IPF
INSTITUTE OF PUBLIC FINANCE

KENYA SHADOW GOVERNANCE DIAGNOSTIC REPORT

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PREFACE

In October 2024, the Government of Kenya requested the IMF to undertake a governance diagnostic assessment as part of its engagement with the International Monetary Fund (IMF). Kenya was under an IMF programme that started in April 2021 and ended in March 2025.The IMF has in the past undertaken governance diagnostics for various countries mainly covering the strengthening of governance and anti-corruption policies, enhancing public spending efficiency; revenue administration; boosting competition; judicial reform; fostering growth and inclusive poverty reduction amongst others. African countries that have recently had a governance diagnostic done by the IMF include the Democratic Republic of Congo (2021), Mali (2023), Zambia (2023) and Gambia (2024). The shadow assessment is thus supposed to mirror the official assessment and provide a largely non-state led perspective on governance in the country.

Specific to Kenya, the purpose of such a diagnostic is to support the government of Kenya in its endeavor to strengthen governance and anti-corruption policies, utilize the diagnostics recommendations to enhance public spending efficiency, boost competitiveness, foster growth, and inclusively reduce poverty. The IMF's programme with Kenya focused on dealing with anti-corruption and illicit financial flows, including fiscal consolidation and state corporation reforms. Under the Kenya Kwanza administration, the Finance Act 2023 and the Finance Bill 2024 made proposals on taxation that effectively served to reduce the disposable incomes of many working Kenyans as well as raise the cost for employers. This led to protests on the cost of living, the opulence of politicians and state officers, and a call for tougher measures on corrupt.

The report has summarized the areas of consideration and reviews the issues arising and makes recommendations on public financial management, judicial reform, anti-corruption, and inclusive economic growth, the major thematic areas that the IMF programme covers. A review of reports, studies, and policy documents, as well as validation by key informants drawn from leading civil society organizations in governance and economic affairs, helps to provide an informed and analytical perspective of the key governance issues in the country and what the IMF and the government might want to consider. Many of the issues covered are not new and are continuously being raised by different segments of the society.

ACKNOWLEDGEMENTS

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EXECUTIVE SUMMARY

This governance diagnostic assessment report examines Kenya's progress and challenges in the key areas of public finance management, anti-corruption, judicial reform, competition, poverty, and inclusive growth. The findings provide insights into policy implementation, governance effectiveness, and areas that require urgent intervention.

Public finance management is crucial for Kenya's economic growth, resource efficiency, and fiscal discipline. The assessment highlights progress in areas such as the transition from cash-based to accrual-based accounting for improved financial accuracy, the implementation of the proposed Zero-Based Budgeting to enhance accountability, strengthened public debt management through the Commonwealth Meridian Debt Management System, and increased public participation in budget-making and oversight processes.

However, several issues persist, including unpredictable county revenue allocations due to political and fiscal pressures, rising public debt beyond approved ceilings, poor enforcement of financial regulations causing inefficiencies in budget implementation, inconsistent tax policies that create an uncertain business environment, weak budget oversight by Parliament, and delays in financial disclosures by government agencies. To address these challenges, the assessment recommends expediting the privatization of underperforming state-owned enterprises (SOEs), aligning fiscal policies with credible revenue performance to curb excessive borrowing, enhancing the independence of oversight bodies such as the Office of the Auditor General, and strengthening mechanisms for equitable revenue sharing between the national and county governments.

Remarkably, Kenya has made strides in fostering a competitive business environment through the Competition Act (2010) and the establishment of the Competition Authority of Kenya (CAK). Notable achievements include strengthened enforcement against abuse of buyer power (217 cases were handled between 2018 and 2023), implementation of the Public Procurement and Asset Disposal Act (2015) to enhance fair tendering, as well as digitization of procurement processes to curb corruption and increase market transparency.

However, competition challenges still remain. These include the dominance of state-owned enterprises (SOEs), which limits private sector growth, corruption in procurement processes, favoritism towards politically connected firms, inconsistent tax policies that undermine business stability, and growth and weak enforcement of competition laws, which allow anti-competitive practices. To overcome these hurdles, the assessment recommends rationalizing SOEs to improve efficiency and reduce financial risks, strengthening enforcement of competition laws to prevent monopolistic tendencies, and improving tax policy stability by reducing frequent, arbitrary regulatory changes.

Judicial reforms in Kenya, have mainly focused on enhancing judicial independence, efficiency, and access to justice. Notable reforms include the expansion of court infrastructure, with High Court stations present in 41 out of 47 counties, digital transformation through e-filing and virtual court sessions, and the introduction of Alternative Dispute Resolution (ADR) mechanisms aimed at reducing case backlog. However, persistent challenges still hinder judicial efficiency. They include political interference in judicial processes, continued underfunding with the Judiciary receiving only 1% of the national budget, and rising allegations of corruption within the Judiciary, which undermine public confidence. To address these challenges, the assessment recommends financial enhancement and operational independence of the Judiciary, implementation of stricter integrity measures to combat corruption, and quick resolution of corruption cases to enhance accountability.

Of great concern, corruption remains a major impediment to governance and development in Kenya despite having comprehensive legal frameworks and institutional mechanisms. The assessment notes that Kenya's ranking on Transparency International's Corruption Perception Index improved slightly from 127th in 2023 to 121st in 2024, but challenges still exist. Limited successful prosecutions of high-profile corruption cases weaken deterrence, political interference, and weak enforcement of integrity laws allow corruption to thrive, while efforts to amend key anti-corruption laws risk diluting transparency and accountability mechanisms. To strengthen anti-corruption efforts, the assessment recommends strengthening the independence and capacity of anti-corruption institutions such as the Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions (ODPP), enhancing whistleblower protection to encourage reporting of corruption cases, and increasing transparency in procurement and budgetary processes to curb financial mismanagement.

Despite Kenya experiencing commendable economic growth in recent years, the progress has not translated into inclusive development or significant poverty reduction. Approximately 36% of the population still lives below the poverty line, with rural areas, youth, women, and marginalized communities disproportionately affected. Key challenges include regional inequalities, high youth unemployment, gender disparities, limited access to basic services, and vulnerability to climate shocks. And although there have been improved sectoral performance in agriculture, services, and manufacturing, inequalities in income, infrastructure, healthcare, and education are still prevalent. To foster inclusive growth, the report recommends strengthening agricultural productivity, promoting job creation, enhancing social protection systems, improving access to healthcare, and advancing inclusive governance. A coordinated, multi-sectoral approach anchored in structural reforms and partnerships between the government, private sector, and civil society is essential to ensure equitable and sustainable development for all Kenyans.

This report highlights progress in governance and economic reforms but also underscores persistent structural challenges. Addressing inefficiencies in public finance management, enhancing competition, strengthening judicial independence, and intensifying anti-corruption efforts are critical to notable sustainable development and good governance in Kenya. Implementing the recommended interventions will lead to economic stability, equitable resource allocation, and enhanced public trust in governance systems.

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ADR	Alternative Dispute Resolution
AML	Anti-money Laundering
AUCPCC	African Union Convention on Preventing and Combating Corruption
BPS	Budget Policy Statement
CAM	Court Annexed Mediation
CRA	Commission on Revenue Allocation
CS-DRMS	Commonwealth Secretariat Debt Recording and Management System
EACC	Ethics and Anti-Corruption Commission
ECOWAS	Economic Community of West Africa States Protocol on the Fight Against Corruption
ECF	Extended Credit Facility
EFF	Extended Fund Facility
FIFS	Facility Improvement Funds
FATF	Financial Action Task Force
GDP	Gross Domestic Product
IFMIS	Integrated Financial Management Information System
IMF	International Monetary Fund
IPF	Institute of Public Finance
JSC	Judicial Service Commission
KRA	Kenya Revenue Authority
LSK	Law Society of Kenya
MTDS	Medium-term Debt Strategy
OAG	Office of the Auditor General
OCOB	Office of the Controller of Budget
ODPP	Office of the Director of Public Prosecution
OGP	Open Government Partnership
OSR	Own Source Revenue
PDMO	Public Debt Management Office
PFM	Public Finance Management
PPIP	Public Procurement Information Portal
PPPS	Public Private Partnerships
RSF	Resilience and Sustainability Facility
SADC	Southern Africa Development Community
SCD	Systematic Country Diagnostics
SOEs	State Owned Enterprises
STAJ	Social Transformation through Access to Justice
UNCAC	United Nations Convention against Corruption
ZBB	Zero Based Budgeting


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1.0 INTRODUCTION

1.1 The Case for Shadow Governance Diagnostic Assessment

1.1.1 Strengthening Public Reforms: a Citizen-led Governance Assessment

Kenya stands at a pivotal juncture in its governance reform journey, with a growing opportunity for broadening participation, enhancing transparency, and strengthening institutional accountability. Recent signals, such as the government's request for an IMF governance diagnostic, demonstrate a willingness to confront structural challenges in corruption, fiscal management, and institutional integrity areas.

Typically, an IMF Governance Diagnostic Assessment provides an in-depth, country-specific evaluation of systemic corruption vulnerabilities and governance gaps across core state functions. Guided by the IMF's 2018 Framework for Enhanced Engagement on Governance, it examines areas such as fiscal governance, central bank effectiveness, financial and market regulation, anti–money laundering (AML)/counter-terrorist financing (CFT), rule of law, and public financial management. Through scoping and main missions, IMF teams engage extensively with authorities, civil society, academia, private sector actors, and oversight institutions to develop a rich, grounded understanding of governance weaknesses. The resulting report presents prioritized and sequenced reform recommendations to strengthen institutional integrity, improve transparency, and embed practical anti-corruption measures into national systems. The diagnostics are voluntary initiatives requested by member authorities, but they are increasingly central to IMF capacity development and integrity embedding.

In October 2024, the Kenyan Government formally requested a Governance Diagnostics Assessment from the IMF. The IMF approved the request and conducted a pre-assessment review mission to the country in early March 2025. In this evolving context, there is increasing recognition that meaningful reform must reflect a diversity of perspectives, including those rooted in citizen experience and independent analysis. This shadow governance diagnostic led by the Institute of Public Finance (IPF) offers a timely and constructive contribution. It enables a deeper interrogation of governance systems, fosters inclusive engagement, and supports reforms that are not only technically sound but also publicly anchored and socially legitimate.

The IMF has in the past carried out Governance Diagnostics Assessments in several countries, including the Democratic Republic of Congo (2021), Zambia, Mali, and Sri Lanka (all in 2023), and The Gambia (2024). Pakistan's assessment is taking place in 2025. The assessment process typically involves meetings and interviews with a range of government officials from relevant ministries, departments, and agencies, as well as representatives from independent offices, the private sector, civil society, and development partners. In some countries, non-state actors have taken the initiative to conduct their own shadow governance diagnostics alongside or in response to the IMF-led process. For example, civil society organizations in Zambia and Sri Lanka developed independent assessments to provide alternative viewpoints and ground the reform dialogue in public interest concerns and local realities. These citizen-led reviews have served to broaden the reform of conversation and strengthen public accountability mechanisms.

The IMF's position is clear: fast-tracking reforms in governance, anti-corruption, and anti-money laundering frameworks is not a policy luxury—it is a structural necessity for rebuilding public trust, unlocking investment, and enabling inclusive, climate-resilient growth. The strategy is three-fold: fix broken institutions, sequence reforms smartly, and target the most damaging governance failures. However, beneath this well-meaning technocratic approach lies a quieter risk: that governance reform becomes a closed-door affair between the state and the lender, detached from public oversight. At times, progress stalls due to weak state cooperation or a government unwilling to share information. Ultimately, the process is shaped by the political incentives of the very institutions under scrutiny, often far removed from the lived realities of those who endure the effects of poor governance, such as corruption daily.

Crucially, while IMF governance diagnostics assessments encourage civil society participation, the degree of access and consultation is determined by the state. This is where the shadow governance diagnostic, developed and conceptualized by the Institute of Public Finance, becomes essential. As a citizen-centered counterweight, it is not just helpful, it is a democratic necessity. Moreover, while governments may or may not choose to publish the IMF diagnostic, the shadow report is not subject to executive discretion. It will be made public, because transparency is a necessity.

The shadow diagnostic takes seriously the idea that systemic challenges in governance are not only technical defects in policy architecture but also a distortion of power. It asks: Who benefits from opaque procurement systems? Why does judicial independence remain elusive? What political incentives sustain a PFM system that budgets for growth but delivers stagnation? Why do anti-corruption institutions stall when they move too close to the politically powerful?

1.1.2 Kenya's Governance and PFM Context with the IMF

In April 2021, the IMF Executive Board approved a 38-month, USD 2.34 billion

Extended Fund Facility (EFF) and Extended Credit Facility (ECF) programme for Kenya. The programme was designed to support economic recovery from the COVID-19 shock, stabilize the macroeconomic environment, and advance inclusive growth. It prioritized fiscal consolidation through revenue mobilization and prudent expenditure, with safeguards for vulnerable populations and targeted reforms for State-Owned Enterprises (SOEs).

In July 2023, the programme was extended to include a 20-month Resilience and Sustainability Facility (RSF) arrangement worth USD 551.4 million, bringing a climate-resilience dimension to Kenya's reform agenda. Since its launch, the programme has undergone eight reviews, the latest being a combined seventh and eighth review under the EFF/ECF and a second review under the RSF, concluded in October 2024. However, the planned ninth and final review of the existing IMF programme was subsequently cancelled, with the government hinting at a pursuit of a renegotiated agreement ahead of the IMF Spring Meetings in April 2025.

Despite formal progress, Kenya's fiscal position remains fragile. Public debt has reached historic levels, with a widely reported discrepancy of KES 20 billion between figures published by the Central Bank of Kenya and the National Treasury, raising public concern about debt transparency and accountability.

In February 2024, Kenya was placed on the Financial Action Task Force (FATF) grey list, citing gaps in its anti-money laundering and counter-terrorism financing frameworks. FATF also noted limited enforcement outcomes and the absence of a national strategy for prosecuting financial crimes related to terrorism. The EU Commission, as a founding member of FATF and because of monitoring the progress of the jurisdictions under "increased monitoring", published an updated list of high-risk jurisdictions that included Kenya. EU entities are thus required to apply enhanced vigilance while transacting with these countries to protect the EU financial system.

These developments have unfolded amid heightened social and political pressures. Widespread protests against the Finance Bill 2024 began in May and escalated significantly in June, resulting in multiple fatalities and raising urgent concerns about fiscal equity, public trust, and the perceived disconnect between revenue measures and citizen welfare. Protesters expressed dissatisfaction with the rising living costs, limited economic opportunities, and perceptions of systemic corruption.

Reform signals have been mixed. The President dismissed his entire cabinet, submitting to one of the key demands from the protesters. Later, the President reappointed half of them back, especially the faces that the protesters had pointed out as those of ministers acting with impunity and displaying unexplained opulence. A political alliance with the biggest opposition party, Orange Democratic Movement (ODM), was also affected with five new cabinet secretaries appointed from the party, and the party leader, former Prime Minister Raila Odinga's campaign to be elected as the chair of the African Union Commission got state backing. Crucial bills like the Conflict of Interest Bill were revived and considered in 2024.

In January 2025, the Cabinet approved a blueprint to merge and rationalize state corporations, while Parliament passed a comprehensive Anti-Money Laundering and Combating of Terrorism Financing (AML/CTF) amendment in April. However, in the same month, the President rejected the Conflict-of-Interest Bill, criticizing it for falling short of public expectations. These developments underscore the complex interplay between policy, politics, and reform ambition in Kenya's evolving governance landscape. The Finance Bill 2025 considerations did not precipitate any protests like in 2024. There was a more open and consultative process with the Cabinet Secretary for the Treasury holding town halls, appearing on radio and TV stations. However, while Parliament was considering the Finance Bill and the final budget statements, Kenyans were protesting the death of Albert Ojwang in police custody. The Finance Bill was passed by Parliament and assented to by the President, with the more notable rejection by Parliament of a request by the Kenya Revenue Authority to have unfettered access to Kenyan's financial data.

Together, these trends reflect the complex dynamics shaping Kenya's current governance landscape - a landscape defined by efforts to stabilize the economy under international frameworks, growing public scrutiny, and an urgent need to align structural reforms with social legitimacy and institutional integrity.

1.2 Introducing the Report

This report presents a Shadow Governance Diagnostic: a politically attuned, technically grounded, and publicly accessible assessment of Kenya's governance system, produced by the Institute of Public Finance (IPF). It is intended to supplement the IMF's formal diagnostic by embedding citizen-centric perspectives, surfacing structural risks, and placing power and politics at the center of the governance discourse.

While the IMF's governance diagnostic typically focuses on formal institutions and compliance-based frameworks, this report uses a broader lens. It situates governance within the lived realities of ordinary Kenyans and within the dynamics that shape public finance choices, accountability mechanisms, and the rule of law.

The report is organized around five governance fault lines, selected for their critical relevance to Kenya's development and reform agenda:

i) <u>Public Finance Management</u> – Assessing the progress and disconnect between fiscal policy intentions and implementation, including revenue performance, debt transparency, and the politics of inter-governmental transfers.

ii) Boosting Competition – Examining how market dominance, protectionist policies, regulatory capture, and policy volatility undermine inclusive growth and enterprise dynamism.

iii) Judicial Reforms – Reviewing access to justice, budget constraints, and judicial independence in light of expanding caseloads and persistent corruption.

iv) Anti-Corruption – Interrogating enforcement gaps, the politicization of anti-corruption efforts, and institutional resilience in tackling high-level impunity.

v) Inclusive growth and poverty reduction-Review Kenya's economic growth and its impact on poverty, especially among rural and marginalized groups, and highlight key reforms needed in agriculture, employment, social welfare, healthcare, education, and governance to promote inclusive development.

The IPF Shadow Governance Diagnostic is intended to serve policy actors, citizens, civil society, funders, and international institutions alike. It is a tool for accountability, action, and advocacy, anchored in the belief that lasting reform begins with transparency and must be owned by the public it aims to serve.

1.3 Highlights of Findings and Key Recommendations

It is important to acknowledge that Kenya has no shortage of well-documented policy recommendations. As evidenced by the extensive archives available on public platforms, including IPF's website from the research that we have conducted in the past, numerous reports and studies have put forward sound proposals. The persistent challenge lies not in the absence of recommendations, but in the lack of effective implementation and enforcement.

Therefore, while this report culminates in a set of actionable recommendations, it is essential to underscore that many of them are not new to the public discourse. The critical question remains: is there sufficient political will and institutional capacity to act on them? We hope that the insights and proposals generated through this process will not only be considered but will also inform meaningful action within the proposed timelines.

i. **Public Financial Management:** Reforms in public finance are underway to bolster fiscal discipline and efficiency. The government's shift from cash-based to accrual-based accounting aims to improve financial accuracy, and the rollout of zero-based budgeting is intended to enhance spending accountability. Public debt management has been upgraded (e.g., adopting the Commonwealth Meridian system), and citizen participation in budget formulation and oversight has increased. In April 2025, the National Treasury launched the e-government procurement (e-gp) system, with the Cabinet Secretary stating that up to 80% of public services will be delivered digitally and that only procurements processed through the system will be approved and paid for. **Challenges, however,** remain acute: intergovernmental finances suffer from unpredictable county allocations (amid political bargaining and fiscal pressures), public debt levels exceed legal ceilings, with limited debt transparency persisting, and lax enforcement of financial regulations leads to waste in budget execution. Inconsistent tax policy and delays in government financial disclosures further erode budget transparency. **Key recommendations** are to align fiscal policies with realistic revenue targets to contain excessive borrowing, empower independent oversight institutions (like the Auditor General's office) for stronger budget accountability, and strengthen mechanisms for equitable revenue sharing between national and county governments.

ii. **Competition:** Kenya's market reforms have gained traction, and notable progress in fostering a more competitive market environment. The 2010 Competition Act and an empowered Competition Authority of Kenya (CAK) have led to stronger enforcement against abuses of market power (e.g. over 200 abuse-of-buyer-power cases reviewed in 2018–2023). Digital procurement tools and the Public Procurement and Asset Disposal Act (2015) have improved tender transparency. **Challenges** persist, however: , but political capture, dominant SOEs, and protectionist policies still distort fair competition. Direct awards and insider deals remain common despite digital procurement tools. Frequent tax changes undermine policy certainty, and weak enforcement allows abuse by powerful firms. SOEs not only crowd out private players but pose fiscal risks. Export growth is sluggish due to regulatory and logistical hurdles. The result: a system tilted toward well-connected incumbents, choking innovation and excluding smaller firms. **Key recommendations** include rationalizing and reforming SOEs to reduce fiscal risks and market distortion, strengthening enforcement of competition regulations to curb monopolistic behavior, and stabilizing tax policy (reducing frequent arbitrary changes) to encourage investment. Reforming competition is not just about economic efficiency, it's about unlocking opportunities for all, not just the privileged few.

iii. **Judicial Reform:** Efforts to improve the Judiciary have focused on expanding access to justice and efficiency. Court infrastructure has grown (High Courts exist in 41 of 47 counties) and digital reforms like e-filing and virtual hearings, alongside Alternative Dispute Resolution (ADR) mechanisms, reduce case backlogs. **Challenges, however,** continue to undermine judicial effectiveness: political interference in judicial processes remains a concern, chronic underfunding of the Judiciary (around 1% of the national budget against a 2.5% benchmark) limits its capacity, and persistent allegations of corruption within the courts erode public confidence. **Key recommendations** include: ensuring greater financial and operational independence for the Judiciary, implementing stricter integrity safeguards to combat internal corruption, and fast-tracking the resolution of corruption cases in the courts to enhance accountability and public trust.

iv. **Anti-Corruption:** Despite robust legal frameworks and dedicated agencies, corruption continues to pose a major governance hurdle. Kenya's ranking on Transparency International's Corruption Perceptions Index has barely improved in 10 years, and enforcement has lagged. Few high-profile graft cases result in successful prosecutions, blunting deterrence. Political interference and weak enforcement of ethics laws allow impunity to persist, and recent attempts to amend anti-corruption laws raised concerns about diluting transparency. A key example is the journey undertaken in assenting to the Conflict-of-Interest Bill 2023. The Bill was first tabled in the National Assembly in April 2023, then passed and forwarded to the Senate, where it was tabled in December 2023 before being watered down on the floor in May 2024. The President decried the delay in the passage of this bill by Parliament in his State of the Nation Address in November 2024. Thereafter, it was passed by the National Assembly in December 2024 and the Senate in April 2024, only for the President to decline to assent to it, citing that it had been watered down and had weakened the role of the Ethics and Anti-Corruption Commission (EACC). The revised bill is currently in the Senate after the National Assembly amended it with the President's feedback. **Key recommendations** focus on bolstering the independence and capacity of anti-corruption institutions – notably the EACC and the Office of the Director of Public Prosecutions – to pursue cases without fear or favor. Additional reforms call for stronger whistleblower protections (to encourage reporting of corruption) and greater transparency in public procurement and budgeting processes, which would help curb fraud and financial mismanagement.

v. **Inclusive Growth and Poverty Reduction:** Kenya's solid headline economic growth in recent years has not translated into sufficient poverty reduction or broad-based improvements in living standards. Approximately 36% of the population still lives below the national poverty line, with rural communities, youth, women, and other marginalized groups disproportionately affected. Challenges include stark regional inequalities, high youth unemployment, gender gaps, limited access to quality basic services, and vulnerability to climate shocks – all of which perpetuate poverty and exclusion despite sectoral gains in areas like agriculture and services. Key recommendations: prioritize investments and reforms to make growth more inclusive: strengthening agricultural productivity and food security, fostering job creation (especially for young people) through an enabling business environment, enhancing social protection systems and safety nets for the most vulnerable, improving access to healthcare and education, and advancing inclusive governance practices (such as involving marginalized communities in policy decisions). Finally, public finance systems should be used to deepen equity and participation by aligning revenue-sharing with need, linking grants to performance, and embedding citizen engagement in budget planning and tracking, with disaggregated data and public dashboards to enhance fiscal accountability.

2.0 ASSESSMENT AREA: PUBLIC FINANCE MANAGEMENT

Kenya has made notable progress in public finance management from plans to adoption of accrual accounting and zero-based budgeting to reforms in public investment and improved debt reporting. Institutions like the judiciary and police now enjoy greater operational independence. But deep challenges remain. The division of revenue is fraught: county funding is erratic, politically driven, and based on outdated audit data, with frequent disbursement delays. Debt management is plagued by opacity and frequent departures from approved borrowing strategies. Publicly guaranteed debts and bailouts for struggling SOEs continue to drain public resources.

Constitutional commitments to equity and public participation are gradually improving but face persistent gaps in financing and execution, thus weakening devolution. Budget credibility is undermined by inflated revenue projections, missed revenue targets, and skewed spending priorities - such as just 17% of the FY 2024/25 budget allocated to development; Oversight institutions are underfunded, with key bodies like the CRA and the SRC frequently sidelined. The Auditor-General remains under-resourced, and audit findings are routinely ignored. Meanwhile, tax unpredictability, misuse of Article 223, breaches of wage ceilings, and revenue leakages persist.

2.1 Overall Context

A well-functioning public finance management system lies at the core of sound economic governance. It not only enables governments to collect and allocate public resources effectively, but also shapes the broader trust in institutions, mediates the social contract between citizens and the state, and determines the extent to which development outcomes are equitably realised. In the Kenyan context, PFM is more than a technical or procedural domain; it is deeply political, woven in the fabric of devolution, contestation over resources, and citizen-state accountability.

Kenya's PFM system is underpinned by a strong legal framework, most notably Chapter 12 of the Constitution, which codifies key principles of openness, accountability, and equity in resource allocation. These constitutional aspirations are operationalized through laws such as the Public Finance Management (PFM) Act (2012), the Public Audit Act (2015), and the Controller of Budget Act (2016), among others. These statutes provide the architecture for managing public finances across both national and county levels (Table One).

Table 1: Legal Framework Governing Kenya's PFM System

Framework	Core Mandate
Constitution of Kenya (Chapter 12)	Enshrines fiscal responsibility, equitable sharing of resources, and public participation in financial matters.
Public Finance Management Act (2012)	Guides prudent use of public resources and budget processes at both national and county levels.
Controller of Budget Act (2016)	Oversees withdrawals from public funds and monitors budget implementation.
Public Audit Act (2015)	Anchors auditing of public entities, enabling oversight and financial probity.
Commission on Revenue Allocation Act (2011)	Promotes fairness in intergovernmental fiscal transfers.
PFM (County Governments) Regulations (2015)	Specifies financial procedures aligned with devolved governance structures.

In practice, the performance of the PFM system reflects the tensions between formal rules and informal practices. Revenue mobilization continues to rely heavily on taxation, with the Kenya Revenue Authority (KRA) at the helm, while the National Treasury (NT) and the county treasury steer budget planning, execution, and debt management at the national and county levels. Parliament exercises its legislative oversight over budget estimates, appropriation, and audit reports. Budget execution is overseen by the Office of the Controller of Budget (OCoB), while the Auditor General provides a post-expenditure audit trail. Public participation, a constitutional requirement, is built into budget processes, yet its actual influence remains uneven. Other players, such as the county governments, administer their own source revenues and implement county budgets.

Recent fiscal events offer deeper insights into the evolving dynamics of PFM in Kenya. The rejection of the Finance Bill in FY2024/25, amid public discontent and nationwide protests, signaled not only a failure in policy communication but also a broader legitimacy crisis in fiscal governance. This moment underscored the reality that fiscal reforms, if devoid of dialogue, risk further alienating the very citizens they aim to serve. In its aftermath, the 2023 Finance Act remains the operative legal instrument, while questions around equity, burden-sharing, and policy responsiveness remain unresolved.

Against this backdrop, the 2025 Budget Policy Statement signals a notable shift in both tone and ambition. For years, the move from cash-based to accrual accounting remained largely theoretical. Now, with a commitment to adopt accrual-based accounting under IPSAS 33 and to operationalize Zero-Based Budgeting (ZBB), the government appears to be pursuing deeper structural reforms. These changes aim to improve the accuracy of financial reporting and foster more deliberate prioritization in budget allocation.

To support the implementation of ZBB in the FY 2025/26 budget, the National Treasury developed a Budget Costing Tool, integrated into the IFMIS Budget Module for national government entities. This tool incorporates standardized costing methodologies to strengthen baseline calculations, improve prioritization, and provide a credible foundation for preparing budget estimates. Under ZBB, all ministries, departments, and agencies must justify each expenditure item from scratch, promoting transparency, efficiency, and alignment with high-impact priorities.

While the government has committed to entrenching this approach in future budgets, the extent of actual implementation remains unclear due to limited data availability. Assessing its effectiveness would require examining budget documentation and costing decisions within a specific ministry or state department to determine whether the new tool has meaningfully influenced allocations.

Parallel efforts are also underway to rationalize public investment management. Ministries, Departments, and Agencies (MDAs) are now expected to submit inventories of ongoing projects before proposing new ones, a measure designed to prevent project proliferation and limit resource wastage. This aligns with growing concerns over stalled or duplicated projects and signals a belated, but welcome shift toward performance-oriented budgeting.

The state's commitment to institutional independence has seen meaningful progress in recent years. The Judiciary and National Police Service now operate with budgetary autonomy and distinct accounting officers, reflecting constitutional intent. Such measures are to help safeguard against executive overreach and reinforce institutional checks and balances. Still, the durability of these reforms must be weighed against political transitions and shifting power dynamics. However, it is a known fact that the Judiciary, for instance, receives inadequate funding.

A competitive market ensures that firms constantly strive to offer better quality goods and services at fair prices, benefiting both consumers and the broader economy. The World Bank's 2020 Kenya Systematic Country Diagnostic (SCD) highlights how competition fosters productivity growth, attracts private investment, and drives economic resilience. Moreover, competitive markets play a key role in enhancing economic growth and poverty alleviation, as recognized by governments and development partners.[1]

2.2 Measures to Enhance Public Finance Management in Kenya

In recognition of the persistent inefficiencies and vulnerabilities in Kenya's fiscal management system, this category of recommendations proposes legal and policy reforms aimed at enhancing economic governance and safeguarding public resources.

2.2.1 Withhold Government Guarantees from Persistently Underperforming State-Owned Enterprises, Especially Where Previous Guarantees or Debt Financing Have Failed to Improve Financial Performance

Kenya's current approach to state guarantees undermines fiscal responsibility and exposes public finances to high and recurring risks. Several SOEs continue to receive state guarantees despite persistent structural inefficiencies and a track record of financial underperformance. The most prominent example is Kenya Airways (KQ), whose inability to service its loans led to a government bailout amounting to KSh 88 billion.

As of June 2024, the guaranteed debt stock stood at Ksh 92.8 billion, compared to 170.23 billion as of 30th June 2023. As of June 2023, three SOEs, Kenya Electricity Generating Company (KenGen), Kenya Ports Authority (KPA), and Kenya Airways (KQ), accounted for Ksh 170.2 billion in publicly guaranteed debt[2], as detailed in

1 The State of Competition Report: Mobile Money Transfer, Agricultural Bulk Storage and Milling, and the Media Sectors in Kenya; Institute of Economic Affairs, 2011.

2 2024 Medium Term Debt Management Strategy

Table Two.

Table 2: Outstanding Government Guaranteed Debt in Ksh Billions

Beneficiary Entity	Amount
Kenya Power and Lighting Company	9.0
Kenya Ports Authority	50.5
Kenya Electricity Generation Company	22.4
Sub-Total Un-called Guarantees	82.0
Kenya Airways	88.0
Sub-Total Called Guarantees	88.2
Total Guaranteed Debt	170.2
Source: The National Treasury	

The opportunity cost of these guarantees is significant. The funds absorbed by these bailouts could otherwise finance entire budgets of key ministries or development projects in sectors such as health, education, or infrastructure. As fiscal pressures mount, continued support for loss-making SOEs without meaningful reforms amounts to a misallocation of scarce public resources.

The contingent liability associated with guaranteed debt arises when the entities receiving the guarantees are unable to meet their debt obligations. In FY 2023/24, the government paid a total of Ksh 17.44 billion on guaranteed loans, all related to the Kenya Airways guarantee[3]. Of this amount, Ksh 14.32 billion was for loan redemption, while Ksh 3.11 billion covered interest payments.

The fiscal risk is further compounded by weak oversight and reporting. According to the Auditor General, the National Treasury's audited statements understate government-guaranteed obligations by Ksh 170.2 billion and further excluding an additional Ksh 152 million owed by the Cereals and Sugar Finance Company from this figure[4]. This discrepancy violates the Public Finance Management Act, 2012, and raises concerns about the credibility of fiscal reporting.

Kenya Airways presents a particularly concerning case. As of December 2023, the airline held liabilities amounting to Ksh 206.8 billion, including Ksh 171.4 billion in long-term debt[5]. The government continues to service Ksh 58 billion in externally guaranteed loans on behalf of the airline, yet these agreements outlining the repayment process or any collateral are not made public. This lack of structure not only exposes public funds to misuse but also weakens transparency and accountability.

3 National Government Budget Implementation Review Report FY 2023/24, Office of the Controller of Budget
4 Summary of the Auditor General's Report on National Government 2022/23
5 Kenya: Seventh and Eighth Reviews Under the Extended Fund Facility and Extended Credit Facility Arrangements (November 2024)

Guarantees should be a strategic instrument for catalyzing industrial growth and innovation, not a routine fallback for liquidity crises or systemic mismanagement. Entities with a record of financial indiscipline or misappropriation of funds should be disqualified from receiving guarantees. A more prudent and transparent approach to issuing guarantees will safeguard public finances and align fiscal commitments with national development goals.

2.2.2 Review and Update Kenya's Public Finance Management Legal Framework to Better Reflect the Country's Current Economic Realities and Sectoral Demands

Thirteen years since the enactment of the Public Finance Management (PFM) Act of 2012, Kenya's fiscal landscape has significantly evolved. Yet, key provisions of the Act and its accompanying regulations continue to constrain practical budget-making and service delivery. Two such provisions, the requirement that at least 30% of budgets go to development expenditure, and the 35% wage ceiling for county governments, have become increasingly difficult to comply with in the face of structural expenditure pressures, particularly in labor-intensive sectors such as health and education.

Section 15(2)(a) of the PFM Act mandates that, over the medium term, a minimum of 30% of national and county budgets be allocated to development. However, this legal benchmark has been consistently unmet. In the proposed FY 2024/25 budget, development spending accounts for just 17% of total expenditure, Ksh 687.9 billion out of Ksh 3.9 trillion. The shortfall is not an anomaly, but part of a sustained pattern where recurrent spending takes precedence. This also means that Article 43 of the Constitution, in regard to socio-economic rights, meant to be progressively implemented by the government, isn't happening since we are experiencing this reduced investment in the development side of Kenya's budget.

The problem extends to the use of borrowed funds. Legally, borrowed resources are to be channeled exclusively toward development expenditure. Yet in FY 2023/24, only 46% of funds raised through borrowing were used for development[6], with the majority financing recurrent obligations, a trend that undermines long-term fiscal sustainability and intergenerational equity.

On the counties side, Regulation 25(1)(a) and (b) of the PFM (County Governments) Regulations, 2015 caps personnel spending at 35% of total county revenue. This rule, intended to preserve room for service delivery and investment, is widely breached. In FY 2023/24, county wage bills reached Ksh 209.8 billion, 47.6% of the Ksh 440.7 billion in total county revenue[7]. Only three counties (Tana River, Narok and Kilifi) remained within the statutory limit. The rest face a structural trade-off between

6 Draft 2025 Budget Policy Statement 'Consolidating Gains Under Bottom-Up Economic Transformation Agenda For Inclusive Green Growth'

7 Draft 2025 Budget Policy Statement 'Consolidating Gains Under Bottom-Up Economic Transformation Agenda For Inclusive Green Growth"

legal compliance and maintaining essential services, particularly in labor-intensive sectors. The 2025 Budget Policy Statement acknowledges the issue but offers no concrete framework to address it. It merely suggests the need for policies that both prioritize service delivery through additional resources and address employment uncertainties at the county level, proposals that remain unactualized.

This misalignment between the fiscal rules and actual spending pressures highlights the need to modernize Kenya's PFM framework. Updating these provisions with lessons drawn from over a decade of implementation would allow for more flexible, realistic, and priority-aligned budgeting. Equally, the debt management framework requires review: determining whether a ratio-based ceiling (e.g., debt-to-GDP) or a stock-based ceiling (absolute limits) better supports fiscal discipline while allowing adequate development financing.

Without such a reform, Kenya risks continuing a cycle of rule-breaking that erodes the credibility of its budget laws and constrains effective fiscal planning. A responsive, evidence-led update of the legal framework is critical to restore the integrity and utility of the country's public finance system.

2.2.3 Strengthen the Legal and Institutional Framework Governing the Division of Revenue to Enhance Equity, Predictability, and Alignment with Constitutional Principles

While Articles 202 and 203 of the Constitution of Kenya provide a robust framework for equitable revenue sharing between national and county governments, the interpretation and application of the provisions remain inconsistent and politically influenced. The result is persistent underfunding of county functions, unpredictability in disbursements, and a misalignment between assigned responsibilities and available resources, which undermine service delivery and public trust in devolution.

Further, while county governments are expected to receive their full equitable share, the National Government disproportionately bears the burden of revenue shortfalls and budget cuts. This creates a perverse incentive structure, where counties are shielded from fiscal discipline while national programmes, including debt servicing, security, and infrastructure, absorb the brunt of fiscal adjustments.

Key Facts on Revenue Sharing Challenges

- Ksh 48.5 billion: Estimated annual cost of basic county operations (2015, IBP). Adjusted for inflation and expanded functions, the gap has widened.
- 17% of counties: Inherit and operate Provincial General Hospitals (PGHs), serving multiple counties without extra funding from the National Government.
- CRA vs Treasury: CRA proposals for equitable share are routinely revised

downward by the National Treasury. The National Assembly typically aligns with Treasury, undermining CRA's role.

- Revenue shortfalls: Counties receive full allocations, while the National Government absorbs budget cuts, distorting incentives and burdening national functions.

- Ambiguous "national interest" spending: Enables overlaps between national and county functions, weakening prioritization and transparency.

Each year, the Division of Revenue Bill is influenced not only by constitutional criteria but also by shifting macroeconomic conditions such as revenue performance, inflation, currency depreciation, fiscal consolidation targets, and debt obligations, as was the case in 2024.

In 2025, the County Allocation of Revenue Bill proposed an equitable share of Ksh 405.1 billion for counties for FY 2024/25[8]. This figure was shaped by several factors: sluggish revenue performance, rising debt servicing costs for the national government, the weakening of the shilling against the dollar, and the government's commitment to a fiscal consolidation plan aimed at reducing the fiscal deficit to 4.3% of GDP in FY 2025/26. The plan seeks to slow debt accumulation, improve the primary balance, and enhance fiscal sustainability.

Financing constraints, driven by limited access to both domestic and international markets, and the impact of ongoing geopolitical shocks on ordinary revenue further strained the national budget. Despite these pressures, the national government continues to absorb revenue shortfalls alone, while counties receive their full allocations, even as the national government faces significant budget cuts.

Moreover, the process of determining the equitable share has become increasingly politicized. Although the Commission on Revenue Allocation (CRA) is constitutionally mandated to recommend revenue allocations based on objective, technical criteria, its proposals are routinely revised downward by the National Treasury. This allocation is meant to be guided by the 15% of the most recent audited national revenue required by Article 203(2) of the Constitution to be allocated to counties. Furthermore, the National Assembly often endorses figures that align more closely with the Treasury's position rather than CRA's assessments, undermining the credibility of the revenue-sharing process and introducing uncertainty into county planning and budgeting.

In 2025, though, CRA recommended an allocation of Ksh 417 billion. The Council of Governors and the Senate proposed Ksh 450 billion, while the Institute of Economic Affairs–Kenya, a civil society organization, suggested Ksh 440 billion.[9] Ultimately, the mediation committee on the Division of Revenue Bill, 2025 (National Assembly

8 County Allocation of Revenue Bill, 2025

9 IEA Kenya Webinar, "Budget 2025/26: Crunching the Numbers – Key Insights and Highlights from the Analysis" held on 17th June 2025

Bills No. 10 of 2025), settled on Ksh 415 billion for the County Equitable Share for FY 2025/26[10]. While still below CRA's recommendation, this marks the first time the final allocation has not fully mirrored the National Treasury's initial proposal, signaling a slight shift toward more inclusive negotiation.

In addition, the determination of equitable share allocations is based on outdated revenue data. In FY 2022/23, allocations were based on audited revenue from FY 2017/18, despite more recent reports having been submitted by the Auditor-General. This trend continued into FY 2024/25, where allocations referenced FY 2019/20 data. Therefore, despite

Article 203(2) and (3) of the Constitution, which mandates that county governments receive no less than 15% of national revenue, the interpretation of this provision is often limited to tax revenues. This narrow interpretation results in counties receiving less than their rightful share of 15% and should therefore be revised to include total national revenue and not just tax revenue.

While many counties have made progress in growing their OSR through improved enforcement, automation, and diversification of revenue streams, this has not meaningfully reduced their dependence on intergovernmental transfers. In fact, despite these gains, the proportion of county budgets financed by the equitable share has remained high or even grown in some cases.

During the reporting period (July 2023 to June 2024), county governments generated a total of KSh 58.95 billion in OSR, representing 72.8% of the annual target of KSh 80.94 billion. This marks a significant improvement compared to KSh 37.81 billion collected in FY 2022/23. However, this upward trend in OSR performance has not been accompanied by a proportional reduction in reliance on the equitable share, which still accounted for 72% of total county revenue in FY 2023/24[11].

This paradox raises important questions about sustainability, especially as fiscal space at the national level continues to tighten due to rising debt service costs and competing national priorities. Striking a better balance between national support and county self-reliance will require not only technical capacity-building but also policy reforms such as revisiting OSR targets, providing incentives for revenue effort, and strengthening the framework for conditional grants linked to performance. Without this shift, counties may remain vulnerable to cash flow disruptions from the national exchequer, with negative consequences for frontline service delivery.

To further complicate the matter, disbursement delays and partial transfers remain routine. In FY 2023/24, counties received only 92% of their equitable share, with Ksh 30.83 billion deferred to FY 2024/25. The delays disrupt core operations, from paying health workers to procuring essential goods, and have ripple effects such as reduced

10 National Assembly, Mediation Committee agrees on Ksh 415 billion for County equitable share allocation

11 County Governments Budget Implementation Review Report for the Financial Year 2023/24

revenue from Facility Improvement Funds (FIFs) and increased industrial actions.

Importantly, salary delays at the county level are not solely driven by delays in national transfers. They also reflect underlying institutional weaknesses. In December 2024, for example, salary payments in many counties were stalled not by cash flow issues from the National Treasury, but by the counties' slow adoption of a new payroll management system.

In many counties, especially those hosting former Provincial General Hospitals (PGHs), the cost of delivering regional-level services far exceeds the allocations received. Counties such as Nakuru and Mombasa are left to finance regional referral hospitals that serve multiple counties, without adequate support from the National Government. This violates Article 187(2)(a) of the Constitution, which requires that transferred functions be matched with corresponding resources. There is therefore a need to reclassify them as national referral hospitals or be provided with additional funding through conditional grants, as was previously the case.

The misuse and underutilization of the Equalization Fund highlight broader systemic weaknesses in Kenya's public finance management. As of June 2024, only Ksh 13.4 billion, just 22% of the Ksh 59.9 billion entitled to the Fund, had been transferred[12]. This persistent underperformance has become a recurring issue flagged annually by the Auditor-General, yet little corrective action is taken. The National Treasury continues to fail in remitting billions each year. For instance, in FY 2022/23, it withheld Ksh 39.2 billion, and in FY 2023/24, this figure increased to Ksh 46.52 billion, in direct violation of Article 204 of the Constitution. These delays deny marginalized communities access to critical investments in basic services and undermine efforts to address historical inequities.

Even when funds are transferred, utilization remains suboptimal. In FY 2022/23, only 87% of the funds were used for approved development projects, and in FY 2023/24, only 83%, with the remainder sitting idle in county fund accounts. This raises serious concerns about the efficiency and effectiveness of fund implementation.

With the Equalization Fund now in its 13th year of the 20-year constitutional timeframe, questions arise as to whether its intended goals — reducing marginalization and promoting equitable development — will ever be fully realized.

To address these challenges, Parliament should urgently enact the Equalization Fund Appropriation Bill to facilitate the timely release and use of funds. The National Treasury must also prioritize strict adherence to constitutional provisions and establish mechanisms to prevent future delays in disbursement. Additionally, since audited national revenue accounts are now available, Parliament should expedite their approval, as the Constitution requires that 0.5% of the most recently approved national revenue be allocated to the Equalization Fund each year. Delays in this

12 Auditor General's Summary Report on National Government FY 2023/24

approval directly affect the fund's annual allocation.

The definition of "national interest" under Article 203(1)(b) also remains vague, enabling its use as a catch-all justification for discretionary programmes. Items like bursaries and youth programmes are classified as "national interest" without clear, agreed criteria. This weakens transparency and risks diverting funds from constitutionally assigned functions and thus, there is now a need to clarify the constitutional definition of "national interest."

A deeper issue is the lack of accurate costing for devolved functions. Despite the Intergovernmental Technical Relations Committee (IGTRC) making progress in delineating responsibilities across ten sectors, the associated costs of these functions remain poorly established. For example, in 2015, the International Budget Partnership estimated the baseline cost of county operations, including personnel, administration, and essential services, at Ksh 48.5 billion[13]. With inflation, expanded mandates, and growing populations, this figure has undoubtedly increased. Yet, revenue allocations have not kept pace, creating persistent funding gaps that counties are expected to absorb.

2.2.4 Reform Public Participation to Enhance Fiscal Legitimacy and Align Budget Allocations with Citizen Priorities

While public awareness of Kenya's budget process has grown, there remains a persistent disconnect between citizen needs and actual budget allocations. Public resources continue to fund non-essential expenditures while critical sectors like education, agriculture, and social protection face significant cuts. This misalignment points to weak feedback loops in the budget formulation process and raises concerns about the credibility of public participation mechanisms. For example, refurbishment and general maintenance of State Houses and Lodges have received escalating allocations, from Ksh 419.5 million in FY2022/23 to a proposed Ksh 872.4 million in FY2025/26, representing a cumulative of about Ksh 3 billion over four years for just seven buildings. (Table Three).

In contrast, the FY2025/26 budget proposes reductions of Ksh 7 billion in basic education, Ksh 4 billion in irrigation, Ksh 7 billion in crop development, Ksh 2 billion in the national social safety net, and Ksh 3.2 billion from children's services, adding up to a total reduction of Ksh 28 billion in high-impact programmes[14].

13 'Kenya: How Much Does It Cost to Run a County?' By John Kinuthia and Jason Lakin, PhD (2015)

14 Okoa Uchumi, "Stealing the Future", March 21st 2025

Table 3: Renovations Budgets for Seven State Houses/Lodges in Kenya (FY 2022/23 to FY 2025/26)

State House/Lodge	2022/23	2023/24	2024/25	2025/26	Total
State House Nairobi	280.0	795.5	400.0	680.7	2,156.2
Eldoret State Lodge	16.0	30.0		60.2	106.2
State House Sagana	22.0	27.0		15.0	64
Mombasa State Lodge	36.0	302.0		42.5	380.5
Nakuru State House	35.5	125.5		25.0	186
Kisumu State Lodge	14.9	9.9		24.1	48.9
Kakamega State Lodge	15.0	10.0		25.0	50
Total	419.5	1,299.9	400.0	872.4	2,991.8

Source: National Treasury Development Budget Books

This misalignment underscores the need to reform Kenya's public participation mechanisms, which remain largely procedural and weakly integrated into final decision-making. Although the withdrawal of key provisions in the Finance Bill 2024 and the President's subsequent veto following public protests signaled greater responsiveness to civic voices, this responsiveness is undermined by the late-stage introduction of new tax measures after the public participation phase has concluded, as seen in the Finance Act 2023. These practices weaken public trust and call into question the legitimacy of the process.

Further, public participation remains overly focused on expenditure, with minimal citizen input on revenue estimates. Citizens are rarely invited to scrutinize where revenues come from, such as income tax, VAT collections by region, or corporate income tax performance. The current practice essentially invites citizens to approve budgets without understanding the source of funds, a "blank cheque" approach that began under the Jubilee administration, in contrast to earlier practices under President Kibaki, when both revenue and expenditure estimates were published simultaneously.

There are also concerns around tokenism, in which participants only want to attend a meeting in which some form of monetary incentive is being offered. On the other hand, citizens, particularly youth, report frustrations at the lack of feedback loops. Consultative forums often fail to communicate what citizens' inputs were received, which proposals were adopted or rejected, and why. The absence of this follow-through leads to growing civic detachment and apathy.

In some instances, the use of ward administrators and chiefs varies, yet both play a central role in community information flows. Technology-driven approaches to participation risk excluding rural and older populations unless complemented by in-person forums. Hybrid models, where digital tools are supplemented by local engagement, remain essential.

One participant in a focus group discussion recalled being given a 200-page policy document at a 30-minute forum, with officials stating that if citizens could not understand it, they should write a memo, and it would be translated. That was the full extent of the engagement, again showing the disconnect between legal requirements and meaningful practice.

Therefore, to restore public confidence and enhance fiscal accountability, the following should apply:

- Broaden the Scope of Participation: Public participation must extend to revenue planning. Citizens should be empowered to engage with tax proposals, revenue assumptions, and fiscal trade-offs, not just expenditure.
- Concurrent Publication of Budget Estimates: All revenue and expenditure estimates must be published simultaneously, in accessible and simplified formats.
- Legal Safeguards on Fiscal Amendments: Introduce legislation to prohibit new tax measures after public consultations have closed, ensuring integrity in fiscal policymaking.
- Alignment of Budgets with Citizen Priorities: Parliament must take greater responsibility in ensuring that budget allocations reflect documented public priorities, with equity-sensitive investments in education, agriculture, health, and social protection.
- Segmented Engagement Strategies: Policymakers must recognize that citizens engage with fiscal data differently. There should be designated champions at the policy level and tailored engagement approaches for grassroots communities.
- Leverage Existing Community Structures: Women's groups like chamas — often overlooked outside election periods — offer critical avenues for civic education and should be actively engaged in the budget process.
- Include the Diaspora: Open up channels for diaspora participation in national debates and public consultations.
- Decentralize Engagement to Ward Level: Public participation forums should be held at the ward level to eliminate travel barriers and increase inclusivity. MCAs must play a more proactive role in facilitating these processes.
- Civic Education Prior to Consultations: Policies and proposals must be shared in advance in understandable formats, enabling citizens to comment meaningfully.

2.2.5 Strengthen Accountability and Transparency in Public Debt Management Through Legal, Institutional, and Procedural Reforms

Debt management reforms are gradually taking shape. The Public Debt Management Office (PDMO) is in the final stages of transitioning from the outdated Commonwealth Secretariat Debt Recording and Management System (CS-DRMS) to the more advanced Commonwealth Meridian Debt System, aimed at improving data integrity and reporting accuracy. These technical upgrades signal a recognition by the government of the importance of debt transparency, particularly given the far-reaching implications of debt on public investment and taxation.

However, a persistent blind spot remains: timeliness. The Central Bank of Kenya (CBK) releases domestic-debt tables every Friday in its Weekly Bulletin, so analysts can see auctions, maturities, and rollover risks within a week of occurrence. By contrast, the National Treasury, on which both the CBK and the public rely for external-debt figures, updates its totals only in quarterly budget reviews and the once-a-year Annual Public Debt Management Report, often with a lag of several months.

The result is an information asymmetry: the CBK has an almost live picture of domestic liabilities, but it must wait for Treasury spreadsheets before it can publish an updated national total. Until this publication gap is closed (for example, by feeding external-loan disbursements into Meridian in real time), investors, rating agencies, and Parliament are left piecing together two data sets, and headline debt numbers can surprise markets.

Those surprises are sizeable. Total public debt reached Ksh 11.36 trillion in March 2025[15]. The debt profile has become increasingly unsustainable, with the government shifting away from concessional loans toward short-term, high-cost borrowing – particularly through the sovereign bond market. Despite the reforms, oversight remains weak. There is limited transparency on loan terms, frequent breaches of borrowing ceilings, and continued underreporting of total liabilities, raising questions about the overall credibility of Kenya's debt management framework.

High debt service costs (Ksh 2.04 trillion in FY 2024/25, comprising Ksh 1.04 trillion for debt redemption and Ksh 995.8 billion for interest payments[16]) and reliance on short-term instruments at elevated interest rates (above 16%) heighten fiscal risks, as was observed in late 2024 and early 2025. These pressures compound concerns over debt sustainability, intergenerational equity, and the opportunity costs of rising interest payments.

Despite debt management frameworks like the Medium-Term Debt Strategy (MTDS), Kenya's borrowing has frequently breached through statutory limits. Parliament

15 Monthly Economic Indicators, March 2025 release by the Central Bank of Kenya

16 2025/26 Programme Based Budget of the National Government of Kenya for the year ending 30th June 2026 published in April 2025

first raised the hard ceiling to Ksh 10 trillion in May 2022, only for total public debt to reach Ksh 10.26 trillion within months under Legal Notice No. 89 of 26th May 2022[17]. It then replaced the numerical cap with a more flexible 55 percent-of-GDP anchor (net present value), yet the stock had already overshot the 10-trillion threshold long before the new rule could take effect, underscoring weak enforcement, to stand at 63% of GDP. The National Treasury gave itself five years to comply with these ceilings. This expires in November 2028. In addition, there is a provision that the Treasury can deviate from this ceiling as long as it provides a written explanation to NT.

Oversight is further constrained by sporadic disclosure of loan-level terms, which leaves analysts guessing about contingent liabilities and refinancing schedules.

A corresponding issue is the shifting of debt thresholds, often done under the guise of creating fiscal space but in practice enabling higher levels of borrowing. This repeated adjustment, such as replacing hard debt ceilings with more flexible debt-to-GDP anchors, dilutes the credibility of fiscal rules and raises Kenya's risk of debt distress. Rather than enforcing discipline, these changes serve to accommodate expanding deficits and signal weak commitment to long-term fiscal sustainability.

Moreover, as highlighted in a 2025 report by IPF Global, there is a persistent disconnect between planned and actual borrowing, not just in volume, but also in composition. The report shows that the ratios of domestic to external borrowing outlined in the Medium-Term Debt Strategy (MTDS) often diverge significantly from those used in the Budget Policy Statement (BPS) and from what is ultimately executed. For example, in FY 2021/22, the MTDS projected a 73% domestic to 27% external borrowing split, while the BPS proposed 56% domestic[18]. In FY 2022/23, the MTDS planned for 25% external borrowing, but the BPS assumed 43%, again illustrating a lack of consistency. The FY 2023/24 cycle reflected similar discrepancies, with the MTDS projecting a 50:50 split, whereas the BPS leaned toward 64% domestic and 36% external.

Compounding the issue, Kenya's headline debt excludes major fiscal exposures such as contingent guarantees, pending bills, and supplier arrears, thereby understating the true burden. In FY 2024/25 alone, guaranteed debt of KSh 19.68 billion sits outside the official total, illustrating how narrow definitions and data lags blunt the discipline that debt ceilings are meant to provide[19].

Moreover, the OAG has repeatedly flagged the payment of commitment fees on undisbursed loans, indicating poor planning and weak coordination in the debt acquisition process. These avoidable costs represent fiscal leakage and reduce the value-for-money of public borrowing — further eroding the effectiveness of Kenya's

17 Summary of the Auditor General's Report on National Government 2022/23

18 Strengthening Debt Accountability in Kenya, Study Report by Institute of Public Finance, 2025

19 2025/26 Programme Based Budget of the National Government of Kenya for the year ending 30th June 2026 published in April 2025

debt management framework.

The situation is further complicated by the lack of comprehensive and up-to-date reporting on public-private partnerships (PPPs). Although a 2018 policy aimed to strengthen PPP risk monitoring, disclosures remain sparse even as PPPs become central to Kenya's infrastructure financing[20]. Undisclosed loan terms, such as in the Standard Gauge Railway (SGR) and Nairobi Expressway projects, hinder effective oversight to determine the full cost to taxpayers and long-term fiscal planning. The opacity surrounding such projects has fueled public concern and speculation about potential risks and liabilities, especially where loan contracts include non-disclosure clauses, further undermining trust in the government's fiscal management.

Legal frameworks have also failed to keep pace. Subscriptions to international organizations—now handled through the African Union and Other International Organizations Subscription Fund, established in 2017—are still governed by outdated statutes under Vote R53, including laws such as the Bretton Woods Agreements Act (Cap 464), the International Development Association Act (Cap 465), and the African Development Bank Act (Cap 492). This legal overlap creates administrative inefficiencies and exposes the government to the risk of duplicate payments. Given that Kenya pays billions annually in international subscriptions, such legal ambiguities present a non-trivial risk of misallocation and should be urgently addressed through legislative harmonization.

Under the Programme-Based Budgets, allocations to the African Union and other international organizations under the International Subscriptions Fund have increased significantly over time. In FY 2025/26, the allocation stands at Ksh 9.66 billion, up from Ksh 6.128 billion in FY 2024/25 and Ksh 4.616 billion in FY 2023/24. This represents a notable rise from earlier years, as detailed in Table 4 below.

Table 4: Allocations to the African Union and Other International Organizations (Ksh Billions)

Financial Year	Amount (Ksh Billion)
FY 2019/20	4.144
FY 2020/21	4.144
FY 2021/22	4.418
FY 2022/23	4.616
FY 2023/24	4.616
FY 2024/25	6.128
FY 2025/26	9.660

Source: Various Programme-Based Budget Documents

20 State of Debt Transparency in Kenya by the Institute of Public Finance (2024)

Compounding these structural issues is the irregular release of key documents such as Debt Bulletins, External Debt Register, and the External Resources Handbook. The Auditor General and Controller of Budget have expressed concern over limited access to critical debt information.

Meanwhile, Ksh 1.435 billion in commitment fees on undrawn loans (e.g., Ruiru II Dam, Last Mile Connectivity, and Mwache Dam) point to poor project execution and absorption capacity, which leads to unnecessary costs to taxpayers. There are also other issues, such as China choosing to refinance 16 roads it had already financed. They were fully funded through institutions like the China Development Bank or China ExIM. In the most recent financial records, China agreed to lend Kenya an additional money for these same 16 roads[21]. This raises concerns about moral hazard: by repeatedly extending loans for the same infrastructure, it creates a pattern where poor planning or inefficiency is effectively rewarded, encouraging continued reliance on debt rather than accountability or reform. Some of the projects, such as the Kisumu City Market, are complete but are not in use yet; money likely borrowed was used for construction.

To improve transparency and fiscal accountability, the Kenyan government commissioned a Presidential Task Force to undertake a forensic audit of public debt in 2024. However, the move faced immediate legal challenges, with the Law Society of Kenya and other petitioners arguing that the task force encroached on the constitutional mandate of the Auditor General under Article 229(4). The High Court subsequently suspended the taskforce's operations, a suspension that remained in effect as of May 2025 pending the determination of the petition. Critics maintained that the Executive-led initiative undermined independent oversight mechanisms and risked politicizing a process that should be led by institutions grounded in law and accountability.

On pending bills, they stood at Ksh 130.32 billion as of June 2024[22]. These are often excluded from budget plans in the subsequent year, resulting in strained service delivery as well as violating Section 74(4) of the PFM Act, 2012. The section provides that a public officer or an accounting officer engages in improper conduct concerning a national government entity if the officer fails, without a reasonable excuse to pay eligible and approved bills promptly in circumstances where funds are provided for.

The figures of pending bills also keep changing depending on who they are being presented to. Payment delays lead to penalties, interest charges, and financial strain on suppliers and MSMEs, while also reducing revenue from VAT and Withholding Tax. This goes to show that pending bills are an indication of gross mismanagement and lack of planning, and there are also questions of verification.

21 Okoa Uchumi, "Stealing the Future", March 21st 2025

22 Auditor General's Summary Report on National Government FY 2023/24

To mitigate the above, in May 2024, the Government of Kenya released a strategy paper outlining the verification and clearance of pending bills (domestic arrears)[23]. However, concerns remain about the transparency and fairness of the process. The verification committee, appointed by the government, approved only about Ksh 230 billion, effectively rejecting the rest. This amounts to a partial default on government obligations to private sector suppliers, an outcome that directly affects business liquidity and confidence.

While it's true that public procurement in Kenya is plagued by corruption and some claims may be illegitimate, the credibility of the verification process itself is questionable. It lacks independent oversight and broader stakeholder involvement. As it stands, the government is acting as both referee and player, an arrangement that undermines trust. For a process of this magnitude, independent verification and multi-stakeholder participation are essential to ensure fairness and accountability.

As such, the Auditor General has raised serious concerns about the legality and transparency of certain sovereign commercial debts. For 26 loans, no legal opinion was sought from the Attorney General, as required. In 39 commercial loans, the proceeds were not applied to any identifiable government expenditure. Syndicated loans and sovereign bonds totaling Ksh 1 trillion lacked expenditure schedules, meaning the National Treasury recorded the inflow of funds but provided no documentation on how the money was spent. This was particularly evident in 13 sovereign syndicated loans. Additionally, several loans had no drawdown information, and discrepancies in loan balances pointed to weak oversight and due diligence. Alarmingly, there is no indication that these practices have been addressed or corrected.

To address these challenges, the following measures should be taken:

- Undertake an independent, comprehensive public debt audit. This must be conducted regularly and published with actionable follow-up by Parliament and oversight bodies. Public trust is eroded when debt is opaque or poorly managed. An accessible public debt portal modeled on examples like Nigeria's DMO portal would improve fiscal transparency and citizen oversight.

- The constituency of people owed money by the government needs to be organized into a unified group. While this is often seen as a private matter, it is fundamentally a public issue. Currently, they lack a collective voice to demand that their dues be paid or to assert that the treatment they've faced is unacceptable. With coordinated advocacy, this issue could finally receive the priority it has long deserved but has not yet attained.

- Transparent publication of all loan agreements, including contingent liabilities, should be mandatory.

23 Government of Kenya Strategy on Verification and Clearance of Pending Bills/Domestic Arears (May 2024)

- The MTDS should be binding, with deviation limits legally enforced.
- A national dialogue involving civil society should guide responsible borrowing aligned with development goals.
- Ensure timely publication of all debt-related reports, including monthly data on new borrowing and repayments, not just cumulative stock.
- Update legal frameworks such as those governing Vote R53 to align with new financing mechanisms and reduce risks of inefficiency or duplication.

2.2.6 Enhance Transparency and Accountability in Domestic Debt Ownership by Mandating Public Disclosure of the Beneficial Ownership of Financial Institutions, particularly commercial banks, pension funds, and other major holders of government securities

Kenya's growing reliance on domestic debt, constituting 65% of total debt repayments in FY 2024/25[24], demands greater scrutiny of who truly benefits. In 2024, while private sector credit declined despite the CBR cuts, government borrowing increased, yet lending rates to the public remained high. This mismatch raises questions about the distributional impact of the Kenyan fiscal policy.

A key concern lies in the ownership of financial institutions holding large domestic debt portfolios. Commercial banks, pension funds, and private capital are often controlled by individuals with close ties with the government, blurring the boundaries between public service and private gain. Historical and contemporary patterns point to a revolving door between those who shape fiscal policy and those who profit from it, suggesting that debt policy may be unduly influenced by vested interests.

Without full transparency, such arrangements risk distorting fiscal priorities, shifting public resources to serve elite accumulation rather than inclusive development. Promoting beneficial ownership disclosure and addressing governance gaps would help realign Kenya's fiscal trajectory with the public good. The cost of the research is also expensive as the register is not open to the public due to data privacy, and for every search, one has to pay KSh 650. Though there is no reason as to why the ownership of the companies should be a secret, certain details can be made public even if it means having some sort of pseudonyms, so that when one is conducting an analysis, he/she can know that person X is at this level.

24 2025/26 Programme Based Budget of the National Government of Kenya for the year ending 30th June 2026 published in April 2025

2.2.7 Reform Kenya's Tax Policy to Promote Tax Justice and Economic Growth

Kenya's tax system continues to be skewed in its application. The salaried formal sector is heavily taxed, while large sections of the informal and corporate economy remain relatively under-assessed. This imbalance is not merely a technical concern, it has material consequences. It causes disposable incomes for middle-class Kenyans to shrink, weakens business competitiveness, and encourages capital flight. In a country where the formal wage sector constitutes a minority of the workforce at 3.2 million out of 20.8 million in 2024[25], this tax structure not only exacerbates inequality but also distorts incentives for compliance and productivity.

As a result, revenue shortfalls continue to affect both national and county governments, driven by systemic governance and operational inefficiencies. At the national level, significant losses stem from mismanagement, procurement irregularities, and weak enforcement at the KRA. Tax evasion, import undervaluation, and other fraudulent practices are exacerbated by limited institutional capacity to detect and prosecute economic crimes. Opaque procurement procedures and inflated project costs further divert critical resources away from development priorities.

At the county level, revenue administration remains vulnerable due to outdated, manual collection systems. The systems lack automation, rendering them susceptible to fraud, such as the issuance of ghost receipts and the diversion of funds by revenue officers. Weak monitoring and oversight mechanisms allow such practices to persist, leading to chronic underperformance against revenue targets and inefficiencies in public service delivery.

Furthermore, Kenya's tax policy environment has also been widely criticized for its unpredictability. The National Tax Policy and the Medium-Term Revenue Strategy were introduced to bring stability and coherence, but their implementation remains patchy. The annual Finance Bills continue to introduce sweeping changes, often after limited or rushed public consultation. The outcome is a business environment that is hard to plan for and increasingly inhospitable to long-term investment. In 2023, a wave of tax-induced cost pressures contributed to business closures and layoffs, reinforcing the perception that tax policy is neither strategic nor inclusive.

Further proposals in the Finance Bill 2025 appear to double down on this approach. A case in point is the removal of input VAT credits to offset other tax liabilities. For exporters and other businesses, this change will hurt cash flow significantly. Refund timelines have been extended from 90 to 120 days[26], and even this is aspirational, given that the Kenya Revenue Authority currently owes businesses more than Ksh

25 Economic Survey 2025, Table 3.1, "Total Recorded Employment, 2020-2024".

26 The Finance Bill, 2025

billion in VAT refunds[27]. Businesses will now be forced to operate with less liquidity, while trusting a refund system that has consistently failed to meet its deadlines.

On the individual side, changes in the way tax reliefs are applied could potentially reduce disposable income by at least KSh 1,680 for salaried workers[28]. This comes on top of increased statutory deductions stemming from the implementation of the NSSF Act 2013 and higher contributions to the Social Health Insurance Fund. Together, these measures have significantly compressed disposable income, dampened household consumption, and constrained aggregate demand. As a result, economic circulation suffers, and investor confidence weakens, reflected in rising incidents of capital flight. These developments underscore a persistent pattern in Kenya's fiscal landscape: the burden of adjustment is disproportionately borne by low- and middle-income earners, while economically advantaged groups with greater capacity to reorganize their affairs continue to elude equitable contribution.

The issue of tax waivers also raises serious governance and equity concerns. The waivers granted at the discretion of the Cabinet Secretary for the National Treasury reflect a system prone to discretionary or potentially discriminatory application. In 2023, tax expenditure increased by Ksh 117.43 billion to Ksh 510.56 billion from Ksh 393.13 billion in 2022, representing a loss of potential revenue[29]. The distribution is shown in *Table 5* below.

Table 5: Summary of Tax Expenditure per Tax Category

Tax Category	2020*	2021*	2022*	2023	Change (2022-2023)	Contibution to the Total Change (%)
	Ksh Million					
Personal income tax	5,271.50	5,522.30	7,163.18	7,829.66	666.48	0.57
Corporate Income Tax	22,564.77	21,636.81	46,315.81	87,301.00	40,985.19	34.90
VAT domestic	172,544.97	211,090.20	248,293.58	306,233.65	57,940.07	49.34
Excise Duty on imports	3.62	92.84	1,837.73	2,104.82	267.09	0.23
Excise Duty (Domestic)	7,119.94	7,635.94	8,035.58	10,179.74	2,144.16	1.83
VAT on Imports	8,058.07	8,772.47	8,666.26	7,818.23	-848.02	-8.77
VAT on Imports (Oils)	16,788.96	28,008.93	44,501.00	18,914.97	-25,586.03	-21.79
Import Duty	4,705.32	4,825.30	13,589.36	63,049.35	49,459.99	42.12
Fees and Levies	2,024.09	5,553.51	14,732.45	7,132.15	-7,600.30	-6.47
Total Tax Expenditure	238,579.25	292,922.49	393,134.94	510,563.57	117,428.63	92
Nominal GDP	10,715,070.00	12,027,661.50	13,489,642.00	15,108,806.00		
Tax Expenditure as % of GDP	2.23	2.44	2.91	3.38		

Source: *The National Treasury and Economic Planning, 2024 Tax Expenditure Report*

The situation is particularly troubling considering the introduction of multiple new taxes in June 2024, many of which were unlikely to yield substantial revenue.

27 Peter Mburu, "Pain as Unpaid Tax Refund Claims hit Ksh 16 billion", 22nd February 2024

28 Okadia Fiona, "How the Finance Bill 2025 Could Lower Net Salaries in Kenya", 27th May 2025, Institute of Economic Affairs Kenya

29 The National Treasury and Economic Planning, 2024 Tax Expenditure Report

This juxtaposition, foregoing substantial tax through waivers while simultaneously imposing new levies, suggests a misalignment in fiscal policy, raising questions about efficiency, equity, and the credibility of revenue mobilization strategies. Moving forward, it is imperative for government tax policy to be guided by the principles of tax justice, ensuring that the system is fair, progressive, and responsive to the economic realities of all citizens.

2.2.8 Increase Transparency and Accountability in the E-Citizen Revenue Collection Systems

Kenya's e-Citizen digital platform is central to its revenue collection, yet the ownership structures, contractual terms, and revenue-sharing arrangements remain largely opaque. This lack of disclosure has raised public concerns about accountability and potential revenue leakages. Transparency is not just a governance imperative but is also essential for building public confidence in the integrity of government systems.

The Auditor General's review of e-Citizen revenue statements for the year ending 30th June 2024 uncovered multiple anomalies. These include a Ksh 44.8 billion variance between reported receipts and platform records, a lack of access to reconciliation statements for over Ksh 7.1 billion in 21 bank accounts, and unsupported prior year balances of Ksh 145.8 million[30]. In addition, the government lacked full control of the system, relying heavily on the vendor for critical functions, with no service-level agreements in place. Alarmingly, even the platform's customer support functions were vendor-managed, using informal channels like WhatsApp.

The legal ambiguity over system ownership culminated in a court settlement where Ksh 127.9 million was paid to two developers, raising concerns over procurement transparency[31]. Additionally, the consultancy agreement between the vendor and the National Treasury was also not made available for audit, undermining oversight.

At a time when the government is pushing for more taxes and higher compliance, it is contradictory for the systems collecting the revenues to operate without clear public oversight. The terms of engagement with private entities managing the revenue platforms should be disclosed, and all revenues collected through them must be properly audited and reported. Without such safeguards, digitalization risks becoming a new frontier for unaccountable rent-seeking rather than a tool for fiscal efficiency and reforms.

30 Auditor General's Summary Report on National Government FY 2023/24

31 Auditor General's Summary Report on National Government FY 2023/24

2.2.9 Safeguard Legislative Independence and Strengthen Oversight Institutions

Effective budget oversight demands a Parliament that is independent and impartial, despite COK 2010 giving it extremely broad powers in terms of budget-making and oversight. Yet, this role is compromised when legislators become implementers of public funds. Parliament seems to have sold its power to the political elite (the Executive), abdicating its role of representing the rights of Kenyans and putting constitutional accountability under siege.

Additionally, the continued disbursement of the Constituency Development Fund (CDF), despite being declared unconstitutional, undermines the separation of powers. The MPs who approve and simultaneously spend public funds cannot credibly oversee the Executive's use of resources. These slush funds, often tied to budget approval, create perverse incentives and weaken Parliament's constitutional role as a check on excesses. Furthermore, in his Budget Speech, the Cabinet Secretary for Finance announced that CDF had been allocated Ksh 58.8 billion in the FY 2025/26 in order to promote regional equity, reduce poverty, and enhance social development across the country[32].

At the county level, the Ward funds are also in the same category of being politically motivated rather than meeting specific objectives, therefore undermining their goal of fostering equitable development. Moreover, mismanagement, including embezzlement and fraud, further reduces their effectiveness in delivering public benefits.

But the problem runs deeper. Parliament has also enabled a weakening of the very institutions meant to hold the government to account. Recommendations from the CRA are routinely ignored in favour of the National Treasury estimates, and the OCOB has seen its advice on debt sustainability sidelined. Its institutional independence has also come under threat, with politically motivated actions such as the arrest of senior staff whose only mistake is exposing the level of mismanagement and misappropriation of resources. The attacks have also come in the form of a reduction in the budget allocations for their offices.

Similarly, the Salaries and Remuneration Commission (SRC) has struggled to enforce wage bill controls, with cases of KSh. 766 million being paid outside approved systems, in violation of Treasury guidelines.

Compounding these weaknesses is Parliament's poor follow-through on audit findings. While Section 204(1)(g) of the Public Finance Management Act provides for sanctions where audit issues are not resolved, this power remains unused. Even more concerning is the tendency of Public Accounts Committees to clear public entities once they submit additional documentation — regardless of whether the

32 Budget Statement FY 2025/26, The National Treasury and Economic Planning

underlying accountability gaps are resolved. As a result, repeat financial irregularities go unpunished. Some accounting officers even flout audit laws outright, submitting inaccurate reports or obstructing audits in violation of Section 62 of the Public Audit Act. Still, no disciplinary action follows.

Oversight capacity is also undermined by structural and legal constraints. The office of the Auditor General, despite an expanded audit mandate, remains underfunded. From FY2018/19 to FY2023/2024, its allocation has remained below 1% of the national budget, as *Table Six* below shows the difference between the requirement and allocation.

Table 6: Budget Requirement by the Office of the Auditor General vs Budget Allocation in Ksh Billions

Financial Year	Requirement	Budget Allocation	Budget Shortfall
2018/19	9.2	5.5	3.7
2019/20	8.9	5.7	3.2
2020/21	8.9	5.5	3.7
2021/22	8.3	5.5	2.4
2022/23	8.7	6.9	1.8
2023/24	11.4	8.1	3.3

Source: OAG Annual Corporate Reports

The continued withdrawal of funds by MDAs under Article 223 of the Constitution, before obtaining parliamentary approval, presents a significant governance and accountability challenge. In FY 2022/23, the State Department for Petroleum withdrew Ksh 42 billion for oil market stabilization, while 22 other MDAs made similar withdrawals. Although Article 223 permits expenditure for emergencies or unforeseen needs, it explicitly requires parliamentary approval within two months. In practice, this requirement is often disregarded, weakening legislative oversight and eroding the principles of fiscal accountability enshrined in the Constitution.

Moreover, legal inconsistency is another problem that has worsened audit delays. Article 229(7) of the Constitution gives the Auditor General six months to submit reports after the end of the financial year. But Section 81(4) of the PFM Act allows entities to submit financial statements as late as September, shrinking the audit window to just three months. This directly impacts audit quality, completeness, and timeliness, reducing the effectiveness of Parliament's scrutiny.

Additionally, fund administrators routinely fail to submit quarterly reports to the Controller of Budget as required[33]. This impedes real-time expenditure tracking

33 County Governments Budget Implementation Review Report for the FY 2023/24

and clouds the performance of various public funds. Without timely data, oversight becomes reactive rather than preventive, creating space for misuse and poor service delivery.

Kenya must therefore:

- Eliminate CDF and similar funds, such as the Ward Funds, to disentangle MPs and MCAs from implementation roles. The national and county executives should be the only ones allowed to spend resources.
- Resolve the legal contradiction between the Constitution and the PFM Act to allow auditors sufficient time for thorough reviews.
- Enforce sanctions for audit violations and hold accounting officers accountable for obstructing or misrepresenting financial data.
- Ensure fund administrators comply with reporting requirements to promote transparency in public fund management.

2.2.10 Adopt Revenue-First Budgeting to Restore Fiscal Discipline in Budgeting

Kenya must realign its budgeting approach to ensure that revenue performance drives expenditure decisions, not the other way around. The current practice, where ambitious spending targets set the pace for revenue collection goals, has contributed to widening fiscal deficits and growing public debt. Revenues on the other hand, are consistently over-projected and they continue to fall below target.

Over the past five years, the Government has significantly expanded its development agenda without sufficient regard for actual revenue performance. In FY 2023/24, while the estimated ordinary revenue was Ksh 2.25 trillion, the Supplementary II Budget projected gross expenditure at Ksh 4.43 trillion[34].

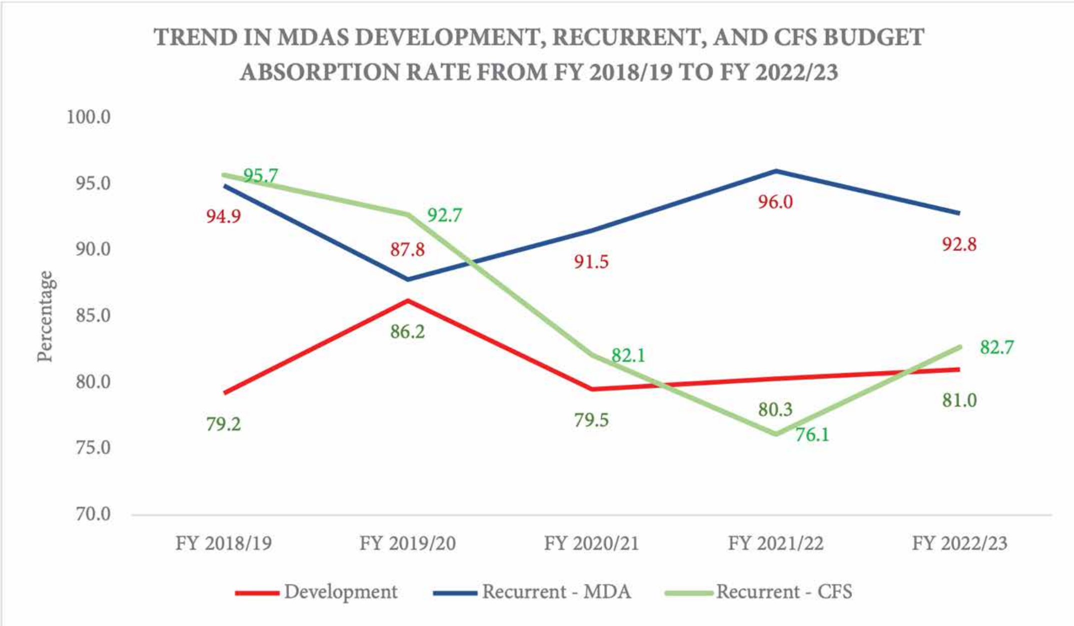
Actual figures show that the national government spent Ksh 3.89 trillion against an ordinary revenue outturn of Ksh 2.16 trillion[35], meaning only 55.5% of spending was financed through revenue. The resulting 44% shortfall has been met through increased reliance on both domestic and external borrowing, deepening the country's fiscal vulnerability.

Additionally, actual government expenditure has consistently fallen short of approved budgets. For instance, in the FY 2022/23, it was 7.2% for recurrent, 19% for development for MDAs, and 17.3% for CFS, as shown in *Figure 1* below. This adds more weight to the fact that the budget estimates are not anchored in accurate or comprehensive data. Inadequate use of historical spending trends, combined

34 National Government Budget Implementation Review Report FY 2023/24, August 2024

35 National Government Budget Implementation Review Report FY 2023/24, August 2024

with delays in donor disbursements, further hampers the reliability of expenditure forecasts. The result is a recurrent misalignment between budget planning and actual performance, which undermines service delivery and contributes to inefficiencies across government programmes.



Source: *Ministries, Departments, and Agencies*

Figure 1: Trends in MDAs Development, Recurrent, and CFS Budget Absorption Rate from FY 2018/19 to FY 2022/23

The persistent mis-projection of figures has led to supplementary budgets becoming a routine feature of Kenya's budgeting process, so much so that they are now expected every financial year. This practice undermines the original intent of supplementary budgets, which, even by law, are meant to address unforeseen and urgent needs and not to correct flawed planning.

Another worrying trend is the emergence of what can be termed as "budgeted corruption". This refers to the deliberate inclusion of resources in the budget not for legitimate public expenditure, but with the intention of diversion and misappropriation. It represents an escalation of corrupt practices from opportunistic skimming during implementation to the premeditated planning of graft within the budget formulation process.

The size of government has also grown significantly, raising concerns about inefficiency and constitutional overreach. The President has doubled the number of his advisors, effectively expanding the cabinet in practice, if not in name. The advisors are appointed through opaque processes that bypass oversight by key regulatory bodies such as the Salaries and Remuneration Commission (SRC) and the Public Service Commission (PSC).

The Constitution clearly outlines the structure of the Cabinet: The President, Deputy President, Attorney General, and up to 22 Cabinet Secretaries. By appointing an additional layer of advisors who appear to perform similar roles, the President signals a lack of confidence in his own Cabinet Secretaries. This informal expansion of Executive power undermines both transparency and the principles of accountable governance.

These approaches collectively undermine fiscal sustainability and expose the economy to debt-related risks. A revenue-first budgeting model would anchor expenditure planning in reality, improving credibility, reducing deficits, and restoring long-term fiscal discipline. Revenue-sharing efforts should also be complemented with firm expenditure side reforms that target corruption, inefficiencies, and the bloated public wage bill. There is a disproportionate emphasis on domestic resource mobilization, particularly through taxing a narrow base, mainly salaried workers, without an equivalent focus on curbing wasteful spending. Corruption at the national and county levels, as well as rising recurrent expenditure, continues to divert resources away from development priorities and service delivery.

2.2.11 Tackle Financial Flows and Politicized Budgeting and Spending

Kenya needs to strengthen anti-money laundering (AML) frameworks and implement campaign finance reforms to curb the misuse of public and illicit funds in politics. Illicit financial flows (IFFs) fuel political capture, undermining oversight and service delivery. Excessive campaign financing by politicians often leads to looting to recover costs. Kenya's failure to enforce existing AML and political finance laws contributes to fiscal leakages. According to a 2022 report by the Economic Justice Network and Tax Justice Network-Africa, Kenya loses approximately KSh 150 billion (USD 1.3 billion) annually to tax evasion and other illicit financial activities[36]. Campaigns in Kenya are extremely expensive, with no effective audits on the source or usage of funds. The **Campaign Financing Act (2013)** remains largely unimplemented as proposals to cap presidential campaign spending at Ksh 4.4 billion and political party budgets at Ksh 17.7 billion were rejected by politicians[37], implying that they probably spend much more.

In the budget planning process, inflated pricing of various components, particularly in infrastructure projects, is a persistent challenge, largely due to weak regulatory frameworks guiding accounting officers on cost control. This lack of oversight often leads to overpriced projects, inflated budgets, and inefficient resource allocation.

36 Kurgat Marindany, "Kenya Tightens Grip on Illicit Financial Flows with Sweeping Regulatory Reforms", March 6th 2025

37 Georgie Ndirangu, "No limits: Campaign spending spikes ahead of Kenyan elections", 22nd June 2022

Additionally, there is a recurring tendency to present overly optimistic budgets, often marked by exaggerated revenue projections as mentioned before. These are frequently driven by political motivations aimed at portraying a balanced budget and fulfilling campaign promises. However, such inflated targets are rarely met. The consequence is a growing backlog of unfulfilled commitments and a widening gap between planned and actual delivery, ultimately eroding fiscal credibility and diminishing public trust in government.

2.2.12 Strengthen and Scale Up Support for Budget Champions to Deepen Public Financial Literacy and Foster Issue-Based Politics

Kenya has made notable strides in advancing PFM, particularly in promoting budget transparency and citizen awareness. Various civil society organizations have been instrumental in fostering a culture of accountability by educating citizens on how public finances are planned and spent. As a result, there is now a visible network of budget champions and facilitators operating across counties. The champions have become a critical bridge between technical budget processes and public understanding, demystifying complex fiscal issues for ordinary citizens.

However, while the presence of budget champions is a major success, their reach and impact are constrained by limited resources. In many counties, champions lack the logistical and financial support to engage diverse publics meaningfully, be it the private sector, religious leaders, women's groups, or youth formations. This gap restricts the democratization of budget knowledge and reinforces the perception that fiscal decisions are made in far-off rooms, inaccessible to the average citizen. Scaling up support to these champions through funding, training, and coordination would expand their ability to engage broader communities consistently and inclusively.

Deepening public understanding of the budget process is not just about participation, it is foundational to building issue-based politics. When citizens understand how their tax contributions are allocated, and how budget priorities reflect or ignore their needs, they are more likely to interrogate campaign promises and demand performance-based leadership. An informed electorate is less susceptible to populism and more inclined to challenge political aspirants on realistic mandates. This shift, from personality-driven to policy-driven politics, is essential for Kenya's democratic and economic maturity.

Moreover, enhancing public literacy on PFM requires more than knowledge of the budget cycle. It must include clarity on the distinct roles of the elected officials, the Executive, and the Judiciary in fiscal governance. Many aspirants exploit public ignorance by making promises that fall outside their legal mandate. Others mislead citizens on who is accountable for service delivery failures. Educating the public on these role distinctions can strengthen accountability mechanisms, reduce political manipulation, and empower citizens to advocate more effectively for their rights.

This transformation, however, will not happen overnight. It requires sustained, well-resourced civic education over multiple years, embedded within both state and non-state initiatives. The gains made in budget transparency and civil society activism, such as the credible work of Okoa Uchumi on public debt, demonstrate what is possible when information is made accessible and champions are empowered. Building on this momentum by supporting local facilitators to expand their reach will be crucial in fostering an informed citizenry that can hold leaders to account and drive meaningful fiscal reform from the ground up.

2.2.13 Balance IMF Fiscal Targets with Citizen Welfare

Efforts should be made to recalibrate fiscal consolidation programmes to protect citizens from excessive taxation and reduced public services. While IMF programmes have focused on reducing deficits through revenue measures, they often overlook the socio-economic toll. Expenditure reforms, especially curbing corruption, inefficiencies, and wasteful spending, should be prioritized before raising taxes. According to the IMF 2024 Article IV report, Kenya's fiscal deficit is projected at **5.5% of GDP**, yet the trends in the poverty headcount rate show a decrease from 36.1% in 2015/16 to 33.6% in 2019; the trend then changes to an increase of 42.9% in 2020 then decreases to 38.6% in 2021 followed by a slight increase to 39.8% in 2022[38], showing a limited trickle-down impact of fiscal tightening.

2.2.14 Strengthen Adherence to the Constitutional Budget Process and Enhance Parliamentary Oversight of Midstream Budget Adjustments

To safeguard fiscal discipline and restore credibility in the budget process, Kenya should reinforce legal safeguards to prevent extra-constitutional budget revisions once estimates have been tabled in Parliament. Treasury circulars that direct changes to already submitted estimates without formal parliamentary review should be explicitly prohibited or subject to stringent procedural controls. Parliament must assert its role in line-by-line approval and ensure that any deviations are transparently debated and legally sanctioned.

A key concern in Kenya's current fiscal governance emerged recently when the National Treasury issued a circular No.5/2025 on 7th May 2025, directing state departments and corporations to revise budget estimates just days after these had been tabled in Parliament on 30th April 2025[39]. This occurred despite the constitutional requirement that once budget estimates are submitted, they form the basis of parliamentary debate and must not be altered outside the formal legislative processes.

38 The Kenya Poverty Report Based on the 2022 Kenya Continuous Household Survey by KNBS

39 Okoa Uchumi, "Stealing the Future", March 21st 2025

This sequence raises significant governance red flags. First, it undermines the integrity of the budget as a legal and fiscal instrument. Second, it creates uncertainty about what exactly Parliament is approving. If changes are being made behind the scenes, then the version approved by legislators may no longer reflect actual expenditure intentions.

The Treasury's justification for a reduction in expenditure does not diminish the gravity of the issue. Whether increasing or reducing allocations, any post-submission adjustments outside Parliament's purview compromise the principle of legislative oversight. Worse still, the precedent could allow for budget expansions by circular, a dangerous overreach that erodes fiscal accountability.

This behavior reflects a weakening of what some analysts refer to as Kenya's fiscal constitution, the norms, practices, and legal safeguards that govern public financial management. For creditors and citizens alike, this erosion raises concerns about budget credibility, expenditure control, and the risk of unapproved fiscal obligations, which could veer into the territory of odious debt, liabilities incurred without public consent or due process.

Table 7: Priority Governance Reforms for Public Finance Management

🟢 Short Term = 1 year
🟡 Medium Term = 1–3 years
🔴 Long Term = More than 3 years

#	Recommendation	Objective	Key Authorities	Timeline
1	Withhold guarantees from underperforming SOEs	Reduce fiscal risks and misallocation of resources	NT, Parliament, AOG	🟢 to 🟡
2	Review and update the Public Finance Management (PFM) legal framework	Align fiscal rules with current realities; enhance service delivery	NT, Parliament, OCOB, CRA	🟡 to 🔴
3	Strengthen the legal and institutional framework for revenue sharing	Ensure equity, predictability, and constitutional alignment	Parliament, CRA, National Treasury, IGTRC	🟡 to 🔴
4	Reform public participation to enhance fiscal legitimacy	Align budget decisions with citizen priorities and increase trust	Parliament, Treasury, Civil Society	🟡
5	Strengthen public debt transparency and accountability	Improve oversight, reduce risks, align borrowing with development	Treasury, PDMO, Parliament, Auditor General	🟡 to 🔴

6	Enhance transparency in domestic debt ownership	Mandate beneficial ownership disclosure of key financial institutions	CBK, Parliament, CMA	
7	Reform tax policy to promote justice and growth	Broaden base, protect disposable incomes, and stabilize the tax regime	Treasury, KRA, Parliament	
8	Increase transparency in e-Citizen revenue collection	Prevent leakages, clarify ownership, and restore public trust	Treasury, Auditor General, Ministry of ICT	
9	Safeguard legislative independence and oversight institutions	Restore checks and balances, enforce accountability, and fix audit gaps	Parliament, Auditor General, OCOB, SRC	to
10	Adopt revenue-first budgeting	Anchor expenditure to actual revenue performance, reduce deficits	Treasury, Parliament, Controller of Budget	
11	Tackle illicit financial flows and politicized spending	Strengthen anti-money laundering, enforce campaign finance laws	EACC, CBK, Parliament, ORPP	
12	Strengthen and scale up support for budget champions	Deepen public financial literacy and issue-based political engagement	Civil Society, National Treasury, OCOB	
13	Balance IMF fiscal targets with citizen welfare	Protect livelihoods by prioritizing spending reform over taxation	National Treasury, IMF, Parliament	
14	Strengthen adherence to the constitutional budget process and enhance parliamentary oversight of midstream budget adjustments	Safeguard budget credibility and prevent unauthorized revisions to tabled estimates	Parliament, National Treasury, Attorney General	to
15	Enhance Enforcement of the Competition Act and Ensure Impartial Application of Competition Rules	Promote fairness, reduce political favoritism, and foster merit-based competition	Competition Authority of Kenya, Parliament, Judiciary	to

3.0 ASSESSMENT AREA: MARKET COMPETITION

Competition reforms in Kenya have advanced, especially with stronger enforcement by the Competition Authority, but market distortions remain due to political capture and dominant state-owned enterprises. Public procurement is more transparent with digital tools, yet insider access and direct awards still undermine fairness. SOEs continue to crowd out private players and carry fiscal risks. Protectionist policies often benefit connected firms rather than whole sectors. Frequent tax changes create uncertainty and complicate investment decisions. Weak enforcement of market rules allows abuse by powerful firms. Export growth remains sluggish, held back by regulatory and logistical barriers.

3.1 Overall Context

Competition is a critical lever for productivity, innovation, and private sector growth. It enables consumers to access better goods and services at fair prices while creating a level playing field for enterprises of all sizes. In Kenya, efforts to promote competition have been steadily advancing over the last decade. The enactment of the Competition Act in 2010, and subsequent establishment of the Competition Authority of Kenya (CAK), marked a significant institutional milestone. The law has undergone several revisions, most recently in 2024, reflecting a maturing commitment to fair markets. The CAK has since grown in influence, investigating barriers to market entry, abuse of buyer power, and anticompetitive practices, while advising government on competition and consumer welfare matters. In tandem, Kenya has made progress in procurement reform, digitizing systems through the Public Procurement Information Portal (PPIP) and aligning with international transparency standards like the Open Contracting Data Standard.

Despite these commendable strides, Kenya's markets continue to face several entrenched barriers that stifle effective competition. State-owned enterprises (SOEs) dominate sectors such as retail, transport, and energy, crowding out private investment and perpetuating inefficiencies. These entities not only consume significant public resources—often running up unsustainable debts—but also distort price signals and resource allocation. For example, the Auditor General flagged that as of June 2023, debt obligations to major SOEs like Kenya Power and Kenya Airways stood at over Ksh 170 billion, without clear mechanisms for repayment or restructuring.

Corruption remains a pervasive concern in public procurement, where insider dealings and opaque processes skew contract awards in favor of a well-connected few. Initiatives like the Access to Government Procurement Opportunities (AGPO), meant to empower marginalized groups, have not been immune to malpractice. Reports of nepotism, bribery, and political favoritism taint its credibility and weaken the potential for inclusive competition. The infamous KEMSA scandal during the COVID-19 pandemic revealed how billions in contracts were handed to unqualified entities, crowding out capable suppliers and undermining value for money.

Tax unpredictability is another critical barrier. Businesses routinely cite the complexity of Kenya's tax system and frequent regulatory changes as key constraints. The annual revisions to the Finance Bill often introduce new levies or change tax structures with minimal transition time or analysis of previous reforms' effectiveness. This regulatory instability deters investment and inhibits long-term planning, particularly for exporters who also grapple with inefficiencies at border points and duplicative levies from multiple agencies. While the National Tax Policy (Sessional Paper No. 2 of 2023) seeks to address these gaps, its implementation will require consistent enforcement and coordination.

Protectionist industrial policies have also skewed competitive dynamics. The cement clinker industry illustrates this tension vividly. Legislative interventions, such as the introduction of levies and duties on clinker imports, have favored local producers, especially those with political clout—while disadvantaging smaller firms reliant on imports. Critics argue that such laws entrench duopolies, stifle innovation, and raise consumer prices. Similarly, arbitrary import restrictions in agriculture, energy, and manufacturing benefit incumbents while closing off market access to smaller and newer firms.

These structural challenges are compounded by weak enforcement of competition rules. Although Kenya has a comprehensive legal framework, implementation is often inconsistent or selectively applied. For instance, the high evidentiary threshold for proving abuse of buyer power may shield dominant firms from accountability, even when smaller suppliers are clearly disadvantaged. This legal ambiguity compromises the CAK's ability to level the playing field effectively.

The World Bank's 2020 Kenya Systematic Country Diagnostic underscored these concerns, highlighting regulatory barriers, high entry costs, and inadequate oversight across key sectors. Whether in tea, insurance, legal services, or manufacturing, excessive government involvement and outdated rules continue to suppress market vibrancy. A more systematic and transparent approach to market regulation is essential - one that rationalizes SOEs, enhances public procurement oversight, streamlines taxation, and safeguards regulatory neutrality. Strengthening competition in Kenya is not only a matter of institutional reform, but a prerequisite for accelerating inclusive growth, deepening regional trade, and unlocking the full potential of Kenya's private sector.

3.2 Measures to Enhance Market Competition

3.2.1 Enhance Enforcement of the Competition Act and Ensure Impartial Application of Competition Rules

Since the enactment of the Competition Act No. 12 of 2010 and the establishment of the Competition Authority of Kenya (CAK), significant strides have been made in regulating market conduct and protecting consumer welfare as a result of the Act undergoing three revisions in total: 2026, 2019, and most recently in 2024. The CAK has significantly strengthened its enforcement efforts, as evidenced by the growing number of cases it has handled. For instance, it has handled over 200 cases of abuse of buyer power between FY 2018/19 and 2022/23[40].

Sections 9(i) and 9(n) of the Act mandate the Authority to investigate market impediments and advise the government on issues around competition and consumer welfare, yet barriers to entry persist across sectors. Kenya's competitive

40 Institute of Economic Affairs webinar on Abuse of Buyer Power held on 24th March, 2024

environment is undermined by political favoritism, which distorts market outcomes and frustrates fair enterprise. Firms with political ties are often given preferential treatment, undermining genuine innovation and efficiency. This leads to an uneven playing field where business success is determined more by political connections than merit. Efforts to make the beneficial ownership register public so that the owners of the businesses are known are often prevented based on data privacy complaints.

Such distortions reduce trust in government procurement, stifle entrepreneurship, and deter long-term investment. Enforcing the Competition Act robustly and impartially would restore fairness and improve overall market productivity. To improve market productivity, the CAK should be given operational independence to proactively investigate anti-competitive behavior, particularly where political capture is involved.

3.2.2 Reform Governance of State-Owned Enterprises (SOEs) Including Transparent Privatization Processes

The World Bank highlights the negative impact of state-owned commercial entities on market competition. Their significant presence in sectors such as retail, banking, and manufacturing crowds out private investment that could otherwise drive revenue generation and job creation. Government intervention in these areas is notably high, Kenya scores around 2.8 on a 6-point scale measuring regulatory restrictiveness, compared to the OECD average of 1.5, indicating a more restrictive environment that further hampers economic growth[41].

As state-owned corporations face declining profitability and rising financial risks, rationalizing these entities could enhance competition, attract private investment, and improve overall economic efficiency. As seen with Kenya Power and Lightning Company (KPLC), Kenya Ports Authority and Kenya airways in which the Auditor General raises that the outstanding debt obligation to these companies stood at Ksh 170.22 billion as of 30th June 2023 and in most cases, it is not clear the arrangement that will ensure that this monies are paid back by the companies[42].

Kenya Airways' case is particularly illustrative: in 2024, the airline reported a pre-tax profit of Ksh 5.4 billion from a Ksh 22.6 billion in the previous financial year[43] but much of this gain was attributed to foreign exchange gains following the appreciation of the Kenyan shilling, rather than fundamental improvements in operations. Moreover, KQ had received a KSh 17.4 billion bailout for a loan[44] that was due, which effectively shifts liability to the taxpayers. Following an earlier government commitment to support the airline's recovery from the impact of the COVID-19 pandemic, the

41 Kenya Country Economic Memorandum, From Economic Growth to Jobs and Shared Prosperity, March 2016, The World Bank
42 Auditor General's Summary Report on National Government FY 2022/23
43 Kenya Airways Reports Historic Profit of KShs 5.4 Billion for the 2024 Financial Year
44 Kepha Muiruri, "Kenya Airways Posts it First Full- Year Profit in 12 Years", Business Daily

Government of Kenya advanced a second tranche of a shareholder loan totaling KES 14 billion in 2021. This was in addition to KES 11 billion disbursed in 2020, bringing the total loan amount to KES 25 billion[45]. The loan was intended to help the airline sustain operations during and after the pandemic, with repayment scheduled after five years at an annual interest rate of 3%. Further, the accrued interests in 2024 of Ksh 8.4 billion, the airline sought and was granted a waiver and deferral[46]. All these issues combined then bring questions into the sustainability of the company and whether indeed it made profits.

Without structural reforms and accountability mechanisms, the bailouts risk becoming perpetual subsidies that entrench inefficiency, distort markets, and burden the exchequer under the guise of short-term stabilization. Attempts to privatize SOEs have also lacked transparency, with no clear criteria for selecting entities for sale or clarity on beneficiaries.

Further, World Bank data shows that the Kenyan government holds direct or indirect ownership stakes of at least 10% in 132 business entities, covering approximately 11% of the domestic market[47]. Notably, around 73% of these state-linked entities operate in the services sector, mostly in competitive markets where the economic justification for state involvement is weak[48]. Some of these firms even hold dominant positions in their respective industries.

In addition, opaque privatization and poor governance of SOEs continue to weaken competition. Past privatization efforts have lacked full disclosure on valuation, beneficiaries, and process design, fueling perceptions of insider deals. Further, many SOEs are governed by politically appointed boards whose members often lack the requisite competence and are disconnected from the enterprises' mandates. Many boards of SOEs are filled through opaque political appointments, often without regard to professional qualifications or sector expertise. This undermines strategic leadership, accountability, and productivity. The CEOs who report to unqualified boards struggle to execute mandates effectively. Moreover, the lack of legal safeguards for public participation in appointments creates room for patronage. Reforms should mandate a clear competency framework, disclose appointments publicly, and introduce vetting mechanisms, ensuring boards are fit for purpose and aligned with institutional goals.

Currently, there is no legal requirement for public participation in board appointments for SOEs. The ministers or the President can appoint individuals with minimal scrutiny, resulting in boards often filled by politically connected but underqualified individuals. These appointments compromise strategic oversight and operational effectiveness. Legal reforms mandating competency-based

45 Kenya Airways Annual Report and Financial Statements 2021

46 Kenya Airways Annual Report and Financial Statements 2024

47 Kenya Country Economic Memorandum, Seizing Kenya's Services Momentum, 2023, The World Bank

48 Kenya Country Economic Memorandum, Seizing Kenya's Services Momentum, 2023, The World Bank

appointments, stakeholder input, and transparency would ensure boards advance national productivity goals rather than private enrichment schemes.

This governance failure leads to inefficiency, waste, and corruption. Transparency in privatization, clear criteria for SOE reforms, and merit-based board appointments are essential for increasing productivity and fair competition. To attract private investment and enhance efficiency, the government must adopt transparent, criteria-based SOE rationalization, guided by public interest, clear valuation mechanisms, and public oversight.

3.2.3 Enforce Transparency and Open Standards in Public Procurement Processes

The Public Procurement and Asset Disposal Act of 2015 and subsequent innovations such as the e-procurement system (2014) and the Public Procurement Information Portal (revamped in 2024) have introduced vital infrastructure for competitive tendering. The PPIP initiative promotes transparency, accountability, and equal access to information, aligning with Sustainable Development Goal (SDG) 16 on Peace, Justice, and Strong Institutions, particularly target 16.5, which aims to substantially reduce corruption and bribery. Initially launched in 2018 with limited features, the system was revamped in 2024 to align with the Open Contracting Data Standard (OCDS)[49].

As of January 2025, the PPIP had reported over 91,000 contracts and Ksh 1.55 trillion in disbursements[50]. The government's broader e-government agenda — spearheaded by the launch of the E-Citizen (*Gava Mkononi*) mobile app in June 2023, which now has over half a million downloads on Google Play[51] and the e-Government Procurement (e-GP) system in April 2025 has played a key role in digitizing service delivery and procurement processes. A survey conducted by the Ethics and Anti-Corruption Commission (EACC) found that e-procurement enhances transparency by 75%, primarily due to the ease of accessing documents, improved security, better information tracking, and increased accuracy in stored data[52].

However, corruption still thrives in procurement, as demonstrated by the KEMSA scandal, where politically linked but unqualified companies won multi-billion-shilling COVID-19 contracts. Contracts worth billions of Kenyan shillings were awarded to unqualified and obscure companies without proper vetting, sidelining experienced firms that could have delivered better value and quality. Many of the contracted companies lacked the expertise to handle large-scale contracts, raising concerns

49 Pioneering Transparency: Revamped Procurement Informational Portal Launched -Strathmore University
50 https://tenders.go.ke/
51 E-Citizen (Gava Mkononi) on Google Play
52 An Evaluation of Corruption in Public Procurement "A Kenyan Experience"

about not only transparency and accountability but also the distortion of fair competition[53].

Well-intentioned initiatives like the Access to Government Procurement Opportunities (AGPO) scheme, designed to empower youth, women, and persons with disabilities, have been tainted by unethical practices such as bribery, nepotism, and favoritism. This gives undue advantages to relatives and friends of public officials, eroding the competitive landscape that the programme seeks to promote.

Further, the persistent favoritism toward politically connected firms with substantial financial muscle continues to undermine fair market access. Smaller businesses and start-ups often struggle to compete for government contracts or access critical procurement opportunities. Practices such as offering kickbacks to secure tenders, or leaking confidential bid information to preferred suppliers, give certain firms an unfair advantage and erode trust in the procurement process.

One early and notable example is the IEBC "Chickengate" scandal (2007–2010), where UK-based Smith & Ouzman bribed IEBC officials with approximately KSh 45 million to win contracts for printing election materials[54]. Officials were found to have leaked rival bid information, leading to inflated costs and blatant procurement bias.

More recently, in 2025, senior officials at the Kenya Ports Authority, including the General Manager for Supply Chain, allegedly manipulated tenders to favor pre-selected suppliers[55]. Tender documents were rushed, and restricted tendering was used to block out competition. Whistleblowers claimed kickbacks worth millions were involved, with some officials reportedly boasting of "unbowed political protection".

Corruption and favoritism in public procurement systems deter businesses from engaging with government tenders. In extreme cases, delays and politically motivated payment prioritization result in large unpaid bills (pending bills), which have financially ruined suppliers. The lack of fair competition discourages integrity-driven businesses, fuels inequality, and increases the cost of public goods and services. Enforcing the Public Procurement and Asset Disposal Act consistently and publicly auditing high-value procurements can mitigate these risks. Ensuring that all tenders follow open contracting standards and are subject to independent audit would protect the integrity of procurement processes and rebuild trust among SMEs and new market entrants.

53 Current Trends and Emerging Issues Affecting Public Procurement in Kenya by Peter Kathuki, November 2024
54 Wachira Maina, "State Capture: The Institutionalism of Impunity in Kenya" August 30th 2019
55 Inside the KPA Scandal: How Tender Manipulation is Draining Public Funds, May 30th 2025

3.2.4 Introduce a Predictable and Investment Friendly Tax Policy Framework

Frequently, arbitrary tax changes introduced through annual Finance Bills have led to widespread uncertainty, particularly for manufacturers and exporters. Complex regulations, inconsistent assessments, and the proliferation of levies especially at border points inflate costs and deter investment. According to the Kenya Association of Manufacturers, surprise audits and erratic classifications serve more as harassment tools than compliance measures. A predictable, business-friendly tax regime should be anchored in a rolling multi-year tax policy as envisioned in Sessional Paper No. 2 of 2023 guided by evidence-based review of past tax reforms and stakeholder consultations. Despite modernization efforts, customs clearance remains fragmented, with overlapping levies imposed by multiple agencies, creating bottlenecks and opportunities for rent-seeking. Downtimes in KRA's digital platforms, disputes over classification, and lack of redress mechanisms frustrate legitimate traders. A unified and streamlined process would lower compliance costs, improve trade competitiveness, and eliminate avenues for discretionary power. Full implementation of the National Trade Facilitation Roadmap and enforcement of single-window protocols would improve the ease of doing business and promote fair competition.

3.2.5 Publish Clear Criteria for SOE Restructuring, Mergers, or Closures

In his budget speech, the Cabinet Secretary for Finance announced that in January 2025, the Cabinet approved reforms to streamline State Corporations and improve governance and accountability. The reforms aim to address operational and financial inefficiencies, enhance service delivery, and reduce reliance on exchequer support. Key measures include[56]:

1. Merging 42 State Corporations into 20 to eliminate duplication and improve efficiency.
2. Dissolving 25 corporations and transferring their functions to parent ministries or other entities.
3. Restructuring six corporations to align their mandates for better performance.
4. Declassifying four public funds currently categorized as State Corporations, with their functions reverting to relevant ministries; and
5. Declassifying 13 professional bodies as State Corporations, reclassifying them as private entities without budgetary support.

To support the reforms, the Government developed the Government-Owned Enterprises Bill, 2024, which is before Parliament, and as of 16th June 2025, it hadn't been approved. The Bill is part of broader efforts to reduce fiscal risks and improve public service delivery.

56 Budget Statement FY 2025/26, The National Treasury and Economic Planning

However, the ongoing consolidation and privatization, such as that of sugar factories, lack publicly available criteria or clear documentation. This opacity raises concerns about political interference and elite capture. To avoid repeating past mistakes, the government should publish objective criteria and involve the public in oversight to ensure reforms serve the public interest.

3.2.6 Guard Against Protectionism Disguised as Industrial Policy

Protectionist policies often disguised as efforts to bolster local industries can significantly distort competition, as evidenced by Kenya's cement clinker industry. The Finance Act 2023 introduced a 17.5% export and investment levy on cement clinker and a 10% excise duty on imported cement, further reducing clinker imports, which were already on the decline. Consequently, cement production also fell. Interestingly, the key beneficiaries of these policy changes are Mombasa Cement and National Cement Ltd (owned by the Devki Group), the only two firms producing their clinker locally. The two local companies previously lobbied for higher import duties, proposing a 25% tariff (up from 10%) in 2021, arguing that the market had sufficient local supply. This could have led to their strengthened duopoly, limiting market competition and creating conditions for higher cement prices.

Critics argue that such laws skewed to benefit a few aligned individuals or firms disproportionately benefit politically connected firms at the expense of smaller players and consumers. Claims that locally produced clinker is substandard further complicates the narrative[57], as smaller cement manufacturers, reliant on imported clinker, face higher costs and reduced competitiveness. This example illustrates how legal instruments can be weaponized to favor cronies, using protectionism as a pretext.

3.2.7 Eliminate Regulatory Barriers and Strengthen Competition Oversight Across Sectors

To unlock Kenya's growth potential, systemic barriers to competition across sectors must be addressed through coordinated regulatory reform. The 2020 World Bank Kenya Systematic Country Diagnostic report identified structural distortions in at least seven sectors. The distortions fall into three interlinked categories[58]:

First, regulatory barriers and government intervention. Burdensome regulations and excessive government intervention distort markets, creating an uneven playing field. For instance, import licenses, quotas, and tariffs often benefit politically connected entities while disadvantaging smaller market players. The National Cereal and Produce Board, which controls key agricultural commodities like maize, is a prime example of how government participation disrupts value chains. In the

57 Revisit Issue on Clinker Monopoly by Jaindi Kisero (2nd February 2023)

58 Table Two (Sector Specific Competition Restrictions)

energy sector, incomplete regulatory frameworks for electricity generation and government dominance in transmission raise concerns about regulatory neutrality, discouraging private investment.

Second, market entry restrictions. High entry barriers limit competition by locking out new players. For example, sectors like tea and legal services impose unreasonable requirements, such as minimum land holdings or restrictions on foreign partnerships. The regulations reduce market dynamism and innovation. Similarly, nontariff barriers, such as quotas and mandatory permits in sugar and air transport, restrict equal access for businesses, benefiting entrenched incumbents at the expense of newcomers.

Third, weak regulatory oversight allows anti-competitive practices to flourish. Collusive behavior in the insurance sector and information-sharing among competitors inflate costs, harming both businesses and consumers. Additionally, state-owned enterprises (SOEs) like the Pyrethrum Processing Company of Kenya and those in the sugar industry are often shielded from competition, despite their inefficiencies. This protectionism perpetuates monopolistic tendencies, undermining private sector growth and innovation.

Since the publication of the 2020 Kenya Systematic Country Diagnostic, Kenya has made some notable progress in addressing some of the competition constraints outlined in the report. On the regulatory front, the government has taken steps to streamline business processes through initiatives such as the establishment of the Karibu Business Support Centre in 2024. This one-stop shop initiative integrates registration and licensing, market access and networking, product standardization, financial services, product development, and linkages to business development opportunities.

Further efforts to improve the regulatory environment are underway through the Deregulation Taskforce established under the Business Laws (Amendment) Act 2024. The task force, which began work in early 2025 and was to work from January 2025 to March 2025, was mandated to review and eliminate redundant licenses and permits to promote a more enabling business environment. However, the task force is yet to publish its report.

On legal reforms, Kenya has moved to modernize its competition framework. The Competition (Amendment) Bill 2024 is currently under parliamentary review. The bill seeks to expand the Competition Authority of Kenya's (CAK) scope to include digital market dynamics such as data dominance, buyer power, and network effects. The changes are intended to enhance regulatory responsiveness in digital platforms, with implications for players like M-Pesa and global tech companies. These reforms reflect an acknowledgment of evolving market structures and a need to update Kenya's regulatory toolkit accordingly.

Notably, over the last five years, enforcement of competition law has significantly strengthened with the CAK pursuing high-profile investigations. These include a KES 1.1 billion penalty imposed on Carrefour for abuse of buyer power[59] and a KES 339 million fine on nine steel manufacturers for cartel-like behavior[60]. The Authority also reached a landmark settlement with Unilever in 2023, which included commitments to improve contract terms for small- and medium-sized suppliers.

To facilitate its operations, the CAK digitized several of its services via the e-Citizen platform, enabling online merger filings and complaints. Additionally, in late 2023, the authority released comprehensive Remedies and Settlement Guidelines to clarify processes for compliance and dispute resolution.

At the institutional level, Kenya has welcomed external reviews to enhance accountability. In December 2024, the CAK initiated an OECD peer review of its institutional and legislative framework. The findings from the review are expected by December 2025 and may inform further improvements in competition oversight. Sector-specific studies, such as a 2024 market inquiry into the animal feeds sector, have also been instrumental in identifying persistent structural constraints, particularly market concentration and regulatory bottlenecks, that inflate production costs and limit competitiveness.

To maintain this momentum, the government should conduct a systematic review of sectoral regulations to identify and remove distortive rules and practices. This process must include:

1. Sunset reviews for outdated or discriminatory entry requirements.
2. Independent regulation of markets with strong public or SOE presence to ensure neutrality.
3. Stronger market conduct enforcement by CAK, particularly in collusion-prone sectors.
4. Enhanced coordination between sector regulators and competition authorities to monitor and address abuse of market power.

3.2.8 Strengthening Implementation of Open Contracting Reforms by Ensuring Full Functionality, Data Quality, and Accessibility of e-Procurement Systems (PPIP, e-GP), enforcing AGPO provisions, and disclosing beneficial ownership in line with OGP commitments

Despite ambitious commitments by the Kenyan government — particularly under Open Government Partnership (OGP) action plans — to overhaul public procurement systems, real-world impact remains elusive. The 2023–27 OGP review characterizes the government's promises around e-procurement (e-GP), the Public Procurement Information Portal (PPIP), Access to Government Procurement Opportunities (AGPO), and enhanced beneficial-ownership disclosure as "ambitious and transformative." However, implementation has largely fallen short.

59 Press Release, The Competition Authority of Kenya on Sanctions Majid Al Futtaim Hypermarkets Limited (Carrefour) for Abuse of Buyer Power

60 Press Release, The Competition Authority of Kenya Sanctions Cartel Conduct in Steel Sector released on Wednesday 23rd August, 2023.

While legal frameworks such as the Public Procurement and Disposal Act (2015) require that at least 30% of public contracts go to youth, women, and persons with disabilities, in practice, this doesn't happen, and mostly in urban areas. Data published via PPIP tends to be historical rather than live, lacks gender or AGPO-specific tagging, and omits crucial post-award stages, hindering meaningful oversight.

The OGP Independent Reporting Mechanism (IRM) also highlights capacity and political-motivation deficits: procurement officers lack adequate training in Open Contracting Data Standards (OCDS); whistleblower protection remains fragmented; and institutional apathy limits adoption of open contracting tools. As a result, despite repeated OGP action plan renewals, the net outcome has been "no/limited results and little to no change in how government does its business.

3.2.9 Strengthen Whistleblower Protections and Anti-Corruption Enforcement in Procurement

Corruption in procurement continues to distort market access, with politically connected entities receiving preferential treatment in contract awards and tax exemptions. Whistleblowers often face retaliation or are ignored, weakening accountability. Enhancing legal protections and incentives for whistleblowers, while empowering investigative agencies to act on credible leads, especially in large-value procurements, would deter collusion and level the playing field for ethical businesses.

Table 8: Priority Governance Reforms to Boost Competition

🟢 Short Term = 1 year
🟡 Medium Term = 1–3 years
🟢 Long Term = More than 3 years

16	Reform Governance of SOEs Including Transparent Privatization Processes	Encourage private sector growth, improve SOE efficiency, and foster accountability	National Treasury, State Corporations Advisory Committee, Parliament, Auditor General	🟡 to 🔴
17	Enforce Transparency and Open Standards in Public Procurement Processes	Reduce corruption, increase SME participation, and promote open competition in public tenders	PPOA, EACC, Public Procurement Regulatory Board, Auditor General, Parliament	🟢 to 🟡
18	Introduce a Predictable and Investment-Friendly Tax Policy Framework	Reduce investor uncertainty, lower compliance costs, and eliminate discretionary practices	National Treasury, Kenya Revenue Authority, Parliament	🟢 to 🟡
19	Publish Clear Criteria for SOE Restructuring, Mergers, or Closures	Prevent elite capture, improve transparency, and support effective SOE reform	National Treasury, Parliament, State Corporations Advisory Committee	🟡 to 🔴
20	Guard Against Protectionism Disguised as Industrial Policy	Prevent market distortions, protect consumer interests, and support a level playing field	National Treasury, Parliament, Ministry of Trade	🟡 to 🔴
21	Eliminate Regulatory Barriers and Strengthen Competition Oversight Across Sectors	Promote sectoral competition, reduce market entry barriers, and address anti-competitive practices	Sector Regulators, CAK, Ministry of Trade, Parliament	🟡 to 🔴
22	Strengthen Whistleblower Protections and Anti-Corruption Enforcement in Procurement	Deter collusion, encourage ethical business practices, and improve the integrity of public spending	EACC, Parliament, Judiciary, PPOA	🟢 to 🟡
23	Strengthen Implementation of Open Contracting Reforms			

4.0 ASSESSMENT AREA: JUDICIAL REFORMS

Kenya's Judiciary is a cornerstone of its constitutional order, safeguarding the rights and freedoms of its citizens while ensuring accountability and equity in the administration of justice. The Judiciary has made strides in enhancing access to justice by expanding court networks, promoting court annexed-alternative dispute resolution, adopting e-filing systems and improving case tracking through digitization. However, critical bottlenecks endure. Case backlogs remain high, judicial appointments are often delayed, and budget allocations fall short of constitutional thresholds, therefore limiting service delivery. Corruption within the Judiciary, real and perceived, undermines public trust, especially in politically sensitive cases. Judicial training, infrastructure and technology remain uneven across the country, compounding inequality in justice delivery. As a result, justice remains slow, expensive and in many cases, inaccessible to the ordinary citizen. Deepening judicial reforms requires sustained political will, predictable funding and a people-centered approach to justice that will build trust, transparency and fairness across the board.

4.1 Overall Context

The Constitution of Kenya establishes the Judiciary as an independent custodian of justice, with its primary role being the exercise of judicial authority delegated to it by the people of Kenya. Article 1 (3) (c) states that sovereign power is delegated to, among others, the Judiciary and independent tribunals, which are mandated to perform their functions in accordance with the Constitution. The Judiciary's framework is further detailed in 15 articles, starting from Article 159 (judicial authority) to Article 173 (Judiciary Fund), which collectively outline its authority, principles and financial independence.

At the core of the Judiciary are the values enshrined in the Constitution. These include impartiality, integrity, and diligence. Article 159 emphasizes that justice shall not be delayed, should be accessible to all, and shall be administered without undue regard to procedural technicalities. These principles guide the Judiciary's operations to ensure fairness and efficiency in the delivery of justice. While the 2010 Constitution established strong safeguards for judicial independence, persistent challenges such as chronic underfunding, political interference, and corruption allegations continue to hinder the Judiciary's effectiveness. Key informants highlight that operationalizing the Judiciary Fund and strengthening the Judicial Service Commission (JSC) are critical to addressing some of these gaps.

The Judiciary also plays a vital role in maintaining checks and balances within Kenya's governance framework. By interpreting and enforcing the Constitution and laws, the Judiciary safeguards constitutionalism and ensures the Executive and Legislature operate within legal limits.

Judicial independence, as guaranteed under Article 160, is fundamental to its functioning. This provision ensures that judicial authority is subject only to the Constitution and the law and is free from external influence. Protections such as secure tenure for judges and financial autonomy under the Judiciary Fund bolster this independence.

Through these structures, principles, and its commitment to upholding justice, the Judiciary remains a cornerstone of Kenya's constitutional order, safeguarding the rights and freedoms of its citizens while ensuring accountability and equity in the administration of justice.

4.1.1 Court Structure

The courts under the Constitution operate at two levels, namely, Superior and Subordinate courts. The Superior Courts comprise of the Supreme Court, the Court of Appeal, the High Court, the Employment and Labour Relations Court, as well as the Environment and Land Court. On the other hand, the Subordinate Courts comprise of the Magistrates' Courts, the Kadhis Courts, the Court Martial, and any other court or local Tribunal established by an Act of Parliament.

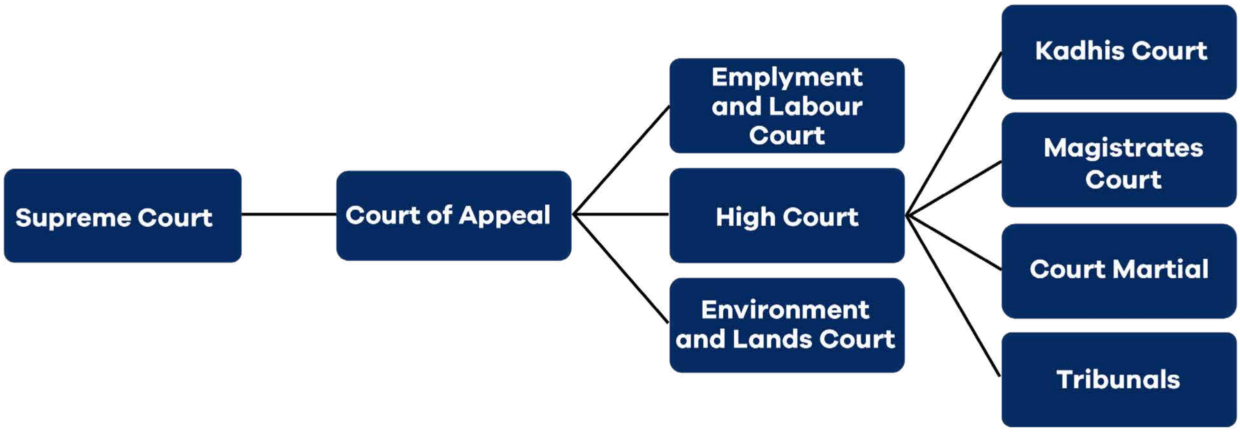


Figure 2:Court Structure in Kenya

The Superior Courts include the Supreme Court, Court of Appeal, High Court, Environment and Land Court, and the Employment and Labour Relations Court. These courts are constitutionally established and vested with various levels of original, appellate, and supervisory jurisdiction, depending on their roles.

At the top of the hierarchy is the Supreme Court, established under Article 163, and composed of seven judges, including the Chief Justice and Deputy Chief Justice, both appointed by the President on the recommendation of the Judicial Service Commission and approval of the National Assembly. The court hears appeals from the Court of Appeal, issues advisory opinions upon request by national or county government entities, and handles matters of constitutional interpretation and general public importance.

Next is the Court of Appeal, anchored in Article 164, which consists of not fewer than twelve judges who elect their own president. The court's jurisdiction is set by the Appellate Jurisdiction Act and includes appeals from the High Court, the Employment and Labour Relations Court, and the Environment and Land Court, as well as other courts or tribunals as provided for by law. It operates permanent benches in Nairobi, Mombasa, Nyeri, and Kisumu, and maintains sub-registries in several other towns where judges travel on circuit to enhance accessibility.

The High Court, established under Article 165, has unlimited original jurisdiction in civil and criminal matters. It also has specific constitutional functions, such as determining violations of rights in the Bill of Rights, interpreting the Constitution, and hearing appeals from certain tribunals, except those concerning presidential removal. The court is managed by a Principal Judge, elected by peers, and its structure and number of judges are determined by statute. The High Court also supervises subordinate courts and other judicial or quasi-judicial authorities under

Article 165(6).

Alongside the High Court are the Environment and Land Court and the Employment and Labour Relations Court, both of which are of equal status to the High Court, as set out in Article 162(2). The Environment and Land Court, established under the relevant statute, has jurisdiction over disputes involving land use, ownership, boundaries, valuation, minerals, natural resources, and environmental rights under Articles 42, 69, and 70. It may also exercise appellate and supervisory jurisdiction over subordinate courts and tribunals dealing with similar matters.

The Employment and Labour Relations Court, operationalized under the Employment and Labour Relations Court Act, handles disputes related to employment and labour relations. These include disputes between employers and employees, trade unions, and employer organizations, as well as matters regarding union registration, elections, membership, and collective agreements. The court exercises both original and appellate jurisdiction.

The Subordinate Courts, created under Article 169, include the Magistrates' Courts, Kadhis' Courts, the Court Martial, and any other court or tribunal established by Parliament.

The Magistrates' Courts, structured under the Magistrates' Court Act, are classified into five levels based on jurisdictional authority: Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate, and Resident Magistrate. Each level has a defined pecuniary limit, with Chief Magistrates hearing cases up to KES 20 million, descending to KES 5 million for Resident Magistrates. These thresholds may be reviewed by the Chief Justice, taking into account economic conditions. Magistrates handle both criminal and civil matters, and may preside over cases relating to African Customary Law, including marriage, divorce, dowry, intestate succession, and related issues. The Constitution also empowers Parliament to allow them to enforce rights under the Bill of Rights. Magistrates may be designated to handle specialized matters in environment, land, and labour, with appeals from such cases going to the relevant specialized courts.

Kadhis' Courts, established under Article 170, have limited jurisdiction to personal law matters among Muslims, including marriage, divorce, and inheritance, and only apply where all parties are Muslims and consent to the court's jurisdiction.

The Court Martial, under the Kenya Defence Forces Act, handles cases involving military personnel. It comprises a Judge Advocate (a magistrate or advocate of not less than ten years' experience appointed by the Chief Justice), and between three to five other members, depending on the rank of the accused. It ensures that offences committed within military ranks are adjudicated in accordance with military justice procedures.

Kenya also has several specialized subordinate courts, including the Anti-Corruption Court, Children's Court, and Small Claims Court. These are presided over by magistrates gazetted for that purpose by the Chief Justice. Their mandates are issue-specific: for instance, the Small Claims Court handles low-value civil claims in a simplified and expedited manner.

Finally, tribunals are quasi-judicial institutions established by Acts of Parliament to handle specific administrative or regulatory matters. These bodies complement formal courts, operate within the limits of the Bill of Rights, and are subject to High Court supervision. While they cannot issue penal sanctions, they must not act in a manner inconsistent with the Constitution, established laws, or principles of justice and morality.

4.1.2 Court-Annexed Mediation

Court Annexed Mediation (CAM)[61] was introduced by the Judiciary in an effort to alleviate case backlog and in line with Article 159 (2) (c) of the Constitution, which mandates the Judiciary to promote alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.

The Judiciary has been implementing mediation as an initiative to promote Alternative Dispute Resolution (ADR) since 2016. This is in tandem with the Social Transformation through Access to Justice (STAJ) Vision, which seeks to, among others, expand the doorways of justice.

Some of the highlights of the new developments in the CAM programme include the gazettement of the New Court Annexed Mediation Rules, 2022, which provide for Private Mediation Agreements. This is part of the Judiciary's multi-door approach to access to justice. Parties can now forward private mediation agreements for registration and enforcement without having to file pleadings as they would have to in the adversarial process.

An Action Plan on the implementation of CAM has been developed and is being executed. The plan aligns the outcome of the pilot and rollout of courts and creates the framework for a three-year implementation plan. The Action Plan takes into consideration the current needs of CAM while considering its long-term aspirations. The Mediation Manual and The Code of Ethics for Mediators are among the key policy documents developed to support enhanced uptake and success of mediation.

4.2 Progress on Judicial Reforms

Kenya's Judiciary has undergone significant transformation over the last 60 years, mirroring the country's social and political evolution. These changes aim to enhance

61 https://judiciary.go.ke/court-annexed-mediation/ as last viewed on 27th January 2024

institutional performance and ensure equitable access to justice for all citizens. Historically, the Judiciary functioned as an extension of colonial governance, primarily serving elite interests while alienating ordinary citizens. Following the declaration of independence in 1963, efforts were made to ensure the Judiciary represented the face of Kenya by increasing Kenyan representation in judicial roles. This gradual process eventually resulted in a Judiciary reflective of the nation's diversity.[62]

The Judiciary has undergone several reviews and purges in the pursuit to continuously reform it and protect access to justice for all Kenyans. Hitherto, it was largely controlled by the Executive and the former Constitution gave the President the power to appoint the Chief Justice. In 1998, the Chief Justice formed the Justice Richard O. Kwach Commission on the Administration of Justice, including on the capacity of judges to carry out their judicial functions as well as the efficiency of the courts. In 2001, the Constitution of Kenya Review Commission invited the Advisory Panel of the Commonwealth Eminent Judicial Experts to provide advice on the Judiciary section of the draft constitution. The panel, while noting that the Kwach Commission recommendations were never implemented, concluded that: "….*as presently constituted, the Kenyan judicial system suffers from a serious lack of public confidence and is generally perceived as being in need of fundamental structural reform…*".

In 2003, following the election of President Kibaki and the NARC government, defeating KANU, the independence party, and in line with the judicial reforms pledge of his campaign and manifesto, the President executed a "radical surgery" by appointing a new Chief Justice, Evans Gicheru who set up an internal committee to investigate corruption in the Judiciary. The report indicted almost 40% of the judges and magistrates with some judges resigning, while some opted to go through disciplinary tribunals. Alongside the purge, major administrative reforms were initiated under the Governance, Justice, Law, and Order Sector (GJLOS) Reform Programme, which focused on governance and judicial sector improvements to support economic recovery and which were coordinated by the Ministry of Justice and Constitutional Affairs. After the disputed 2007 general elections, where Chief Justice Gicheru agreed to conduct the swearing in of President Kibaki for his second term, aided by the Electoral Commission of Kenya's disputed and inconclusive results, the opposition vowed not to resolve the disputes in the courts until they were reformed. At the time, Public confidence in the Judiciary was at an all-time low.

While the constitutional review process was being finalized from 2008 as part of the national accord signed between President Kibaki and Raila Odinga, a Taskforce on Judicial Reforms was established in 2009 and was chaired by the Registrar William Ouko. The Taskforce considered far-reaching aspects of judicial reforms, including a more strengthened Judicial Service Commission, the financial autonomy of the

62 Kenyan Judiciary. (2023). A blueprint for social transformation through access to justice: A people-centered justice approach, 2023–2033.

Judiciary, measures to address case backlog and dealing with corruption alongside other proposals given to the Committee of Experts drafting the new constitution.

Following the promulgation of the Constitution in August 2010, which included a new chapter on the Judiciary, the Judges and Magistrates Vetting Board was established to vet all judges and magistrates afresh to ascertain their suitability to serve under the new constitutional dispensation and to restore public confidence in the Judiciary. A new Chief Justice and President of the Supreme Court were appointed following a rigorous selection process. Chief Justice (Emeritus) Willy Mutunga thereafter launched the Judiciary Transformation Framework and established structures within the Judiciary, including a transformation secretariat and a Chief of Staff to assist with delivery.

It is worth noting that the establishment of the Judicial Service Commission (JSC), tasked with promoting judicial independence and fostering accountability, was critical.[63] Judicial appointments and removals now require JSC processes and approvals. The Constitution also established a Supreme Court as the final appellate court for matters requiring constitutional interpretation and of great public interest, as well as the determination of presidential election disputes. Financial independence was safeguarded through constitutional provisions that protected judges' salaries and benefits, a fully-fledged Chief Registrar of the Judiciary as the accounting officer and the establishment of the Judiciary Fund, which was operationalized in FY 2022/2023 and is administered by the Chief Registrar. These measures collectively empowered the Judiciary to act as an impartial guardian of the rule of law. Notable milestones in the reform process include the 2013 public vetting of judges and magistrates, which enhanced transparency and accountability.

Early reforms focused on expanding infrastructure, adopting technology and improving service delivery, while subsequent initiatives targeted reducing case backlogs, improving case management and enhancing judicial accountability through performance evaluations. Another priority for the 2010 reforms was access to justice. Previously, judicial services were concentrated in urban areas, limiting access for many Kenyans. Today, High Court stations are operational in 41 of Kenya's 47 counties, and Magistrates' Courts serve 127 locations. Mobile courts reach remote areas, ensuring no citizen travels more than 100 kilometers to access justice. Specialized courts such as the Small Claims Courts and Sexual and Gender-Based Violence Courts cater to the unique needs of vulnerable groups.[64]

Beyond the courtroom, Kenya's Judiciary has embraced alternative dispute resolution (ADR) mechanisms, including mediation, arbitration, conciliation and Alternative Justice Systems (AJS). These initiatives support a multi-door justice

63 Koome, M. (n.d.). The changing landscape of justice in Kenya: A 60-year journey. Chief Justice of Kenya. Retrieved from https://judiciary.go.ke/the-changing-landscape-of-justice-in-kenya-a-60-year-journey/

64 Refer to footnote 2

system that ensures disputes are resolved efficiently.[65]

The Judiciary's digital transformation has further revolutionized access to justice. It is lauded for its digital advancement during the COVID-19 pandemic, when the nation was on lockdown for months, but still ensured access to justice during the period.

E-filing, virtual court proceedings and the Case Tracking System (CTS) have improved transparency and reduced delays. Nationwide implementation of these systems is ongoing, with plans to integrate judicial platforms with other justice sector agencies for better coordination and efficiency.[66]

4.3 Challenges in Judicial Reforms

The Judiciary has faced challenges and has also come under increased scrutiny. The institution continues to come under political pressure, especially during periods of political tension, such as presidential election dispute resolution. In 2013, the Supreme Court upheld the election of President Uhuru Kenyatta following a petition filed by Raila Odinga, who came second in the election. With strengthened credibility, the opposition accepted the results. In 2017, the Supreme Court nullified the presidential election results, coming under immense criticism and attacks from the then ruling party that had won the elections under President Kenyatta. Following the repeat election, which was boycotted by the opposition, the government reduced the Judiciary's budget and halted the appointment of judges already approved by the JSC.

The Taskforce on Judicial Reforms in 2010 recommended that the Judiciary should receive 2.5% of the National Budget. Currently, the Judiciary gets about 1% (KSh 21Billion)[67] of the budget that only funds just under 50% of its annual budget, hampering its efficient operations. This chronic shortfall undermines court infrastructure, staffing and digitization. The Executive may defend this limited allocation by pointing to debt servicing, recurrent costs and competing development priorities, yet even amid a tight fiscal environment, other sectors have benefited from upward revisions. For instance:

- The Ministry of Interior (internal security) received a 33% budget increase in the 2024/25 Supplementary II allocation (from KSh 28 billion to KSh 37 billion), while the Judiciary's allocation remained stagnant.[68]
- The State House budget was increased by 2.4% (from KSh 8.37 billion to KSh 8.57 billion) and the Executive Office of the President by 17.6%, even as the Judiciary still lobbied for a KSh 40 billion package but received only KSh 26.7 billion in FY 2025/26.[69]

65 Kenyan Judiciary. (2024). State of the Judiciary and the administration of justice annual report: Financial year 2023/24.
66 Kenya Institute for Public Policy Research and Analysis (KIPPRA). (2021, July 1). *Leveraging on digital technology in administration of justice.*
67 https://eastleighvoice.co.ke/national/163829/judiciary-gets-sh2-billion-increase-in-2025-26-budget last viewed on 28th June 2025
68 https://www.treasury.go.ke/wp-content/uploads/2024/07/FY2024-25-PBB-Supplementary-1.pdf
69 Ibid

Despite this, the Judiciary improved its case clearance rate, clocking in at a 99% rate in the FY 2022/2023 and cleared its case backlog by 17% in the same year. These accomplishments demonstrate what can be achieved with learner funding, yet they also underscore how much more could be gained with equitable investment in justice. Notwithstanding constitutional protections, the Judiciary remains vulnerable to political pressure, particularly during election disputes. Budget cuts (up to 30% in recent years) have stalled judge appointments and exacerbated case backlogs. Furthermore, while digital innovations like e-filing have improved efficiency, systemic issues such as uneven implementation of technology and resource constraints remain.

The election of President Ruto in August 2022 was also subjected to a presidential election petition, which was upheld by the Supreme Court. President Ruto's first executive action was to appoint the judges whose appointments had been withheld by President Kenyatta. However, in just over a year, the President expressed his misgivings of the Judiciary for rulings coming from the courts following numerous petitions filed by Kenyans challenging the policy implementation, such as the Affordable Housing Programme and the Finance Acts, amongst others. At the beginning of 2024, the President's political allies issued veiled threats at the Judiciary, with some MPs calling for the Judiciary budget to be cut. The Chief Justice, in her capacity as Chair of the JSC, had to issue a statement reminding the political class of the separation of powers.

These political tensions coincide with deep-seated institutional challenges. Corruption persists at all levels of the Judiciary, from case delays to alleged bribery, while the JSC's disciplinary processes remain slow and opaque, further eroding public trust. In most of 2024 and escalating towards the end of the year, the Judiciary Reform Movement has reignited debates about the state of the justice system, focusing on corruption, inefficiency and accountability. While the movement aims to address systemic failures, it has faced mixed reactions regarding its motives and effectiveness. Concerns have arisen about whether the reforms are driven by genuine objectives or political and personal agendas.[70] Led by four former presidents of the Law Society of Kenya, the latest outrage has emerged as a result of accusations of corruption in all the courts, which they have fondly labelled "JURISPESA". A joint press statement by the four emphasized the need to combat judicial corruption and incompetence and strongly advocated for reforms to strengthen the system.

Consequently, the Chief Justice (CJ) convened the Law Society of Kenya (LSK) and the Senior Counsel's Bar to a roundtable to discuss the increase in complaints on corruption in the Judiciary. The CJ updated the lawyers on the progress regarding complaints filed at the Judicial Service Commission (JSC) against specific judges. The LSK put the Judiciary on notice and said that its own committee will start a

70 Kabaara, D. (2025, January 12). Judiciary reforms alone can't solve the trouble with the justice system. The Standard Newspaper. Retrieved from https://epaper.standardmedia.co.ke/

nationwide data collection process on corruption in the Judiciary. The "Jurispesa" allegations and subsequent debates underscore deep-seated concerns about judicial corruption. Critics argue that the JSC lacks the capacity to investigate complaints transparently, while others note that political actors exploit these allegations to undermine judicial independence.

There also exist significant capacity gaps among judges in emerging and specialized areas of law, such as devolution, climate change, and environmental governance, which continue to result in inconsistent and at times conflicting judicial rulings. These inconsistencies not only compromise legal certainty but also erode public confidence in the Judiciary's ability to handle complex cases that have wide-ranging policy and governance implications. For example, adjudicating matters of devolution demands a sophisticated understanding of constitutional principles, the architecture of intergovernmental relations and county-level legislative frameworks. Likewise, climate-related litigation increasingly intersects with international obligations, national regulatory frameworks and rights-based approaches that require both legal and scientific fluency.

Addressing these gaps calls for deliberate, sustained capacity-building initiatives aimed at enhancing judicial competence in these fast-evolving areas. Well-structured training programmes would not only strengthen the quality and consistency of rulings but also align jurisprudence with Kenya's development priorities and constitutional values.

Overall, significant progress has been made. However, corruption, inefficiency and judicial incompetence remain significant challenges. Disciplinary processes for judicial officers have faced criticism, and concerns about judicial independence persist. Broader systemic issues, such as inconsistent technology adoption and resource constraints, further hinder the Judiciary's effectiveness.

In conclusion, the judicial reforms initiated under the 2010 Constitution have significantly transformed Kenya's Judiciary, improving independence, efficiency, and access to justice. However, the journey is ongoing. A steadfast commitment to [71]addressing systemic barriers, fostering collaboration, and preserving judicial independence are essential to building a justice system that meets the aspirations of all Kenyans. And as the Judiciary continues to evolve, vigilance will be crucial in safeguarding its gains and upholding its constitutional mandate.

71 The Judiciary: GUIDE FOR THE CITIZEN FY 2024/25 BUDGET REPORT page 5 and 6

4.4 Measures to enhance Judicial Reforms

4.4.1 Improve Transparency and Public Engagement

Transparency is foundational to public accountability. The Judiciary should publish annual performance metrics, including case backlogs, clearance rates, and corruption investigations, and engage citizens through platforms such as social media, town halls, and community outreach programmes. These initiatives will demystify judicial processes, encourage civic trust, and foster a culture of openness and responsiveness.

4.4.2 Strict Enforcement of Leadership and Integrity Standards

The Judiciary must strictly apply the provisions of Chapter Six of the Constitution to bar individuals who breach integrity standards from holding public office. Judicial officers should issue clear and consistent rulings on integrity-related cases, which will deter unethical conduct and establish strong precedents for public accountability. Upholding these standards in judicial appointments and case law strengthens institutional integrity across government.

4.4.3 Expedite Corruption Case Resolutions

Delays in resolving corruption cases undermine justice and embolden perpetrators. The Judiciary should prioritize the timely and impartial adjudication of corruption and integrity cases to reinforce public confidence. Swift rulings not only deliver justice to victims but also serve as a powerful deterrent to future misconduct. Performance metrics such as case clearance rates should be published annually to demonstrate commitment to efficiency and transparency.

4.4.4 Address Corruption Within the Judiciary

Combatting judicial corruption requires a strong, independent, and well-resourced institutional framework. The JSC should be strengthened with adequate resources to investigate complaints independently and transparently. Additionally, publicizing disciplinary outcomes will enhance public trust in internal accountability mechanisms. Transparent, constitutionally grounded investigations into corruption allegations are key to restoring confidence in the Judiciary as a fair and incorruptible arbiter of justice.

4.4.5 Strengthen Collaboration with Oversight Bodies

The Judiciary should deepen collaboration with independent oversight bodies such as the EACC and the ODPP. Enhanced cooperation will promote seamless investigation, prosecution, and adjudication of corruption cases. It is also critical that courts resist political pressure and maintain judicial independence by issuing rulings that uphold constitutional boundaries, including the nullification of unconstitutional budgetary allocations such as the Constituency Development Fund (CDF) when warranted.

4.4.6 Ensure Full Judicial Independence

The Judiciary must enjoy full financial and functional independence, free from interference by other arms of government. This includes operationalizing the Judiciary Fund to guarantee financial autonomy and shielding judicial budgets from political retaliation. Functional independence also requires expediting judicial appointments and rigorously enforcing Article 160 of the Constitution to insulate judicial decisions from the executive or legislative influence. Such safeguards are essential to uphold the rule of law and ensure impartial decision-making, particularly in politically sensitive cases such as those involving corruption.

4.4.7 Enhance Judicial Capacity

Inconsistent rulings, particularly in complex or emerging legal areas, highlight the need for robust capacity-building efforts. The Judiciary must invest in specialized training for judges, especially in areas such as devolution, public finance management, climate justice, and environmental governance. Continuous professional development will ensure judicial officers are well-equipped to handle Kenya's dynamic legal landscape and issue rulings that reflect constitutional principles, legal innovation, and socio-economic realities.

Table 9:Priority areas to enhance judicial system

🟢 Short Term = 1 year

🟡 Medium Term = 1–3 years

🔴 Long Term = More than 3 years

Recommendation	Objective	Authority	Timeline
Improve Transparency and Public Engagement	Publish judicial performance data and engage the public via different media platforms, including social media and outreach, to build trust.	Judiciary, Judicial Service Commission (JSC)	🟢
Strict Enforcement of Leadership and Integrity Standards	Apply constitutional integrity rules firmly to deter unethical conduct in judicial appointments.	Judiciary, Judicial Service Commission	🟢 to 🟡
Expedite Corruption Case Resolutions	Prioritize timely rulings on corruption cases to reinforce justice and deter future misconduct.	Judiciary, Judicial Service Commission	🟢 to 🟡
Address Corruption Within the Judiciary	Strengthen internal investigations and publicize disciplinary outcomes to restore public confidence.	Judicial Service Commission	🟡
Strengthen Collaboration with Oversight Bodies	Enhance cooperation between courts and oversight agencies for effective investigation and prosecution.	Judiciary, Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecution	🟡
Ensure Full Judicial Independence	Guarantee financial and operational autonomy to shield the Judiciary from political interference.	Judicial Service Commission, Parliament	🟡 to 🔴
Enhance Judicial Capacity	Invest in ongoing specialized training to improve judges' handling of complex and emerging legal issues.	Judicial Training Institute, Judiciary,	🟡 to 🔴

5.0 ASSESSMENT AREA: ANTI-CORRUPTION REFORMS

Kenya's anti-corruption framework is robust on paper, anchored in a constellation of institutions; from the Ethics and Anti-Corruption Commission (EACC) to specialized anti-corruption courts. Legal reforms have clarified mandates, improved asset recovery processes and increased disclosures for public officials. However, enforcement remains the Achilles' heel. Despite decades of legal reforms, institutional investments, and political promises, corruption remains deeply entrenched in Kenya, challenging the very foundations of good governance, justice and public trust. Investigations are often slow, politicized or poorly coordinated across agencies. Prosecution rates for high-level corruption remain low and convictions are rare. Whistleblower protection is weak and public awareness campaigns are underfunded. Meanwhile, corruption continues to thrive in various sectors including procurement, licensing, land administration and public appointments. The weaponization of anti-corruption efforts for political gain further erodes credibility. Unless impunity is tackled head-on and institutions are shielded from political interference, anti-corruption will remain a rhetorical exercise. True reform must empower watchdogs, follow the money and protect those who dare to speak out.

5.1 Overall Context

The foundation principles of good governance and the fight against corruption are hinged on various Articles of the Constitution of Kenya, including Article 10, which provides for the National Values and Principles of Governance, Chapter Six on Leadership and Integrity, and Article 232 on Values and Principles of Public Service.

Further, Article 79 of the Constitution provides for the establishment of an independent ethics and anti-corruption commission, thereby paving the way for the establishment of the EACC as a constitutional commission with powers and status of a Commission as envisaged in Chapter Fifteen of the Constitution. Article 80 provides for the enactment of legislation establishing procedures and mechanisms for the enforcement of Chapter Six of the Constitution. It creates binding provisions for adherence to the principles of leadership and integrity set out in the Constitution by targeting State and public officers.

5.1.1 Legislative Framework

By dint of Article 2 (5) and (6), which provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya, Kenya is a State Party to the United Nations Convention against Corruption (UNCAC)[72]. Other International Instruments that Kenya has ratified that speaks to combating corruption include the UN Convention Against Transnational Organized Crime, the UN Declaration Against Corruption and Bribery in International Commercial Transactions, and the International Code of Conduct for Public Officials.

Regionally, Kenya has ratified the African Union Convention on Preventing and Combating Corruption (AUCPCC), the Southern Africa Development Community Protocol Against Corruption (SADC), and the Economic Community of West African States Protocol on the Fight Against Corruption (ECOWAS)

Within its borders, Kenya has put in place several statutory legal instruments for fighting corruption. The principal anti-corruption laws are:

i. Anti-Corruption and Economic Crimes Act, No. 3 of 2003.
ii. Public Officer Ethics Act, No. 4 of 2003.
iii. Ethics and Anti-Corruption Commission Act, No. 22 of 2011.
iv. Leadership and Integrity Act, No. 19 of 2012.
v. Bribery Act, No. 47 of 2016.

72 Kenya was the first country to sign and ratify UNCAC on 9/12/2008.

Other laws which complement the fight against corruption include;

a. Proceeds of Crime and Anti-Money Laundering Act, No. 9 of 2009.
b. Commission on Administrative Justice Act, No. 23 of 2011.
c. Public Procurement and Asset Disposal Act, No. 33 of 2015.
d. National Police Service Act, No. 11A of 2011.
e. Elections Act, No. 24 of 2011.
f. Election Offences Act, No. 37 of 2016.
g. Public Finance Management Act, No. 18 of 2012.
h. Political Parties Act, No. 11 of 2011.
i. Mutual Legal Assistance Act, No. 36 of 2011.
j. County Governments Act, No. 17 of 2012.
k. National Payment System Act, No. 39 of 2011.
l. Public Appointments (Parliamentary Approval) Act, No. 33 of 2011.
m. Prevention of Organized Crimes Act, No. 6 of 2010.
n. Access to Information Act, No. 31 of 2016.
o. Public Audit Act, No 34 of 2015.
p. The Penal Code (Cap 63).

In addition to the highlighted legal instrument, most institutions have developed Codes of Conduct and Ethics which govern the conduct of public officers in line with the provisions of the Public Officers Ethics Act, 2003. Further, specific Leadership and Integrity Codes have been developed for State officers serving in various public entities as per the provisions of the Leadership and Integrity Act, 2012. For all civil servants, the Public Service Commission Human Resources Manual and Procedures addresses issues of discipline, ethics, and integrity of civil servants.

Despite the broad legal framework outlined above, progress on enacting and operationalizing key anti-corruption laws remains slow. Notably, the Conflict of Interest Bill and the Whistleblower Protection Bill are yet to be passed, thereby weakening preventive efforts. Similarly, while the Proceeds of Crime and Anti-Money Laundering Act exists, enforcement remains a challenge, with significant illicit financial flows going undetected or unpunished. This legislative lag undermines the effectiveness of Kenya's anti-corruption strategy.

5.1.2 Institutional Framework

The laws highlighted above that provide frameworks for combating corruption in Kenya also establish boards or institutions tasked with implementing the mandates and responsibilities outlined in these laws. These institutions are empowered to promote transparency, accountability, and good governance, thereby ensuring the effective enforcement of anti-corruption measures and fostering integrity in the public and private sectors.

The institutional framework for anti-corruption in Kenya comprises law enforcement agencies, oversight institutions, policy regulatory institutions, partnerships, and other good governance initiatives. This section will sample some of the institutions that support the fight against corruption.

5.1.3 Law Enforcement Agencies

i. **The Ethics and Anti-Corruption Commission** is established to combat and prevent corruption and economic crime in Kenya through law enforcement, asset recovery, preventive measures, public education, and promotion of standards and practices of ethics and integrity.

ii. **The Office of the Director of Public Prosecutions** is established under Article 157 of the Constitution of Kenya and operationalized by the ODPP Act of 2013 and is mandated to institute and undertake criminal proceedings against any person before any court (other than a Court Martial) in respect to any offence alleged to have been committed.

iii. **The Judiciary** is established under Article 159 of the Constitution of Kenya and has the mandate to dispense justice in line with the Constitution and other laws, and is expected to resolve disputes in a just manner to protect the rights and freedoms of all Kenyans.

iv. **The National Police Service** is established under Article 243 of the Constitution as one of the State organs on national security and consists of the Kenya Police Service and the Administration Police. The Constitution requires the service to prevent corruption, promote and practice transparency and accountability, among others.

v. **The Directorate of Criminal Investigations** (formerly the Criminal Investigations Department (CID) is established under Section 28 of the National Police Service Act, and its core mandate is to detect, prevent, and investigate crimes.

5.1.4 Oversight Agencies

i) **Parliament** is established under Article 93 of the Constitution and comprises of the Senate and the National Assembly. Parliament plays a pivotal role in the fight against corruption through its legislative, oversight, and representation functions. Both houses enact laws and policies that provide the legal framework for combating corruption. Through its oversight role, Parliament holds public institutions and officials accountable by scrutinizing their operations, approving budgets, and auditing public expenditure. Additionally, parliamentary committees, such as the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), investigate cases of mismanagement and corruption, making recommendations for corrective action. Parliament also facilitates public participation and represents citizens' interests by advocating for transparency, accountability, and integrity in governance.

ii) **The County Assemblies** are established under Articles 176(1) and 177 of the Constitution. Similar to the National Assembly and Senate, the mandate of the County Assemblies is to enact laws for the effective performance of the functions and exercise of the powers of the county governments and to exercise oversight over the County Executive Committee and any other County Executive Organs.

iii) **The office of the Auditor General** is established under Article 229 of the Constitution, and its main function is to audit and report on each financial year on the accounts of the County and National Governments. By identifying irregularities, mismanagement, and misuse of funds, the Auditor General provides evidence that can lead to investigations and prosecutions of corruption cases. Additionally, the office promotes good governance by recommending measures to enhance financial accountability and prevent future malpractices.

iv) **The Controller of Budget** is established under Article 228 of the Constitution. The main mandate is overseeing the implementation of the budgets of both the National and County Governments to ensure that funds are released only for lawful and approved purposes. By monitoring expenditure against the approved budget, the Controller of Budget helps prevent misallocation, misuse, or diversion of public resources, and their reports can assist in the fight against corruption.

v) **The Commission on Administrative Justice or Office of the Ombudsman** is a Constitutional Commission established under Article 59(4) of the Constitution. The Commission's mandate is to investigate any conduct in state affairs or any act or omission in public administration that may be prejudicial or may result in impropriety in any sphere of Government, and complaints of abuse of power, unfair treatment, manifest injustice, or unlawful, oppressive, unfair, or unresponsive official conduct. The Commission is the oversight agency for the right to fair administrative action and the right to access to information as provided for by Articles 47 and 35, respectively of the Constitution, the Fair Administrative Action Act, 2015 (FAA), and the Access to Information Act, 2016.

vi) **The Public Procurement Regulatory Authority**[73] is responsible for the regulation of public procurement in Kenya. Although the Procuring Entities (PEs) are responsible for managing and ensuring that the procurement process is in conformity with the legal and regulatory requirements, PPRA ensures that the Procuring Entities adhere to these requirements.

5.1.5 Policy Regulatory Institutions

a. **The President** of the Republic of Kenya is expected under the Constitution to play a very critical role in the fight against corruption by providing the necessary political will for fighting corruption and setting the country's agenda for good governance and anti-corruption.

b. **The Office of the Attorney General and Department of Justice** play a crucial role in providing policy support in the fight against corruption in Kenya. As the principal legal adviser to the government, the Attorney General offers guidance on the formulation, interpretation, and implementation of anti-corruption laws and policies. The office ensures that legislative and regulatory frameworks align with constitutional principles, international standards, and best practices. Additionally, the Attorney General represents the government in legal matters, including defending or initiating cases related to corruption. By working with other institutions, the Attorney General supports the development of policies and strategies aimed at preventing corruption, promoting good governance, and enhancing accountability across public institutions.

c. **The National Treasury** is established under Section 11 of the Public Finance Management Act, 2012 (PFMA) and is mandated to, among other things, design and prescribe an efficient financial management system for the National

73 established under Section 8 of the Public Procurement and Asset Disposal Act, 2015

and County Governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution.

5.2 Progress towards fighting corruption in Kenya

Corruption in Kenya is endemic, persisting despite decades of efforts to combat it through anti-corruption reforms, institutional investments, and legislative frameworks. While conversations on anti-corruption have been a prominent feature of Kenyan politics, impunity remains widespread. Rooted in the politics that has shaped governance since independence under the first post-colonial government, corruption seems to be deeply ingrained in the Kenyan Public Administration.[74]

Efforts to fight corruption in Kenya date back to 1956, following the enactment of the Prevention of Corruption Ordinance that later became the Prevention of Corruption Act[75] at independence. During that period, corruption was treated like any other offence under the Penal Code and was investigated and charged by the police. The Prevention of Corruption Act was repealed in 2003 following the enactment of the Anti-Corruption and Economic Crimes Act, [76]which established the Kenya Anti-Corruption Commission (KACC) as the national dedicated agency for the fight against corruption, as well as the Kenya Anti-Corruption Advisory Board to provide advice to KACC on the exercise of its functions.

Notably, there were earlier efforts, for instance, in 1992, the Anti-Corruption Squad was established within the Kenya Police in a bid to create a dedicated institution to fight corruption in Kenya. However, increased levels of corruption heightened demands for a more transparent and accountable government by Kenyans and a section of development partners. This led to the establishment of an independent anti-corruption body, the Kenya Anti-Corruption Authority, in 1997, following an amendment to the then Prevention of Corruption Act. The Authority was however, declared unconstitutional by the High Court on 22nd December 2000, following a constitutional reference in the case of ***Stephen Mwai Gachiengo & Albert Muthee Kahuria v. Republic***[77] on the grounds that it had usurped the prosecutorial powers of the Attorney General and the investigative powers of the Commissioner of Police, and that its existence offended the principle of separation of powers in that the Director/ Chief Executive of the authority was a Judge of the High Court on secondment.

While this was a setback, the agitation towards fighting corruption did not stop there. In August 2001, the Government sought to amend the Constitution through the Corruption Control Bill to pave the way for the establishment of the Kenya Corruption Control Authority. Once again, the Bill was not passed in Parliament. Later that year, the Government established the Anti-Corruption Police Unit (ACPU) within the Kenya Police. ACPU was meant to be a stopgap measure in the fight against

74 Maina, W. (2023). Lessons from state capture in Kenya: Foundations, features, and options for reform.

75 Cap. 65 Laws of Kenya

76 No. 3 of 2003

77 Stephen Mwai Gachiengo & Albert Muthee Kahuria v. R [2000] eKLR

corruption, pending the reform of the law to provide for another anti-corruption body. The Unit was operational until 2003, when the newly elected National Rainbow Coalition (NARC) government created the Department of Governance and Ethics housed in the Office of the President to oversee the implementation of various good governance initiatives.

These shifts in Kenya's anti-corruption framework, particularly from the Kenya Anti-Corruption Authority (KACA) to the proposed Kenya Corruption Control Authority (KCCA), and from earlier police-based anti-graft squads to the Anti-Corruption Police Unit (ACPU), did not result in the creation of parallel institutions. Instead, they reflected attempts to reform or restructure existing mandates. The transition from KACA to KCCA was intended as a legal and institutional realignment following a High Court ruling that declared KACA unconstitutional due to prosecutorial powers being improperly assigned outside the Office of the Attorney General (***Gachiengo v Republic, 2000***[78]).

Although the Corruption Control Bill failed in Parliament, the proposed KCCA was conceptualized as a successor, not a parallel agency.[79] Similarly, within the police, the ACPU was a restructured version of prior anti-corruption squads and was positioned as a transitional mechanism rather than a standalone or competing it.[80] These transitions reveal a pattern of institutional improvisation in the face of legal and political challenges, underscoring Kenya's evolving but fragmented commitment to combating corruption.

The government also established the Ministry of Justice and Constitutional Affairs (MOJCA) to provide policy guidance in the fight against corruption. The Ministry facilitated the enactment of two principal anti-corruption laws, namely: the Anti-Corruption and Economic Crimes Act, 2003, and the Public Officer Ethics Act, 2003[81]. The Anti-Corruption and Economic Crimes Act established the Kenya Anti-Corruption Commission with the mandate to combat corruption through law enforcement, prevention, public education, and asset recovery.

The Act also provided for the appointment of Special Magistrates to adjudicate on corruption and economic crimes cases on a priority basis. This did not result in the creation of a parallel institution, but rather marked a formal re-establishment and strengthening of Kenya's anti-corruption framework following the disbandment of earlier bodies such as KACA and the interim Anti-Corruption Police Unit (ACPU).[82] The Kenya Anti-Corruption Commission (KACC), established under the 2003 Act, assumed a broader and more structured mandate, with clear legal backing and

78 Gachiengo v Republic [2000] eKLR. Kenya Law. https://kenyalaw.org/caselaw/cases/view/14292/

79 Transparency International Kenya. (2011). A brief history of Kenya's anti-corruption institutions. Retrieved from https://tikenya.org/wp-content/uploads/2021/06/Anti-Corruption-History-in-Kenya.pdf

80 Ombaka, D. (2003). The Anti-Corruption Police Unit and its role in Kenya's governance reform. Kenya Law Review. Retrieved from https://kenyalaw.org/kl/index.php?id=400

81 No. 4 of 2003

82 Transparency International Kenya. (2011). A brief history of Kenya's anti-corruption institutions. Retrieved from https://tikenya.org/wp-content/uploads/2021/06/Anti-Corruption-History-in-Kenya.pdf

specialized powers.[83] The role of MOJCA was complementary and focused on policy leadership and coordination, while KACC functioned as an independent body tasked with investigation and enforcement.[84] This institutional configuration was designed to close the legal and operational gaps that had hindered earlier anti-corruption efforts, rather than duplicate functions.

On the other hand, the Public Officer Ethics Act sought to promote ethics and integrity among public officers through adherence to various principles of ethics and integrity, a system of financial declarations, and enforcement of Codes of Conduct and Ethics. The Government also established the National Anti-Corruption Campaign Steering Committee (NACCSC) to complement public education and awareness initiatives against corruption with a view to creating a cultural renaissance of integrity and anti-corruption. It also established the then Kenya National Audit Office (composed of the Auditor General and staff) to enhance oversight through independent audit of public institutions. Additionally, the Government set up the Integrity and Anti-Corruption Committee of the Judiciary in 2003 to implement the "radical surgery" initiative designed to improve accountability in the administration of justice.

Fast forward to 2010, and against the backdrop of the 2007/2008 Post post-election violence encountered in Kenya that exposed glaring governance challenges, the Constitution of Kenya was promulgated, which ushered in a strong governance superstructure and a raft of ethics, integrity, and anti-corruption measures. Key among them was the entrenchment of a framework of national values and principles of governance under Article 10 of the Constitution. The new Constitution paved way for the enactment of the Ethics and Anti-Corruption Commission Act,[85] which established the Ethics and Anti-Corruption Commission pursuant to the provisions of Article 79 of the Constitution, and the enactment of the Leadership and Integrity Act 2012,[86] to implement Chapter Six of the Constitution on Leadership and Integrity.

Subsequent governments have upheld the intention to fight corruption, but the challenge remains deeply ingrained in the Kenyan Society.

5.3 Challenges in the fight against anti-corruption

In 2024, Kenya was ranked 121 out of 180 countries in the Transparency International Corruption Perceptions Index (CPI), scoring 32 out of 100. This is a marginal improvement from 2023, when the rank was 127 and the score was 31 out of 100.[87]Kenya's poor CPI performance has been linked to the lack of successful prosecutions in high-profile graft cases, numerous case withdrawals by prosecutors, acquittals with no visible follow-up efforts, and prolonged case delays. The handling of high-profile cases, such as the quashing of a 67-million-shilling case against a Member of

83 Republic of Kenya. (2003). Anti-Corruption and Economic Crimes Act, No. 3 of 2003. Kenya Law. https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Anti-CorruptionandEconomicCrimesAct.pdf

84 Mwenda, A. (2007). Corruption in the Judiciary: A review of legal mechanisms. Kenya Anti-Corruption Commission. Retrieved from https://www.kacc.go.ke

85 No. 22 of 2011

86 No. 19 of 2012

87 Transparency International. (2023). *Corruption perceptions index 2023*. Retrieved from https://www.transparency.org/en/cpi/2023

Parliament[88] and the cancellation of controversial deals further highlights systemic failures in constitutional and investigative institutions, as well as parliamentary oversight.

In the recently released 2024 CPI report[89], Kenya scored 32 points, a marginal improvement from 31 in 2023, ranking 121 out of 180[90]. The 5-year trend analysis shows that Kenya has had a change of only one score between 2020 (31 points) and 2024 (32 points). This score still falls below both the Sub-Saharan Africa average of 33 and the global average of 43. Kenya's stagnation reflects persistent corruption challenges despite public outcry and civic activism. High-profile incidents and the erosion of public trust in institutions continue to underscore ongoing challenges in the fight against graft. This stagnation reflects systemic enforcement challenges, including political interference in high-profile cases and inconsistent application of anti-corruption laws. The lack of convictions despite overwhelming evidence undermines public trust in the entire system.

Moreover, Kenya's anti-corruption landscape is marked by overlapping mandates and weak inter-agency coordination. A key challenge lies in the EACC's limited prosecutorial power, requiring it to forward completed files to the DPP, which slows down the conversion of investigations into charges.[91] While the EACC reported recovering KSh 9.2 billion in assets in FY 2023/24, it also highlighted weaknesses in legal frameworks and policy coordination, which significantly hampered enforcement and asset recovery efforts. Although Kenya has made progress in digitizing its public sector operations, data interoperability between institutions such as EACC, ODPP, Judiciary, and Asset Recovery Agency remains limited, thereby preventing effective case tracking and collaboration across investigative, regulatory, and prosecutorial bodies.[92]

Additional institutional challenges have emerged, further entrenching governance weaknesses. While Kenya has made strides in establishing digital contracting tools such as the Electronic Government Procurement (EGP) portal, these mechanisms remain limited by weak enforcement and oversight. At the same time, Kenya lacks a robust and implemented whistleblower protection framework. This leaves individuals reporting corruption vulnerable to retaliation, further deterring accountability and transparency efforts. Calls to establish safe channels and effective safeguards for whistleblowers remain unmet.

Beyond institutional enforcement, inclusive governance mechanisms remain weak. Public participation, particularly in procurement, budgeting, and legislative

88 Business Daily. (2023, August 14). Court quashes 40-year terms for Waluke, Wakhungu in NCPB fraud case. Business Daily Africa. https://www.businessdailyafrica.com/bd/economy/court-quashes-40-year-terms-waluke-wakhungu-ncpb-fraud-case-4792018

89 Transparency International. (2024). Corruption perceptions index 2023. Retrieved from https://www.transparency.org/en/cpi/2024

90 The CPI uses a scale of 0-100 (where 100 is the cleanest and 0 is the most corrupt). Countries and territories are ranked based on their perceived levels of public sector corruption.

91 Ethics and Anti-Corruption Commission. (2024). Annual report for the financial year 2023/2024. https://www.eacc.go.ke/

92 ibid

processes continues to be viewed as tokenistic. Citizens are often invited to forums without any follow-up, leading to distrust in government initiatives. There are increasing demands for the development of independent digital platforms such as ZKE to aggregate citizen input and track official responses. Without responsive feedback mechanisms, participation risks becoming symbolic rather than substantive.

Furthermore, efforts to amend key anti-corruption laws have raised concerns. Some of the proposed amendments risk undermining transparency, accountability, and the rule of law, eroding public trust, and reinforcing impunity. Compounding the issue is the appointment of individuals with questionable integrity to senior positions in both national and county governments, which undermines efforts to instill public confidence in governance. Further, legislative delay in enacting key bills such as the Conflict-of-Interest Bill and Whistleblower Protection Bill continues to weaken institutional efforts. These bills, along with the full implementation of Beneficial Ownership transparency reforms, are essential in closing legal loopholes that facilitate corruption and financial secrecy. The legal and institutional gaps continue to erode the credibility of Kenya's anti-corruption commitments.

At the county level, the decentralization of public funds has created new vulnerabilities. County governments often lack strong internal audit mechanisms, and local anti-corruption frameworks are either weak or under-resourced[93]. Several county officials have faced investigations over procurement irregularities, misappropriation of development funds, and conflict of interest, especially where governors and their allies control both budgetary and implementation arms.[94] The lack of civic education and limited media coverage outside Nairobi further diminishes accountability in devolved units.

In 2024, the government's withdrawal of advertising from the three largest media companies dealt a significant blow to press freedom and the financial viability of independent media[95]. Observers have also noted that the ongoing recruitment of experienced journalists into government communications departments is increasingly weakening the role of journalism as a check on government excesses. The diminishing independence of the media is a troubling development, as a robust and free press is essential for exposing corruption and holding power to account. Recent cases demonstrate how investigative journalists exposing corruption have faced intimidation, leading to reduced scrutiny of government activities. The withdrawal of state advertising from critical media houses has exacerbated financial pressures, limiting their capacity for independent reporting.

Efforts to regulate donor funding have raised concerns about shrinking civic

93 Maina, W. (2024, May 29). Auditor-General's report reveals rampant corruption, mismanagement in county assemblies. Daily Nation.

94 Duri, J. (2021). Kenya: Corruption and devolution (U4 Helpdesk Answer 2021:12). Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute. Retrieved from https://www.u4.no/publications/kenya-corruption-and-devolution

95 Standard Media. (2025). Govt withdraws state adverts from radio and TVs in another mortal blow to media industry. Retrieved from https://www.standardmedia.co.ke/business/business/article/2001491143/govt-withdraws-state-adverts-from-radio-tvs-in-another-mortal-blow-to-media-industry

space. Past experiences show that restricting NGO autonomy weakens oversight, as organizations auditing public projects or advocating for transparency face increasing operational constraints. Additionally, a government directive issued on September 8, 2023, titled "Notice to NGOs on Realignment of Donor Aid,"[96] raised alarms about attempts to centralize control over donor funding. The notice argued that donor aid systems were misaligned with national priorities, suggesting they prioritized donor interests over Kenya's Bottom-Up Economic Transformation Agenda (BETA). This raised fears that increased central control over donor funds could undermine the independence of public watchdogs and civil society actors. This move could compromise the independence of non-governmental organizations (NGOs) and public benefit organizations (PBOs), which play a crucial role in providing checks and balances. Allowing the government to dictate donor funding priorities risks undermining their ability to hold the government accountable and highlight corruption practices.

The political economy of corruption in Kenya is also a critical enabler. High campaign financing costs fuel illicit fundraising among politicians who, once elected, seek to recover expenses through corrupt means. Conflict of interest is rampant, with many public officials conducting business with government agencies. These practices are often poorly regulated, perpetuating a culture of impunity.

Cultural normalization of corruption, both among elites and in parts of society, continues to weaken civic resistance. There is a notable absence of widely recognized anti-corruption champions willing to challenge entrenched systems. Moreover, legislative actors have been implicated in corruption; for instance, Members of Parliament continue to control Constituency Development Fund (CDF) allocations despite court rulings questioning this role. These overlapping interests blur the lines of accountability.

Kenya also faces challenges in international cooperation on corruption cases, particularly in recovering stolen assets hidden abroad. The country lacks sufficient bilateral treaties for mutual legal assistance (MLA), and even when treaties exist, bureaucratic hurdles and legal inconsistencies hamper progress. Enhanced international cooperation through faster extradition processes, sharing of financial intelligence, and harmonization of anti-corruption laws would boost Kenya's ability to trace and return assets embezzled through complex global financial networks.

At the international level, Kenya's commitments under the International Monetary Fund (IMF) and other governance-related programmes have not translated into robust reforms. Conditionalities related to public-private partnership (PPP) transparency and debt auditing remain only partially fulfilled[97]. While domestic revenue mobilization has been emphasized, it disproportionately targets formal

96 Ministry of Interior. (2023, September 8). Notice to NGOs on realignment of donor aid [Notice by Principal Secretary Raymond Omollo]

97 IMF. (2022, December). Staff report: Fourth reviews under the Extended Fund Facility (EFF) and Extended Credit Facility (ECF) arrangements for Kenya

and salaried workers, whereas wasteful expenditure and corruption in mega-projects persist. Observers note that the phenomenon of "budgeted corruption," where funds are knowingly allocated for theft, is systemic. Flagship projects such as the Standard Gauge Railway (SGR)[98] remain shrouded in opacity and allegations of graft, undermining public trust and fiscal discipline.

These governance concerns are mirrored at the global level, where Kenya's anti-corruption record has come under increased scrutiny following its grey listing by the Financial Action Task Force (FATF).[99] FATF cited Kenya's weaknesses in enforcing Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) laws, especially in relation to virtual assets and politically exposed persons. Enforcement remains weak due to under-resourced regulatory institutions and inadequate technical capacity.

Furthermore, the civil society space that could complement these efforts is increasingly under pressure, with restrictions placed on NGO operations, data privacy, and funding. While Kenya's legal framework formally protects civic space, the operational environment remains restrictive, ultimately undermining effective civic engagement and independent oversight.

While anti-corruption conversations and reforms have been ongoing for decades, their impact has been undermined by impunity, legislative backtracking, and the erosion of public trust. Addressing these requires not only institutional reforms but also a cultural shift to prioritize accountability. The government's recent actions, ranging from weakening media independence to proposing amendments that dilute anti-corruption laws as seen above, threaten to further entrench graft and diminish oversight mechanisms.

Notably, the June 2024 demonstrations against government spending signaled growing public discontent. Without visible improvements, civic unrest and institutional distrust are likely to deepen, making reform an urgent imperative. Addressing these challenges requires not only political will but also a reinvigoration of public institutions, civil society, and the media to restore accountability, strengthen the rule of law, and rebuild confidence in Kenya's governance structures.

5.4. Measures to enhance anti-corruption efforts

5.4.1 Public Awareness and Social Behavior Change

In light of the growing civic apathy and tokenistic public participation, citizens must be exposed to the effects of corruption to promote informed choices, particularly during elections. Public engagement and awareness campaigns can help prevent individuals with histories of corruption or ethical breaches from gaining public office, making society a critical safeguard against corrupt leadership. There is also

98 Transparency International US. (2025, February). Kenya's debt crisis: The role of weak governance and corruption (Brief).

99 Financial Action Task Force. (2024, February 23). Jurisdictions under increased monitoring (grey list).

a need to counter the normalization of corruption by using targeted civic education and amplifying anti-corruption role models. Further, leveraging digital platforms and civic technology tools such as participatory budgeting applications and public audit dashboards can empower citizens to track public spending, report misuse, and engage directly with governance processes.

5.4.2 Professional Prosecution of Corruption Cases

The Office of the Director of Public Prosecutions (ODPP) must ensure corruption cases meet evidentiary thresholds and are prosecuted with professionalism to avoid withdrawals or delays. To address Kenya's stagnation on the CPI and the lack of high-profile convictions, the ODPP must prioritize complex and politically sensitive cases. It should also prioritize public interest and prevent abuse of the legal process while ensuring justice is administered diligently and efficiently. To enhance public confidence and accountability, the ODPP must also ensure collaboration with investigative agencies and introduce transparent tracking of case progress accessible to the public. A public-facing platform for tracking the status of corruption cases, jointly managed with the EACC and Judiciary, would boost transparency.

5.4.3 Application of Leadership and Integrity Standards

Courts and independent bodies, such as the Ethics and Anti-Corruption Commission, must enforce Chapter Six of the Constitution by developing clear standards for integrity breaches and consistently applying them. This should include the swift passage and enforcement of the Conflict-of-Interest Bill and the institutionalization of mandatory lifestyle audits for public officials to proactively detect and deter illicit enrichment. Quick and impartial resolution of integrity-related cases will deter individuals with questionable conduct from holding public office and ensure accountability for those already in positions of power. These tools are essential to address the appointment of individuals with questionable integrity and legislative backtracking on ethics laws.

5.4.4 Entrenching a Culture of Ethics in Public Service

Public officials should undergo continuous ethics training to instill integrity, honesty, and responsibility, aligned with constitutional principles of governance and national values. These efforts should emphasize the significance of public trust, resource management, and the role of ethical leadership in national development. Special emphasis should be placed on ethics compliance at the county level, where weak internal audits and politicized procurement processes undermine service delivery. These efforts should be supported by the digitization of government procurement processes, including open contracting and real-time public tracking systems to reduce opportunities for graft.

5.4.5 Sanctions for Corruption cases

Kenya must make corruption a high-risk activity by facilitating quick adjudication of cases and imposing harsh penalties, including steep fines and mandatory jail sentences, to deter potential offenders. The Judiciary should be empowered and resourced to fast-track corruption-related trials, especially those involving public procurement and asset recovery. Additionally, public officers found guilty of corruption should be permanently barred from holding any public office, in line with existing court rulings and constitutional integrity provisions. Perpetrators should face severe consequences regardless of their social status, emphasizing the principle that no one is above the law. This must apply uniformly, regardless of the official's status or political connections.

5.4.6 Prevention of Corruption

Efforts to prevent corruption must focus on strengthening the Judiciary's financial and functional independence, ensuring it operates without interference or attacks from other arms of government. Addressing internal malfeasance within the Judiciary should adhere strictly to constitutional frameworks. Upholding integrity within the Judiciary is vital to fostering trust and promoting justice. In parallel, the operational independence of the ODPP, EACC, and Auditor General must be ring-fenced from political interference. This includes ensuring data interoperability across institutions and full implementation of the E-Government Procurement system. Further, the conflict of interest and whistleblower protection legislation should be fast-tracked, with practical reporting channels and retaliation safeguards in place.

5.4.7 Strengthening County-Level Accountability and Oversight

County governments, as the primary interface between the state and citizens under Kenya's devolved governance system, are critical to service delivery and inclusive development. However, decentralization has also introduced new vulnerabilities, particularly in procurement, budgeting, and oversight. Addressing corruption at the county level, therefore requires targeted strategies that strengthen institutional integrity, enhance civic engagement, and improve transparency in local governance. The following recommendations propose specific interventions to curb corruption and promote accountability in county governments.

i. ***Mandatory Internal Audits and Risk-Based Procurement Reviews:*** County governments should regularly conduct internal audits with clear reporting timelines to the Auditor General. Also, risk-based reviews should be conducted on high-value procurement processes.

ii. ***Establish Independent County Oversight Committees:*** These committees, comprising of representatives from civil society, professional associations, and religious groups, can monitor procurement, budgeting and implementation independently of the county executive and assembly.

iii. ***Roll-out of County Civic Education Hubs:*** Partner with CSOs and faith-based organizations to create civic education hubs in each county to inform citizens on how to monitor public funds, interpret county budgets, and participate meaningfully in governance.

iv. ***Introduce County-Level Whistle blower Support Systems:*** Establish localized, confidential reporting channels for county staff and citizens to report graft, with follow-up mechanisms in place and protection guarantees.

v. ***Digitize County Budgets and Contracts:*** All counties should be required to publish procurement plans, awarded tenders, contractor information, and project status on a centralized and publicly accessible digital portal. This will enhance transparency and enable citizen monitoring.

vi. ***Expand Local Media Access to Budgetary and Procurement Information:*** Media houses, especially community radio and local reporters, should be supported through partnerships to track county service delivery and expose corruption, including capacity-building in investigative journalism.

vii. ***Link Equitable Funding to Governance Compliance:*** Conditional disbursement of certain funds (e.g., through the Equalization Fund or donor grants) could be tied to evidence of good financial management, timely audits, and public disclosure of county expenditures.

5.4.8 International and Donor Accountability

External financing and development support should be tied to verifiable anti-corruption benchmarks beyond legislative commitments. Development partners and international financial institutions must work closely with civil society organizations to monitor compliance with governance conditions and ensure transparency in the use of public funds.

Table 10: Priority Governance Reforms to Boost Competition

🟢 Short Term = 1 year
🟡 Medium Term = 1–3 years
🔴 Long Term = More than 3 years

Recommendation	Objective	Authority	Timeline
Public Awareness and Social Behavior Change	Launch education and awareness campaigns to inform citizens about corruption and promote ethical voting	Government, Civil Society, Media	🟢
Professional Prosecution of Corruption Cases	Ensure evidence-based, efficient prosecutions with transparent case tracking to build public confidence.	Office of the Director of Public Prosecutions (ODPP), Investigative Agencies	🟢 to 🟡
Application of Leadership and Integrity Standards	Enforce integrity rules, pass the Conflict of Interest Bill, and conduct lifestyle audits to deter corruption.	Judiciary, Ethics and Anti-Corruption Commission (EACC), Parliament	🟢 to 🟡
Entrenching a Culture of Ethics in Public Service	Provide ongoing ethics training and digitize procurement to embed integrity and reduce corruption risks.	Government Ministries, Public Service Boards	🟢
Sanctions for Corruption Cases	Impose swift, harsh penalties and bar corrupt officials permanently to increase deterrence.	Judiciary, Parliament	🟢
Prevention of Corruption	Guarantee financial and operational independence for oversight bodies and protect whistleblowers.	Judiciary, ODPP, EACC, Auditor General, Parliament	🟡 to 🔴
Strengthening County-Level Accountability and Oversight	Enhance transparency and reduce corruption in devolved units	County Governments, Auditor General, Ethics and Anti-Corruption Commission (EACC), Civil Society	🟡 to 🔴
International and Donor Accountability	Tie donor support to anti-corruption benchmarks and ensure collaborative monitoring with civil society.	Government, Donors, Civil Society, International Financial Institutions	🔴

6.0 ASSESSMENT AREA: INCLUSIVE GROWTH AND POVERTY REDUCTION

Kenya has made commendable progress in expanding economic opportunities and public services, with notable gains from devolution, improved infrastructure, and growing digital inclusion. However, the benefits of this growth remain uneven. Poverty still affects more than a third of the population, and inequality persists across regions and population groups. Youth unemployment remains alarmingly high, health financing reforms are lagging, and the effects of climate change are intensifying vulnerabilities. Meanwhile, planning remains fragmented across political cycles, and public debt has grown without matching economic transformation.

To tackle these challenges, Kenya must centre governance in its pursuit of equity. This means adopting a unified national strategy on poverty and inequality; aligning county and national planning cycles; and reforming the tax system to shift the burden from the poor to those with greater capacity to contribute. Investment in youth employment, smallholder agriculture, education, and social protection must be made more targeted and transparent. Counties should receive not only predictable financing but also technical support to strengthen frontline services. Intergovernmental coordination, data systems, and citizen participation must be improved to ensure that public resources are used more effectively and accountably.

6.1 Overall Context

Inclusive growth remains a fundamental development imperative for Kenya, both an economic necessity and a constitutional obligation. Defined broadly, we analyze inclusive growth as the process by which prosperity is expanded equitably across society, particularly among traditionally excluded groups, while safeguarding opportunity, voice, and economic rights. Yet the country's current trajectory reflects an imbalance: while Kenya continues to report relatively aggregate growth averaging 5% annually over the last decade, this growth is increasingly spatially and socially uneven, driven by a narrow base of high-output regions and sectors, while vast populations remain locked in poverty and vulnerability.

Kenya has made important progress in expanding opportunities and improving living conditions for its people. Over the last decade, the economy has grown at an average of 5% annually. This growth has helped expand infrastructure, improve access to basic services, and open up new economic spaces, projecting resilience despite various global challenges. Across many counties, new roads, market sheds, dispensaries, and learning institutions now serve communities that were lacking public investment. School enrolment has improved, digital access has deepened financial inclusion, and more citizens are engaging with public service delivery than ever before.

Devolution has played a major role in this transformation. By shifting resources and decision-making closer to the people, it has allowed counties to identify and respond to their own development priorities. In some counties, it has unlocked investment in healthcare, agriculture, and small businesses, with citizens gaining more visibility in budgeting processes and leadership, although the pace and quality of implementation vary.

There are also signs of economic diversification. While agriculture remains central, growth in services, construction, and small-scale manufacturing has created new income opportunities, especially at devolved levels. The growing use of mobile money and digital services has supported trade, reduced transaction costs, and brought financial tools to many who were previously excluded. These changes reflect a country that is trying to build from the ground up, in response to local needs.

Yet, these gains have not reached everyone. Unemployment, especially among young people, remains one of the most pressing challenges. Each year, nearly a million young Kenyans enter the job market, but only a fraction finds stable employment. Many rely on informal work such as boda bodas, hawking, or online gigs, with little job security or benefits. National job creation policies have neglected regional labor market dynamics, while local governments often lack targeted employment programs, despite constitutional mandates for local development planning. Public employment programs are limited, and most counties do not yet have dedicated strategies to tackle youth unemployment in a lasting way. As a result, a growing number of young people feel left behind. For many households, vulnerability to shocks such as drought, illness, or job loss persists. In some parts of the country, incomes have barely grown in recent years, and key services remain out of reach. Disparities between counties, and even within counties, continue to widen. While some places have moved forward quickly, others have seen stalled projects, limited job creation, and persistent gaps in access to clean water, electricity, or safe housing.

Governance failures lie at the heart of this paradox. Although Kenya adopted devolution in 2010 to redistribute power and resources, glaring disparities remain. For instance, counties like Mandera, Wajir, and Garissa have per capita outputs less than one-fifth of Nairobi's, and there is no evidence of convergence in productivity over time. The fiscal architecture, including conditional grants and the Equalization Fund, has not been sufficient or effectively managed to reverse structural inequities. Poor targeting, fragmented intergovernmental coordination, and inconsistent implementation of development mandates continue to plague efforts to unlock the potential of historically marginalized areas.

Furthermore, Kenya's growth model is increasingly exclusionary. In arid and semi-arid areas, the economy remains narrowly focused on low-productivity agriculture and informal services. There is limited capital accumulation, technological diffusion, or large-scale value chain development. For example, Turkana, despite hosting the Lake Turkana Wind Power project, remains among the poorest counties, highlighting the governance gap between investment flows and local benefit sharing. The weak coordination between national and county governments on infrastructure priorities, dispute over road classifications and fund allocations, and delayed implementation of integrated development plans all point to underlying institutional shortcomings.

Financial inclusion has improved nationally, reaching 85% by 2024, driven by mobile money. Yet, in some counties exclusion remains as high as 31%. This underscores the inadequacy of financial regulatory frameworks to adapt to the unique constraints of underserved regions, such as lack of identity documentation, low digital literacy, and limited network coverage. The absence of a national policy to incentivize inclusive innovation or crowd in private financial actors in marginal markets is a missed governance opportunity.

Equally, politicized development agendas have failed to institutionalize a coherent poverty reduction and inequality framework. With each electoral cycle, development priorities shift, which different leadership implementing their own manifestos, which sometimes may upset the previous progress. This challenge is more pronounced at the devolved levels. Governance fragmentation, ad hoc policymaking, and poor data systems further erode Kenya's capacity to target interventions and monitor impact. The result is a vicious cycle: poverty deepens in regions and among groups that are politically or institutionally neglected, thus reinforcing economic marginalization and social exclusion.

Access to quality healthcare remains uneven, and climate-related risks are making this challenge more urgent. While more health facilities have been built across counties, many still face critical shortages of staff, equipment, and supplies. For low-income households, the cost of treatment can be devastating, and many continue to be pushed into poverty by medical expenses. At the same time, droughts, floods, and erratic weather have become more frequent, disrupting food production, driving up prices, and increasing malnutrition—especially among children. These pressures are felt most in communities that already face limited access to care and basic services. Kenya's commitment to Universal Health Coverage (UHC) and stronger primary health systems is at risk if health financing reforms are not properly implemented. The Facility Improvement Fund (FIF), which would allow health centers to manage their own revenues, remains stalled or unevenly rolled out in many counties. Nationally, the creation of a centralized Social Health Authority (SHA) must be closely monitored to ensure it improves service delivery rather than recentralizing decision-making without local accountability.

From the national fiscal lens, Kenya's public debt has grown substantially over the last decade, largely to finance development projects and support economic expansion. The rationale for borrowing has often been framed around infrastructure-led growth, with public funds channeled into roads, energy, housing, and other capital investments. While some of these projects have improved connectivity and access, the broader economic returns have not kept pace with the debt burden. Growth rates have remained modest, and the spillover effects—such as job creation, industrial growth, or improvements in household incomes—have often fallen short of expectations. Meanwhile, debt servicing costs have risen sharply, now taking up a significant share of national revenue and leaving fewer resources for health, education, and employment programmes. At the same time, Kenya has room to reform its tax system to reduce inequality. Lower-income households shoulder higher tax burden through consumption taxes, while wealthier individuals and businesses often benefit from exemptions and/or weak enforcement. Introducing progressive measures such as wealth taxes and stronger oversight can shift this imbalance.

What this shows is that Kenya is moving forward, but not fast enough and not together. Too many people are still excluded from the benefits of growth. Stronger governance is needed to close these gaps. This means better coordination between national and county governments, clear rules on how money is used, timely project delivery, and public participation that leads to real action. It also means making decisions based on what works, not what is politically convenient.

6.2 Measures to Improve Inclusive Growth and Poverty Reduction

6.2.1. Strengthen Agribusiness and Modern Rural Economies

Kenya must move beyond traditional input support and irrigation schemes to modernize agriculture through a strong agribusiness lens. This means shifting public investments toward enterprise-driven models that build competitive agricultural value chains, foster local agro-processing hubs, and create off-farm jobs. Counties can incentivize cooperatives and small firms to aggregate produce, add value, and link to markets. Public finance tools such as conditional grants and concessional credit can be tailored to crowd in private investment into cold storage, transport logistics, and digital agriculture platforms. A renewed focus on rural electrification and feeder roads will further unlock rural production zones. Building these modern, integrated rural economies is essential to increase farmer incomes, enhance food security, and promote inclusive rural transformation.

6.2.2. Expand Youth Inclusion and Localized Employment Models

Kenya's youth face chronic underemployment, despite existing national initiatives. Going forward, national and county governments must institutionalize youth involvement in the design, monitoring, and oversight of development programmes. Youth councils should have formal representation in public investment committees and budget hearings. Employment programs should include quotas for youth-led enterprises in procurement and infrastructure delivery, alongside access to business incubation and co-financing. Budgetary allocations to vocational training should prioritize county-level needs assessments and align with local value chains. In sectors like affordable housing or ICT, counties can use budget allocations to co-finance internship and apprenticeship schemes. This participatory, place-based approach will ensure youth empowerment is not only programmatic but embedded in fiscal decision-making.

6.2.3 Institutionalize Minimum Income Guarantees for the Poorest Households

To address deep-seated vulnerability, Kenya should consider institutionalizing a guaranteed minimum income for extremely poor households. This goes beyond fragmented cash transfers by anchoring protection within the national fiscal framework. A minimum income floor could be implemented through conditional or universal transfers in high-poverty counties, linked to nutrition, school attendance, or climate shocks. County governments should be given performance-based grants to co-finance these programmes and scale community-based identification and delivery systems. To expand its measure of progress, Kenya must consistently integrate multidimensional poverty metrics into budgeting and evaluation. This includes indicators on child stunting, food access, and resilience to shocks, among others.

6.2.4 Climate-Proof Health Systems and Strengthen Local Accountability

The country must prioritize climate-resilient public health systems, especially at the primary level. Rather than focusing only on new facilities, Kenya should invest in climate-proofing existing infrastructure, recruiting and retaining health workers in underserved areas, and strengthening county capacities for disease surveillance. Health financing reforms like the Facility Improvement Fund and Social Health Authority must be grounded in participatory planning, transparent budgeting and technical capacity support, allowing hospitals to fully understand, integrate and benefit from these frameworks, while communities track resources and service delivery. Counties should receive ring-fenced allocations for community health and nutrition programs, especially in climate-vulnerable zones. Budget reporting formats should include equity and access indicators, not just input/output counts.

Use Public Finance to Deepen Equity and Participation

Kenya can leverage its public finance management (PFM) system to advance inclusion. This includes aligning the revenue sharing formula to prioritize fiscal equity and needs-based allocations, especially for historically underfunded counties. Conditional grants should be linked to performance in delivering inclusive services. At county level, participatory budgeting must go beyond tokenism: citizen inputs should be tracked through budget tagging and linked to actual allocations and implementation. National Treasury and the Controller of Budget should not only publish disaggregated data on resource flows by region, gender, and age, but also complementarily create public dashboards to monitor service delivery and flag off gaps. Ultimately, embedding inclusion within Kenya's fiscal rules, planning frameworks, and audit systems will unlock more accountable, responsive governance.

Table 11: Priority Governance Reforms to Inclusive Growth

🟢 Short Term = 1 year
🟡 Medium Term = 1–3 years
🔴 Long Term = More than 3 years

Recommendation	Objective	Authority	Timeline
Shift from input subsidies to agribusiness-centered rural development	Build competitive value chains, raise rural incomes, and modernize agriculture through targeted public investment and enterprise support.	Ministry of Agriculture, Council of Governors, National Treasury	🟡 to 🔴
Institutionalize youth participation in programme design and public investment	Ensure youth voices influence employment policies and budget decisions at national and county levels.	Ministry of Youth Affairs, County Assemblies, Youth Councils	🟢 to 🟡
Establish a minimum income guarantee for extremely poor households	Provide predictable and fiscally anchored support to households facing multidimensional poverty.	Ministry of Labour and Social Protection, National Treasury, County Governments	🟡 to 🔴
Climate-proof health infrastructure and finance community-based primary care	Strengthen access to health in underserved areas while building resilience to climate shocks.	Ministry of Health, County Health Departments, Parliament	🟡 to 🔴
Reform intergovernmental fiscal transfers to promote equity and accountability	Align revenue sharing with need and performance; institutionalize participatory budgeting and open fiscal data.	National Treasury, CRA, Controller of Budget, OAG, CoG	🟢 to 🟡

6.0 CONCLUSION

Kenya's shadow governance diagnostic reveals that while important reforms are in motion, the country's governance challenges are deep-rooted and interlinked. Across public finance, markets, the Judiciary, anti-corruption bodies, and social sectors, progress has been made in updating laws and strengthening institutions. Yet persistent structural weaknesses – from unchecked fiscal leakages and captured markets to politicized justice and inequitable growth – continue to hamper effective governance. These weaknesses are not merely technical shortcomings; they reflect entrenched power imbalances and incentive problems that have built up over time. The overarching message of this assessment is that addressing these governance fault lines is critical for Kenya's sustainable development. Without tackling corruption, inefficiency, and exclusion, economic gains will remain fragile and inequitable, undermining public trust in institutions.

Crucially, the significance of the identified governance challenges goes beyond technocratic fixes. It strikes at the core of Kenya's social contract – Poor governance has tangible costs: it diverts resources from public services, discourages investment and job creation, and exacerbates inequality and discontent. Kenya's stakes are high: recent episodes, from public debt strains and budget controversies to high-profile corruption scandals have heightened citizens' demands for transparency and accountability. Improving governance offers Kenya a path to rebuild public confidence and unlock inclusive prosperity. Meeting the citizens' demands is not only ethically right, but also economically smart, as better governance will create a stable environment for growth and poverty reduction. Global experience shows that winning public trust and maintaining social cohesion requires prioritizing governance and anti-corruption reforms. In Kenya's context, this means that reforms must deliver visible accountability and fairness in how public resources are managed and how justice is served.

Kenya stands at a pivotal juncture where governance reforms are not just desirable but imperative for the country's future. The findings of this report make it clear that fixing broken institutions, closing enforcement gaps, and broadening inclusion are all part of the broader effort to strengthen the foundations of the state. Implementing the recommended interventions will be challenging, but it is achievable with strong political will and broad-based support. If Kenya can follow through curbing corruption, managing public resources prudently, delivering justice efficiently, and ensuring growth is shared, the rewards will be substantial. The country will be better positioned to achieve economic stability and equitable development. These politically attuned, citizen-centered reforms are not a luxury; they are, as the IMF has emphasized, a structural necessity for rebuilding trust and driving inclusive, resilient growth. The road ahead will require continued courage and collaboration.

The diagnostic underscores the need to align Kenya's structural reforms with social legitimacy and institutional integrity. Successful reforms for Kenya must be politically grounded and socially legitimate. Technical solutions will falter if they ignore the political incentives that perpetuate the status quo or exclude the very citizens who have the most to gain from change. Reforms should be built on broad consensus and driven by constituencies that demand better governance. Government action alone is not enough. Lasting change will require sustained pressure and participation from outside government as well: civil society oversight, media scrutiny, private sector support for rule of law, and citizen engagement in decision-making. By anchoring reforms in public dialogue and transparency, Kenya can ensure they reflect a diversity of perspectives and local realities, rather than top-down prescriptions. This inclusive approach will help make anti-corruption and governance initiatives resilient against political pushback and more responsive to citizens' needs.

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