them more competitive. The result has been, in many cases, that liberalisation has not accompanied privatisation, resulting in the emergence of private monopolies that have necessitated government regulation (Gillwald, 2005, 2010). Regulation has been used to introduce competition, delimit national or regional boundaries; increasingly make operations horizontally integrated (Finger and Varone, 2006). These rapid changes create a new set of unique demands both in governments and businesses (Li et al., 2000).

Governments are yet to realise an integrated, enabling and indeed the innovative approach that continually acknowledges the increasingly cross-cutting nature of ICTs and contributes meaningfully to the achievement of broader national and international development goals. Most African countries still face challenges of ensuring affordable access to ICTs despite the myriad of associated benefits and the various attempts made by governments to ensure universal access. These challenges are mainly due to the high cost of infrastructure, poor regulation, and unfavourable market conditions barring new entrants, resulting in high cost of ICT services.

Traditionally the ICT sector was a monopolistic market and continues to be in some countries (Gillwald, 2009; Wellenius, 1997; Li et al., 2000). Reforming the sector addresses policy and regulatory concerns hindering the achievement of universal and affordable access, and positions ICTs as an engine for development. The demands of globalisation, the promises of information and knowledge societies and the challenges faced by developing countries in meeting these has motivated the reforms of ICT policies and regulation at national, regional and international levels (World Bank, 2009; Figueres-Olsen and Paua, 2003). Reforms have led to the evolution of national ICT ecosystems over the last two decades, with interesting outcomes. However, it has also brought some challenges. The ICT ecosystem represents a “rugged competitive landscape” that leads to a vast number of choice variables and an increase in strategic uncertainty and

unpredictability. Secondly, the structure of the ICT ecosystem becomes more vulnerable to “regime shifts” due to asymmetric, interdependent relationships of market players within a dynamic, fast developing ecosystem (Moore, 1996; Porter and Siggelkow, 2008; Basole and Karla, 2011). The outcomes have been policies and regulations that open the ICT market to competition, lowering costs and paving the way for the introduction of new technologies.

Achieving complete reforms requires a gamut of structural changes necessary to internalise the expected benefits of restructuring (Ayogu and Hodge, 2001). Structural changes have the potential to result in the introduction of new markets, reduction of regulatory intervention after initially regulating market opening, and ultimately generating the benefits for consumers (Finger and Varone, 2006).

Sector reforms across the continent have in the last thirty years shadowed broader political and economic reforms, which themselves have followed global economic reforms leading to the liberalisation of markets and establishment of independent regulatory and competition agencies. From the emergence of the World Trade Organisation on the global stage to the reform of the Organisation of African Union into the African Union and revival of regional economic communities, the focus has shifted to market liberalisation and economic regulation. In fact, ICT sector reforms have significantly altered the sector’s market structure and institutional framework and have been accompanied by a change in thinking on how utilities should be organised and regulated (Newbery, 1999; Berg and Hamilton, 2001; Gomez-Ibanez, 2003).

ICT sector reforms underway in most countries at both regional and international levels are characterised by new laws and policies, and the establishment (or reorganisation) of telecommunication regulatory agencies in a new dynamic international market environment (Melody, 2005). In line with global developments, countries continue to make global and regional commitments to open their communications markets to foreign investment and harmonise local legislation with that of other countries in similar geographic or economic situations (World Bank, ITU & Infodev, 2009). Such commitments serve as a means to accelerate regulatory reform, facilitate global or regional best regulatory practices, and provide ICT investors with a level of certainty and predictability.

ICT indicators for Africa indicate that the ICT sector in Africa lags behind global averages⁴ (Berg and Hamilton, 2001). Despite the exponential increase in international bandwidth through the landing of multiple terabyte undersea cables on the continent, from a terrestrial and user point of view Africa remains largely unconnected in terms of Internet and broadband. This is also despite the positive and welcome growth of the mobile phone industry which is unlocking the Internet for consumers in the same way as it did with voice services. There are strong historical issues to explain this lag, including the inadequacy of the legal and regulatory environment as well as the lack of capacity of relevant institutions to achieve liberalised markets, with pervasive infrastructure, and a reduction in prices for ICT services. Again the adoption of incorrect reform sequences and time frames compounded by some social, economic and political factors has meant that most countries in Africa have only managed to privatise partially with uneven liberalisation across different markets. Sections 1.1.2.1-1.1.2.3 highlights the issues impacting progress in Africa.

1.1.2.1 Investment

Fair budgetary arrangements are critical to achieving sector reforms. A crucial role government plays to ensure successful sector reforms is attracting investors to the sector by ensuring that right conditions in place for regulation, competition and market entry (European Commission, 2005). These conditions guarantee certainty to investors on the timing and nature of regulatory interventions while retaining a flexible enough policy environment to respond to a dynamically changing sector. Often this requires a mix of market forces and policy interventions appropriate for achieving policy objectives and a matrix of interests and institutions that are in a continuous state of flux (McNamara et al., 2008; Melody, 2005). Since investors prefer a hierarchical and stable legal and regulatory environment that encourages investment and increases consumer confidence, the specification of rights and obligations (i.e., the rules of the game) that apply to the sector is necessary. As such laws enacted by parliament, and the mechanisms for oversight

⁴ See International Telecommunication Union (ITU) - Measuring the Information Society Reports for 2015, 2014, 2013, 2012, 2011, 2010; Available on URL: <http://www.itu.int/en/ITU-D/Statistics/Pages/publications/mis2014.aspx> (Accessed October 2010 & November 2015)

including budgetary and for representation, become a critical component in the creation and retention of a flexible policy environment.

1.1.2.2 Sequencing

The success of the reforms predominantly relies on its sequencing. Wallsten (2002) proposes that to succeed reforms should start with the introduction of the regulator, followed by liberalisation, and privatisation comes last. Establishing a regulatory authority before privatising is a necessary condition for increased penetration, investment, and access. Other views exist that are premised on the existence of a correlation between the performance of a country's economy and her sequencing of reforms, with either privatisation or liberalisation preceding the other (McNamara et al., 2008). A country facing economic difficulties may choose to privatise first while a country enjoying a healthy growth opens various segments to local competition first. Liberalisation of the domestic market tends to undermine the potential market value of the carrier, whereas undertaking privatisation first typically entails a request by investors for a time-bound exclusivity in the local market, thereby delaying the possible benefits of competition. Literature (for example Jordana & Levi Faur, 2004; Gillwald, 2010; Li et al., 2000; McNamara et al., 2008) reflects that sequencing models are emerging in ICT sector reforms. Interestingly what may be successful in one country may not necessarily work in another.

1.1.2.3 Global governance

The pace and success of reforms are influenced to a great extent by events in the international arena. Continued globalisation of markets, supported by the explosion of new communication networks, has fundamentally changed the nature of the state and government. This has necessitated international rules and codes that extend beyond national boundaries to be established. These rules and codes have necessitated the emergence of entirely new entities and multilateral agencies such as the World Trade Organization (WTO) and the World Intellectual Property Rights Organization (WIPO), and the reform of United Nations bodies such as the International Telecommunications Union (ITU). The existence of these entities and agencies has led to the devolution of power upwards into international governance with which nation states are required to comply; downwards into local authorities and laterally into specialised agencies (Gillwald, 2011). Responding to these changing systems of governance has become a critical part

of all political institutions.

A number of frameworks established at the international level recognise the importance of an enabling environment in the development of the ICT sector. At the international level, there are processes and initiatives such as the WSIS process⁵, numerous ITU frameworks, the WTO Reference Paper of the Fourth protocol of the General Agreement on Trade in Services (GATS). These processes among others, impress upon member states the importance of a trustworthy, transparent and non-discriminatory environment as essential to the use and growth of ICTs in the developing world. These frameworks define crucial paths that structure the regulatory framework as required to achieve the desired environment (Levy and Spiller, 1994; World Bank et al., 2009).

Examples of good practices are now emerging, but no single blueprint can be followed. Often regulatory models developed on best practices fail to take into account the effects of the different legal traditions prevalent in the country which influence the procedures and approaches taken upon implementation (Figueres-Olsen & Paua, 2003; Guermazi and Satola, 2005). This is worsened by slow and complex processes for capacity building and establishing adequate regulatory institutions in developing countries which often lag behind the entry of private operators into the sector (Cubbin and Stern, 2006; Zhang, Parker and Kirkpatrick, 2008). Furthermore, most African countries continually suffer from serious institutional weaknesses that result in planned reforms not producing the intended benefits (Parker, 2002).

1.1.3 Institutional endowments

The answer to the issues in Section 1.1.2.3 lies in how the national and international institutional arrangements are implemented. The rise of the regulatory state has created new institutions across countries and sectors. Jordana and Sancho (2004) observe that these new institutions are embedded in institutional settings most likely established in previous periods and for different kinds of public action. Furthermore, this configuration combines institutions with various public policy mandates, often with different and contradictory goals. Scholarly attention has largely

⁵ See World Summit declaration and action plan, at:
www.itu.int/wsis/documents/listing.asp?lang=en&c_event=pci|1&c_type=td [Accessed October 2010]

focused on the new regulatory agencies as the key player shaping regulatory outcomes, yet this does not provide a holistic view of the institutional arena required to build an understanding of the differences in policy processes and outcomes (Jordana and Sancho, 2004). This thesis hopes to contribute to this gap by providing a parliamentary perspective, showing how parliament as a significant contributor influences or constrains policy outcomes within the ICT sector.

Most infrastructure industries, including energy and water, have adopted unclear reform strategies that are worsened by institutional arrangements that continually affect the autonomy of regulatory agencies and undermine their independence to perform critical functions (Gillwald, 2011). This is compounded by the political, rather than technocratic appointments made for decision-making positions across the sector institutions, ministry, regulators and inherently parliamentary commission, which result in the absence of specialised skills necessary for effective policy formulation and regulation (Gillwald, 2011).

As highlighted in Section 1.1.2 most ICT policy initiatives in Africa are yet to achieve their desired outcomes. The success of the reforms depends greatly on the willingness and ability of government to provide regulatory and legislative provisions that not only promote the development of infrastructure and service offerings but also accommodate the country's institutional endowments. The continent remains largely unconnected regarding Internet and broadband despite the positive growth of the mobile industry. This is a sign that the reforms are failing and that the governments continue to protect the status quo that limits market entry and constrains fair competition at the expense of sector development.

Levy and Spiller (1994, 1996), having surveyed the performance of regulated telecommunications industries in different political and social environments, argue that a country's institutional endowment at the macro-political level determines the scope for arbitrary administrative discretion, the confidence of investors that their assets will not be arbitrarily appropriated and, through this, the performance of regulated industries. Thus, governments are key stakeholders at the macro level and have an obligation to design and adopt various institutional mechanisms to reform legal frameworks to support the implementation of international, regional and national ICT policies.

However, the structure of these legal frameworks is determined, in part, by the nature of the state and the *legal and constitutional system* of each country and how these can be extended and applied (Levy and Spiller, 1996). Success is to a large extent influenced by the rules that define who can participate and shape the various strategies that influence the outcomes and preferences of the actors involved in the reforms process (Steinmo, 2001). As Howell (2006) aptly observes, outcomes in the ICT sector are determined principally by the actions within the sphere of policy, law and regulation, as a consequence of the ultimate powers conferred upon them to determine the applications, products and services exchanged in the markets that ensue, and the distribution of the net benefits that arise.

Numerous desirable institutional arrangements for effective regulation of infrastructure industries have been developed. Examples are in Melody (1997), Kerf, Schiffler, & Torres (2001), Mustafa (2002), Smith and Wellenius (1999), Stern (1997), and Stern and Holder (1999). These scholars recommend a variety of arrangements across infrastructure industries that enhance the quality of regulatory governance and increases confidence in the regulatory system as institutions embrace a very wide range of governance arrangements, roles, activities, processes and outputs.

Adopting institutional arrangements for the ICT sector is a significant role for government. Following a governance model that allows for the participation of various actors who can define and agree on goals together is desirable (Song and Oh, 2012). Interaction among the different elements is influenced by networking principles that allow for collaboration and cooperation with a focus on achieving collective action. However, due to the immaturity of the market and civil society and the existence of cross organisational sectionalism among ministries, most African governments have adopted arrangements that give high authority to either a government ministry for the planning and coordination or distribute policy functions to several departments.

The institutional approach adopted by a country fundamentally matters as it can either promote or constrain the participation of parliament in ICT sector reforms. Parliamentary interventions most times are shaped by national priorities, institutional and legal endowments as well as the

interactions with the main sector players during the reforms trajectory ⁶ (Kessides, 2004). By design parliaments tend to follow similar models as those within the executive, especially when establishing committees to oversee the ministries. Such arrangements often result in horizontal and fragmented coordination that does not achieve the desired collective action as parliaments have to contend with internal institutional designs that can hinder effectiveness. Parliament is a key political institution in creating an enabling environment for sector growth.

ICT reforms require a stable, open and certain environment that encourages confidence in the ICT market and is premised on a legal and regulatory framework that can level the playing field to allow key sector players to interact by introducing competition, improving conditions for market entry and protecting consumer interests (McNamara et.al. 2008). Such a framework requires policy, legal, market and social considerations that interact both at domestic and global levels to create conditions for ICT-led growth and innovation (Figueres-Olsen and Paua, 2003; Guermazi and Satola, 2005).

1.1.4 An enabling environment for sector reforms

Key players in the policy arena such as citizens, civil society, private sector (operators), and regulators depend on the prevalence of an enabling environment to participate successfully in the reform process. Critical elements to achieving an enabling environment include state decisiveness⁷ and resoluteness⁸, public confidence, inclusiveness, stability, transparency, competition, investment, innovation, and growth (Tsebelis, 2002; Figueres-Olsen, 2003; World Bank, 2009). An enabling environment allows government and its branches to work at a macro level setting out objectives, issuing legislative provisions and addressing policy issues of national concern to both investors and operators. Effective governing at this level relies on the ability to implement policy changes effectively (state decisiveness) and to ensure the decision-making processes support these changes.

An enabling environment feeds on effective government coordination, which speaks to the

⁶Reforms path follow from monopoly →liberalisation→competition→convergence.

⁷Ability to enact and implement policy changes.

⁸ Ability to maintain and commit to a policy once established.

ability to engage systematically and communicate a vision while maintaining an environment that supports growth and innovation. It requires government, as a whole, to harmonise sector specific policy concerns with other national issues through a variety of statutory mechanisms to ensure alignment with national aspirations and goals (Darwiche et al., 2007).

Several challenges in shaping the enabling environment from a parliamentary perspective are outlined in Chapter 2 of this thesis. These reflect the perceived role of parliament as the legislative arm of government and its relationship with other state institutions and the arising institutional arrangements thereof. There are assumptions and expectations placed on parliament regarding its role in the process of guaranteeing a legal and regulatory framework that can level the playing field within the sector. The regulatory framework should allow for competition, market entry and protection of consumer interests in a way that brings stability, openness and confidence in the ICT market. Such an environment encompasses a broad range of expertise and is informed, forward-looking and adaptive; requiring policy, legal, market and social mechanisms that interact both at domestic and global levels to create conditions for ICT-led growth (Guermazi and Satola, 2005). Achieving the enabling legal framework relies on institutions with the capacity to implement policies and manage a complex array of competition in infrastructure and services. The result would be effective regulation of liberalised markets, with pervasive infrastructure, and a reduction in prices for ICT services which more often than not resides outside parliament (McNamara et al., 2008).

1.2 Necessity for the research

While investments in network industries in general yield greater social and economic returns than many other investments, investments in communications infrastructure with particular network effects associated with enhanced flows in information yield greater returns (Gillwald, 2005). Despite a body of evidence (Gillwald, 2005; Roller and Waverman, 2001; Kelly, 2004; Qiang, 2009) providing linkages between telecommunications development and economic development, the reasons why these positive outcomes are elusive in developing countries that have pursued sector reform have not been adequately explained. Specifically and in the context of this thesis, what structural factors constrain the successful implementation, particularly about parliament as an assumed central element of sector reform in nascent democracies.

As such any findings emerging from this study are likely to apply across most, if not all, infrastructure industries. Just like in other network sectors, the institution of parliament is increasingly having a significant bearing on the outcomes of the ICT policy and regulatory reforms. There is a lack of studies measuring parliamentary participation in ICT sector reforms in Africa. This provides the rationale and basis for this study. Parliaments in Africa have been the subject of much research in as far as their performance, institutional arrangements and power dynamics are concerned. Similarly, the ICT sector reform process is subject to much research in its own right. Scores of ICT scholars have identified the conditions under which the on-going ICT sector reforms can accomplish desired outcomes. However, most have not anticipated how parliaments can be a significant factor in achieving the reforms, neither have they considered the institutional challenges that may hinder parliament from effectively implementing its role. How the different legal systems and arising institutional arrangements influence or constrain the creation of an enabling environment for the ICT sector is still an unearthed area.

There is little research available on how parliaments deal with the rapid changes within the ICT sector as a key infrastructure for modern economies. Neither has it been anticipated how parliaments deal with the new governance arrangements for the sector as it reforms from a public utility into a multiple supplier competitive environment requiring promotion and safeguarding as a public good. Pertinent factors such as characteristics of legislative power (its separation, source and values), political interests, parliamentary attributes, electoral system, political will and space structure political participation in governance processes to either secure policy benefits or negatively impact the political decision-making process.

The dearth of such studies in developing countries and near absence in Africa in particular, make this is an important and novel area to examine. Result- oriented parliamentary research providing a link between parliaments and policy outcomes is of concern for both understanding and promoting ICT sector reforms. A comparative analysis of the two parliaments (Kenya and South Africa) from two economic regional blocs of Africa with distinctly different legal systems is worth engaging. These countries have swapped position as the continent's ICT leaders in the second round of reform (broadband) from the first, which South Africa led.

1.3 Problem statement

Faced with the coincidence of post-cold war political reforms and the advent of the technological revolution that undermined traditional conceptions of the telecommunications monopolies, governments are constantly called upon to reform their public utilities, open markets and create enabling environments for infrastructure investment. Li and Xu (2004) observe that with less mature democracies the establishment of democratic institutions affects the pace of reforms by moderating politician discretion. As such parliaments in such dispensations have met up with challenges in effectively applying their representative, legislative and oversight mandates (Aringo, 2012) in a manner that facilitates the reforms of the sector. Studies (for example Hall & Taylor, 1996; Epstein & O'Halloran 1997; Johnson, 2005; Ernesto, 2007; Norton, 1998; Olson, 1994) have identified some challenges impacting parliamentary participation within the ICT ecosystem, chief among them being;

- i. unsupportive institutional arrangements for parliamentary participation both within the broader political governance and in the ICT ecosystem context;
- ii. ineffective parliamentary mechanisms, designs and policy practices; and
- iii. inadequate capacity and knowledge by parliament to handle the ICT sector issues.

1.4 Research question

Arising from the problem statement above, the primary question that the research seeks to answer is: what role does parliament play in enabling or constraining ICT sector reform? To respond to primary question sub-questions relating to the institutional and governance arrangements, political context, parliamentary mechanisms, policy practices, capacity and knowledge levels of the ICT industry are examined to understand how these factors shape the participation of parliament in the ICT sector reforms process. The following sub-questions are raised to facilitate this evaluation in Kenya and South Africa:

1. To what extent have the two countries implemented ICT sector reforms and with what outcomes?
2. How has the surrounding governance context (nature of the state, the interplay between

state and market; the interplay between different institutions and interest groups, the extent of political space; the impact of global governance) supported or constrained the effective participation of parliaments in influencing ICT sector reforms?

3. Do interest groups (government, industry, civil society) accept parliamentary legitimation in the sector reforms?
4. To what extent has parliament applied its legislative, representative, oversight and budgetary mandates to influence ICT reform processes?
5. How have the existing institutional capacity, political competence, and specialised knowledge levels concerning ICT, within parliament enabled or hampered its participation in developing an enabling environment for ICT sector reforms?

To contextualise the primary question the study reviews existing literature on pertinent issues with regards to the institutional factors, arrangements and dynamics within the regulatory, political and economic environments. The literature explores the prevalent policy practices and determinants of parliamentary performance that influence or constrain the achievement of an enabling environment for ICT sector development in the two countries under study. This is so to determine contextual and institutional factors affecting the role of parliament in ICT sector reforms process.

1.5 Significance of the research

This investigation intends to make an original contribution to the body of knowledge in ICT sector reforms by applying an institutional and capacity analysis to ICT sector reforms process in a developing country from a parliamentary perspective. It intends to make a contribution to the existing body of knowledge by extending the analysis of parliamentary processes on sector outcomes to the ICT policy and regulatory reforms on the one hand and a developing country context on the other side through the gathering of detailed empirical evidence on the applicability of practices to policy making. By so doing the research will enable an examination of the

relationship between parliament as the body responsible for ensuring an enabling environment and other key players in the sector in ensuring the achievement of effective ICT sector reforms, with practical application for African parliaments.

A combination of an ICT ecosystem, institutional constellation and self-assessment framework provides a research methodology that may have been applied individually or in a different setting but is yet to be implemented in a parliamentary context. While the self- assessment has been utilised within the parliamentary context, in Kenya, it focused on budget process and had not been applied to the ICT policy making process. Combining individual concepts into a new conceptual framework is expected to contribute towards the development of a new approach to analysing the role of parliaments in policy reforms of infrastructure industries.

This study will benefit ICT policies and practices and academics by contributing to the understanding of enablers and constraints of effective parliamentary participation in ICT sector reforms. The findings are likely to assist participating parliamentarians, together with the support staff, ministries and civil society to realise some of the gaps that require attention in their respective countries. The study contributes to the yawning research gap on the role of parliament in facilitating ICT policy and regulatory reform, particularly in the African context, and in the process, it is likely to identify a plethora of new research opportunities.

1.6 Overview of the structure of the thesis

The thesis consists of eight chapters. Chapter 1, the introductory chapter, has discussed the historical and theoretical context for regulating and reforming infrastructure industries and more specifically the ICT sector, the motivation for parliamentary participation as well as some of the key concepts that inform policy debates. The chapter has provided the rationale and context for the examination of parliamentary participation in ICT sector reforms that the subsequent chapters contain.

Chapter 2 explores literature on the challenges faced by parliament in regulating infrastructure industries, the surrounding governance context and determinants of parliamentary performance (influence of parliament) in an attempt to establish the factors constraining the effective

participation of parliament in ICT policy and regulatory reforms. Chapter 3 explores and explains relevant major contending theories and concepts' concerning parliamentary participation in governance and on that basis defines a conceptual framework to address research questions raised by the study. Chapter 4 presents the methodology for the study, describing the paradigm, epistemological and ontological approaches that have influenced the selection of methods of data collection and analysis.

Chapters 5 presents a review of constitutional, legal, normative and strategic documents, media statements and reports on parliaments and the ICT sector in Kenya and SA that define the legal, regulatory, constitutional and institutional architecture and environment that shape parliamentary participation. Chapter 6 reports on the qualitative findings of the study, from a horizontal self-assessment complemented by deep cutting high-level interviews with key stakeholders in national ICT ecosystem of Kenya and SA, to investigate the key parliamentary practices, applied to the ICT sector through the committee system.

Chapter 7 reviews evidence presented in previous chapters in light of the current practice of law and the state of play by parliament in the ICT sector through the lens of institutional constellation framework and other arising sub-concepts such as state, power, representation and interests to understand the different outcomes in each country. Drawing on the emerging themes and patterns from the findings in Chapter 5 and 6, Chapter 7 provides a cross-country comparison of the role of parliament in the ICT policy making processes of Kenya and South Africa by analysing the trends, tensions and contradictions in parliamentary participation. Finally, Chapter 8 summarises the main points of this comparative analysis, presents conclusions and offers final observations making some policy and practice recommendations that are geared towards the academia, practicing parliamentary and ICT experts, government and parliament itself.

This thesis presents findings that have significant implications for our understanding of the structural and institutional constraints on parliaments in developing countries and nascent democracies. Parliaments lack the capacity to simply fulfil their legislative and oversight roles, not to mention creating an enabling environment for innovative public policy, sector investment and public interest outcomes as required by this dynamic sector in any modern, globalised

economy. A proactive approach that follows a disciplined management practice to resolve capacity constraints could ultimately solve the problem of uncertain outcomes and reinvent parliament for accountability. The internal designs and political governance arrangements should evolve in a manner that upholds and reinforces constitutional mandates to give parliament the required power and ability to fulfil its mandates in sector policy reforms.

The recommendations made at the end of the thesis highlight a relationship between effective parliamentary participation and positive policy outcomes in ICT reforms, specifically showing the importance of timely and appropriate legislative responses, underpinned by sufficient legislative power and capacity of parliament to act independently. Furthermore, the findings in the thesis encompass the beginnings of defining a parliamentary engagement model for sector reforms processes.

Chapter 2

DETERMINANTS OF PARLIAMENTARY PERFORMANCE

Chapter one discussed the theoretical motivation for regulating infrastructure industries, especially the importance of reforming the ICT sector placing importance on the policy and regulatory environment of which parliament is a key player. This chapter explores the theoretical perspectives underlying significant challenges faced by parliament, particularly about its participation in sector reforms. On the basis of the challenges, the chapter then builds a set of critical determinants and highlights the critical capacities required for parliamentary performance as enablers for parliamentary participation.

2.0 The political system

Work by Tsebelis (2002) on veto theory provides a framework for analyzing political institutions, providing context and conditions under which parliaments operate. Tsebelis (2002) views the political system as a means of collective decision-making with a series of political institutions translating into a constellation of veto players that influence policy stability. Accordingly parliament is an institutional veto player alongside the executive as assigned by the constitution. Decision making within this political system involves the participation of some collective veto players like a committee or political party. The collectiveness of the system makes decision-making complex and requires internal decision-making rules based on a majority, qualified majority, or unanimity.

Like market institutions, legislative institutions reflect two key components: the goals or preferences of individuals (for example MPs seeking re-election) and the relevant transaction costs (Weingast & Marshal, 1998). Weingast and Marshal describe parliament as after all, the popularly elected assembly with a mandate to ensure a responsive and accountability government to citizens. Parliament, according to the World Bank (2010), performs two vital political functions, namely conducting free and open political debate regarding government legislation, spending and implementation of policies and representing citizens and groups in their dealings with government.

As the foundation of political life, parliament is theoretically viewed by legislative scholars (Kinoshita, 2008; Campbell, 2004; Parliamentary Centre, 2009) as an independent factor in political behavior. It consists of formal and informal rules, monitoring and enforcement mechanisms, and systems of meaning that define the context and relationships within which individuals, political groups, the executive, corporations, labor unions, nation-states, and other organisations operate and interact with each other. As summarised by Polski & Ostrom (1999) parliament is, therefore, constituted by a set of institutional arrangements and participants with a common set of goals and purposes, and who must interact across multiple action situations at different levels of activity.

Tsebelis (2002) argues that all actors in the political system care about policy outcomes either directly or indirectly. Tsebelis remarks that while the system generates policy preferences and assures that these preferences are implemented; policy outcomes are consequently a result of actors' preferences and the prevailing institutions. The outcomes are influenced by the number and location of veto players, the sequence with which veto players make decisions (that is, who makes proposals to whom), or whether it is at an individual or collective level. These factors affect the influences that these veto players have in the decision-making process, with individual veto player's deciding by their preferences and collective (like a parliament or political party) depending on the rules and who controls the agenda.

The above become mere definitions if parliamentary performance fails to reflect the evolution of these relationships at least as far as authorities, rules, procedures and resources, the interrelatedness of institutional arrangements and the interest and behavior of the actors are concerned. Parliaments should become more and more pervasive and resilient in securing government accountability and policy outcomes, as observed by Rahman (2005). While on one hand they remain representative bodies reflecting the sentiments and opinions of the populace, on the contrary, they are the prime source of law to govern a country. Accordingly as Olson (1994) points out the union of these two features qualifies their significance in democratic politics. In fact, Lijphart (1991) suggests that legislatures should probably be regarded as the most important institutions in a democracy.

Traditionally parliaments perform three core functions that of representation, legislative functions, and oversight. Legislative scholars (Weingast & Marshall, 1998; USAID, 2000; Steinmo, 2001) demonstrate that the existence of parliaments is premised on three critical assumptions, i.e., that (1) members represent the interests located within their constituencies, (2) political parties place no constraint on the behaviors of individual representatives, and (3) majority rule is a binding constraint. Through its mandate parliament then ensures that the administration of public policy reflects and meets the people's needs, and that agreed policy is properly implemented and delivered to target citizens (Aringo, 2012; Yanamoto, 2007).

The assumption is, therefore, that parliament as an institution can impact and influence the behavior and outcomes of society in a number of ways. The assumption further explains how and whose interests are ultimately considered in the policy-making process; the different power bases and reward systems within parliament and how they influence the choices and priorities as well as how the majority rule influences the quality of legislative outcomes (Weingast & Marshall, 1998).

Tsebelis (2002) defines policy as the principal outcome of a political system and as such people participate in a political system to promote the results (policies) that they prefer. As a result, policymaking is necessary for political actors whether or not they have direct preferences over policies. The effectualness of parliament to influence policy making, and consequently ICT sector development, is the subject of the rest of this chapter.

2.1 Challenges for parliament

Li and Xu (2004) provide a rationale for reforming the ICT sector as, among a myriad of other benefits, to yield important policy implications such as a shift from state-dominated institutions to pro-market institutions. It is the critical role of policy and regulations in delivering ICT benefits to society in the face of globalization, sustainable development and poverty reduction that is discussed at length in ICT policy literature (Kenny ,2000; Roller and Waverman, 2001; Kelly, 2004; Gillwald, 2005; Qiang, 2009). Policy and regulation are by nature incremental and contextually shaped by local realities, making the behavioral aspects of organisations (parliament in the case of this thesis) responsible for policy and regulation an important element of this study.

The government uses policy and regulation processes as tools to achieve ICT objectives (Jordana & Levi Faur, 2004).

The House of Lords (2004) in attempting to understand the regulatory system points out that the process of regulation not only starts with parliament but its ultimate responsibility rests with parliament. The broader regulatory accountability framework thus has to take into account parliamentary responsibility for establishing the appropriate legislation with the effective parliamentary scrutiny of both process and outcomes (House of Lords, 2004), while at the same time reflecting the hierarchy of regulation⁹ prevalent in the country. What is clear is that parliament often legislates for regulation that in many cases is carried out by independent regulators, to shield market interventions from interference from ‘captured’ politicians and bureaucrats.

Several challenges to realizing potential benefits of ICTs are identified. Chief amongst them is the inadequacy of the legal and regulatory framework to create liberalised markets, with pervasive infrastructure, and reduced prices for ICT services. This inadequacy is compounded by other regulatory governance problems, political conflicts and capacity challenges of relevant institutions within the policy arena. The ability of parliament as a key institution in the regulatory arena, the dynamics of power structures and institutional arrangements within the broader political context are therefore necessary conditions to respond effectively to the dynamism of the sector. Parliamentary participation is very much a direct outcome of a combination of factors that include the surrounding governance context and the arising institutional arrangements within which they operate. Sections 2.1.1-2.1.3 narrates the significant challenges for parliamentary participation discussed in governance, regulatory and political literature and applicable to ICT sector development.

2.1.1 Parliamentary accountability and scrutiny

Accountability and scrutiny are two critical primary control mechanisms that ensure government

⁹ Refers to how regulations relate to each other in a predetermined way starting with primary legislation- ICT law; followed by secondary legislation - regulations, decrees, instructions and guidelines; then lastly the authorisation framework- licenses, concessions, permits, registrations and notifications.

maintains and endorses effective regulation while identifying and exposing ineffective regulation (Norton, 1998; House of Lords, 2004; Wang, 2005; Staddon, 2007; Black, 2008). On one side is accountability a broad two-dimensional concept that embraces both answerability¹⁰ and enforceability¹¹ (Schedler, 1999; House of Lords, 2004; Staddon, 2007). It is integral to the macro design of the regulatory system as a whole. Accountability is given effect through three elements: duty to explain, exposure to scrutiny and the possibility of independent review. On the other is scrutiny which then ensures that regulatory bodies have decision-making authority but can at the end effectively respond to the results either judicially or in a parliamentary committee (House of Lords, 2004).

Government and parliament retain the responsibility to review the regulation and ensure that the legislation remains fit for purpose. So even if regulators are independent for particular purposes they still fall within the overall responsibility of government and must, therefore, be held accountable for their actions through a set of defined arrangements, one of which being parliament. What matters is more the independence of government rather than of government (House of Lords, 2004). The key concern is increasingly the ability to formalise relationships within the regulatory framework, while constraining or empowering the parties, one in relation to the other, as appropriate. Effectively this is done through legislative delegation outlined in section 2.1.2.

Parliamentary accountability is derived from the legislative power conferred by a country's constitution which sets the rules that define, describe and regulate the structure and operation of the state, its institutions, activities and officials⁶ (Staddon, 2007). Wang (2005) proposes an accountability framework that shows external factors such as the constitutional powers, social legitimacy, and the interests of actors as well as internal factors including the committee system, party groups, and the chamber as influential in parliament's ability to hold the executive accountable. The House of Lords (2004) circle of accountability (Figure 1) confirms Wang's factors as critical, providing an elaboration of each key stakeholder's role in the circle. While each plays a different part at different times, more or less independently, the circle of

¹⁰ Refers to the requirements to inform, explain and justify.

¹¹ Refers to the capacity of accounting agencies to impose sanctions.

accountability is arranged within an overall framework of an effective regulatory state (House of Lords, 2004). Within this framework, parliament sets the statutory framework but legislates for it to be carried out by independent regulators.

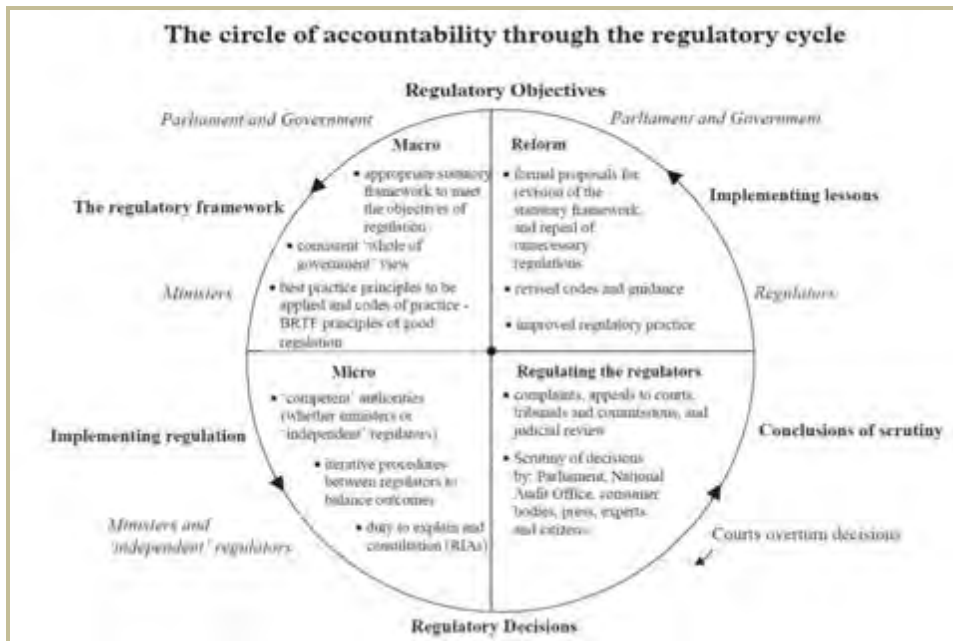


Figure 1: Accountability and regulatory cycle. Source: House of Lords (2004).

Wang (2005) and House of Lords (2004) places the internal structuring and workings of parliament at the center of its ability to influence policy outcomes. It is through accountability that parliament assigns roles to institutions and actors to distribute the power to impose in regulatory design activities. It is for accountability that parliament holds the government to account for its action and passes laws creating regulatory bodies.

Griffith (2005) affirms that the expansion of modern state and the exponential growth in administrative activity presses upon parliament the need to exercise its accountability or scrutiny functions efficiently and effectively. In enforcing the desired accountability, parliament faces some challenges arising from political conflict created by design rules that impose obligations directly on individuals and organisations, and that also determine the basic forms of intervention and enforcing conformance. Most often parliament lacks the mechanisms for consistent and

coherent scrutiny¹² of regulation. This is compounded by the fact that regulatory agencies have multiple accountabilities¹³ (see Figure 1) in practice, depending on the circumstances, including the relationship between the interested parties to the regulator. This is further challenged by overlapping jurisdiction stemming from the interrelated responsibilities of parliament, ministers and independent regulators.

2.1.2 Legislative delegation

Extensive literature exists on legislative delegation (for example Shepsle, 1991; Majone, 1997; Stiglitz, 1998; Gilardi, 2002; Jordana & Levi-Faur, 2004 and Gillwald, 2009). According to these scholars, legislative delegation is the technocratic solution used to solve the lack of expertise and time constraints of policy makers and is currently considered amongst the most independent and critical methods of ensuring regulatory independence. Delegating authority to regulatory agencies provides specialised decision-making on technical matters that political institutions do not have the capacity to perform. Over and above, agencies prevent conflicts of interests within the government as significant shareholders in incumbent operators, providing professional autonomy in cases where privatization is achieved.

Legislative delegation supported by both normative and positive perspectives has been the subject of research in political science, legal scholarship and economics (for example Rose-Ackerman, 2007, 2008; Epstein & O'Halloran, 1999). While some theories rationalise legislative delegation to focus on the trade-offs between the value of administrative competence and the loss of political control due to the mismatch between the objectives of bureaucrats and their political principals (Bawn, 1995; Epstein & O'Halloran, 1999; Bendor et al., 2001). Others yet view delegating authority to regulatory agencies as enhancing the 'credibility' of government in certain policies to attract investors in the face of unpredictable electoral cycles and increasing

¹² Capacity to effectively conduct parliamentary scrutiny is essential as it is not just a question of the answerability of regulators to parliament, but also ensuring that parliamentary scrutiny is not fragmented and inconsistent with no means of establishing a coherent overview of the regulatory regime or regulatory burden. General trend has been that scrutiny is dependent on individual committees deciding that inquiry is necessary into a particular regulator or regulatory decision.

¹³ The House of Lords (2004) describes a 360° view matrix of accountability where the regulators account multiple stakeholders including parliament, government, judiciary, citizens, interest groups, regulated companies, consumer representative bodies, and customers and consumers.

international interdependence (Wellenius, 1997). Consequently, the capacity of experts to credibly commit themselves is much greater than that of democratically elected politicians (Gilardi, 2002; 2005).

At the very least, National Regulatory Authorities (NRAs) that report to the legislature are viewed in principle as more independent than those that report to the sector ministry. Their work is much less associated with the volatility in governmental or ministerial changes and political parties and views (Brown et al., 2006; Andres et al., 2008). Wesrup (2007) observes that such institutional model has emerged as the paradigm of an infrastructure regulator, as opposed to cases of high concentration of executive authority, a corporatist style of policy making where parliament has low interest in oversight, and the evolution of regulatory governance can take time and follow an uneven path.

Legislative power as enshrined in a country's constitution is a critical determinant of effective legislative delegation. Sector reforms heavily rely on the existence of regulatory institutions supported by strong parliaments with an ability to exercise its powers and delegate authority to these institutions. However, literature identifies significant challenges faced by parliament in enforcing legislative delegation worth noting. The first is guaranteeing the independence of the delegated agency, failure of which regulation can be subjected to “political capture”. Since statute creates regulatory functions, ideally regulators should carry out only regulatory functions designed and passed into legislation by regulatory. Secondly, while legislation may, in theory, be used to empower regulators, political expediency can undermine regulatory independence as government often finds other ways of influencing regulators. The result is goals are distorted to pursue political ends, a sign of failed legislative delegation (Stiglitz, 1998).

Thirdly ‘trust is given to some institutions and actors and is withheld from others’ (Jordana and Levi-Faur, 2004:13) a declining public confidence in political institutions is proving a major hindrance to the effectiveness of legislative delegation. They argue that while the regulatory state can be impelled by business investment concerns and expertise in the policy process, there is a critical gap that relies on a trust-building process between social and political actors. The trust between politicians and the public amidst scandals, catastrophes and public pressure, especially

in the establishment of independent regulators, may contribute to progress in the regulatory reform processes and enhance understanding of the institutional design of the regulatory state (Jordana and Levi-Faur, 2004).

Epstein & O'Halloran (1999) identifies a political challenge with minimizing the tradeoff between the advantages of having an independent agency and the apparent threat to the proper process of democratic accountability. This trade-off is related to the principal/agent relationships, derived largely from the economics of organisations. The government and parliament are considered principals and the regulators are considered the agents (Weingast & Moran, 1983; McCubbins and Schwarz, 1984; Moe, 1984; Rose-Ackerman, 2007). The principals seek to minimise “agency losses”¹⁴. The “degree of independence is thus ultimately shaped by ex-ante mechanisms such as the legislative mandate that describe the role and objectives of the regulator and by a series of ex-post mechanisms¹⁵ requiring the regulator to report on its actions to the principals”(Wesrup, 2007:8).

2.1.3 Independent regulation

A universal feature of indirect government in a regulatory state and an outcome of effective legislative delegation is the creation of independent¹⁶ regulatory agencies (Baudrier, 2001; OECD, 2002; Maggetti, 2009; Rommel, 2009) and ensuring their formal independence from politicians both functionally and structurally. Brown et al., (2006), argue that this increase independence credibility, transparency and long-term sustainability of the regulator; validating sector management approaches, ensuring compliance with international standards and in the process increasing sector attractiveness.

Regulatory independence is largely based on the strength of legislative delegation, supported by legal guarantees enshrined in an act of parliament. The outcome is a distinct relationship between

¹⁴ Defined as a situation where agents act contrary to the preferences of the principal, because of “shirking”, where agents act to pursue their own preferences(Wesrup, 2007)

¹⁵ Legislative committees can choose between two styles of oversight: police patrols or fire alarm. In the case of police patrol, regulatory oversight is “-centralised, active and direct” and includes legislative hearings and special inquiries, whereas fire alarm is less active and indirect, and encourages -citizens to bring agency discretion to the attention of principals (McCubbins and Schwarz, 1984).

¹⁶ The ability of the regulator to act independently from the executive arm of the government while allowing the legislative branch to be in charge of appointments and reporting (Wesrup, 2007).

the executive and parliament compounded by substantial autonomy for the regulator in the allocation of resources; structuring of internal arrangements including accounting and personnel management (Baudrier, 2001; Gilardi, 2002, 2005). Furthermore, the independence gives regulatory agencies powers to prevent unfair competition, block mergers and even control prices in that particular sector and enforces legal requirements (Thatcher, 2005; Gilardi, 2005).

Challenges often arise when the defined formal independence differs in substance from the perceived or actual autonomy (Christensen & Læg Reid, 2005, 2006; Maggetti, 2007, 2009). Christensen & Læg Reid (2005, 2006) and Maggetti (2007) observe that regulatory framework influences the autonomy of the regulator as much as does the formal and actual relations with politicians. Since no actor has full competence over a sector, actors become dependent upon each other. As the players function and share competencies with others, the capacity of single regulators to intervene is constrained by the mandate and powers of other actors in the arena.

2.2 Determinants of parliamentary performance

To overcome the challenges as identified in section 2.1 parliamentary participation is largely based on its ability to perform functions effectively. The level of parliamentary performance influences the quality of design of regulations contributing to the completion of tasks, assignment of roles to institutions and actors, and distributing power to impose obligations (Jordana et al., 2004).

The literature identifies a number of factors that influence parliamentary performance. Some of the literature (for example Copeland & Patterson, 1998; Norton and Olson, 1996; Johnson 2005; Staddon, 2007; World Bank, 2010; Jana, 2014) suggests that parliamentary attributes are prescribed in the country's constitution. These attributes delineate aspects of several key parliamentary characteristics, such as its organization, how it carries out its basic functions and the extent of the parliament's powers *vis-a-vis* that of other political institutions. These characteristics are implemented by parliament adopting laws that delineate the electoral system; its role in the budget process; and access to information (Johnson, 2005). Furthermore, parliaments adopt internal rules, such as by-laws and rules of procedure, that dictate how the parliament conducts its daily activities and with which instruments.

Attributes such as the typology are important determinants of parliamentary performance and predominantly matter when measuring the strength, capacity and effectiveness of parliament in policy making (Mezey, 1979; Norton, 1998; Rahman, 2005). Similarly, the constitutional and government structures, power and authority bases, and dynamics of the party system are factors influencing the effectiveness of parliament. All these factors shape political outcomes, with important implications for party caucuses, committees, individual legislators, legislative leaders and staff (USAID, 2000). Moreover, the continuity and strength of a parliament depend on the existence of a support system that incorporates socio-economic forces such as civil society, media and interest groups; institutional history; political cultures; and the economic environment.

This section provides a theoretical overview of parliamentary performance as a critical determinant of parliamentary participation in policy making in general and in the ICT sector development in particular. Fundamental to parliamentary performance is its relationship with other state institutions as prescribed by the constitution.

2.2.1 Surrounding governance context

The interrelatedness of key aspects with the governing context and attributes of parliament provide insightful information on how parliament conducts its business, a useful variable in understanding better the role of parliament in sector reforms. ICT sector reforms in different parliamentary traditions and systems provide insight on the interconnectedness of rules in place that shape public decision-making, including shared interpretative structures and how these affect the patterns of decision-makers within the sector (Ostrom, 1994; Jordana & Levi-Faur 2004).

Surrounding governance is concerned with the nature of the state, the interplay between state and market, between the different institutions and interest groups, the extent of political space and the impact of global governance. It alludes to the institutional arrangements that define the rules that structure political participation. The surrounding governance is concerned with how expertise and information on policy flows between state institutions from sources independent of the executive, identifying as stable the specialised system of committees, as a necessary condition

for legislative strength regardless of what political system in place (Norton, 1994; Schuttemeyer, 1994; Strom, 1998).

It is the governance context that allows parliament to exercise legislative authority by delegating state power to the regulator (Berg & Hamilton, 2001; OECD, 2002; Westrup, 2007). The rules at play very much influence the nature and level of delegation. Delegation is defined by law that prescribes a neutral environment free from partisan political considerations for a regulator to exercise duty (Westrup, 2007; World Bank et.al, 2009). As highlighted in Chapter 2 § 2.1.2 delegation of state powers to an agent is meant to solve the lack of expertise within parliaments. It caters too for time constraints and the problems of political credibility and insulate politicians from the fallout of unpopular decisions by shifting blame to the regulator (Levy & Spiller, 1996; Majone, 1997, 2001). This level of delegation poses other challenges, chief amongst them is the creation of the third layer of decision making not directly accountable to the electorate, and that also challenges the essence of democratic governance, which is parliament's core business (Jordana & Levi-Faur, 2004; Westrup, 2007).

2.2.1.1 Predefined role in government

According to O'Neil (2007: 2) formal institutions are “explicit and concretized in written documents (e.g. constitutions, laws and regulations, commercial and civil service codes and procedures) physical structures (e.g. ministries, legislatures, courthouses) and public events (elections, council meetings)”. On the other hand informal institutions are explicit and based on unwritten understandings such as social cultural norms, routines and traditions, with the belief that the rules they give to rise will be enforced (O'Neil, 2007).

It is quite common within the African polity to have informal regimes that are “based on the giving and granting of favours” (Cromwell and Chintedza, 2005:2) existing alongside the formal institution as described in this section. This makes the separation in policy of public and privately motivated decisions and resource distribution hard to distinguish. This common phenomenon is supported by what O'Neil (2007:2) describes as an “institutional hybridity” where informal patrimonial practices occur alongside formal legal rational rules or institutions that are often dysfunctional, incompatible, multiple, unpredictable, and contradictory and are

supported by a strong often rhetorical elite commitment to the separation of public and private spheres.

Formally, constitutional provisions predefine the role of parliament in government conferring legislative authority that make other state institutions accountable to it. However, the strength or weakness of parliament in this role is measured by its ability to command political resources for the purpose of influencing public policy (Edelman & Zelniker, 1973). Mezey (1978) and Gilardi (2005) confirm that the strength of parliament is frequently connected to its capacity to resist or modify policy initiatives emanating from the executive branch. When the legislature has no such capacity, its policy-making role is said to be weak; in contrast to legislatures with strong policy-making roles which can resist the executive influence.

The role of parliament is influenced to a vast extent by the governance context within which it operates. As Johnson (2005) observes the political system under which government operates on a daily basis is based on interactions with other practicalities, precedents and habits. Variables such as the relationships between the state, the market and civil society, the extent of political space and support for active citizenship become key to the way parliament conducts its business. Political and colonial conditions (whether parliamentary or presidential; west-minister, congressional or mixed), electoral systems (whether constituency based, proportional representation or mixed), determine the formal parliamentary powers, political will and political spaces that enable parliament to perform its role (Copeland & Patterson, 1998; Johnson, 2005).

Effective policymaking reflects a certain degree of cooperation between government and parliament based on predetermined rules at constitutional and operational levels of a country that establish practices and principles including separation of powers. In modern democracies, a country's constitution formally structures decision making and interaction between the executive and parliament (Mezey, 1998; Johnson, 2005; Staddon, 2007). Johnson (2005:1) points out that “parliament requires the capacity to monitor the executive, and the executive must be willing to comply with legislative enactments”. The reality, however, is that parliament operates in a world of complexity, contradiction, and confusion often with minimum access to information required or inconsistent information to make decisions.

According to Jordana (2004), in most jurisdictions congressional actions are confined to the political environment and institutional settings provided by governments, which in turn define the institutional networks that shape the behavior of state actors. For this reason, functions of parliament, its practices, and mechanisms are essential elements of the governance process. The downfall in many cases is a result of parliament not possessing the specialised expertise needed to perform the policy testing, implementation and budgetary oversight functions that may mitigate any negative policy outcomes (Gillwald, 2011). As such, as highlighted by Johnson (2005), the political and colonial conditions above including the political and electoral system, formal legislative powers, political will and political space, and technical capacity culminate into three functions of parliament as described below.

Parliament is mandated with a legislative function in government. This function is underpinned by the degree of involvement in and the ability of parliament to facilitate legislative processes through debate, amend, approve or reject, formulate and pass legislation. According to legislation literature (Weingast & Marshal, 1998; Johnson, 2005; USAID, 2000; World Bank, 2010) procedures followed for processing bills vary depending on the volume of bills being processed and on whether or not a parliament has established a committee system. The committee system, in turn, is influenced by whether the parliament follows a Westminster or congressional system of government. In most instances the legislature refers the bills to the committee with jurisdiction over the legislation. The effectiveness of such an undertaking, however, depends first and foremost on the capacity of the MPs and staff to read and draft laws and amendments to interpret any policy changes and analyze proposed new rules. It also depends greatly on the committees' access to external expertise to assess the exact scope of a draft law and its consequences from diverse perspectives (for example legal, social, economic or environmental).

The will of the people gives parliament authority strongly linking representation to the legislative function (Agora portal, n.d). The distribution of seats in parliament makes members directly accountable to a constituency. It is this close association to citizens that provide a basis for parliaments' representative function. Johnson (2005:2) views legislators as being “responsible for

representing the differences in society, and for bringing these differences into the policy-making arena”. Thus the parliament, as the sum total of these differences, is said to represent the beliefs and ideas of a nation.

As Aringo (2012) reflects, effective representation is highly influenced by how citizens view their interactions with representatives, often requiring engagement to express their opinions and perspectives (i.e. legislating, participating in debates, authoring questions, voicing the resulting ideas). For this reason, it is important for parliaments to be equipped with institutional capacity and to have powers to fulfill the requirements for effective representation when dealing with issues of access to ICTs.

The parliamentary oversight role is one of the cornerstones of democracy. As Kahyarara (2012) observes oversight is a means of holding the executive accountable for its actions and policy implementation. He reflects further that existence of robust monitoring of the executive by the parliament is an indicator of good governance. Through oversight parliament can ensure a balance of power and assert its role in maintaining the people’s interests (Aringo, 2012; World Bank, 2010).

The oversight tools and mechanisms are outlined in the constitution and operationalised by parliament through parliamentary bylaws and/or internal procedures. As observed by Kahyarara (2012), oversight powers depend on the existence of a legal framework, to consolidate the position of parliament as an oversight institution which guarantees its powers and independence within the political system (Aringo, 2012). Therefore most parliaments in a bid to improve performance and budget permitting tend to improve their oversight capacities by reforming their rules and procedure to introduce good practices such as, for example, assigning a single committee to each government ministry. Success from a parliamentary perspective depends on the parliament’s capacity to play its oversight role especially regarding allocation of resources and funding for the reforms.

The assertion of neopatrimonialism provides an understanding of the varying degrees of formalisation and informalisation of parliament as a political institutions at different stages of its

development. O’Neil (2007) identifies as key the concentration of power in one individual with charisma used to legitimize authority. Given this, the political leaders resort to both formal institutions (e.g the state) and informal rules, norms and practices (e.g personalism, patronage, de facto centralised control of state resources) to gain legitimacy and advantage. The coexistence of informal and formal power structures influences to a great extent the role of parliament in policy making as it defines how parliament relates to its members, capabilities, resources and how the relationship between different stakeholders is sustained.

2.2.2 Rules in use in the political arena

According to Steinmo (2001), the success of legal frameworks to support the implementation of policy is largely influenced by the rules that define who participates and shapes the various strategies that influence the outcomes and preferences of the actors involved in the reforms process. The role of parliament in policy-making process is thus influenced by the formal and informal rules prescribed in the legal framework that direct behavior in that policy arena. Compliance and non-compliance behavior to the rules of by the individuals or organisations whose behavior is being controlled or influenced provides an understanding of the determinants of the incentive structure in a policy arena.

Three levels of rules are distinguishable that cumulatively affect the actions taken and outcomes obtained in any policy situation. Kiser and Ostrom (1982:19) describe these rules as *operating rules*, *collective-choice rules* and *constitutional rules*. “*Operating rules* affect participants’ day-to-day decision-making in specific political and economic settings, *collective-choice rules* determine who is eligible to participate in an activity affecting the operating level and how operating rules may be changed, and the *constitutional rules* determine who is eligible to participate in crafting collective-choice rules and how these rules may be amended”. Effectively rules are frequently nested in other sets of rules that define how lower-level rules function.

The effects of formal rules at any of the three levels: operational, collective choice and constitutional influence parliamentary participation in ICT policy and regulatory reforms. The focus is ultimately on the source, application, and scope of the operating and constitutional rules

applicable to parliament. Ostrom (1994) identifies seven types of rules that explain policy-related actions, interactions, and outcomes (Table 1) Of importance is what these rules are, the source of each of the rules, and the reasons for adherence or non-adherence.

Table 1: Rules in use in a political arena

Rule	Description
Position	Specify the set of positions or roles that participants assume in an action situation and the number and type of participants who hold each position.
Boundary	Exit and entry rules specifying which participants enter or leave positions and how they do so.
Authority	Specify the actions participants in given positions may take.
Aggregation	Determine how decisions are made in an action situation.
Scope	Specify the jurisdiction of outcomes that can be affected and whether these outcomes are or are not final.
Information	Affect the amount and type of information available to participants in an action arena.
Payoff	Determine how costs and benefits are meted-out in the action arena.

Source: Ostrom, 1994.

2.2.3 Institutional development and capacity

A third, yet important, factor determining the performance of parliament is its level of institutional development. As identified by Gottinger (2003) and World Bank (2010) the degree of institutional development varies widely depending on a number of political, social and technical factors.

Three distinct levels of institutional development that impact on parliamentary participation are worth noting from existing legislative literature (Norton, 1998; Johnson, 2005; Rahman, 2005; World Bank, 2010; Parliamentary Centre, 2011; Aringo, 2012; Kahyarara, 2012). These authors agree on the levels and characteristics of each level of development. At the bottom of the

pyramid, is where rubber *stamping* parliaments are found. These parliaments are consisting of one political party with legislative activities and decision-making processes that are dominated by the executive. Rubber stamping parliaments are characterised by low levels of legislative activities, severely constrained debates, slight influence on government and little effectiveness in representing the concerns of citizens. Sitting in the middle are the *emerging democratic* parliaments, largely still dominated by one political party but with an opposition starting to make an impact (Parliamentary Centre, 2011). Emerging democratic parliaments are viewed as by-products of the process of democratization witnessed over the last decade and are characterised by increasing political space for debate, rising level of legislative activities, growing influence with government, and growing interest and effectiveness in representing citizens. At the top are *stable democratic* parliaments that vary greatly in power but are characterised by multi-party competition, intense partisan debate, high level of activity with varying degrees of influence on government, and well-organised services for constituents.

What is evident from the above literature is that the institutional development plays a significant role in shaping regulatory reforms (Weingast & Marshall, 1998; Johnson, 2005; Jordana and Sacho, 2004; IPU, 2006). Like in many other policy processes, the legal framework has a significant impact on the role of institutions in governance processes. Howell (2006) asserts that powers granted to regulatory bodies (policy-makers, regulators and legislators) to bind all other participants to act according to the will, confers upon them, the ability to support, direct and constrain all current and future technological and economic opportunities arising from interactions in the sector. As a consequence, the success of ICT sector reforms relies on the ability of parliaments to manipulate their representative, legislative and oversight prerogative within predefined institutional arrangements. These arrangements are influenced by the strength of separation of powers within state institutions.

Another critical development essential, from an institutional development perspective that has brought significant changes in parliamentary performance in the last decade, is the rise of specialised committee systems. Committee systems have increased parliamentary involvement in decision making as they permit parliament to stretch its resources both in terms of people and time to inquire into issues in ways that the full house would find cumbersome. Committees

provide parliament with an ability to follow and investigate the trends of governmental activity as they take shape and make a significant contribution to policy development, possibly ahead of the work of government (Weingast and Marshall, 1998). In these smaller groups, members can utilise or develop expertise in a committee specialty such as ICT, or Environment or Energy for example.

Following a wave of parliamentary reforms committee systems have been established in most democratic dispensations as parliament is necessary organizational structures and loci of power (Mattson & Strom, 1995). The impact of a legislature today is largely dependent on its committee arrangements and its policy making power depends on how highly developed the committees are in generating policy expertise (Mezey, 1979; Blondel, 1990; Shaw, 1998). Committees aim at increasing the capacity of parliament to implement its mandate. To do so, a number of models utilised include the establishment of dedicated committees as part of the integrated ministerial model that allows effective shadowing of ministerial level arrangements. As a result, the recent emergence of committees responsible for ICTs within most parliaments reflects similar arrangements as adopted for ICT governance by ministries in several African countries.

Weingast & Marshall (1998) and Shaw (1998) view strong committees as a necessary precondition for effective parliamentary participation in the governance processes. Establishing specialised parliamentary committees with application to the ICT sector has potentially contributed to the creation of the much needed enabling environment. Weingast & Marshall and Shaw both confirm that committees provide a less adversarial atmosphere, an alternative institution for legislators' exchanges to gain greater durability. Committees allow for the critical examination, commenting and monitoring of the performance of ICT policy matters by parliament. Through committees parliament can stretch its resources both in terms of people and time to inquire into issues in ways that a full house (plenary) would find cumbersome. Furthermore, committees allow the utilization or development of expertise in a committee specialty which facilitates effective follow-up and inquiry into the trends of governmental activity as they take shape. The establishment of committees has influenced the performance of parliament positively, with important implication for increased levels of parliamentary

participation.

However, there are a number of important institutional designs that influence the effectiveness and sustainability of committee systems. Most importantly is how the committees are the organised and established, with significant implications for assigning of membership, source of power and values, the property rights systems associated with committee positions and the exchange mechanisms over these rights. Others factors include how new policies are provided and enforced, what problems arise from delegating power to other stakeholders and what motivates the subsequent level of debate in plenary (Weingast & Mashall, 1998; Johnson, 2005; Wang, 2005; World Bank, 2010).

A critical determinant of committee effectiveness and in no way less important is how the goals that MPs pursue in conducting their business are structured. More often than not, the goals are centered on re-election. To realise the goals MPs attempt to provide benefits to their constituencies, but often realise they cannot do it acting alone. So in combination with the diversity of interests they use committees to generate gains from exchange and cooperation. In this way committees effectively lower the transaction costs of enforcement, problems of exchange found in most vote trading models¹⁷, allowing for gains of exchange and making the passage of stable legislation possible while assisting to solve collective action problems that may confront parliaments (Hall & Taylor, 1996). Moreover, committees provide a *veto point* that influences decision making underpinned by the ability or inability to make choices (Hall & Taylor, 1996). Choices of interests can influence votes trading and increase the marginal impact of ICTs within a member's constituency. A high marginal impact will determine the importance of ICTs in the legislative agenda as well as the ultimate implementation of enforcement mechanisms for their policies.

Other critical factors that influence the performance of parliament in policy making include the individual and compound knowledge, capacity and skills resident within parliament to implement effective legislative actions. The capacity of MPs and staff to read and draft

¹⁷ Non-contemporaneous benefit flows and non-simultaneity

legislation and amendments to interpret any policy changes and analyze proposed new rules effectively enhances legislative outcomes. As Ostrom (2005) aptly observes, if the individuals who are crafting and modifying rules do not understand how particular combinations of rules affect actions and outcomes in a given environment, rule changes may produce unexpected and, at times, disastrous outcomes. In the absence of such capacity, committees tend to access external expertise to assess the exact scope of a draft law and its consequences from diverse perspectives: legal, social, economic or environmental (World Bank, 2010).

Effectiveness is further enhanced by certain demographic attributes of members such as the educational and other qualifications levels, age and gender. Furthermore, performance is influenced by the number of members of parliament sitting in the cabinet, parliament's ability to determine own budget and the level of information asymmetry as a resource upon which the relationship among politicians, regulators and stakeholders are based (UNECA, 2007; World Bank, 2010)¹⁸.

The above insights are confirmed by a number of authors (for example. Majone, 1994; Stiglitz, 1999; USAID, 2000; Gillwald, 2002; Stork & Vetter, 2006; McNamara et al., 2008; World Bank, 2010). Stork & Vetter (2006), in their studies on ICT policy making, demonstrate that having adequate capacity to analyze policy and regulatory issues and adapt global experience to local realities, is essential and required in creating enabling environments for expanding affordable access to ICTs in developing countries. Gillwald (2002) observes introducing competition, without the regulatory capacity or political will to oversee a competitive framework, has a potential of being counterproductive to the achievement of the liberalization goals. Majo (1994: 81) emphasises that “regulation is not achieved simply by passing a law, but requires detailed knowledge of, and intimate involvement with, the regulated activity”. Thus, the quality and effectiveness of policy-making depend to a large extent on the quality of knowledge bases upon which decisions are founded (Stiglitz, 1999). This quality of knowledge is in turn determined by the political, institutional and cultural environment in which information and knowledge is produced, disseminated, and exchanged among the various stakeholders (Stiglitz, 1999).

The constitutional knowledge and legal expertise described above are crucial in the production of coherent and consistent laws but are not necessarily sufficient in designing appropriate and “implementable” laws. The effectiveness of the legal and regulatory framework heavily relies on the capacity of parliament to utilise instruments, mechanisms and tools at its disposal to engage citizens, to legislate and oversee the executive. Tools and mechanisms such as the committee systems, questions to ministers, budgetary oversight and commissions of inquiry and the debates in plenary structure parliamentary participation ensuring effective representation and oversight of the policy making process (Johnson, 2005). These instruments and tools, depending on the model of power, enable parliament to act independently to provide avenues for debate and analysis of public policy.

Detailed and sector specific regulation can either block technological developments by locking the development in certain paths or can be overtaken by technological advancements (Henten et al., 2002). Thus, capacity is a critical element relevant to the ICT sector is parliament's capacity to develop laws that adapt to dynamic changes in the environment such as convergence and divergence, either in the immediate term or in anticipation of trends¹⁹ (World Bank et al., 2009). Due to the rapid growth of the ICT sector, ICT scholars (World Bank et al., 2009); McNamara, 2008) emphasise elements of flexibility and foresight as critical in the process of designing new legislative frameworks. Inadequate capacity can result in laws that are of low quality, varying incompatibility, uniformity (for example, legal terminology) and applicability, and frequently having severe inconsistencies and shortcomings needing immediate amendments (Staranova & Mathernova, 2003). Considering that the market of new technologies changes often, legislators are advised to be mindful not to develop legislation that may rapidly become outdated or redundant.

The increasingly complex legislation process requires specialised knowledge, expertise, and careful analysis to design appropriate laws, and parliaments tend to rely on external consultants

¹⁹Refers to the coming together of IT, telecoms, broadcasting and other media, from a technology, market and policy perspective.

to assess and draft laws. The literature seems to suggest that as developing countries move further along the ICT reforms trajectory, in the context of rapid technological changes, their capacity needs become more complex, more context-specific, and more focused on ongoing problem-solving than on one-off acquisition of technical policy or regulatory skills (McNamara et al., 2008). Often parliaments lack expertise in specialised areas such as ICT and depend on external expertise to solve arising problems. However Staranova & Mathernova (2003) warn that the practice of relying on external consultants has a danger of 'state capture'²⁰; where the hired consultants come from interest groups and, often, the low capacity of the parliamentary officials disables them to detect concepts or strategies that may be beneficial solely to these interest groups.

To address the lack of expertise parliaments seek training opportunities for both members of parliament and staff. However, as noted by McNamara et al. (2008), the bulk of capacity building efforts currently in place are aimed at a narrow range stakeholders, for example with inadequate attention given to other key interested parties in the broader ecosystem. Effective and locally appropriate policy and regulation depend on the participation and capacity of parliamentarians to analyze, adapt and advocate for appropriate measures to achieve national development goals. Furthermore, given the step-by-step and contextual nature of most policy and regulation, the "one-off" training and capacity building approach used for policy makers does not adequately equip them to make sequential, complex and locally- contextualised decisions necessary to guide a long and complicated process of sector reform (McNamara, 2008).

Lobbying for policy and regulatory reform in ICT, like any other policy, should be based on evidence, facts, and figures from respective constituents. According to Stiglitz (1999), developing legislation is thus a time-consuming process that requires careful and in-depth studies before deciding on which regulations or combination of laws and regulations are appropriate and suitable. It, therefore, follows that the law making process (ICT laws included) should be guided

²⁰ Obtains when a small number of firms (or such entities as the military) is able to shape the rules of the game to its advantage through massive illicit and non-transparent provision of private benefits to officials and politicians. Examples of such behaviour include the ability to control legislative votes, to obtain favourable executive decrees and court decisions.

by a participatory process if parliamentarians are agents representing the interests of their constituents. Such an assumption brings to the fore the capacity of parliament to conduct its representative mandate effectively. Parliament utilises a number of mechanisms such as public hearings and opinion polls to capture the knowledge and opinions of respective constituencies for inclusion in the legislation process.

The emergence of the e-parliaments²¹ in the last few years as a concept provides parliaments with the opportunity to engage systematically with the development of ICTs as well as their governance. Such international organisations as the Inter Parliamentary Union (IPU) the Global Centre for ICTs in Parliaments, agree that an appreciation of technology is crucial for parliaments to engage effectively with ICT policy related issues. The definition pursued by the SADC-PF (2008) of an e-parliamentarian clearly articulates the responsibility, motivation and leadership roles that parliamentarians “should” play in reforming the ICT sector. However, the e-parliament concept does not necessarily provide the knowledge required for understanding the sector reforms. It is, therefore, important to analyze both the e-parliament processes and the ICT law-making process to observe the linkages that exist between having knowledge and capacity of the ICT industry and the subsequent quality of the legislative outcome.

2.3 Role of parliament in sector investment and institutional arrangements

2.3.1 Sector investment

ICT sector investment is a critical area for parliamentary participation in sector reforms. Throughout the developing world, due to significant costs associated with establishing and maintaining a telecommunications infrastructure, monopolistic or oligopoly markets continue to exist and fail to meet the mandates of universal and affordable service, quality service provision to users and product innovation (Stork & Vetter, 2006; Gillwald, 2002). Reforming the ICT sector is a necessary but expensive undertaking requiring careful budgetary and oversight considerations for successful implementation. Given the importance of ICT for socio-economic and political development governments continually seek to ensure there is a semblance of universal and affordable access for all citizens (Melody, 2005). Successful reform requires an

²¹ A recent development modelled along the lines of e-government

investment climate and opportunities shaped by policy and regulatory decisions with clarity for state involvement. Recent trends show that some African countries fund and specially license state-owned networks, and some governments are increasing their direct involvement in the operations of fixed and mobile operators (Melody, 2005; Msimang, 2009). Such actions pose a threat to an otherwise stable regulatory environment.

What is evident in literature is that countries investing sufficiently in reforming the ICT Sector are starting to realise the benefits. World Bank (2009), through its International Development Association (IDA) projects, reports that IDA countries that have implemented significant sector reforms generated around US\$30 billion in investment between 1997 and 2007, catering for around 4 percent of gross domestic product (GDP). The benefits are a result of an investment worth almost US\$1 billion of IDA²² funds between 1997 and 2009 to support ICT sector reform, regulatory capacity building, and infrastructure investment, in addition to a significant amount of advisory services.

Scores of authors on ICT policy and regulatory reforms have increasingly raised concern over the lack of sustainable ways to support the implementation of the policy objectives of the ICT reforms (Gillwald, 2002; Melody, 2005; Msimang, 2009; Labelle, 2010). These authors seem to suggest that funding is critical in securing universal access to ICTs and that there is a need to define a funding model especially in circumstances where not doing so is likely to increase the digital divide. Msimang (2009) proposes that to fund universal access to ICT infrastructure upon which broadband, wireless and other information technologies are based, governments need to provide lending support, and implement proper regulation to lower costs.

Labelle (2010) and Msimang (2009) acknowledge the existence of challenges faced by many governments in ensuring funding for developing the ICT sector. Amongst these challenges is the limited financial and technical means to embark on meaningful ICT projects. The initial ICT reforms - the first round of privatization and liberalization - has not demonstrated significant

²² The International Development Association (IDA) is the part of the World Bank set up to help the world's poorest countries.

gains either. Multiple reasons unique to the political economies of different countries are identified. Chief amongst them is the absence of the necessary capacity and resources to enforce restructuring policies. The effectiveness of competition as a regulatory tool to contribute to public interest outcomes of access, affordability, quality and choice of service is dependent on the existence of capacities and resources to implement monitor and enforce the relevant policies. Policymakers need to create conditions that are sufficiently certain and predictable to secure the investment necessary for infrastructure development (Gillwald, 2002).

The menu of possible strategies and options²³ that governments can tap into to fund infrastructure development for ICT has become a consistent feature of ICT literature (for example Msimang, 2009; Melody, 2005; Gillwald, 2002; Labelle, 2010). What seems to be a challenge in the majority of cases, however, is the importance for the government to retain power over the design and implementation, and providing financial incentives while also implementing non-financial strategies (Msimang, 2009). Furthermore, Misuraca (2007) points out that the global public goods approach has become an important alternative framework for justifying financing mechanisms that go beyond what the market supplies. Misuraca (2007) argues that extending access to the information society in developing countries is a global public good that benefits everyone because of the value of network externalities²⁴. The ICT regulatory reform literature (including Labelle, 2010; Mimicopoulos, 2004) also suggests other funding sources that can be considered.

Parliament plays a significant role in allocating the country's budget in line with set priorities shouldering the responsibility of adequately providing funding and creating frameworks that attract sufficient investment for ICT sector reforms. Parliament has a number of budgetary and oversight instruments at its disposal to ensure sustainable financing for ICT. These, include

²³ Options include public treasury financing, universal access/service funds, philanthropic contributions from the private sector; foreign direct investment (FDI) venture capital, international financial institutions, debt swap financing and transnational corporations; ceding concession to the private sector through a contract based on a public private partnership (PPP).

²⁴ The global economy runs on global information networks to create a global marketplace, the private sector in developed countries stands to benefit from the extension of ICTs in developing countries and should help pay for ICT for development as a global public good.

allocating adequate resources for the achievement of key policy objectives (access and affordability), overseeing the privatization of incumbents, as well as monitoring efficient and effective utilization of resources by the executive (Johnson, 2005). Parliament's ability to establish and oversee independent reform institutions, infrastructure development plans and sustained enhanced competition within the sector, support parliament's legitimacy in this process (Jana, 2014).

It is quite clear that parliament's oversight mechanisms are essential for the effective implementation of ICT sector reforms and ensuring that projects and programmes embarked on remain focused on public interest. Given that such a large menu of funding possibilities exists, parliament should carefully analyze options to propose a sustainable legal approach; an approach they have jurisdiction to oversee and at the same time one that ensures that public interest remains relevant. The political economy underlying ICT sector development tends to be highly sensitive, both due to vested interests and because of labour and revenue implications of restructuring, privatization and competition (McNamara et al., 2008). This increases the relevance of policy makers and brings to focus their need to design creative incentives to increase consumer and investor confidence in the sector (Msimang, 2009).

Parliaments, through the committee systems, are increasingly having a bearing on budget allocations and expenditure. Different parliaments use different approaches relevant to the level of power supporting their ability to monitor government spending. Essential to this process is the existence of capacity of parliament to utilise the tools available for them to engage in oversight. For example, budget analysis skills are required to ensure that when the ministry presents its budget, it is linked with national priorities and that it will, in fact, achieve policy goals. An understanding of the process by which parliaments approve funding options proposed by the executive, incorporates public opinion and finally decides on which options to pass into effect can highlight significant institutional arrangements needed by parliaments to play effective oversight on the reforms.

2.3.2 Sector institutional arrangements

House of Lords (2004) clearly demonstrates that the process of regulation not only starts with

parliament, but its ultimate responsibility rests with parliament. Parliament utilises mechanisms at its disposal to play a critical role in every phase of the reforms process. For effective participation parliament has to be recognized as a key part of the sector arrangements.

Model ICT sector institutional arrangements emphasise, among other things, clarity of roles and objectives of the regulator, independence (autonomy) of the regulator, participation in the regulatory process by interested parties, transparency of regulatory decisions and accountability of the regulator for its decisions (Figure 2). Two approaches the ministerial and supra-ministerial to defining sector arrangements have made an impact on the adoption of internal designs and ultimately parliamentary participation in the reforms of the sector.

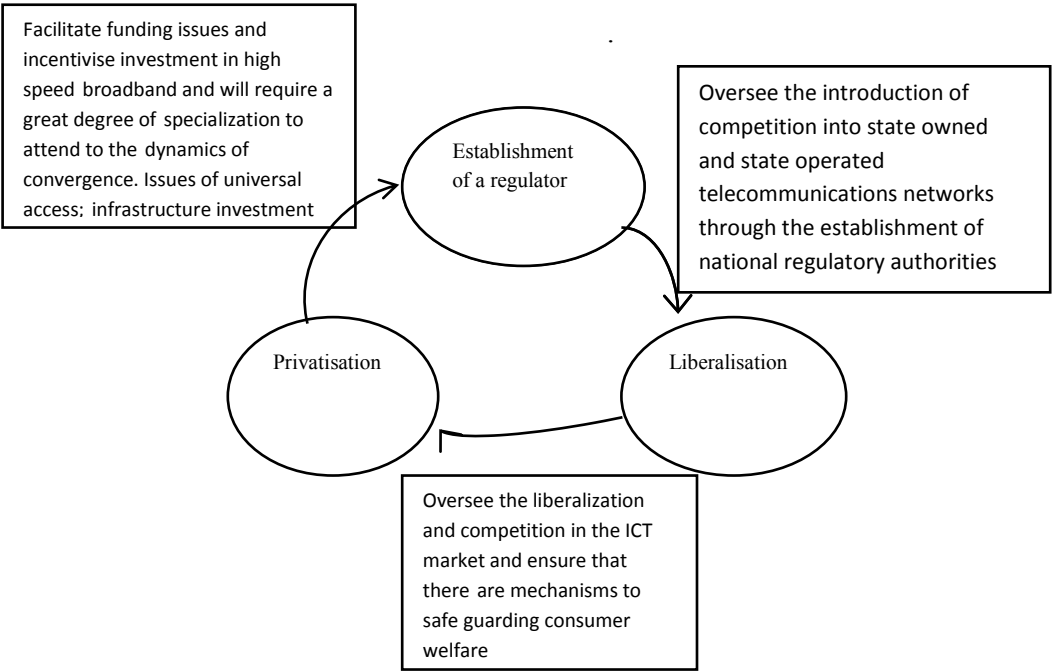


Figure 2: Parliament role in the reforms process. Source: Author Synthesis

Two proposals that can influence sector arrangements and typology are defined by the United Nations (UN) through its Asia and Pacific Centre for ICTs (APCICT), and by the Organization

for Economic Co-operation and Development (OECD)²⁵. According to the World Bank (2010) both proposals highlight important of local realities for adopting institutional arrangements that work. Furthermore the proposals acknowledge the widespread understanding that regulatory institutions are essential to move forward the regulatory agenda. Lastly the proposals are aligned to a good practice, but there is little empirical knowledge on how developing countries are establishing institutions and processes that reflect their unique reform priorities, stages of development, political challenges, and broader contexts (World Bank, 2010).

The United Nations (UN) proposal develops ICT models based on the realization that strategies for institutionalising ICT sector reforms differ among countries. While some countries prefer to have policy functions integrated under one ministry, in other countries the functions are shared across several ministries (Song & Oh, 2012). The supra-ministerial approach adopts a rationalist perspective that gives formal authority of the processes to the president or prime minister of a country. The ministerial approach follows an incrementalism perspective, that favors policy functions distributed to several ministries, with a centralised role of a higher level authority being absent or weak. The UN defines an accepted approach described in Table 2 emerging as best practice sector arrangements for ICT sector governance globally. The approaches are the supra-ministerial approach mostly prevalent in developed countries with mature markets and stable democracies, and the ministerial approach mostly prevalent in developing countries where the market is still immature (Song & Oh, 2012). The Ministerial approach utilises one or some mix of the four models described in Table 3.

25 International organization helping governments tackle the economic, social and governance challenges of a globalised economy; see www.oecd.org/about/membersandpartners/ [Accessed October 2010].

Table 2: ICT Models based on the Supra-Ministerial Approach

Model	Critical element
Chief executive staff model	Staff members develop policies under the direct control of the president or prime minister e.g. UK and USA.
Cabinet committee model	Cabinet committees consisting of relevant ministers dealing with various policy areas are brought together to plan and coordinate cross-cutting policy activities e.g. Canada.
Supra-ministerial committee model	Establishes committees ²⁶ under the direct control of the president, prime minister or vice prime minister e.g. Republic of Korea.

Source: Author's compilation based on Song and Oh (2012)

The OECD model is based on a typology; of the most commonly found institutional arrangements for regulatory reform that focuses on four different institutions, as follows:

- Regulatory oversight bodies located within the executive branch and charged with driving and managing regulatory reform efforts across government on a day-to-day basis (UK, Italy, Serbia, US and Kenya).
- High-level committees for regulatory reform charged with leading and guiding reforms from the political level (Canada, Denmark and Bangladesh).
- Advisory and/or advocacy bodies charged with challenging and advising the government's regulatory reform policy (Croatia, UK, and Australia).
- Ad-hoc institutions established to spearhead specific tasks and regulatory review (Mexico, Vietnam and Kenya).

²⁶ Committees take various forms in terms of title (e.g., committee, commission, council), format (e.g., formal vs. informal; regular vs. ad hoc) and function (e.g., resolution or decision, deliberation, advice, argumentation, advocacy). Committees can include representatives of political parties and stakeholders such as trade union, employers' associations, and non- governmental organisations, as well as experts from think tanks and academia.

Table 3: ICT Models based on the Ministerial Approach

Model	Critical elements
Planning and budgeting (finance and treasury)	Utilises ministries in charge of finance, budget and planning by letting them control the ICT budgets required by other ministries and thus integrating ICT policy into long-term economic development plans and expenditure frameworks e.g. Australia and Finland
Administrative process model (public services and interior affairs)	Utilises the plans of the public service ministry to improve front office services and back office management e.g. Japan)
Techno- industrial model (science, technology, industry and trade)	Exploits the loosely networked relations among organisations (players) ²⁷ in the public and private sector that share common interests in ICT policy and consider ICTs as a strategic tool for industrial competitiveness and vitalizing domestic and global e.g. Canada and the USA
Integrated ICT model	A specific ministry is given full authority over and responsibility for most ICT policy functions. Such a ministry can be established by either transforming an existing organization or by forming a new “niche” ministry with the role of planning and executing ICT policy e.g. India, the Republic of Korea (1995-2007) and Saudi Arabia

Source: Author’s compilation based on Song and Oh (2012)

2.4 Conclusion

Parliament is a constitutionally mandated institution that performs a number of functions which, reflect formal powers to hold the executive to account, represent the nation in its diversity of interests, make laws for the good governance of the country (SADC-PF,2010. Furthermore, parliament is expected to ratify and domesticate policy, approve the national budgets, taxation policy and monitor public expenditure.

²⁷ Government agencies, universities, research centers and firms, leading the wide spectrum of ICT policy issues such as R&D, and industrial and market development

This chapter has highlighted significant challenges faced by parliament in facilitating consistent and non-fragmented support for policy making through effective accountability and scrutiny to hold the government to account for its actions. Another challenge stems from an inability to enforce delegation to regulatory agencies and guaranteeing independence from political influence. The challenges reflect among other factors the existence of interrelated and multiple accountabilities placed on government bodies, ministries and parliament. The challenges reflect withheld and declining public confidence as well as the minimised tradeoffs between having an independent agent against the threats to the proper process of democratic accountability.

A set of critical determinants to solve the above challenges is identified in this chapter. These include having a political governance context where the role of parliament in government and the rules in use are clearly articulated understood and enforced by all impacted stakeholders. The governance context determines the relationships between the state, the market and civil society, the extent of political space and support for active citizenship and impacts the way parliament conducts its business. The level of institutional development and the institutional capacity influences the degree of executive dominance, legislative knowledge, flexibility and adaptability of parliament, and especially the committee, to respond and deal with ICT-related policy issues. The establishment of specialised committees' increases parliamentary involvement in decision making as it permits parliament to stretch its resources both regarding people and time, to inquire into issues in ways that the full house would find cumbersome.

Parliament plays a critical role in a number of areas especially in defining an enabling environment for sector reforms. There are fundamental institutional designs and institutional arrangements required for effective parliamentary participation in the ICT sector reforms processes. Mainly, because the ICT sector represents a complex ICT ecosystem where the interplay of different institutional arrangements calls for a enabling environment, to ensure effectiveness reform processes.

ICT literature points to the governance context, political and colonial conditions, political interests, power relations, as significant to the ability of parliament to command political resources, exercise oversight, strength to delegate authority, clarity of rules to define roles and

responsibilities as factors that influence parliamentary participation and effectualness. Noteworthy from the literature is how the representation function influences MP incentives and structures political participation based on the principal-agency relationships established. It is this function that then structures how the interests of the citizens are captured and linked to government decision making. The establishment of committees has allowed parliament to become pervasive and resilient in its role. Through committee systems parliament can stretch its resources, provide a less adversarial atmosphere for consensus building, and develop the capacity to deal with expert issues such as ICT.

The theoretical perspectives underpinning parliamentary participation discussed in this chapter will be weaved together with the main concepts discussed in the next chapter to develop the conceptual framework that will be used to analyse the empirical evidence gathered for this research.

Chapter 3

THEORETICAL AND CONCEPTUAL FRAMEWORK

3.0 Introduction

Whereas there is a wide body of literature on ICT sector reforms (for example Majone, 1994, 1990; Li et al., 2000; Berg and Hamilton, 2001; Gillwald, 2002, 2005, 2010; Gottinger, 2003; Melody, 2005; Pasha, 2005; Jain, 2006; Stork, 2006; McNamara, 2008; Infodev, 2008) and parliamentary development and performance (Weingast & Marshall, 1998; Norton, 1998; USAID, 2000; Johnson, 2005; Rahman, 2005; Wang, 2005; Staddon, 2007; Yamamoto, 2007; World Bank, 2009, 2010; Jana, 2014) and indeed on institutionalism (Giddens 1981, 1984; North, 1990; Immergut, 1998; Ostrom, 1990, 2005, 2007; Steinmo, 2001), there is very little literature on the intersection between parliament and ICT policy and regulatory reforms.

This chapter reviews this literature to draw out the contending theories and concepts in these distinct areas and to weave them together into a conceptual framework to address research questions raised in chapter 1 § 1.4. The literature review locates the research in this thesis within the political economy tradition, as it seeks to provide an understanding of the interplay of the institutionalist and political perspectives that determine the context, sector processes, established institutions and practices; agency and interests (Drazen, 2008; DFID, 2009; Mosco, 2009; Tompson & Price, 2009; Palan, 2013; Poulton & Douarin, 2014) within different social and economic systems that influence outcomes in the ICT sector, defining key institutional factors for effective parliamentary participation.

As pointed out in chapter 2 parliaments are political institutions reflecting diverse interests, actors and decision-making processes to influence policy outcomes. As the central institution in my analysis, it is important at this juncture to contextualise the institution of parliament by attempting a definition in advance of conducting a review of its participation in ICT sector reform. I draw upon some definitions of parliament that have been put forward by scholars (for example Weingast & Marshall, 1998; Johnson, 2005) to define parliament as a polity with rules,

policy practices, planning and budgeting principles that structure the patterns of interaction internally and externally with other institutions, with intended and unintended outcomes.

This definition assumes that parliament has a set of working rules for actors in the political decision-making process to refer to when they decide on policies for implementation in a country. The rules determine who is eligible to participate, make and veto decisions, what actions are allowed or constrained, what procedures must be followed, what information must or must not be provided, transaction costs and payoffs will be assigned to individuals as a result of their actions (Weingast & Marshall, 1998; Ostrom, 1999). With these characteristics, parliaments are then a set of institutional arrangements with the power to shape policy outcomes (Poulton & Douarin, 2014). To understand the role of parliaments in policy formulation, systematic way to analyze these arrangements and power dynamics to generate and compare alternatives, is required, an element of which political economy enables an analysis.

3.1 Political economy tradition

To examine the complex interrelations within the ICT sector, I draw extensively on insights from the political economy tradition. More specifically those insights applicable to the ICT sector reforms (Mosco, 1995; Winseck, 1995; Li et al., 2000; Gillwald, 2009; Tompson & Price, 2009; Palan, 2013; Spruyt, 2013). Political economy is concerned with how political forces influence the economy and the economic outcomes (Poulton & Douarin, 2014)²⁸. Poulton & Douarin (2014) locate political economy at the intersection of economics, culture and political relations; where it draws upon economics, sociology, and political science to explain how political institutions, the political environment, and the economic system—capitalist, socialist, or mixed—influence each other. As Mosco (2009) observes, the focus is on the social relations, particularly power relations that mutually constitute the production, distribution, and consumption of resources as well as the drivers for reconsidering a wide range of established institutions and practices in an effort to increase potential output (Tompson & Price, 2009).

²⁸ The interactions, however, run both ways. It is economic activity that generates the resources that are required to sustain political activity. Policy might lead to a certain economic activity prospering, and this can generate interest in maintaining the economic activity, because a sizeable number of people now benefit from it (Poulton and Douarin, 2014).

A useful, political economy perspective that this study draws upon is that of Palan (2013), grounding political economy in the theory of the state to concentrate on how order or change comes about. Change is a perspective that enables an understanding of why states perform as they do by focusing on critical concepts such as the interplay between state and power. These same concepts allow for an exploration of the interaction between political and economic processes within society to examine how policy-makers acquire power (Drazen, 2008). The concern is centred on the production, distribution, exchange, consumption and usage of different types of values and power, built upon the fundamental forces and processes at work in the marketplace (Collinson, 2003; Mosco, 2009). The above-mentioned perspectives are useful in investigating parliamentary processes as a critical element in state decision-making processes, given its centrality to managing the power dynamics that influence policy outcomes.

The political economy tradition focuses the analysis on who the political actors are – specifically the policy-makers and in particular for this study the parliamentarians and the citizenry or the electorate. Their interests and objectives as well as the political mechanisms and constraints in place- to set the 'rules of the game' for the selection of leaders and those that structure the process by which policies are made (Drazen, 2008; Poulton and Douarin, 2014) are major perspective for this thesis.

Central to any political analysis, the structure and agency debate provides a framework that explains the dynamics of interaction between agency, structure and social change to attribute causation (Kleine, 2010; Sibeon, 1999; Aston, n.d). Aston further alludes to the fact that political theory needs “abstraction and over-simplification to explain phenomena and change” (Aston, n.d: 9). As Ostrom (2005) asserts, opportunities and constraints faced in any particular situation, the information and benefits obtained or excluded from, and the reasoning capacity about the situation are all affected by the rules or absence of rules that structure the situation.

While some structures can exist as a result of reform agency of individuals, collectives can change processes and outcomes. Parliament as an individual resource-based agency can operate within a given structure to achieve desired outcomes. However, the ICT sector is by nature linked to different elements and embedded in structures that influence the agency’s ability to

make decisions. A well-resourced agency, able to support the participation in decision-making of a broad range of interests with a lenient standard for judicial review, will be far less dependent for information on well-resourced and well-represented interests and is required to meet a very high judicial standard for upholding its decisions. On the other hand “...an agency which has a broad range of responsibilities but which repeatedly follows the orientations of the parliament or politicians has little effective power” (Jordana & Sancho, 2004:309).

McCubbins et al.(1989) having investigated political manipulations of some of the structures and processes that appear to allow for independent decision-making, identified ways in which rule-making can be influenced by an agency’s structure and processes. The ways in which the structure and processes are set up for the agency affect their dependence on information critical to decision-making. However, the way in which processes are manipulated to alert politicians to non-compliance by administrative agencies often requires lengthy processes before decisions can be made. As McNollgast (1989) argue, this provides politicians with an opportunity to avert non-compliance with the preferences, which is always much less costly than a formal reversion of regulations.

Through the use of economic tools to examine political phenomena, analysis of the impact of self-interest of political agents in generating policy outcomes (Poulton and Douarin, 2014; Palan, 2013; Spruyt, 2013) political economy provides a useful framework for defining factors of parliamentary effectiveness. This makes this research a concentrated analysis of “a specific set of social relations organised around power or the ability to control other people and processes even in the face of resistance” (Mosco 2009:24) providing a firm foundation for the analysis of parliament as a political institution that contributes to how public policy is created and implemented.

Important elements of the political economy that underpin this study are analytically described in the sections that follow.

3.1.1 Neopatrimonialism

As Lopes (2015) observes any analysis of African politics is bound to be complex, given the

variety of contextual and societal factors concerning the intrinsic nature and cultural underpinnings of the African context. Countries differ in “form and content depending on how the configuration of class and social context, coalition building, alignment and realignment of political actors, agencies and political outcomes contribute to defy any strict characterization of African politics” (Lopes 2015:13).

This research adopts an analytical approach and methodology that take into account the history, social structure and context, political agency and institutional framework of the political action and policy. Whilst the departing colonial powers patterned modern state institutions such as parliament on Western models as defined in Chapter 2, this only provides a normative framework for the analysis of the formal behavior, political context and authority, domination and legitimacy of most nascent democracies. In the African context the political setting can be further understood through a number of paradigms including that of neopatrimonialism, derivations of which are discussed below.

Neopatrimonialism identifies a “pathology of African politics” and describes a ‘haven of patron client relationships’ (Lopes 2015:6). It remains the most ‘complete explanation of nature of African governance and perceived failure of its evolution to democracy’ (Nyaluke 2014: 1). Mkandawire (2013) supports O’Neil’s observations in describing it is a system of social hierarchy where patrons use state resources to secure the loyalty of the general population. Furthermore the element of informality in the patron-client relationship can reach high levels within state structures and down to individuals at village levels. Mkandawire’s observations provide an empirical basis for predictions and policy prescriptions that argue that neopatrimonialism is descriptive of the social practices of the states and individuals that occupy different positions. These perspectives ultimately constitutes important elements of attitudes and knowledge of those dealing with government. This analysis should assist in placing the case studies of South Africa and Kenya into a more appropriate theoretical and empirical setting.

Neopatrimonialism literature is mainly derived from Weberian sociology with a vast scholarship in different areas and disciplines (for example Erdmann and Engel , 2007; O’Neil 2007; Bach & Gazibo, 2012; Mkandawire, 2013; Gray & Whitefield, 2014; Lopes 2015,) Common to these is

the location of the logic of patrimonialism in social relations that reflect the precolonial traditions and differing experiences in the genealogy of each country to define its democratic footprint, distribution of power and political legitimacy. As such the different effects of apartheid and the colonial regime in South Africa and Kenya respectively matter in shaping its current political economic and democratic conditions. These scholars assert historical, contemporary perspective and concepts such as precolonial traditions and practices, colonial encounters, post-colonial nation building, state civil relationships, political transitions, social movements, parties and other political institutions as critical to the political trajectory of each country.

It is the assertion of these scholars that while colonialism disrupted existing traditional patterns of authority, reconstructed and reconfigured clientelism survived and can explain the continued existence of traditional power relations and the prominence of informal rules with the 'big man' presiding over weak societies (O'Neil, 2007; Bach & Gazibo, 2012) . In the big man rule scenario autocratic leaders accumulate wealth and maintain order by relying on patrimonial authority over citizens to solidify political support and cohesion among political elites. State resources are used to reward supporters for their loyalties but also for the personal enrichment of leaders and the state is autonomous from society. Neopatrimonialism underlays the bureaucratic structure of the state as it defines the source of power as connections rather than positions

Political legitimacy is a critical element of neopatrimonialism in that imported nature of African states at independence disrupted pre-existing institutions (O'Neil, 2007). To maintain power, political leaders use neopatrimonial strategies to secure the loyalty of competing elites on the assumption that there are groups of elites with the right to rule. Thus contesting the right to rule and making legitimacy dependent on a variety of factors including state performance. In instances where the internal configuration of power and desires of polity have not been catered for, unitary systems of government are used to manage diversity in plural societies, concentrating and centralising power around political leaders both institutionally and operationally. The outcome is a political landscape characterised by multi-party democracy in some instances and one party systems in others as influenced by the imperatives of state-building.

Both Lopes (2015), and Mkandawire (2013) argue that the conditionality of these imperatives

imposed on democracy represents the most sophisticated form of regulation and the basis of politics and power as the means of allocating scarce resources in political communities. This contributes to the conceptual framework used to analyse parliamentary development in Africa by providing insight into how parliament in a policy making ecosystem to appreciate how parliament makes and sustains relationships with other key stakeholders through informal relations. Even though the quality and progress of democracy in Africa may be limited, the nature of politics is changing. Though outcomes are uneven, developments on the continent over the last decade have seen democratic tendencies, multi-party perspectives, observance of the rule of law, and increased institutional checks and civil political participation. Parliament and other institutions of democracy are as a result challenging the administrative fiat of the executive and redefining their dominance in the public sphere.

While neopatrimonialism has become the conventional wisdom as the pathology of African politics and is considered the “convenient, all purpose, and ubiquitous moniker for African governance” both Lopes (2015:7) and Mkandawire (2015) feel it fails to provide the analytical content and explanatory capacity that would advance knowledge on nature of politics, economy and society or provide predictive value with respect to economic policy and performance. Building on Mkandawire there is a need to better understand the state in order for it to better perform its role in economic policy and performance. Futhermore Bach & Gazibo (2012) observe that while concepts from neopatrimonialism may shape and impact broader society the nature of the African state at all levels remains somehow absent from the narrative. There is still a sense that overall the complexity and context of the African state has been missed as there is very little consideration for how the traditional elites still exist and intertwine with the workings of the state (especially at local levels), for example.

3.1.2 Political Economy of Communications (PEC)

The ICT industry has become one of the fastest economic sectors and produces highly valuable goods (ICT infrastructure and the information) in the world marketplace. However, significant economies of scale are required to upset several characteristics that make ICT services untradeable in markets and unlikely to deliver optimal and economically efficient prices and

quantities (CDRF, 2007).

Technological advancements have dramatically transformed the telecommunications sector, with the existence of privatised firms increasing especially in developing countries over the last 30 years (Li et al., 2000). Accordingly, the rise of privatization has reduced state involvement in areas where historically the state was directly involved in building infrastructure, setting technical standards, regulating market access and directly providing services and allowing the private sector to provide services (Mosco, 2009). The implications of the changing nature of the state, and consequently the changing nature of infrastructure industries giving rise to new regulatory requirements and approaches, are elements which the political economy perspective embraces.

There are both theoretical and methodological considerations that make the work by Mosco (2009) appealing to this study. Mosco (2009) highlights political economy of communications (PEC) as providing an entry point into the social analysis by providing a substantive focus for thinking about characteristic social practices. He anchors PEC in an inclusive and subjectivist epistemological framework in which causality favors ‘multiple, dynamic interactions’ because the reality is constituted by many sources and cannot be reduced to either economics or culture. Mosco’s (2009) approach is anchored in the belief that concepts, ideas and observations guide our thinking, rejecting the view that only our ideas or only our observations, but not both, are real. Mosco’s (2009) approach follows an ontology that stresses structures and institutions rather than ‘change, processes and relativism’, bringing to the fore concepts of social change, social processes, and social relations, even if that means “re-evaluating the emphasis that political economy has traditionally placed on social institutions” (Mosco, 2009:1) .

3.1.3 Political interests

The general assumption by political economists (North, 1990; Collinson, 2003; Poulton & Douarin, 2014) is that the ‘public interest’ that policy seeks to promote can be reasonably defined. Interest is linked to the correction of market failures in pursuit of economic growth, poverty reduction or general welfare (Poulton & Douarin, 2014). The rationalist perspective that has for so long dominated policy analysis assumes the state to be a rational and calculating actor

(Palan, 2013). This point of view may provide useful explanations for legislative behavior by allowing for the generation of a testable hypothesis linking the motives of individual parliamentarians, institutional structures and policies (Saalfeld, 1995; Hall & Taylor, 1996). It is however too simplistic a notion and does not adequately explain nonlinear, complex process, vested and conflicts of interest associated with policy outcomes. In reality, it is nearly impossible to define a single 'public interest' in a complex world of multiple actors, interests and imperfect markets (Palan, 2013; Poulton & Dourain, 2014). As such decisions have to be taken about competing interests and claims on scarce resources.

Furthermore, as observed by North (1990) the political elites, of which parliamentarians are a part of, are the ultimate determinants of national policy. North (1990) argues that elites tend to set policies that serve their interests first and foremost, without much consideration of who benefits. The powerful interest groups, visibly working at the macro governance level, have the ability to influence policy to further their own economic and/or political interests. A good example of this is seen in how non-government actors are concerned with economic outcomes and government actors with own private economic interests such as retaining positions of power. Political economy models allow for an in-depth analysis of the macro level interests, rules of the game facing top political player and functions of the highest level political institutions (Palan, 2013).

Some political scientists (for example Bates, 2002; Palan, 2013) have further argued that power is the missing element in a rational choice approach. This emphasises the potentially destructive nature that power can have. Therefore, suggestions have been put forth to integrate 'power' into the rational choice perspectives. It is this limitation of the rational choice perspective that promotes an investigation on the conditions under which rational individuals cooperate in collective action problems. The rational choice theory makes the institutions - the underlying political powers, bureaucratic agencies or social and private organisations - a critical part of a political analysis. However, as emphasised by the power based perspective, cooperation (as is assumed in rational choice models) does not always lead to beneficial outcomes for all. Instead, institutions might be persistently created for powerful interests (Palan, 2013).

Again, political behavior is influenced by ideologies. When constrained by multiple realities or bounded rationality, and when they cannot assess all possible outcomes from all different choices, individuals tend to get guidance from ideologies consistent with their fundamental beliefs and values in life (DFID, 2009). Incorporating ideology into political economy models allows for the inclusion of other relevant factors, supporting the fact that some political action is motivated by factors other than pure self-interest.

3.1.4 Institutions

Institutions matter in the policy making process, but they matter differently depending on how the institution is defined and what scope is applied (Riker, 1982; Ostrom et al., 1994). Institutions are the formal or informal 'rules of the game' that structure human behavior and the incentives facing political actors (North, 1990; Poulton & Douarin, 2014). Institutional theorists provide differing perspectives on what constitutes an institution (Giddens, 1981, 1984; North, 1990; Ostrom, 1990; Saalfeld, 1995; Immergut, 1998; Steinmo, 2001) which this study draws upon in analyzing relationships, behaviors and choices made in parliament.

What is common to all these perspectives is their agreement on the difficulty of defining institutions. There is on one hand, the view of institutionalist such as Song & Oh (2012), and Ostrom (2007), who define institutions as organizational entities such as the parliament or a government ministry in a narrow sense. On the other hand, the broader definition of shared rules, norms and strategies operating within or across organisations is more widely shared although Yoo (2008) observes that the definition varies depending on the purpose of the research. Riker (1982) defines institutions as “rules about behavior, especially about making decision”. North (1990) on the other hand defines institutions as “...the rules of the game in a society or, more formally, the humanly devised constraints that shape human interaction. Ostrom (1986, 1999) defines institutions as” rules (working rules or rules-in-use) that refer to prescriptions commonly known and used by a set of participants to order repetitive, interdependent relationships that produce outcomes affecting those individuals and potentially affecting others.” The amalgamation of the above definitions provides this study with a definition of an institution that facilitates an analysis of rules that govern the behavior of actors within a polity.

Defining institutions in this study allow for an analysis of the behavior, decision making processes, structures, interaction patterns and organization of parliament. That will, however, not be sufficient as the context of the above still requires an understanding of the formality with which the defined institutions operate. A formal institution is understood in relation to the legal sphere, with constitutions, regulations, and statutory bodies and the entities that these refer to - public and private institutions. These define matters such as how leaders are chosen and how a new policy can be introduced. An informal institution is a set of norms, conventions, moral values, religious belief and traditions, and other behavioral norms that determine individual behavior in pursuit of their aim (North, 1990; Ostrom, 1986, 1990). In practice, informal norms and ways of doing things might be as influential in shaping actual outcomes.

Institutions are important for policy reform precisely because they are “intentional constructions that structure information and create incentives to act or not to act in a particular situation” (Polski & Ostrom, 1999). In consequence, they structure incentives in human exchange, whether political, social, or economic. Thus, research that perceives institutions as an important underlying factor would look to both the various rules and laws related to a defined policy area (Ostrom, 1986; 1999) but also extend to how they function by examining the informal factors that influence outcomes.

Implementing institutions require arrangements that dynamically capture the essence of both the formal and informal regimes and coalitions for collective action and inter-agent coordination shaped by economic exchange, socio-cultural norms and political regimes (Geels, 2004). Institutional arrangements are shaped by national and international contexts and tend to mutually influence each other within a framework of complex interlinkages and strategic feedbacks. At the core interest are the exogenous and endogenous drivers of change with implications for policy processes, self-interest, and power and enforcement coordination.

It is upon these understandings of institutions, together with those of legislative institutions specific to the work by Weingast & Marshal (1988), Norton, 1998, Rahman, 2005; Wang, 2005

that I draw on to conceptualise the contextual factors that influence behavior, decision making, interaction and participation in ICT sector reforms from a parliamentary perspective.

3.1.5 Institutional constellation

As the nature of the state changes and power shifts from the centre to specialised agencies, power is formally delegated to them to deal with an increasing complexity of decision making under rapidly changing conditions. To analyze these changing conditions a ‘constellations perspective’ has emerged in the literature which implies that the regulatory chain (i.e. rule-making, licensing, monitoring, enforcement) is no longer performed by a single organization. Although all components should still be present in the sector, it is likely that functions are spread across several bodies. From a purely organizational perspective, an institutional constellation can be defined as the set of formal organisations that are mandated to perform one or several regulatory tasks within a particular field (Rommel, 2009). It is the “aggregate level that assembles different single institutions interacting because of decisions related to the same policy area” (Jordana & Sancho, 2004: 298).

Since regulations are a product of the interplay between several bodies, the constellation of institutions perspective provides a mechanism for placing a focus on parliament’s regulatory capacities and enrolment procedures as an actor involved in the regulatory system (Hood et al., 2001; Black, 2003). Moreover, the fact that institutional constellations “shape to a great extent the problems of governance and policy change in regulatory policies, distil political conflict, and connect sector policy-making to other sectors’ problems and priorities’ (Jordana & Sancho, 2004: 299) in essence reflects parliament’s goals for participating in policymaking and creating an enabling environment to ensure policy outcomes.

Jordana & Sancho (2004) provide a conceptual matrix to analyze regulatory configurations by “institutional constellations” through three key dimensions of institutional diversity, distribution of responsibility and power structure as detailed in Table 4. Jordana and Sancho’s matrix (Table 4) reflects many arrangements that are used in an institutional structure, ranging from complete government control to self-regulation with consequences of fragmentation, high dispersion of responsibilities and hierarchical or centralised power structures. Even collective and individual

decision-making procedures and the political culture²⁹ embedded in any institutional constellations aid the understanding of parliamentary participation.

Table 4: Jordana and Sancho matrix for analysing regulatory configurations

Key dimensions	Definition	Range of Variation	Absence of institutional constellation
Institutional diversity	Number of institutions involved.	Degree of Institutional fragmentation (low-high).	Institutional unity
Distribution of responsibility	Allocation of policy decisions to different institutions.	Degree of dispersion responsibilities (low-high).	Concentrated responsibilities
Power structure	Institutional capacity to control policy decisions.	Degree of centralization (low-high).	Hierarchical power

Source: Jordana & Sancho (2004).

Jordana & Sancho in the matrix (Table 4) present concepts that facilitate the institutional analysis of parliament in a number of ways. These concepts allow the incorporation of measures of power with factors that can better influence effective autonomy over decision-making, such as the power to veto or reverse decisions, or the anticipation of preferences. Furthermore, decision-making processes can then be explored empirically through an examination of the laws that delegate powers to the agency to regulate a particular sector, the appointment and dismissal procedures, and whether the appointments are primarily on the basis of patronage or technical ability; the resources at the agency’s disposal, including human and financial; final control or who the agency is ultimately accountable to - the judiciary, the legislature or the executive.

Jordana & Sancho (2004) extends the analysis of regulatory configurations to the “whole institutional arena”, which was previously confined to just the new agencies, as it is the whole that makes a difference in policy processes and outcomes. The focus on institutions consequently

²⁹ Policy dominance, consensus formation and policy coherence. Policy dominance refers to the common understanding about who controls the policy area; whilst consensus relates to informal joint-decision systems among the players involved in a regulatory arena, and coherence reduces flexibility to ensure policy consistency (Jordana & Sancho, 2004: 310-311).

offers “deep discussions of some of the consequences of different configurations for policy-making” (Jordana & Sancho, 2004: 298) that can facilitate such a cross-country comparative analysis of regulatory designs as sought by this thesis. Furthermore, it facilitates an institutional analysis of the impact of institutional structures on the actors involved in the polity. Parliament is indeed a “fundamental actor in the regulatory game” (Jordana & Sancho, 2004: 298) representing diverse interests, constrained by institutional mechanisms and structures with effects on the decision-making processes relevant for policy outcomes. However in doing so, a major shortcoming arises, as identified by Rommel (2009). The shortcoming is that the general structure of such constellations, as well as the task divisions between its members, is still largely unclear. So while conceptualizing institutions within constellations is useful analytically, analyzing institutions through the formal interplay between those in a constellation may fail on its own to explain how they work. As discussed above the informal interplay between institutions - the informal power relations and interests at play and the informal resolution mechanisms - can be equally or more important.

Gillwald (2009) extends the Jordana and Sancho matrix (Table 4) to developing countries in particular by incorporating the Levy & Spillers (1994) concepts of institutional endowment and capacity as factors influencing policy outcomes. Gillwald demonstrates that wider institutional ability to transform the economy and society, and the human capacity and competencies, are required within the ICT sector for reform efforts to be successful. Furthermore, her framework synthesises Jordana and Sancho’s matrix and Campbell’s (2004) institutional change to allow for a “structure to analyse the changing nature of state-sector relations, the re-arrangements of institutions to consolidate power and negotiate conflict, and the impact that this had on sector outcomes.”(Gillwald, 2009: 360). The integration of these two concepts enables a richer understanding of the interplay between the national and sector levels by identifying the institutional mechanics at play in the processes of policy formulation and implementation. In doing so, she exposes the structural determinants of policy outcomes, such as the conflicts of interest in the institutional arrangements, extending a largely economic analysis of a sub-optimal performance of the sector to the political realm (Gillwald, 2009).

To overcome the shortcomings of Jordana & Sancho (2004), in this thesis I draw on this intellectual evolution of the notion of institutional constellations by building on Gillwald's (2009) application of Jordana and Sancho's matrix to developing country contexts (with greater emphasis on the interplay between formal and informal power relations). I do so specifically by locating parliament in the identified institutional constellation.

This thesis brings a focus on the role of parliament in the institutional constellation responsible for regulatory reform in South Africa and Kenya. As an important veto player, power broker, interests' negotiator, law custodian, and conflict resolver, parliament potentially influences the different elements of the institutional constellation and outcomes within the ICT sector. To change any policy parliament, through its mechanisms has to influence individual and collective actors to agree to any proposed amendments based on the configuration of veto players in the country's political system (Tsebelis, 2002). Parliament is an agenda setter and often has to make proposals acceptable to the other veto players such as ministries with significant control over the policies that replace the status quo. Parliament structures the sequence of veto players in specific ways to make policy decisions, and it is inversely related to policy stability.

To understand the realities of parliamentary participation in a complex policy environment with the power dynamics of multiple actors, interests and institutions such as in the ICT sector reform, this thesis places parliament in a conceptual framework that combines the concept of ICT as a complex ecosystem (Fransman, 2007, 2008, 2010; Gillwald, 2012) with that of a constellation of institutions (Jordana & Sancho, 2004; Gillwald, 2009), the interplay among which influences reform outcomes.

3.2 New institutionalism

This study adopts a new institutionalism approach, specifically historical institutionalism. New institutionalism acknowledges that political economy is a principal factor structuring the collective behavior of actors to achieve distinct outcomes (Hall & Taylor, 1996). This allows the research to escape from a purely structural type analysis that views institutional arrangements as based only on economic, cultural variables and presents politics rather as a process than just a

decision system oriented to output production (Immergut, 1998; Lecours, 2005).

By adopting a historical institutionalism approach the thesis allows for an analysis that construes the relationship between institutions and behavior in broader terms than interests and outcomes, as well as between politics, state and society in a particular historical period explaining the process by which institutions originate or change (Hall & Taylor, 1996; Immergut, 1998). Interactions are structured to generate distinct “national trajectories” that emphasise the impact of national political institutions on the structuring of the relationship between legislators, organised interests, the electorate and judiciary (Lecours, 2005). Furthermore, it provides the research with a basis for understanding how the organization of parliament structures conflict so as to privilege the interests and preferences of certain groups, specifying the mechanisms through which it shapes the parameters of choice and emphasizing the asymmetries of the associated power (Immergut, 1998; Lecours, 2005).

Consequently new institutionalism provides a perspective for understanding the political system. The polity is viewed as an overall system of “interacting parts”, where the behavior of actors in the system depends on institutional constraints within which they act (Immergut, 1998; Lecours, 2005). Such an approach facilitates the integration of other factors and ideas into the analysis as important determinants of political outcomes. It allows for the diffusion of processes and institutional arrangements, with the nature and functioning of regimes and associated institutions with the organisation and the rules or conventions promulgated by formal organisations (Hall and Taylor, 1996; Lecours, 2005).

Historical institutionalism, especially as applied to the ICT sector, aids the analysis of institutions and behavior, explaining the process by which institutions change (Majone, 1994, 1997; Hall & Taylor, 1996; Jordana & Sancho, 2004; Gillwald, 2009; Rommel, 2009). Understanding of the nature and outcomes of state intervention within the ICT sector is fundamental to identifying the determinants of effective parliamentary participation.

3.2.1 Changing nature of state

The nature of the state as the primary institution that formulates policies matters to contextualise

parliamentary participation in the ICT sector and provide an understanding of the arrangements and linkages within state institutions. One of the primary roles of the state in economic development is correcting market failure through effective policy - for example, removing barriers to market entry or introducing competition in previously monopolistic markets. It is, therefore, assumed that the state will regulate private market activity, provide public goods or services and establish institutions that facilitate information exchange, assist contract enforcement and protect property rights (Poulton & Douarin, 2014).

Continued globalization of markets, supported by the explosion of new communication technologies, has fundamentally changed the nature of the state and market engagement. With increasingly globalised markets new forms of governance that extend beyond national boundaries have emerged. These rules and codes have necessitated the emergence of entirely new entities and multilateral agencies, such as the WTO and the World Intellectual Property Rights Organization (WIPO), and the reform of United Nations bodies such as the International Telecommunications Union (ITU). The existence of these entities and agencies has led to the devolution of power upwards into international governance (with which nation states are required to comply), downwards to local authorities, and laterally into specialised agencies (Gillwald, 2011). Responding to these challenging systems of governance has become a critical part of all political institutions.

Investigations and arguments by political economy scholars on the nature of state can be broadly divided into three categories- developmental, regulatory and predatory. Drawing on Gillwald (2009) consideration of these different forms of state about the development of the ICT sector in different contexts, and South Africa in particular, the three categories are examined below.

Both Kenya and South Africa claim to be developmental states. However, there is little evidence to explain what is understood by this from a policy perspective. The literature, suggests that neither country can be described as in a developmental state as there is no evidence of the characteristics outlined below. The developmental state is a phenomenon of state-led macroeconomic planning that has been prevalent in East Asia since the late twentieth century. By definition, it is a state that is focused on economic development and takes necessary policy

measures to accomplish that objective (Mosco, 2009). The state has more independent or autonomous political power, as well as more control over the economy and is characterised by having strong state intervention, as well as extensive regulation and planning (Cohn, 2002). A developmental state intervenes more directly in the economy through a variety of means, to promote the growth of new industries and to reduce the dislocations caused by shifts in investment and profits from old to new industries (Denny, 2006; Rommel, 2009).

On the contrary, the regulatory state governs the economy mainly through regulatory agencies empowered to enforce a variety of standards of behavior to protect the public against market failures of various sorts, including monopolistic pricing, predation, and other abuses of market power, and by providing collective goods that otherwise would be undersupplied by the market (Moran, 2001). While developmental states can pursue industrial policies, regulatory states generally cannot. The global liberalization of ICT markets from the 1980s onwards has happened in the context of shifting from centralised states to regulatory states characterised by devolution of power to specialised agencies that deal with the complexities of modern economies.

In a predatory state, power is concentrated at the top. The personalization of networks of a delegation of this authority is rampant, which leads to the instability of political institutions and the replacement of the institutions with exclusive relations based on personal and ethnic loyalties (Castells, 1999a: 98). The “predatory” state can result in lower levels of both output and popular welfare as it may provide public goods, such as protection, and hence may superficially resemble a contractual state. However, the ability to offer such goods can reduce public welfare. Moreover, the kinds of public goods that predatory states provide are those that increase revenue, not necessarily welfare (Mossell & Polak, 2001). Castells (1999) identifies exploitation of ethnicity and tribalism for capital accumulation as a major difference between many predatory states in Africa and the developmental states in Asia where it is either absent or has been managed. Castells (1999) further explains that the absence of a shared geography, history and culture as a result of arbitrary colonial determination of boundaries and political power allows for this level of exploitation, unlike in many parts of the Asian Pacific where, despite waves of colonialism, the nation-state tends to have a sense of common history.

The current development of the world suggests that the second perspective, the regulatory state, which will be the prime position of this thesis, is a more reasonable assumption in Africa; at least in a foreseeable future.

3.2.2 Regulatory State

Regulatory reform is happening since the 1980s, such as privatization, liberalization and re-regulation have given rise to the regulatory state. The rise of the regulatory state has involved the creation of new institutions across countries and sectors (Jordana & Sancho, 2004; Rommel, 2009). As observed by Majone (1994), while the traditional welfare state was concerned with redistribution of income and macroeconomic stabilization, the regulatory state is mainly concerned with the correction of market failures via rule-making instead of direct production (Rommel, 2009).

The regulatory state entails a new mode of governance, not only with changes in state functions (from distribution to regulation) but also with new institutions (Rommel, 2009; Majone, 1997). Its diffusion takes into account different existing adaptations and variations of the procedures and legal traditions of the decision-making processes (Jordana & Sancho, 2004). By its nature, the regulatory state relies on indirect government, where powers are delegated to a “complex web of specialised organisations and the separation of regulatory activities from policy preparation and implementation signals credibility” (Rommel, 2009:3).

Regulation increases the number of actors and institutions involved in separating tasks increasing the complexity of decision making as n of different institutions with the capacity to intervene accumulate. Furthermore, the nation-state increasingly shares authority with sub-national and supranational actors, leading to a system of multi-level regulatory governance (Denny, 2006; Rommel, 2009).

Two critical and central features of the regulatory state that influence sector arrangements are identified by Rommel (2009). These include operating in complex, fragmented constellations and having regulatory autonomy from the minister. These are critical components of the research seeking to understand how parliament ensures accountability of state and other actors and reflect

the diversity of interests of its principals through scrutiny and oversight based on the principal-agent relationships which it structures.

3.3 Sector arrangements

According to Weingast & Marshall (1998), issues that make it on the legislative agenda reflect its marginal impact on an interest group and constituency. Thus, the marginal impact of ICTs will depend on the underlying choices of interests, and vote trading models in place to negotiate diverse interests and goals. This brings to the fore the nature of sector arrangements and how they are organised to solve collective action problems that parliaments may confront and allow for consensus building. When faced with enforcement problems such as those of exchange found in vote trading models³⁰ legislators may devise alternative institutions such as committee systems to provide their exchanges with a greater degree of durability.

The United Nations (UN) proposed ICT institutional model discussed in Chapter 2 § 2.3.2 is fundamentally based on institutional arrangements that draw from concepts of rationalism, instrumentalism and interactionism as underlying principles in policy making (Song & Oh, 2012). The UN presupposes that adopting a model is critical in ‘circumstances where ICT policy issues, cutting across the traditional boundaries, call for functional integration and vertical coordination between ministries’ (World Bank, 2010:17). For better results considering various conditions of developing countries, where the “market and civil society are not sufficiently mature, and where organizational sectionalism among ministries prevails, supra-ministerial approaches would be more favored” (World Bank, 2010:13).

Song & Oh (2012) present three arrangements that are useful for the analysis of parliamentary participation. The first arrangement is modeled on a centralised authority with authority over all policy issues including their funding. All goals are set and coordinated centrally, favoring planning and coordinating organisations with a higher authority and integrated by the implementing ministry. Success is about attaining formal goals already formulated, and failure

³⁰ Non-contemporaneous benefit flows and non-simultaneity (Weingast & Marshall, 1998).

occurs due to unclear goal setting, resistance from implementing agencies or clients, and lack of information and control.

The second arrangement is modeled on a decentralised authority with ICT policy functions distributed to several ministries, with a centralised role of a higher level authority being absent or weak. In this model, the interests of local actors are regarded with a worm's eye-view perspective, where according to World Bank (2010:12)

“Ministries or agencies can exert autonomy and discretion within their jurisdictions and defined policy domains. ... This approach may fail if local actors are excluded from policy formulation, if there is too little discretion, or if resources are insufficient. The policy process can be improved by increasing the autonomy and discretion of ministries as well as by providing more resources”.

The third arrangement follows an inter-ministerial organization with a cabinet committee or ministerial board being responsible for policy. This follows an interactionism philosophy which considers policy making to be constituted by various actors and no ministry coordinating other ministry with more frequent horizontal interaction among the ministries. Establishing a common goal is about collective action, where failure can be a result of no common vision. ;. This view supports the notion that various institutional arrangements are “rich mixtures of public and private instrumentalities” (Ostrom, 1999:182; World Bank, 2010).

The above three sector arrangements influence to a large extent the decision making process in a sector for which parliament is an agenda setter. The perspectives above define the participation mechanisms of key role players including parliament, obviously depending on the model. They equally influence the incentives and information flows that facilitate decision making for the sector. This makes the nature and organization of sector arrangements a critical component for the analysis of parliamentary participation.

3.4 ICT ecosystem

Formal overlaps have been identified in how systems of species and systems within the ICT

sector are organised and in how they interrelate (Lansiti & Richards, 2006; Platt, 2011). The definition of an ecosystem highlights the network of interactions by key and essential elements interacting within a system, either collaboratively or in competition, as being critical to business outcomes. The ICT ecosystem is thus in essence an integrated perspective of markets, networks, services, applications and content and the determining governance, legal and regulatory frameworks. Gillwald (2012) expands the eco-systemic perspective to ICT in general and links access and affordability to institutional arrangements up to global and regional governance, structure and processes. According to this concept, the ICT ecosystem is characterised by a large number of participants who depend on each other for their mutual effectiveness and survival (Figure 3). It is organised as complex networks of firms whose integrated efforts are necessary to deliver value to end customers.

The ICT industry today consists of a rapidly evolving and massively interconnected network of organisations, technologies, products, and consumers. In contrast to the vertically integrated environment of the 1960s and 1970s, today's industry is divided into a large number of segments producing specialised components, systems, and services. The degree of interaction amongst key players is very high, with hundreds of organisations frequently involved in the design, production, distribution, and implementation of a single product.

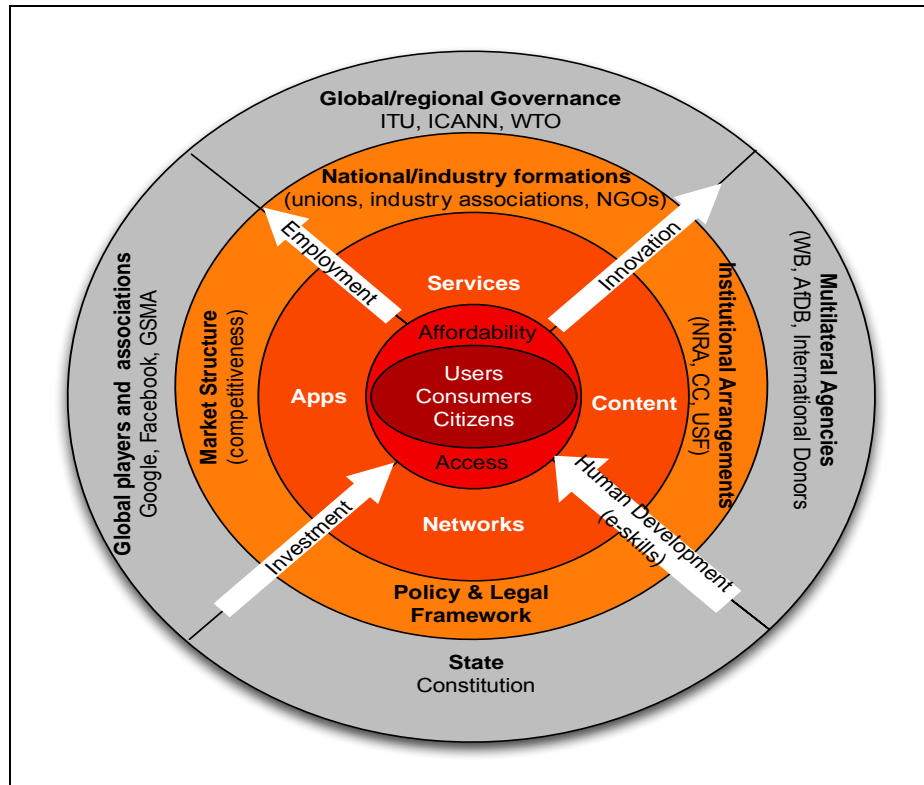


Figure 3: The ICT Ecosystem. Source: Gillwald, 2012

The ICT ecosystems differ in each country in terms of objectives, configurations, modus operandi and performance. Due to the high costs of ICT services regulation now plays a critical role in the governance of the ICT sector. However, the policy making and monitoring the role of government differ in each country because of factors such as the international competitiveness of local companies, influence of domestic institutions which themselves are molded by an internal organization with the power to change them, and political institutions and processes (Fransman, 2010).

Similar to the natural life ecosystem, the ICT ecosystem allows for an assessment of the linkages between processes, essential elements and the relationships that exist among key players in that ecosystem. It is comprised of players³¹, symbiotic interactions and institutions³² that reflect the

³¹ Corporate, private consumers- users, government policy-makers, and regulators

³² For example regulations that determine what firms can do or not do, legal frameworks defining legal institutions, macroeconomic conditions under which players interact

joint responsibility of different stakeholders each with own perspective and none with a holistic conceptualizing of it as a whole (Fransman, 2008, 2010; Madikiza, 2011; Gillwald, 2012). The ICT ecosystem offers a conceptual vehicle for the analysis and strategic implementation of changes within the digital landscape and helps inform the development of appropriate corporate strategies and government policies.

The manner in which this system is operated and constructed recognises the interplay between governance, citizenship, knowledge, communication, and innovation allowing for an analysis of how the different ICT ecosystems in the various countries evolve and mature with different paces and outcomes. It also allows for a discussion of the different global and regional and national, legal and policy arrangements that bring stakeholders together to define the technology environment. Furthermore, the ICT ecosystem explicitly allows the definition of the coordination role of government providing an understanding of the necessary integration of operational capacities of key stakeholders. However, of note is that government bureaucracy and institutional fragmentation makes it difficult to coordinate vital stakeholder capacities, resulting in inconsistencies within the sector. Parliament is thus expected to play an important role in ensuring government accountability to the sector.

While the ICT ecosystem framework has the potential to assist scholars to understand the interrelationship within the sector, effectively contextualizing the ICT ecosystem within the political domain requires drawing extensively from institutional theories (for example the rational and public choice). Institutions are neither a mere reflection of other forces (e.g. technological or social), nor are they neutral arenas within which political behavior, driven by more fundamental factors, occurs. Parliaments affect the power of groups, shaping the way ideas circulate to influence policy and coordination of public decisions by affecting the context of debate and the power of actors wishing to reform policymaking. The appropriateness of the ICT ecosystem lies in that it provides scope for understanding the context of interactions amongst different key actors in the sector.

The ICT ecosystem framework is useful in defining institutional factors and identifying stakeholder to establish the essential elements within the ICT sector. It subtly provides direction

on who should participate in this study providing the logical and methodological framework to be used for data collection and analysis. Furthermore, the framework offers a better understanding of the interrelationships of the key players and the outcomes of their interventions. The ICT ecosystem lenses (Figure 3) build the ability of this study to engage with the dynamics of the system and define key parliamentary patterns of interaction

3.5 Locating parliament in constellation of institutions

Drawing from the literature in Sections 3.1-3.4 parliament is confirmed as a key actor with a significant role to play in the ICT reforms market. Investigating the nature and dynamics of ICT sector reform in Africa from a parliamentary perspective can be a complex undertaking without the aid of existing frameworks. To assess the extent to which parliaments participate in ICT sector development process in Africa this study assumes that no single framework can fully explain the complex nature of the reality of parliaments.

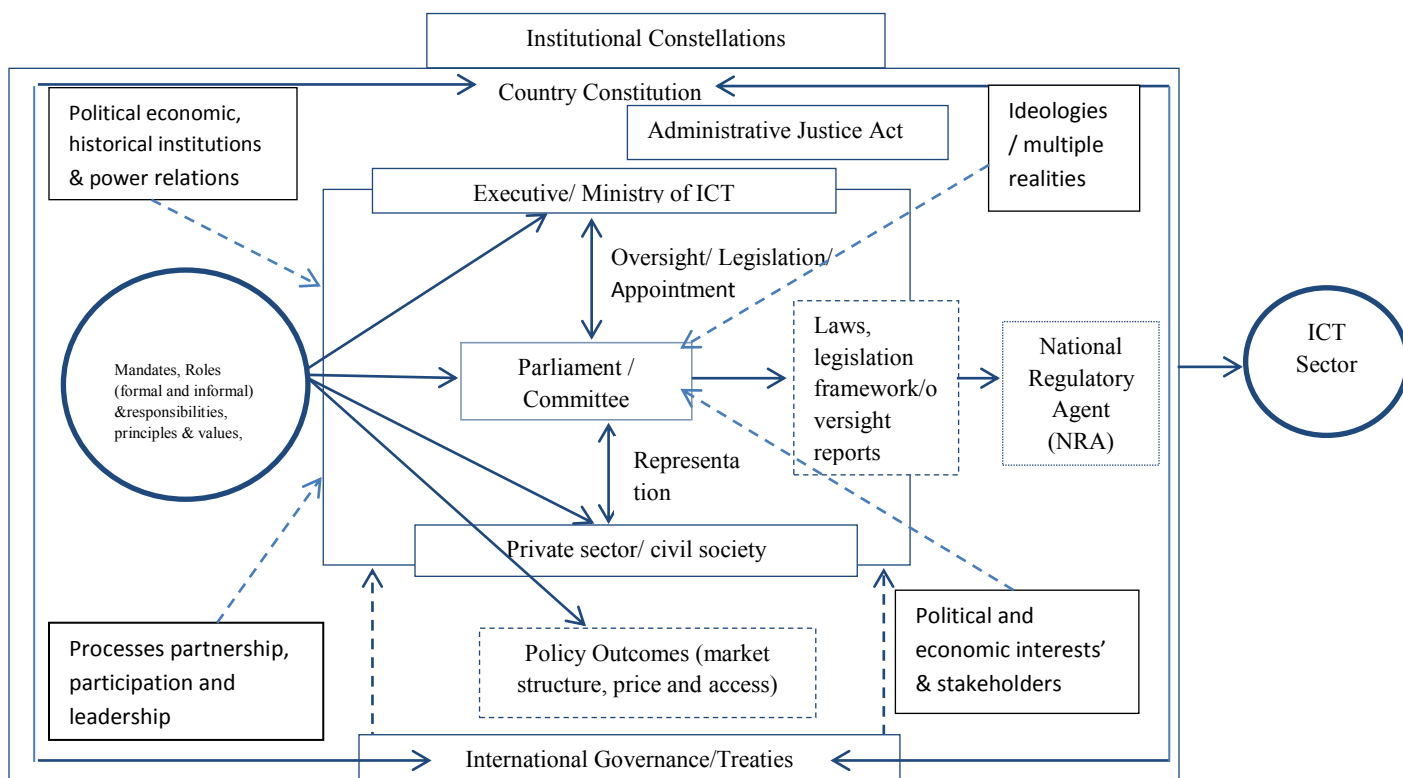


Figure 4: Locating parliament in the constellation of institutions. Source: Author’s synthesis of Jordana and Sancho’s (Table 4), Gillwald (2009) concept of an institutional constellation and ICT Ecosystem (Figure 3).

The conceptual framework constructed for this thesis is shown in Figure 4. The conceptual framework locates parliament in a framework that combines the concept of ICT as a complex ecosystem with that of a constellation of institutions. It contextualises the analysis in the political and economic circumstance of each country, embracing key elements of the political economy tradition as outlined in Sections 3.2 to 3.5. These include the formal and informal historical, economic, diverse institutions and power structures, the interests, ideologies, responsibilities, and the ongoing processes to examine what shapes political behavior of parliaments. The new state theory aids our understanding of how the changing nature of the state is critical to understanding current structures and processes. The ICT as a complex ecosystem enables an examination of the interrelationships and engagement patterns within the sector, to effectively contextualise the ICT ecosystem within the political domain. Figure 4 depicts all the elements of the conceptual framework and how they are linked to each other.

To apply the conceptual framework that was constructed for this study (and shown in Figure 4), there is further elaboration in several respects to illustrate the structural relationships between the different actors, the elements of the institutional constellation and the factors influencing institutional outcomes. This study is particularly concerned with the interaction of the above elements to explain outcomes within the ICT sector in Kenya and South Africa from a parliamentary perspective. The conceptual framework in Figure 4 assists the researcher's understanding of the ICT sector reforms market as a political space with a set of political and economic activities underpinned by both formal and informal institutions and regimes, actors with diverse interests and constraints that result in power relations which determine policy outcomes in the ICT sector.

The conceptual framework extends the analysis of the research to the broader sector context that influences the decision-making processes of the state and the economy and more specifically the specialised institutional arrangements of the modern state (in the case of this research the regulatory system for the telecommunications sector). The broader context allows the research to examine critically essential elements such as the processes and structural designs that shape the relationships among key players in the ICT ecosystem. The framework assists the researcher to

identify and understand the extent to which these sector designs influence the formal and informal engagements of parliament from rule-making to organizational practices and behavior.

The conceptual framework in Figure 4 provides a lens for examining empirical evidence on parliamentary participation in ICT sector reforms in the Kenyan and South African states. Based on the constitutional mandates that define the roles, responsibilities, principles, values and the relationships that exist, the framework exposes key factors of parliamentary performance, the arrangement of institutions to ensure effective engagement, consolidation of power and negotiation of conflict, leading to specific outcomes in the ICT sector. Furthermore, the framework provides a basis for understanding the relationships that exist between parliament and other state actors, the private sector and civil society. This allows for an analysis of how the defined formal legal framework influences or constrains the actions of parliaments in practice and ultimately identifying institutional factors that determine the effective in contribution to the ICT reform processes.

It is through the lenses of the conceptual framework developed for this study (Figure 4) that patterns, trends and contradictions in parliamentary participation and their causes can be observed in Kenya and South Africa. To bring in the internal factors influencing parliamentary effectiveness into the conceptual framework (Figure 4), the analytical framework constructed for this study factors in parliamentary performance dimension as critical to parliamentary participation in the sector reforms. The analytical framework adds to the conceptual framework appropriate tools for analyzing parliamentary performance, co-relationships amongst key sector players and any changes arising from their interactions. A self- assessment methodology is used to examine parliamentary performance dimensions as described in Chapter 2, to identify critical capacity elements that influence parliament's practices and performance within the ICT ecosystem.

3.6 Conclusion

This chapter has outlined concepts and theories around the subject and conceptual framework at the core of the research contained in this thesis. The key concepts and theories around the subject

and conceptual framework explained in this chapter indicate how the play out of law making in practice, the context (social, political economic, historical institutions and power relations), the constellation of institutions (institutional diversity, power structures, and distribution of responsibilities), interests (political and economic interests, and stakeholders), ideologies, arrangements and constellation of rules, as well as internal capacity of institutions guarantee effective, meaningful and sustainable participation of parliament in policy making. Fundamental to effective parliamentary participation are the internal and external factors that determine sector institutional arrangements and design structures. Clarity on the political, social, economic aspects of policy reform, its linkages to the institutions and actors that will enforce it is thus necessary to operationalise parliamentary participation in ICT sector reforms as an agenda for research.

The development of the ICT sector has been in the spotlight in the last three decades as demand for affordable and accessible ICT services increased with the growth of knowledge-based economy. In most cases this development has been largely dependent on the growth of an ICT ecosystem underpinned by the symbiotic interactions within it. The ICT ecosystem recognises the interplay between governance and other key elements such as citizenship, knowledge, communication, and innovation reflecting the joint responsibilities of the different stakeholders. The interplay between the ICT policies and regulations (for example laws relating to ICT, burden of government regulation), market dynamism (for example ICT competition, intensity of local competition and capacity of innovation) as well as the business climate (for instance procedures to start business, efficiency of a legal framework) places parliamentary accountability and participation right at the centre of the reforms of the sector.

A conceptual framework that combines the concept of the institutional constellation with that of an ICT as a complex system will thus contextualise the analysis in the political and economic circumstances of Kenya and South Africa. This is to examine the role parliament plays in the two countries by pursuing the orthodox ICT reform model, the interplay among which influences reform outcomes.

Chapter 4

METHODOLOGY AND RESEARCH DESIGN

4.0 Introduction

The validity of research is based on some philosophical assumption that should be understood to evaluate the research. Based on the theoretical underpinnings discussed in Chapter 2 and the conceptual framework (Figure 4) developed in Chapter 3, this chapter discusses the paradigm, epistemological and ontological approaches and the methodology of the study, describing what has influenced the selection of methods of data collection and analysis. This institutional analysis is located in the context of an applied policy research and, thus, builds concepts as a means of explanation, rather than as a test of the theory. Constructs are derived from the field through an in-depth examination of the phenomenon of interest. An interpretative paradigm is identified as the framework of the study, bounded in the belief that there is no single correct route to knowledge; theories are judged according to how interesting they are to both the researcher and participants (Walsham, 1993).

Parliamentary participation in ICT sector reform is investigated from a political economy perspective that draws on Jordana & Sancho's (2004) notion of constellation institution as further developed by Gillwald (2009). According to Jordana & Sancho (2004: 297), it is worthwhile to study parliamentary participation as a key player since it is the "whole institutional arena, not just the new agencies making the difference in policy processes and policy outcomes". Furthermore, the focus on decision-making processes relevant for policy outcomes and the influence of institutional settings that combines comprehensive and specialised public bodies charged with shaping public policy according to various public mandates, with different and often contradictory goals, enables a wider political and contextual analysis of the relevant institutions in the policy arena.

Institutions define interaction patterns and structures, the interests and ideologies that determine behavior and the processes through which policy outcomes are achieved. The literature identifies parliament as a key public body that can influence key outcomes within the ICT sector. To understand the determinants of parliamentary performance in this complex institutional setting

with multiple players, this thesis also draws on the concept of parliamentary performance (Johnson, 2005; Parliamentary Centre, 2013) as a critical dimension of parliamentary effectiveness in policy making processes.

Within the context of an institutional constellation located in a national ICT ecosystem, this thesis combines the relevant theoretical, conceptual, formal and informal perspectives to investigate contextual and institutional factors and examine the relevance of parliament in enabling ICT sector reforms. These perspectives develop a motivation for analyzing both external and internal factors that give rise to effective parliamentary participation in developing an enabling environment for ICT sector development in the two selected countries. Furthermore, the thesis analyzes the dynamism of the regulatory, political, historical and economic environments, exploring prevalent policy practices, key actor engagement patterns within a complex ICT ecosystem to determine underlying determinants of parliamentary participation.

In order to consider the external factors this study examines the following key dimensions :-- the context (social, political economic, historical institutions and power relations), the constellation of institutions (institutional diversity, power structures, and distribution of responsibilities), interests and ideologies (political and economic interests and stakeholders), arrangements and constellation of rules to understand the institutional and market performance. The internal investigation focuses on five dimensions of parliamentary performance based on the expected traditional parliamentary roles of representation, legislation and oversight. The five capacity dimensions identified area: the legal mandate; accessibility; bill reviews and hearings; oversight committees; and financial and material resources.

4.1 Epistemological and ontological approaches

The research process has three dimensions: ontology, epistemology and methodology. Ontological and epistemological perspectives are concerned with the world view of how reality and knowledge are perceived. Epistemology is about what constitutes valid knowledge and how we obtain it; ontology is what constitutes reality and how we can understand existence. A

research paradigm is a comprehensive system of interrelated practices and thinking that define the nature of enquiry along these three dimensions (TerreBlanche & Durrheim, 1999).

The research literature (for example Yin, 1989; Myers, 1997; Bryman, 2001; Patton, 2002; Guba & Lincoln, 2005) identifies major paradigms or world views to knowledge: interpretivism, positivism and subjectivism. Interpretivism views knowledge of reality as a social construct of language, shared meanings, tools, documents and is thus inductive (Walsham, 1993). Positivism is a major paradigm mainly associated with the quantitative methodology where the research process is deductive, as it starts with a hypothesis. The data is subjected to experimentation and statistical manipulation to establish the cause-effect relationship between variables. Positivism is not suitable for this study as the study is mainly a qualitative methodology that follows a subjectivist epistemology that has no predefined variables. In positivism, the focus is discovering and interpreting patterns as the situation unfolds (Orlikowski & Baroudi, 1991; Kaplan & Maxwell, 1994). Those who have experienced aspects under investigation are selected to participate, in positivism (Jackson & Kassam, 1998). Subjectivists argue that proving the cause-effect relationship between variables with certainty in social and political phenomena can be problematic (Guba & Lincoln, 2005). The subjectivists further argue that the nature of political phenomena and the existence of multiple realities, knowledge or truth are relative rather than absolute. It can be a product of interpretation of lived experiences as well as construction in the minds of individuals.

The subjectivist approach of reality emphasises the importance of understanding the process through which institutions fix their engagement models (Morgan & Smircich, 1980). The subjectivist approach accepts that organisations generate their reality shaped by experience and an ongoing interchange of perceptions, meanings, and motives. Parliament is identified as the place where the interests of the public are negotiated and debated (IPU, 2006). It is in parliament that MPs generate their realities based on their experiences and interactions with their constituencies and other stakeholders, as well as their appreciation of the world around them. It is these realities that are of particular importance to this study, as they can help create an understanding of the linkages between parliament and the outcomes of ICT sector reforms.

A subjectivist approach has distinct advantages: it requires researchers to observe, analyze and explain actions concerning internal, personal interpretations of their environment. It also provides fruitful theoretical and applied subjectivist research which de-emphasises exploitation of existing opportunities, and the knowledge construction fundamental to the genesis of creative behavior becomes central (Evely et al., 2008). The fact that parliament is concerned with human choices and actions and not just mechanically dependent relationships motivates for the subjectivist approach.

This research has practical implications in that it contributes not only to the theoretical debate on parliamentary participation in ICT sector reforms but also creates knowledge that is of practical use to practitioners, parliaments and key players within the ICT sector. A political analysis is undertaken to contextualise the political circumstances³³ of the two countries under study, to understand the relevance of parliament in ICT sector reforms, Due to the practical implications accompanying such a piece of research, epistemologically the study adopts a political economy perspective and is guided by a practical and interpretive paradigm. This approach depends on an interpretive and subjective philosophical assumption regarding the nature of knowledge, reality and existence.

Interpretivist construes the reality as consisting of people's subjective experiences of the external world, stressing the need to put an analysis in context and supporting the adoption of a subjective epistemology. Interpretivism acknowledges the existence of multiple realities from a subjectivist perspective as a means to understand meanings assigned by participants for the researcher to judge or evaluate, and refine interpretive theories. The researcher and research participants are thus viewed as co-creators of knowledge (Yin, 1989; Bryman, 2001; Patton, 2002; Guba & Lincoln, 2005).

The institutional approach to a case methodology adopted for this research requires the gathering of evidence. The theory is used differently in interpretive case studies. It can be used to guide the

³³ Includes the context (social, political economic, historical institutions & power relations); the constellation of institutions (institutional diversity, power structures, and distribution of responsibilities); interests- political and economic interests' & stakeholders; ideologies, arrangements.

design and collection of data, provide an iterative process for data collection and analysis and to be an outcome of the study. This thesis uses theory to provide an iterative data collection and analysis process. Iterative observation and interpretation underpin the process by drawing inferences from the information and some abstraction or meaning assigned to concepts by people (Deetz, 1996).

From an ontological perspective, this study adopts a new institutionalism approach and more specifically that of historical institutionalism acknowledging that political economy is a principal factor structuring collective behaviour and distinctive outcomes. The research acknowledges that multiple realities exist due to people's diverse knowledge, interpretations and experiences. This reality can be explored and meanings discovered and constructed through human interactions (conversations) and actions.

This ontology perspective enables an analysis that construes the relationship between institutions and behaviour in broad terms, explaining the process by which institutions originate or change (Hall & Taylor, 1996). It allows for the examination of the interplay between the ICT processes and structures (for example policies and regulations such as laws relating to ICT, burden of government regulation), market dynamism (for example ICT competition, intensity of local competition and capacity of innovation) as well as the business climate (for instance procedures to start business, efficiency of a legal framework). Table 5 displays the characteristics of interpretivism, as used in this study, categorised into the adopted approach, the ontology and epistemology.

Table 5: Summary of the Epistemology and Ontology approach.

Item	Approach	Characteristics
Theoretical approach	Political economy	<ul style="list-style-type: none"> • Analysis of power relations, interests and institutions. • Interpretive and practical paradigm. • Knowledge is viewed as the product of theory and practice. • Practical as it is used to understand the process through which institutions fix their engagement models to advise policy and decision makers on appropriate structures and arrangements. • Subjective as causality favors ‘multiple, dynamic interactions’.
Epistemology	Interpretive	<ul style="list-style-type: none"> • It rejects the reduction of all social practices to a single political-economic explanation, as there is no single correct route to knowledge; constructs are discovered and interpreted as the situation unfolds. • Knowledge is socially constructed by subjective experiences. • Understood through interpretation and interaction within social contexts.
Ontology	New institutionalism, Historical institutionalism.	<ul style="list-style-type: none"> • It assumes the existence of the multiple realities different values and perceptions and personal interpretations. • It stresses structures and institutions rather than social change, social processes and relativism. • Assumes that reality is constructed subjectively through meanings and understandings developed socially and experientially.

Source: Walsham, 1993; Myers, 1997; Guba & Lincoln, 2005, Lecours, 2005; Gillwald, 2009.

4.2 Methodological considerations

The nature of the political phenomena and the existence of multiple realities in parliament motivates for a qualitative approach to the investigation based on an interpretivist perspective that allows for the co-creation of knowledge by both the researcher and research participants. To enable co-creation of knowledge informed by adequate dialogue between the researchers and participants to collaboratively construct meaningful reality (Yin, 1989; Bryman, 2001; Guba & Lincoln, 2005), the study utilises questionnaires, interviews, observation and analysis of existing texts to develop a comprehensive analysis of parliamentary participation in the ICT sector of Kenya and South Africa.

Investigating ICT policy and regulatory reforms can take a variety of designs depending on, among others, the line of enquiry and conceptual framework. The conceptual framework developed in Chapter 3 (summarised in Figure 4) enables an analysis of key external and internal factors that influence or constrain parliamentary participation in policy making processes.

Multiple data collection methods are used to gather information from primary and secondary sources. Primary data is collected through a self-assessment survey of ICT Committees and complemented by high-level interviews with key sector players and based on ‘direct observations’ of parliamentary processes as part of my work in multilateral agencies building African parliamentary capacity.

The self-assessment through the questionnaires confirms the existence, or non-thereof, of critical capacity elements required for effective parliamentary participation. The Africa Parliamentary Index (API) follows an assessment methodology that enables the evaluation of existence of parliamentary capacity by parliament itself as well as by other interested stakeholders such as civil society/operators and the regulators. Such a mix of data collecting methods underscores the subjectivist nature of the study in that it facilitates the co-creation of knowledge by assuming the existence of multiple realities, different values and perceptions and personal interpretations.

Secondary data is collected through an extensive document review and analysis of country constitutions, ICT policy documents, ICT Laws and ICT legal frameworks, parliamentary

reports, ICT sector reviews. The intention is to unearth key factors that highlight key decision-making processes supporting parliamentary participation in the policy making process and the integration mechanisms of this decision-making process in the wider parliamentary engagement with the main actors.

Participants were purposively sampled to represent, interrogate, juxtapose and construct the experience of 15 participants from both countries key actors within the sector reforms process. The sample of 15 was perhaps not ideal but adequate considering the use of high-level interviews with participants purposefully selected on the basis of availability and experience with parliament and access to relevant information. The findings from the self-assessment and the high-level interviews were analysed in terms of the governance framework including the constitutional provisions that define legal and operational powers for parliament, implementation and enforcement arrangements, mechanisms and procedures. Quantitative supply-side data related to the ICT objectives of price and access was collected through secondary data from the ITU, the World Bank, and Research ICT Africa to evaluate and appreciate progress made in the ICT sector effectively,

4.2.1 A comparative case study of parliamentary participation in Kenya and South Africa

This research uses a comparative case approach to the investigation in that it constructs a justification of worldwide trends common to parliament and allows the researcher to analyse the intricate trends of that particular society (Ragin,1987). It justifies trends by evaluating and contrasting one ideology aligned with others showing two parallel sides of two slightly different situations.

According to Routio (2007), comparison is used to explicate or utilise tacit knowledge or tacit attitudes. Furthermore, he asserts that the goal is to examine cases which are similar in some respects but differ in others to explore causes for the differences and reveal the general underlying structure which generates or allows such a variation. This study explores two cases to reveal the systematic structure and invariance that could be generalised as true not only for the cases studied but for Africa as a whole. Data are collected primarily by self-assessment surveys,

and underpinned by observation and high level interviews to determine trends, similarities and differences related to parliamentary participation in ICT sector reforms in Kenya and South Africa through a horizontal analysis of the political economic issues and the linkages between the political-economic framework, the institutional arrangements, and the ICT policy outcomes. The case studies are used to provide a detailed understanding of the in country nuances to reveal the what, how and why parliamentary participation in ICT sector development has been ineffectual.

According to Sarana (1975), such an illustrative comparative analysis can be used to examine trends, tensions, and contradictions by exploring units of comparison and types of data that reflect a variety of theoretical assumptions and interests. In the case of this research to understand what role parliament plays in ICT sector reforms, the units of comparison include the dimensions of institutional constellations, political, historical institutions and power, economic and political interests and culture, ICT market performance, impact of global governance as well as parliamentary mechanisms and practices for oversight, representation and legislation in Kenya and South Africa. These units of comparison explain and exemplify political phenomena, enabling the development of typologies and analyses of processes found in the different parliaments in the two selected countries. These items are chosen to illustrate the value and are not systematically chosen to be statistically representative (Sarana, 1975). Illustrative comparisons have been used in historical reconstructions, to support interpretations or general assertions.

4.2.2 Research limitations

A significant limitation to using a comparative analysis is that the data sets (units of analysis) in different countries may not use the same categories, or may define categories differently, affecting its comparability. Explanations may be unique to a country obviously affecting the kinds of generalisations that are possible given the nature of the data processes studied and the data used.

4.2.3 Primary and secondary sources

This research made use of both primary and secondary sources of data and information. The main sources of primary data are the self-assessment surveys, observations and high-level interviews. Primary data was captured through a self-assessment survey by members of the ICT parliamentary committees and complemented by high-level interviews with key sector players conducted over several hours on different occasions mostly between 2012 -2015 (see Appendix 1: Research Framework and Protocol).

Taking into cognizance the uniqueness of parliament as an organisation (normally 1 or 2 houses in each country) with very few people comprising them, this study adopts the qualitative methodology that purposively samples participants to represent, interrogate, juxtapose and construct the experience of parliaments and the various actors within the reforms process. This will provide an in-depth understanding of the world as seen through the eyes of the people being studied. The findings are triangulated with those from an extensive document analysis. The interviews were conducted in person or over Skype, transcribed and digitally stored for coding.

4.2.3.1 Self-assessment through surveys and high-level interviews

Whilst a number of tools exist for assessing parliamentary performance (for example NDI standards; SADC Parliamentary Forum Benchmarks for Democratic Legislatures; CPA benchmarks; IPU toolkit; Parliamentary Centre³⁴ evaluation frameworks for Budget and Audit), the Africa Parliamentary Index (API) is suitable for this study as it allows for the assessment of parliament through the committee structure where most of the work by parliament is done. I therefore adapt the API and utilise the set of indicators and questions developed and apply to ICT parliamentary committees.

Developed by the Parliamentary Centre (2011), through its Africa Parliamentary Strengthening Programme (APSP), the API consolidates a set of indicators into a tool that comparatively assesses and measures the performance of parliaments (Parliamentary Centre, 2011). The choice

³⁴ See www.parlcentafrica.org/index.php?option=com_content&view=article&id=108&Itemid=85&lang=en (Accessed January 2012).

of indicators is based on the governance work conducted by such international institutions as the National Democratic Institute (NDI), the World Bank Institute (WBI), the Commonwealth Parliamentary Association (CPA), Inter-Parliamentary Union and experience of the Parliamentary Centre in Canada; assessing parliaments against international best practice. These indicators are combined into an index to measure cross-country variation in five broad functions³⁵.with the identified capacity elements then customised to reflect other empirical applications based on the design of the survey. In particular, the application to this study is concerned with whether or not certain internal capacity element exists to influence parliamentary performance as a key player in the ICT sector.

According to the Parliamentary Centre (2011), the value of API lies in its adaptability as a tool to address a number of different issues of parliamentary performance. It presents a standardised, simplified system for assessing the performance of parliaments. The questions are framed in comparative mode (“How effective, adequate, systematic, etc.) allowing comparing across dimensions and countries ((For a full set of questions see Appendix 2: Questionnaire). Participants are then invited to provide a value assessment based on a four-point scale based on the API Index (Parliamentary Centre, 2011) reflected below:

- 4 = High level of capacity in place
- 3 = Moderate level of capacity in place
- 2 = Basic level of capacity in place
- 1 = Clear need for increased capacity

The API follows a self-assessment methodology that allows the evaluation of the performance of parliament by both parliament itself and allows for triangulation of content by other interested stakeholders to counter any biases. This underscores both the subjectivist and interpretive nature of this study in that it facilitates the co-creation of knowledge by assuming the existence of multiple realities, different values and perceptions and personal interpretations which the API methodology caters for.

³⁵See Parliamentary Centre(2011) . The API focuses on five core areas that are of importance to this study, namely: representation, legislation, oversight function, financial oversight and institutional capacity providing a weighted capacity ratio defining the level of parliament’s capacity given the priority level individual respondents attach to each capacity element.

The API provides a measure that gives an idea of what parliament is like (Parliamentary Centre, 2011). The API approach assesses value judgments of how parliament measures itself against set criteria process by allowing different groupings to assess key committee functions and reflecting the broadest possible array of perspectives. Respondents are asked to provide recommendations and the evidence for such at the end of the assessment.

The API assessment enables a compound assessment of the capacity of parliament against a set criterion (for example effectiveness, sustainability and structured participation) in parliamentary practice for executing legislative, representation and oversight functions in respect to a certain policy area. Such a methodology for data gathering facilitates a practical and interpretive review of core parliamentary functions and mechanisms in place, an approach for co-creation of knowledge.

4.2.3.2 Sampling of respondents

To cater for the uniqueness of parliament occurring as one entity per country purposive sampling, a common sampling strategy is used to allow for the grouping of participants based on preselected criteria relevant to a particular research question and relevancy to the study. Sample sizes vary depending on the resources and time available, as well as the study's objectives and are often determined on the basis of theoretical saturation allowing for both data review and analysis to be done in conjunction with data collection.

A total of 15 respondents were drawn from the two African countries, Kenya and South Africa.

Four categories of participants were involved in the study, as follows:

1. Chairpersons and or representative MPs from committees responsible for ICTs ,who have the responsibility to develop the legislative framework and ensure the right governance is in place. They are also charged with ensuring that parliament applies its traditional roles of oversight, legislative and representative in the ICT sector policy processes. Insights were sought too from the committee clerks and staff who support the committee work. To get further insight on the capacity and knowledge levels of parliaments, parliamentary development experts working with the two countries were included in the sample. These

experts and staff of parliament also filled an important role as proxies in cases where the MPs were not available.

2. Representatives from the regulatory bodies whose insight was sought into the dynamics of the relationship between parliament and the independent agencies. Their insights highlight key issues affecting the independence of regulation which is a key requirement for successful reforms. The findings will enable parliament to assess its role and respond more meaningfully to the requirements of the sector.
3. Senior representatives from departments responsible for legal and regulatory affairs and/or public relations in the main industry associations and mobile and fixed telecommunication companies. They provided insight and opinions into how parliament has applied its mandate within the sector, and provided much needed evidence to support the formulation of patterns of interaction and engagement models, limitations and constraints outside of government, in a fast changing and dynamic sector where policy is always playing catch up to innovations.
4. Lastly, participants from civil society organisations and, in particular, parliamentary monitoring organisations and interest groups with focus on developing the ICT sector and ensuring affordable access for all. These participants provided their views as the watch dogs of parliament, holding it accountable to the interests of the constituencies and the broader electorate and, therefore, countered any biases likely to be present as parliament evaluates its own performance.

Participants were selected according to their experience and access to relevant information (taking into account the researcher's resource limitations), and grouped according to their relevance to the study.

4.2.3.3 High level (elite) interviews

To discover how political institutions operate, how important decisions are made and how political power is attained we are likely to focus attention on those individuals (very small group) who have access to this level of information- those referred to as political elites(Harrison&Sratin,2013).

High level and elite interviews allow for the conducting of intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea (Boyce & Neale, 2006). Elite, in this case, may be defined as 'a group of individuals, who hold, or have held, a privileged position in a society' (Richards, 1996) or more flexibly as an interview for 'any interviewee who is given special, non-standardized treatment' because they have specialist knowledge the researcher is eager to be taught (Dexter, 1970).

As observed by Hochschild (2009), the central purpose of high level or elite interviews is to acquire information and context that only that person can provide about some event or process. Furthermore elite interviews give substance and meaning to prior analyses of institutions, structures, rule-making, or procedural controls. Elite interviews are therefore an appropriate data collection methodology for a study as this one that follows recent historical change, or process-tracing of policy enactment or implementation, and seeks to understand the role of elites and perception in a political process.

Elite interviews allow researchers to engage legislators and others involved in political and policy decision-making processes to find out their perspective and/or what went on backstage away from the final formal institutional story (Hochschild, 2009). However such individuals have very tight schedules and are unlikely to agree to spend a lot of time on the interview. More so, because of the political nature of the subject, interviewees who remain in office in particular may be reluctant to participate at all or to be transparent on all issues. While the final number of interviewers was lower than was intended, other than a few key ones that despite persistent efforts could not be secured, the necessary spread of interests and functions was covered to enable the research questions to be addressed and for the findings to be verified through

triangulation.

As Hochschild (2009) suggests the researcher can carefully triangulate among respondents; without revealing any confidences or names of previous subjects, and this can counter any biases that may arise from the fact that politicians are part of the institutions. Further, the researcher utilised other data collection methods to capture the perspectives such as the self-administered questionnaire and through intensive document analysis.

The individuals identified for the elite interviews were figures in decision making roles such as the chairperson of committees, senior government officials, and senior managers in private sector was mainly used as a follow up on the basis of a generalised questionnaire. The interviews investigated the engagement patterns that influence the decision-making process that support the parliamentary intervention in the policy making process. The semi structured interviews had open-ended questions to allow interviewees to express themselves within their own framework and introduce new perspectives and support the co creation of knowledge by both researcher and participants. This could help gain perspectives, views and experiences of parliamentary processes and politics.

4.2.3.4 Document review

Secondary data was collected through an extensive document review process that analyzed data from a variety of secondary sources including constitutional, legal, normative and strategic documents and reports on ICT and parliaments in Kenya and South Africa that have created institutional arrangements, practices, structures and mechanisms that shape parliamentary participation in ICT policy making processes. Documents included ICT sector and parliamentary reports, supply-side ICT data, print and electronic media, plenary and committee records as well as ICT Laws (see Table 6).

Table 6: Sources of secondary data used in the study

Dimension /Element	Source	Type of Data /information
ICT Market Performance	<ul style="list-style-type: none"> • Comparative ICT Sector Performance Review (RIA 2009/2010); • ICT Sector Performance Reviews of Kenya and South Africa (RIA 2009/2010) • ITU ICT Indicators Database 	<ul style="list-style-type: none"> • Market structure • Sector Priorities • ICT indicators
Parliamentary mandates political culture, extent of political power	<ul style="list-style-type: none"> • Constitutions of the Republic of Kenya (2010), South Africa(1996) • Rules of Procedure for Kenya and South Africa • Oversight and Accountability Model(PSA) 	<ul style="list-style-type: none"> • Political, institutional framework • Constitutional provisions for parliamentary power. • Characteristics and relationship between state institutions. • Dispute resolution processes. • Decision making process.
Institutional constellation	<ul style="list-style-type: none"> • ICT Laws (Kenya and South Africa) • Terms of Reference of Committees Responsible for ICTs for Parliaments of Kenya and South Africa • ICT Strategies / Action Plans /ICT Policy guideline of the Ministries Responsible for ICTs in Kenya and South Africa 	<ul style="list-style-type: none"> • Degree of institutional fragmentation, dispersion responsibilities and centralization. • Rules in use for regulating the sector. • ICT sector attributes. • Sector arrangements, plans and actions. • ICT strategies in place.
Parliamentary performance (mechanisms and practices)	<ul style="list-style-type: none"> • Rules of Procedures of the Parliaments of Kenya and South Africa • Committee Reports of Committees Responsible for ICTs for Parliaments of Kenya and South Africa • Hansard (debate records) of the Parliaments of Kenya and South Africa 	<ul style="list-style-type: none"> • Rules in use • Sector attributes • ICT bill process • Level of debate
International and global governance	<ul style="list-style-type: none"> • World Economic Forum Report • SADC Protocol on Transport 	Global governance processes, frameworks and protocols.

Source: Author's Compilation

The document analysis focused on presenting the constitutional mandate of parliament by reviewing whether the mandates of the parliaments of Kenya and South Africa were clearly stated, either in the constitution or in any other document. The outcomes were compared for trends and contradictions of the assigned mandates and power structures. Furthermore the analysis investigated the structures and processes and mechanisms that parliament used to achieve the mandate. Lastly, the analysis investigated compliance to what is widely accepted as the role of parliament (representation, oversight and legislation) as reflected in the SADC Parliamentary Forum (SADC-PF) benchmark for democratic parliaments and National Democratic Institute (NDI) international standards. An analysis of the ICT reports defined the market performance during the period of analysis, identifying key drivers of ICT policy and regulatory reforms and the various sector arrangements in play in the reforms arena.

4.2.4 Data Triangulation

Respondents were selected using a purposive sampling approach to represent, interrogate, juxtapose and construct the experience of 15 participants from the two countries representative of parliament and the various key actors within the ICT sector reform process. In order to corroborate the evidence primary data was collected from three different sources and perspectives including parliament, civil society and technical experts and the data in itself were triangulated (Figure 5).

4.2.5 Challenges with data collection

Two main challenges worth pointing out were encountered by the researcher during data collection. Firstly, at conceptualisation, the scope of the study covered three countries (Kenya, South Africa, and Zimbabwe) and included facilitated focus group discussions to implement the assessment. Getting the requisite institutional approval from all the selected parliaments to conduct the study proved to be a difficult undertaking. As is general practice with such state entities letters of request were sent to the administrative management of parliament to seek permission to meet and interview the participants. However, of the three parliaments approached, only one positive response - from Zimbabwe - was received almost immediately, with permission granted for the researcher to work through the staff/committee clerk. However, upon implementation, it became clear that targeted respondents were not available, which was made

more difficult by the significant political changes Zimbabwe was undergoing at the time of the research (2010-2015). In the case of Kenya permission was never granted, and South Africa advised that they would respond in due course.

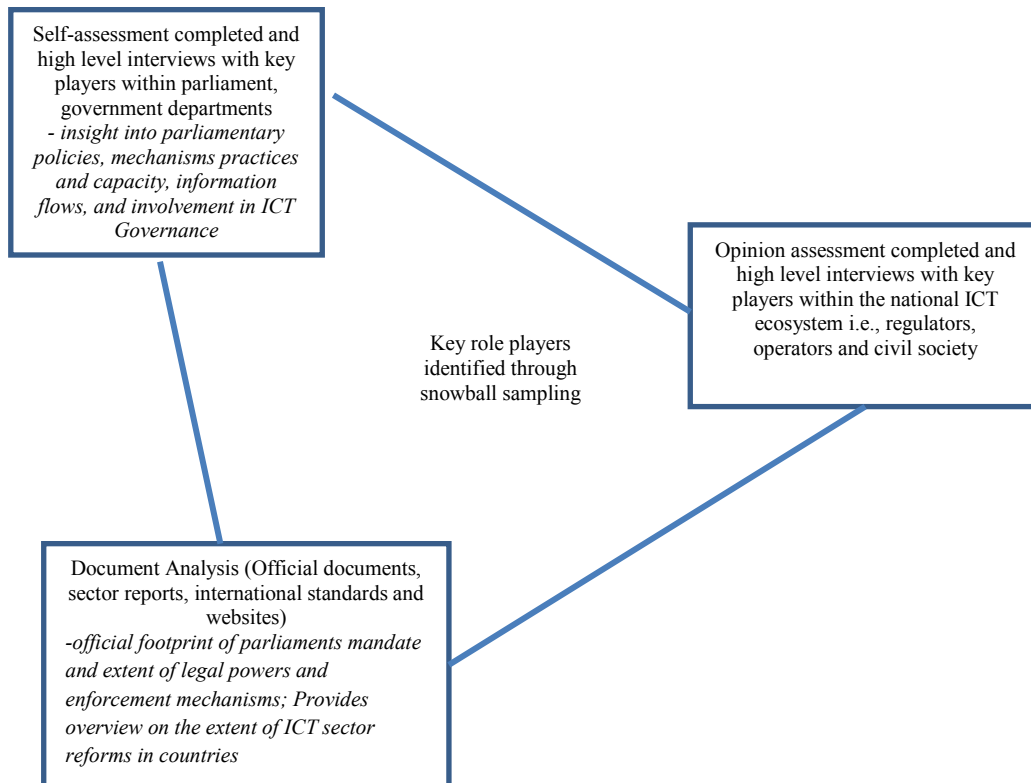


Figure 5: Data triangulation for the study.

Secondly, the continued availability of parliamentarians in the countries under study was not guaranteed. All countries had elections during the study period, with resultant changes in the administration, membership and chairpersonship of the committees. Whilst the other key players were available, they often expressed lack of knowledge and capacity to respond to parliament related issues, an indication of very weak inferences and ambiguous patterns of exchange. Furthermore, when eventually a solution was found through utilisation of personal networks and relationships the time and effort required to administer the questionnaire and receive a significant number of completed responses varied. Some participants took quite a long time to respond,

often times leading the researcher to consistently follow up and, in a number of cases, sit with the respondent / or converse over teleconference and complete the questionnaire. The turnaround time for receiving a completed questionnaire varied greatly from 1day to two months. These challenges confirmed that indeed parliaments, especially the Kenyan case, are not as open as they are expected to be, and are largely as bureaucratic as any state institution.

The two challenges and the location proximity of the researcher ultimately influenced the decision to focus on South Africa and Kenya and to include former chairpersons in the sample in the case where there had been political changes in representation. I as the researcher had to appeal personally to the chairpersons of the committees, with respect to South Africa and Kenya, for support based on relationships built during the time I worked within the parliamentary circles. Ultimately the researcher had to resort to respondents completing the questionnaire without the focus group discussions happening as part of the process. In the case of Kenya, the researcher piggy backed on data from a similar research conducted during the same period made available by a development organisation working with parliament. The effect of these challenges on the quality of the research was mitigated through triangulation of the data (Figure 5).

4.3 Coding

The first step in the analysis was to develop codes to enable the selection and narrowing down of responses received into consistent clusters of data that enabled an understanding of the concerns around each particular mandate. In order to organise the data, analysis and data collection occurred concurrently, with the data being consistently reflected on and analytical questions being posed so that data could be “organised categorically” (Cresswell, 2002:).

The coding of qualitative data added value for the explanatory process of indicating the levels of existence of the different capacity elements investigated in this study. Moreover, the coding of the data collected from official documentation, high level interviews and self-assessment survey responses were a reflective and reflexive activity. This was essential to ensure the capturing of the textual, non-numerical information required to elicit meaning from the data. As Basit (2003:152) explains; “What coding does above all, is to allow the researcher to communicate and connect with the data to facilitate the comprehension of the emerging phenomena...”

Narrative data collected was analysed using thematic coding. Thematic coding is “interpreting the information” and categorising textual extracts with reference to “themes in the context of a theory or conceptual framework” (Boyatzis, 1998:11). This form of coding allows one to analyse narrative data and to identify emergent themes. Thematic coding was used to combine and catalogue recurring patterns identified in the narrative data that were collected through the semi-structured interviews. The codes were generated from the topics addressed in the self-assessment questionnaire which were useful in clustering similar subjects or ideas gathered from different respondents.

Once groups of narrative data were created on the basis of themes and the issues mentioned above, a more in-depth analysis of the participants’ answers gathered in codes (See Appendix 3: Coding Schedule) made it possible to identify themes that were clearly connected to the issues previously identified in the theoretical framework. Transcripts of interviews and questionnaire responses were reviewed, listing topics found based on recurring issues. Topics were identified based on the research questions and prior literature review and described through the lens of conceptual framework that combines the concepts of the ICT as a complex ecosystem with that of institutional constellations in which parliament is centrally located. The emerging thematic patterns were used to analyse comparatively the practices that parliament applies to set the national policy objectives, oversee implementing agencies and shape policy outcomes in the ICT sectors of Kenya and South Africa.

The information collected from both primary and secondary sources centred on four main areas of investigation to answer the research questions raised in Chapter 1 (Section 1.4). These areas were informed by the theoretical framework and prior literature review and then described through the lenses of a conceptual framework that combines the ICT ecosystem and constellation of institutions. Parliamentary capacity elements were then indexed through the self -assessment. The areas investigated were around the following:

- i. The extent to which the two countries (Kenya and SA) have implemented ICT sector reforms, leading to the development or maturity of a national ICT ecosystem.

- ii. The surrounding governance context (nature of state, the interplay between state and market; interplay between different institutions and interest groups, extent of political space; impact of global governance) and how it has supported or constrained effective participation of parliaments in influencing ICT sector reforms:
 - Political culture: policy dominance, consensus formation and policy coherence,
 - Degree of institutional fragmentation (low-high),
 - Degree of dispersion responsibilities (low-high),
 - Degree of centralization (low-high).
- iii. How parliaments have applied their mandates (legislative, representative, oversight and budgetary; Table 7) to influence ICT reform processes.
- iv. Existing or nonexistence of institutional capacity, political competency, and specialised knowledge levels with regard to ICTs hampering its participation in developing an enabling environment for ICT sector reforms.

The codes were generated from topics addressed by the self-assessment questionnaire and the high level interviews used and grouped into similar subjects or ideas and conversations. The assessment used for analysing empirical evidence on capacity provides for a 1-4 coding system for responses, with meanings as follows:

- 1 signifies the clear need for increased capacity in parliament,
- 2 means that basic level of capacity is in place,
- 3 means a moderate level of capacity
- 4 means high level of capacity in place.

For each rating, an explanation was provided to support meaningful selection of choices by participants. The information was coded and evaluated to reflect the following issues:

1. The level of maturity of the ICT sector reforms process in each sampled country, measured by the outcomes of policy objectives price, access and quality of service, as well as levels of government/parliamentary intervention in the process.

2. Degree of involvement of parliament in national and regional ICT ecosystem, measured by its accessibility to key stakeholders and parliamentary application/adherence to international frameworks.
3. Extent of influence of parliamentary participation in ICT sector reforms, measured by its oversight effectiveness and resource availability.
4. The degree of application of political power by parliament in ICT governance processes measured through its legal mandate, and the effectiveness of the bill review and hearing and oversight mechanisms and processes.

Table 7: Summary of parliament’s mandates.

Parliamentary Mandate	Capacity Element	Key dimensions
Representation	Accessibility	<ul style="list-style-type: none"> i. Parliamentary openness; ii. mechanisms for public awareness; iii. mechanisms to promote public understanding; iv. guidelines to govern relationship with stakeholders
Legislation	Legal mandate	<ul style="list-style-type: none"> i. source of parliamentary power to amend legislation ii. power to amend bills iii. opportunities for citizens to input into legislative process iv. mechanisms to track impact of legislation v. Power to send back legislation for review
	Bill reviews and hearings	<ul style="list-style-type: none"> i. Period of review of any ICT legislation ii. Existence of an ICT Committee iii. Existence of Public hearings on ICT
Oversight function	Oversight committees	<ul style="list-style-type: none"> i. oversight function performed by sector related committees ii. oversight committees have investigative powers iii. oversight of the expenditures of state owned enterprises and opportunities for minority/opposition to participate iv. mechanisms to obtain information Power to follow up on recommendations v. adequately resourced vi.

Source: Author’s synthesis of Parliamentary Centre(2011,2013)

4.4 Conclusion

The literature review assisted in the identification of important themes for effective parliamentary participation in ICT policy making. From the literature reviewed, a conceptual framework was developed to provide a lens through which empirical data was analysed. From the self-assessment and follow up interviews, qualitative evidence was collected to enable a comparative analysis of worldwide trends common to parliament allowing for an analysis of the intricate trends in participation of the parliaments of Kenya and South Africa in ICT policy making. The result was a detailed identification and description of parliamentary structures, mechanisms and processes to understand the practices that have been applied to the ICT policy process. The document analysis provided evidence of the parliamentary and legal mandate basis for developing the structures, processes, and mechanisms that have influenced the parliamentary practices. Primary and secondary qualitative data was used to measure ICT policy and regulatory outcomes, in terms of market performance.

In the next chapter the findings of the document and legal analysis of parliamentary mandate structures, mechanisms and processes are applied to the ICT policy making process. Legal documents were assessed in terms of the Constitutions of Kenya and South Africa and what is commonly accepted as the role of parliament as determined from the literature review.

Chapter 5

DOCUMENT ANALYSIS OF PARLIAMENTARY PROCESSES AND MECHANISMS FOR ICT POLICY MAKING IN KENYA AND SOUTH AFRICA

5.0 Introduction

Building on the research problem set out in Chapter 1, the theoretical and conceptual framework in Chapters 2 and 3, and applying the methodology described in Chapter 4, Chapter 5 presents a review of constitutional, legal, normative and strategic documents, media statements and reports on parliaments and ICT sector in Kenya and South Africa that define the legal, regulatory, and institutional environment to shape parliamentary participation.

The formal role of parliament, its functions and procedural guidelines are defined by a country's legal and governance framework. The legal framework, however, exposes the parliamentary system to a variety of interpretations reflective of the ambiguity of different relationships parliament has with its stakeholders. Furthermore having different colonial, historical and constitutional arrangements means that values held by each parliament manifest in a variety of ways (SADC- PF, 2010). In some cases, these values are embedded in the constitutional and legal frameworks and activities of some parliaments, while in others values remain aspirations that require urgent and concrete interventions to bridge aspirations, policy and practice.

What constitutes a formal legal, regulatory and institutional architecture for ICT policy making from a parliamentary perspective is what is investigated and outlined in this chapter. This includes a focus on the constitutional mandate, the underlying power, authority bases, institutional history and capacity and the political culture that structures political participation and shapes policy outcomes. This is done taking into account how the continuity and strength of a parliament are influenced by a set of external and internal factors that depend on a support system which incorporates socio-economic forces such as civil society, media and interest groups.

The chapter then identifies mechanisms and structures that exist in both parliaments to implement the architecture outlined. These parliamentary mechanisms and structures, together with the parliamentary mandates, are benchmarked for compliance with what is accepted as the role of parliament reflected in international standards³⁶. The assessment in Chapter 6 then focuses on how parliament has practically applied its constitutional mandate including the mechanisms and structures in ICT policy-making processes and the extent of influence of such external factors as political culture and institutional constellation within the sector.

To contextualize and apply parliamentary mandate to ICTs, an attempt at understanding ICT sector governance is undertaken. Following the developments within the national ICT ecosystem of each country under study, parliamentary participation is assessed within the context of influencing or constraining factors defined in ICT laws, policies and institutional arrangements adopted by Kenya and SA. The chapter thus presents the parliamentary mandate for ICT policy making, through a reflection of the extent of legal powers the processes and mechanisms to implement the mandates. Chapter 5 provides a foundation for an examination of the parliamentary practices adopted and applied to the ICT sector in the next chapter.

5.1 Legal context

The constitutional structure of a country shapes the quality of its governance and defines the divergent executive organizations and arrangements. The constitutions of both countries have set up the fundamental modes of legitimate governmental operations by vesting the constitutional authority separately in three arms of government - the executive, parliament and the judiciary. Both constitutions provide a rights-based legal framework that defines who the government's officials are, their selection and terms of office, division of authority, processes to be followed, and the rights reserved for citizens (Nunow, 2004; Africog,2013).

³⁶ Commonwealth Parliamentary Association's "Benchmarks for Democratic Legislatures"; Inter-Parliamentary Union's "Evaluating Parliament: A self-assessment toolkit for parliaments"; National Democratic Institute's "Toward the Development of International Standards for Democratic Legislatures"; SADC Parliamentary Forum Benchmarks for Democratic Legislatures in Southern Africa.

On the basis of the constitution, the political and structural relationships and division of power among the state organs set out the principles and values that each parliament serves in the two countries under study. It is the institutional constellation³⁷ of these state agencies, the values, and arrangements that then influence the effectiveness of the democratic system of governance, making the implementation of the constitution dependent on applicable legislation, administrative capacity and the power and remits of parliament (Africog Report, 2013). As provided in the constitution, South Africa practices a multiparty parliamentary democracy³⁸ in a single, sovereign democratic state where the executive is drawn from parliament (PSA, 2004). The government is formed in the lower house, and the leader of the majority party in the national assembly is the president. The parliament follows the Westminster parliamentary procedures, with the rule of the majority at the heart and respect for the minority. Its objective is to facilitate deliberation of interests to understand the will of the parliament upon these questions.

The Kenya 2010 constitution brought with it major changes to the country's systems and structures (Kenya National Commission on Human Rights Report, 2012). The general political structure changed with the adoption of a bicameral parliament and a two-level devolved system of government: national and county. Kenya is now a pure presidential republic with clearly demarcated separation of power between parliament and the executive³⁹ amplifying the independent and distinct roles of the three arms of state (Oloo, 2011; Mathooko, 2014). This clear cut separation of power has resulted in increased responsibility for parliament and greater need to ensure intergovernmental interaction to enable extensive scrutiny. In implementing its mandate, the parliament is transitioning from the Westminster procedures before the 2010 Constitution to congressional with a bicameral legislature comprising of a national assembly

³⁷ Entire set of political institutions and the interconnected rules that shape public decision-making, including shared interpretative structures affecting the patterns of interaction by decision-makers.

³⁸ A political system in which the legislature (parliament) selects the government - a president, or premier, along with the cabinet ministers - according to party strength as expressed in elections; by this system, the government acquires a dual responsibility: to the people as well as to the parliament.

³⁹ The new government consists of a president and cabinet secretaries (executive), a national assembly representing constituencies (with allocated seats for minorities) and a senate representing counties all elected directly by Kenyan citizens.

(NA) and the Senate. The national assembly controls the allocations of revenues to the various state organs and has the power to impeach state officials.

The SA's parliamentary system, on the one hand, creates a more centralized decision-making process with an institutionalized policymaking process centered on strong political parties and party-aligned interest groups. The system is more decisive with hierarchical administrative structures than would normally be found in a presidential system. Whereas the Kenyan presidential system is a more resolute system of governance centered more on individual politicians and smaller, less established organizational entities. There is greater institutional fragmentation that offers greater resistance to change, which requires increased capacity and willingness on the part of parliaments to exercise the power in the face of undue executive dominance.

The SID Constitution Working Paper Series No 1 (2010) brings to the fore notable differences between the two systems as lying in the number of additional veto points brought by delegation within the political process. The report confirms that additional veto points increase the number of institutions involved in policy formulation, resulting in an even greater degree of fragmentation. Delegation to state agencies is a constitutional provision used consistently to bring credibility in both countries to formally vetoing against unilateral decision making. Delegation can, however, result in less hierarchical power structures when specialized agencies with differing degrees of autonomy impact the decision-making process and the principal-agent status interchanges depending on the institution.

Kenya is inclined towards a less concentrated dispersion of responsibilities with simultaneous actions performed by several institutions and no clear-cut separation of responsibilities between competing authorities and sector regulators. This has resulted in overlaps and undefined limits of responsibilities amongst key institutions in the sector (ICT Sector Review, 2010). Kenya's transition to a presidential system has introduced new challenges to the system, with delegated state agencies vested with rule-making powers and providing the executive an opportunity to create laws possibly ignoring the will of parliament, and in addition not systematically reviewed or defined (Africog Report, 2013).

It is the institutional capacity requirements of effective parliamentary participation in different political systems and cultures that will be further tested by the empirical section of this study. Both Kenya and SA are multi-party democracies with a parliament comprised of members who influence the decision-making processes based on political party goals irrespective of the governance arrangements in place. The major difference between the two lies in the incentives for MPs, whether or not they are driven by an individual or party vote. Within both governments, the executive represents government policy, and parliament provides the checks and balances through scrutiny, review and oversight of government actions. Institutional arrangements in place to facilitate policy and decision making are reflective of the constitutional structures in each country.

As determined in Chapter 2 of this study, the typology of national parliaments, government structures, the interplay of political and social factors, political context in which they operate predominantly matter when measuring homogeneity levels, preferences, strength and capacity of parliament in the policy making process. Table 8 summarizes the characteristics of the political environments within which the parliaments of Kenya and SA operate. The political environments define the governance arrangements within which the parliaments of Kenya and SA influence policy outcomes in the ICT sector. The next section provides an analytical narrative of the constitutional mandate for Kenya and SA, based on the constitutional choices and as determined by the legal and political context described above.

5.2 Constitutional mandate

The origin of the institution of parliament is the constitution. The constitutional mandate sets out the roles and functions it performs (Article 93 of Constitution of Kenya; Chapter 4 of Constitution of SA). Furthermore, it enables the definition of the values and principles parliament as an organization pursues. The structure of political participation is achieved by defining parliament's relationships with other state institutions.

In South Africa, it is the constitution and other laws that limit parliament functions (PSA Website, 2015; Chapter 4, 9, Constitution; Strategic Plan, 2014). Similarly, within the Kenyan

context, the parliament is constitutionally mandated by enacting legislation, determining the allocation of revenue between the levels of government, overseeing national revenue, expenditure, and state organs. The new Kenyan Constitution has fundamentally changed the operational framework increasing responsibilities for members significantly (Mathooko, 2014).

Table 8: Political environment in Kenya and SA (2012).

Institutional variable	Kenya	SA
Type of political system	Presidential	Parliamentary
Level of representation	National, county(post 2010)	Sub-national, national
Parliamentary structure	Bicameral (post 2010)	Bicameral
Method of election	Mixed representation combined constituency and proportional representation	Pure List Proportional Representation
Parliament's size	Between 250 and 500 MPs	Between 250 and 500 MPs
Parliament is Age	Over fifty years of democratic existence	21 years
Administrative structure	Decentralized (post 2010) and less hierarchical	Centralized and Hierarchical
Resource availability	Determined by an independent Parliamentary Service Commission	
Colonial tradition	Congressional	Westminster
Formal parliamentary Powers	Constitutionally mandated	Constitutionally mandated
Political will and space	Constitutionally provided for but limited by the political culture and system	Constitutionally provided for but dominated by political party dynamics

Source: Authors compilation

Table 9 summarizes the constitutional mandates of the parliaments of Kenya and SA as reflected in constitutions (The Constitution of Kenya, 2010; Constitution of the Republic of South Africa, 1996). The summary in Table 9 and the preceding discussions on the mandate of the parliaments of Kenya and SA emphasize the promotion of inclusive and sustainable participation of citizens in governance processes with a human rights based approach that ensures accountability by the government for its actions. Both parliaments in implementing the constitutional mandate seek to

be open, accessible, transparent and responsive through an electoral system that diffuses authority among multiple independent bodies.

Table 9: Parliamentary constitutional mandates for Kenya and SA.

Constitutional mandate	SA	Kenya
Promote the principles and values of the country.	<p>Parliament of SA must:</p> <ul style="list-style-type: none"> • Promote constitutionalism and human rights. • Be inclusive in the way it's constituted (represent all South Africans) and in its practices which must respect participatory democracy and ensure proportional party representation in their proceedings (sections 57 and 116). • Be accessible, open, responsive and participatory (sections 59, 72 and 118). • Be efficient and effective. 	<p>Parliament of Kenya must (Article 10(2)) promote:</p> <ul style="list-style-type: none"> • Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; • Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; • Good governance, integrity, transparency and accountability; and • Sustainable development.
Implement parliamentary roles and responsibilities.	<ul style="list-style-type: none"> • Selection of officials for the legislature and elsewhere such as the President (section 86), the Judicial Service Commission (section 178(1) (h)), most of the Chapter 9 institutions (State Institutions Supporting Constitutional Democracy) and the Public Service Commission (section 196). • Making law- (sections 55(1) (ii), 68(1) (ii) and 114(1) (ii)), (sections 73(2) and 119. • Providing, sustaining and overseeing the executive. • Linking citizens and the legislature. 	<ul style="list-style-type: none"> • Promotion of inclusive representation (Article 27(8); Articles 97, 98, 100, 177 and 82). • Deliberate on and resolves issues of concern to the people. • Enacts legislation in accordance. • Budgetary oversight⁴⁰. • Exercises oversight over national revenue and its expenditure. • Approves declarations of war and extensions of states of emergency.

Source: Author's synthesis of PSA (2004), Murray (2010), Migai (2010), Oloo (2010).

⁴⁰ Determines the allocation of national revenue between the levels of government and appropriates funds for expenditure by the national government and other national State organs.

Table 9 (continued): Parliamentary constitutional mandates for Kenya and SA.

Constitutional mandate	SA	Kenya
Structure its relationships with other state organs in a system of governance.	<ul style="list-style-type: none"> • Executive is drawn from it. • Broad legislative powers. • Bears primary responsibility for oversight of the national executive. 	<ul style="list-style-type: none"> • Executive is separate. • Reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office. • Approves the appointment and dismissal of public officers (including judicial officers). • Exercises oversight of State organs.

Source: Author’s synthesis of PSA (2004), Murray (2010), Migai (2010), Oloo (2010).

Electoral accountability is a key disjuncture between parliamentarism and presidentialism as practiced in SA and Kenya, respectively. SA offers greater accountability at the national level (between constituents and their political party) while Kenya accountability is at the local level (between constituents and their individual representative). The Kenyan system, because of the separation of powers prescribed by the constitution, requires more consensus building to agree on any policy direction and as such consensus is mandated by the constitution. In SA on the other hand, the consensus is often and temporarily monopolized by the ruling party, with other groups voicing their opposition but having no formal mechanism to affect policy outcomes.

It is the same constitutional mandate underlying the political environment that accounts for some of the major differences arising from the political culture, power structures and governance processes of the two countries. In the Kenyan case, the clear-cut separation of powers has increased checks on an executive that previously enjoyed enormous and unfettered power.

However, having an executive drawn from parliament brings with its dynamics particularly since political parties influence the level of participation and ability to exercise power required for effective governance processes as is the case with SA. The arising arrangements change to a great extent the roles and functions each branch of government plays as especially reflected in the processes of delegating responsibilities to state agencies.

A significant difference between the Kenyan and South African system lies in the prioritization of the constitutional choices or focus. Constitutional choices reflect the notion that a government that requires more checks and balances follows a presidential system while that which requires power to enact laws quickly follows a parliamentary system. The choices are often underpinned by multiple realities based on the cultural, socioeconomic, and historical factors which vary from period to period (Oversight Model, 2009). The strategic direction of the parliament of SA shows that for a while, post-independence, the focus was on developing institutions and structures to redress the ills, imbalances, and backlogs inherited from years of apartheid rule. This called for increased legislation and representation capacity during the post-apartheid era. The constitutional choice was relevant taking into account the expressed need to pass a lot of legislation. Lately, however, there is a significant shift towards developing the oversight capacity which had been lagging for a while (Oversight Model, 2009; PSA, Strategic Plan, 2014).

Kenya on the other hand, post adoption of the new constitution, is in the process of aligning all laws to the new constitution. The logic of the new constitution is to be people centered, with important implications for the three arms of government. This is at the backdrop of a state that has been largely dominated by the executive with a judiciary and legislature that has over the years been compromised⁴¹ (SID Constitution Working Paper No. 1).

Table 10 summarizes the constitutional provisions for the Kenya and South African parliaments. The interpretation of the constitutional provisions listed in Table 10 contextualizes the parliamentary mandate in both policy making and within the broader political governance, with

⁴¹ Africa's political systems are characterized by powerful central governments with equally powerful executives that have overshadowed, and in some cases, rendered irrelevant the judicial and legislative branches. See Maxon (1994)

particular emphasis on provisions for legal frameworks, the arising institutional arrangements and mechanisms required for policy implementation (described below)

Table 10: Summary of constitutional provisions for parliaments of Kenya and SA.

Constitutional provisions	South Africa	Kenya
Establishment	Chapter 4 Section 42 establishes National Assembly and the National Council of Provinces.	Chapter 8 establishes the National Assembly and the Senate.
Legislative Authority	Chapter 4 (Sections 43 and 44) vests the legislative authority in parliament.	<ul style="list-style-type: none"> • Article 93, 44 (1), (2), and (4) vests legislative authority in Parliament. • Section 19 to 31 of the National Assembly and Presidential Elections Act. • National Assembly Elections. • Election Petition & Rules.
Legislative power	Section 55 (1),(2) - Derives from the Standing Orders	<ul style="list-style-type: none"> • Article 94(5); Article 109(1); -derives from the Standing Orders
Legislative delegation	Chapter 4, Section 44. 1(a) (iii) - assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.	Not clearly articulated.
Accountability	Ch. 44 Section 55 2 (a) determines accountable of all government to parliament. Section 181(5) – Accountability of State Institutions Supporting Constitutional Democracy.	Article 119 - right to petition parliament. Article 104 - right to recall an MP and enactment of legislation to do so.
Parliamentary Functions		
Legislation	Section 44(2) -parliament can intervene by passing legislation Section 73(2)- Introducing a Bill in the Assembly is only by a Cabinet member or a Deputy Minister, or a member or committee of the National Assembly, money Bills by only the Cabinet member responsible for national financial matters	<ul style="list-style-type: none"> • Article 109. • Article 118 - Bills must be introduced by members of Parliament (thus members of the executive need to find sponsors for legislation they want to put through). • Article 119- the executive is to be consulted on money Bills but cannot block their passage.

Source: Author's synthesis of the Constitutions of South Africa (1996) and Kenya (2010).

Table 10 (continued): Summary of constitutional provisions for parliaments of Kenya and SA.

Constitutional provisions	SA	Kenya
Parliamentary Functions (continued)		
Oversight of state organs/ key stakeholders	National Assembly- Sections 42(3) and 55(2) and National Council of Provinces (Section 42(4)). Further provisions - Section 41(2); Section 56; 59; Section 66(2), Section 67, Section 69, Section 70(1), Section 89, Section 92, Section 93(2), Section 100(2), Section 102, Section 114(2), Section 115,116(1), 118, Section 125(4), Section 130(3) & (4); Section 133(2) & (3); Section 139 (2), Section 139(3), Section 139 (6), Section 146 (6), Section 154, Section 155(6), Section 155(7), Section 231(2), (3) & (4)	<ul style="list-style-type: none"> • National Assembly- Article 95 4(C), 5 (b). • Senate- Article 145.
Representation	<ul style="list-style-type: none"> • Ch. 44 Section 59 - public involvement in the legislative and other processes of the Assembly and its committees; • Section 59(1.b) - parliament conduct its business in an open manner, and hold its sittings, and those of its committees, in public with reasonable measures may be taken to regulate public access • participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy; 	<ul style="list-style-type: none"> • Article 10 • Ch. 7 provisions for a mixed system - plurality/majority system based on the first past the post (FPTP) and proportional representation system (Article 98 (b) election of 16 women county representatives; Article 97 (c) - special interest groups) • Articles 94 and 95 provide for - diversity of the nation, the will of the people, and exercise their sovereignty in parliament. • Article 118 imposes a duty on Parliament to facilitate public participation and involvement in the business of Parliament and its committees • Article 118(1) provides for conducting parliamentary business in an open manner, and its sittings and those of its committees shall be in public

Source: Author's synthesis of the Constitutions of South Africa (1996) and Kenya (2010).

Table 10 (*continued*): Summary of constitutional provisions for parliaments of Kenya and SA.

Constitutional provisions	SA	Kenya
Parliamentary Organization		
Parliamentary Service Commission (PSC)	No PSC	Article 127(1)
Processes and Procedures	<ul style="list-style-type: none"> • Chapter 4 Section 57& 70 (internal arrangements, proceedings and procedures and makes rules and orders concerning its business. • Section 57 - rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public. • Financial and administrative assistance to each party represented in the Assembly. • Sections 56(d) and 69(d) of the Constitution, requires Parliament to accept petitions, representations and submissions from any interested persons or institutions. 	<ul style="list-style-type: none"> • Article 117(2); Article 124(1) - Standing Orders for the orderly conduct of its proceedings including the proceedings of its committees. • Article 126 - Determination of its calendar.
Committees	<ul style="list-style-type: none"> • Terms of reference for are derived from Standing Orders. 	Article 124. (1) Each House of Parliament may establish committees.
Parliamentary structure	<ul style="list-style-type: none"> • Chapter 4 Section 42 – provides for bicameralism consisting of the National Assembly and the National council of provinces. 	<ul style="list-style-type: none"> • Chapter 8 provides for bicameralism consisting of National assembly and the Senate (Articles 109-113).
Financial and Human resources	Budget is determined by the executive.	Article 120 - Parliament's budget is dealt with separately from that of the executive.

Source: Author's synthesis of the Constitutions of South Africa (1996) and Kenya (2010).

The right of parliament to organize itself, as conferred by the constitution, is the basis for the formation of parliamentary groups and committees that then scrutinize legislation and executive action providing opportunities for input and feedback into parliamentary processes. The institutional designs take into account the principles and values of representativeness, participatory democracy, accountability, transparency and public involvement in parliament to structure itself to promote and facilitate intergovernmental and other relations through appropriate mechanisms and procedures.

Furthermore, defining core legislative and oversight functions gives parliament the ability to initiate legislation as well as rights to propose and amend legislation, consult experts, and staff, hold public hearings or receive testimony from experts, subpoena or obtain documents. The following section outlines key parliamentary mandates that build the legal and institutional frameworks, bearing in mind the prerogative (Sections 57 & 70, South African Constitution (1996); Articles 117 & 124, Kenya Constitution (2010)) that parliament has for designing its internal arrangements, processes and procedure tools and by-laws, rules and regulations to define its conduct.

5.2.1 Legal Mandate

The source and level of legislative authority are critical elements to defining parliament's role in policy making. Both the constitutions of Kenya and South Africa confer legislative authority to its parliaments. Legislative authority gives parliament the power to consider, review and amend the constitution and pass laws concerning any matter as necessary to maintain national security, economic unity and to establish minimum and essential standards required for the rendering of services (The Constitution of the Republic of South Africa, 1996).

Legislation considered in both countries is mainly in the form of public bills sponsored by either government or private members or statutory instruments, but with very few private bills ever passed. Acts of parliament are enacted to give ministry and other state agencies powers to make regulations or subsidiary legislation and apply the law in greater detail adapting it to fit changing circumstances as required. The subsidiary legislation is passed by a simple resolution of the house.

In both countries, law-making has its roots in policy and generally speaking, the policy is conceptualized by the executive with in-country nuances existing. In South Africa, the policy formulation process is usually a two-step process that starts with a Green Paper (discussion), which is published for comment before a White Paper (policy) is then compiled. The process of drawing up a green or white paper is often a lengthy one and may involve consultations with the department responsible for making policy in the area, with the relevant parliamentary committee(s), and other experts or stakeholders as well as the general public.

In SA, legislation whether or not it is preceded by a policy paper is drafted by the executive in line with the constitutional provision regarding the power to introduce bills. The new constitution in Kenya allows only members of parliament to introduce bills in parliament. Since cabinet members cannot be members of the national assembly, need to develop intergovernmental relationships have grown as cabinet members seek to sponsor bills in parliament.

To effectively implement the constitutional mandate both countries have defined legislative processes comprised of elements listed in Table 11. The process places parliament at the center as key players and custodians of laws. Parliaments are also the entity charged with approving the budget and overseeing the implementation of the programs to implement the adopted policies and enacted legislation. The process is very similar in both countries with three clear cut stages as a condition precedent to enactment. The main difference remains in who has the power to introduce bills.

The legislative authority of parliament allows parliament to "delegate any of its legislative powers, except the power to amend the constitution, to any legislative body in another sphere of government (Constitutions of Kenya, 2010 and South Africa, 1996)." Delegation brings to bear the constitutional structures and arrangements described above, exposing factors such as ability to exercise power, principal-agent relationship with the ministry, effects of party politics, level of institutional development and the inherent capacity to utilize mechanisms and processes at parliament's disposal.

Parliament's effective utilization of powers in the ICT sector reforms process can be measured by its ability to delegate authority to an independent regulator. In SA, this is done by the Independent Communications Authority of SA (ICASA) through the ICASA Act of 2000, and in Kenya through the Communications Authority (CA) in 1999 through the Kenya Information and Communication (KICA) Act of 1998. The ICASA Act acknowledges the importance of establishing an independent body to regulate broadcasting and electronic communications and thus provides a procedure to appoint and manage the regulator. The KICA Amendment (2013), defines an executive led process for appointing the regulator. Table 12 summarizes the key elements of the establishment and appointment processes followed in Kenya and SA to establish a sector regulator for ICTs.

Appointing a regulator for the ICT sector in both Kenya and SA is a critical process central to the effective governance of the sector. Over the years, as part of the reforms trajectory, it has become a significant but controversial element of the work of the parliamentary committees responsible for ICTs, especially in a parliamentary system like South Africa. Significant differences in the appointment processes can be observed in Kenya and South Africa reflecting the nature of the prevailing political systems and governance arrangements. The differences mainly lie in how the regulator is appointed and members selected, the public consultation approaches, approval authority, the appointment of chairperson and members and in the length of terms of office.

In South Africa appointing a regulator is mainly parliament-led process, with all approvals done at parliament level before any appointments are made by the minister. Parliament is mandated to follow a public process that caters for the public nomination, elaborate interviewing, vetting and selection. The short listing of candidates is often a controversial undertaking with no consensus reached both committee and party levels, ending with a vote many a time. The parliamentary committee often utilizes technical experts to facilitate the process that can take anything from a few weeks to- months. The process is clearly an indication of the formal legal system in SA that dictates a multiparty public process representing multiple interests. Parliamentary involvement extends beyond the appointment process to other essential elements of running the regulator such as performance management. Kenya, on the other hand, follows a predominantly executive process for both the appointment and the selection of board chairperson and members.

Parliamentary engagement is very minimal and occurs outside of the appointment process to allow for effective scrutiny of the performance of the agency.

Table 11- Legislation processes and mechanisms in Kenya

Purpose	Process/ Mechanism	PSA	Kenya
Introduce bill to the house by reading the title only. Minister or relevant Committee may move a motion to have the bill committed to the relevant committee.	1 st Readings	X	X
Entire bill is read to the House, marks the beginning of the debate when the minister moves the bill.	2 nd Readings	X	X
Amended bill is read to the House, and a vote is taken to accept or reject the bill	3 rd Readings	X	X
Bill is read one clause at a time, and each clause is debated, and questions on it are put. This is the stage when amendments to the bill are proposed and questions put on each clause.	Committee of the whole house, plenary debates	X	X
Consider bills and invite inputs from stakeholders, amends the bill to include recommendation and reports to the House.	Committees, Committee debates, Public input	X	X
To report on the current position of the bill.	Report of Progress	X	X
Allows for amending a bill that has been reported to the Committee of the whole house.	Recommittal of a bill	X	X
Allows for bill withdrawal at any stage without prior notice.	Withdrawal of a bill	X	X
Ratify and domesticate international laws.	International agreements process	X	X

Source: Author's compilation.

Table 12: Establishment and appointment procedures for regulators in Kenya and SA.

Element	SA	Kenya
Purpose of Council/CA	To regulate broadcasting and telecommunications electronic communications	To license and regulate telecommunication, radio-communication and postal services in accordance with the provisions of the KIC Act.
Constitution of Council /Board	<p>Council consists of a chairperson and eight other councilors appointed by the Minister upon the approval by the National Assembly, according to the following principles, namely—</p> <ul style="list-style-type: none"> a) participation by the public in the nomination process; b) transparency and openness; and c) the publication of a shortlist of candidates for appointment, with due regard to subsection (3) and section 6 	<p>The Board consists of a chairperson appointed by the President, a Principal Secretary (broadcast, electronic, print and all other types of media), Principal (finance), Principal Secretary (internal security) and seven persons appointed by the Cabinet Secretary.</p> <p>In selecting, shortlisting and appointing the chairperson and members of the Board, the President/Cabinet Secretary shall—</p> <ul style="list-style-type: none"> a) ensure that the appointees reflect the interests of all sections of society; b) ensure equal _opportunities for persons with disabilities and other marginalized groups, and c) ensure that not more than two-thirds of the members are of the same gender.
Terms of office	Chairperson holds office for a period of five years, and other councilors hold office for a period of four years	The chairperson and members of the Board shall hold office for a period of three years renewable once.
Financing of and accounting by Authority	The Authority is financed from money appropriated by Parliament.	The Authority among other sources of finance receives such moneys as may be provided by parliament for the purposes of the Commission
Reporting to parliament	The minister tables a copy of the annual report in Parliament with a predetermined time after received the report	The minister lays the audit and annual reports before parliament within a predefined time after it's submitted to him.

Source: Author's compilation.

Table 12 (continued): Establishment and appointment procedures for regulators in Kenya and SA.

Element	SA	Kenya
Appointment of councilors / members to Council / Board	<p>Parliamentary Committee</p> <ul style="list-style-type: none"> with assistance from technical experts: invites applicants submits a list of suitable candidates, at least, one and a half times the number of councilors to be appointed to the minister interviews and evaluation and selection public engagement if not satisfied that the persons recommended for appointment by the minister comply with set criteria parliament may request the Minister to review his or her recommendation <p>Minister</p> <ul style="list-style-type: none"> recommends to parliament whom he or she proposes to appoint to serve on the Council from the list provided following approval by parliament of the minister's recommendation for appointment, the minister must appoint the chairperson or other councilors by notice in the <i>Gazette</i>.'' 	<p>A selection panel⁴² convened by the President / cabinet secretary:</p> <ul style="list-style-type: none"> determines own procedure with support from the cabinet secretary. considers applications, shortlists and publishes the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and on the official website of the Ministry, within seven days from the expiry of the deadline of receipt of applications interviews the shortlisted applicants selects three persons qualified to be appointed as chairperson; and two persons, in relation to each vacancy, qualified to be appointed as members of the Board, and forwards the names to the President / Cabinet Secretary. President / Cabinet Secretary appoints the chairperson and the members appointments are published in the Kenya Gazette.
Removal from office	<p>Councillors may resign tendering three months' written notice to the minister. A councilor may be removed from office only on-</p> <ul style="list-style-type: none"> a finding to that effect by parliament; and the adoption by parliament of a resolution calling for that councilor's removal from office. <p>The President-</p> <p>(a) may suspend a councilor from office at any time after the start of the proceedings of the parliament for the removal of that councilor;</p> <p>(b) must remove a councilor from office upon adoption by parliament of the resolution calling for that councilor's removal.</p>	<ul style="list-style-type: none"> A person desiring the removal of a member of the Board of the Authority may present a complaint under oath to the Cabinet Secretary, setting out the alleged facts constituting that ground. The Cabinet Secretary shall consider the complaint and if satisfied that it discloses a ground under subsection shall send the complaint to the President. On considering a complaint under subsection (1) or on receiving a complaint under subsection the President may suspend the chairperson or member pending the outcome of the complaint on recommendation of a tribunal.

Source: Author's compilation.

⁴² Shall comprise of persons drawn from the following organisations - (a) Media Council of Kenya; (b) Kenya Private Sector Alliance; (c) Law Society of Kenya; (d) Institute of Engineers of Kenya; (e) Public Relations Society of Kenya; (f) Kenya National Union of Teachers; (g) Consumers Federation of Kenya; and (h) the Ministry responsible for matters relating to media.

5.2.2 Representative Mandate

Parliament manifests diversity of the nation, represents the will of the people, and exercises their sovereignty (Constitution of SA, 1996; Constitution of Kenya, 2010). Representation is thus one of the most valued functions of parliament (SADC PF- Self Assessment Toolkit, 2012). Access and public participation are key elements of representativeness and are measured by parliament's openness to the public, mechanisms in place to promote an understanding of the work of parliament, and nature of the relationship between parliament, civil society and other related institutions (Parliamentary Centre, 2011).

Embedded in representation is the assumption that parliament represents a diverse society - in terms of political plurality, gender, culture, age, and language, among other factors (SADC PF- Self Assessment Toolkit, 2012). Thus, the extent and level of representation hinges, first and foremost, on the country's electoral system and the authority granted by a constituency to act as its representative is through winning a democratic election. The Parliament of Kenya follows a mixed system with elements of both constituency-based systems and proportional representation (Oloo, 2011). A mixed system combines elements of the plurality/majority system and proportional representation system with the rationale to translate a party share of the votes into a proportional number of seats in parliament. In Kenya, the connection between constituents and the MP is the "glue that binds voters to political institutions" (SADC-PF, 2010: 13).

On the other hand, the SA parliament is based on a purely proportional representation system. It is the plurality/majoritarian system that is used to determine the allocation of parliamentary seats, while the proportional representation system is used to compensate for the inequalities that may arise from the use of the plurality/ majority system (Oloo, 2011). Here the voters are closely attached to political parties as vehicles for representation.

A key measure of representativeness is parliamentary accessibility and openness. Access to the institution and its members and information provided to the public is vital for representativeness of parliament. According to a Parliamentary Monitoring Group (PMG) evaluation of the openness of parliament South Africa on the basis of four key indicators (see Table 13), the parliament has a moderate score satisfying most of the criteria necessary to call it open.

However, there are weaknesses still identified in a number of areas. The same criterion was then applied to the Kenyan parliament based on the researcher's observations and research.

The PMG report findings point to the ability of the South African parliament to promote proactively access, transparency and openness through civic education, multiple channel access, live streaming of plenary and committee sessions, publishing the plenary schedule for every term and implementing such initiatives as taking parliament to the people and establishing parliamentary democracy offices. By so doing it excels in easing access to information in a non-discriminatory basis and enables two-way communication with its stakeholders. However, inconsistencies are evident in the way the information is published, with a lack of emphasis on recognizing public ownership of information. This affects information reuse by citizens and availability of necessary information to the broader citizens for informed decision making.

The case of Kenya brings to the fore yet another key measure of representativeness that of public participation. Formally Kenya acknowledges the right of the people to participate in the governance of their country (Constitution of Kenya, 2010). The decentralization of government to county levels is aimed at creating and encouraging public participation through decision making processes and new powers of self-governance (Africog Report, 2013). Under the constitution, public participation is mandatory at both parliament and county assembly levels. There is a requirement to facilitate public participation and committee hearings by ensuring attendance and safeguarding the public right to attend. Significant challenges hampering public participation include the low staffing levels, limited number of committees, lack of time to scrutinize proposed legislation due to slow working committees, and poor support from government agencies (Africog Report, 2013). The solution herein lies in not only amending standing orders to include general principles of openness in committee hearings and proceedings but to provide necessary information, for example through a website that is interactive with accessible and reusable information (on the basis of Table 13 findings, this is lacking), and addressing the technical and legal⁴³ obstructions to access.

⁴³ The National Assembly (Power and Privileges) Act allows information to be withheld on the ground that it is of a private nature.

Table 13: Kenya and SA parliamentary openness scores based on criteria used by the South African Parliamentary Monitoring Group.

Indicator	Criteria	Scores	
		SA	Kenya
		3 = meets requirements 0 = meets none	
Promoting a culture of openness	Recognizing public ownership of information	1	1
	promoting civic education	3	2
	engaging citizens /civil society	3	1
	enabling effective monitoring	2	1
	disseminating complete information	1	1
	providing timely information	1	1
	ensuring accurate information	2	2
Making information transparent	pro transparency policies	1	1
	information on roles and responsibilities	3	3
	informing citizens on the legislative agenda	3	3
	records of committee proceedings	1	1
	publishing budget/expenditure information	2	2
	disclosing member assets	3	1
	disclosing information on unethical conduct	3	0
	access to historical information	1	1
Easing access to information	information availability multiple channels	3	2
	open sessions to public attendance	3	1
	guaranteeing media access	3	1
	live/on demand streaming of proceedings	3	2
	nationwide access to information	2	2
	plain language used	2	2
	multiple languages	2	1
	free access to information	2	2
Enabling electronic communication	clear privacy policy	2	1
	intuitive and friendly website	2	2
	downloadable and usable information	1	1
	regularly updated and maintained	1	1
	search optimization	1	1
	information linked	2	1
	use of alert services	1	0
	two way communication	1	1

Source: Author's synthesis of Parliamentary Monitoring Group (2014)

Parliament as the national forum for the public consideration of issues puts in place processes, mechanisms and tools (see Table 14) that facilitate interaction and involvement with key stakeholders and gathering feedback from the electorate on its processes. The frequency and pattern of interaction (proactive/ reactive or regular/ frequent) depend on the extent of the relationship between parliament and its stakeholders.

5.2.3 Oversight mandate

According to an oversight model developed by the parliament of South Africa, parliamentary oversight is about the proactive interaction with executive and administrative organs initiated by a parliament to review, monitor, and supervise state agencies, programs, activities, and policy implementation (Oversight Model, 2009). Oversight encourages compliance with constitutional requirements by the executive and administration to ensure delivery of agreed-to objectives for the achievement of government priorities. Essential elements of parliamentary oversight, therefore, include the evaluation of the efficacy of public service programmes and the appropriateness of financial resource allocations and management, and the relationships between these key elements (Oversight Model, 2009).

For these reasons parliamentary accountability is used as a primary control mechanism used by regulatory agencies. Its effectiveness is supported by a variety of authorities such as the constitution, public law, plenary and committee rules and is an integral part of the system of checks and balances between parliament and the executive. Underlying effectiveness are the democratic principles and practical purposes used to achieve parliamentary accountability

Table 14: Parliament representation processes and mechanisms.

Purpose	PSA	Kenya
Inform and educate stakeholders about the role of parliament	<ul style="list-style-type: none"> • Sectoral parliaments <ul style="list-style-type: none"> ○ People's Assembly, ○ Taking Parliament to the People programme, ○ Women's Parliament ○ Youth Parliament • Outreach programmes- Radio and television programmes and broadcasts • Business and educational publications • Website, newsletters, promotional material, Facebook, Twitter and YouTube 	<ul style="list-style-type: none"> • Business and educational publications <ul style="list-style-type: none"> ○ Website, newsletters, promotional material • Outreach programmes – public broadcasts, access to the public gallery • Transcripts of proceedings • Public relations office
<p>Solicit and receive input into parliamentary proceedings and programmes.</p> <p>Provide mechanism for interest groups, civil society and individuals to give input into government policy and legislation.</p>	<ul style="list-style-type: none"> • Public hearings • Submissions • Representations • Petitions⁴⁴ 	<ul style="list-style-type: none"> • Public Petitions • Public hearings ⁴⁵ • Written submissions • Oral presentations • Expert opinions • Right to observe, give evidence and offer views

Source: Authors synthesis of the Parliaments of South Africa website, Kenya Parliament website

⁴⁴ A written prayer to the House by a member of the public requesting the House to consider any matter within its authority including enacting amending or repealing any legislation.

⁴⁵ New phenomena introduced by the Constitution (2010) to be undertaken by parliamentary committees on critical issues.

The parliaments of Kenya and SA are constitutionally mandated to provide mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to parliament (Constitution of South Africa (1996), Kenya (2010)). On that basis, the parliaments are mandated to maintain oversight of the exercise of national executive authority including the implementation of legislation by any organ of state (Constitutions of Kenya and South Africa, 2010; 1996). This mandate allows parliament to conduct scrutiny effectively and oversee government actions. Parliamentary accountability in both countries is too derived from the legislative power conferred upon parliament, and is an essential element for effective policy making (Oversight Model, 2009). However as discussed in Chapter 2 § 2.1.1 and 2.2.1 the ability to hold the executive accountable is influenced by external (constitutional powers, social legitimacy, and external actors) and internal (the committee system, party and party groups, and the chamber) elements.

Parliament exercises legislative power largely through its committee system and other activities and contexts that include authorization, appropriations, investigative, and legislative hearings; specialized investigations by select committees; and reviews and studies by parliament support agencies and staff. In both countries, parliamentary oversight occurs at both committee, and plenary levels with the committees are finding appropriate means to conduct oversight to cover all organs of state. A committee either requests a briefing from the organ of state or visits the organ of state for fact-finding, depending on the purpose of the oversight. Table 15 summarizes the oversight mechanisms in use at the parliaments of Kenya and SA. Furthermore, the tools used to support and facilitate parliament oversight are categorized in Table 16.

Table 15: Summary of parliament oversight mechanisms in Kenya and SA.

Purpose	Processes Mechanism	SA	Kenya
Committee Level			
<ul style="list-style-type: none"> Facilitate detailed scrutiny of legislation and oversee government activities and any aspect of the department, including its structure, functioning and policy Be an intermediary body between interest groups the public and external factors and government and an entry point for citizens to the work of Parliament and interaction with 	<p>Oversight Committees</p> <p>Study tours</p>	<p>Two Portfolio Committees responsible for ICTs following the split of DOC in 2014 - Presidential Declaration</p>	<p>One Departmental Committee responsible for ICTs with split mandate for Energy and Communications</p>
Provide feedback from the activities of the oversight committees both to parliament and the broader public	Committee Reports	X	X
Plenary Level			
Allow for scrutiny of budget by each committee of the respective government department over which it exercises oversight to determine whether the Department has kept its undertakings of the previous year, and spent taxpayers' money appropriately.	Budget votes	X	X
Provide the ability to hold the government to account. Question time provides MPs the opportunity to question members of the government on matters of service delivery, on behalf of their political parties or the electorate	Questions for executive reply	X	X

Source: Authors Compilation

Table 15 (*continued*): Summary of parliament oversight mechanisms in Kenya and SA.

Purpose	Processes Mechanism	SA	Kenya
Plenary Level continued			
Brings up issues for debate in Parliament by a member of any political party thereby helping to fulfill their oversight responsibilities	Notices of Motions	X	X
Bring important information to the attention of the government regarding specific government programmes or legislation required to improve service delivery.	Plenary debates	X	X
Members of Parliament can make statements in the House, on any matter.	Members' statements	X	X
	Commission of inquiry	X	X
Provide MPs with an opportunity to conduct individual oversight interact with the public and identify any issues to alert Parliament.	Constituency work	X	X
	Statutory provisions (for example the filling of vacancies in a statutory body).	X	X

Source: Authors Compilation, Oversight model, 2009

5.2.4 Committee systems

The most prevalent structure for implementing a parliamentary legal and institutional architecture for parliament is through parliamentary committees. Committees are constitutionally mandated and are the fundamental structures through which parliamentary participation influences or constrains policy making. The parliamentary processes and mechanisms identified in the preceding sections occur, for the greater part of their life cycle, within the ambit of committees. The committee is at the epicenter of legislative activities where the interplay of key sectoral relationships defined.

Table 16: Categories of parliamentary oversight tools used in Kenya and South Africa.

<p>Relating to annual, monthly and weekly activities</p> <ul style="list-style-type: none"> • State-of-the-Nation Address • Questions (written and oral) <ul style="list-style-type: none"> ▪ President ▪ Deputy President ▪ Ministers • Members’ statements • Ministerial statements • Debates in the House • Matters from constituency work • Private member’s bills • Individual member’s oversight • Committee reports on legislation and oversight activities • Committee reports on international agreements • Departmental strategic plans • Departmental current and past annual performance plans • Annual reports (including annual financial statements, statements on programme performance and human resource information) • Performance contracts • Departmental compliance with parliamentary committee recommendations 	<p>Financial instruments</p> <ul style="list-style-type: none"> • Budget Speech/ Review • Estimates of National Expenditure / Revenue • Division of Revenue Bill • Ministers' budget vote speeches • Departmental budget votes • Treasury Regulations relating to strategic planning • Reports of the Auditor-General (including performance reports) • Treasury reports (monthly and quarterly reports) • Audit Reports • Budget Policy Statement • Adjusted Estimates of National Expenditure • Intergovernmental Fiscal Relations report • Public Finance Management Act (PFMA) • Financial statements (monthly financial reports and quarterly performance reports) • Statistics reports. • Medium Term Expenditure Framework • Public Finance Management Reform Strategy • National Integrated Monitoring Evaluation System
<p>Issues arising from institutions supporting constitutional democracy</p> <p>Reports on investigated matters of relevance by institutions supporting constitutional democracy (ISDs) and other statutory institutions supporting democracy for consideration by Parliament.</p>	<p>Established legislation and long-term plans</p> <ul style="list-style-type: none"> • Constitution of the Republic • Legislation • Government Programme of Action [5-year plan]

Source: Oversight Model, 2009

Kenya and SA, like many parliaments, have reformed their committee systems to enable the committees to shadow respective government departments and allow their members to develop appropriate expertise accordingly. The mandate, characteristics, composition and type of the committee(s) reflect the prevailing arrangement within the ministry and/or government departments (PMG, 2015).

Parliament of South Africa has two dedicate portfolio committees for ICT related issues, one for communications and the other for telecommunications and postal services. The two committees are reflective of a 2014 presidential proclamation⁴⁶ that split the Ministry of Communication into two departments. Kenya has established a department committee with a split mandate for communication and energy sectors. Depending on the institutional arrangements within a particular the sector, committees are the main interface with parliament.

The Kenya Parliament's website⁴⁷ lists the functions of departmental committees as follows:

- Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- Study and review all legislation referred to it;
- Study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- Investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
- To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and

⁴⁶ See Proclamation, No. 47 of 15 July 2014, Available on URL: <http://www.gov.za/reconfiguring-ministerial-portfolios-line-governments-new-mandate> (Accessed

⁴⁷ See more information on <http://parliament.go.ke/the-national-assembly/committees/mandate-and-classification/departmental-committees> (Visited 21 May 2015).

- Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The three parliamentary committees: Communications and Telecommunication and Postal service(South Africa) and the Energy and Communication(Kenya) offer a setting that facilitates the detailed scrutiny of legislation, oversight of government activities; vehicle for public input, feedback and stakeholder interaction with the public and external factors and participation of minority groups in parliamentary business (Oversight Model, 2009). All three committees work as intermediary bodies that connect interest groups and government and provide an entry point for citizens into the work of parliament. Table 17 summarizes the characteristics of the committees responsible for ICT in Kenya and SA.

The activities of committees include consideration of committee reports, an essential and necessary component of the ICT policy-making and governance process. Study visits that entail physical inspections, conversing with people, assessing the impact of delivery and developing reports which contain recommendations for the assembly to consider are also a critical part of the work of the three committees. Table 18 highlights the type of information and oversight activities that the committees have engaged with over a period of two years, occurring within the period of this study.

Table 17: Parliament committees responsible for ICTs in Kenya and SA.

Country	Number and type of Committee	Oversight responsibility	Composition (in 2015)
Kenya	1 Departmental Committee- Energy and Communications	Ministry of Information	29 MPs
SA	2 Portfolio Committees Portfolio Committee on Communications	Department of Communications and following statutory entities: <ul style="list-style-type: none"> • South African Broadcasting Corporation Limited • Telkom SA Limited • National Electronic Media Institute of SA 	14 Members (8 Ruling Party, 6 opposition)
	Telecommunications and Postal Services	Department of Telecommunications and Postal Services and the following entities <ul style="list-style-type: none"> • Sentech Limited • Independent Communications Authority of SA (ICASA) • SA Post Office Limited • Universal Service and Access Agency of SA (USAASA), • State Information Technology Agency (SITA), the ZA domain name authority 	11 Members (6 Ruling Party, 5 Opposition)

Source: Authors Compilation

Table 18: Sample oversight activity and work of parliamentary committees in Kenya and SA (2013-2014).

Type of information/ Activity	Stakeholder(s)	Communications Committee(SA)	Telecommunication and postal services (SA)	Energy and Communications (Kenya)
Public hearings on policy issues such as cost of communication	Private Sector, CSO, Public	X	-	X
Written and oral Submissions on industry related issues	Private Sector, CSO, Public	X	X	X
Budget Votes on department proposals	Ministry and Plenary	X	X	X
Strategic and Annual Performance Plans for Oversight Agencies and the ministry	Ministry, Agencies	-	X	X
Progress Reports/ Performance Updates	Departments, ministry, agencies	X	X	X
Bill Reviews/ Bill amendments/ deliberations / processing	Plenary	X	-	-
Committee Strategic planning	Committee Members		X	-
Appointment/ Selection Reviews	Agencies/ Ministry/ Public	X	-	-
Tabled Reports – Study and oversight visits, vacancy filling, budget votes	Plenary, Public	X	X	X
Calls for Comments	Agencies/ Ministry/ Public	X	X	_X
Questions and replies/ responses by ministry	Agencies/ Ministry/ Public	X	X	X
Dispute resolution/ Inquiries of public officials	Agencies	X	X	X

Source: Authors Compilation

Table 18 (*continued*): Sample oversight activity and work of parliamentary committees in Kenya and SA (2013-2014).

Type of information / Activity	Stakeholder(s)	Communications Committee(SA)	Telecommunication and postal services (SA)	Energy and Communications (Kenya)
Election of Chairperson	Committee Members	X	X	X
Expenditure Reports/ Budgetary Reviews	Ministry/ Plenary	X	-	-
Briefings- ICT and sector developments, political developments, Parliamentary Research	Ministry, Agencies, Private sector, other ministries and departments	X	X	-
Quarterly performance review of oversight agencies	Ministry, Agencies	X	X	X
Briefing- International relations, compliance with treaties and protocols	Committee Members, Agencies, Academia, Private Sector	X	X	-
ICT Seminars/ Capacity building		X	X	-

Source: Authors Compilation

The activities and information listed in Table 18 are an indication of the level of parliamentary participation in the ICT sector through the committee system in both parliaments (Kenya, SA) during the period under study. The activities cut across the three traditional roles of parliament and require a committee composition that reflects multiparty representation, committee leadership, industry knowledge and capacity for effective implementation. For the purposes of exercising oversight, committees often obtain first-hand knowledge from people engaged in the direct implementation of specific programmes and/or who are directly responsible for service delivery. To evaluate the work of government from a broader perspective, committees invite experts from outside government to provide background knowledge and analysis on relevant

issues. Evidently it is at committee level that parliamentary practices emerging in support of implementing the parliamentary mandates can be tested (see Chapter 6).

The fact that parliament of SA records a greater number of legislative outcomes and activities than that recorded for Kenya during the period 2013-2014 is indicative of a number of possibilities. This could be a clear indication of Kenya's lack of capacity (Africog, 2013) or a case of failing to recognize that parliament is a public institution, and, therefore, its information should be in the public domain, but ultimately a case of being less accessible and open. Kenya has relatively less capacity to support committee work, as reflected in the split mandate of the committee for the energy and communication sectors. The two committees in the SA parliament reflect the split of the Communications Department after a presidential declaration in 2014. The less number of legislative activities by the telecommunications and postal services committee in South Africa reflects its infancy more than capacity.

5.3 Conformance with international standards and benchmarks

Benchmarking parliaments against international and regional standards is increasingly being used by various institutions worldwide as a tool to gauge strengths and weaknesses and create strategic plans for democratic reform. To remain relevant and healthy parliament's practices and systems must keep pace with those of the society it serves and must be recognized as doing so. Most legislative benchmarks and standards focus on the central themes that make parliament relevant in the present day such as its representativeness, oversight over the executive, legislative capacity, transparency and accessibility, accountability and involvement in international policy.

Critical elements covered by international standards such as the National Democratic Institute (NDI) International Standards for Democratic Legislatures, the International Parliamentary Union (IPU) Self-Assessment Toolkit, and the SADC Parliamentary Forum Benchmarks for Democratic Legislatures include:

- Elections and status of legislators,
- Organization of the legislature,

- Values of the legislature (institutional independence, procedural fairness, and democratic legitimacy/representation),
- Right of parliament to organize itself,
- Core legislative and oversight functions, political parties, party groups and caucuses.

A significant element of this study is the conformance to internationally agreed standards of the implementation of the parliamentary mandate by the parliaments of Kenya and SA. The critical elements listed above are all contained in SADC benchmarks for legislatures, hence its suitability as the standard in this thesis for testing conformance of selected parliaments against what is the accepted the role of parliament. Moreover, it is presently the only publication developed by African parliaments for African parliaments taking into context the peculiarity of the democratic and governance processes in Africa. The assessment focuses on the existence of the standards at their barest minimum as defined in the SADC Benchmarks for Democratic Parliaments adopted at a regional level in 2010.

The parliaments of Kenya and SA are both, by definition, aligned to the SADC benchmarks and encompass the critical elements of the role of parliament as follows:

- Pass legislation or laws (makes new laws, changes existing legislation and repeals,
- Scrutinize and oversee executive action (keep oversight of the executive and organs of state,
- Facilitate public participation and involvement in the legislative and other processes,
- Participate in, promote and oversee co-operative government,
- Engage and participate in international assistance (participate in regional, continental and international bodies).

The above roles are reflected in the mandates of both parliaments, which are as follows:

- The role of the Kenya National Assembly is to enact legislation, determine the allocation of revenue between the levels of government, oversee national revenue,

expenditure and state organs and approve declaration of war and extensions of states of emergency (Article 94 of the Constitution of Kenya).

- The Parliament of South Africa fulfills its constitutional mandate by passing legislation or laws; scrutinising and overseeing executive action (keep oversight of the executive and organs); facilitating public participation and involvement in the legislative and other processes; participate in, promote and oversee co-operative government and engaging and participate in international participation (participate in regional, continental and international bodies (Parliament Website (SA), 2015)

Table 19 summarizes the minimum level of compliance to the SADC Parliamentary Forum Benchmarks for Legislatures as reflected in legal parliamentary documents that define the constitutional and institutional architectures of Kenya and SA. Table 19 indicates compliance with the barest minimum having considered mechanisms, processes, and structures used in the parliaments of Kenya and SA as described in section 5.2.

Chapter 6 investigates, from an empirical perspective, the conversion of these minimum requirements into mature practices that consistently support policymaking. At this lowest minimum level, it is just about awareness, the maturity of the practices increases exponentially to the capacity being built to support the practices. As best practice will dictate, high levels of conformance are directly linked to maturity of the parliamentary practices and reflect practices that have become repeatable, defined and managed over time.

An understanding of the constitutional mandate and role of parliament, the mechanisms to operationalize the mandate checked against the internationally accepted role provides a solid foundation for extending an analysis of parliamentary participation in ICT sector development. Such an analysis requires an exploration of the nature and extent of political and governance arrangements of the ICT sector as narrated in the next section.

Table 19: Summary of compliance of the parliaments of Kenya and SA to SADC benchmarks.

Theme	SADC Benchmark
Accessibility and openness	Accessible and open to citizens, civil society organizations and the media
	Appropriate access to its proceedings by the media
	A non-partisan media relations facility
	Promote the public's understanding of its work
	Use of multiple working languages to be supported by simultaneous interpretation of debates and translation of records.
Transparency and Integrity	Members and staff maintain high standards of accountability
	Transparency and integrity in the conduct of all personal, public and parliamentary matters.
	Legislation to enforce parliamentary codes of conduct, including rules on conflicts of interest and acceptance of gifts for Members and parliamentary staff.
	Legislation requiring legislators and staff to fully and publicly disclose their financial assets and business interests.
	Internal mechanisms to prevent, detect and bring to justice Members and staff engaged in corrupt practices
	Electoral system designed to ensure reflection of will of the people expressed through a voting process conducted in accordance with continental and regional instruments for democratic elections.
	MPs reflect the social diversity of the population with respect to gender, language, religion, and ethnicity among other considerations.
Rules of Procedure	Develop and adopt own rules of procedure based on regional best practices.
	Parliamentary legal department reviews all draft laws and standing orders to ensure compliance with the constitution.
	Power to adopt and amend its rules of procedure subject to review by the judiciary only in cases of a constitutional nature.
Convening of Sessions	Speaker has power to convene Parliament for ordinary business, provided that the Head of State may call extraordinary or special sessions in consultation with the Speaker.
	Parliament meets regularly and for lengths of time sufficient for engagement with their responsibilities, including constituency work.
	Parliament develops its own calendar.

Source: Authors' synthesis of SADC-PF (2012)

Table 19 (*continued*): Summary of compliance of the parliaments of Kenya and SA to SADC benchmarks.

Theme	SADC Benchmark
Plenary	One third of the MPs may petition the Speaker to call for an extraordinary meeting of Parliament.
Agenda	The agenda of Parliament set by a steering committee (sometimes called the Business Committee, Standing Rules and Orders Committee, Committee of Committees, or the Bureau) chaired by the Speaker. Where membership of such a committee includes members of the executive, such members shall not outnumber backbenchers. Parliament has the right to amend the proposed plenary agenda.
Debate	Parliament establishes and follows transparent procedures for structuring debates and determining the order of precedence of motions tabled by Members. Parliamentary rules are not changed in the chamber. Waivers or suspension of rules are agreed to prior to plenary by the steering committee Parliament has equitable time allocations for motions, committee reports, ministerial statements, and bills and constituency issues Parliament provides meaningful opportunity for legislators to debate bills and consider committee reports in open session before adoption or a vote. At each new meeting, Parliament allocates time for outstanding business from previous meetings.
Plenary Voting	Voting in plenary is public. Parliament makes public any exceptions and gives advance notice before a secret vote. Parliament establishes and follows fair and transparent procedures for a specified minority of Members to demand a recorded method of voting to be used. When Parliament uses roll call voting, the public shall be given access to how Members voted. All Members have the right to vote in the chamber
Presiding Officers	Members have the right to elect their own Presiding Officers The Presiding Officer is impartial in the conduct of his or her duties. There are equitable gender representations in the election of Presiding Officers. The Presiding Officer is elected by secret ballot. The removal of a Presiding Officer from office follows due process established by Parliament's own rule of procedure. Removal from the position of presiding officer does not imply removal from Parliament, as a former presiding officer may become an ordinary member The executive has no power to remove Presiding Officers

Source: Authors' synthesis of SADC-PF (2010)

Table 19 (*continued*): Summary of compliance of the parliaments of Kenya and SA to SADC benchmarks.

Theme	SADC Benchmark
Committee System	Parliament has permanent and temporary committees
	Membership of committees reflects the Parliament's political party composition and gender parity and seeks to include all parties and independent MPs.
	Selection of Members of committees is responsibility of a committee presided by the Speaker with leaders of parliamentary parties and/or party groups or party whips as members
	With limited exceptions, membership to committees is for the entire term of the Parliament.
	Chairpersons and Vice Chairpersons of committees are elected by committee members and reflect gender equality.
	Parliamentary committee meetings and hearings, except those of the business/standing orders committee are open to the public. Parliament may, however, establish transparent procedures for determining in-camera committee meetings and hearings
	Parliament notifies the public in advance of committee meetings or hearings.
Powers of Committees	All legislation is referred to an appropriate parliamentary committee for review before plenary debate. This includes bills and other forms of legislation such as regulations
	Parliamentary committees have the power to call for public consultations on legislation and any matter under consideration.
	Parliamentary committees have the power to propose amendments to legislation.
	Parliamentary committees have the right to consult and/or hire experts if the required expertise is not available in Parliament
	Parliamentary committees have the power of summons to examine persons, papers and records from the executive and quasi-executive bodies
	Parliament determines and enforces penalties for non-compliance with its powers and those of its committees.

Source: Authors' synthesis of SADC-PF (2010)

5.4 ICT Institutional Analysis

Governing the ICT sector requires a combination of processes, structures and institutional arrangements that can determine with certainty actions within the sphere of policy, law and regulation, given the powers conferred upon them. Parliament is a key partner in defining frameworks that influence or constrain the establishment of a comprehensive legal and governance structure and is resilient to emerging challenges. For effectiveness, an ICT

governance structure should be created through legislation to support with ease the translation of policy goals into results.

5.4.1 ICT sector governance

ICT sector governance in Kenya and SA utilizes both legislation and regulation as tools at the disposal of the government. The pace with which leading ICT countries (such as Canada, Ireland, Malaysia, and Singapore) have reformed laws in support of commercial and government activity in the digital environment by adopting laws on e-commerce provides opportunities for learning. First and foremost they have recognized institutional approaches that emphasize established governance structure as key to providing coordinated support to the sector. Furthermore, government's ICT sector initiatives are placed under high-level political leadership to secure intergovernmental co-ordination to synergize policies and programs driven by various government departments and agencies. In such cases, business and academia take a central role in advising the government on appropriate policies, and the civil sector is drawn in as a co-partner in government initiatives to attract investment (especially foreign investment) in the ICT sector.

In particular Kenya's multi-operator ICT industry is a "culmination of a series of policy, legal and regulatory interventions" (Murungi, 2011: 41) underpinned by developments and transitions⁴⁸ occurring mainly during the period 1997- 2008. Murungi (2011) highlights three fundamental pillars of an ICT regulatory framework and within the Kenyan context establishes as critical to developing the ICT industry the policy, administrative and legal frameworks that define the institutional arrangements, the goals and targets of the sector, and how key stakeholders interact.

Murungi (2011) describes how the ICT policy and national development frameworks supported the transition from a state controlled market to a liberalised and competitive market and provided incentives for participation and investment in the telecommunication sector. Furthermore, the administrative framework underpinned by five key institutions (see Table 22) structured an

enabling environment that clearly identified key sector players and the decision-making processes for the sector.

The above elements provide for a proper comparison between the two countries under study. The institutional arrangements prevalent within the broader ICT governance context define a supportive legal framework that brings parliament closer to the sector to ensure government accountability. The governance framework is highly dependent on the effectiveness of parliamentary structures mechanisms, and tools to ensure the public interest is maintained, captured and fed into the policies. The mechanisms, structures and tools described in the preceding sections, depending on the model of power, enable parliament to act independently to provide avenues for debate and analysis of ICT policy. The next section investigates the existing laws regulating the ICT sector of Kenya and SA to probe the ICT institutional arrangements and contextualize parliamentary participation.

5.4.2 ICT laws regulating the ICT sector in Kenya and SA

As mentioned in Section 5.4.1 developments in the ICT sector are influenced by the broader political governance⁴⁹ space and the national and international legal frameworks prevailing within the sector. At the national level, the primary Act of parliament regulating the electronic communications industry in SA is the Electronic Communications Act 36 of 2005 (“the ECA”). Kenya has clearly undergone rapid change in the sector since the establishment of sector reforms by an Act of parliament (Kenya Information and Communications Act 1998). The two overarching legal frameworks have defined the sector institutional arrangements as well as the key interactions required to achieve sector outcomes. Table 20 summarizes the legislation that impacts upon the ICT sector for Kenya and SA.

⁴⁹ Dr Makau in her Examiners Report of this thesis notes the impact of developments within the political economy post the terror attacks in Kenya. The focus of parliament turned towards national security and counterterrorism rather than investment conditions. This led to amendments to the Security Act that affect ICT sector reforms (curtailing consumer identity protection) as well as forays into cyber security as reflected in the Kenya Cyber Security Report 2015.

By being the custodians of laws, the parliaments of Kenya and SA are key institutions and major players in creating and implementing ICT-related legislation as summarized in Table 20. Both parliaments play significant roles in passing laws at various points in the reforms trajectory, including enabling key and much needed public participation based on constitutional mandates that allow them to intervene in any matter. Furthermore, they continuously exercise oversight of government actions through a system of dedicated committees⁵⁰. The historical and current roles of the parliaments in the sector reforms are summarized in Table 21.

5.4.3 Institutional Constellation

The implementation of ICT legal frameworks identified in section 5.4.2 determines institutional arrangements that have significant implications for parliamentary participation in both Kenya and SA. Key institutions influencing ICT policy formulation and implementation in Kenya and SA are compared in Table 22.

Figure 6 presents a constellation of institutions created by the Electronic Communications Act of 2005 in SA, showing a high degree of dispersion of responsibility that extends beyond the sector. The Kenya Communications Act of 1998 has created an even higher degree of dispersion of responsibilities within the sector with ICT responsibilities distributed in different agencies with little coordination, if any, and often resulting in duplication. This has introduced huge overlaps amongst key players⁵¹. To top it all the regulator CA, does not have a formal relationship with the Monopolies and Prices Commission; as a result, there is no mechanism to regulate competition in the industry.

5.4.4 International and regional ICT Frameworks

Given the importance accorded to international frameworks in support of cohesion and integration, most countries have defined procedures and processes for acceding to international

⁵⁰ For SA there are two dedicated committees: Parliamentary Committee of Communications and the Parliamentary Committee for Telecommunications and Postal Services. Kenya has one committee: Committee on Energy and Communications.

⁵¹ Overlaps exist between the national communications secretariat and Kenya ICT board with respect to advisory services to government on ICT issues. More overlaps found in the implementation of key E-government applications by the Kenya ICT Board and e-government directorate with no clear coordination. Yet more overlaps exist in the implementation of universal access projects by the ICT Board with no clear coordination with CCK which has the universal access mandate.

/regional laws and treaties. Parliament plays a critical role in domesticating and ratification of regional and international laws and treaties. The process followed depends on the constitutional provisions and institutional arrangements defined for such an engagement. While tensions may arise from the national development and international aspirations, it remains a useful mechanism for check and balances.

SA proactively participates in the international arena for ICTs through an executive-led process that starts with the executive preparing and promoting a national and/or local position. The national position is signed at the executive level with input from ministry departments, cabinet committee and legal opinion from the Justice Department before submitting to parliament through the parliamentary committee for approval.

The parliament has option to participate in global issues independently through a number of ways. The Speaker, who is the leader of the national assembly, represents the institution during the signing of international treaties, conventions and declarations. Furthermore, the Speaker hosts international delegations to the SA Parliament and represents parliament in the multilateral and bilateral relations (Parliament Website, 2015). As a consequence the current Speaker, Hon. Baleka Mbete (Fifth Parliament), is a member of various bodies including the Pan African Parliament (PAP), International Board for Information and Communication Technology, Southern African Development Community Parliamentary Forum (SADC-PF), Inter-Parliamentary Union (IPU) and Commonwealth Parliamentary Association (CPA).

Table 20: ICT legislation governing the ICT sector in Kenya and SA.

Impact / Expected Outcome	Legislation	
	Kenya	SA
Sets out the broad legal and regulatory framework for the ICT sector	<ul style="list-style-type: none"> Kenya Communications Act (1998) Science, Technology and Innovation Act 28(2012) Kenya Information and Communications (Amendment) Act, 2013 	Electronic Communications Act 36 (2005)
Establishes the sector regulator, its powers and sanctions	Section 3 Kenya Communications Act (1998)	ICASA Amendment Act 13 (2006)
Sets out a lawful intercept regime and details the obligations of electronic communications service providers in co-operating with law enforcement authorities and storage of traffic data	Section 27A of the Kenya Information and Communications Act (Amended in 2013).	Regulation of Interception of Communications and Provision of Communication-related Information Act 70 (RICA) (2002)
enable and facilitate electronic communications and transactions in the public interest	-	Electronic Communications and Transactions (ECT) Act 25 (2002)
Legislates against anti-competitive practices such as collusion and cartels	<ul style="list-style-type: none"> Competition Act Monopolies and Prices Commission 	Competition Act 89(1998)
Obliges electronic communications service providers to assist where a person alleges harassment using electronic communications	Section 29 of Kenya Information and Communications Act, 1998	Protection from Harassment Act 17(2011)
Regulate the use and management of personal information within the digital environment	Kenya Information and Communications (Amendment) Act, 2013	Protection of Personal Information Bill (2009)
Disputes resolution	Section 102 of the Kenya Information and Communications (Amendment) Act, 2013 establishes a Communications and Multimedia Appeals Tribunal	Section 17 ICASA Amendment Act 13 (2006)

Source: Author's Compilation

Table 21: ICT legislation passed to support sector reforms in Kenya and SA.

Reforms Stage	Role of Parliament	Legislation and Year	
		Kenya	SA
Establishment of the regulator:	Establishment of national regulatory authorities (NRAs) to complement liberalization and competition.	Section 3 of Kenya Information Communications Act (1998), Amendment(2013) provides for separation of roles and establishment of different legal entities including the Communications Authority of Kenya (CA) as the regulator	Passed the ICASA ACT (2006) to define the role and arrangements for independent regulation
Liberalization:	Oversee the liberalization and competition in the ICT market and ensure that there are mechanisms to safeguard consumer welfare.	<ul style="list-style-type: none"> • Provisions in the KCA(1998) for the introduction of competition in certain market segments- Section 23, 2(a)-(e) • Enacted the Statistics Act (2006) • Airwaves and Vsat services Liberalized 	Competition Act (1998)
Privatization:	Facilitate funding issues and incentivize investment in high-speed broadband and the dynamics of convergence including issues of universal access; infrastructure investment.	<ul style="list-style-type: none"> • KCA(1998) provisions for the disbanding Kenya Post &Telecommunications Company reducing and eventually eliminating government operational role in the Telecommunication Sector • Privatizations Act, 2004 was passed to privatize prudently public enterprises with Telkom Kenya was privatized in 2007 	De Villiers Report (1987) Telecom White Paper, Telecom Act (1996), Telkom license (1997)

Source: Author's compilation.

Table 22: Key ICT sector institutions in Kenya and SA.

(a) Kenya

Institution	Role
Ministry of Information and Communications	In charge of national ICT policy formulation and implementation, coordination (and oversight) of the entire ICT sector policy guidelines
National Communications Secretariat	Advisory policy role the Government of Kenya, through the Ministry of Information and Communications.
Communications Authority of Kenya	Statutory agency, whose purpose is to license and regulate telecommunications, radio communications and postal services
Appeals Tribunal	Arbitrating disputes between the parties under the Act. Members appointed by and are responsible to the ministry
Directorate of E-government	Oversees the implementation of e-government strategy and assists the government to deliver more effectively services to citizens. An E-government strategy proposes that each ministry should have its ICT department
Government Information Technology Services (GITS)	Provides computer services to government ministries and departments and some parastatal organisations ensure ICT standards within government organisations
Kenya ICT Board (created by a Presidential Order in 2007)	Advisory role to the government on all relevant matters pertaining to the development, co-ordination and promotion of information and communications technology industries in the country
Parliamentary Committee on Energy, Communications and Public Works	Oversees the actions of the Ministry of Information and Communications, dealing with any arising political issues on behalf of the Ministry and most importantly sponsors legislative framework for the sector in parliament before the bills become an Act of Parliament
Monopolies and Prices Commission	Determines matters that may affect competition in the telecommunications business (excludes monopolies established by an Act of parliament control). Consequently, the MPC had little effect on telecoms sector exclusivity.

Source: Author's compilation

Table 22 (*continued*): Key ICT sector institutions in Kenya and SA.

(b) South Africa

Institution	Role
Ministry of Information and Communications - Department of Communications/ Department of Telecommunication and Postal services	In charge of national ICT policy formulation (issues both policy and policy directions)
Competition authorities	<ul style="list-style-type: none"> • ICASA is generally regarded as having ex ante regulatory powers, i.e. it acts so as to prevent future anti-competitive conduct. • Ex post regulation – responding to specific complaints or instances of anti-competitive conduct – is the province of the Competition Commission and Competition Tribunal under the Competition Act. • ICASA and the Competition Commission act under a Memorandum of Agreement
State-owned Companies	Charged with intervening in the provision of electronic communications facilities where government is of the view that there is market failure. <i>Broadband Infraco</i> provides national long-distance and international cable services at prices based on a cost-plus basis. <i>Sentech</i> is the national signal distributor and has been earmarked for the development of a national wireless backbone.
National Consumer Commission	Enforces consumer rights under the Consumer Protection Act 68 of 2008. Hearings are conducted by the Consumer Tribunal.
Universal Service and Access Agency of SA	Established under the ECA to promote the goals of universal access and universal service in the under-serviced areas of SA.
Portfolio Committees	Exercises oversight over the ministry, the regulator and other government agencies. It has powers to conduct inquiries and subpoena documents

Source: Author's compilation

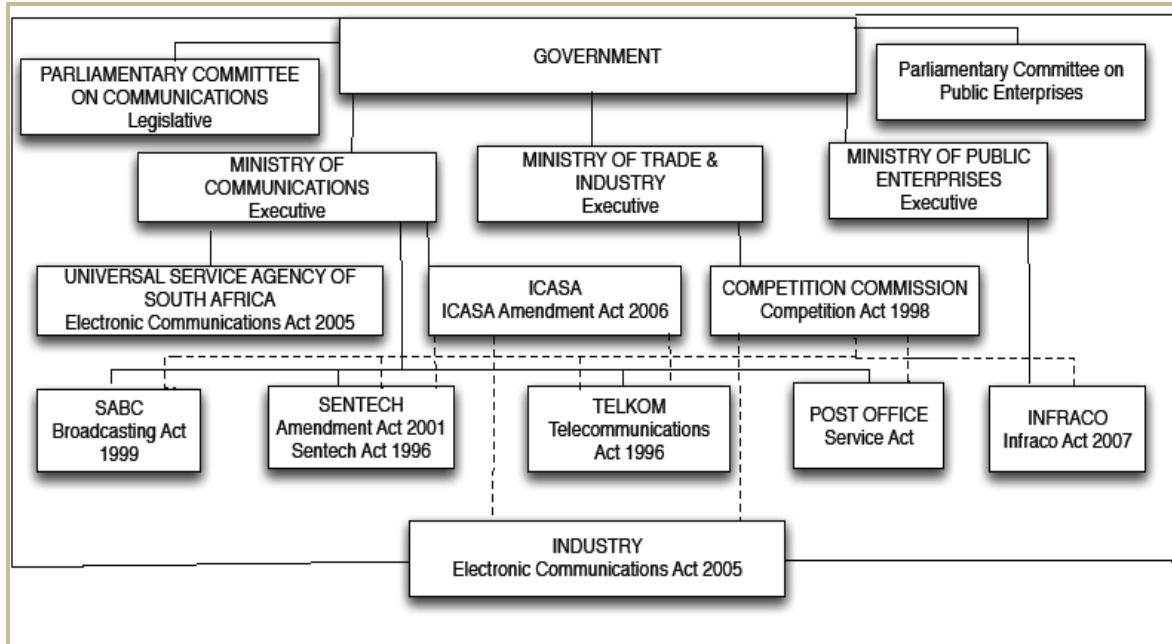


Figure 6: Institutional framework for SA telecommunication sector. Source: Gillwald (2009).

Before the 2010 constitution was adopted, Kenya was a “dualist state, requiring implementing legislation before any ratified treaty could have the force of law nationally” (Kenya National Commission on Human Rights Report, 2012:3). Kenya 2010 Constitution transformed the country from a dualist to a monist state by providing that all treaties ratified by Kenya would form part of the law of Kenya. As the Kenya National Commission on Human Rights Report (2012:4) reflects “the need for implementing legislation and international treaties can now be invoked before the courts, tribunals and administrative authorities in the Republic. However, Article 2(5) and 2(6) of the Constitution has to be given full effect and clarity through legislation. This is more so since Article 21(4) of the constitution requires the state to enact and implement legislation to fulfill its international obligations”.

The procedure for international engagement and ratification of international instruments in Kenya, has been formalized through the Treaty-Making and Ratification Act of 2012. The Act fulfills the constitutional requirements of Article 2(6) and provides a procedure that includes parliament in the making and ratification of treaties. Accordingly the Executive is responsible for initiating the treaty-making process, negotiating and ratifying treaties and may delegate this responsibility to a state agency. The treaty is then considered by parliament, with public

consultation expected through the committee system.

Parliament may approve the ratification of a treaty with or without reservations to specific provisions of the treaty. In the case where parliament refuses to ratify a treaty, the executive may resubmit. Parliament is obliged by both this act and the constitution to sanction the ratification of a treaty that is in the best interest of Kenyans. Currently, parliament does not sanction but can only approve and/or refuse to ratify if provisions are contrary to Constitution.

In future it is envisaged that parliament will have the power to sanction and fulfill this requirement, the Kenyan Parliament will be involved in sanctioning the treaties before they are domesticated. A multi-agency committee to monitor and oversee implementation of the international treaties is being established to review all conventions, treaties and agreements that have been signed since independence and advise the government on the ones to maintain and those to drop. The role or inclusion of parliament in this committee is not yet clear. Furthermore, this move has been criticized by opponents as it is perceived to target specifically the International Criminal Court (ICC), which has been under heavy criticism for its refusal to withdraw all the cases against Kenyans at The Hague (The East Africa, January 10, 2015).

The above procedures and processes are applied to the ICT sector. However, poor implementation, conflicting laws and general lack of understanding of the implication of the international framework are likely to pose challenges in realizing benefits. Table 23 presents the main ICT legal frameworks that Kenya and SA have signed. The effectiveness of the laid processes is reflected in the year of signing and the status of ratification and domestication.

5.4.5 Sector Outcomes

The national and regional ICT processes described above are implemented to achieve certain policy outcomes (universal access, low prices and quality of services for example) within the sector. Both Kenya and SA have recorded positive outcomes from implementing sector reforms since the 1990s. A number of global and national ICT indicators evidence this progress

confirming the two countries as the ICT giants of sub-Saharan Africa, and leaders in their right within their regional economic communities⁵².

Table 23: Main ICT international and regional frameworks that Kenya and SA are party to.

Country	International/Regional Frameworks	Year
South Africa	WTO- Basic Telecommunication Agreement, 1994 (GATS Fourth Protocol, 1996)	1995
	SADC Protocol on transport, communications and meteorology	1997
	Telecommunication policies for SADC	1998
	SADC ICT Declaration	2001
	Regional Indicative Strategic Development Plan	2003
	Support for harmonization of the ICT Policies in Sub-Saharan Africa	2009
	COMESA ICT policy	2003
	COMESA Regional Information and Communications Technologies Support Programme	2002-2007
Kenya	Basic Telecommunication Agreement, 1994 (GATS Fourth Protocol, 1996)	1995
	Regional e-government framework	2006
	Framework for cyber laws	2008
	Guidelines on Interconnection and access for telecommunications networks and services within the East African Community	2008
	COMESA ICT policy	2003
	COMESA Regional Information and Communications Technologies Support Programme	2002-2007

Source: Author's compilation

Table 24: Status of ICT sector reforms in Kenya and SA.

Element	Kenya	SA
Regulator	Converged	Converged
Liberalization and Competition	Limited competition introduced	All except electronic network services liberalized.
Licensing Regimes (type, year)	Technological Neutral	Horizontal
Privatization (incumbent / government ownership)	Telkom Kenya (49%)	Partially privatized (Telkom 49%)

Source: Authors synthesis of RIA (2010), CA (2012), ICASA.

⁵² SADC and EAC.

At the national level, the prioritization of performance objectives for the ICT sector is an important process in the determination of institutional arrangements including the roles and responsibilities of key players in the ICT ecosystem. ICT Indicators such as market structure, pricing, access are critical measurements in understanding the performance objectives for the sector. Table 24 shows the status of ICT sector reforms and the resultant market structures for Kenya and SA⁵³.

ICT sector outcomes in Kenya and SA can be analyzed through three international measures namely the World Economic Forum (WEF) Networked Readiness Index (NRI)⁵⁴, WEF Global Competitiveness Index⁵⁵ and the ITU ICT Development Index (IDI)⁵⁶. These indicators measure how each country is performing in developing its ICT sector and providing policy makers with insights into country performance, strategies and policy direction. The ITU ICT Development Index (IDI) ranks 157 countries' performances regarding ICT infrastructure and uptake. Table 25 shows the performance levels of Kenya and SA as demonstrated by the international indicators.

SA has steadily maintained its rankings, with slight fluctuations of growth. IDI rankings showing ICT infrastructure (access), use and skills, has moved upwards from 90 to 84 in 3 years (2012-2014). Meanwhile, the IDI rankings for Kenya have remained consistent at rank 124 with scores ranging from 2.62- 2.79 for the period 2012-2013. Kenya shows signs of stagnant growth, stabilizing prices following high degree of competition and liberalization in the sector. According to the GCI rankings which measure institutions, policies and strategies underpinning competitiveness SA and Kenya rank 56 and 96 in the global scenario, respectively. Within the sub-Saharan African region, SA ranks 2nd behind Mauritius with Kenya coming in 5th. This is a

⁵³ These are of particular interest to the study as they are proxies that can to confirm critical parliamentary touch points and government interventions.

⁵⁴ Measures access and usage, effectiveness of the political and regulatory environment and the economic and social impact of ICTs providing policy and decision makers with an ability to evaluate the impact of ICT at a global level and to benchmark ICT readiness and use in different countries.

⁵⁵ Measures factors underpinning national competitiveness as a set of institutions, policies, and factors that determine the level of productivity of a country to provide insight and stimulate discussion about the best strategies and policies to help countries overcome obstacles to competitiveness.

⁵⁶ Ranks the performances of 157 countries' in terms of ICT infrastructure and uptake and explains differences among countries and within regions with regards to ICT development. The IDI explains differences among countries and within regions with regards to ICT development.

clear indication of the huge differences between developed and developing countries, with a widening gap between the highest and lowest ranked.

Another measure used to compare performance in African countries is the Research ICT Africa's index⁵⁷ on prepaid mobile voice which shows the pricing trends (see Table 27 & Figure 7 for the pricing trend for Kenya and SA over 5 years). SA ranking of 7th on this index is characterized by an oligopoly mobile phone market with a relatively high level of access to and use of mobile phones. In this market, MTN and Vodacom are the two dominant operators, and often match their prices which are relatively high compared to other African countries. On the other hand, Cell C and 8ta have been reducing their retail prices. Kenya ranking 2nd behind Sudan also has an oligopoly market where Safaricom is the dominant player.

The trend shows a decrease in prepaid pricing in the last five years with drastic reductions recorded during certain periods. Kenya recorded low prices in 2013 Quarter 4 and 2014 Quarter 1 and 2. SA has drastically reduced its prices from close to USD20 to the current rate of USD4.79. Drastic reductions for SA were recorded from Q3 of 2013. These reductions reflect the prioritization levels and the prominence given to the cost of communication and access to the government agenda at different intervals. Table 27 and Figure 7 show the pricing trends over a period of five years in Kenya and SA.

These above outcomes measure how well the institutional and governance arrangements and structures are performing within a broader political transformation context. They represent a significant level of commitment from regulatory states that are in a constant influx of prioritisation and implementation with complex political contexts. Rapid changes in the ICT industry have however necessitated a review of the 2006 sector policy (Kenya) and the ECA (SA) inspired by the need to bring them in tandem with the new changes in the industry as well as the constitutional dispensation in the case of Kenya. For Kenya, the new constitution binds the state to review all laws that are inconsistent with it to ensure fundamental rights under the new constitution are taken into account.

⁵⁷ The measure is based on OECD (2010) baskets 40 calls/60 SMS.

Table 25: Performance levels of Kenya and SA on Global ICT Indices (IDI, GCI, and NNRI).

Country	Global ICT indices					
	IDI (2012;2013; 2014)		GCI (2013-2014)		NRI(2014)	
	Rank	Score	Rank	Score	Rank	Score
Kenya	124;124;	2.62;2.79;	60;96	3.93	92	3.71
SA	90;89; 84	4.42;4.19;3.95	53,56	4.37	70	3.98

Source: ITU, database for 2012, 2013, 2014

Table 26: Cost of cheapest products in Kenya and SA for OECD's 40 calls/60 SMS basket.

Country Name	Cheapest product				% cheaper than dominant
	Dominant operator		Cheapest in Country		
	USD	Rank	USD	Rank	
Kenya	4.3	4	1.48	2	66%
SA	12.06	19	5.2	7	57%

Source: ITU database

Table 27: Mobile call pricing trends per quarter (Q) in Kenya and SA 2010-2014.

Country	Period														
	2010	2011				2012				2013				2014	
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Kenya	3.47	3.36	2.79	2.59	2.91	3.25	3.25	3.25	1.69	3.16	2.90	2.82	1.48	1.47	1.46
SA	19.79	19.53	20.13	16.98	14.93	15.56	13.10	12.86	12.21	11.53	10.89	5.28	5.20	4.85	4.97

Source: Research ICT Africa (2014).

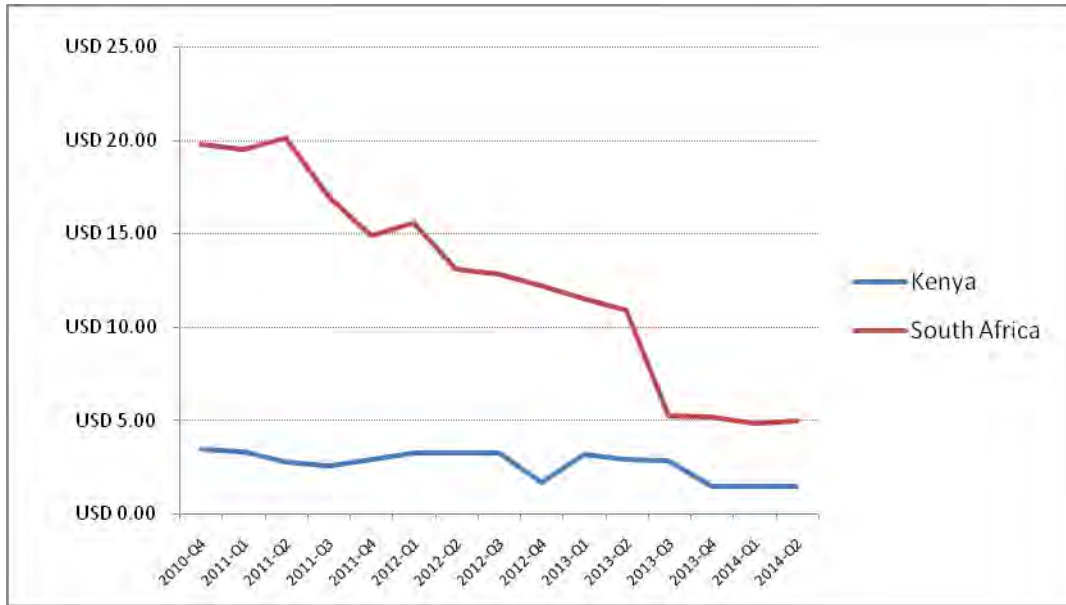


Figure 7: Pricing trend prepaid mobile calls, 2010-2014. Source: Research ICT Africa (2014).

5.5 Conclusion

The legal framework for the ICT sector clearly identifies a significant role for parliament in ensuring government accountability through implementing its oversight, representative and legislative mandates. A country's constitution gives parliament power to organize and structure participation through its three traditional roles of representation, legislation and oversight. Kenya and SA have both defined these roles within the limits of their constitutions. The role is further defined by the epistemic community based on internationally agreed standards of how parliament should be organized. Based on the constitutional mandate key components of a parliamentary legal and institutional architecture applicable to ICT policy making (see Figure 8) are identified. The architecture is based on a formal system that defines the limits of power; the functions and roles; the mechanisms, structures and processes that determine the practices and the relationships of parliament and its stakeholders.

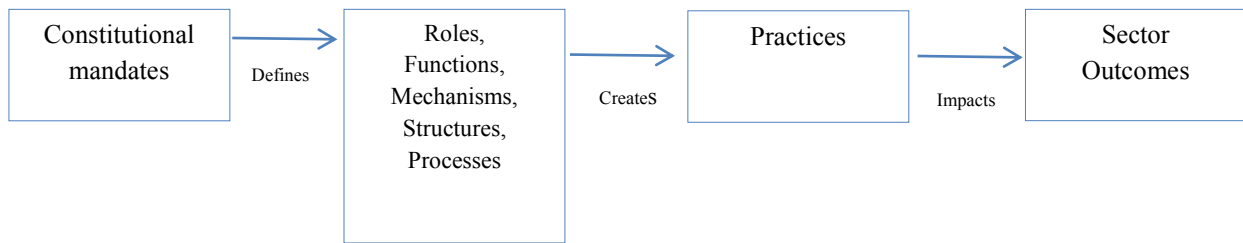


Figure 8: Parliamentary legal and institutional architecture Source: Authors compilation

A defined legal and institutional architecture structures parliamentary participation, positioning it as a significant political institution in the promulgation and manifestation of the principles and values of the constitution. The political systems and culture determined by the constitution outline the rights and relationships that parliament has at its disposal for the implementation of its mandate. Kenya pursues a presidential system with a clearly demarcated separation of power between the executive and parliament. This separation of power influences the extent of parliamentary powers and authority and the ability in holding the executive to account for its actions. The arrangement is different in SA where the executive is drawn from parliament, results in a system of governance impacted by the dynamics of a political party system and ultimately executive dominance that undermines democratic participation. Comparably, this results in differing approaches and levels of institutional development, with aspirations to ensure inclusive participation, maintain public interest as central to public policy and decision-making processes while preserving a significant degree of accountability.

From the above evidence, both parliaments play an important role in ICT policy formulation and implementation with a constitutional responsibility for policy adoption. As a consequence parliaments should consult and engage sector players, on the main ICT policy issues to develop ICT laws and implement processes, represent the eensures the diverse and competing for public interest remains a dominant driver for policy. Furthermore to cater for a lack of capacity and utilise powers conferred parliament assigns and approve regulatory tasks, oversees government action.

The interplay between the legal framework and multiple interests represented reflects the play out in the practice of the principal-agent relationship that occurs between parliament and the

ministry as well as with delegated agencies, the regulator and the citizenry. The degree and extent of the delegation are heavily influenced by the governance context which determines the level and separation of power and nature of relationships among state institutions. Subsequently, this influences the power relations that define participation levels in policy making. The attributes of political systems and the political culture influence decision making processes, institutional arrangements and constellations impacting on the effectualness of parliamentary participation in the policymaking processes across sectors and industries including the ICT sector.

The ICT sectors of Kenya and SA have made nominal progress over the years in achieving policy objectives of access and price as set in national and international ICT legal frameworks. Both countries have set up overarching legal and institutional frameworks through the Kenya Information and Communications Act, Amendment (2013) and the Electronic Communications Act (2006), respectively. Both pieces of legislation provide policy directions, define sector priorities and outline key institutions and governance arrangements giving parliament considerable structural support, from an institutional arrangements perspective, to sustain participation.

The link between the broader governance arrangement and those of the ICT sector is not ambiguous. In South Africa and Kenya, the overarching legislation has defined a legal environment that reflects an institutional constellation at the broader level of governance. The legal environment clearly indicates the link with broader governance environment which influences sector outcomes. There is significant institutional diversity and high degree of dispersion of responsibilities among institutions within the ICT sector in both of the countries under study. While such levels of institutional diversity and dispersion of responsibilities can reflect a system of checks and balances in both countries, it has resulted in greater degrees of institutional fragmentation. The main difference being that the Kenya Information and Communications Act (Amendment, 2013) provides a decentralized arrangement built on the separation of powers, with less hierarchical power structures that have resulted in huge overlaps and no clear coordination within the sector. The Electronic Communications Act of 2005, South Africa while pro-competition and pro-convergence, has a high degree of dispersed

responsibilities extending even to institutions outside the sector. Policy decisions are allocated to different institutions but with a centralized, hierarchical power structure maintained.

Significant legal and technical capacity is required if parliament is to implement effectively its mandate within a fragmented sector, with an executive that is likely to be dominant or is drawn from it. This capacity resides in a committee system that has dedicated responsibility for the ICT sector. These committees have increasingly become the key interface with the sector and are regarded as key players within the ICT constellation of institutions. The effectiveness of the committees is likely to be influenced and constrained by the arrangements within the sector, such as the degree of fragmentation, levels of dispersion of responsibilities and the capacity to control policy decisions.

In conclusion despite both Kenyan and SA parliaments having a constitutional mandate, and putting in place structures, mechanisms and processes to support their role, they are probably ineffective in ICT policy-making. The document review in this chapter clearly shows that there is considerable structural support from an ICT institutional arrangements perspective to sustain parliamentary participation in ICT sector reforms. There is continued lack of a supportive legal environment as highlighted in a myriad of literature in the ICT sector. This could be a clear indication that, in practice, parliament has not possibly implemented or has encountered challenges that affect its ability to implement its role as required. It perhaps also indicates a lack of agency capacity and competency and other problems affecting implementation within parliament, but also market forces that have been left to define who participates; raising the question of sector inclusiveness.

To understand the effectiveness of parliamentary participation in Kenya and SA, Chapter 6 investigates the parliamentary practices as applied to the ICT policy making process by the committees responsible for ICTs. Chapter 6 extends this review by presenting findings from the qualitative findings of self-assessments and interviews conducted with key stakeholders and in the ICT sector. The results of the analysis are written up in Chapter 7 in a rich analytical narrative that is responsive to the main empirical questions and which builds a comparative analysis of parliamentary practices within the ICT sectors of Kenya and SA.

Chapter 6

PARLIAMENTARY PRACTICES FOR ICT POLICY MAKING IN KENYA AND SOUTH AFRICA

6.0 Introduction

Key components of a legal and institutional architecture, the mechanisms, structures, processes and tools that parliament utilizes to participate in ICT sector reforms are outlined in Chapter 5. In order to set the national policy objectives, oversee implementing agencies and shape policy outcomes there are three key elements critical to this architecture, namely: (1) legislative authority and power anchored in a constitutional mandate, (2) the committee system as a pillar for parliamentary processes, and (3) a system of governance that allows parliament to apply practices and influence sector outcomes.

This chapter reports on the qualitative findings from a horizontal self-assessment complemented by deep cutting high level interviews with key stakeholders in national ICT ecosystem of Kenya and South Africa. Such an investigation is meant to explore the key parliamentary practices applied to the ICT sector through the committee system, While the self-assessment provides horizontal views and perceptions of a wide range of factors, the high-level interviews provide a deep cut into understanding the realities.

This chapter aims at establishing whether the defined parliamentary legal and institutional architecture (including the outputs of national structures, processes, frameworks) have resulted in committee practices that facilitate or constrain the participation of parliament in ICT sector reforms process. This is in the context of a sector that continually presents policy makers with unique and difficult challenges. One such complexity is the rapid development of technologies that require policymakers to constantly play “catch up” as new legislative and regulatory challenges arise. For understandable reasons, the development of legislation for the ICT sector often lags behind its technical developments.

This analysis is done in the context of parliaments undergoing institutional reforms to increase its relevance, responsiveness and accountability. A major outcome of the reforms has been the establishment of committee systems as a key interface for parliamentary participation in ICT policy-making and governance processes. It is in these committees where most of the legislative work for the sector is done. The focus of the analysis in this chapter is thus to unearth the practices adopted to influence/constrain parliamentary participation in ICT sector development. The emerging themes and patterns, together with the findings of the document analysis in Chapter 5, will be used to present a cross-country comparative analysis of parliamentary participation in ICT sector in Chapter 7.

The self-assessment was conducted with purposefully sampled key stakeholders focused on the following four dimensions measuring the key mandates of parliament as main areas of investigation:

1. Degree of representation, measured by the openness and accessibility of parliament to key stakeholders within national ICT ecosystem.
2. Degree of application of parliamentary power in ICT governance, measured through effectiveness of legal mandate reflected in the bill review and hearing processes.
3. Extent of influence of parliament in ICT sector reforms, measured by its oversight effectiveness and levels of parliamentary accountability and scrutiny.
4. Level of institutional effectiveness, measured by availability of resources such as budget, support staff, logistics and support for constituency development.

6.1 Sampling

Purposefully sampled respondents were selected from key stakeholders in the ICT reforms process and ICT ecosystem from both Kenya and SA, as follows:

1. Parliament: Chairs/ Members and staff of the Parliamentary Committee responsible for ICTs in Kenya (Committee on Energy and Communication) and South Africa (Portfolio Committee on Communications, and; Portfolio Committee on Telecommunications and Postal Services). Due to the continued unavailability of key respondents from the Kenyan Parliament, the researcher utilized raw data from a similar survey conducted during the same period to capture parliamentary practices.

2. Regulator: Communications Authority of Kenya (CA) and Independent Communications Authority of South Africa (ICASA).
3. Mobile Operators (private sector) and industry associations: Vodacom, Neotel Cell-C, Internet Service Providers Association (ISPA). Due to continued unavailability of potential respondents with knowledge of parliament and limitations of researcher's resources MTN and 8ta and mobile operators from Kenya are excluded from the sampling frame.
4. Experts from government departments: South Africa - Former employee of the Competitions Authority; Kenya - former Permanent Secretary for the Ministry of Information and Communications.
5. Civil society (parliamentary monitoring organisations & interest groups): South Africa - Parliament Monitoring Group (PMG); Kenya - Mzalendo, Kictanet.

6.2 Key Findings

The following themes and patterns recurring in the coding process identified key parliamentary committee practices discussed in this chapter.

- Whilst parliament is widely acknowledged as a significant player in policy formulation and implementation for the ICT sector, respondents were dismayed at the ineffectualness in the conduct of this role. An essential role identified by respondents is that of structuring the principal-agent relationships, which influences the level of participation by both the principal and the agent defining the political environment that supports the growth of the ICT ecosystem. Respondents identified both internal and external factors that hinder the effectiveness of participation, such as executive dominance that weakens parliamentary oversight; principal-agent relationships that result in contradictions and inherent conflict; insufficient parliamentary capacity and technical knowledge in the ICT sector that cause confusion and delays; and an inadequate internal design for achieving inclusive participation that limits parliament's ability to facilitate core legislative activities.

- Interviewees described the South African parliament as having high levels of democratic participation with requirements and support structures set in an administrative justice framework. On paper, the processes looked tedious and protracted with all the checks and balances in place to ensure compliance as required. However, the reality reflects ruling party dominance in ensuring preferred outcomes for such parliamentary processes as legislation and appointment of the regulator. These processes become relatively seamless when the executive interferes with parliamentary decision making processes, and party preferences are filtered through ruling party dominated committees and whipping practiced to ensure favorable outcomes. Responses to questionnaires indicate the Kenyan parliament as having a higher capacity for oversight in comparison to its representation and legislation functions which are relatively weak. The strength of this oversight is influenced by presence of investigative powers (rated 4) enshrined in law, to request and receive updates on actions taken by the Executive. This is supported by sufficient powers to oversee the expenditures of state-owned enterprises.
- Respondents further describe ICT parliamentary committees as the workhorse of parliament providing the critical link between key stakeholders and government actions and policy implementation. These committees, according to respondents, ensure effective scrutiny and accountability of government actions as well as providing opportunities for public engagement with the reforms process. However, respondents lamented the inability of parliament to exercise its powers in holding the government to account and the insufficient capacity limiting the utilization of existing mechanisms, tools and processes that build consistent practices to facilitate sector outcomes. Split mandates and institutional arrangements within the broader governance limit participation and independence from the executive and sometimes the industry compromise the oversight role of parliament.
- Parliament is indicated as a useful source of information on government priorities and provides investors in the sector with the credibility and certainty required for decision making. Respondents further identified emerging alternatives for reliable sources of

parliamentary information are emerging from parliament monitoring organizations⁵⁸. However the quality of this information still relies on the accessibility, openness of parliament and effectiveness of stakeholder engagements and consultations. This is viewed as a critical element for solving the information asymmetry that influences principal-agency relationships particularly that of the ministry and parliament.

- Respondents highlighted parliamentary engagement models as becoming an effective and institutionalized way of ensuring increased participation and consultations for parliament to remain representative. These engagement models facilitate structured collection, aggregation and expression of interests, concerns, opinions and preferences of the citizen, offering an important link to government agendas and ultimately hold the government to account for its actions. Both formal and informal consultations with stakeholders in the sector have become key and fundamental to decision and policy making.
- Respondents further indicate that parliament is more than a neutral, legal structure. Rather it serves as a significant power broker, agenda setter, veto player, conflict resolver that reflects the competing interests at play. The effectiveness of these roles and leverage within the sector is however determined by its source of power. While this is primarily derived from the constitution, how parliament is perceived by other stakeholders is critical to its exercise of power. Constitutional hurdles often confronted, limit parliamentary scrutiny and approval, resulting in minuscule leverage exercised by parliament on input made into proposals. In light of such challenges, sector governance arrangements need to reinforce and uphold the parliamentary mandates that support improved parliamentary performance.

⁵⁸ Parliamentary monitoring organisations are citizen-based groups that monitor or assess the functioning of parliaments or their individual members, often seeking to facilitate and promote public knowledge of and participation in parliamentary processes in order to strengthen parliamentary accountability, citizen engagement and access to information.

6.2.1 Respondents' views on the role of parliament in ICT sector development

To assess key sector players' understanding of the role of parliament in the ICT sector, respondents were asked to assess if parliament provides the required framework to support their mandate and how this could be improved.

All 15 respondents concurred that parliament had a critical role to play in the ICT sector. Patterns emerged related to the conceptual framework, with an overarching view that parliament plays a significant role in facilitating reforms while its ineffectualness was raised as a major concern. Although viewed differently, this role is mainly centered on facilitating the adoption of policies formulated by the ministry and contributing to shaping the desired outcomes by providing avenues for input into the legislative processes, while overseeing government and agents' actions through parliamentary scrutiny and accountability. Effectiveness becomes a factor of its constitutional mandate and its ability to exercise power which in turn determines the type and nature of relationships among key players, the prevailing power structures⁵⁹ and the extent of parliamentary authority. Mechanisms, structures and tools are then developed to support implementation.

Diverse parties agreed on the significance of a constitutionally mandated role of parliament, yet there was wide felt dismayed at the ineffectualness in the conduct of the role as defined in the constitution, citing the influence of external factors on the broader governance process. A key player representing a mobile operator in South Africa defined the role of parliament as:

“...custom-based, significant, and critical for both policy shaping and as the custodian of the legal framework. Parliament plays an important role in shaping policy outcomes. A good example of parliament playing its role in the recent years is around the whole the debate on the cost to communicate raised on the floor by Hon Patricia De Lille in 2009. This resulted in further debates, public hearings, and key stakeholder consultations that led to the issue of mobile

⁵⁹ Institutional degree of capacity to control final policy decisions which can either be centralized or hierarchical. Hierarchical power structures concentrate authority within a 'principal' institution enjoying democratic legitimacy (such as the legislature). Less hierarchical power structures provided different institutions have some degree of autonomy and the centralization of power is reduced.

termination rates becoming a key regulatory instrument to address market failures in South Africa” (Cohen, personal interview in March 2015).

This respondent further acknowledged the significance of parliament in the law making process in South Africa:

“Parliament tests proposals to law, holding rigorous debates both in committee and plenary levels inviting participation of key stakeholders including industry. However, the impact of legislation is not sufficiently conducted often resulting in unintended outcomes.” (Cohen, personal interview in March 2015)

On a similar note from a Kenyan context a respondent who has provided significant leadership and input in developing the sector as the former permanent secretary in the Ministry of Information and Communication viewed this role as happening mostly through the committee system:

“In Kenya we have a Parliamentary Committee on Energy and Information and Communications, whose role includes 1) overseeing the Ministry of Information and Communications, 2) dealing with political issues on behalf of the Ministry, and most importantly 3) sponsoring the legislative framework for the sector in Parliament before the Bills become an Act of Parliament” (Ndemo, questionnaire response in 2014).

A respondent from the private sector in South Africa further noted that:

“The separation of powers amongst state institutions depicts an ICT policy making the process that has clear cut responsibilities with policy formulation being the purview of the Ministry of Communication while policy adoption sits with parliament, policy implementation with the regulatory and policy monitoring is done by the justice and courts. This is meant to facilitate policy coherence, consensus building, and effective coordination” (Barandse, personal interview in 2015).

Furthermore, respondent Barandse confirmed the existence of a policy process in South Africa which as depicted in Figure 9, which lists parliament as a significant player with a principal-agent relationship with the ministry that influences the quality of legislative output. The respondent stated that the legislative output is:

“...highly dependent on how the policy formulation process is structured. There is a principal-agent relationship between parliament and the ministry, between parliament and the regulator that results in contradictions and inherent conflict especially on reaching consensus regarding sector priorities. Moreover, interestingly agents often behave opportunistically” (Barandse, personal interview in February 2015).

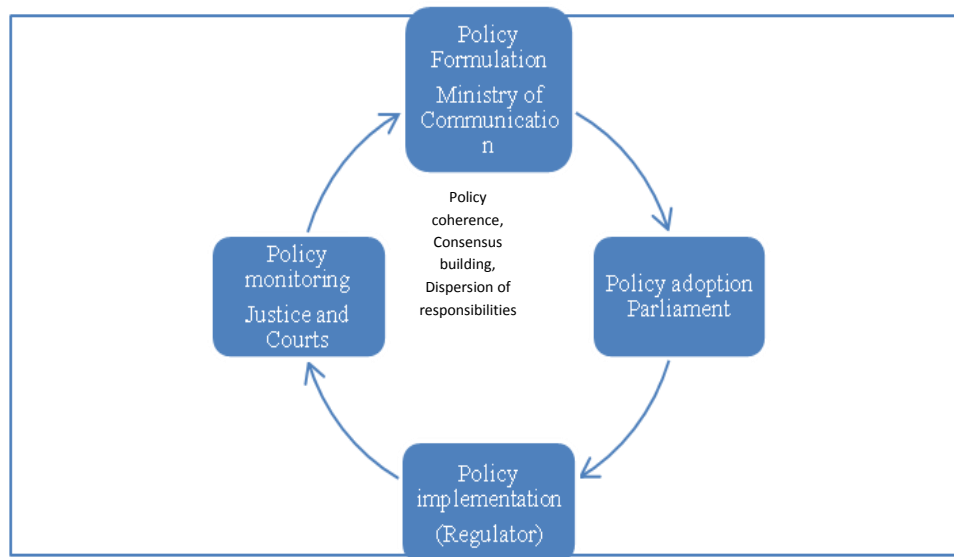


Figure 9: Policy process in South Africa. Source: Authors compilation

Furthermore, respondent Barandse confirmed that in the case of South Africa,

“Most, if not all, ICT policy is formulated by the Ministry of Communication with the Minister and Director General leading the consultation process as required” (personal interview in February 2015).

A respondent from the private sector in South Africa acknowledged that the role of parliament is “often underemphasized with checks and balances that are more pronounced due to opposition party politics” (Cohen, personal interview in March 2015). Furthermore, the respondent highlighted critical behavioral aspects of parliamentary relationships that often result in unintended outcomes:

“The diversity of interests from members leads the committee to generate gains from exchange and cooperation opportunities. Trade-offs become an important element of the exchange mechanisms and is often adopted by parties with sometimes unintended consequences that can backfire. A good example is the way the Communications Committee handled the debate to reduce the number of ICASA Councilors in the ACT [during the fourth parliament]. ICASA representatives have based their submission on what is a commonly accepted behavior of the ruling party (ANC) which often takes an opposing view to that of opposition parties. However, in this particular case because of trade-offs engaged in between the ruling and opposition parties, the outcomes did not match the original intention of the regulator” (personal interview in 2015).

It is the ineffectualness of parliament in implementing its role within the sector that was consistently raised by most respondents, pointing to the need for increased institutional and technical capacity in the various areas that the committee has responsibility for. One such area of ineffectualness that was raised was that parliament is often reactive, as noted by a respondent from a parliamentary monitoring organization in South Africa that:

“Parliament needs to take a greater leadership role and not leave it up to the Department [of Communication] to bring the parties together and advance the growth of the ICT sector. There are on-going concerns that the ICT sector remains fragmented and fractious. The ICT policy green paper⁶⁰ published by the Ministry [of ICT] in January 2014 for comments is viewed as providing the solution to address these concerns. Parliament has been briefed on the policy and

⁶⁰ http://www.gov.za/sites/www.gov.za/files/37261_gon44.pdf (Accessed May 2015.)

has held several meetings with industry stakeholders⁶¹” (Alli, questionnaire response in March 2015).

A similar observation was shared by two other respondents from both countries, who viewed parliament as *“reactionary rather than proactive in providing a coherent framework”* (Weeks, questionnaire responses in 2013; Rad questionnaire responses in 2012). Furthermore, a respondent from the private sector [South Africa] had observed an:

“...often lack of tangible outcomes from the entire work parliament does which may benefit from a parliamentary operating model developed along the lines of a disciplined programme management to a level of ISO certification. This could reinvent parliament to be more outcome-based with the desired levels of accountability and responsibilities that follow due time frames, stakeholder engagement and allows for benefits realization” (Cohen, personal interview in March 2015).

A respondent from the Internet Service Providers' Association⁶² [South Africa] agreed with the above perceptions, but further highlighted the lack of technical capacity as hampering effective participation.

“Parliament has contributed significantly to the required framework, particularly through the work done by the Portfolio Committee for Communications leading up to the passing of the Electronic Communications Act 36 of 2005. While I am aware that members of this Committee have undergone training before, there is a critical need for on-going education in some of the technical and regulatory aspects of what is a complex field. It is understandable that levels of comprehension of some of the important issues is lacking, particularly when a new committee is constituted, but this must be addressed to ensure that debate is appropriately informed” (Cull, questionnaire respondent in July 2014).

⁶¹ <https://pmg.org.za/committee/117/>

⁶² The Internet services association

Table 28: Summary of main parliamentary mandates and key dimensions investigated

Parliamentary Mandate	Capacity Element	Key dimensions
Representation	Participatory Accessibility	v. Parliamentary openness; vi. mechanism for public awareness; vii. mechanisms to promote public understanding; viii. guidelines to govern parliament relationship with stakeholders
Legislation	Legal mandate	vi. source of parliamentary power to introduce, amend and veto legislation vii. existence of power to amend bills viii. opportunities for citizens to input into legislative process ix. mechanisms to track impact of legislation x. Power to send back legislation for review
	Bill reviews and hearings	iv. Period of review of any ICT legislation v. Existence of an ICT Committee vi. Existence of Public hearings on ICT
Oversight function	Oversight committees	vii. oversight function performed by sector related committees and other special committees viii. oversight committees have Investigative powers ix. oversight of the expenditures of state owned enterprises x. mechanisms to obtain information from the Executive for effective oversight xi. Power to follow up on recommendations xii. adequately resourced to undertake their activities xiii. opportunities for minority/opposition parties to engage in effective oversight of government expenditures

Source: Authors synthesis of Parliamentary Centre (2009)

In order to categorize the overarching concerns raised in understanding the role of parliament in developing the ICT sector, the findings are clustered according to the three core parliamentary mandates (see Table 28) identified in Chapter 5 in respect to ICT policy making. The capacity requirements in relation to parliament fulfilling the mandate for each key dimension are

identified. The committee system provides a structure through which all three mandates manifest and opportunities for structured interaction with the sector are provided. It is, therefore, prudent that the investigation is done through the committees responsible for ICTs in the parliaments of Kenya and South Africa, with the opinions of the other stakeholders captured either through the assessment or the high level interviews.

The difficulty of accessing the Kenyan Parliament is reflected in how the author was not being granted access to participants. The author pursued several other avenues to get responses for the questionnaires, but this failed. The researcher then resorted to using raw data, specifically for the parliament category, from a similar assessment carried out during the same period by the Parliamentary Centre (Africa Programmes) in 2012, which went a considerable way in filling that gap. This data was then triangulated in the analysis with data captured in questionnaires conducted with other categories of participants in Kenya to guard against biases and for validity.

6.2.2 Mandate 1: Representation and participation - parliamentary openness and accessibility

Public participation is intrinsic to democratic governance and hence theories of democracy have in turn led to theories of public participation that presuppose popular authorization and representative accountability. As discussed in Chapter 2 § 2.2.1.1 the discussion on representation in this thesis focuses on the elements relating to public participation. It is important at this juncture to emphasize two notions of the democratic theory in political governance literature that underpin this study. Varied forms of governance have been advocated, with “representative democracy” on the one hand having elected representatives acting in the interest of the people and on the other hand “participatory democracy” providing a more direct, arguably popular or progressive form of democratization through collective decision-making where citizens have power to decide on policy proposals and politicians assume the role of policy implementation (Aragonès & Sánchez-Pagés, 2009). This thesis investigates the levels of participatory democracy in the parliaments of Kenya and South Africa on the assumption that representative democracy conducted through fair election systems results in governance arrangements that influence participatory democracy.

Participatory democracy provides opportunities to overcome the shortcomings of representative democracy by combining elements that facilitate direct participation by citizens in making policy proposals, which the elected may subsequently decide to implement. This makes parliament a central institution for democratic participation representing the various interest groups and, providing space and opportunity for citizens to express their interests. These issues of local and national importance are debated, with view of translating the issues into policies. The effectiveness of the representational role of the MPs and, for that matter, parliament depends to a large extent on the quality of constituent's interactions with MPs.

6.2.2.1 Representation

In order to assess the representation capacity of parliament, respondents were asked questions that determined existence and level of openness and accessibility as key factors to define stakeholder participation and consultation in parliamentary processes. To define key practices for participation, the assessment looks at the level of parliamentary openness that allows stakeholders such as citizens, the media and key players within the sector to participate in parliamentary process. Secondly, the assessment identifies the mechanisms in place for promoting public awareness and knowledge on the work of the parliament and the role of MPs in ICT policy making process as a key element for effective participation. Lastly, the assessment identifies key structural elements such as guidelines and policies that govern parliament's relationship with its stakeholders to ensure consistent representation. Table 29 summarizes the ratings of accessibility of parliament as assessed by key respondents from the ICT ecosystem of Kenya and South Africa.

The chairperson of the Parliamentary Portfolio Committee on Telecommunications and Post, Hon Kubayi⁶³, in a self-assessment of parliament, rated the Parliament of South Africa as having high level capacity in place for representation as “parliament is accessible to citizens and the media guided by a framework and communication strategy”. The high level capacity and supporting mechanisms for representation in South Africa to support public participation is confirmed by the document analysis in Chapter 5. Furthermore, a representative from the

⁶³ Chair of the Portfolio Committee for Telecommunication and Postal Services(5th Parliament)

internet service providers association confirmed the utilization of these mechanisms as the parliament does promote the understanding of the role of parliament in ICT policy making through stakeholder engagements.

“There have been some engagements with the public through committee oversight visits and engagements around the cost to communicate programme” (Cull, questionnaire response in July 2014).

Table 29: Respondent assessment of accessibility of parliament in Kenya and SA.

1- Clear need for increased capacity 2- Basic level of capacity in place 3-Moderate Level of Capacity 4- High Level of capacity in Place								
Type of respondent	Accessibility							
	The parliament is open to citizens and the media		Mechanisms to promote public understanding of the work of parliament		Promoting citizen's knowledge and understanding of the role of MPs		Relationship between parliament, and other related institutions	
	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa
Committee 1	4	4	2	4	3	4	3	-
Committee 2	-	4		4		4		-
Regulator	4	4	3	3	3	3	4	4
PMO	2	4	3	3	3	2	3	4
Expert_ Govt.	3	3	3	3	3	2	4	3
Operator1		3		3		3		-
Operator2		4		3		2		-
ISPA_ Operators	-	3	-	3		3		-
Average rating	3	3.5	3	3	3	3	3	3.5

Source: Authors Compilation

Respondent Alli, from civil society further confirmed the existence of high representation levels, pointing out the fact that the parliament has focused a lot of effort in developing the representation capacity in the post-apartheid era.

“The Parliament of South Africa has focused a lot of effort during its first two parliaments post-apartheid on developing its representation and legislation

capacity...This has resulted in the development of a public participation model with direct input from the public through an online process recently.” (Alli, Skype Interview in March 2015).

However, Alli further notes that the focus of the public participation model could be improved if parliament had sufficient time and capacity for broader participation.

“Whilst PSA takes public participation seriously as directed by the rules and procedures with committee’s proactively advertising submission requests and call for comments for legislation, department budget and any matter they may want to solicit input, there is never sufficient time depending on the impact of the issue on the legislative agenda. Ultimately it’s the views of the regular participants (people and organizations) that track parliament whose submissions are heard, hardly ever getting the voice of ordinary people.” (Alli, Skype Interview in March 2015).

The South African Parliament was confirmed by all groups of key players in the sector as accessible and open. In practice, this means that parliament has in place a framework and strategy with guidelines in the rules and procedures to facilitate engagement between parliament and its stakeholders. The framework provides a structured process and entry points for stakeholders to input into the work of parliament. To facilitate engagement PSA promotes its work through a variety of media and outreach programmes⁶⁴ to enhance the public’s understanding of the work of parliament and, in particular, the MPs role in policy-making.

The assessment by respondents of the Kenyan Parliament’s accessibility and openness indicates existence of mechanisms that could potentially make parliament accessible to its stakeholders including at committee level. These are as prescribed by standing orders and speakers’ rules. Mechanisms include live broadcasting of proceedings on national television, and a parliamentary

⁶⁴ Parliament of South Africa utilises a variety of channels to reach out to its stakeholders that includes the website, radio and television programmes, broadcasts , publications, newsletters, promotional material and social media - Facebook, Twitter and YouTube. See Chapter 5 § 5.5.5 for a lists representation tools and mechanisms)

website providing access to verbatim records and the schedule of parliamentary business. Moreover, parliament has a fully equipped media centre with Internet, enabling journalist to file stories, and parliamentarians to have media conferences and briefing irrespective of political affiliation. Respondents felt that it was not sufficient to have these mechanisms in place and yet ignore the mandate to enforce these to achieve participation. Respondents from civil society and government felt the representation mandate was often ignored. The assessment clearly indicated basic to moderate capacity, with mechanisms that were either non-existence or existed but were not well structured and not followed. Two respondents with diverse interests confirmed the above concession:

“Kenya Parliament has a clear constitutional requirement on media freedom and citizen participation but ignores it when it comes to serving their own interest like salary increases” (Ndemo, questionnaire response in 2014).

In addition, a representative from a parliamentary monitoring organisation (PMO) assessed that:

“Parliament is only partially opened to citizens and the media. This is usually in response to pressure from organized groups. No communication strategy or framework exist to structure and guide this. It is difficult to access parliament and getting information requires going through someone” (Rad, questionnaire response in 2012).

A key determinant of openness and accessibility is the promotion of the public’s understanding of the work parliament does. Parliament of South Africa has instituted mechanisms that define engagement models and create patterns of interaction to link diverse stakeholders with the governance processes. One of the models confirmed by key stakeholders from civil society and private sector in South Africa is the utilization of a parliamentary liaison office model⁶⁵ to engage and consult with the committees and the rest of parliament. A representative from a parliamentary monitoring group in South Africa explained:

“Dedicated parliamentary liaison officers are appointed by the organizations and companies to sit in debates and committee meetings collecting information and writing reports for their organizations. Whilst this model is not institutionalized it works.”(Alli, Skype Interview in March 2015).

⁶⁵ The officer sits in the committees to record proceedings and reports regularly to the organisation.

Neotel, a fixed line operator in SA, follows this model by virtue of inheritance but rather prefers a reactive approach in terms of consulting with parliament. They have adopted an “engage when engaged” approach, only responding to calls for submissions and attending hearings. In an interview with them it was highlighted that other players in the market have found different approaches with:

“bigger corporates and dominant players in the market playing the stakeholder system by establishing informal and useful relationships with select members of the Committee and having direct access to the ANC⁶⁶ study group on the sector ... However it is debatable if this access has translated into outcomes for the company” (Cohen, personal interview in March 2015).

Furthermore, Cohen (2015) qualified their reactive approach and views as:

“...Improper for operators to engage parliament on a particular issue outside of the formalized arrangements. Parliament should too guard against [providing] preferential access to certain operators. Neotel rather prefers to engage directly with the regulator should there be any arising issues or to petition the responsible ministry” (Cohen, Personal interview in March 2015).

Whilst the assessment of South Africa confirms presence of key elements for participatory representation by key stakeholders, indicative of high capacity in place, the Kenyan case was a complete contrast with the self-assessment by parliament indicating a clear need for increased capacity, as the existing mechanisms⁶⁷ are unstructured and fail to promote the required public understanding by civil society and other key stakeholders within the national ICT ecosystem. The parliament had not institutionalized any public education programmes to guide and foster relationships with stakeholders. No clear parliamentary engagement model, especially with private sector and civil society, has thus emerged within the ICT sector of Kenya.

An assessment by a representative from a parliamentary monitoring organization indicated that mechanisms in place were:

⁶⁶ African National Congress (ANC) is the ruling party in South Africa.

⁶⁷ Current mechanisms include outreach programme, Kenya Parliament magazine, public gallery and the public relations office.

“...Very basic as it is upon the citizens to request and pressure parliament in order to participate. Furthermore, there is need to sensitize MPs to acknowledge this and introduce structured forms of engagement” (Rad, questionnaire response in 2012).

Respondents have indicated parliament as a key source of information on government priorities for the sector. As indicated through the interviews in South Africa attending parliamentary sessions by representatives of private sector had become the norm rather than the exception as stakeholders found value in accessing parliamentary information on the sector. A representative from the private sector remarked that parliament was a critical link to important developments in the sector:

“There is information that ICASA [the sector regulator] never issues except at parliamentary sessions and operators have found it beneficial to attend sessions where regulator is making submissions. In actual fact, the regulator has no obligation⁶⁸ to provide information to stakeholders and often times operators find useful information when the regulator presents to parliament” (Barendse, personal interview, in February 2015).

Respondent Cull [civil society, South Africa] stated that the internet service providers association was “happy with level of communication received from parliament and have too subscribed to the Parliamentary Monitoring Group (PMG) to receive regular information”. It is the currency and reliability of the information that then plays an important part for decision making within the administrative justice framework, as highlighted by one operator that:

“Parliament has become an important source of current information for the sector. From a regulatory perspective currency of information and access to decision makers underpin administrative justice” (Cohen, personal interview in March 2015).

Whilst stakeholders can participate through committees, alternative sources of parliamentary information are emerging, and one such is the Parliamentary Monitoring Organizations

⁶⁸ By nature, the regulator is accountable to parliament and is required by law to report its activities to parliament directly or through the minister. However, there is no obligation on the regulator to share or consult with other key stakeholders in the sector.

(PMOs)⁶⁹. Globally PMOs seek to facilitate and promote public knowledge of and participation in parliamentary processes, collect and catalogue information as part of their tracking. A representative of PMG stressed on the reliability of the information they collect remarking that:

“...although it may not be an official record of parliament there is high level of acceptance of PMG by parliament to an extent where MPs tend to ask where PMG is absent in meetings” (Alli, Skype Interview in March 2015).

The reliability of PMG is further confirmed by the nature and numbers from both South Africa and beyond that use it as source of information on local developments and governance of the ICT sector.

“As a result, Parliament Monitoring Group⁷⁰ (PMG) has become a trusted source of current information within South Africa and globally for even members of parliament themselves, private sector, legal firms, local and international NGOs, universities/courts, foreign embassies and ordinary South Africans and has been online since 1998.”(Alli, Skype Interview in March 2015).

Civil society in Kenya rated the openness of parliament to citizens and media very poorly.

‘Parliament is a mysterious entity whose operations are not fully understood by citizens. It, additionally, looks at citizens as bothers and/or interruptions and it does not recognize that information they produce is for the public. It is upon the citizens to request and pressure parliament in order to participate’ (Rad, questionnaire response in 2012; Munyua, personal interview in 2012).

According to a respondent from the Parliamentary Monitoring Group, the parliament is only partially opened to citizens and the media, and this is usually in response to pressure from organized groups. There is no communication strategy or framework to structure and guide the relationships. An interviewee from civil society confirmed that:

“Getting a response or information from parliament requires extensive lobbying and pressure and using personal contacts. It is up to civil society to use own initiative to pressure for engagement” (Munyua, Personal Interview in 2012).

⁶⁹ Parliamentary Monitoring Group and Mzalendo are the main PMOs in South Africa and Kenya, respectively, and have filled the information gap becoming trusted sources of parliamentary information for a variety of stakeholders.

⁷⁰ PMG was established to fulfil a basic need to understand what happens in the committees of parliament [engine of parliament] as parliament was not producing sufficient information initially and committees were closed prior to 1994.

Furthermore, the lack of access affects its representativeness as “It is difficult to access parliament and getting information requires going through someone” (Rad, questionnaire response in 2012).

In cases where engagement models have been established, it is the quality of the consultations that are key determinants for both the development and uptake of the public participation, engagement models and the mechanisms described above.

“In doing their governance role parliament engages at different levels with different stakeholders. With the ministry it evolves around submissions, questions, approvals and appointments; and with civil society and industry through public hearings” (Barendse, personal interview in February 2015).

Barandse in an interview further defines parliamentary consultations:

“... with interested stakeholders as either formal or informal depending on the issue at hand. Formal consultations are prescribed by legal frameworks whereas informal consultation is ad-hoc and based on emerging needs of either party” (Barendse, personal interview, February in 2015).

Responses reflect that both the private and civil society sectors engage at formal and informal levels with parliament. A variety of reasons drive consultations ranging from lobbying, information dissemination, protecting investment interests, to ensuring certainty and credibility. Whilst parliament seeks conformance with constitutional requirements to ensure engagement with a wide variety of stakeholders as part of the policy making process; the process is often viewed by the private sector as motivated by the needs of the political leadership to get leverage especially from informal consultations:

“The reasons for informal consultation are very much dependent on the capabilities of the Chair of the Committee to deal with ICT issues, and these consultations provide the Chair with the information and knowledge that can be utilized in the formal consultations as well as during committee sessions. There is, however, cases of opportunistic intentions by some Chair of the Committee (both incumbent and previous) especially close to election [times]. Chairs have called for public hearings specifically to get coverage and in those cases it has often been during election campaign times” (Barendse, personal interview in February 2015).

Furthermore, Barandse views private sector engagement as being driven by self-interest and the need to protect investments from disruptions that may arise from policy changes that are driven by politicians, but also to ensure no misrepresentations of their intentions. The private sector also seeks to provide industry related information to the committees to solve lack of ICT capacity and information asymmetry that has resulted from reliance by the committees on information from the ministry and the regulators.

“Operators are aware of the limitations that parliament has in terms of capacity to handle technical issues such as those of ICT...It is really to close the gap of information arising from lack of skills by parliament and solve the information asymmetry problem” (Barendse, personal interview in February 2015).

Furthermore whilst the outcomes of both informal and formal engagements are then concluded transparently within the public space, it is the nature and type of committee leadership as reflected in the chairperson that influences the levels of engagement. As observed by representatives from the private sector that:

“Whilst some chairpersons are very active and passionate and seek knowledge through engaging industry, others are vulnerable and may not actively facilitate engagements outside of the formal engagements prescribed. Hon. Kubayi is regarded as very open to engagement, knowledgeable about issues and as a result during any conflicts in the sector were resolved transparently” (Barendse, personal interview, February in 2015).

A similar reason was provided by another interviewee from the private sector:

“The type of committee chairperson has influenced the level of parliamentary participation over the years as different chairs take different approaches guided by their background knowledge and involvement with the sector. Hon. Kubayi’s leadership [of the Telecommunications and Post Committee] has provided more flexibility and more engagement with the committees. The Minister too at that time was very interventionist. More central leadership is provided under Hon Joyce Clementine Moloi-Moropa [current chair of the Communications Portfolio Committee] – who, coming from industry, understands the role of the private sector. One former chairperson was very constituency focused and would often raise questions of connectivity at that level. Under Hon. Vadi the committee unified around the issue of reducing the cost to communicate” (Cohen, personal interview in March 2015).

Respondent Cohen, from the private sector observed that the organization of the parliamentary calendar was still unstructured to achieve effectiveness. According to Cohen if calendar is structured, it could be possible for parliament to have consistent quarterly engagement with key institutions and ensure they receive written reports and conduct more hearings.

“The agenda should not be filled with reviewing of reports only; there is need to clarify resolution rate of problems. There is no follow up time frame. There is generally a lot of talk and engagement but no actual deliverables within timeframes - this could improve the oversight model” (Cohen, personal interview in March 2015).

6.2.3 Mandate 2: Legislation - Legal mandate and bill review and hearings processes

Law making is a responsibility performed by parliament either by making new laws, or repealing existing laws and amending others. To effectively carry out law making requires knowledge and expertise in a wide range of technical areas. Both the assessments and interviews interrogated the legal mandate with particular emphasis on the source of authority of legislative power, the origin of the law making role of parliament, the source of parliamentary power to amend legislation and bills, the opportunities available for citizens to input into legislative process, mechanisms to track impact of legislation and the power to send back legislation for review. The ratings of the legal mandate of parliament as assessed by key respondents from the ICT sector of Kenya and South Africa are summarized in Table 30.

Key determinant of parliamentary participation identified by respondents as critical to the legislation process is the effectiveness of the legal mandate assigned to parliament. The indicators investigated factors for effective legislation including the power to amend bills, adequate opportunities⁷¹ for citizens to input into the legislative process, mechanisms to track legislation and power to send back legislation for review by the executive.

⁷¹ Mechanisms used by citizens include- Public hearings, Submissions, Representations , Petitions, Expert opinions and the Right to observe, give evidence and offer views

Self-assessment by the parliament of South Africa rated the capacity in place for all indicators associated with the legal mandate as high. Mechanisms are in place to provide the public with opportunities to provide input into the legislation process such as bills. The opportunities are contained in the rules of procedure and made public.

The self-assessment by parliament of Kenya indicates that they were faring well in some but not all aspects. The legal mandate derived from the 2010 constitution, supported by various acts of parliament, subsidiary legislation and the standing orders, gives parliament unlimited powers to amend bills without seeking the consent of the executive reflective of a distinct separation of powers between the two arms of government.

Table 30: Respondent assessment of legal mandate of parliament in Kenya and SA.

<i>1- Clear need for increased capacity 2- Basic level of capacity in place 3-Moderate Level of Capacity 4- High Level of capacity in Place</i>										
Type of respondent	Legal Mandate									
	Law making		Power to amend Bills		Opportunities for public input into the Legislative		Mechanisms to Track Legislation		Power to send back legislation for review	
	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa
Committee1	3	4	4	4	3	4	2	4		4
Committee 2	-	4		4		4		4		4
Regulator	4	4	4	3	4	4	4	2	3	3
PMO	4	4	4	4	4	4	2	3	4	4
Expert_ Govt	4	3	3	3	4	4	2	3	3	3
Operator1		4		4		3		3		4
Operator2		3		-		4		3		
Operators - ISPA	-	4		3	-	4		4		-
Average Rating	3.5	4	3.5	3	3.5		2.5	3.5	3	3.5

Source: Author's compilation.

According to available data from Kenyan parliament, whilst the 2010 constitution requires public consultations by parliamentary committees on any issues of public interest there are still limited publicised opportunities for public participation. Parliament consequently introduced public

hearings in 2011, but due to capacity constraints, it is currently only implemented for the budget process. Whilst acknowledging these weaknesses parliament further highlighted time limitations, inadequate staff and coverage of public consultations, insufficient facilities and limited public knowledge on the opportunities for participating as affecting implementation of legal mandate.

In the Kenyan case a respondent (named Rad) from the Parliamentary Monitoring Organisation (questionnaire response in 2012) acknowledged that whilst the constitution specifically provided for public input into the legislative process, there was nothing compelling parliament to take into consideration this involvement. This was supported by a former government representative who explained that:

“There are several steps from the Ministry to the Constitutional Review Commission to stakeholders to Parliament. But even with these provisions parliament has some leverage to make amendments” (Ndemo, questionnaire response in 2014).

Respondent Rad’s suggestion that acknowledgement of input and consideration by stakeholders be documented and tabled at plenary has since been adopted. Public hearings have been introduced, and it is expected that parliamentary committees will table inputs for consideration by plenary. However, as determined in this section, there is limited capacity to cover public consultations. In concurrence a respondent from the ministry reflected that:

“In most cases the Parliamentary Committee is supportive but sometimes it does not understand the urgency of some legislation that in most cases delay and cause confusion in the sector. For example, the Freedom of Information (FOI) Bill has been in and out of Parliament for the past 10 years, yet the sector needs guidelines as big data becomes more important. If Parliament were to appreciate the impact of such law, it would help, but politics usually takes centre stage where you cannot divorce politicians from doing what they know best. They tend to fear that FOI will expose their interest, and hence it becomes difficult to move such a law” (Ndemo, questionnaire response in 2014).

Furthermore, respondent Ndemo viewed the process as flawed since:

“Once a law is passed, parliament in most cases does not follow [up] to see the impact not unless the civil society organizations (CSOs) bring up the matter. In

this case, Parliament summons the Ministry to explain if there is need for review of the law.”

Using the example of the Kenya Communications Amendment Bill (2008), respondent Ndemo confirmed the need for a mechanism to track impact of legislation. Whilst it was realized at the time of passing the bill that further amendments were required almost immediately the current process utilizing the miscellaneous amendment process takes a long time. It took a lengthy period to get the amendments done.

An important determinant of parliamentary performance as revealed by the respondents is the ability of parliament to track legislation. Both the institution of parliaments and even the key stakeholders in the sector concur on the inadequate of capacity to track legislation. The ability to track legislation requires that mechanisms in place are supported by sufficient resources to capture evidence on the impact of ICT legislation. The current situation was that some mechanisms existed, but these were inadequate with parliament failing to facilitate smooth rule functioning and strengthening. The lack of capacity is further confirmed by another respondent, a former representative of a government department, who observed that:

“...more regular review of legislation through impact assessment and engagement with stakeholders and bodies responsible for implementation is required. Capacity building among MPs needs to be improved. This should also extend to the support function which should include a strong professional core properly qualified to do research and work on policy and legislation and provide support to MPs and committee members” (Weeks, questionnaire response in 2013).

Parliament of South Africa indicated adequate mechanisms to track legislations that have been enacted with access to resources to provide evidence on the impact of ICT legislation. The rules and procedure operationalises the constitutional provisions empowering parliament to send back legislation to the executive for review, and this provision is often exercised.

With regards to sending bills back to the executive for review, the Kenyan representative from government (named Ndemo) assessed parliament as having moderate capacity in place as the

rules and procedure, and/or other laws empower the parliament to send back legislation to the Executive for review. However, in reality, this provision is usually not exercised as,

“Even with glaring anomalies, Parliament never sends back bills. They prefer reviewing it themselves without giving stakeholder a chance to contribute if the Bill has to be revised unless the Bill comes up when the Parliament is prorogued for elections” (Ndemo, questionnaire response in 2014)

Moreover, as respondent Ndemo further highlighted,

“...the executive has veto powers within two weeks and if no veto within the stipulated period, the law is presumed as passed” (Ndemo, questionnaire response in 2014).

Another capacity element identified by the respondents as influencing effectiveness parliamentary participation is its source of legitimacy⁷² for legislative activities. Political legitimacy is about the validity of decisions made on laws, policies by the candidates for political office. As described in Chapter 1§ 1.0 legitimation alludes to the recognition and acceptance, by key stakeholders within the sector, of the right of parliament to act in some manner, placing an obligation on stakeholders to abide by the action (Copeland & Patterson, 1998). The seriousness of the perceptions is reflected by how industry responds to parliamentary intervention, as highlighted by an interviewee from South Africa that:

“Parliament has power and authority to influence ICT sector development, and as such is taken seriously by operators. In most cases when parliament calls for submissions, operators respond positively and at the highest possible level of management, with often times CEOs themselves going in person to attend” (Barandse, personal interview in 2015).

Furthermore, the interviewee indicated that this has become the norm rather than the exception amid fears of being labeled “undermining parliament” if firms do not respond to call for submissions with top level representation.

⁷² juridical legitimacy - appreciate the legal basis of the system; symbolic legitimacy- feel emotionally attached to the system ; instrumental legitimacy-perceive the system to be performing to their satisfaction

A critical stakeholder in determining legitimacy and authority of parliament especially in the case of SA is identified by respondents as the president of the country. One respondent observes that in South Africa:

“During the term of President Mandela parliament wielded power and made decisions to the point where Telkom invested in a Parliament Liaison Office in Cape Town. A senior manager was placed in this office to engage constantly and regularly with parliament. However in President Mbeki era this model did not yield results as power was shifted and resulted in the closing of the office, as private sector realized that decisions were now being made elsewhere.”

Yet another critical source of parliamentary legitimacy is the private investors especially within the mobile industry as explained by a representative from the private sector.

“Due to the high cost high risk and high returns nature of network industries investors are constantly looking out for certainty that their investments are protected. Parliament gives certainty and guarantee for foreign direct investments by maintaining a trusted legal framework” (Barandse, personal interview in 2015).

Additionally:

“Regulation holds value for network infrastructure industries. Parliament can hold or destroy value by changing policy or a phrase within a policy. Foreign investors use parliament as a signal/ yardstick to check validity of investment decisions” (Barandse, personal interview in 2015).

Furthermore, interdependencies amongst key players in the sector affect the interplay of power influencing consensus building within this space as:

“Consensus is highly contentious and often results in unintended outcomes. There is a high interference by political parties in the decision making process which ultimately influences the direction of strategy around critical issues in the sector. Case in point is the digital migration, end of termination rates, etc.” (Barandse, personal interview in 2015).

A critical and important factor influencing the exercise of parliamentary power in the sector is its ability to delegate to the regulator. Parliament is often perceived as ‘highly disorganized’ and technically not equipped to deal with ICT issues and thus delegates certain tasks of policy

adoption to the regulator (ICASA and CA) as determined by the ICT laws in each country, i.e. ECA (SA) and KICA (Kenya).

“Parliament by nature delegated authority to the regulator to act on their behalf and as such may or may not have direct influence on the impact of regulation. As such any involvement of parliament outside of this delegation may be deemed as undermining the power to delegate” (Barandse, personal interview in 2015).

The relationship between the regulator and parliament is very much that of principal-agent. This principal-agent relationship if not managed effectively can influence to a great extent, the ability of parliament to implement its mandate. A challenge, however, is often the ministry by passing parliament and issuing policy directives to the regulator even though it is within their mandate. These relationships especially as observed in South Africa determine outcomes and affects consensus making.

“By nature ICASA can make contestations on parliament decisions but because of the principal- agent relationship they ultimately seek guidance from parliament. Parliament too depends on the minister, who may be influenced by party politics to take a certain policy direction” (Barandse, personal interview in 2015).

However according to respondent Cohen from the personal experience of having been appointed as an ICASA councilor in 2008, the parliamentary based appointment and oversight process used is a “competitive, professional engagement with sufficient structures in place”.

A good measure of legislation capacity is also the ability of parliament to review bills and provide opportunities for input into the bill process through hearings. The questions in this category assessed the capacity of parliament to conduct legislative scrutiny for ICT policy making through committees and debates. Three indicators were assessed: 1) the adequacy of the period of review for ICT legislation, 2) existence of a dedicated ICT committee with a mandate to review ICT policy issues, and 3) if the ICT Committee and other committees hold public hearings on ICT policies in which evidence from the executive and the public are taken. Table 31 summarizes the results of this assessment.

The responses in Table 31 reveal no major contradictions but a clear indication of insufficient time set aside for the review of bills in both countries. In Kenya, the parliament indicated that the

two months period provided is insufficient and that there is a great need to review relevant laws to extend it to four months. The representative of the Kenya government (named Ndemo) concurred with this but further explained that the current bill review process takes a long time especially when the changes are significant while smaller changes take the miscellaneous amendment route, which in itself takes a while. The same lack of capacity is lamented in South Africa as:

“Parliament does not have adequate capacity to conduct impact assessments on effects of legislation, decisions and budgetary consideration on agencies ability to implement” (Cohen, personal interview in March 2015).

Table 31: Respondent assessment of bill review and hearings in Kenya and SA.

<i>1-Clear need for increased capacity 2- Basic level of capacity in place 3-Moderate Level of Capacity 4- High Level of capacity in Place</i>						
Type of respondent	Bill reviews and hearings					
	Period of review of any ICT legislation		Existence of an ICT Committee		Public hearings on ICT	
	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa
Committee1	2	-	4	4	3	4
Committee 2		4		4		4
Regulator	3	-	4	3	4	4
PMO	-	4	4	4	4	4
Expert_ Government	-	-	3	4	4	4
Operator1		-		4		3
Operator2		4		4		4
Operators -ISPA		4		4		4
Average Rating	1	4	3.5	4	3.5	4

Source: Authors compilation

The bill review process, according to a representative from the parliamentary monitoring organization in South Africa, is lengthy because it's within a contested policy space:

“ the ICT sector is a contested space and the legislative process has become lengthy with complex and contentious bills taking more than 3 months”(Alli, Skype Interview in March 2015).

With regards to the existence of oversight committees, the self-assessment rated the South African Parliament as having a high capacity in place, having two committees with a sole mandate to review ICT policy issues. In Kenya, on the other hand, there was a committee with a split mandate for the ICT and energy sectors which are both in infrastructure industries but requiring different technical knowledge to manage. Given the insufficient capacity experienced in the Kenyan parliament having a departmental committee that focused on two policy areas was common. The difference in capacity levels between the committee structures of Kenya and South Africa becomes very evident, as South Africa in 2014 introduced two dedicated committees focusing on the ICT policy area following a presidential proclamation (See Chapter 5§ 5.2.3) that split the department of communications in line new mandate. The existence of two committees in SA could, however, increase the degree of dispersion of responsibilities in the sector.

In order to provide opportunity for input into the legislative process parliament, through the committee systems, often utilizes public hearings but these only happen within parliament only. According to respondent Cull, there was a need to solicit the views of more ordinary citizens so the committee should hold hearings in provinces across the country.

Furthermore, respondent Cull highlighted that when the ICT Committees and other committees hold public hearings on ICT policies in which evidence from the executive and the public was taken, there was often insufficient opportunities to have further engagement on the responses of the government department. A more structured process where more detailed motivations and reasons were advanced for decisions taken was, therefore, required.

6.2.4 Mandate 3: Oversight

The committee system is a key parliamentary structure for oversight. It is where parliamentarians develop expertise and conduct thorough examination of proposed legislation, executive actions, policies and expenditure. Oversight is the mechanism used by parliament to maintain a balance

of power among the three arms of government and to assert citizens' interest against executive decisions. The focus of the questions in this category sought to assess parliament's ability to review, monitor and supervise government and public agencies' actions on the implementation of policy and legislation to ensure public policy reflects and meets the citizen's needs.

The questions that were asked were directly related to the level of oversight performed by sector related committees on government actions as well as the expenditures of state owned enterprises. Key factors influencing the oversight capability include the level of investigative powers, the power to follow up on recommendations and the mechanisms used by parliament to obtain information from the executive. This should be supported by access to adequate resources to undertake oversight activities. An important element of oversight is providing opportunities for minority/opposition parties to engage in effective oversight of government actions and expenditures. Thus, the study assesses the existence and effectiveness of oversight committees, their powers and resources available to them through seven key elements as listed in Table 32.

Respondent Cohen notes that in a parliamentary democracy it is expected that parliamentarians as elected leadership hold the public interest at heart and would be able to intervene in areas of importance to find out why outcomes have not been achieved. This provides insight into the effort both parliaments have directed into developing oversight capacity which is rated as moderate to high. The increased entrenchment of the separation of powers has resulted in defined roles and responsibilities within the broader governance system. In South Africa, the oversight function of parliament is performed by sector related committees⁷³ and other special committees and often exercised both at committee and plenary levels. In Kenya, in addition to the Communications Committee, there is a Public Accounts Committee and Public Investment Committee that have other mandates.

⁷³ In SA, the Portfolio Committee on Communication conducts oversight of government agencies including ICASA, MDDA and the Department of Communication; Portfolio Committee on Telecommunication and Postal Services provides oversight on . In Kenya the committee on energy and communication oversees the ministry and through the ministry the actions of government agencies such as CAK, e-government directorate

Respondents provided differing insights into the capacity of the parliament of SA to conduct oversight. Whilst some viewed the capacity as improving tremendously in recent years others felt there is room for improvement especially with regards to investigative powers:

“There is huge room for improvement in investigating implementation issues and improving the institutional memory of parliament... the same issues occurs year after year, and my view is that the committee in general fails to hold the executive and portfolio organizations accountable” (Cull, questionnaire response in 2014).

Respondent Ndemo regarded Kenya as having high capacity in the exercise of investigative powers by oversight committees. This is supported with clarity of rules as the ministry undergoes, at least, an investigative session with different committees annually. Furthermore sufficient mechanisms exist for the committee to obtain information from the executive to exercise its oversight function in a meaningful way. These mechanisms have proven time and again to work perfectly and are prescribed in the Public Finance Management Act with adherence taken seriously.

“Oversight committees have adequate powers in law to request and receive response on actions taken by the executive on the committees/parliaments recommendations- The Committee can summon anybody and can ask for any information”(Ndemo, questionnaire response in 2014).

Regarding the capacity to follow up on recommendations respondent Alli suggested that committees in South Africa should be more diligent and insist on more follow-ups when they scrutinize government departments. Mechanisms for the oversight committee to obtain information from the executive are available through department and agencies reporting which is done periodically: quarterly, annually and whenever asked. Furthermore, the respondent observed that:

“Mechanisms to obtain information from the executive include letters between the Chair of the committees and the executive Heads, PLOs who attend meetings; written questions and even the Deputy President as leader of Government business interventions when there are disputes” (questionnaire response in 2015).

In the case of Kenya, the Parliamentary Monitoring Organization, Mzalendo describes oversight committees as having adequate powers in law to request and receive response on actions taken

by the executive on the Committees/Parliaments recommendations - Committees are empowered by the act to receive these responses. This is supported by adequate resources to undertake activities as the committees have a separate budget to cover its operations.

Table 32: Respondent assessment of oversight committees in Kenya and SA.

1- Clear need for increased capacity 2- Basic level of capacity in place 3-Moderate Level of Capacity 4- High Level of capacity in Place															
Type of respondent	Oversight Committees														
	Existence of committees		Investigative powers		Oversight of spending by State Enterprises		Mechanisms to obtain information from the Executive		Power of to follow up on recommendations			Access to resources		Opportunities for minority/opposition parties	
	SA	Kenya	SA	Kenya	SA	Kenya	SA	Kenya	South Africa	Kenya	South	Kenya	South Africa	Kenya	
Committee1	4	3	4	3	4	4	4	4	4	4	4	2	4	-	
Committee 2	4	0	4	0	4	0	4	0	4	0	3	0	4	0	
Regulator	4	4	4	-	3	4	4	4	4	4	3	4	4	4	
PMO	4	4	4	4	3	4	4	4	4	4	3	4	4	1	
Expert_ Govt.	-	4	-	4	-	4	-	4	-	4	-	4	-	4	
Operator1	4		3		4		-		4		4		3		
Operator2	4		4		4		3		4		4		3		
Operators -ISPA	-		4		3		4		3		3		-		
Average Rating	4	4	4	3.5	4	4	4	4	4	4	3	3	4	3	

Source: Author's compilation.

The opportunities for minority or opposition to make meaningful input into the legislative activities of parliament were regarded differently as respondent Allie viewed committee meetings in the parliament of South Africa as a “platforms for robust exchanges and dialogue”. Respondent Allie felt the opposition voices get drowned during plenary. Respondent Cull, however, confirmed that:

“Oversight committees are dominated by the ruling party with very limited opportunities for minority/ opposition parties to engage or have in oversight of government expenditure. This has been a trend over the past 10 years with the

committee moving from being relatively collegial to one in which there is little real debate” (questionnaire response in 2014).

Budgetary oversight is considered a key mechanisms used by parliament to hold the government accountable for its actions. Respondent Cohen provided insight into the process:

“Parliament approves the budget votes for the different ministries. Subsequent to the presentation of the Budget by the Minister of Finance, each parliamentary committee discusses the different budget votes and has hearings with the relevant government department. In this process, the Communication Committee approves the budget votes for the different agencies implementing ICT related programmes” (personal interview in March 2015).

The respondent further remarked that:

“However upon implementation parliament often takes decisions that have a budgetary effect and may impact implementation capacity of agencies. This raises the question of how costing is done and exposes the lack of adequate impact assessments by parliament” (personal interview in March 2015).

The implementation of the oversight model by the parliament of SA has deepened oversight visits under the current chairperson as the committee continually seeks reasons why policy outcomes are not being achieved. The model could be a useful best practice guide that other parliaments can learn from. Oversight should be conducted irrespective of party politics and allow for oversight of all government departments as mandated by the constitution. However a balance is required, and parliament should not behave as self-appointed cowboys.

6.2.5 Financial and material resources

In order to effectively conduct its mandates parliament requires access to financial and material resources. The parliamentary system is not equipped for technical requirements as mostly their roles are limited to setting the overarching policy and governance through approval of budgets, appointment of statutory staff, overseeing of policy implementation. As determined throughout this chapter, in implementing their role parliament engages at different levels with different stakeholders from ministry through submissions, questions, approvals and appointments to the broader public and industry through public hearings and consultations.

The availability and independence of resources is identified as a significant factor for parliamentary effectiveness by key stakeholders within the ICT sector. A parliament with resources, capacity and the will to exercise its responsibilities will create the vibrancy required to support democracy. Parliaments should exert the constitutional powers they possess and do away with the practice where parliaments in some instances are viewed as sub-branches of the executive. Parliament requires independence to define the resources it requires for effective implementation of its mandate.

Table 33 identifies five critical factors a parliament requires to ensure adequate resourcing. These include powers of parliament to determine its own budget, resources for constituency development, mechanisms for receiving technical assistance and research and support staff as well as logistics to support the work of MPs. Most respondents scored parliamentary committees as supportive but often lacking the knowledge and capacity to deal with the urgency of some pieces of legislation, resulting in delays and confusion in the sector. The respondent assessments of parliament financial and material resources are shown in Table 33.

Parliament of SA assessed itself as having clear need for capacity in terms of determining its own budget as currently the budget for parliament is determined by the Minister of Finance. The case in Kenya is different as parliament is empowered by the constitution to make its own budget and submit to national assembly for approval through its parliamentary service commission, and this resulted in a rating of 4. The Kenyan Parliament is financially independent; it prepares its annual budget, and the executive cannot vary it.

“Parliament determines its budget for the year and the executive cannot vary it. It is stipulated in the Public Financial Management Act” (Ndemo, questionnaire response in 2014).

In terms of logistics, both the Kenyan and SA parliaments have sufficient office space, but this could improve since for PSA:

Table 33: Respondent assessment of financial and material resources in Kenya and SA.

<i>1-Clear need for increased capacity 2- Basic level of capacity in place 3-Moderate Level of Capacity 4- High Level of capacity in Place</i>										
Type of respondent	Financial and material resources									
	Power of parliament to determine its own budget		Logistics available		Resources for MPs constituency development activities		Mechanisms for receiving and coordinating technical assistance		Research and support staff	
	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa	Kenya	South Africa
Committee1	4	1	4	4	4	1	4	1	4	4
Committee 2		-		4		-		4		4
Regulator	-	4	4	3	4	-	3	3	4	3
PMO	1	1	-	2	4	3	1	3	3	4
Expert Govt.	1	-	-	3	4	-	1	-	3	3
Operator1		3		4		-		4		3
Operator2		3		3		4		4		4
Operators -ISPA		2		-		-		-		-
Average Rating	1	2	2	3.5	4	1	2	2	4	3.5

Source: Author's compilation.

“Parliament hires outside venues if the meeting programme is packed. The legislature is planning on increasing its size. All committees should have a designated meeting room” (Alli, questionnaire response).

And for Kenya:

“A more centralised office space for staff as they are currently operating from five different locations making it strenuous for MPs to seek assistance” (MP Kenya, questionnaire response)

Assessment of Kenya indicated adequate logistics; including office space to enable it perform its functions with all members having office space and for committee work. On the issue of resources for MPs and constituency development activities, the self-assessment for SA rated it at clear need for capacity. In South Africa, MPs have no constituency development fund that is used for development projects in the constituencies. Civil society highlighted the need for:

“Greater transparency around MP expenses and how MPs spend their time

during constituency periods.”

In Kenya, the situation is different as:

“MPs have a constituency development fund supported by an ACT that creates the CDF Fund. CDF is used for development projects in the constituency and is managed jointly by the MP through CDF Board. They, however, have to independently appoint management committees and are audited by the Controller of Revenue” (Ndemo, questionnaire response in 2014).

With regards having a structured system for receiving technical and advisory assistance from external sources, Kenya Parliament standing orders provide for this, and the clerk coordinates the technical departments in this regard. The ministry perspective is that currently:

“The parliament does not have a structured system for receiving technical and advisory assistance from external sources. This role is undertaken by Treasury which then reports to the Public Accounts Committee and parliament requires an office to independently verify treasury reports” (Ndemo questionnaire response, 2014).

In terms of research capacity, Parliament of South Africa was generally considered to have research and support staff, but these were inadequate and lacked requisite tools to enable them to provide MPs with information in real time. Basing also on the often poor quality of questions asked in parliamentary hearings there was an assumption that the support was not adequate. To mitigate this parliaments sometimes outsourced some of the work when need arose. According to the civil society representatives in South Africa:

“This capacity has improved over the years but ideally; each MP should have their own staff” (Alli, questionnaire response in 2015).

The parliament of Kenya has inadequate staffing. Yet adequate capacity supported by personnel with the right skills set is paramount to parliament discharge of its functions. Parliament is not equipped to deal with the technical, economic and financial objectives of the ICT sector. The parliamentary system is not equipped for technical requirements, their roles is setting the overarching policy and governance and as such approve budgets, appoint staff, oversee policy implementation.

6.3 Summary of findings

Table 34 summarizes the findings outlined in Section 6.2.

Table 34 Summary of research findings from respondent interviews.

Area of investigation	Themes	Summary of findings
Role of parliament in ICT sector reforms	Support policy adoption and the shaping of outcomes	<p>Custom based, significant and critical in policy shaping and as a custodian and sponsor of the legal framework</p> <p>Dealing with political issues on behalf of government ministries</p>
	Parliamentary ineffectualness	<p>Structuring of policy-making framework and principal – agent relationships influences or constrains parliamentary participation, as the clear cut definition of roles and responsibilities highly depends on the extent of separation of powers between the executive and parliament</p> <p>Institutional and technical capacity and knowledge to deal with ICT issues, especially at committee level, is required, the lack of which results in confusion and delays in implementing legislative activities.</p> <p>A proactive approach to providing a coherent framework that utilises a disciplined methodology could solve the problem of intangible outcomes and reinvent parliament for accountability</p>
Degree of openness and accessibility	Participation and engagement models	<p>Institutionalised engagement models and patterns of interaction result in predictable outcomes</p> <p>Patterns of interaction are ambiguous, weak or strong, and change as the sector matures, and the role of each stakeholder becomes better defined with frameworks set up to identify responsibilities that meet sector requirements.</p> <p>ICT committees provide the link between government and citizens and other key players but often lack the capacity and knowledge required</p>

Table 34 (*continued*) Summary of research findings from respondent interviews.

Area of investigation	Themes	Summary of findings
	Parliament a source of information	Parliament is a critical source of information on government priorities providing credibility and certainty for investors in the ICT sector Effectiveness of representation is influenced by access to information. PMOs have become an important alternative and reliable information source of information on parliamentary proceedings.
	Parliamentary consultations	Formal and informal consultations with stakeholders is key for decision and policy making
Degree of application of political power by parliament in ICT governance processes	Legal Mandate	ICT legislative capacity is weakened by the complexity and contentious nature of the sector Principal-agent relationships result in contradictions and inherent conflict especially with regards to consensus on sector priorities
	Ability to track legislation	Impact assessments on effects of legislation, decisions and budgetary consideration on agencies ability to implement is required to ensure intended outcomes

Table 34 (continued) Summary of research findings from respondent interviews.

Area of investigation	Themes	Summary of findings
	Parliamentary legitimacy	<p>Stakeholder perception of parliament influences or constrains the exercise of power by parliament in the sector. Building this reputation depends on the effectiveness of mechanisms in place to support parliamentary processes.</p> <p>Stakeholder perceptions on parliamentary power and authority influence level of response by key players to interventions with seriousness measured by executive level management engagement.</p> <p>Interdependencies among key sector players in the sector affects the interplay of power influencing consensus building</p> <p>Parliament is used as an important yardstick in guaranteeing certainty to investors that their investments are protected through a trusted legal framework</p> <p>Executive dominance weakens parliament ability to legislate as political party politics undermines the importance of separation of powers and the independency required for parliament to be effective.</p>
	Legislative Delegation	Effectiveness of delegation heavily relies on the structuring of the principal-agent relationships.
	Period for reviewing bills	Insufficient time to review legislation coupled with inadequate capacity to deal with ICT issues leads to poor legislative output

Table 34 (*continued*) Summary of research findings from respondent interviews.

Area of investigation	Themes	Summary of findings
Extent of influence of parliament in ICT sector reforms	Balance of power among state institutions	Oversight is the mechanism used by parliament to maintain a balance of power among the three arms of government and to assert citizens interest against executive decisions. Institutionalized investigative sessions/oversight visits provide useful mechanisms for effective oversight of government departments. Ruling party dominance limits input from opposition and minority parties compromising the representativeness and levels of debate
	Development of expertise and thorough examination of proposed legislation and executive actions	Committees provide a structure through which s all three traditional roles of parliament manifest and opportunities for structured interaction with the sector are provided. Committees are a key structure for oversight as they allow parliamentarians to develop expertise and conduct thorough examination of proposed legislation, executive actions, policies and expenditure.
	Power to exercise oversight	Investigative powers, power to follow up on recommendations and opportunities for minority/opposition parties to engage in effective oversight of government actions and expenditures are key elements for conducting oversight.
	Access to executive information for effective oversight	Power to request and receive executive information on actions is essential for effective oversight but can be limited by parliament capacity to utilize mechanisms effectively as well as other factors such as the principal-agent dynamics.
Level of institutional effectiveness	Independence of parliament to determine own activities	A parliament with resources, capacity and the will to exercise its responsibilities will create the vibrancy required to support democracy. Adequate resources to undertake activities as committees have a separate budget to cover its operations

Chapter 7

COMPARATIVE ANALYSIS OF THE ROLE OF PARLIAMENT IN ICT SECTOR REFORMS

7.0 Introduction

This chapter reviews the evidence presented in previous chapters in light of the current practice of law and the state of play by parliament in the ICT sector through the lens of institutional constellation framework used throughout. Drawing on the emerging themes and patterns from the findings in Chapters 5 and 6, Chapter 7 provides a cross-country comparison of the role of parliament in the ICT policy making processes of Kenya and South Africa by analyzing the trends, tensions, and contradictions in parliamentary participation. Chapter 7 is an institutional analysis using the concept of an institutional constellation and other arising sub-concepts such as state, power relations, representation, and interests to understand the different outcomes in each country.

The concept of an institutional constellation locates parliament and the state within the ICT ecosystem, providing the framework for the comparative analysis. It enables an examination of the political environment in each country, the diversity, responsibilities and power structures associated with decision-making processes and, more specifically, the parliamentary mechanisms and practices that determine outcomes for the ICT sector in Kenya and South Africa.

The document review in Chapter 5 revealed the formal legal basis for parliamentary engagement in the sector. The constitution mandates parliament to develop structures, processes, and mechanisms that result in parliamentary practices that are applicable and prevalent in the ICT policy-making arena, as identified in Chapter 6. The analysis identifies the different factors that influence parliamentary participation in the development of this particularly critical infrastructure industry in these two leading African countries regarding ICT development. The findings that emerge from the comparative analysis of the role of parliament in policy-making have practical implications for outcomes in the ICT sectors within these countries.

As indicated in Chapters 1- 3, this thesis is theoretically informed by the overarching role of the state in policy and regulation. It is widely accepted that states should provide public goods, regulate the market, enforce contracts, balance the economy, maintain order, and negotiate disputes. While state involvement in ICT sector development is, therefore, a given, it is the nature and degree of that relationship that concerns this study. As argued by Gillwald (2009) the success or failure of the reform and developmental strategies of states is influenced by the nature and quality of state involvement. There are thus internal and external factors affecting the quality and level of state involvement, importantly its decisiveness. The conceptual framework in Figure 10, through which the two countries have been analyzed, will assist in this final review of the evidence from a comparative perspective.

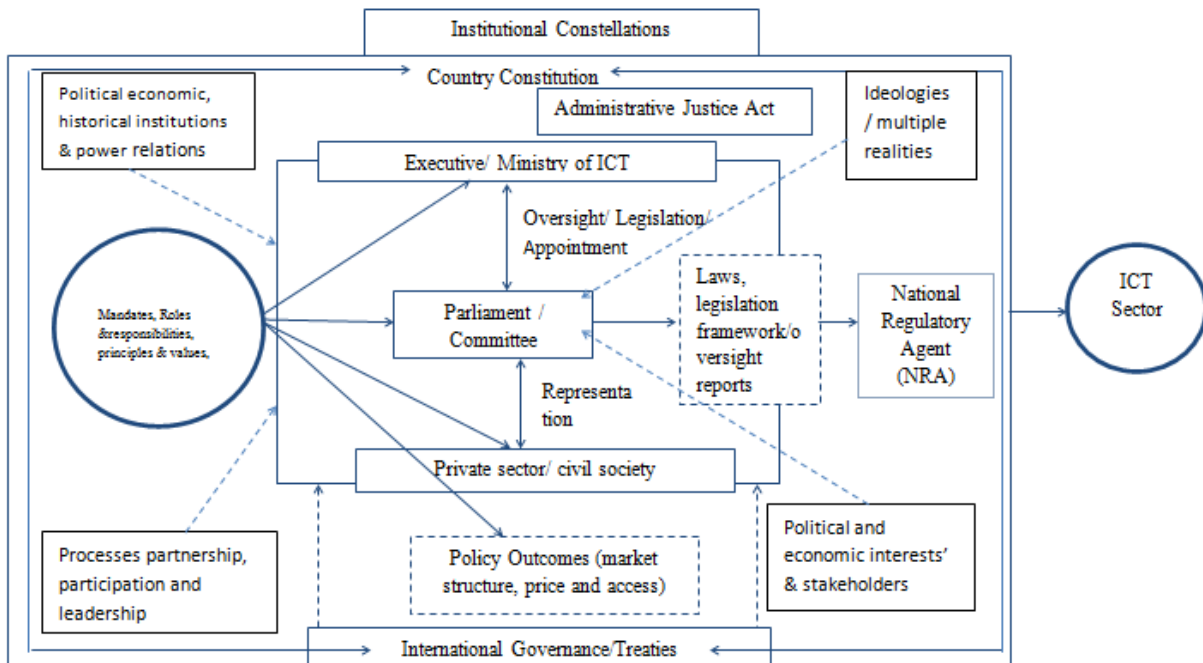


Figure 10: Locating parliament in a constellation of institutions. Source: Authors compilation

7.1 Political environment: A legal basis for the role of parliament in ICT sector

The political climate determines the level of government intervention in the ICT sector and, consequently, parliamentary participation. It is this political environment that defines the formal/legal/constitutional roles and functions of parliament within the institutional

arrangements of the state and the practice of parliament within a particular government. Formally parliament, through multiparty committees, is responsible for appointments to statutory bodies and their oversight. However, different administrations use the state instruments such as parliament in different ways even within the same party, with some being hands off (no accountability), and others hands on (interference) - forcing through decision making by majority or consensus in the national interest.

Consequently, the constitution determines the roles and responsibilities, principles and values and the relationships pursued by key state institutions and key players in support of ICT sector reforms. Chapter 5 emphasized the importance of a legal and institutional architecture that allows parliament to (1) hold government to account for effective scrutiny and oversight, (2) conduct transparent debate that leads to enactment of laws, and (3) ensure effective representation of citizens and other party's interests in dealing with the government. It is by implementing such a legal and institutional architecture that parliament can structure mechanisms that promulgate and manifest the principles and values of the constitution.

Parliament as the legislative arm of the state can contribute significantly to government decisiveness with significant implications for policy change and implementation. Depending on the makeup of parliament and the dominance of parties and the interests represented, it can constrain ICT development by vetoing legislation, weak oversight of agencies and supporting politically based appointments that reflect party ties or patronage instead of the technical expertise required by the sector. Establishing optimal levels of parliamentary involvement in the ICT sector is addressed in this thesis by considering the institutional theory, specifically historical institutionalism in relation to the empirical evidence on its role in the ICT sector in Kenya and South Africa. A conscious decision to pursue certain developmental strategies by the state ultimately determines the degree of its involvement in the ICT sector.

7.1.1. Extent of state involvement in ICT sector reforms

Both Kenya and South Africa profess to be “developmental states”, but it is not clear what distinguished them as such other than their claims to be so. While both governments strongly believe it is this form that can deliver economic growth and development, state intervention in the ICT sector at present is very much defined by a regulatory state perspective that has accompanied the global reform process. Regulatory states govern the economy through regulatory agencies empowered to enforce standards of behavior to protect the consumers against market failure. As Gillwald (2009) argues, in the case of South Africa, the development state has been more a rhetoric of the African National Congress than practice and was only ever actively deployed post the 2004 election with the introduction of the economic policy ASGISA in 2005.

Problems associated with the state’s inability to respond to market failure and indecisiveness in Kenya and South Africa are addressed through constitutional design by structuring the participation of the state institutions and their agents. The constitution defines the roles and responsibilities, principles and values and the relationships among state institutions that separate executive and legislative power as well as the legislative enactment from interpretation and between different levels of government. In this way the constitution determines the formal rules of the political system, mandating parliament’s role and leverage within the system. This following quotation by an interviewee Africa (named Barandse) in South makes clear the relationship between the political environment and policy processes.

“...separation of powers amongst state institutions depicts an ICT policy making the process that has clear cut responsibilities for policy formulation being the purview of the ministry of communication while policy adoption sits in parliament and the justice and courts do policy implementation with the regulatory and policy monitoring. This is meant to facilitate policy coherence, consensus building, and effective coordination” (Barandse 2015, personal interview).”

A comparable regulatory model was presented in Chapter 5. The model has been adopted in both countries with the establishment of a regulator, partial liberalization, and privatization. The regulatory model has influenced the adoption of a legal framework that separates roles within the

sector, with the government being responsible for policy making, NRAs for the implementation of the policy and operators, including ideally in terms of the reform model, privatized incumbents to roll out services.

The establishment of NRAs through an act of parliament has facilitated the growth of the sector, developing an enabling environment for regulating the market and ensuring sector performance through the Communications Authority of Kenya (CA) and the Independent Communications Authority of South Africa (ICASA). In theory, the Acts guarantee the required independence of regulation from state and private interests and ensure the enactment of timely legal provisions that are in line with national strategies and global trends for reforming the sector. It is in practice that the ineffectualness of the reform model and its failure to consider the institutional endowments (institutional capacity, individual competency, political culture and ethos, exercise of autonomy of statutory institutions, accountability, and transparency) of each country can be observed.

7.1.2. Political power structures

An analysis of the empirical evidence in both Kenya and South Africa indicates the legal basis for a parliamentary role in policy making, stemming from a country's constitution. The findings confirm that legislative authority and power are vested in parliament through a constitution. It is this authority that gives parliament power to intervene and veto in any matter as necessary to maintain national security, economic unity and to establish minimum and essential standards required for rendering of services. It is through the law-making role that parliament's constitutional powers manifest to make new laws, repeal and amend existing laws. Whilst the parliament of SA reflects the required capacity to perform its law-making role as supported by a legal mandate derived from the constitution and the arising administrative justice law, in Kenya the requirement of the constitution to provide for the consideration of public representations in committee work is compromised by the insufficient capacity of parliament to utilize mechanisms in place.

Empirical findings further suggest that the legitimacy with which parliament is perceived by its stakeholders is an important source of parliamentary power and authority. This perception can be

symbolic, based on either the acceptability or fairness of formal procedures guiding engagement or the effectiveness of legislative performance. These symbolic perceptions are defined to a large extent by the structural and institutional arrangements in place, determined by the overlying legal and constitutional system of each country. The level of effectualness of parliament in both countries has, to a certain extent, influenced stakeholder perception on the fulfillment of its role within the sector.

Mobile phone operators in South Africa perceive the power of parliament as symbolic, as indicated by an interviewee. The interviewee stated that responding to parliament's calls for engagement has become the norm rather than the exception amid fears of being labeled as "undermining parliament" if a firm does not respond to calls for submissions and more so at with top level representation.

"Parliament has power and authority to influence ICT sector development, and as such is taken seriously by operators. In most cases when parliament calls for submissions, operators respond positively and at the highest possible level of management, with often CEOs themselves going to attend" (Barandse, personal interview, 2015).

The perception in Kenya is to a large extent influenced by the parliament's inability to institutionalize engagement models with the different stakeholders. The general perception indicates that mechanisms in place are:

"very basic as it is upon the citizens to request and pressure parliament to participate. Furthermore, there is need to sensitize MPs to acknowledge this and introduce structured forms of engagement" (Rad, questionnaire response, 2012).

7.1.3. Participation and representation

Party systems and the underlying electoral system have been shown to have a significant bearing on state's decisiveness. A proportional representation system such as the one practiced in South Africa makes the parliament representative of popular wishes, in contrast to a plurality rule which favors single party control. Structural conflict of interests arises from political parties' interference in committee work. Requirements for appointing members to committees impacts

the ability of parliament to act in the broader interests of the sector, or even the economy as a whole, without impacting negatively on party interests.

South Africa has de jure separation of powers yet de facto parliamentary decision-making is dominated by the executive through a party system with single control and a decisive government, with high levels of stability. Kenya, on the other hand, has a distinct separation of power in practice in conformity with its presidential system, in which the executive sits outside of parliament.

The separation of power increases the number of veto points in the political system, further fragmenting the ICT sector as more institutions are introduced to the decision-making chain. Fragmentation within the sector (shown in Table 35) has not served the sector well rather; it has either offered a safety net for centralized decision making or as is the case here, has diffused power from specialized or dedicated agencies, so they are unable to take decisions autonomously. The veto power assigned to parliament in the ICT policy making process has created serious regulatory bottlenecks, with critical sector development policies being delayed in parliament for months and even years. It then takes the interested bodies to lobby the committees around decisions in accordance with the public processes required by law.

Table 35: Institutional fragmentation in the ICT Sector of Kenya and South Africa.

Key dimensions	Definition	Kenya	South Africa
Institutional diversity	Number of institutions involved	High Institutional fragmentation	High Institutional fragmentation
Distribution of responsibility	Allocation of policy decisions to different institutions	High dispersion of responsibilities	High dispersion of responsibilities
Power structure	Institutional capacity to control policy decisions	Decentralized	Hierarchical and centralized

Source: Authors Compilation based on Jordana & Sancho Matrix (2004)

An important element central to the findings of this study becomes the fact that government, through parliament, structures political participation in the sector through a variety of

mechanisms (discussed in Section 7.2) as well as its committee systems. The decision-making processes in the broader governance environment, such as delegation mechanisms and veto powers, then articulate the power structures both formally and informally. Legislative rules in parliament decentralize decision-making to multi-party parliamentary committees offering an opportunity to deal with the specialized and technical requirements of policy and law in this dynamic sector, away from the party and government leaders. The practice, however, has to contend with other institutional factors that include structuring the principal-agent relationships and mechanisms for vetoing policy decisions discussed in Section 7.2.

7.1.4. ICT sector arrangements

The political structure influences arrangements within the ICT sector in both Kenya and South Africa to a large extent. In both countries nominally there has been progress towards reaching national policy objectives of increasing affordable access to a wide range of ICTs. Global indicators measuring how each country is performing in developing its ICT sector confirms this, placing the two countries among the top performing African countries. The pace at which this is being achieved, and how well these countries compare relative to similarly developed economies, is the real measure of their success. While Kenya has moved up in global ranking from 126 in 2009 to 124 in 2014 in the ITU IDI, South Africa has steadily descended in global rankings over the last five years to 90 in 2014 from an 87 in 2009.

Chapter 5 presented evidence that both countries have ICT sector institutional arrangements characterized by high fragmentation with high dispersion of responsibilities (see also Table 35). The major disjuncture is in the way power is structured. South Africa has a hierarchical structure with the delegation to agencies playing a major role in the decision-making processes. Kenya has a decentralized power structure through a federated government with decisions made at both the national and county level. Ultimately sector arrangements reflect the governance arrangements. Appointment of councilors (South Africa) and board members (Kenya) to the regulatory body is more on the basis of political allegiance (as it is in many jurisdictions) but in both these cases, though arguably more so in South Africa, this trumps critical technical expertise that is a requirement in law. This has produced conflict and ineptitude, as appointees are accountable within a system of patronage rather than within a transparent and accountable legal system

designed to ensure the institutions operate in the public interest.

7.1.5. An underutilized formal system

It is evident from the findings in Chapters 5 and 6 that parliament is widely acknowledged as a significant player in ICT policy formulation and implementation, based on responses (interviewees: Barandse and Cohen in 2015; questionnaire respondents: Cull and Ndemo in 2014). While a formal legal system exists to shape and define political and power structures, it is underutilized and ineffective in influencing parliamentary effectualness to a large extent. The effectiveness of parliament is influenced by how principal-agent relationships identified in Chapter 6 (among other political, legal, social and institutional factors) are structured to influence outcomes. Both countries present evidence of parliament effectiveness being hindered by inadequate internal designs for inclusive participation that limits parliament ability to facilitate core legislative activities. This is worsened by an executive and political party dominance that weakens parliamentary oversight and principal-agent relationships that result in contradictions and inherent conflict. An insufficient parliamentary capacity and technical knowledge in the ICT sector causes confusion and delays. An electoral system with constitutionally stipulated powers at stake (either directly or indirectly) to influence MPs incentives.

Empirical findings further indicate that a significant factor for poor outcomes lies in the ineffective utilization of the mechanisms that exist. For example, both Kenya and SA parliaments' oversight committees have investigative powers over implementation issues including budgetary matters. These investigative powers are enshrined in the rules of procedure or other laws but are seldom enforced. An example to expound this is the case of South Africa where parliament calls the department to explain the failure to expend budget, or ICASA is wrapped over knuckles for non-performance, and yet there is no evidence of conformance to any recommendations agreed. It is clear that parliament has separate powers but does not use mechanisms at its disposal effectively (Kenya) and/or can be exploited by the government through political party systems to achieve preferred outcomes that are not necessarily in the public interest (South Africa).

7.2. Parliamentary practices and policy outcomes

In implementing its mandates, a number of parliamentary practices are identified that influence the effectiveness of parliamentary participation and, consequently, the policy outcomes and developments in the ICT sector. These are discussed in the subsections that follow.

7.2.1. Structuring principal-agent relationships

Parliament, through its committee system, is a significant political institution in the structuring of principal-agent relationships in the ICT sectors of both parliaments utilising a set sequence of delegation. The principal-agent relationships, while anchored in a public interest perspective, determine the ultimate form of ICT policy. It is through legislative delegation that the question of parliament's responsiveness to broad public interests and its administrative capacity to implement decisions and ensure sustainable implementation of policy changes is raised. The effectiveness of the delegation heavily relies on how the principal-agent relationships are structured. This was confirmed by a South African respondent (named Cohen) in 2015, who observed that:

"..in a parliamentary democracy it is expected that parliamentarians as elected leadership hold the public interest at heart and would be able to intervene in areas of importance to find out why outcomes have not been achieved".

Chapters 5 and 6 confirm three distinct levels of delegation prevalent in both Kenya and South Africa. The first level of principal-agent relationship occurs when citizens delegate decision-making to members of parliament, specifically through a constitutional mandate that gives the citizens power to replace members of parliament through representation mechanisms and an electoral process. This level of delegation gives parliament the power to act and interact on behalf of citizens in the ICT sector, with the expectation by citizens (as the principal) that elected members (the agent) will represent their best interests at the national level.

The arising principal-agent relationships at this level are very much influenced by the incentives that accrue to individual MPs, which are determined by rules regulating electoral competition. These incentives influence the MPs' actions as they often act in accordance with their master's

preferences. Moreover, MPs' capabilities are determined by electoral success and the constitutional powers of government positions at stake.

In the South African case democratic participation and requirements are set out in an administrative justice framework. A good example is how the processes for legislation and appointing a regulator in South African looked both tedious and protracted on paper, with all the checks and balances in place to ensure compliance as required. However, the reality reflects political party and executive dominance, which undermine the multi-party and participatory structure of parliamentary processes to achieve party preferences and control outcomes. Such processes become relatively seamless when the executive interferes with parliamentary decision-making processes. Party preferences are filtered through ruling party dominated committees with whipping practiced to ensure favorable outcomes. This limits input from the opposition and minority parties, thereby compromising representativeness and levels of debate. This confirms that by and large the parliament of South Africa can be categorised as emerging.

In Kenya's case, while there is heavy influenced by the combination of distinct separation of powers and a constituency-based electoral system that could provide a legal basis for greater parliamentary accountability, the highly fragmented sector arrangements compounded by a lack of internal capacity to utilize parliamentary instruments and mechanisms constrain parliament's participation.

Both the Kenya and SA parliaments have put in place mechanisms to promote representation that ensure a sustainable relationship where the agent (parliament) acts in the best interests of the principal (citizens). These include:

- Informing and educating stakeholders about what parliament does,
- Soliciting and receiving input into parliamentary proceedings and programs,
- Providing mechanisms for interest groups, civil society, and individuals to give input on government policy and legislation.

Chapter 5 presents representation mechanisms and processes utilized by both parliaments with Chapter 6 confirming such practices as prevalent within the ICT sector.

The empirical evidence reveals three essential practices as pertinent to support effective representation in ICT policy and decision making in Kenya and South Africa. These include parliamentary openness and accessibility- reflecting the establishment of engagement models and patterns of interaction; the usefulness of parliament as a source of information; and the importance of parliamentary consultation in decision and policy making, as described below.

Institutionalizing engagement models supports effective representation by parliament as it provides MPs with continuous opportunities to interact with constituencies to understand and capture interests, views, and perspectives. Parliament uses various processes and tools such as questions, motions, resolutions to bring these issues to the attention of implementing institutions for redress. The openness of the committee system fully embraces the models and patterns providing opportunities for parliament to consult and get feedback from citizens and stakeholders. The quality and effectiveness of these interactions depends on the level of understanding of interested parties of the role of MPs in the ICT policy process.

The South African engagement model, together with the quality and nature of submissions made, creates patterns of interaction amongst key players within the ICT sector giving rise to a model as depicted in Figure 11. Findings in Chapter 6 indicated multiple interactions that over time result in predictable outcomes with incentives linked to specific contextual factors.

Patterns of interaction with each key stakeholder arise out of both organized and ad hoc engagements as summarized in Table 36. The patterns of interaction can either be ambiguous, weak or strong. They normally change as the sector matures and the role of each stakeholder becomes better defined with frameworks set up to identify responsibilities that meet sector requirements. These patterns are determined by the range of strategies which can either be of a broad or limited nature as the sector learns from past actions. Similarly, the patterns arise out of situations that can either be tightly constrained or less constrained as decisions are made within the context of the ICT ecosystem or with other external stakeholders that are required for effective implementation of the sector reforms.

It is when engagement models are institutionalized and patterns of interaction established that

cooperative and symbiotic relationships with citizens and recipients of policy outcomes result in predictable outcomes. The effectiveness of the engagement models is thus influenced by parliament’s levels of accessibility and openness. Ultimately parliament becomes a critical source of information on government priorities and provides credibility and certainty for investors in the sector. This has to a large extent influenced the use of Parliamentary Monitoring Organizations (PMOs) as an alternative and reliable source of information on parliamentary proceedings.

The parliament of SA proactively promotes access, transparency and openness to its processes through civic education, multiple channel access, live streaming of plenary and committee sessions, publishing the plenary schedule for every term and implementing such initiatives as taking parliament to the people and establishing parliamentary democracy offices. In Kenya public participation is hampered by low staffing levels, a limited number of committees, lack of time to scrutinize proposed legislation due to slow working committees, and poor support from government agencies. Openness is inconsistent with the information published, lacking emphasis on recognizing public ownership of information.

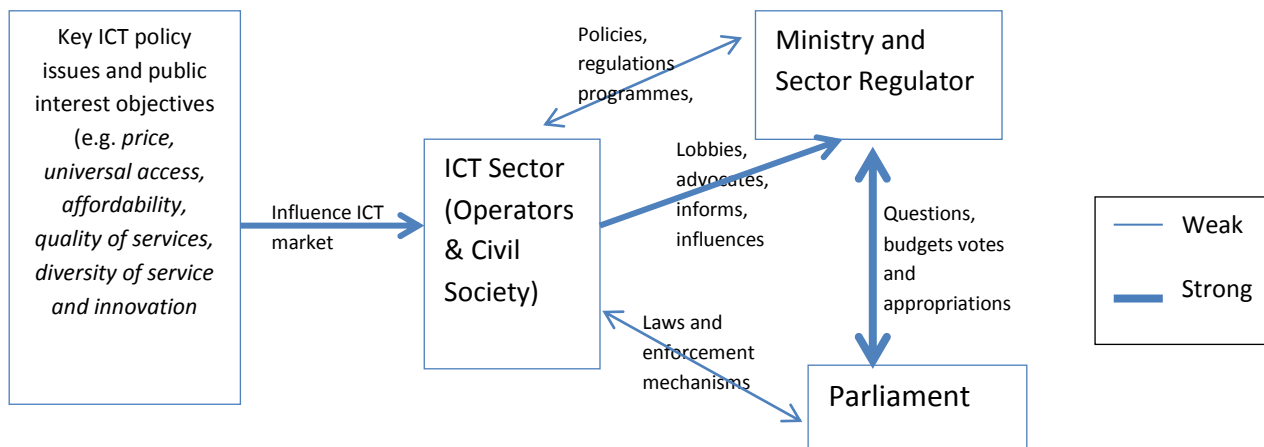


Figure 11: Sector engagement patterns. Source: author’s compilation

Table 36: Patterns of interaction between parliament and stakeholders in Kenya and SA.

Parliament	Regulatory bodies	Civil Society	Operators/private sector
Parliament of Kenya	Strong inferences and specific predictions about likely patterns of behavior (guided by law).	Weak patterns of exchange (formal structures and mechanisms often ignored).	Weak patterns of exchange (unstructured engagement).
Parliament of South Africa	Strong inferences and specific predictions about likely patterns of behavior (guided by law).	Ambiguous inferences about patterns of interaction (formal structures and mechanisms in place but often conflicting priorities).	Strong inferences about patterns of interaction with institutionalized engagement models.

Source: Author's Compilation.

The differences in electoral systems in Kenya and South Africa account for the significant disjuncture in the structure of political participation within the ICT sector. Different electoral systems influence the incentives for MPs with either a party or candidate vote determining actions. The Kenyan electoral system is candidate-centered and cultivates personal votes; voters directly decide which of the party candidates will represent them in parliament. As a result candidates in Kenya have substantial incentives to compete against one another, promoting intra-party competition and influencing involvement levels. The South African system, on the other hand, is party-centered; voters have no ability to affect which of the party candidates, actually represent them in parliament, subsequently cultivating party votes with a very little incentive for candidates to compete amongst themselves.

The Kenyan system provides an example of how constitution based systems provide opportunities for politicians to seek focused policy benefits for their constituencies. MPs seek re-election by cultivating personal votes as an optimal strategy through providing private services to voters or through providing particularistic services and favors to special interests groups in return for campaign support. Given the institutional designs prevalent in South Africa, individual MPs

cannot claim credit for policy changes since there are more MPs involved. At best they celebrate party successes and use these to gain personal votes but also claim credit for public work projects located in their constituencies and for benefits they have helped deliver. The respondents Barandse, Cohen and Ndemo (whose views are used in Chapter 6), having worked with parliament from both a private and public sector perspective, observed that MPs do cultivate personal votes through building relationships with dominant players in the sector, who would then support their initiatives at constituency level.

The second level of delegation is found within the internal organization of the executive and parliament through the adoption of sector arrangements that create a centralized or decentralized authority. Ministerial positions, committee and agenda control mechanisms that structure the composition of parliament, are reflected as essential elements at this level of delegation as they influence the power relations between the executive and parliament. In the South African case, for example, the executive, through the president, often uses parliament as the legitimation arm of government, making it subordinated and a mere rubber stamp of the executive decisions. This is understandable given that separation of power is undermined by the dominance of the ruling party, and by de-facto, it doesn't exist and yet by de-jure it does. In both Kenya and South Africa, however, participation is structured through a ministerial model in the sector, with principal-agent relationships determined by constitutional regulations, sector institutional arrangements as set up through the ICT related acts (ECA and KICA), ministerial positions, the power to control committees and plenary agenda.

As discussed in Chapter 2, two institutional arrangements are prevalent within the ICT sector worldwide. There is, on the one hand, a supra-ministerial model which gives formal authority of the ICT development processes to the president or prime minister of a country and, on the other hand, a ministerial approach that favors distributing policy functions to several ministries, with a centralized role of a higher level authority being absent or weak. The institutional arrangement adopted is meant to provide clarity of roles, the objectives and independence of the regulator, participation models within the regulatory process by interested parties, and transparency of regulatory decisions and accountability of the regulator for its decisions.

Both South Africa and Kenya implement an integrated ICT model with specific ministries given full authority over, and responsibility for, most ICT policy functions. Furthermore, policy functions are distributed across departments, agents and committees but are coordinated by a dedicated ministry that manages the sector. It is the ministry that is then shadowed by the parliamentary committees holding it accountable through various mechanisms such as question time, legislative hearings, specialized investigations, reviews and studies by parliament, briefings from the ministry or department/agent visits for fact-finding. These mechanisms support parliament to maintain a balance of power and to assert citizens interest against executive decisions through institutionalized investigative sessions/oversight visits.

However, tipping of this power to the ministry makes parliament “reactionary rather than proactive in providing a coherent framework, as it fails to take on the leadership required to coordinate interest groups, leaving it to the ministry with its own preferences resulting in the sector remaining fragmented and fractious”, according to questionnaire responses by respondents Rad (in 2012), Weeks (in 2013), and Alli (in 2015). Committees, however, allow parliamentarians to develop expertise and conduct a thorough examination of proposed legislation, executive actions, policies, and expenditure.

From a parliamentary perspective, the principal-agent relationship at this level is a reversal of the arrangements at the first level, converting parliament from being an agent to principal. Often, the agency relationships in this space result in contradictions and inherent conflict especially with regards to a consensus on sector priorities, with agents, often behaving opportunistically (personal interview with respondent Barandse, February 2015). Parliamentary participation becomes a product of the extent of separation of powers between the executive and parliament.

A critical element of parliament’s effectiveness in structuring political participation is the availability of power and capacity to request and receive executive information on actions. This can be significantly limited by parliament capacity to utilize representation mechanisms effectively as well as other factors arising from the principal-agent dynamics. The case of South Africa presents clear examples of this, where two dedicated committees review and receive briefings from the relevant departments and agencies and, through these mechanisms, the

committee questions and contributes to the sector priorities. The consensus is then achieved through debates and trade-offs that become a critical element of committee and plenary work.

Delegation to various agents, specifically to the regulator by parliament through administrative procedures and laws, presents yet another level in the sequence. A delegation of responsibilities to the national regulatory agency (NRA) is a governance practice prevalent in both Kenya and SA. The major difference lies in the appointment process of members to the regulator, in South Africa using a parliament-led process and Kenya subscribing to an executive-led process, all reflective of the political governance environment in each country. Global best practice and international law have established that a parliament-led process is best for the appointment of the regulator to protect the system against political interference. The above-stated difference, therefore, accounts for the outcomes and associated impact on regulatory independence.

In both country contexts, the principal seeks to create conditions using procedural and democratic means, but results are ensured by appointing the ‘right’ agents, granting sufficient veto powers and requirements of notice/timing which the principal can then use to their advantage. The principal directs the actions of the agent to ensure preferred outcomes, but if the administrative or legal processes require accountability or consultation (public participation) the degree to which the principal can guarantee their preferred outcomes above possibly, conflicting public preference is limited.

7.2.2. Vetoing the ICT policy and decision-making process

State indecisiveness and policy stability are identified right at the onset of this study as key governance problems, which parliament by design contributes to. As observed by Tsebelis (2002) parliament is part of a constellation of veto players that influence policy stability. Knowing the preferences of veto players, the position of the status quo and the identity of the agenda setter enables predictable policy outcomes (Tsebelis (2002)). However, with the legislative authority vested in a single institution and with numerous competing factions expected to consent to changes in law or policy, state indecisiveness or irresoluteness is increased.

Increasing the number of veto points within a political system is a necessary condition for state indecisiveness and policy stability. In Kenya, the presidential system adopted post-2010 introduced distinct separation of powers between the executive and the legislature through a devolved government and a bicameral parliament. Constitutional division of legislative powers between two houses (in both Kenya and SA) divides up this authority among the various actors in the national and subnational legislative process, introducing different decision-making rules and veto player configurations to support any policy changes. While establishing the checks and balances is meant to reduce the ability of a single faction to take advantage of state to achieve their preferences, parliament facilitates diversity of opinion and interest through the legislative process (Chapter 5).

Both Kenya and SA have ensured that there is a separation of purpose among the various veto powers through establishing dedicated sector committees in parliament and positioning them as key players in ICT sector governance. In particular, the rotational appointment of parliamentary committee chairpersons represents a diversity of parliament holding positions of power to ensure no particular purpose holds supreme. Furthermore parliamentary practices implemented through the committee system have introduced diverse political actors with diverse interests into the ICT ecosystem distributing further the power structures. The diversity enforces the use of tradeoffs by politicians in the polity to act decisively and ensure all interests are captured. The following quote from one of the respondents captures the essence of how interests are dealt with at parliamentary level.

“The diversity of interests from members leads the committee to generate gains from exchange and cooperation opportunities. Trade-offs become an important element of the exchange mechanisms and is often adopted by parties with sometimes unintended consequences that can backfire (personal interview, Cohen, South Africa, 2015)”.

Increasing veto points increase transaction costs of negotiating with more people and having more deals to be struck before consensus is reached. Case in point is the appointment process followed by South Africa to appoint councilors on ICASA, the regulator. While the process is,

by de-facto, open and transparent a lot of trade-offs are negotiated and often with unintended outcomes, as South African respondent Cohen described:

“... ICASA, in their submission, based their proposal on what is a commonly accepted trait that the ruling par, in this particular case because of trade-offs engaged in between the ruling and opposition parties the outcomes did not match the original intention of the regulator” (Cohen 2015, personal interview).

Political interference hampers progress as decisions are not based on market forces and policy outcomes but more inclined to serve the wishes of the dominant political group. Political parties and groupings within parliament are an additional veto point that introduces yet another diverse viewpoint as the opposition seeks to ensure its preferences are taken into account. This often leads to a plenary vote – and ultimate whipping and party political wrangling. As a result, Acts enacted by parliament (CCK in Kenya and ICASA in SA) to create an enabling environment for the regulator to regulate the market and ensure sector performance, are often undermined by an appointment process that is not based on merit and interest, but party preferences. Furthermore, if the area of specialty does not match party interests not, much attention is given to that committee in the party agenda.

While successful policy implementation accommodates different actors’ policy preferences; the impact of political interference and conflicting goals of veto players is a divided government. The consequence of a divided government is unilateralism, with both the executive and parliament attempting to implement policy without the other’s cooperation resulting in policy logrolling and gridlocks. This is the case in Kenya where an executive-led process has resulted in legislative activities occurring within the ambit of the regulator, CCK, and in South Africa policy gridlock (disagreements on policy direction among parties in a committee) as can be observed as part of the parliamentary-led processes.

Over and above being a politically motivated veto point parliament still has to battle with its legitimacy that ultimately influences its acceptance as a significant player in the sector. Stakeholder perception of parliament influences or constrains its exercise of power in the sector. Building this reputation depends on the capacity and effectiveness of mechanisms in place to

support decision-making processes. However in cases where the executive dominates, parliament ability to be effective is weakened by political party politics that undermine the importance of separation of powers and the independence required. More so the lack of institutional and technical capacity and knowledge to deal with ICT issues, especially at committee level, often results in confusion and delays in implementing legislative activities.

The Parliament of South Africa is described as ‘custom based, significant and critical in policy shaping and as a custodian and sponsor of the legal framework’ (according to respondent Cohen), building a reputation that has influenced the seriousness with which certain organisations respond to parliament led interventions. Parliament of South Africa, through its committee systems, engages the Ministries of Communications and Telecommunications and Postal Services, its agents, civil society, operators and the citizenry as a whole as part of its decision-making process through written and oral submissions, public hearings, reports, and oversight visits. The Kenyan parliament, on the other hand, continues to battle with integrity issues, where some committee members expect ‘kickbacks’ (Transparency International, 2010) as a result of poor management of resources. There are reported low staffing levels, a limited number of committees, lack of time for scrutiny of proposed legislation and poor support from government agencies, which slow down committee work and undermine effectiveness (Africog, 2013).

Increasingly both formal and informal consultations with the private sector and civil society are making a significant impact on the decision-making process, especially as observed in the Parliament of South Africa. With regards to factors driving these consultations, it is evident that each party has a different reason for participating. For the most part, the main reasons for engaging include lobbying, information dissemination, protecting investment interests and ensuring certainty and credibility. While parliament seeks conformance with constitutional requirements to provide engagement with a broad range of stakeholders as part of the policy-making process, the process is often viewed by the private sector as motivated by the needs of the political leadership to get leverage, especially from informal consultations.

It is evident from an analysis of the two countries that presidentialism and parliamentarian promote differing arrangements for facilitating decision making. The results in both cases are the promotion of practices such as executive dominance that go against policy intentions.

7.2.3. Linking interest groups to government agendas

Key players such as civil society, the private sector, and regulators have vested interest in the reforms process and depend on the prevalence of an enabling environment to participate successfully. Theoretical underpinnings of this research suggest that ICT policy formulation requires the participation of a broad coalition of stakeholders that include government, business, academia, research organizations and civil society. Empirical findings in Chapter 6 indicate that parliament links the different ICT sector stakeholders to government processes and solicits input through mechanisms such as public hearings, submissions, and calls for.

Parliamentarians are mediators for constituents in dealings with government agencies and can either act individually or collectively to represent constituent interests in the policy-making process. Both Kenya and SA have a formal system that allows citizens to voice their concerns, issues and interests by working with the varied structures of parliament. Parliament is expected in return to utilizing structures, including through political party structures, to get input for decision making from those it represents. A significant difference between the two jurisdictions thus lies in the model for linking stakeholders to the government agenda.

Parliament, through the committees, interfaces and collaborates with stakeholders on sector related issues, with potential for consolidating interests and enhancing principles of participation in the decision-making process. If individual legislators and committees are powerful, then interest groups need only influence at that level. However, political party interference (in the case of South Africa) or executive dominance (in the case of Kenya) has resulted in practices that undermine the multi-party and participatory structure of parliamentary processes to achieve party preferences and control outcomes.

Both the interests and the stakeholders are diverse and vast, ranging from civil society lobbying for pro-poor access and civil liberties in order to address the causes of poverty in its various forms, to business that aims to make a profit from offering a service, and a government that is meant to facilitate all perspectives. The high stakes and diversity of players and diverse interests makes the sector very contentious, with interdependencies among key players influencing the interplay of power and consensus building. This complex and contentious nature of the sector weakens the ICT legislative capacity.

Formally through the committee system, parliament provides a political node for negotiating conflict. In South Africa, parliamentary the emergence of engagement models has institutionalized participation and consultations to ensure parliament remains representative. In Kenya, according to questionnaire respondent Ndemo:

Parliament deals with political issues on behalf of the Ministry and most importantly sponsors the legislative framework for the sector in parliament before the bills become an Act of Parliament”.

The findings suggest that public participation, through defined engagement models and consultations, is critical for decision and policy making. The South African case presents an institutionalized engagement model that utilizes a parliamentary liaison office concept with senior managers from the private sector sitting in on committee meetings. This model facilitates structured collection and aggregation of information from parliament and the expression of concerns, opinions and preferences of the stakeholders. This creates an important platform for requisite participation in the affairs of the country, thus holding the government to account for its actions. The existence of capacity and the repeated experiences gained within the parliament of South Africa has culminated into a public participation engagement model with predictable patterns of interaction. Key players within the ICT sector have confirmed the existence of a variety of mechanisms through which they engage the portfolio committees to make input on important matters for the sector. The engagements are both formal and informal, have a significant bearing on the decision making processes.

Kenya on the other hand, whilst acknowledging the importance of institutionalizing engagement models for the sector, still has very weak and basic structures in place and is yet to institutionalize any significant and repeatable public participation model. The impact of this is felt by both the civil society organizations and the private sector as they don't feel that the parliament is responsive, nor does it create sufficient opportunities to receive input into the ICT policy making process. Civil society claimed that they often have to "pressure the committee into action", according interview respondent Munyua in 2012 and media reports in 2015).

The findings further suggest that parliament has become an important yardstick in guaranteeing certainty to investors that their investments are protected through a trusted legal framework. Parliament filters government information and decisions back to stakeholders through published information sources on debates and hearings. It is in light of this that Parliamentary Monitoring Groups (PMOs) are emerging as an important alternative and reliable source of information on parliamentary proceedings and actions. However, access to parliamentary information remains a common challenge even with such organizations as PMOs in existence, as there is a huge reliance on the accessibility and openness of parliament and often times there is resistance from within parliament to their activities. The Kenyan case presents this very challenge. Despite having a similar organization like the one prominent in SA, the currency and reliability of parliamentary information is questioned by a number of stakeholders. Whilst SA seems to be making headways, the Kenyan case is different, as observed by representatives from both PMOs and civil society interest groups there.

The SADC-PF standards prescribe that parliament should resolve conflicts among key players in the policy arena. This requires effectively utilization of the multi-party nature of the committee system. This is evident in the South African case where both committees often meet to resolve conflict issues arising out of implementing policy directives. Parliament uses its powers, subpoena government officials to gather evidence and input from the ministry and regulator on the issue of contention. Parliament is also well positioned to seek input from the rest of the stakeholders through hearings and submissions both formal and informal.

7.3. Conclusions

This chapter has provided a comparative analysis of the formal legal system and its play out in practice to influence ICT policy outcomes in Kenya and South Africa. The formal legal system shapes and defines political and power structures but is often underutilized and ineffective in influencing parliamentary effectualness. Different governments use the state instruments such as parliament in different ways - with some having no accountability, others interfere, and yet others forcing through decision - making on the basis of majority or consensus in national interest. Whilst the decision making processes in the broader governance environment articulate the formal power structures, it is the legislative rules in parliament that then decentralize decision making to multi-party parliamentary committees, thereby offering an opportunity to deal with specialized and technical requirements of policy and law in this dynamic sector, away from the party and/or government leaders.

The chapter identifies three significant practices that are firmly anchored and influenced by the governance and political environment within which the parliaments operate. Firstly parliament structures the principal-agent relations at three levels: constituent, government ministry and government agency levels. Secondly, parliament is a veto point meant to provide checks and balances within existing sector veto configurations that are defined by the sector legal frameworks. Lastly parliament links interests groups to the government agenda and provides a negotiating platform for resolution of conflict.

Parliamentary effectiveness is influenced by how the principal-agent relationship is structured to influence outcomes, among other political, legal, social and institutional factors. Formally the electoral system, which determines the constituency-parliament relationship, is a critical enabler for influencing policy outcomes by providing means for effective public participation based on the type of political system appropriate to the policy direction a country wants to pursue. It creates the necessary legitimacy that parliament requires to set it up for effectiveness. Any parliamentary consultations with stakeholders within this political system that are happening both formally and informally become key elements for ICT policy and decision making. The interplay between the formal powers of parliament and the practical exercise of these by government, especially when it has an overwhelming majority, means it is able to utilize

parliament, both as a veto point in the decision making process and to structure political participation and link interest groups to its agendas.

The formal system established, and its play out in practice, influence to a large extent ICT sector arrangements for both Kenya and South Africa. In both countries, the nominal progress made in achieving policy objectives of increased affordable access to a wide range of ICTs is influenced by the level of legislative delegation to the regulator based on an internationally recognized reform model that has been adopted by both countries. In theory, the legal framework (Acts) guarantee regulatory independence from political influences in practice the reform model has failed to consider the institutional endowments in play at operational levels. This is compounded by the fact that inadequate institutional capacity and individual competencies of appointed regulators are a result of interference in the appointment processes by government and political parties, stemming from a system that is underutilized and ineffective. The system assumes high political culture and ethos that influence patronage, and impacts on the exercise of autonomy of statutory institutions affecting accountability and transparency.

The next chapter summarizes the main points of this comparative analysis to answer the research questions asked, presents conclusions and offers recommendations.

Chapter 8

CONCLUSIONS AND RECOMMENDATIONS

8.0 Introduction

This chapter summarizes the main points of a comparative analysis of parliamentary participation in the ICT sector reform in Kenya and South Africa and concludes this thesis with some recommendations. As policy research this thesis makes some policy and practice recommendations that are geared towards practicing parliamentary and ICT experts, government and parliament, besides demonstrating the original contribution of this work to the body of knowledge in the area of sectoral and institutional reform.

The research problem identified in Section 1.3 contextualizes the limitations of political governance and institutional capacity hindering parliamentary participation in emerging infrastructure industries to meet the demands of a globalised economy, while ensuring universal access to services. Analyzing the effectiveness of parliamentary participation in ICT sector reforms has been guided by a primary question that sought to answer what role parliament plays in enabling or constraining ICT sector reform. To answer the primary question sub-questions relating to institutional and governance arrangements, political context, parliamentary mechanisms, policy practices, and capacity and knowledge levels of the ICT industry were examined in order to understand how these factors shape the participation of parliament in the ICT sector reforms process (see Section 1.4).

The solutions proposed by this research reflect a paradigm shift in the positioning and structuring of parliament as a significant political institution within the broader political and sector governance frameworks. The focus is directed toward the operationalization of parliamentary mandates through effective mechanisms, tools, practices that influence effective participation by parliament in the policy and regulatory reforms of infrastructure industries.

This chapter concludes the comparative analysis that has unpacked the determinants of parliamentary participation to understand the role parliament plays in developing infrastructure industries. Using the cases of Kenya and South Africa, two countries that have become ICT leaders in Africa rising and declining respectively, and with relatively different political and colonial traditions, this study has brought to the fore critical insights that can shed light on the sector governance arrangements and internal designs at both a political and technical levels to influence outcomes within the ICT sector.

8.1 Enabling ICT sector reforms

ICT have a significant bearing on inclusive and sustainable development in the information era and as such have become a concern for public policy especially in developing countries. With this recognition most governments are implementing far-reaching sector reforms⁷⁴ to respond to historically low telecommunications penetration rates. Both Kenya and South Africa have at least formally followed the orthodox ICT reform model that has resulted in the establishment of a regulator, liberalization of the market and at least partial privatization of the incumbent. As a result of these reforms not being fully implemented or getting the sequencing wrong the anticipated positive competitive outcomes and associated consumer welfare have in many respects not been realized. Although Kenya and South Africa perform relatively well on the continent, ICT sector reform in Africa still lags behind global averages⁷⁵.

However, increased democratic practices in Africa in recent years have influenced parliamentary

⁷⁴ The reforms take the form of restructuring, de-monopolization, introduction of competition policies, encouraging private participation among other strategies giving rise to new regulatory laws, institutions, contracts, regimes, and processes, establishing new approaches to regulation (Jerome, 2002; Kessides, 2004; Noam, 2010).

⁷⁵ It has been observed (Chapter 1, § 1.1.2) that progress in achieving ICT objectives has been hindered by the inadequacy of the legal and regulatory environment; lack of capacity of relevant institutions to facilitate the liberalization of markets, with pervasive infrastructure, and a reduction in prices for ICT services; and the adoption of incorrect reform sequences and time frames which are in themselves influenced by a number of social, economic and political factors.

involvement in policy-making processes including that of ICTs shown in the findings of this thesis. Parliamentary participation is explained within the context of a complex and adaptive ICT ecosystem, it being part of a constellation of global and national institutions that determine national and sector outcomes (Chapter 2). The parliaments of Kenya and South Africa participate in setting national policy objectives, overseeing implementing agencies and shaping policy outcomes within the ICT sector. While the law provides them with legal standing, their effectiveness is constrained by a number of key challenges from political, ICT governance and internal institutional designs perspectives⁷⁶. The thesis unearths several determinants⁷⁷ of parliamentary performance that influence parliamentary participation. These set conditions that determine the basic relationship that parliament can pursue with meaningful impact in the sector to influence policy, facilitated by internal factors and designs that reinforce capacity.

Parliament is more than a neutral, legal structure and is positioned as a significant power broker and key political entity reflecting the competing interests of the various key players. These players and parliament are within a constellation and accumulation of different institutions with the capacity to intervene and make a decision in a complex regulatory policy undertaking within a complex ecosystem. Placing parliament at the center of the reforms provides insights into an understanding of the institutional structures and their effects on decision-making processes as relevant to achieving desired policy outcomes.

By establishing appropriate legislation and providing scrutiny of both process and outcomes parliament is meant to achieve regulatory accountability. The parliaments of Kenya and South Africa have both supported the reforms process through a legal environment established by

⁷⁶ Challenges affecting parliamentary participation in influencing sector reforms include capacity for parliamentary accountability, parliamentary scrutiny, legislative delegation, and guaranteeing the independence of regulation (Chapter 2, § 2. 1).

⁷⁷ Determinants of parliamentary performance include the surrounding governance context within which it operates that defines the mandates of parliament, its relationship with other government arms and stakeholders; the level of institutional development and capacity that support effective committee systems and increase budgetary oversight capabilities; the ICT sector arrangements that define how, and why parliament should participate in sector reforms (Chapter 2, § 2.2).

enacting ICT laws, and facilitating regulatory governance processes to ensure public confidence, inclusiveness, and transparency in the sector. The effectiveness in practice of both parliaments is influenced extensively by political and institutional factors shaped by a political environment that define the formal/legal/constitutional roles and functions of parliament within the institutional arrangements of the state.

The institutional structures of the sector can assume a variety of arrangements and models, (Chapter 2 § 2.2.3). The two most common approaches pursued are the supra-ministerial and ministerial approaches with a number of models under each⁷⁸. The prevailing ICT sector arrangements of Kenya and South Africa are highly fragmented and decentralised following a ministerial-based model with policy functions distributed to several agencies. While this is reflective of a common approach used by most African countries mainly because of the immaturity of the market and other political factors, the adoption of this arrangement is influenced by an intention is to diffuse concentration of power and provide required checks and balances (Chapter 5, § 5.5).

However, external decision making processes especially from a political governance perspective impact these sector arrangements in practice. The sequencing of the veto configurations within the sector open the process to manipulations as the different veto players seek to achieve their interests and the preferences of their masters resulting in executive and political parties dominating the outcomes. South Africa for example has *de jure* separation of powers yet *de facto* parliamentary decision-making is dominated by the executive through the overwhelming dominance of the party. The multiparty portfolio committee system in SA for example, tries to draw on the expertise of other parties, ideally to gain consensus through compromising in the national interest. But dominance of the ruling party is so strong that although it's used to gain some level of consensus it often just put deadlocks to the vote.

A hybrid methodology (outlined in Chapter 4) was applied to examine the existence of certain capacity elements required to implement parliamentary mandates, performance determinants and

⁷⁸ Models institutional arrangements (Chapter 2 § 2.3.2)

internal designs and structures that influence the capacity of parliaments to set policy objectives, oversee implementing agencies and contribute to ICT policy outcomes. The methodology emphasizes qualitative data and analysis combining a self-assessment survey by members of the ICT parliamentary committees, complemented by high-level interviews with key industry players and triangulated with findings from an extensive document analysis. The challenges encountered with data collection (Chapter 4 § 4.2.5) were mainly at the primary institution level in Kenya, reflecting how likely parliamentary institutions in presidential systems are closed in practice despite claims of openness and transparency on paper. This was further confirmed by other key participants from the sector who, even though available, often expressed lack of knowledge and capacity to respond to parliament related issues, an indication of very weak inferences and ambiguous patterns of exchange.

The thesis identifies key elements critical for parliamentary participation. These are hinged upon formal legal and processes (see Chapter 5) that assigns parliament legislative authority and power anchored in a constitutional mandate to conduct representation, legislation and oversight. However the formal legal system that exists to shape and define political and power structures, is underutilized and ineffective in influencing parliamentary effectualness in both countries. Underlying political economic interests of key stakeholders and political interplay between the state institutions influence outcomes within the sector. Effectiveness of parliament is hindered by a number of factors that include:

- the practice of principal-agent relationships that result in contradictions and inherent conflict;
- inadequate internal design for inclusive participation that limits parliament's ability to facilitate core legislative activities;
- an executive and political party dominance that weakens parliamentary oversight;
- insufficient parliamentary capacity and technical knowledge in the ICT sector which causes confusion and delays; and
- an electoral system with constitutionally stipulated powers at stake (either directly or indirectly) to influence MPs incentives.

Section 8.2 makes observations that answer the research questions raised.

8.2. Observations on findings

Drawing on the political economy tradition and in particular historical institutionalism, and guided by a practical and realistic paradigm, this thesis explores how the underlying policy and legal frameworks, institutional arrangements, and market conditions within developing countries have promoted or constrained parliamentary participation in ICT sector reforms. The thesis highlights a formal legal system that exists to shape and define political participation and the requisite power structures which is often underutilized and ineffective in influencing parliamentary effectualness. In practice the way the law plays out in the context of the constellation of rules and the internal incapacity of the relevant institutions, fails to guarantee the political space, political will, independence and legislative power required for effective, meaningful and sustainable participation of parliament in policy-making. The formal processes that exist are manipulated and maneuvered as political actors seek preferred outcomes.

8.2.1 ICT policy outcomes

The comparative analysis of Kenya and South Africa reveals different legal traditions that contribute to an understanding of the underlying policy and governance practices influencing parliamentary participation in sector reforms. The thesis has demonstrated that both countries have nominally made progress in implementing ICT sector reforms with increased access and low prices over time obtainable (Chapter 5 § 5.4.5) as reflected by global indicators placing the two countries in the top performing African countries category, Kenya on the rise, South Africa on the descent.

Formally, the institutional arrangements sustain parliamentary participation in sector reforms as part of the broader national constitutional and institutional arrangements. In both cases the role of parliament in the sector development is anchored in legal frameworks as determined by the constitution and supported by the epistemic community through alignment with international standards. It is partly through implementing the legal and institutional architecture for the

parliament that national and international ICT legal frameworks⁷⁹ (Chapter 5§5.4.4) have been set up to influence policy achievements over the years. However it is essentially the unofficial power relations that exist alongside the formal institutional arrangements that influence the level and quality of parliamentary participation.

While the formal link between the national arrangements and those of the ICT sector exist, there are constraints that arise upon implementation that limit the effective participation of key stakeholders to influence outcomes. Both countries have overarching legislation with primary Acts (ECA, 2005 and KICA, 1998) implemented to support the reforms process and sector development. A separate Act in the case of South Africa, (ICASA, 2000) especially enacted to establish the regulator. In Kenya the primary act contains provisions for the establishment of the regulator Section 3 Kenya Communications Act, 1998). These laws are enacted to provide arrangements that reflect a constellation of institutions at a broader level of governance that can, with the right capacity, and in the absence of other political and economic factors such as executive and political dominance (South Africa) and fragmentation (Kenya) meaningfully influence sector outcomes.

South Africa has in place a well-designed, parliament–led system that reflects compliance with formal legal systems and international reform mechanisms as required for appointing the regulator. While the ICT laws (ECA, ICASA) enacted provide the sector arrangements to be implemented, it is the local realities, economic interests, and the underlying political forces that limit the power of parliament to fulfill its functions and roles; and utilise the mechanisms, structures and processes to safeguard dominant interests. To ensure their preferred outcomes from the formal parliamentary processes the dominant party is able to use parliament as an intermediary between the principal, the executive for example, and agent, and an appointed regulator for example. In the end, a process which looks protracted and consultative on paper can be manipulated by strong political actors seeking to ensure preferred outcome. In the absence of a supportive framework, parliamentary processes are manipulated and fail to make government

⁷⁹ Chapter 5 presented both countries as having set up overarching legal and institutional frameworks through the Kenya Information and Communications Act, Amendment (2013) and the Electronic Communications Act (2006), respectively.

accountable. Over and above the incentives of the political actors, the veto configurations prevalent, and the internal capacity, all influence parliament's inability to facilitate legislative process by failing to provide opportunities for the different interests to input into the legal processes.

8.2.2 Parliament legitimacy and mandates

Parliament is widely acknowledged by all key players in the sector as significant player (Chapter 6 § 6.2.1), a power broker representing competing interests in policy formulation and implementation for the ICT sector. However, its ineffectualness in fulfilling this role is Kenya and South Africa that is equally frustrating efforts to contribute meaningfully to sector outcomes. As a uniquely custom based institution, critical in shaping policy, parliament acts as both a custodian and a sponsor of the legal framework dealing with political issues on behalf of the government.

Parliamentary practices evolving over the years, and described below, are used to implement the three traditional functions of representation, legislation, and oversight. Parliament advances effective political participation through structuring principal-agent relationships at three distinct levels⁸⁰ (Chapter 7, §7.2.1), which influences the levels of participation by principals and agents interchangeably, while defining a political environment required to support growth of the sector. Both countries purport (Chapter 6, § 6.2.2) to have high levels of democratic participation with requirements and support structures set in an administrative justice framework. On paper, the processes often looked tedious and protracted with all the checks and balances in place to ensure compliance with formal legal systems and international reform mechanisms as required. However, the reality reflects rather the dominance of ruling party and/or executive ensuring

⁸⁰ Chapter 7, through a comparative analysis, identifies three levels of principal-agent relationship as: (1) occurs when citizens' delegate decision making to members of parliament specifically through a constitutional mandate with power to set constitutional rules and to replace members of parliament at election time; (2) internal organisation of the executive and parliament through creating ministerial positions as well as the committee and agenda control mechanisms, structuring the composition of parliament and determining whether or not cabinet members sit in parliament; (3) delegation to various agents specifically to the regulator by parliament through administrative procedures and laws.

preferred outcomes for ICT sector processes such as legislation and appointment of the regulator. This is a clear case of the failure of regulatory models developed on best practices to take into account local realities and institutional endowments in the country which influence the procedures and approaches taken upon implementation.

Structuring of principal-agent relationships by parliament drives participation levels of key stakeholders within the policy arena, defining a political environment that supports the development of the sector in a particular way. Furthermore, by exercising veto powers over the decision-making processes (Chapter 7 § 7.2.1) of the sector parliament contributes towards achieving policy stability. However, the roles and responsibilities of the different veto players and the aggregation rules (how decisions are made) are not effectively implemented, in countries, resulting in lengthy legislative processes that reflect conflict among key stakeholders (South Africa) and executive dominance (Kenya).

Parliament serves as the link between interest groups and the government agenda as it mediates on behalf of stakeholders with government agencies. The high stakes and diverse interests of the different stakeholders make the sector contentious, with interdependencies that influence interplay of power and consensus building; this can effectively weaken the ICT legislative capacity. Stakeholder interests vary. Economic interests to protect investments from disruptions provide the motivation for private sector engagement with parliament. Private sector is also motivated by a need to provide committees with sector related information to solve the capacity gap and likely information asymmetry if parliament becomes highly dependent on information from the executive. Social interests driving civil society to insist on political solutions to the digital divide. It is through parliament that the voices of stakeholders represented by KICTANET in Kenya are expressed. KICTANET as multi stakeholder grouping of people and institutions with varied interests in ICT development in Kenya is a powerful platform that exerts pressure on parliament and government to respond to current issues. Similarly in South Africa, parliament was a useful link in the discussions around the cost of communication and termination rate. The engagement with stakeholder made it possible for parliament to engage and ultimately represent competing interests in seeking a solution that influenced government agenda, bringing down the cost significantly.

8.2.3 Wider governance arrangements

Institutional arrangements at the national and sector levels influence parliamentary participation in a number of ways. When veto power is exercised by government on an agent such as the regulator, it is expected that parliament has the ability to guarantee independence from political influence. While delegating state power to a regulatory agent rationalises the number of institutions involved in the ICT decision making process, it increases the number of veto points, introducing duplication. Kenya's ICT sector is highly fragmented with dispersion of responsibilities distributed in different agencies with little coordination; huge overlaps amongst key players⁸¹ and no formalised relationships between the regulator Communications Authority for Kenya CA, and other agencies such as the Monopolies and Prices Commission; which has resulted in no mechanism to regulate competition in the industry. Having a bicameral system of parliament and a federated government has increased the fragmentation even more as decisions required more stakeholders to input into the process, increasing the transaction costs and lengthening the legislative processes.

While the formal legal system confers parliament with the required constitutional power to implement related policy mandates through defined functions, structures, mechanisms, and processes, these are arguably ineffective in ICT policymaking. The inadequacy of the legal environment of the ICT sector reforms continues to be recorded in literature. There are several possible reasons for this. It could be an indication that in practice parliament has not implemented or has encountered challenges that could affect the ability to implement its role as required. Alternatively, perhaps in some cases such as in South Africa it reflects rather a lack of agency capacity and competency and other problems affecting implementation, but also, possibly market forces that have been left to define who participates.

⁸¹ Overlaps exist between the national communications secretariat and Kenya ICT board with respect to advisory services to government on ICT issues. More overlaps found in the implementation of key E-government applications by the Kenya ICT Board and e-government directorate with no clear coordination. Yet more overlaps exist in the implementation of universal access projects by the ICT Board with no clear coordination with CCK which has the universal access mandate.

8.2.4 Parliamentary capacity

The legal and technical capacity of parliament is a significant factor influencing parliamentary participation, especially when decision making in a sector is fragmented and with an executive that is likely to be dominant (Chapter 5, § 5.5). The capacity of parliament resides within the committee system that has dedicated responsibility for the ICT sector. An analysis of the different capacity requirements of committees in Chapter 6 determined key parliamentary practices apply to the ICT sector to reveal a wide range of factors for understanding the realities of parliamentary participation. Of importance is that insufficient ICT capacity and technical knowledge cause confusion and delays, while the inadequate internal design for achieving inclusive participation limits parliament ability to facilitate core legislative activities.

The empirical findings further show underpinning parliamentary challenges relating to internal designs and capacity as well as broader governance problems that influence or constrain the participation of parliament in sector processes. Principal-agent relationships often result in contradictions and inherent conflict. Political party dominance influences the agendas of parliament, raising the question of the legitimacy of the committee system as a multiparty entity affecting the essence of participation and effectively not upholding public interests. Parliamentary processes become relatively seamless when the executive interferes with the decision-making processes and party preferences are filtered through ruling party dominated committees and whipping practiced to ensure favorable outcomes. The case of SA shows the African National Congress as the ruling party in South Africa conferred with legitimacy through an election. However, the exercise of the majority has undermined consensus building at the committee level, and arguably the input from the public process is simply overruled.

8.2.5 Emerging challenges

In practice there a number of challenges parliaments have to contend with in implementing their role. A huge burden comes from executive dominance that often results in political parties overstepping their formal bounds of oversight to ensure preferred outcomes. Outcomes are further influenced by how the electoral system impacts and influences MPs incentives to determine actions, with a parliamentary system seeking party votes and a presidential system seeking individual votes. In the latter case, it is common for MPs to use the position to influence

development within their constituencies as this will get them re-elected. By the nature of the political system MPs in Kenya have substantial incentives to compete against one another, promoting intra-party competition and influencing sector outcomes. The South Africa system, on the other hand, is party centered; voters have no ability to affect which of the party candidates, actually represent them in parliament cultivating mainly party votes and being less of incentive at the individual level of MPs.

Structural conflict of interests undermining positive policy impacts the ability of parliament to act in the broader interests of the sector, or even the economy as a whole, without affecting negatively on party interests. This is revealed in outcomes such as the Minister in South Africa being responsible for the appointment of the regulator, on the advice of parliament, with the incumbent, with the state a significant shareholder in the incumbent.

The institutional fragmentation within the sector has not served the sector well in either country; rather it has resulted in arrangements that are less of a safeguard against centralized decision-making than as a check on delegated power. The veto powers assigned to parliament in the ICT policy-making process has created serious regulatory bottlenecks, with critical sector policies or regulations, such as spectrum or termination rates in South Africa and competing international gateways for a long time in Kenya, being delayed in parliament for months and even years. It then takes the interested bodies to lobby the committees around decisions in accordance with the public processes required by law.

While the committee system supports effective scrutiny and accountability of government actions as well as provides opportunities for public engagement and involvement in the reforms process, parliament does not always have the capacity to exercise fully its powers to hold the government to account. This insufficient institutional and technical capacity results in the limited utilization of established mechanisms, tools and processes that would build consistent practices to facilitate sector outcomes. This lack of capacity results in confusion and delays in implementing legislative activities. The bill review and hearing processes of both countries provide a good example of how insufficient capacity influence parliamentary participation and, consequently, sector outcomes. There is rarely sufficient time allocated to it to effectively

support citizen involvement and gathering of evidence from the executive. Furthermore, there is no capacity to track the impact of legislation and power to send back legislation to the executive for review effectively. Parliaments end up just rubber stamping in a bid to meet policy requirements.

8.3 Contributing to theory and practice of parliamentary and ICT sector development

Utilizing a political economy perspective and, in particular, that of historical institutionalism (Immergut, 1998) and drawing from the concept of neopatrimonialism (Mkandawire,2013; O’Neil,2007) this thesis has highlighted the role played by parliament in facilitating or stifling ICT sector reforms. This thesis contextualizes institutional analysis in the specific political and economic circumstances of the two countries in order to understand the relevance of parliament in sector reforms. It reveals how the constellation of the institutions operating within a complex ICT ecosystem, in which parliament is centrally located, enable or constraint the ecosystem’s self-restoring adaptation to its dynamic conditions. In this way the thesis extends the research of existing institutional, regulatory and ICT ecosystem work traditionally applied in the area of ICTs (Levi & Spiller, 1996; Immergut, 1998; Gillwald, 2002, 2009, 2011) by highlighting the significant role parliament plays in policy and reform but with institutional challenges that can constrain its effective participation. It does so through a comparative analysis of Kenya and South Africa, which confirms parliament as a significant political institution and key veto player in constraining and influencing the realization of policy outcomes.

It is the contention of this thesis that parliament as a representative democratic institution becomes ineffectual if it is not properly mandated and capacitated to structure political participation in policy making. Major hindrances to parliamentary participation are identified as unsupportive institutional arrangements for parliamentary participation, both within the broader constitutional and legal framework and within the ICT sector context, which determines the institutional relationships (Chapter 1§1.3). The comparative analysis showed that while parliament is confirmed formally as a significant player in ICT sector development, in practice, its ineffectualness is a cause of negative or suboptimal policy outcomes. Parliament is critical for ensuring political participation through structuring principal-agent relationships, as well as vetoing the decision making the process to provide the necessary checks and balances and

ensuring that stakeholders' interests are linked with government agendas.

The insights yielded in this thesis make practical contributions that provide opportunities for intervention in national policy and practices, and that would guarantee parliament fulfills its democratic functions of legislation, oversight and representation effectively. Furthermore this thesis can be used as a foundation for theorising about the role of parliament in the institutional arrangements of regulated sectors in Africa. Clearly the transposition of current political and parliamentary theories patterned from western models to African governance is problematic (Chapter 3 Section 3.2). The western model alone fails to take into account the traditional and patrimonial underpinnings of the African context that define the behavior, attitude and decision making practices of political actors, the legitimacy of political institutions, and the power relations that determine them. Although the analysis of these two cases highlights the importance of context which makes them in many ways not generalisable, the findings and conclusions do highlight key common informal relations, impacting the nature of the African state and its formal institutions such as parliament. These include political and colonial conditions, political interests, traditional power structures, informal power and practices, political legitimacy. Building on these findings existing theory in relation to the institutional analysis of regulated sectors in developing countries could be extended within the political economy tradition.

On the basis of this the section below proposes a set of recommendations that if implemented would enable parliament to fulfill its role more effectively, with more public interested outcomes for the sector and the nations.

8.4 Recommendations

This thesis recommends that the mandate of parliament in ICT sector development be clearly articulated to ensure it has the authority to structure political participation and effectively carry out its functions. Specifically, governance structures, processes, and parliamentary practices should evolve in the following aspects to effectively fulfill the mandates:

8.4.1 Sector governance and institutional arrangements

1. Effective parliamentary participation in sector reforms requires that constitutional mandates and the ensuing arrangements be clear, safeguarded, reinforced and upheld within the ICT sector. It is these mandates that define the extent of application of legislative power by parliament. The mandate also defines relational and power structures that parliament can utilise to structure its engagement with key stakeholders whose interest it represents. As argued by interview respondent Barandse when parliament has power and authority to influence ICT sector development, it is taken seriously by the interested parties. While this is achieved through getting the legal environment right, it should be balanced with the autonomy that parliament enjoys making decisions on sectoral issues that do not necessarily reflect political party affiliation or the preference of the executive. Institutional arrangements defined in the broader governance within the confines of the constitution should, as Ostrom (2009) argues, allow for effective political participation in policy making at the operational level. Parliament should thus lead in ensuring the transparency and accountability required to implement the constitution through better representation and improved public engagement.
2. Decision-making rules for the ICT sector defined in legal frameworks must clearly articulate the role of parliament in monitoring and enforcing sector arrangements as is the case in South Africa. Such clarity facilitates effective implementation and sequencing of veto configurations decisions to manage potential conflicts that would otherwise result in unintended outcomes. The laws, upon implementation, should reflect public interests and provide adequate opportunities for citizens to input into any legislative process. These opportunities should be contained in the rules of procedure or other law/ instrument that are made public.
3. ICT is a particularly dynamic and complex sector, the need for dedicated committees is essential. Through dedicated committees parliaments ensure timely establishment of legal (acts, bills and laws) and a regulatory (regulatory governance regime and the regulatory substance) environment that facilitate an effective reform process. Through the committees, parliament effectively provides the requisite checks and balances to assure policy outcomes. However, the lack of capacity of parliament to fulfill the mandate requires attention. Training and knowledge are required to build the capacity of the committees. Internal mechanisms defined in Chapter 5 and decision making processes

evidenced in chapter 6 should allow for effective participation of all stakeholders including minority groups and opposition parties.

4. ICTs are an international market increasingly with global governance and players. Implementing national policies as if they can be insulated from international developments defeats sector development. The limited knowledge and participation of parliament in international occurrences needs to be addressed as often the process is predominantly executive-led. This has ramifications for the domestication/ratification process for international instruments, which becomes a prerogative of parliament as often there is information asymmetry between the two government bodies. The participation of parliaments in the international governance arena is recommended to ensure sufficient capacity and knowledge to implement international instruments as required.

8.4.2 Internal designs and parliamentary practices

The internal designs of parliament constrain or influence its effective participation in ICT sector development in a number of ways. The internal design and parliamentary practices should evolve in the following manner:

1. Effective representation is required for setting of national policy objectives. Representation depends heavily on the ability of parliament to be accessible. Accessibility depends to a large extent on the degree of openness and transparency that drives public knowledge and understanding of parliament's work. From an internal design perspective, effective representation requires parliamentary frameworks, strategies, and processes that promote citizens' knowledge and understanding of the role that MPs play in the ICT policy-making process. Guidelines in the rules and procedures and/or other laws should govern the relationship between parliament and other related institutions. This will increase public participation in parliamentary processes and be supported in the wider governance context through electoral systems that clearly define position (set of positions or roles that participants assume) and boundary (entry and exit) rules to facilitate the ability of parliament to conduct representation effectively.

2. Decision making rules that design veto configurations in the sector should allow for effective utilizations of veto power by parliament to assure policy outcomes. This will ensure parliament's internal decision making processes through different mechanism and tools in place to mediate political conflicts based on norms and rules that support making of public policy decisions, such as participation of minority groups and opposition parties. In most cases the power of the parliament to make laws is in the constitution, but what's often lacking is the implementation power which provides adequate opportunities for citizens to input into any legislative process. These opportunities should be contained in the rules of procedure or other law/ instrument and made public
3. ICT committee should be established with the sole mandate to review ICT policy issues. This will allow building expertise in this area to facilitate the critical examination of issues. Committees allow parliament to build its capacity to participate effectively in a legislation process that often emanates from outside the institution. Appointment of membership to the committees should take into account interests and existing knowledge in the area of specialty. Where it does not exist parliament should invest in creating that specialty. With the capacity and knowledge, parliament should then be provided with sufficient time to review a bill, with at least three months lead time. This will result in an effective bill review and hearing process that supports citizen involvement and gathering of evidence from the executive. Furthermore the ability to amend legislation and bills and track the impact of the legislation will be enhanced once parliament can send back legislation to the executive for review.
4. The internal designs of parliament, through reforming rules and procedure, should enable the oversight function to be performed by all sector- related committees as well as other special committees. For effectiveness, these committees must be conferred with investigative powers enshrined in the rules of procedure or other laws, and regularly enforced by implementation processes including budgetary aspects. Based on the position rules set, committees can, without prejudice, confidently call for special audits or invite officers of respective state owned enterprises to testify before them as required. With sufficient mechanisms in place, committees should be able to obtain information from the Executive, without fear of state capture, to exercise its oversight function in a meaningful

way. Where possible oversight committees should be adequately resourced with a separate budget to undertake their activities. Due to the multiparty nature of oversight committees, it is the entity that can provide meaningful opportunities for minority/opposition parties to engage in effective oversight of government expenditures.

5. Parliament requires institutional support to be effective in the conduct of its mandate. In this respect parliament should be enabled to exercise its power to determining of its budget for the year which the executive cannot vary. Ability to determine its budget will facilitate parliament to secure adequate logistics capacity and resources including office space to enable it to perform its functions. Where constituency development funds are available for constituency projects, it should be independently managed by the Member of Parliament. Where applicable parliament should follow a structured system for receiving technical and advisory assistance from external sources.

8.4.3 A missing capacity dimension- reinventing parliament for outcomes

There is a missing capacity dimension in parliamentary development which may be a candidate for future research. This is informed by what respondent Cohen referred to as the “lack of tangible outcomes from the entire work parliament does”. The development of a results based management capability would provide a proactive approach and a coherent framework that utilizes a disciplined methodology such as offered by the ISO standards to solve the problem of intangible results and reinvent parliament for the outcome and accountability. A disciplined approach will facilitate the institutionalization of required engagement models and patterns of interaction that lead to predictable outcomes for parliamentary participation in policy making.

8.5 Conclusions

Weak institutional arrangements and designs in both Kenya and South Africa are identified as limiting the participation and independence of parliament from the executive and sometimes industry, both of which can compromise parliamentary oversight and visionary leadership expected from specialized portfolio committees. In South Africa, the reason is an underlying parliamentary system that promotes the political party and executive dominance which undermine parliamentary processes in order to achieve party preferences and control policy outcomes. In Kenya, while the combination of distinct separation of powers and a constituency based electoral system provide a legal basis for parliamentary participation, the highly

fragmented sector arrangements compounded by a lack of internal capacity to implement mechanisms constrain parliament's participation.

In concluding this chapter, this thesis recognises two significant parliamentary practices that can be generalized to infrastructure industries. The establishment of dedicated parliamentary committees as a structure of parliament that both links key stakeholders with government agenda and is a useful source of information on government priorities⁸² to provide investors with a degree of credibility and certainty required for decision-making. Committees are an important determinant of effective parliamentary participation and accountability to the citizenry, at least through formal electoral process.

It is at committee system level that engagement models are institutionalized as mechanisms to increase participation and allow effective consultation. In this way, parliament remains representative of public interest. In the absence of institutionalized models, such as the Kenya case, engagement remains unstructured, with the continued outcry from key stakeholders in the sector⁸³. The effectiveness of the committees is, however, influenced by political and social factors that include political party dominance and inadequate capacity to utilise tools at its disposal. Political party dominance influences outcomes based on party preferences that do not take into account public interests and technical requirements of the sector. Furthermore, the institutional arrangements within the broader governance limit committee participation with independence from the executive and sometimes the industry compromising the oversight role of

⁸² Chapter 6 revealed the importance to stakeholders of the information that resides in parliament to an extent that high level delegations, at the level of CEO, sit in proceedings as the information available from parliament is relevant in shaping their strategies. Furthermore, the use of a parliamentary liaison office is becoming institutionalized, specifically in South Africa.

⁸³ A number of media reports showing key stakeholders are not consulted. See links below:

<http://www.itwebafrica.com/ict-and-governance/256-kenya/235462-kenya-stakeholders-squabble-over-ict-dominance> (accessed 26/11/2015).

<http://allafrica.com/stories/201511180525.html> <http://www.telecompaper.com/news/tespok-seeks-involvement-in-telecom-amendments--1113842> (accessed 26/11/2015).

parliament.

Key to effective participation is having clear, safeguarded, reinforced and upheld constitutional mandate and arising institutional arrangements within the sector both formally and informally. Such arrangements provide parliamentary leverage within the sector allowing for the effective fulfilment of its oversight, legislative, and representation functions. While legislative power is legally derived from the constitution, in, practice it is highly dependent on key stakeholders' perceptions of parliament. With the appropriate mandate parliament can manage political interests by structuring the principal agent relationships, vetoing ICT policy and decision-making processes, linking interest groups to government and party agendas, resolving conflicts and, sometimes, building consensus among key players.

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[20does%20this%20framework%20help%20us%20in%20political%20analysis.doc](#) (Accessed November 2012)

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APPENDIX 1: RESEARCH FRAMEWORK AND PROTOCOL

Documents Reviewed	South Africa	Kenya
Primary Documents	<p>The Constitution of the Republic of South Africa (1996)</p> <p>Rules of Procedure for National Assembly, South Africa</p> <p>Terms of Reference of Committees Responsible for ICTs for Parliament of South Africa</p>	<p>The Constitutions of the Republic of Kenya (2010)</p> <p>Rules of Procedure for Kenya National Assembly</p> <p>Terms of Reference of Department Committees in the Parliament of Kenya</p>
Parliamentary Information	<ul style="list-style-type: none"> • Parliament of SA Website • Parliament of SA Strategic Plan, 2014 • Oversight Model, 2009 • Oversight and Accountability Model in South Africa, 2009 	<ul style="list-style-type: none"> • Kenya National Assembly Website • Africog Report (2013) • Kenya National Commission on Human Rights report (2012) • Elections, Representations and the New Constitution, Society for International Development (2011) • SID Constitution Working Paper Series No 1 (2010) • Murray C (2010) Kenya's 2010 Constitution • Working Structures of Parliaments in East Africa, 2010 • African Parliamentary Index (API) Report (2012) Round 2 Country Self-Assessment (Kenya), • Measuring Parliamentary Performance - The African Parliamentary Index (API) (2013), A Summary Report of the API Round II Assessments in Seven African Countries. • Parliamentary Centre. (2011). Africa Parliamentary Index (API): A Report for Seven African Parliaments, Parliamentary Centre (Africa Programmes).

Documents Reviewed	South Africa	Kenya
Legal framework	Electronic Communications and Transactions Act ICASA Act. (2000).	Kenya Communications Act
ICT data and information	<ul style="list-style-type: none"> • PMG Committee reports , minutes and presentations • Committee Reports of Committees Responsible for ICTs • Hansard (debate records) of the Parliament of South Africa • Comparative ICT Sector Performance Review (RIA 2009/2010); • ICT Sector Performance Reviews of South Africa (RIA 2009/2010) • ITU ICT Indicators Database • ICT Strategies / Action Plans /ICT Policy guideline of the Ministries Responsible for ICTs in South Africa Withdrawal of Regulations relating to Interconnections and Facilities, 2000. • Overview of electronic communications regulation in South Africa 	<ul style="list-style-type: none"> • ICT Sector Review, 2010 • ICT Strategies / Action Plans /ICT Policy guideline of the Ministries Responsible for ICTs in Kenya • Comparative ICT Sector Performance Review (RIA 2009/2010); • ICT Sector Performance Reviews of Kenya (RIA 2009/2010) • ITU ICT Indicators Database
International Governance	<ul style="list-style-type: none"> • World Economic Forum Report • SADC Protocol on Transport communications and meteorology • Regional e-government framework(East Africa) • Guidelines on Interconnection and access for telecommunications networks and services within the East African Community • Global Governance processes, frameworks and protocols • SADC PF- Self Assessment Toolkit, 2012 • Africa Parliamentary Index Report 2012 • ITU Measuring the Information Society Report ,2009,2015,2012 	
Media statements	<ul style="list-style-type: none"> • http://www.itwebafrica.com/ict-and-governance/256-kenya/235462-kenya-stakeholders-squabble-over-ict-dominance • http://allafrica.com/stories/201511180525.html • http://www.telecompaper.com/news/tespok-seeks-involvement-in-telecom-amendments--1113842 (accessed 26/11/2015). 	

Research Participants	Questionnaire respondents	High level Interviews
Parliament representatives	<ol style="list-style-type: none"> 1. South Africa- Mbombo Maleka representing Hon Sikhumbuzo Kholwane, Chairperson of Communications Committee (4th Parliament) 2. South Africa- Hon Mmamoloko Kubayi Kunene, Chairperson Telecommunications & Postal Services (5th Parliament) 3. Kenya - Used raw data from similar survey conducted in 2012 by the Parliamentary Centre 	
Regulators	<p>Willie Currie, ex Commissioner, Independent Communications Authority of SA</p> <p>Mercy Wanjau, Communications Authority of Kenya</p>	Mercy Wanjau, Communications Authority of Kenya, September 2013
Private Sector	<p>Anonymous1, CellC</p> <p>Anonymous 2, CellC</p> <p>Dominic Cull, Regulatory Advisor, ISPA</p>	<p>Tracy Cohen, Chief Corporate Services Officer, Neotel, March 2015;</p> <p>Andrew Barandse, Legal Affairs Director, Vodacom South Africa, March 2015</p>
Experts and former government officials	<p>Ndemo, Former Permanent Secretary</p> <p>Keith Weeks, EX -Competition Commission</p>	
Civil Society organisations	<p>Rashaad Alli, PMG</p> <p>Conrad Akunga, Mzalendo</p> <p>Jessica Musila, Mzalendo</p>	<p>Rashaad Alli, PMG, March 2015;</p> <p>Alice Munyua, Kictanet, November 2012</p>

APPENDIX 2: QUESTIONNAIRE

FIRST RESEARCH QUESTION: WHAT ROLE DOES PARLIAMENT PLAY IN ENABLING OR CONSTRAINING ICT SECTOR REFORM?

Discussion Questions

1. To what extent is power vested in parliament?
2. What have been the main areas where you have required parliamentary intervention? How has parliament received your requests?
3. Do you feel parliament engages private sector sufficiently? How could this be improved? Does parliament adequately provide private sector with opportunities to input into the legislative process
4. Do you have a parliament liaison office? If so what motivated its establishment? What are the activities for this office? How has parliament received this?
5. How do different interest groups outside government (e.g. private sector, NGOs, consumer groups, the media) seek to influence policy?
6. How effective is parliament as a forum for debate on questions of public concern
7. Does parliament have a recognized constitutional role in the ICT Policy making process? Is the power of the parliament to make laws contained in the Constitution?
8. In your opinion does parliament have a role to play in ICT sector development? What role is it?
9. Do MPs consult their constituents and represent their interests in the ICT policy making process
10. Does parliament influence government decisions and behaviour in ICT matters?
11. Do oversight committees exercises sufficient oversight of the expenditures of state owned enterprises through calling for special audits or inviting officers of respective state owned enterprises to testify before them.

SECOND RESEARCH QUESTION: TO WHAT EXTENT HAVE THE TWO COUNTRIES IMPLEMENTED ICT SECTOR REFORMS AND WITH WHAT OUTCOMES?

Discussion Questions

1. How the sector is financed (e.g. public-private partnerships, user fees, taxes, donor support)? What is the balance between public and private ownership?
2. What are the dominant ideologies and values which shape views around the sector? To what extent may these serve to constrain change?
3. What reform sequence has each country followed?
4. What are the policy trends for price and access over the last 5 years
5. How has Kenya/SA fared on the global rankings for ICT
6. How have international developments influenced sector reforms? Which International governance instruments have been applied in Kenya and South Africa, and with what effect?

THIRD RESEARCH QUESTION: HOW HAS THE SURROUNDING GOVERNANCE CONTEXT (NATURE OF STATE AND IT RELATIONSHIP WITH OTHER STAKEHOLDERS AND THE MARKET; EXTENT OF POLITICAL SPACE; IMPACT OF GLOBAL VILLAGE) SUPPORTED OR CONSTRAINED THE EFFECTIVE PARTICIPATION OF PARLIAMENTS IN INFLUENCING ICT SECTOR REFORMS?

Discussion Questions

1. How are decisions made within the sector? Who is party to these decision-making processes?
2. What are the decision making rules guiding who makes decisions when and how in ICT? Who is the custodian of these rules?
3. Once made, are decisions implemented? Where are the key bottlenecks in the system? Is failure to implement due to lack of capacity or other political economy reasons?
4. Do political parties mobilize and organize their members to participate in the ICT policy process?
5. Is the relationship between parliament, CSOs and other related institutions governed by clear guidelines in the Rules and Procedure and or other laws?
6. Do the procedure and or other laws provide entry points for civil society and other stakeholders to make input into the work of parliament
7. How effectively can parliament scrutinize appointments to posts and hold their occupants to account
8. Who conducts the oversight function of parliament? Is it performed by all sector related committees and other special committees? Do these committees have investigative powers over implementation issues including budgetary issues? Are these powers enshrined in the rules of procedure or other laws and are regularly enforced?
9. How adequately does the composition of parliament represent the diversity of political opinion in the country (as reflected membership of committees)?
10. How are members assigned to Committees?
11. Is parliament open to citizens and the media? Is this guided by a framework and communication strategy of parliament? Does a communication strategy exists and does it focus on accessibility by citizens and the media? Is there pressure from organized groups to make parliament more open?
12. Is the power of the parliament to make laws contained in the constitution or convention or Act or has no legal backing
13. Do oversight committees exercises sufficient oversight of the expenditures of state owned enterprises through calling for special audits or inviting officers of respective state owned enterprises to testify before them.

FOURTH RESEARCH QUESTION: DO INTEREST GROUPS (GOVERNMENT, INDUSTRY, AND CIVIL SOCIETY) ACCEPT PARLIAMENTARY LEGITIMATION IN THE SECTOR REFORMS? TO WHAT EXTENT HAS PARLIAMENT APPLIED ITS LEGISLATIVE, REPRESENTATIVE, OVERSIGHT AND BUDGETARY MANDATES TO INFLUENCE ICT REFORM PROCESSES?

Discussion Questions

1. Do you feel you are getting on-going and consistent parliamentary support to achieve your objectives? What would be your suggestions for improvements?
2. How often and through what means do you engage with parliament? Is this an institutionalised process?
3. Does parliament promote citizen's knowledge and understanding of the role of MPs in the ICT policy-making process? Are there carefully structured processes to support this?
4. Are there mechanisms to promote public understanding of the work of parliament? Is this supported by a carefully structured process? In the absence of mechanisms does parliament make an attempt to promote public understanding of its work at all?
5. Who conducts the oversight function of parliament? Is it performed by all sector related committees and other special committees? Do these committees have investigative powers over implementation issues including budgetary issues? Are these powers enshrined in the rules of procedure or other laws and are regularly enforced?
6. Does the ICT Committee and other committees hold public hearings on ICT policies in which evidence from the Executive and the public is taken
7. Does parliament provide the required framework to support growth of the ICT Sector? How can this be improved?
8. Does parliament have power to amend bills? With or without limitation?
9. Do adequate opportunities exist for citizens to input into any legislative process? Are these opportunities contained in the rules of procedure or other law/ instrument and made public
10. Can parliament amend a bills without limitations or requires the consent of the Executive through the relevant ministry?
11. Who manages the constituency development fund used for development projects in the constituency? Are there any ICT projects initiated?
12. Do adequate mechanisms exist for parliament to track legislations that has been enacted? Is this supported with access to resources to provide evidence on the impact of ICT legislation?
13. Are the rules and procedure and or other laws empowering parliament to send back legislation to the Executive for review?

FIFTH RESEARCH QUESTION: HOW HAVE EXISTING INSTITUTIONAL CAPACITY, POLITICAL COMPETENCY, AND SPECIALIZED KNOWLEDGE LEVELS WITH REGARD TO ICT, WITHIN PARLIAMENT ENABLED OR HAMPERED ITS PARTICIPATION IN DEVELOPING ENABLING ENVIRONMENT FOR ICT SECTOR REFORMS?

Discussion Questions

1. Do MPs have the knowledge and skills to participate effectively in the ICT Policy making process?
2. Does parliament provide opportunities for MPs to improve their knowledge and skills
3. Do political parties assign parliamentary responsibilities to Members based on their knowledge and skills?
4. Does parliament have an ICT committee with the sole mandate to review ICT policy issues?
5. Are there sufficient mechanisms for committees to obtain information from the executive to exercise its oversight function in a meaningful way? Can the committees request and receive response on actions taken by the executive on the Committees/Parliaments recommendations and is this supported by adequate powers in law
6. Does parliament determine its own budget for the year which the executive cannot vary? Are oversight committees adequately resourced to undertake their activities with a separate budget
7. Do Oversight committees provide meaningful opportunities for minority/opposition parties to engage in effective oversight of government expenditures
8. Parliament has adequate logistics including office space to enable it perform its functions
9. Who manages the constituency development fund used for development projects in the constituency?
10. Parliament has a structured system for receiving technical and advisory assistance from external sources. A fully staffed donor coordination unit exists
11. Parliament has a highly competent specialists research and other staff that provides MPs with requisite research and other information in real time including position papers on topical issues

APPENDIX 3: CODIFICATION SCHEDULE

Area of investigation	Theme	Codes	Tally
Role of parliament in ICT sector reforms	<ul style="list-style-type: none"> • Representation and participation • Policy adoption and shaping of outcomes • Parliamentary ineffectualness 	State involvement Consultation Inadequate capacity Principal- agent Power relations Interests	
Openness and accessibility of parliament	<ul style="list-style-type: none"> • Source of information on government priorities 	Openness Accessibility Engagement Participation Electoral	
Application of parliamentary power	<ul style="list-style-type: none"> • Parliamentary legitimacy • Legislative delegation • Effective review and tracking of bills • Legal mandate 	Legislative capacity Principal – agent relationships Law-making Power relations and structures Formal/informal Rules	

Area of investigation	Theme	Codes	Tally
Influence of parliament in ICT sector reforms measured	<ul style="list-style-type: none"> • Balance of power among state institutions • Power to exercise oversight • Legal and technical expertise • Access to executive information 	Veto point Oversight Sector arrangements Institutional diversity Distribution of responsibility	
Level of institutional development	Independence to determine budget	Separate budget Constituency development funds Research support staff	

Capacity indexing		Total Assessed Score for Capacity Area	Capacity Rating Average	Capacity Rating Weighted Average
	Accessibility and Openness			
	The parliament is open to citizens and the media			
	Mechanisms to promote public understanding of the work of parliament			
	Promoting citizen's knowledge and understanding of the role of MPs in the ICT policy-making process			
	Relationship between parliament, CSOs and other related institutions			
	Legal Mandate			

	Capacity indexing	Total Assessed Score for Capacity Area	Capacity Rating Average	Capacity Rating Weighted Average
	Law making			
	Power to amend Bills			
	Opportunities for public input into the Legislative process			
	Mechanisms to Track Legislation			
	Power to send back legislation for review			
	Bill review and hearings			
	Period of review of any ICT legislation			
	Existence of an ICT Committee			
	Public hearings on ICT			
	Oversight Committees			
	Existence of oversight committees			
	Investigative powers of oversight committees			
	Oversight of spending by State Enterprises			
	Mechanisms for oversight committee to obtain information from the Executive			
	Power of oversight committees to follow up on recommendations			
	Access to resources by Oversight Committees			
	Opportunities for minority/opposition parties			
	Financial and material resources			
	Power of parliament to determine its own budget			
	Logistics available			
	Resources for MPs constituency development activities			
	Mechanisms for receiving and coordinating technical assistance			
	Research and support staff			