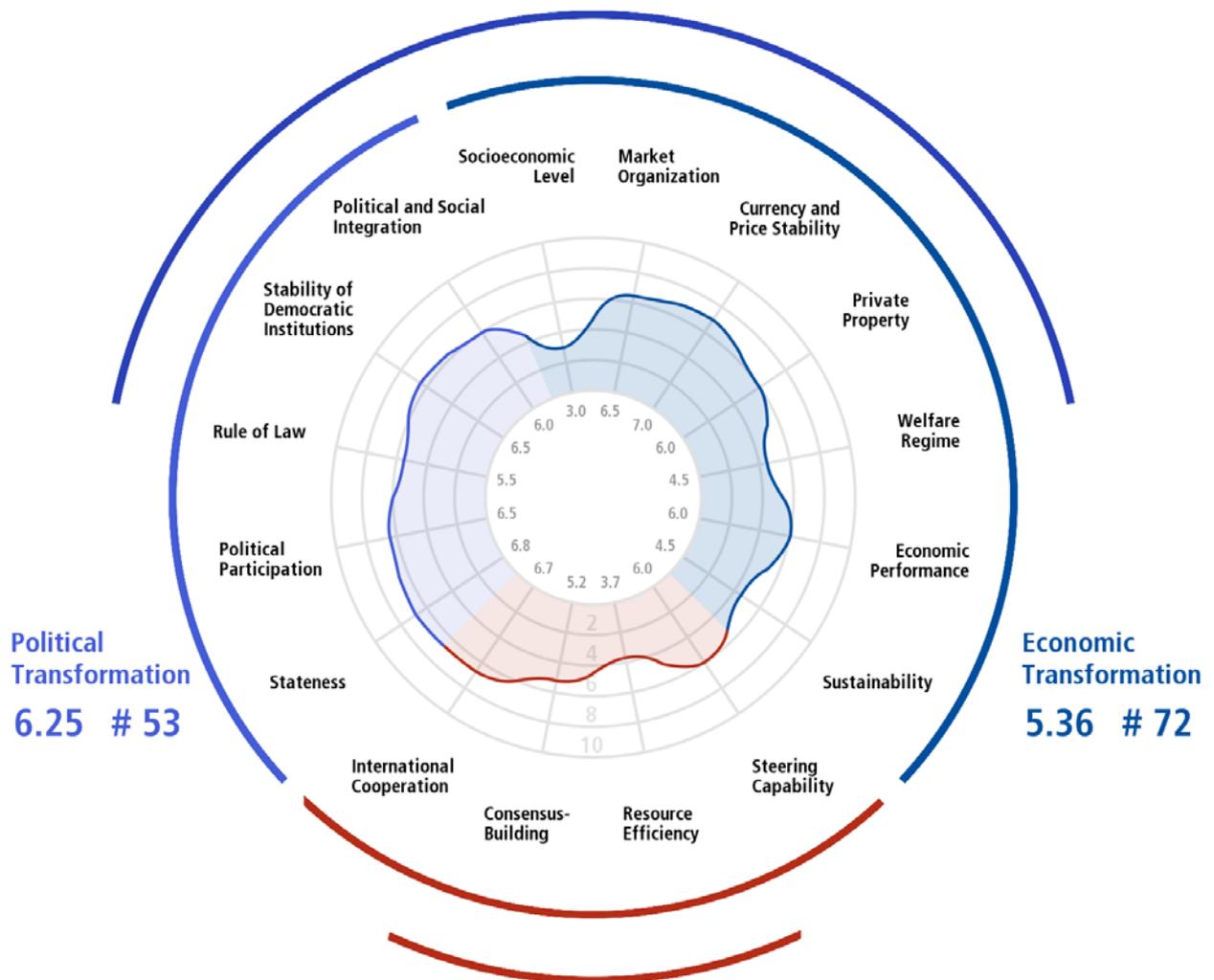


# Kenya

## Status Index

**5.80 # 57**

on 1-10 scale out of 129



**Political Transformation**  
**6.25 # 53**

**Economic Transformation**  
**5.36 # 72**

## Governance Index

**4.92 # 68**

on 1-10 scale out of 129

This report is part of the Bertelsmann Stiftung's Transformation Index (BTI) 2018. It covers the period from February 1, 2015 to January 31, 2017. The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 129 countries. More on the BTI at <http://www.bti-project.org>.

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## Key Indicators

Population	M	48.5	HDI	0.555	GDP p.c., PPP \$	3156
Pop. growth <sup>1</sup>	% p.a.	2.6	HDI rank of 188	146	Gini Index	48.5
Life expectancy	years	66.6	UN Education Index	0.545	Poverty <sup>3</sup>	% 60.6
Urban population	%	26.1	Gender inequality <sup>2</sup>	0.565	Aid per capita \$	52.4

Sources (as of October 2017): The World Bank, World Development Indicators 2017 | UNDP, Human Development Report 2016. Footnotes: (1) Average annual growth rate. (2) Gender Inequality Index (GII). (3) Percentage of population living on less than \$3.20 a day at 2011 international prices.

## Executive Summary

In April 2016, the intervention of the International Criminal Court (ICC) came to an end after the Office of the Prosecutor vacated the case against the Deputy President William Ruto and radio presenter Joshua arap Sang. With the ICC cases at an end, the political debate turned to the next general election – scheduled for August 2017 – as politicians sought to build cross-ethnic coalitions and the opposition pushed for reforms of the Independent Electoral and Boundaries Commission (IEBC). On the one hand, the ruling alliance sought to bring President Kenyatta’s The National Alliance (TNA) and Deputy President’s United Republican Party (URP) together within a new Jubilee Alliance Party (JAP); while, on the other hand, opposition leaders sought to establish a new National Super Alliance (NASA). At the same time, the opposition insisted that the incumbent IEBC commissioners were tainted by corruption scandals and their alleged role in electoral malpractice in 2013, and needed to be replaced by new commissioners.

The judiciary continued to provide an important check on government and issued a number of rulings against the executive, which protected various rights including the right of assembly. The institution also continued to provide an important avenue for protest as several government directives – such as a decision to close Dadaab refugee camp in northern Kenya – were challenged through the courts. Nevertheless, the judiciary lost some of its public credibility as a result of corruption cases, and also among civil society organizations (CSOs) and the opposition over its 2013 ruling on the presidential election petition. The new Chief Justice David Maraga, is considered as a professional of integrity but may lack some of the moral authority and political clout of his predecessor, Willy Mutunga.

The transition from a highly centralized state to a devolved form of governance, which started after the March 2013 general elections, is one of the most ambitious such transformations worldwide, as it not only transfers significant executive and fiscal powers to the county level but simultaneously establishes a new layer of governance. Devolution continued to be highly popular among the majority of citizens across the country and to be associated with visible signs of

development, as county-level projects – such as roads and clinics – went hand-in-hand with the construction of new hotels and retail outlets in county headquarters.

However, criticism grew regarding the localization of ethnic politics; inefficiency and the size of the country's wage bill; and the localization of corruption. Thus, various actors argued that governors were either employing and appointing members of the dominant ethnic group to the neglect of local minorities, or – where governors were more inclusive in their approach – that they were employing “outsiders” to the neglect of the “local” majority. At the same time, devolution continued to be associated with unnecessary expenditure and duplication in many areas, as county governments spent much of their budget on salaries, sitting allowances, foreign trips, offices and cars, and hired staff with similar skills to those seconded by the national government.

Criticism also grew regarding the localization of corruption, as devolution provided new opportunities and incentives for graft. As county governments engaged in procurement and contracting with little oversight, and incumbent governors and members of the county assembly (MCAs) sought to fund their campaigns for re-election in the face of increasingly fierce competition.

This proliferation of corruption at the county level also went hand-in-hand with the return of grand corruption scandals – from those associated with the Eurobond scandal to those that rocked the National Youth Service and Ministry of Health. Since its inception in September 2011, the Ethics and Anti-Corruption Commission (EACC) has been deliberately weakened and compromised – with two consecutive chairmen forced to resign over their pending corruption charges. Moreover, while there have been cases where ministers under investigation have stepped aside or resigned, investigations have not been concluded or brought to trial, and there are no long-term ramifications for the politicians' careers. Instead, allegations or investigations are often denounced by the accused and their supporters as ethnic “witch hunts” and as an attempt to remove popular community leaders from power.

Increased corruption – in the context of high levels of inequality, costs of living and salaries for elected officials – constituted a source of popular frustration and anger. In response, a number of public demonstrations were organized, while a number of public workers – including medical practitioners – organized extended strikes. The corruption crisis also placed further strain on already tense relations between the government and prominent CSOs and the media. This is particularly evident when it comes to prominent human rights organizations, which the Kenyatta government holds partly responsible for the ICC's intervention. In response, the government has launched several, so far unsuccessful attempts to restrict CSO activities, which has cultivated a sense of a Cold War between the government and governance/human rights organizations. As a result, the latter became increasingly reactive to government initiatives and attacks, rather than agenda setting.

Police reform stalled with little attention given to the ongoing vetting of police officers. Extra-judicial killings also increased. However, a focus on alleged criminals – and, more specifically,

on young men from informal settlements – meant that this increase attracted little public outcry and was instead seen by many as a welcome response to crime and terrorism.

Real GDP growth remained buoyant, but the majority of the population have enjoyed only limited benefits, while the debt/GDP ratio is increasing. Economic growth continued to be driven by investment in infrastructure and construction, financial services and communications, as well as by rapid urbanization, a burgeoning middle-class, and the growth of shopping malls and supermarkets, which ensured the relatively rapid growth of the country's wholesale and retail trade markets. In September 2014, the country's economy was rebased, increasing its GDP by 25.3% and making it a middle-income country and Africa's ninth largest economy (up from 12th). The country has experienced an average annual GDP growth rate of 5.6% between 2013 and 2016. However, according to the Gini Index, Kenya has a value of 0.45, which means Kenya's inequality surpasses the rest of the East African Community (EAC) with economic disparity particularly pronounced in the rural areas. The debt/GDP ratio has also increased from an annual average of 36.6% during Kibaki's second tenure (2008-2013) to an annual average of 45.6% under the Kenyatta administration, indicating both the increase in development and infrastructure spending and in corruption turnovers.

## History and Characteristics of Transformation

Political transformation in Kenya remains shaped by its colonial legacy (1896 – 1963). Questions of land allocation, which are ultimately linked to questions of wealth and interethnic group relations, have never been adequately addressed. Both during the initial period of de facto, and later of de jure one-party rule (1967 – 1991) as well as the period of multiparty competition (1991 to the present), strong ethnic undercurrents have shaped how politics are conducted. All four presidents in the country's 55 years of independence (Jomo Kenyatta 1963 – 1978, Daniel arap Moi 1978 – 2002, Mwai Kibaki 2002 – 2012 and Uhuru Kenyatta since 2013) have favored their own ethnic communities and regions, plus those of their close allies, leading to considerable discontent among the remaining ethnic groups. In the fertile Rift Valley, both Kikuyu and Kalenjin claimed land previously under colonial occupation. Competing ethnopolitical demands for land have never been resolved and remain a latent source of conflict between the two communities. The demand for greater equity in the country's resources among the regions became one of the dominant issues during the constitutional reform process (1999 – 2010). This led to a complete restructuring of the state's political and administrative framework, which started to take shape following the 2013 general elections with the creation of 47 elected county governors and county assemblies.

In addition to tensions between the Kikuyu and the Kalenjin, political antagonism developed between the Kikuyu and the Luo over the 1966 dismissal of Kenyatta's Luo vice president Oginga Odinga (father of current opposition leader and former Prime Minister Raila Odinga) and the

mysterious assassination of the senior Luo politician Tom Mboya – a potential contender for the presidency – in 1969.

These lines of conflict, and differences over trickle-down versus redistributive policies, culminated in the 2007 election when a relatively broad opposition alliance led by Odinga and the then nascent new Rift Valley leader, William Ruto, faced incumbent President Kibaki, whose ethno-regional support was somewhat diminished. Kibaki was re-elected for a second and final term amidst widespread reports of grave electoral irregularities and manipulation in vote-counting, which triggering unprecedented violence and left some 1,300 people dead and nearly 700,000 displaced. Only an international diplomatic intervention, led by former U.N. Secretary-General Kofi Annan, ended the crisis and oversaw the formation of a government of national unity with Kibaki as president and Odinga as prime minister.

The coalition proved unwilling to prosecute perpetrators of the 2008 post-election violence. Instead, the ICC in The Hague assumed jurisdiction over the cases and confirmed charges against four suspects, among them Uhuru Kenyatta and William Ruto, who were allegedly the antagonistic masterminds behind the post-election violence (Kenyatta of the Kikuyu/Mungiki, Ruto of the Kalenjin). The ICC cases fundamentally changed the political dynamics of the country. Kenyatta and Ruto joined forces to fight the ICC charges and contested together with the presidential elections in 2013 successfully. After witnesses retracted their statements, while others died or disappeared, the charges were eventually dropped (against Kenyatta in December 2014 and against Ruto in April 2016).

The grand coalition (2008 – 2013) managed to complete the constitutional review process. The new constitution was ratified by a referendum and its implementation, to unfold over five years, began in late August 2010. The implementation process became a new site for battles between anti-reform forces and pro-reform actors with the former trying to manipulate the lawmaking process to sabotage the spirit, direction and meaning of the 2010 constitution.

The BTI combines text analysis and numerical assessments. The score for each question is provided below its respective title. The scale ranges from 1 (worst) to 10 (best).

## Transformation Status

### I. Political Transformation

#### 1 | Stateness

The state has, in principle, a monopoly on the use of force, but it is not always and not fully exercised throughout its territory. Particularly in the vast arid and semi-arid areas of the north and northeast with its low population density, police presence is low and the ability and determination to maintain law and order minimal. Secessionist tendencies along the coast, engineered by the Mombasa Republican Council, a militant, largely Muslim secessionist movement, reached its peak in the run-up to the 2013 elections, but have since subsided. Kenya's borders with Somalia, Ethiopia and Sudan are porous, leading to an influx of weapons and al-Shabab insurgents. Political interference, a lack of proper police oversight and high levels of corruption, as well as technical and organizational deficiencies within the police force, are the main reasons for these gaps. Local militia groups have exploited these gaps. This includes a now divided and largely defunct Kikuyu based Mungiki sect, as well as relatively small groups in the slum areas of Nairobi and Kisumu, which de facto replace law and order with an alternative order based on violence and fear. In rural areas, the police have failed to curtail armed banditry. The 70,000-strong police force is, at 160 officers per 100,000 citizens, far below the United Nations recommended ratio of 220 to 100,000.

Kenya remains affected by the state crises of its immediate neighbors. Kenya currently provides shelter for more than 300,000 refugees, mainly from Sudan and Somalia. They have become targeted by the Kenyan government as alleged hiding and breeding grounds for al-Shabab terrorists, leading to illegal forced repatriations of thousands of Somali from 2015 onwards and frequent announcements by the Kenyan government to close the camps of Dadaab (at the Somalian border) and Kakuma (South Sudan border).

Question  
Score

Monopoly on the  
use of force

5

'06 '18 10



1

Since independence, more or less all major groups in society have respected the Kenyan state as legitimate. However, the strong centralization under the first three presidents (1964 – 2012), with clear biases in regional resource allocation, infrastructural projects and government appointments, led to complaints from various ethnic, religious and nomadic groups regarding real or perceived marginalization. The 2010 constitution contains mechanisms to reduce regional imbalances through devolved government and the introduction of an Equalization Fund (\$116,000 million in 2017), to the least advanced counties. However, by the beginning of 2017, the Ministry for Devolution & Planning has come under severe criticism for not having touched the allocated funds since the start of devolution in 2013. Despite this failure, counties have experienced improvements in health care, road networks and government services since the start of devolution, likely to have resulted in a somewhat improved acceptance of the state and its institutions since the start of devolution. However, the lack of integration and sometimes open harassment of the Muslim community leaves pockets of resentment among the population along the coast, the north and northeastern, occasionally leading to the resurgence of organizations that challenge the legitimacy of the nation-state (Islamic Party of Kenya in the 1990s, Mombasa Republican Council/MRC around the 2013 elections).

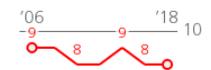
In principle, all groups and individuals have the right to acquire citizenship without discrimination. However, in practice, members of certain groups – such as ethnic Nubians and Somali – face significant problems gaining identification documents and are often required to provide additional evidence, resulting in at least temporary denial of full citizenship rights.

Since independence, religious dogmas have not interfered with the state's legitimacy. However, the 2010 referendum campaign on the proposed constitution ushered in a new dynamic. Christian churches, including the mainstream (Catholic and Anglican) and evangelical churches, rejected the new constitution and fought fiercely against its adoption of the 2010 referendum, because of an abortion clause which was allegedly too liberal, and because of the retention of the Khadi courts (Muslim law courts dealing with limited personal status issues). Both abortions on medical grounds and the constitutionality of Khadi courts have long been a reality in Kenya. The Khadi courts' jurisdiction is confined to personal status issues for Muslims, such as marriage, divorce and inheritance. They have far less power than Kenya's magistrates' courts and High Court. The Christian churches have considerably impaired relations between Christian and Muslim communities, but having lost some of their moral clout as a force above politics, the churches have been unusually silent in public debates since the constitutional debate.

At the same time, the last two decades have witnessed a neo-pentecostalization of political culture and informal institutions. Generally, politicians regularly seek to mobilize support and legitimize their positions through displays of religiosity. This

#### State identity

8



1

#### No interference of religious dogmas

8



1

includes the “laying on of hands” by clergy at political prayer meetings, rallies and political inauguration ceremonies.

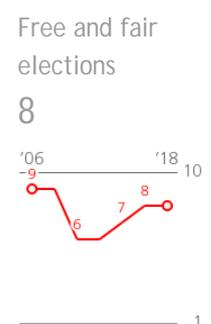
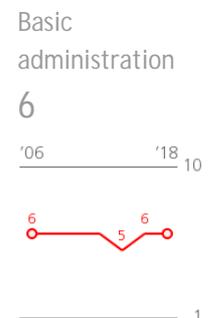
In the restructuring of the state’s administrative framework through devolved government, based on the 2010 constitution and ensuing laws, there is an implicit recognition of the state’s past failure to provide services and to treat regions equally. The March 2013 establishment of 47 counties, each with its own governor and assembly, with new functions and responsibilities (leaving security and education as the only main services that are not devolved), is an attempt to bring service delivery closer to the people. Despite some organizational deficiencies during the transition period and some inconsistencies in the provision of key public services, such as health care, the county governments have brought government structures closer to people, especially in peripheral areas such as Turkana and other parts of northern and northeastern Kenya. Through devolved governance, the spread of government structures throughout the entire territory of the country has started to become gradually more even.

The new constitution grants such rights as free education, safe housing and access to clean water, but in practice, people do not enjoy those rights. For example, the free primary and secondary education provision is fraught with corruption. Clean and safe drinking water is delivered in urban areas, but not to the extent required. Adequate housing for all is far from reality as competing interests, and overlapping responsibilities between the Ministry of Land, Housing & Urban Development and the National Lands Commission paralyze program development. The invalidation by a High Court in January 2017 of all title deeds issued by the ministry since 2013 for defiance of the constitutionally mandated consultative process displays the disorganization of the whole land sector. Under the judicial reform framework, the judiciary has substantially reduced its case backlog and makes its services more accessible through the establishment of additional High and Magistrate Courts throughout the country. Certain administrative structures simply are not functioning because of corruption.

## 2 | Political Participation

Kenya has conducted regular elections since independence, usually every five years. With the reintroduction of the multiparty system in 1991, the presidency was contested by competing parties for the first time. The 2002 elections also resulted in the country’s first peaceful and democratic transfer of power.

The 2007 elections reversed those democratic gains as the Electoral Commission of Kenya (ECK) could not account for the grave irregularities in the presidential result aggregation process. The declaration of incumbent President Kibaki as the winner was immediately violently contested, leading to the most serious political crisis of independent Kenya. Not only were about 1,700 people killed, 700,000 displaced and



property on a large scale destroyed, but also the country's institutions (ECK, High Court, churches, police) proved incapable of restoring peace, protecting people and property or resolving the political stand-off between Kibaki's Party of National Unity (PNU) and Odinga's Orange Democratic Movement (ODM).

After the crisis was eventually resolved through an internationally led mediation process one of the key lessons learned was that –to avoid similar crises in future – the key institutions need to be overhauled, strengthened and vested with an earned legitimacy. These were some of the lessons that guided the Constitutional reform process under the grand coalition of Kibaki (as president) and Odinga (as prime minister) and culminated into the promulgation of a new constitution after a successful referendum in August 2010.

For the 2013 election a substantially restructured electoral commission, the Independent Electoral and Boundaries Commission (IEBC), and an even more fundamentally reforming judiciary enjoyed broad public acceptance and legitimacy that enabled them to stir an electoral process through public and political contestation that was less severe than in 2007 and remained non-violent. The electoral process itself had improved, but reasons for failures of the electronic result transmission system remained unexplained, and several decisions by the IEBC were non-transparent. Odinga lost the elections to Kenyatta and lodged a petition against the result. The newly established Supreme Court unanimously declared the elections free, fair, transparent and credible, and the ruling was begrudgingly accepted by the political opposition. Before that international and national observers had given the elections a clean bill of health.

However, prior to the 2017 elections corruption scandals had riddled the IEBC and the opposition's constantly repeated narrative that the IEBC lacked neutrality eventually led to an overhaul of the Commission in key positions, including the commissioners and the CEO who heads the secretariat. The Judiciary also had lost some of its public credibility over new corruption cases and among CSOs and the opposition over its 2013 ruling on the presidential election petition. Its new chief justice (since October 216), David Maraga, is considered as a professional of integrity but may lack some of the moral authority and political clout of his predecessor, Willy Mutunga. Thus, these key institutions entered the hot electoral period with diminished legitimacy.

There are no traditional veto powers in operation, but the effectiveness of governance was substantially hampered by frictions, tensions and infightings within governments since 2003, aggravated by ICC charges against four figures allegedly responsible for the post-election violence of 2007 to 2008. The Kenyatta government devoted much time and energy to fight off the ICC prosecution. Corrupt, self-seeking politicians interfere with legislation and some key institutions (Ethics and Anti-Corruption Commission, National Land Commission, parliamentary committees). Attempts to apply veto powers are not done openly but in secret. Those likely to be negatively

Effective power to govern

6

affected by full implementation of the constitution try to secretly undermine and derail legislative processes. This group mainly consists of the political elite and beneficiaries of the current Kenyatta and former Moi era. They are particularly concerned with land acquired illegally which may be re-appropriated under the new constitution.

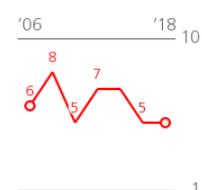
There are no legal constraints on the right of any group to assemble or associate freely. However, since the election campaign in 2013 the government has repeatedly significantly infringed on the right of assembly, by violently dispersing peaceful civil society demonstrators outside parliament, outside the Independent Electoral and Boundaries Commission offices (May 2016), Kibera slums of Nairobi and other parts of the country. The excessive use of force by the police caused the death of at least two people during the May 2016 Anti-IEBC demonstrations. Against the backdrop of the post-election violence of 2007/08, the government has been effectively trading off the right of assembly and association against what they see as stability and peace. In fact, the government has instrumentalized the public quest for peace to label and proscribe legitimate demonstrations as destabilizing, thereby substantially violating the constitutionally guaranteed rights to associate and assemble freely. In addition, the government is using the threat of terrorism to fight civil society groups with several human rights organizations required, for example, to prove that they are not terrorist entities against the norms of natural justice. Several hundred CSOs have been deregistered since 2013, most of them temporarily, some permanently. Apart from the terrorism charges failed accounting procedures have been used as justification. Clearly, the Kenyatta government uses threats, intimidation and the selective application of the law to severely curtail the public space.

Substantial press freedom exists in Kenya on paper as well as in principle. There is a substantial diversity of published opinions. However, the legal environment in which the media operates is complex. Though the 2010 constitution guarantees the freedom of the press, several laws curtail and infringe on this freedom. So far, attempts to enact draconian laws and/or amendments to existing acts have failed (e.g., the Parliamentary Powers & Privileges Bill 2015 which would have required journalists to clear with parliament anything they wish to publish about parliament; the Amendment of Kenya Information & Communication Act/KICA, or the Media Council Act/MCA). Restricting press freedom has not been successful in part because courts have put these enactments on hold, and partly because the president did not sign them into law. However, provisions in several security-related laws (e.g., the 1967 Preservation of Public Security Act remain unadjusted to the 2010 constitution) provide wide-ranging executive powers to restrict/prevent public information provision and fine or imprison journalists. Though rarely applied the Kenyatta government has created an atmosphere of fear and intimidation, particularly for reporting on the ICC cases and certain corruption cases, though the mere presence of these laws leads to substantial self-censorship among journalists. On certain



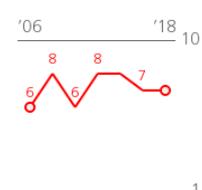
Association /  
assembly rights

5



Freedom of  
expression

7



occasions, journalists have been fired, beaten up by police during investigations, and bloggers been detained for publishing information on terrorism.

Freedom of religion is guaranteed by the constitution.

### 3 | Rule of Law

Separation of powers was not emphasized in the old constitution; particularly under the Kenyatta, and Moi governments the executive often obstructed separation of powers. During the Grand Coalition (2008 – 2013) the legislative and executive were strongly interlaced as more than two-thirds of parliamentarians held cabinet positions.

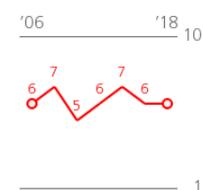
The 2010 constitution stresses the importance of the separation of powers. It allows for a maximum of 22 cabinet secretaries (formerly ministers) and stipulates that they must come from outside parliament. The president is required to seek parliamentary approval for his cabinet secretaries. Parliament can dismiss ministers, which was previously the exclusive prerogative of the president. Appointments by the president to national commissions, the positions of attorney general, auditor general, budget comptroller and public prosecutor are based on nomination by special panels. Parliamentary approval is required here to keep panels largely free of presidential influence. In the new constitution, the powers of parliament have generally been strengthened and those of the president curtailed. Subsequent changes to some acts (e.g., the Police Service Act) only marginally strengthened and maintained the role of the president, for example, the vetting through a panel constituted by representatives of the main relevant bodies.

Willy Mutunga was the first chief justice under the 2010 constitution (2011 – 2016), and substantially strengthened the role and independence of the third power. Mutunga's judicial reform process was received with a rise in approval ratings for the judiciary in public polls and surveys. However, during the last two years of Mutunga's tenure, the high-level corruption cases (implicating the Chief Registrar who had to resign) and controversies about the composition of the Judicial Service Commission and its mandate, smacked strongly of interference by the executive into judicial affairs. On several occasions, the National Assembly and the lower house of parliament appeared to be directed by the executive.

Under the guidance of Chief Justice Willy Mutunga, reforming the judiciary was initially a successful flagship project of the fundamental reform processes required by the 2010 constitution. This has been a remarkable recovery from its status as one of the most corrupt and least trusted institutions in Kenya. However, during the last two years of Mutunga's tenure (he retired in June 2016) the reform pace slowed down, corruption cases again upset the judiciary as did attempts of executive interference. The reform course is still largely on track, but it appears now more

Separation of powers

6



Independent judiciary

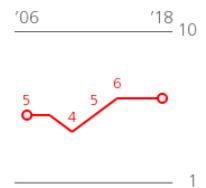
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fragile. Mutunga's successor, David Maraga, pre-selected by the Judicial Service Commission and appointed by the president, has a good professional reputation and is likely to fulfill his mandate more conservatively, unlike his more activist predecessor. Therefore, it remains uncertain to what extent he will be prepared to defend the constitution against attempted acts of sabotage.

Mutunga's main achievement and legacy is the Justice Transformation Framework (JTF) which rolls out a comprehensive reform process. JTF expands services with a wider distribution of court locations, the installation and support of court user committees, and the strengthening of the court case management system with training structures. A comprehensive vetting process of all Supreme Court, High Court and Court of Appeal judges and magistrates (2012/13), led to the dismissal of 13 judges and a significant number of magistrates, this revealed the seriousness of the reform process and earned the judiciary a strong surge in approval ratings. Subsequent corruption cases tainted the new positive image slightly.

Under the Kenyatta government, the judiciary has been subjected to several attempts to infringe on its independence and to undermine the reputation of its leading judges. But the judiciary has largely protected its integrity and independence, which is proven by several rulings which dismissed laws and amendments which would have restricted constitutionally guaranteed rights of freedom of expression.

The 2010 constitution dedicates a full chapter to the issue of integrity and defines appropriate conduct for public office holders, as well as conditions for removal from office. The constitution also ascribes constitutional status to the Ethics and Anti-Corruption Commission (EACC). However, subsequent legislation, particularly the Leadership & Integrity Act 2012, did not operationalize constitutional provisions in a way that allows appropriate vetting of public officeholders and political aspirants. Anti-corruption institutions and policies, as well as the judicial and the political system (with regard to human rights abuses), have proven too weak to break the cycle of impunity. The accused perpetrator has not been convicted in any of the major corruption cases, including the Goldenberg case (Moi era, 1992-91994), the Anglo Leasing scam (Kibaki era, 2002-2004), and the National Youth Service scandal (Kenyatta administration, 2015-16) for which the judicial proceedings are ongoing. The same applies to the extra-judicial killings by the police during the post-election violence of 2008. Anti-corruption and human rights policies and practice have yet to be a real deterrent to corruption and human rights violations. In response to the new press freedoms of the 1990s, there was a period in which critical reporting, in newspaper and commission reports, had some effect. But, alone the press did not prove to adequately disincentivize corruption and any positive impact faded away as none of the relevant government institutions responded with action.



Chapter four of the new constitution contains a comprehensive bill of rights. Any citizen who feels that his or her fundamental human rights have been denied or violated now has the right to initiate court proceedings.

A lack of sufficient civic education, however, means that the vast majority of the population remains unaware of these provisions. Moreover, there are structural limits to the enforcement of these rights, with most citizens lacking the financial means to institute a court case. As important as their support is, institutions like the Federation of Women Lawyers (FIDA) and Kituo cha Sheria remain limited in their outreach. However, through its decentralization process, the judiciary has established more court locations easing the access to justice from the supplier side. An important role is also played by the Court User Committees that are now anchored in the respective act of parliament and are seen as the best vehicle to improve public participation in the judicial process.

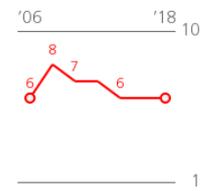
Despite some progress in fostering a culture of respect for civil rights since 2002, random arrests and extra-judicial killings, illegal confinement, extortion, physical abuse and fabrication of charges by the police forces still occur on a significant scale mostly without legal consequences for the perpetrators, particularly if political interests are involved. International human rights organizations continue to decry these abuses without much impact. Women are disadvantaged in all aspects of public and civil life, particularly in rural areas. In addition, human rights abuses have occurred as a result of the “war against terror” as security services respond to terrorist attacks with screenings of ethnic Somali and arbitrary arrests, while there is a widespread belief that a number of radical clerics have been killed by the Anti-Terrorism Police Unit, which is supported by the Israeli Mossad. Finally, while the ICC dropping its charges against President Kenyatta and Ruto were presented by the government as proof of their innocence, the ICC Office of the Prosecutor continues to cite the death, bribery and intimidation of key witnesses and the non-compliance of the Kenyan government in handing over requested records as insurmountable hurdles to a successful prosecution. The ICC can reopen the cases at any time when new evidence becomes available. However, the ICC failure to conclude the trials against the president and his deputy has terminated any efforts to bring to trial those lower and mid-level functionaries responsible for the post-election violence.

#### 4 | Stability of Democratic Institutions

The 2010 constitution reconfigures the ensemble of democratic institutions and the relations between them by introducing a devolved democratic level of government, curtailing presidential powers, strengthening parliament and institutions establishing several independent constitutional commissions. Parliament had previously struggled to control government effectively. Parliament’s self-administrative powers have been strengthened by the constitution and now include the ability to initiate and administer

Civil rights

6



Performance of democratic institutions

6

a presidential impeachment, and among other components, now have a key role in the drafting of the national budget. These steps have reduced formerly vast presidential powers. However, other factors undermining parliament's independence and efficiency are more structural and remain in place. These include the undermining of democratic principles by personal and ethno-regional interests, the frequent realignment of political blocs as a result of political power games and bribery on all levels of parliament. The level of political polarization in conjunction with parliamentarians' susceptibility to bribes ensures that the government maintains substantial control.

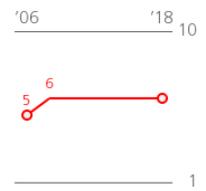
The new governance system, with the Senate as a second house of the National Assembly and with its elected county governors and county ward representatives taking over the provincial and district administration and local authorities, started in March 2013. In contrast to the independence constitution of 1963, where the federal governance structures were not strongly safeguarded, the 2010 constitution precludes the abolition of the devolved system. The expected jostling for power and influence between and among the different arms of the executive and legislative is still not concluded, but the governors through their Council of Governors have emerged as the new gravitation center of power vis-à-vis the national government. So far, they have proved fairly effective at protecting devolution against real and perceived attempts to strengthen the national government's role at the county level.

All actors accept the value of democratic institutions and rules in principle, but in practice politicians, business managers, CSO leaders and civil servants try to influence or even manipulate them for their own interests.

Elections results tend to be more acceptable when the winning side comprises key representatives of all major ethnic groups, as was the case in 2002, and less acceptable when bigger ethnic groups are not represented in the winning coalition as was the case in 1992, 1997, 2007 and 2013. In 2013, the public's desire for peace and the strong presence of special police forces in potential hotspots helped to contain potential violence.

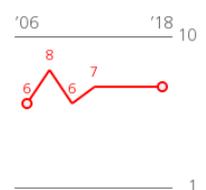
The 2010 constitution provides key institutions with better protection from external influence, utilizing transparent and competitive appointment processes less dependent on the executive and accountable mainly to the legislature. However, there are no safeguards against attempts to buy influence as evidenced by various attempts to bribe members of parliament in key parliamentary committees and members of the EACC to remove names from incriminating reports.

No institution holds and uses specific veto powers, but the government has deliberately failed to fundamentally reform the police service along the constitutional requirements to be able to prolong its instrumentalization for extra-legal actions, including killings, which has characterized the nature of the police since the Moi era.



Commitment to democratic institutions

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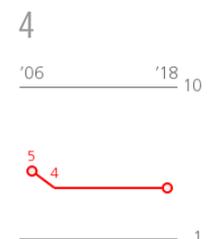


## 5 | Political and Social Integration

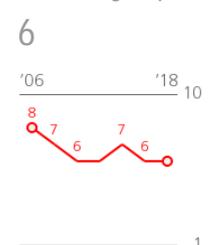
Parties continue to serve the interest of strongmen, built around ethnic loyalties and patronage rather than platforms or principles. Party politics are characterized by a high degree of polarization and volatility. The introduction of multiparty politics in December 1991 led to various cycles of parties forming, splitting, merging and forming once more that continues to this day. Consequently, the party system remains unstable. Some politicians would rather establish a new party than contest leadership positions within their existing party. Uhuru Kenyatta, William Ruto and Musalia Mudavadi opted for new parties ahead of the 2013 elections, as they were not guaranteed candidacy by their previous parties. With an incumbent president standing for re-election in the 2017 elections, there were only some realignments (NASA-formation) in the party landscape, and the main political camps remained intact. Relations with interest groups are limited and ad-hoc at best. Parties do not aggregate interests which are expressed in social, cultural or economic terms. Instead, leaders use political parties to channel and re-engineer their ethno-regional interests and rally the support of their ethnic communities around them. It is only around election time that parties are vibrant and relevant when leaders need to aggregate and consolidate their political following. A government may be based on a coalition, but soon after elections, the constituent parties will become dormant and informal alliances between individuals emerge. Various government representatives will start working with different opposition members of parliament, with the result that the boundary between government and opposition often becomes completely blurred. To some degree, the 2013 to 2017 parliament was an exception, as the political polarization largely prevented formal and informal floor crossing. An alliance across the political divide developed under the umbrella of the Council of Governors, the organ coordinating and representing the interests of the county governors when they formed an initiative to request a higher share of the national budget from the national government (from 15% to 45%). When their interest appeared to converge with those of a similar initiative by the opposition the ruling coalition's leaders reigned in and ended the cooperation. Legal attempts to eliminate last minute party hopping before an election have been ineffective and inconsequential. Party hopping is more or less accepted by the public, as party nominations have always been weakly regulated and heavily manipulated by the party leaderships.

Primarily, social interests are organized along ethno-regional lines. Even organizations representing the economic interests of their members are prone to internal splits along ethnic lines. Interest organizations that could potentially use their sheer size for significant political leverage, such as the Central Organization of Trade Unions (COTU) and the Kenya National Federation of Agricultural Producers (KENFAP, successor to the Kenya Farmers' Union), remain hampered by corruption and weak leadership. While populations, such as farmers, are politically important, their impact varies. Some, such as the Kenya Human Rights Commission (an NGO),

Party system



Interest groups

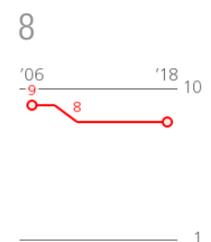


the Kenya National Commission on Human Rights (a government body), the Law Society of Kenya and the Kenya Private Sector Alliance (KEPSA), have genuinely and constructively engaged with the government of which several had significant impact on the constitutional drafting process. They remain unable to address social issues for their members, let alone issues of national importance. Nonetheless, in recent years the Kenya Medical Practitioners, Pharmacists and Dentist Union, the Kenya National Union of Teachers and University Staff Unions went on strike for higher wages and better working conditions. There are also numerous other professional and interest groups covering a variety of fields, including human rights, gender equality, business interests, fair trade and environmental protection. These are mostly confined to the urban centers, and so fail to represent the interests of rural populations.

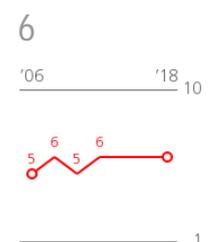
Despite the post-election violence and the persistence of corruption, support for democratic forms of government remains high, although a downward trend is visible. The preference for democracy over any other form of government has declined from 78% in 2008, to 72% in 2012, and yet further to 65% in 2015 according to the Afrobarometer. Nevertheless, overall survey results indicate that support for democratic values remains high. The share of Kenyans that do not consider their country a democracy or as a democracy with major problems has been significantly declining, from 47% in 2012 to 31.5% in 2015. Satisfaction with Kenyan democracy stands relatively stable at 47% (in the last two Afrobarometer). The launch of the 2010 constitution has increased trust in democratic norms.

A large number of social and self-help organizations exist, although without effective division of labor. Networks are also limited by financial and infrastructural constraints. Social trust often remains largely limited to family, clan or ethnic networks, while levels of interethnic mistrust remain high across much of the country. This is particularly true in areas characterized by strong communal histories of injustice and marginalization, and by histories of violence either during election cycles or as a result of other forms of insecurity such as cattle rustling. Consequently, trust within the population is higher in largely ethnically homogenous areas than at the national level or in many cosmopolitan/border areas. Locally initiated self-help projects were popular in the first two and a half decades of independence, fostering trust among the local population and political leaders, before they fell victim to manipulation by political interests. Informal savings associations are still popular throughout Kenya, especially in rural regions which the significant expansion of bank services has not reached. Informal cooperatives and self-help groups are difficult to monitor, but they exist all over the country, especially in rural areas and informal settlements of urban centers. They play an important role in fostering a sense of communal and, in extension, national belonging.

Approval of democracy



Social capital



## II. Economic Transformation

### 6 | Level of Socioeconomic Development

Kenya has the largest and most diversified economy within the East African Community (EAC). In September 2014, the country's economy was rebased, increasing its GDP by 25.3% and making it a middle-income country and Africa's ninth largest economy (up from 12th). Its GDP per capita, up from \$1,090 in 2012, is now estimated at \$1,340 and remains the highest in the EAC region. However, according to the Gini Index Kenya has a value of 0.45 and is the most unequal society in the EAC, despite having considerably improved since 1992 (0.63). According to latest available statistical data from 2009, 45.2% of the population live below the poverty line, only a slight improvement from 1997 (51%), consequently, the U.N. Millennium Development Goal of halving poverty by 2015 has thus far not been achieved. Some 25 of the 47 committed counties have poverty levels above the national average. Women and youth are still disadvantaged. The 2016 gender gap in Kenya remains considerably higher than in Rwanda, Tanzania or Burundi and slightly below Uganda. Kenyans generally perceive inequality in terms of unequal regional distribution rather than class.

Poverty is more pronounced in rural areas, in 2005/6 (the last official breakdown data) with a rate of 50.5%, as compared to an urban rate of 33.7%. According to a calculation by the Kenyan Chapter of the Society for International Development (SID) 25 counties (out of 47) and 148 constituencies (out of 290) were below the national average poverty line of 45.2% in 2013. Poverty is particularly prevalent in counties of the former northeastern, Western, Coastal and Nyanza Provinces. The Kikuyu dominated Central Province is comparatively better off as is the multiethnic Nairobi (21.8%).

Youth (aged between 15 and 35 years) constitute 35.4% of the population (according to the latest census from 2009) and are most affected by inequalities in access to education and the failure of the economy to provide sufficient jobs. 38% of youth neither study nor work.

Out of Kenya's estimated labor force of 19.67 million in 2015, only 2.601 million, or 11.5%, are waged employees in the formal sector (718.400 in the public sector and 1,882 million in the private sector). Women only account for 30% of employees in the modern private sector. About 12.6 million are working in the large informal sector according to the National Economic Survey 2016, with a greater number of women confined to non-paying occupations. The economy has created about an average of 800,000 jobs annually between 2006 and 2013 according to the World Bank. This

Question  
Score

Socioeconomic  
barriers

3

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4.5% annual employment growth exceeded the annual growth of the working-age population which averages 2.8% for the same period. However, the core problem of Kenya's labor market is twofold. First, the formal sector underperforms in job creation, as indicated by the ever gradually increasing total employment share of the informal sector which rose from 81.06% in 2009 to 82.85% in 2015. Secondly, the productivity of jobs has remained stagnant between 2006 and 2013 and therefore too low to have a significant impact on poverty reduction.

Economic indicators		2013	2014	2015	2016
GDP	\$ M	55097.3	61445.3	63767.5	<b>70529.0</b>
GDP growth	%	5.9	5.4	5.7	<b>5.8</b>
Inflation (CPI)	%	5.7	6.9	6.6	<b>6.3</b>
Unemployment	%	11.9	11.8	11.3	<b>11.0</b>
Foreign direct investment	% of GDP	0.7	1.5	1.0	<b>0.6</b>
Export growth	%	-2.2	5.8	6.2	<b>0.6</b>
Import growth	%	-0.4	10.4	1.2	<b>-4.7</b>
Current account balance	\$ M	-4871.7	-6339.4	-	-
Public debt	% of GDP	44.0	48.6	51.6	<b>52.6</b>
External debt	\$ M	13836.0	16969.4	19764.0	<b>22325.0</b>
Total debt service	\$ M	647.3	1249.5	832.9	<b>1117.2</b>
Net lending/borrowing	% of GDP	-5.3	-5.8	-9.0	-
Tax revenue	% of GDP	15.5	16.9	16.3	-
Government consumption	% of GDP	14.1	13.9	14.3	<b>13.6</b>
Public education spending	% of GDP	5.4	5.3	5.3	-
Public health spending	% of GDP	3.3	3.5	-	-
R&D expenditure	% of GDP	-	-	-	-
Military expenditure	% of GDP	1.6	1.3	1.3	<b>1.3</b>

Sources (as of October 2017): The World Bank, World Development Indicators | International Monetary Fund (IMF), World Economic Outlook | Stockholm International Peace Research Institute (SIPRI), Military Expenditure Database.

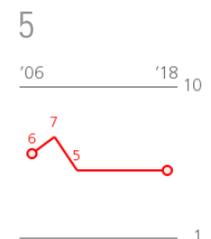
## 7 | Organization of the Market and Competition

Since independence, Kenya has in theory been led by free-market principles, while in fact, it has been subject to major state interventions under its first two presidents, who used the economy as a political instrument to safeguard power. Once driven by the government, the economy is now essentially propelled by the private sector as a result of the extensive privatization program since 1992. Nevertheless, state-owned enterprises still exist beyond the traditional infrastructure sectors in areas usually more the prerogative of the private sector (banking, wholesale & retail trading and agro-processing). Market competition is particularly constrained in the agricultural sector (of maize, tea and sugar) and the energy sector. Despite progress, market competition still suffers from mainly two factors. First, interference by politicians and political dynasties (e.g., Kenyatta's, Moi's and Kibaki's) attempting to advance either their own business interests or to punish companies which cooperated with individual opponents or the opposition (e.g., the telecommunication company Airtel which scarcely received a government contract after they worked with the opposition, CORD, during the 2013 elections). And secondly, a restrictive regulatory framework that creates barriers to market entry from new actors. The Kibaki government largely eliminated the export and import licensing system and streamlined and reduced tariffs, leading to the waiving of export duties and restrictions on current accounts. The Price Control Act of 2011 gives the government the power to review prices for essential commodities and set temporary maximum prices; however, the act has not been applied since it came into force, though the government tends to put ceilings on fuel prices at times of high world market prices.

Despite considerable corruption, day-to-day political interference in the economy has subsided, allowing ministers and staff to conduct their work in a more professional, technocratic way.

A large and still growing part of the working population is employed in the informal sector (known as the *jua kali*, or “under the sun” sector). Most enterprises start off in the informal sector, as they cannot afford the comparatively expensive process of registering with the government. From a policy perspective, the government treats the informal sector as part of the micro- and small enterprises category, some of which are registered and form a part of the formal economy. However, structural constraints remain high (including limited access to markets, inadequate skills and technology, poor product quality, inadequate business skills, limited access to information, and the lack of an institutional framework). The Micro and Small Enterprises Development Act (of January 2013) though has considerably eased access to credit and regulates the sector for the first time, promoting it as part of the Vision 2030 strategy. The Kenyatta government is in principle committed to this

Market-based  
competition



approach and tries to facilitate linkages between the jua kali sector and the new counties.

Monopolies and cartels in Kenya and throughout the EAC currently cause unnecessarily high prices for consumers, affecting staples such as maize, sugar, dairy products, energy and the telecommunications sector.

The long overdue reform of the institutional and legal framework for regulating competition was initiated under the 2010 constitution with the Competition Act, which came into force mid-2011. It has been streamlined with Vision 2030. The act creates two new agencies; the Competition Authority of Kenya (CAK) is an autonomous body which assumes the functions of the Monopolies & Price Commission, previously part of the Ministry of Finance, and the second is the Competition Tribunal which replaces the Restrictive Trade Practices Tribunal. The CAK is vested with wide reaching powers, intended to bring together various industrial regulatory bodies and organizations responsible for consumer protection. While regulations previously allowed mergers if they fell within certain criteria (e.g., similarity, market share, size of the companies), now all applications for merger or acquisitions are vetted. By mid-2016, the CAK has completed four cases concerning restrictive trade practices, reviewed 178 mergers and also provided an advisory opinion on several cases. It has issued various guidelines on restrictive trade practices and mergers and initiated an anti-cartel compliance program. Kenya is the third country in sub-Saharan Africa to have recently launched a market investigation into the retail sector as in other African countries. Controversially, experts have recommended the disillusion of the dominant telecommunications company, Safaricom (40% owned by British Vodafone), to allow for more competition within the sector. According to a recent World Bank study, the biggest loophole in the legal framework is the fine's cap at KSH 10 million (approximately €100,000) whereas international best practice sets a fine at 10% of the turnover value of the firm involved. Members of the political elite with significant business shares play a crucial role in maintaining monopolies and cartels and are likely to resist anti-cartel moves by the CAK.

Kenya was one of the founding members of the WTO in 1994 and has signed all WTO agreements, including the General Agreement on Tariffs and Trade (GATT), the Agreement on Agriculture (AOA), the General Agreement on Trade in Services (GATS), the Agreement on Textiles and Clothing (ATC) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS). Kenya is also a key member of the EAC, the Intergovernmental Authority on Development (IGAD), and the Indian Ocean Rim Association for Regional Cooperation (IOR-ARC), and is granted nonreciprocal trade preferences under the Cotonou Agreement with the European Union. However, following the still unresolved stalemate over the signing of the Economic Partnership Agreement (EPA) by the EAC, in 2014, Kenya was granted preferential access to the EU market under the Generalized System of Preferences

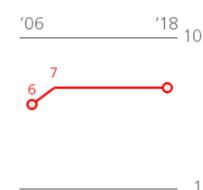
#### Anti-monopoly policy

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#### Liberalization of foreign trade

7



which allows for duty-free export on a number of agricultural products and offers lower tariffs on other goods. This access has been extended several times since and plans are being developed for a bilateral agreement with the EU allowing duty-free exports. Kenya is one of 39 countries covered by the U.S.-African Growth and Opportunity Act (AGOA), which provides for quota and duty-free market access to the United States on a variety of goods until 2025.

Numerous reforms over the past 15 years include: the abolition of export and import licenses (with the exception of some items listed under the Imports, Export & Essential Supplies Act), liberalization of the exchange rate, rationalization and reduction of import tariffs, abolition of export duties and account restrictions, and more recently strengthening the legal framework through more specific legislation. Recent legislation designed to boost investor confidence has implemented a modernization of petroleum, mining & energy bills, and strengthened the Kenya Investment Authority with the Insolvency Act, and Business Registration Service Act. As a result, foreign direct investment (FDI) has increased strongly since 2012, though from a low level, mainly due to robust investment from Chinese companies in the infrastructure and energy sectors.

With the establishment of the East African Customs Union in January 2005, the EAC common external tariff (CET) has become Kenya's main trade policy instrument. The judiciary's complacency and corruption in the port of Mombasa are among the reasons cited for Kenya's failure to enforce WTO anti-dumping, countervailing or safeguard measures. Non-tariff measures include costs associated with the recently introduced Import Standardization Mark and fees for import declarations. According to the WTO, Kenya follows international norms for standard-setting.

Once fragile and subject to exploitation for political gains, the banking sector has become far more robust since Kibaki took power in 2002, with significantly less political intervention and greater regulation. Over the past 10 years, Kenya has become one of the world's most innovative markets for mobile banking technology. It has become well differentiated and, in principle, Kenya is oriented to international standards.

There are currently 42 commercial banks in Kenya, 29 of which are domestically owned with the Kenyan government holding a majority in three of them. The remaining 13 have foreign ownership above 50% of its shares. They account for roughly 40% of the commercial banking sector's core capital with the two longest-standing institutions, Barclays and Standard Chartered, accounting for 30% of the sector between them. 11 banks are listed at the Nairobi Stock Exchange. The large informal sector of the economy (see "market-based competition") is also reflected in the large number of informal banks. The majority of Kenyans are members of a private savings and credit association (SACCO) organized by individuals or groups,

Banking system

8



1

and also transfer money by telephone. A telephony infrastructure allowing for connections to a savings and credit system was introduced in 2012.

The financial sector is one of the key drivers of economic growth. Banks are supervised by the central bank of Kenya (CBK). In 2010, the CBK claimed that the majority of Kenyan banks were aware of the Basel II guidelines, allocating medium importance to them.

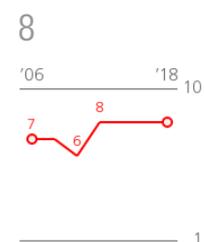
In early 2007, the Kibaki administration amended the Banking Act, which now requires banks to share information on nonperforming loans. According to the World Bank, the share of nonperforming loans rose sharply from a single digit percentage to 11.7% in 2016. In February 2009, new regulations provided guidelines on this information sharing. Long after independence from Britain in 1963, Kenyan banking remained dominated by local subsidiaries of international banks such as Barclays and Standard Chartered. Even though foreign owned banks dominate the sector, homegrown institutions targeting the lower end of the market have begun challenging them. In the last three years, pan-African banks such as Nigeria's United Bank for Africa have also entered the market, along with the Islamic banks Gulf African Bank and First Community Bank. The banking sector was not adversely affected by the recent global financial crisis.

## 8 | Currency and Price Stability

Post-election violence in 2008 drove inflation to 26.2%, the highest rate since the aftermath of the 1992 elections and the associated Goldenberg scandal (46%). The rate has been fluctuating (9.2% in 2009, 4.1% in 2010, 14% in 2011 and 9.4% in 2012), with destabilized in the single-digit range during the Kenyatta reign with an annual average of 6.35% between 2013 and 2016. Those items, however, that matter most for the citizens remained above average (food at 8.4% and transport at 10.4%) and were the main inflation drivers. However, the drop of world market oil prices in 2014 – together with a reduction in electricity tariffs after the country became increasingly reliant on cheaper geothermal power – eased inflationary pressure and had a positive impact on many economic sectors although it has negative implications for high public expectations surrounding the exploitation of newly discovered oil reserves in northern Kenya. However, the drought in 2016/17 has increased inflationary pressure, as main food items became scarce and therefore more expensive, pushing inflation over the 10% mark in January 2017.

The Kenyan shilling is not fixed. Following the post-electoral violence, the shilling lost 13% value relative to the U.S. dollar in 2008, but later bounced back (the dollar to shilling exchange rate was 1:69 in 2008 and 1:86.1 in 2013), reaching an all-time high in September 2015 (1:106.5), and remaining above the 1:100 ratio ever since. Diaspora remittances and central bank interventions helped to keep the Kenya shilling relatively stable against the U.S. dollar. This has led to depreciation below

Anti-inflation /  
forex policy

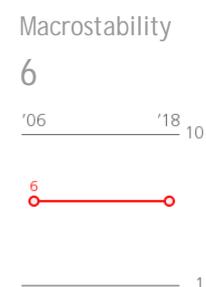


those of other African countries, thereby, making Kenyan exports to those markets considerably more expensive.

The central bank is independent, yet subject to political interference. The Moi administration was known to print extra money in election years to finance its campaigns, which fueled inflation. But, the Kibaki administration has not followed this practice, while the Kenyatta government has accepted increasing wage bills in the election year 2017, which has negatively impacted inflation.

Like its predecessor, the Kenyatta government is committed to macroeconomic stability in principle, navigating the right balance between stabilizing the economy and stimulating growth. After budgets to boost economic growth, the government and central bank enacted anti-inflationary policies to curb the inflation rate, but have been back on the growth promoting path. The central bank restricted monetary policies and eventually succeeded in stemming inflationary pressure, leading to shrinking demand for credit. Higher interest rates attracted an inflow of short-term foreign exchange, with the desired effect of stabilizing the Kenyan shilling. This helped the Kenyan economy regain the trust and confidence of market forces. By the end of 2012, the central bank had eased monetary policy once more to stimulate local demand for credit and investment.

During the review period, government consumption remained stable at 17% or 18% of GDP. The government's development expenditure has more than doubled since 2004/2005 from 3.4% of GDP to 9.1% in 2011/2012 while recurrent expenditure remained stable at around 19% of GDP for that period. Kenya regularly has cash deficits (2008: 4.1% of GDP, 2007: 3.0%). Under both, the Kibaki and the Kenyatta administration, budget deficits were deliberately accepted to stimulate growth, averaging 6.2% between 2009 and 2016 with an increase over the past three years, reaching an annual average of 8.3% (2014 – 2016), above the official government target of 4.5%. External debt has increased from \$6.4 billion in 2005 to over \$9.6 billion in 2012, to \$19.1 billion in 2016, the equivalent of 24.1% of GDP, while domestic debt totals 21.2% of GDP; together, summing up to about 45% of GDP, well above the government's 40% target. The debt/GDP ratio has increased from an annual average of 36.6% during Kibaki's second tenure (2008 – 2013) to an annual average of 45.6% under the Kenyatta administration, indicating both the increase in development and infrastructure spending and in corruption turnovers. Forecasts saw a rise of 57% of GDP by 2018. In late 2016, the World Bank considered the debt level sustainable but concluded that the fiscal space was shrinking fast. The current account deficit improved from 10.5% of GDP in 2011 to 6% in December 2016, which is the lowest deficit of the past five years. The World Bank mainly attributes the low deficit to an increase in diaspora remittances and the positive performance of tea and horticultural exports.



## 9 | Private Property

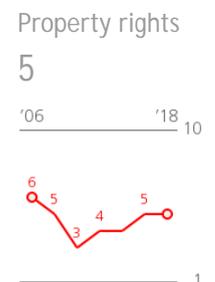
The 2010 constitution aims to lay a new foundation for property rights. Since independence, right to land has been the country's most contentious topic. Foreigners are now only permitted to lease land for a period up to 99 years. The constitution also prescribes that legislation shall specify maximum and minimum acreages of ownership and introduces options for repossessing illegally acquired land. These provisions target the excessive land ownership by the ruling elite and their cronies. These provisions may be the real reason why large segments of the political elite either openly opposed the new constitution (Ruto, former President Moi) or tried to secretly undermine it (Kenyatta, Musyoka), as it represents a threat to their wealth. However, the Land Act of 2012 leaves broad ambiguity, as it does not determine those limits. The establishment of the National Lands Commission (NLC) was severely delayed, only becoming fully operational in June 2013. Since then, the Lands Ministry and the commission have been stuck in protracted battles over competencies and responsibilities, eventually jeopardizing the rule of law and ownership security. A High Court in December 2016 declared all title deeds (more than 3 million) issued since 2013, which is illegal due to the Ministry's failure to follow the mandated consultation process with the NLC. The court, however, gave the Ministry a twelve-month period to comply with the legal requirements to avoid a fundamental landownership crisis.

Both old and new constitution allow for land ownership in any part of the country. Since independence, however, property security has been highest in those regions considered the homeland of the buyer's ethnic community and much lower in the homelands of other ethnic groups. Owners from different ethnic groups have often been viewed as "outsiders" by those who considered themselves "indigenous" with an assumed moral right to control over that land, implying an ultimate right to dispel others.

With the use of fake land title deeds and the regular disappearance of registered title deeds from the Registrar, possession of a land title does not guarantee property ownership. Houses on illegally acquired property, such as land reserved for roads, are often demolished without prior notice.

Corruption and impunity from prosecution mean that land grabbing by politicians and others is very common. The NLC at least canceled some dubious title deeds in Lamu and the Kalenjin parts of the Rift Valley (Eldoret and Cherengani) in late 2014.

According to the International Property Rights Index, in 2016 it took nine procedures (eight in 2010) and an average of 73 days (previously 64 days) to register private property.



A Kenyan exporter needs 15 signatures on eight forms and has to wait 45 days before being able to export goods. The government openly encourages investment through agencies such as the Kenya Investment Authority.

Under the first two presidents, the economy was to a large extent state-driven. The privatization process started in the early 1990s and has since experienced three waves: 1992 – 2002, 2003 – 2007, and the third one which started at the end of 2012. It has been facilitated by continuous reorientation of the legal framework to promote investment opportunities and improving the business climate, including the Privatization Law, which came into force in January 2008, and the legislation provided for by the new constitution. The establishment of the Privatization Commission under the 2005 Privatization Act, however, had been delayed by several years up to the end of 2012. As privatization was meant to fill gaps in the national budget, in the meantime the government had to resort to borrowing on the domestic market. By April 2017 the commission has listed 15 state-owned companies earmarked for privatization, including three banks and three energy related companies. The debate about the privatization of the five sugar factories in the opposition strongholds Nyanza and Western has been strongly politicized and is on hold after a court injunction.

Given that most leading Kenyan politicians are also successful businessmen, privatization is ultimately seen as a means of promoting individual business interests, rather than as a political goal per se. But although the privatization process has been manipulated, private businesses remain the backbone of the economy and economic growth.

Fair and equal competition between private and public enterprises is the rule, but there are exceptions where state corporations are protected by either guaranteed market share, lower marketing hurdles or preferential access to government credit with lower interest rates.

## 10 | Welfare Regime

The current system does not provide for the working poor. Public spending on health in 2014 (3.2% of GDP) is lower than it was in 2004 (3.9% of GDP). In contrast, life expectancy went up nine years, from only 53.5 in 2004 to 62.5 years, in 2014.

By 2008, the HIV prevalence rate had dropped from a high 14% to a relatively low 5%. Infection rates increased again in 2013 to 6% but diminished to 5.3% in 2014, according to UNAIDS Global Report, with the urban educated affected at a higher rate of 7.2% compared to the national average, with only 4.6% of the rural poor affected. There is also a strong regional variation with only nine counties (out of 47) accounting for 65% of new infections in 2015, with the counties of former Nyanza hit worst. About 70% of those affected now receive treatment, a huge improvement

Private enterprise

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Social safety nets

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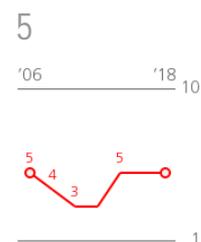
compared to 10 years ago. The general decline in prevalence is due to extensive donor and government efforts to fight the disease and raise awareness.

Recurrent droughts continue to haunt Kenya. The most recent ones in 2009/2010 and 2011 meant that 4 million Kenyans were reliant on food aid.

Kenya suffers from gross social differences that have a negative effect on women, youth and the disabled. These three groups are supported by a variety of NGOs and development agencies, but their situation has not markedly improved.

Non-discrimination and equality are two of the key threads that run through the new constitution. Discrimination against women in relation to inheritance and unbiased access to landownership has been corrected. The new constitution also states that no gender shall occupy more than two-thirds of elective positions. However, the legislature failed to enact this constitutional requirement in time for the 2013 elections. The Supreme Court in December 2012 declared that the gender rule shall only be implemented gradually, giving the legislature time to prepare necessary provisions. This has not occurred, however, with the deadline for implementation (August 2015) now past. With 67 members of parliament (47 elected county women, 16 elected constituency members of parliament plus four nominated members of parliament) women represent about 19% of the National Assembly (349 seats), far short of the minimum one-third required by the constitution. No women were elected governors or to the Senate, but 18 were nominated to the Senate on a proportional list basis. As the constitution had been less ambiguous about the County Assemblies, women here represent 736 members of County Assembly (MCAs).

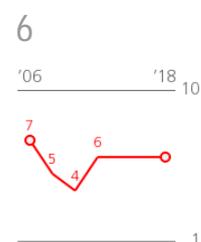
Equal opportunity



### 11 | Economic Performance

With an average annual GDP growth rate of 5.6% between 2013 and 2016, whereas sub-Saharan Africa registered a growth rate of only 1.5% in 2016. The Kenyatta government could sustain and strengthen the economic growth path of the Kibaki era (2003 – 2013) where annual growth stood at an average of 4.9%. This has been a remarkable recovery from the miserable final decade of the Moi regime (1992 – 2002) with an annual average growth rate of just 1.8%. It is, however, still substantially too low to achieve upper middle-income status as outlined in Kenya’s economy blue print Vision 2030. Though, Kenya has continued its economic expansion, it still trails behind some EAC countries (Tanzania and Rwanda).

Output strength



The economy has reduced its dependence on the performance of the agricultural sector, though world market price fluctuations for its main export commodities (tea, coffee and horticultural products), as well as regular negative weather impacts (e.g., the prolonged drought in 2016/17), plus mismanagement of marketing boards (for sugar, maize, tea and coffee) and a general low productivity in the sector prevent the realization of the higher GDP growth rates necessary to achieve the Vision 2030

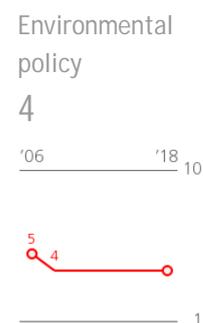
objectives. The drivers of economic growth have been the banking, the ICT and the agricultural sectors. The World Bank confirms the high growth potential of the Kenyan economy despite depressed credit growth rates, recent upsurges of global fuel prices and local food prices, as a consequence mainly of the drought, leading to higher inflation rates. The World Bank's optimism is based on the impact of a strengthening global economy, improvements in tax revenue collection (from 15.7% of GDP in 2003, to over 18.9% of GDP in 2009 and 2016 to an envisaged 21.5% by 2020), strong improvements in FDI (after having decreased from an all-time high in 2007 when it stood at 2.7% of GDP to an all-time low in 2008 with 0.2% of GDP it recovered to 1.55% in 2014 and 2.3% in 2015), continued strong remittances from the Kenyan diaspora and the anticipated benefits from the improved physical infrastructure with major projects heading for completion (e.g., Standard Gauge Railway Mombasa to Nairobi). It should, however, be noted that the Kenya Revenue Authority has missed its collection targets for several years continuously.

## 12 | Sustainability

Kenya's most pressing environmental issues include deforestation, poaching (due to increased demand for ivory from China and other Asian countries in the past six years), soil erosion, water mismanagement and degraded water quality. The main forces leading to resource degradation are population growth, low agricultural productivity, inadequately designed and managed settlement programs, and the lack of a comprehensive land policy prior to the new constitution. The National Environment Management Authority (NEMA), founded in 2002, has a mandate to coordinate all environmental matters. However, NEMA is hampered by a lack of capacities, persistent conflict between its mandate and previously existing laws, insufficient funds for environmental plans, and corruption. Unlike the previous version, the new constitution spells out principles, obligations and guidelines for environmental management, reflecting a strong commitment to environmental preservation and rehabilitation. The enactment of the corresponding legislation is trailing somewhat behind schedule. Policies addressing water management, air pollution and wastewater management are urgently required, but there is a lack of political will to prioritize them.

The government does not pursue a coherent environmental policy. Environmental protection is only a reality in areas significant to tourism. On the 2016 Environmental Performance Index, Kenya ranks 123 out of 180 countries with an Environmental

Performance Index (EPI) of 62.49.



The country's literacy rate is 87.4%, which makes it a top performer on the African continent and the frontrunner in the EAC. The level of education of the workforce is high and one of Kenya's assets in pursuing the goal of becoming a medium middle-income country.

Kibaki fulfilled his campaign promises of removing fees for primary education (2002) and secondary education (2007). Free primary education increased enrollment from 6 million to 8 million within two years. The government underestimated the additional cost of this move, leading to a drop in the quality of primary education exacerbated by a skills shortage and the misallocation of education funds. Ancillary expenses, such as school uniforms, remain a severe obstacle. Private schools outclass public schools' year after year in the Kenya Certificate of Primary Education examinations. After free secondary education was introduced, enrollment increased by 30%. Under the proposed program, the government promised to cover tuition fees while parents would cover boarding costs. However, the government only provided a quarter of the funding needed to make free secondary education a reality. Schools have drastically increased boarding fees to cover the shortfall. Overall, the quality of secondary education has been compromised. The outgoing Kibaki government left a shortage of 80,000 teachers and had plans to fast-track the recruitment of 40,000 and later up to another 100,000, which was, however, not prioritized by the Kenyatta government.

The number of universities is increasing rapidly, with many colleges upgraded to university status. There are currently 39 universities in Kenya, of which 16 are public and 23 private.

Education policy /  
R&D

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## Governance

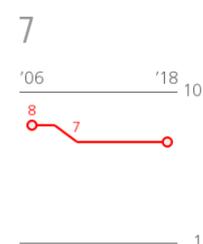
### I. Level of Difficulty

Despite high economic and administrative potential associated with its traditional political stability and comparatively educated workforce, Kenya remains one of the poorest countries in the world. In 2015 it ranked 145th worldwide on the HDI (out of 187 countries), and though its HDI improved to 0.548, this has not yet moved Kenya into the category of medium human development (greater than 0.55). It still has the highest HDI in the EAC but has made the least progress. Despite a decrease in population growth from 3.8% per year in the early 1980s to 2.6% in recent years, the country still has one of the fastest growing populations in the world. If the current fertility of 4.6 children per woman prevails, Kenya's population will be about 82 million by 2040 (up from 9.1 million in 1964); if fertility falls to the envisaged 2.1 children per woman, it will be around 65 million.

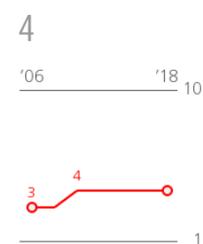
Despite the relatively good education of the labor force, a core problem is the low productivity of jobs, even in the formal sector. As the World Bank pointed out, the GDP per employed worker is lower than in many other African countries. This lack of productivity is a severe bottleneck for poverty alleviation efforts.

Civil society has played a crucial role in building a democratic public sphere, especially during the period of transition to a multiparty democracy in 1991, prior to the 1997 elections, during the constitutional conferences of 2003 and 2004, and during the implementation of the new constitution post-2010. Civil society has been greatly engaged in civic education, particularly in the 1990s and around the constitutional conferences. Kenya has a long history of grassroots organizations around the country, engaged in community work and opening fora for people to engage in local public life. For a long time, the grassroots organizations and the then overwhelmingly Nairobi-based civil society organizations (CSOs), however, have never really connected. The latter managed to reach the grassroots through cooperation with the Christian churches which, particularly in the last years of the one-party state (1988 – 1991), provided shelter for those criticizing the government. It has only been in the last decade that a variety of CSOs have slowly proliferated in provincial and county towns. While civil society has constantly sought issue oriented political debates and decisions, it did not prove immune to the political importance of ethnicity, as rifts and splits along ethnic lines affected the clout and coherence of

Structural constraints



Civil society traditions



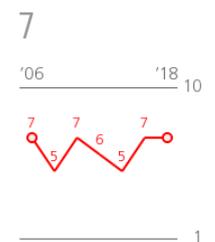
civil society, particularly around the highly polarized 2007 elections. The impact of this is still being felt. Moreover, in the run-up and aftermath of the 2013 and, to a lesser degree, the 2017 elections, there was a concerted campaign spearheaded by Jubilee supporters to demonize prominent civil society actors as part of an “evil society” and to delegitimize them as stooges of foreign donors. This campaign resonated with a significant number of Kenyans, highlighting the dangers of extraversion in contexts where anti-neocolonial sentiments remain understandably strong. The mainstream and evangelist Christian churches have lost some of their moral high ground, having become widely regarded as partisan in the 2007 and 2013 elections and during the 2010 constitutional referendum – when large segments of the churches supported the ‘no’ campaign for superficial reasons. Civil society traditions are relatively strong, but in times of heightened political polarization, such as during elections, ethnic considerations can supersede or compromise moral and political convictions.

The legalization of political parties immediately brought long-standing but previously suppressed ethnopolitical cleavages to the surface. Conflicts initially took the appearance of ethnic conflicts, but their nature was less intrinsically ethnic than distributional (land, resources). However, the prolongation of these conflicts over decades and the political elite’s deliberate failure to take action has changed their character. While it plays a less significant role in normal day-to-day life, Kenyans have become more ethnically conscious and cautious in the multiparty era, as continuous mobilization along ethnic lines during election periods has left its impact on the self-conception of Kenyans. So, as well as the distribution issue, these conflicts now have a clear ethnic component. This applies particularly to Luo-Kikuyu and Kikuyu-Kalenjin relations. The manifestation of these conflicts is still strongly dependent on the policy directions taken by the political elite. This has been powerfully demonstrated by Kikuyu-Kalenjin relations, seen in the discontent over land distribution in the Rift Valley. While containing this issue through an elite pact between political leaders sometimes had political advantages, at other times there has been political capital to be gained from accentuating the land question when the political leaders of both ethnic groups stood on opposing sides. The alliance between Kalenjin leader Ruto and Uhuru Kenyatta as the Kikuyu leader since the 2013 presidential campaign comes as a result of their prosecution by the ICC. It is a pure elite pact for personal gain with no prior reconciliation between their hostile communities in the Rift Valley.

It has helped, though, to prevent major outbreaks of violence and clashes in the Rift Valley, though it should be noted that the absence of violence does not imply the prevalence of peace, as indicated by hateful messages as well as mutual accusations based on ethnic stereotypes on social media during the elections.

Un- and underemployment, lack of security and the rule of law, underpin the proliferation of criminal gangs and semi-militias in slum areas in major towns, but

Conflict intensity



also in rural parts of the former central province and the Rift Valley. They act semi-autonomously and are – particularly around election periods – hired by politicians to trump up support and to intimidate opponents. So far, they do not unfold a political relevance by themselves, but the prevailing disconnect between relatively high economic growth rate and poverty alleviation make those groups a ticking time bomb.

In addition, many areas are troubled by resource and border conflicts that regularly become violent clashes. This includes Tana River and large swathes of northern Kenya around Laikipia and Samburu, which are troubled, for example, by retaliatory cattle raids between neighboring pastoralist communities such as the Pokot and Turkana.

Finally, religion is becoming an increasingly important fault line, as a long-standing sense of historical marginalization among the country's Muslim community translates into radicalization in the context of burgeoning religious divisions at the regional and global level.

## II. Governance Performance

### 14 | Steering Capability

The Kibaki and Kenyatta governments demonstrated an ability to set strategic economic targets. The Vision 2030, launched by Kibaki in 2008, aims at transforming Kenya into a middle-income country by 2030, a goal the country has already come closer to when, after the rebasing of the economy, it entered the ranks of low middle-income countries. Resting on four pillars (economic, social, political and enablers, and macro), the government pursues a wide range of projects with varying links. Its aim is to achieve sustainable economic growth of 10% for more than 20 years to eradicate poverty by 2030. A key precondition is the continued rehabilitation and expansion of the country's physical infrastructure, which has seen huge investments in road, railway (Mombasa-Nairobi) and port (Lamu) systems and in rural electrification in the past nine years. However, little or no progress has been made where reforms have touched on vested interests of the old established elite around the former three presidents, particularly with regard to land reform and the fight against corruption.

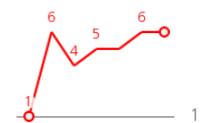
Within the executive, three groups can be distinguished, none of which is an unrestrained driver of the reform agenda. The first group comprises those around former President Kibaki, which is conservative and business oriented in nature, generally more reserved toward reforms, but not unsupportive as long as their own vested interests remain untouched. Since Kibaki's exit, this group has lost clout. The

Question  
Score

Prioritization

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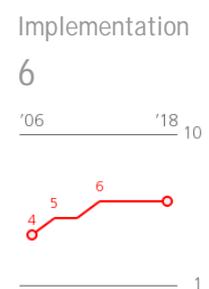
second group consists of defenders of the (old) status quo through new means. This is made up of President Kenyatta, his Deputy Ruto, former President Moi and a large group of the old Kenyan African National Union (KANU) elite that benefited from illegal land deals under Kenyatta's and Moi's reigns. They fear losing part or all of those lands once a new land policy comes into full effect. The business interests of these first two groups often converge. The third group clusters around the loser in the 2013 presidential election, Odinga, who is seen by many in diplomatic circles as a more genuine reformer. In general, he has actively supported the reform agenda while opposing specific reforms that would undermine his interests (as prime minister colluding with Kibaki, for example, in delaying the appointment of the head of the Anti-Corruption Commission and diluting the Leadership and Integrity Act).

The more genuine reform drivers are civil society organizations, a number of backbench members of parliament, and, to a yet to be established degree, the reforming judiciary. However, lack of coordination between these groups limits their impact.

Both Kibaki administrations and the current Kenyatta government have shown determination in putting the economy back on course and preparing it for a comprehensive transformation process toward industrialization and expansion of the service sector. They have also shown a degree of commitment to fighting poverty. Despite early promises of wide-ranging reforms, however, this goal has been subordinated to the immediate interests of key political players. Results have been mixed. The economy has shown remarkable gains despite continued corruption, and the 2010 constitution was passed despite strong opposition, initially from within the government itself. While economic policies and legislation broadly follow the rationale of a market economy, as long as they allow securing corruption benefits. The Kibaki and even the substantially stronger Kenyatta government have been partly successful trying to undermine the spirit and letter of the constitution with regard to human and political rights as well as civil liberties and press freedom.

The reform of the judiciary is a major milestone, though the sole government input was the appointment of the reform-minded Chief Justice Mutunga, who then shaped the reform. The appointment of his successor, David Maraga, is professionally sound, though it appears doubtful that he has the same reform vigor as Mutunga. The police reform has been deliberately delayed, leaving the unreformed Kenya police force to control the elections. It is still not concluded and is partly resisted by forces from within the National Police Service. Problematic appointment processes have marred both the Kenya National Human Rights Commission and the EACC. In 2016, the EACC started to live up to its mandates, but its longevity has yet to be proven.

The fact that all ministries have ministers from one-party and assistant ministers from the other coalition partner has made implementation difficult. Significant enmities



and open conflict between partners have to a certain extent rendered ministries in- or less effective.

The 2010 constitution is the result of a long and hard learning process. Devolution is a direct result of the failure of the central state to guarantee a broadly equal regional distribution of resources, services and government jobs. The constitution addresses most of the issues listed under Agenda 4 of the National Accord (long-term solutions to structural triggers of the post-election crisis) after the 2007 elections. It shows a clear, positive learning curve, with its promise to curtail presidential powers, strengthen parliament and the judiciary, create a comprehensive and progressive bill of rights, and ensure a more equitable gender balance throughout society. However, the executive and legislature have been less eager to bring the document to life. Moreover, there appears to be insufficient learning in national security provisions with many alleging that current strong-armed tactics simply contribute to the further radicalization of some of the country's Muslim population.

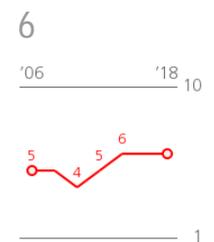
Parliament has in its various committee stages continuously welcomed and to a certain degree used the expertise of civil society and specialized NGOs and companies.

## 15 | Resource Efficiency

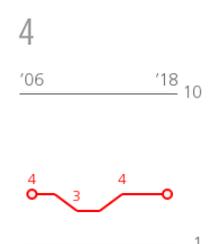
The government is in the process of improving the efficient use of available human, financial and organizational resources. Though there is still a large number of politically motivated appointments in all ministries, and recruitment for top positions is still driven by personal and ethnic loyalties, the vetting procedures provided for under the 2010 constitution are coming into effect, providing a better framework for more efficient use of resources. While there was little transparency in previous government budgets, the Public Finance Management Act of 2012 fundamentally alters the budgeting process, assigning a greater role to national and county assemblies and the public. The latter's participation in budget planning at the county level is, however, still significantly hampered by a general lack of knowledge as well as very limited public budget literacy. In 2013, the Kenyan government introduced the public financial management reforms (PFMR) strategy for the period from 2013 to 2018. According to donors supporting this scheme, the results are mixed: despite some progress in resource allocation and budget execution, weak accounting and record keeping in government ministries, and a lack of transparency can be observed.

Devolution has also raised new questions. Concerns have grown since 2014 regarding the size of Kenya's public sector wage bill, which rose to over 55% of government revenue, or about 13% of GDP, whereas international standards consider a ratio bill to revenue ratio of 34% economically sound. The hike was due, in part, to the large number of "ghost workers," who were estimated to be paid at least \$1 million per month, as well as the large number of politicians and government advisers who

### Policy learning



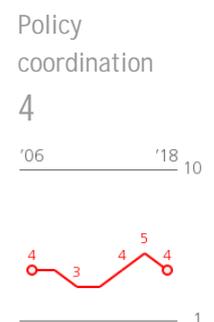
### Efficient use of assets



enjoyed extremely high salaries. It was further exacerbated by devolution, which prompted the hiring of staff across the 47 new counties. This included unnecessary duplication in many areas, as county governments hired staff with similar skills to those seconded by the national government. Indeed, the costs of devolution – and the fact that many county governments imposed new or higher levies at the local level, but seemed to spend most of their budget on salaries, “sitting allowances,” foreign trips, offices and cars – was the main source of public dissatisfaction with this new tier of government. Public perceptions reflected realities. While the government appeared to realize the danger of a spiraling wage bill by putting in place austerity measures in 2016 those were again abandoned ahead of the 2017 elections when high salary increases were granted to civil servants. Together with decision to finance physical infrastructure development primarily with credit, threatens to make Kenya’s debt level unsustainable. Within just three years Kenya’s debt rose from 43% of GDP (2013) to 55% (2016).

The disbursement of new resources to county governments, competition between local leaders, use of power by MCAs to impeach governors and to remove county executives to leverage for contracts, and the weakness of county-level auditing processes and oversight also meant devolution increased the ability of politicians and state officials to allocate jobs, procurement and other resources as patronage. In turn, devolution has become widely associated with the localization of endemic corruption from the national level down to new county governments.

As is typical for a neo-patrimonial system, various coordination styles prevail. The hierarchic-bureaucratic approach officially dominates but is often undercut by informal networks and the personalization of functional relations. The second Kibaki administration, the grand coalition, was frequently split. Many ministries headed by PNU party members often had ODM assistant ministers and vice versa, as a means of establishing mutual checks and controls. The Kenyatta administration uses a similar portfolio distribution. The antagonism in Kibaki’s grand coalition was so profound that planning in an integrated manner for the related sectors was almost impossible. The tension level within the Kenyatta government is lower and integrated planning more feasible. Thus, efficiency, coordination and the prioritization of policies and goals suffer less in the Kenyatta government. The tendency to appoint members of one’s own ethnic community to state-owned companies, civil service and public institutions increased during Kibaki’s second tenure and continues under Kenyatta. The constitution stipulates that no more than one-third of any ethnic group shall be employed at a given public institution. In 2016, three studies were conducted by the National Cohesion & Integration Commission as to whether public service and parastatals adhere to this requirement. The studies revealed that the five largest ethnic communities (Kikuyu, Kalenjin, Luhya, Luo and Kamba) dominate the civil service and parastatals, more or less within their population share, except for the Kikuyu which are over-represented.



A new need for effective coordination arose through the devolution of government structures. The Ministry of Devolution & National Planning has the mandate to coordinate county and national government action while the Council of Governors is both a horizontal policy coordination body and an interest group. The retention of the provincial administration has opened up a new theater of conflict. The provincial administration was remodeled after the pattern of the national administration and is responsible for coordinating activities of national government agencies at the local level and for cooperating with the county governor and his administration. There is particular tension with regard to security, which as a national function falls under the responsibility of the county commissioners.

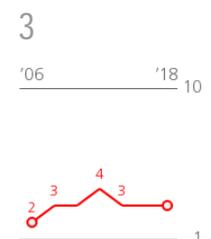
The personalized and ethnically oriented nature of Kenyan politics is an additional obstacle to policy coordination. This is reflected in new struggles between different layers of government as governors, for example, sought to defend their position against the national government, ambitious senators and members of parliament, and truculent MCAs.

Attempts by the Moi, Kibaki and Kenyatta governments to fight corruption have merely been superficial public relation exercises to calm and comfort the public. Some individuals, generally low-level perpetrators, were brought to trial, but even they were exceptions. No high-ranking politician has been sentenced to prison so far over the country's major financial scandals (National Youth Service, Anglo Leasing, and Goldenberg). Cases where ministers under investigation step aside or resign are regarded as signs of progress, though investigations are never concluded or brought to trial and there are no long-term ramifications for the politicians' careers. Instead, allegations or investigations are often denounced by the accused and their supporters as ethnic "witch hunts" and as an attempt to remove popular community leaders from power.

The new constitution places great emphasis on integrity; public officers under investigation must resign until they are cleared. The rules for politicians, however, are more ambiguous. The Leadership and Integrity Act, which was meant to operationalize these constitutional principles, was watered down by parliament.

Furthermore, since its inception in September 2011, the Ethics and Anti-Corruption Commission (EACC) has been deliberately weakened and compromised in the fight against corruption. Two chairmen (Mumo Matemo in May 2015 and Philip Kinisu in August 2016) alongside other commissioners were forced to resign over their pending corruption charges. This plus the exodus of qualified staff (in 2015 only 17% of the 2,246 staff positions were filled) rendered the commission ineffective for a long time. Recruitment drives in July 2015 and September 2016 helped to fill some staffing gaps. In addition, strengthened cooperation with the Office of the Public Prosecutor and the Attorney General resulted in 2016 in 411 court cases and the prosecution of about 900 suspects, including some former Ministers and high-ranking civil servants. In December 2016, the newly appointed chief justice opened a special Corruptions

Anti-corruption  
policy



and Economic Crimes Court in Nairobi to reduce the time spent on a corruption case from an average of over three years to not more than three months.

## 16 | Consensus-Building

Kenyan politicians, the business community, civil society, Christian churches and mainstream Muslim groups, as well as the vast majority of Kenyan citizens, agree in principle on democratic norms. Even though no leading Kenyan politician openly doubts the merits of democratic electoral contests and basic human rights, the 2007 and 2013 elections demonstrated how difficult it is for candidates to concede defeat. This has raised major doubts on the internalization of basic democratic norms. The significance of ethnicity and personalities in Kenyan politics plus the corresponding strong ethno-regional polarization makes any consensus-building difficult.

The aforementioned groups as well as the vast majority of Kenyan citizens agree in principle on the need for development and the importance of a free-market economy. There is also a clear consensus about the importance of education in ensuring a place for individuals within such a society. This is embedded in a general consensus on the country's direction and is formalized in the government's Vision 2030, by which Kenya aims to become an industrialized middle-income country by 2030, and its streamlining of the Agenda 2030 with its sustainable development goals into national planning processes. However, there are often irreconcilable differences with respect to translating these principles into practice. This includes ideological differences (i.e., in preference of growth with trickle down or growth fueled by redistribution) and practical differences as to which development projects should focus where and why, and who the principal beneficiaries should be. Currently, this has become highly visible in the implementation of the constitution, as it affects vested interests of the old and current elites. Therefore, implementation and application is a contested field in which elites attempt to undermine and soften constitutional provisions through the legislative process and the application of those laws. Many political and administrative positions are designed to target the well-being of specific ethnic groups at the expense of others, which further hampers attempts at consensus-building.

There is no political force openly opposed to democratic reform per se. However, self-interested individuals attempt to sabotage democratic policies if they believe their interests are threatened; such actors can be found in every political faction, but are particularly prevalent in the circles around the two former Presidents Moi and Kibaki, and current President Uhuru Kenyatta. On the one hand, the more reform-minded group around Odinga, civil society organizations, key government commissions and the public have been successful in building momentum for the successful conclusion of the constitutional reform process, a force that anti-reform actors have been unable to withstand or openly oppose. Since then, anti-reform actors

Consensus on goals

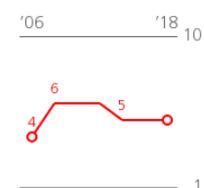
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Anti-democratic actors

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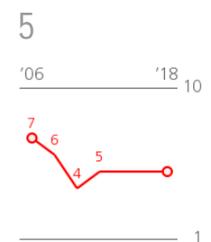
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around the president and his deputy have been dominating the political arena. They have used the legislative process and the selection process of constitutional commissions (Ethics & Anti-Corruption, Kenyan National Human Rights Commission) to undermine accountability, transparency and the rule of law. The strategy proved partly successful. Restrictions on media and CSOs, however, have been dismissed by the courts. Despite several attempts to strengthen the national government at the expense of the county governments, attempts at re-centralization by the Kenyatta side of government, as seen elsewhere in Africa, have not occurred and are unlikely to be launched.

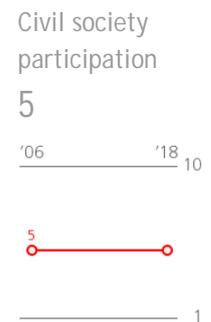
Kenya remains deeply divided along ethnic and to a lesser extent religious lines. Political leaders of all major groups continue to organize interests along ethnic lines. They transform personal power struggles into conflicts between ethnic communities over access to resources and thereby politicize, engineer and exploit differences between ethnic groups. In times of decreased polarization, politicians are disinterested in resolving conflicts arising from the exploitation of ethnicity, preferring to keep them simmering for exploitation in the future. This is particularly evident in the use of land conflicts in the Rift Valley, which largely pits the partners of the ruling Jubilee coalition, the Kalenjin against the Kikuyu. Neither side has shown an interest in substantially resolving the conflict, for which windows of opportunity existed between the violent ethnic clashes in the area during the 1994 and the 2007 elections, and since 2008. In 2013, the two 2008 antagonists who fueled the post-election violence, Kenyatta and Ruto, formed an alliance of convenience to contest the 2013 elections and to fight the ICC charges from a position of power. After having won the 2013 elections, the alliance remained broadly intact, particularly after charges against both were finally dropped by the ICC. The alliance keeps the conflicting forces in both camps in check through the material benefits of being in power. The actual causes of the 2008 conflict escalation remain untouched, thus threatening to resurface anytime the coalition disintegrates.

Religious cleavages are not as pronounced as ethno-regional cleavages but have increased within the past decade, partly due to growing radicalization among Muslims at the coast who feel marginalized by the central state, and partly because of a neo-pentecostalization of Christianity and specific opposition to Khadi courts, which are recognized by the constitution. The war against terrorism and Kenya's military intervention in Somalia (since 2011) to stop al-Shabab attacks in Kenya have also contributed to these tensions, particularly after several of those attacks in Nairobi and other parts of the country killed more than 400 people and injured more than 1,000 between 2011 and early 2017. The weak and non-conceptual counter-terrorism strategy of the Kenyatta government, with its random round up of alleged Somali nationals, has further aggravated tensions.

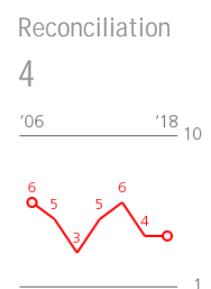
Cleavage /  
conflict  
management



Traditionally, civil society has been opposed to the government, playing a watchdog role. During the Kibaki administration this role changed, partly because the government was at first more open to civil society concerns and expertise, particularly as large numbers of civil society activists were absorbed by the new administration. After the 2007 and 2013 elections, civil society organizations attacked the government and parliament for their lackluster fight against corruption, the continued impunity enjoyed by perpetrators of past crimes, the undermining of the 2010 constitution through watered down legislation, the appointment of non-credible heads to crucial commissions, and attempts to sabotage ICC proceedings. At the same time, the civil society sector has become more diversified and specialized in a broad range of fields that government and parliament are utilizing through various channels, including parliamentary committees. This applies to issues not directly related to questions of power, corruption and human rights. Political decision makers do not seek dialog on these important issues, and in most cases simply ignore civil society's recommendations. This has been particularly true since the formation of the grand coalition, which civil society rejected in principle. Overall, the impact of civil society has decreased over the past decade, and it is now much less capable of setting or even strongly influencing the political agenda. The Kenyatta government sees parts of Kenya's advocacy CSOs as responsible for their ICC trials, as several provided key information and witness testimonies to the ICC prosecutor. The government is clearly on a course to curtail CSO activities and has been relatively successful at casting them (at least in the eyes of their supporters) as part of an "evil society" and as stooges of Western donors. This rhetoric is periodically refreshed, particularly when the government fears the scrutiny, as in election times.



There is widespread consensus that the one-party state, as well as the Moi regime between 1992 and 2002, caused harm and historic injustice to large sections of the population. There have long been calls for some sort of mechanism to deal with past crimes, as well as a campaign of reconciliation.



There is also a sense among many government critics that the perpetrators of the ethnic clashes of 2008, which led to the deaths of more than 1,000 people and forced hundreds of thousands of Kenyans to flee their homes, should be prosecuted.

The government established a Truth Justice and Reconciliation Commission (TJRC) with a mandate to investigate, analyze and report all cases of injustice, marginalization of ethnic groups and violence that occurred between 12 December 1963 and 28 February 2008. Despite severe internal fighting and disputes, the commission was able to compile a relatively comprehensive report that was eventually handed over to Kenyatta in May 2013. The report does not only name many of those responsible for past crimes and those who benefited from them, but it also contains detailed recommendations on how these crimes should be addressed by the government, stakeholders and society. However, parliament subsequently changed the TJRC act and assigned itself the right to alter the report, ostensibly with

the intention to soften it and exonerate some of those implicated. Since December 2014, the report has not been touched by parliament and is obviously meant to die a similarly slow death as many previous explosive reports.

Many Kenyans reject providing amnesty to perpetrators. To date, none of those responsible for the major corruption scandals (National Youth Service, Goldenberg and Anglo Leasing), political assassinations (of Tom Mboya, J.M. Kariuki, Robert Ouko and others) or ethnic clashes have been sentenced. The government has never addressed past injustices, despite its stated commitment to do so. Resettlement of internally displaced persons that favored the Kikuyu have exacerbated grievances and ethnic divisions. The National Cohesion and Integration Commission, which was established under the National Accord in September 2009 with a mandate to address and reduce discrimination against individual ethnic groups, has sued a handful of politicians for hate speech during campaign times. It also conducts country wide trainings and workshops for local political stakeholders, CSOs, etc., on conflict prevention. However, the commission has been criticized for a failure to clearly and decisively censure hate speech.

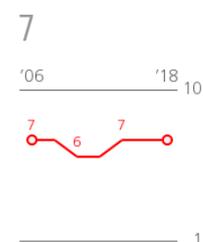
## 17 | International Cooperation

Kenya has continuously reduced its aid dependence. From an all-time high of 132% of GDP in 1993 (Moi government) has reduced its debt levels to an all-time low of 21% in 2008 (Kibaki government). Since then it has been gradually but steadily rising to 30.5% in 2015. The biggest share of bilateral aid flows into the health and population sector (54%). The former donor darling, the education sector, now only receives about 3% of total bilateral Official Development Assistance (ODA) as a consequence of gross misappropriation of funds. China has recently overtaken Japan as the biggest bilateral lender, while the United States remains the country's largest donor.

With Vision 2030, the country has a roadmap for its economic, social and political development in which donor support is integrated. The implementation of Vision 2030, however, lacks timely government budget allocation, causing procurement delays as well as bottlenecks in absorbing donor funds.

Depending on their points of view, past donors have arrived at different conclusions on the government's reform performance. The European Union, United Kingdom and the United States stress the governance sector and have at various stages been highly critical of the government. Particular criticism has been garnered because of its declining human rights record and the extent of corruption, but this has yet to result in withholding substantial funds due to their need to keep the government's cooperation in the anti-terror fight. This imperative has also prevented the United States and the United Kingdom from reconsidering engagements with the newly elected Kenyatta/Ruto government, in contrast to iterations prior to the 2013

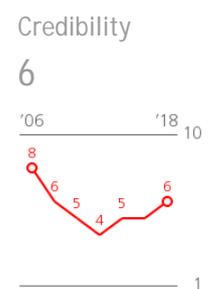
Effective use of support



elections. On the other hand, the World Bank and the IMF have concentrated on the institutional reforms in the economy and expressed positive views on the government's performance in the last few years. Both institutions do not deny the existence of corruption but fail to highlight or to debate its structural roots and its negative impact on economic growth and poverty alleviation. Since 1975 the IMF has entered into 19 credit agreements with the Kenyan government. Where the Kibaki government only signed one such agreement in 2011, the Kenyatta administration has entered into four such agreements. However, these credit agreements serve only as a safety net against external shocks and have not been drawn from at the time of this writing. The World Bank – with a \$5.5 billion portfolio – is running 27 national and six regional projects in eight different sectors (transport, devolution, energy, water, urban, health, public sector management and social protection). The government generally faces severe problems in utilizing and absorbing allocated budget lines. This also extends to international financial assistance.

Kenya's international reputation as a reliable partner had suffered under the second Kibaki and the Kenyatta government. Under these administrations, Kenya has tried successfully to solicit support from other African governments in their efforts to undermine the credibility of the ICC at a time when Kenyatta and Ruto were facing charges and eventually trial before the ICC for their roles in 2008's post-election violence. Also, the relationship with main Western governments became severely strained as they were initially clearly backing the ICC trials. Since the cases against both have been dismissed (Kenyatta December 2014, Ruto April 2016) the Kenyatta government has been gradually moving back to a more middle ground course toward Western governments, who have been just as eager to drop initial reservations. Particularly the United States and United Kingdom governments have been keen to keep a strong foothold in the country in light of the continued al-Shabab threat and China's advancement. The dropping of the ICC charges made it much easier for world leaders to get back to normal business with the Kenyan government. Therefore, Western governments have been much less vocal in criticizing the government for the new upsurge in corruption and on its worsening human rights record. In addition to these shows in the main theater, Kenya has remained an active member of many international organizations and sought – though unsuccessfully – to obtain leadership positions in WTO and the African Union. Kenya's envoy to the United Nations has been instrumental in developing and ensuring a diplomatic breakthrough for the new Sustainable Development Goals (SDGs) in 2015 and received substantial praise for his role.

On the economic front, the country keeps receiving international recognition for its steps toward economic transformation. IMF and World Bank do see the country on the right track to strengthening and broadening its economic growth perspectives by debt financed huge investments into the country's infrastructure.



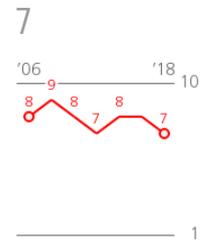
Kenya is a member of all relevant regional organizations. The African Regional Integration Index 2016 sees Kenya as the top performer within the EAC, COMESA and IGAD, with the EAC being assessed as the best performing regional integration mechanism in Africa. This comes despite open conflict within the EAC over the signing of the Economic Partnership Agreement with the European Union. While Tanzania and Uganda refused it on grounds that it makes their economies more vulnerable to cheap European imports, Kenya (and Rwanda) signed it in 2016 because it would give Kenya as a middle-income country duty-free access to the European market, access that all other EAC members as low-income countries already enjoy. This development has to be seen in the wider context of shifting regional power relations. Under its President Magufuli (since 2015) Tanzania has become more assertive. Uganda's backtracking on the construction of a major oil pipeline to Kenya in favor of Tanzania has a major negative economic impact on Kenya's grand scale infrastructural projects to spur economic growth.

For decades Kenya has been considered a constructive, mainly neutral force and arbitrator to seeking solutions for the many crises that have affected the Horn of Africa and the wider east African region. Under the Kenyatta administration, this reputation has become tainted. After playing a major role in brokering the Sudanese and South-Sudanese peace processes, under Kenyatta the country lost influence by openly becoming partisan in support of President Kiir which contributes to the prolongation of the violent South-Sudan conflict. Additionally, Kenya's temporary withdrawal of its troops from the U.N. Mission in South Sudan (UNMISS, November 2016 – February 2017) cast doubt about its reliability as a partner under difficult operational and security conditions. This withdrawal was a reaction to the sacking of Kenya's UNMISS head, following his failure to protect civilians which led to the killing of more than 300 civilians in July 2016.

After al-Shabab insurgencies into its territory Kenya unilaterally intervened militarily into Somalia. Its forces later became integrated into the African Union Mission in Somalia (ANISOM) which has yet to defeat al-Shabab.

The government has been backed by other African countries and the African Union (AU) in its various attempts to defer the ICC trials.

#### Regional cooperation



## Strategic Outlook

In the next few years, Kenya will face six principal challenges, the management of which will determine if and how political stability and economic growth will be sustained, and whether the latter will start to address deep-rooted inequalities. The challenges are the management of the upcoming general election and increasing public confidence in the IEBC, management of the secession battles ahead of the 2022 elections, addressing the national security crisis; absorbing an increasingly youthful population into the workforce, minimizing the negative impacts of devolution, and tackling endemic and grand scale corruption.

In 2007, a disputed election prompted an unprecedented crisis, which led to the death of over a 1,000 people and displacement of almost 700,000 more in two months. In 2013, widespread violence was avoided due to a number of factors. A new political alliance brought together the previously warring Kalenjin and Kikuyu communities, constitutional change increased public confidence in key institutions, pervasive peace messaging and the strategic placement of security forces, all contributed to avoiding violence. However, low levels of confidence among opposition supporters in the IEBC and the judiciary – together with reduced investment in peace-building and another close election that again pits a Kikuyu against a Luo – raises fears that a disputed presidential election could trigger large-scale demonstrations and further erode public confidence in key institutions. There are also concerns that heightened competition over gubernatorial and MCA positions could be associated with the rise of local-level violence across multiple counties.

Once the 2017 election has passed, politicians will soon have to address the issue of succession. If the Jubilee Alliance wins, questions will be raised about whether the Kenyatta and his Kikuyu community will hand over power to the Deputy President, William Ruto, and thus further institutionalize an alliance that came as a result of the ICC investigation. Since 2012, this alliance has helped to prevent major outbreaks of violence and clashes in the Rift Valley. However, the absence of violence does not imply the prevalence of peace. There are fears that if the alliance were to collapse tensions would soon rise between the Kalenjin and Kikuyu communities. However, the question of succession also affects NASA; the principal, Raila Odinga, has promised that if he wins this election, he will only stand for one term.

Besides election and secession-related security threats, the main threats still emanate from al-Shabab (a radical Islamist group based in neighboring Somalia) and local resource-based and border conflicts. Terrorist attacks have reduced in recent years with the worst attacks against Kenyan nationals occurring within Somalia. As occurred, on January 15, 2016, when al-Shabab militants overran an African Union Mission in Somalia (AMISOM) operating base garrisoned by Kenya Defense Force troops at El Adde. However, the lack of integration and sometimes open harassment of the Muslim community within Kenya – together with a strong narrative of historical injustice and marginalization – helps to sustain pockets of resentment against the government among the country's Muslim population along the coastal and northern parts of the country. Moreover, while these areas have historically been regarded as economically and politically

peripheral, they are becoming increasingly politically and economically significant as a result of devolution and the development of new natural resources and infrastructure projects. In turn, reports of radicalization and al-Shabab recruitment in former Coastal and North-Eastern provinces, the government's failure to address a strong Muslim narrative of historical marginalization, and Kenya's ongoing military involvement in Somalia, ensures that the possibility of future attacks remains a real and pressing threat. In this context, steps have been taken to develop a national policy on countering-radical extremism (CVE); the government continues to develop new community policing structures, and the international community is supporting various local and international organizations to carry out CVE programs.

Concerns over security are heightened by a burgeoning youth population and difficulty absorbing an increasingly educated workforce into formal employment. Thus, youth (aged between 15 and 35 years) constitute over a third of the population and are most affected by inequalities in access to education and the failure of the economy to provide sufficient jobs.

Devolution appears to be largely on track due to: its high popularity among the country's citizens, leading to – among other things – strong pressure on the governors to protect devolution against national government's (perceived and real) attempts to undermine it; strong constitutional safeguards; and the governors' readiness to use their legal powers to protect devolution. The fact that some historically marginalized counties are beginning to experience improved health services and more responsive local administration is also a success. While devolution is also helping to stabilize and infuse new legitimacy into the political system, those losing out in national elections (like CORD in 2013) can still win locally (like CORD in Nairobi, Mombasa, Kisumu and other significant places). However, the opening up of new political arenas at the local level is clearly a threat to effective planning and implementation, which has led to unnecessary duplication and the localization of corruption, as well as increasing ethnic tension and conflict in some areas.

Corruption remains deeply entrenched in the country's political culture. Under Kenyatta, grand scale corruption has reached a new peak, which is a source of burgeoning public frustration and a barrier to higher levels of economic growth and development.