

SECOND COUNTRY REVIEW REPORT OF THE REPUBLIC OF KENYA

JANUARY 2017



FOREWORD



It is my great pleasure to present the second APRM Country Review Report and the National Programme of Action of the Republic of Kenya. Kenya, thus becomes the first APRM member to pioneer the second cycle review, and this under my leadership as the Chair of the APRM Forum of Heads of State and Government.

Kenya acceded to the APRM at its inception in 2003 and was the third country to be peer reviewed by the APR Forum at its meeting held in Banjul, The Gambia, in June 2006. Since then, Kenya has undertaken major restructuring of its governance system and tremendous progress has been registered in all the four areas of APRM assessment. The Constitution of 2010, hailed as one of the best things to happen to our country, has brought a stronger legal and institutional basis for democracy and good governance, with emphasis on an entrenched and extensive Bill of Rights, rule of law and due process, independent commissions, separation of powers with attendant checks and balances, and a system of devolution of powers which has created 47 County Governments at the local level, bringing government closer to the people with extensive provision for public participation in the governmental process.

As elaborated in the Country Review Report, Kenya has similarly achieved commendable progress in the sphere of economic governance and management. The adoption of the Kenya Vision 2030 in 2008 as the long-term development strategy has strengthened the economic policy framework, and facilitated the achievement of a number of milestones in terms of macroeconomic performance. Economic growth has averaged 5.5 percent during 2011-2015 and a continued strong growth is projected for 2017. Fiscal deficit has been reduced to single digit (4 percent of GDP) and although public debt has increased, it still remains within manageable levels.

The Report commends a number of best practices including Huduma Centres, devolution, mobile banking through the M-Pesa platform, the high revenue generation and an active corporate social responsibility,

to name just a few. As a country, we are indeed happy for the recognition of these best practices and stand ready to share them in the framework of peer sharing and learning.

Notwithstanding this progress, there are challenges. The Panel notes among other things, corruption, politically mobilised ethnicity and historical patterns of marginalization which devolution is progressively dismantling. The government has adopted a multi-institutional and multi-dimensional approach to deal with the issue of corruption. The Ethics and Anti-corruption Commission (EACC), the Parliamentary Public Accounts Committee (PAC) and the Public Investment Committee (PIC), the Directorate of Public Prosecutions (DPP), Attorney General (AG), amongst others, are institutions working to end this vice.

Indeed translating the high economic growth into a broad-based, pro-poor and inclusive development remains a challenge against which we are determined to address. Therefore, besides accelerating economic growth, the task ahead must include massive reduction of poverty while addressing inequality and youth unemployment.

The Kenya National Plan of Action provides details of programmes and activities for implementing the various recommendations of the Panel. I reiterate my government's commitment to implement this plan of action and urge all the social actors and development partners to contribute to its successful implementation.

I would like to thank all the countries participating in the APRM, and particularly my Peers in the APR Forum, for their commitment and support to the implementation of the APRM.

I thank the APR Panel of Eminent Persons for its leadership in the preparation of the Country Review Report of Kenya. I extend the same gratitude to the APRM Secretariat, the Strategic Partners of the APRM as well as my officers for their contribution to the success of Kenya's review process.

H.E. Uhuru KENYATTA

PRESIDENT OF THE REPUBLIC OF KENYA, AND
CHAIRPERSON OF THE APR FORUM



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ACKNOWLEDGEMENTS

The APR Panel of Eminent Persons of the APRM is pleased to present the 2nd Country Review Report (CRR) of the Republic of Kenya.

Kenya becomes the first country to undertake and complete the second review of its governance and socioeconomic development under the framework of the APRM. The APR Panel commends the leadership and support of the Government and people of Kenya, without whom this Report would not have materialised. Special thanks go to His Excellency Uhuru KENYATTA, President of the Republic of Kenya and Chairperson of the APRM Forum of Heads of State and Government for his commitment to the APRM and pioneering the 2nd generation reviews.

The APR Panel is grateful to Mr Mwangi Kiunjuri, Cabinet Secretary for Planning and Devolution, and APRM Focal Point, the National Governing Council, the Kenya NEPAD/ APRM Secretariat for organising a widely participatory and inclusive country self-assessment that allowed state and non-state stakeholders throughout the 47 counties.

The APR Panel is gratified by the vibrancy and dynamism of multi-stakeholder dialogue and participation in public forums. The level of openness, self-criticism and engagement, which have characterised APRM public forums, are highly commendable. In this respect, we acknowledge the active participation and coverage of APRM meetings by the Kenyan media.

The APR Panel would also like to acknowledge the contribution of the APRM's strategic partners to the 2nd Review of Kenya. The United Nations Economic Commission for Africa (UNECA), the Africa Capacity Building Foundation (ACBF), and the African Union Advisory Board on Corruption (AUABC) availed seasoned experts to support the review exercise.

The Panel expresses its profound gratitude to the Country Review Team (CRT) composed of Prof Adigun Agbaje, Ms Laura Nyirinkindi, Dr Elvis Mtonga, Dr Bernard Dasah, Prof Festus Egwaikhide, Prof Kofi Adusei, Prof Nehemiah Osoro, Honourable Isa Ozi Salami, Mr Paul Mpuga, Mr Charles Akong, and Mr Mayer Ngomesia. The overall leadership was provided by Prof Al Amin Abumanga, member of the APR Panel of Eminent Persons, and technical coordination by Dr Rachel Mukamunana, Head of Division from the Continental Secretariat. The APR Panel commends the high level of professionalism, competence, and dedication with which CRT carried out the second review of Kenya.

Finally, the APR Panel would like to thank the members of the APRM Secretariat, under the leadership of Professor Edward Maloka, Chief Executive Officer of the Secretariat for providing the necessary backstopping to support the review mission and ensuring timely completion of this Report.

To all those who, directly or indirectly, work for the promotion of APRM ideals, please accept the APR Panel's heartfelt appreciation.

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Geographic location	Located in East Africa, bordering the Indian Ocean, between Somalia and Tanzania. It borders with Ethiopia (861km), Somalia (682km), South Sudan (232km), Tanzania (769km) and Uganda (933km).
Surface area	The total surface area is 580,367km ² , of which land constitutes 569,140 km ² and water 11,227 km ² .
Population	<p>Population: 46.7 (estimated 2016)</p> <p>Age structure:</p> <p>0-14 years: 40.87% (male 9,592,017/female 9,532,032)</p> <p>15-24 years: 18.83% (male 4,398,554/female 4,411,586)</p> <p>25-54 years: 33.54% (male 7,938,111/female 7,755,128)</p> <p>55-64 years: 3.84% (male 819,665/female 976,862)</p> <p>65 years and over: 2.92% (male 590,961/female 775,842) (2016 est.)</p> <p>Ethnic groups: Kikuyu 22%, Luhya 14%, Luo 13%, Kalenjin 12%, Kamba 11%, Kisii 6%, Meru 6%, other African 15%, non-African (Asian, European and Arab) 1%</p>
Religion	Christian 83% (Protestant 47.7%, Catholic 23.4%, other Christian 11.9%), Muslim 11.2%, Traditionalists 1.7%, other 1.6%, none 2.4%, unspecified 0.2% (2009 est.)
Independence	12 December 1963 from the United Kingdom
Constitution	<p>Promulgated on 27 August 2010, replacing the 1963 independence Constitution.</p> <p>It provides the Structure of the Government of Kenya to consist of the Executive, the Legislature, the Judiciary and the Devolved Governments.</p>
Executive	<p>The President, the Deputy President, and the cabinet constitute the executive arm of the Kenyan Government.</p> <p>President: H.E. Uhuru KENYATTA</p> <p>Deputy President: Hon. William RUTO</p>
Legislature	<p>Parliament consists of National Assembly and the Senate</p> <p>NA: 350 MPs (includes 47 elected women from each county)</p> <p>Senate: 68 Senators (includes 16 nominated women, 2 youth, 2 PWD)</p>
Judiciary	<p>Independent judiciary consisting of courts and tribunals.</p> <p>The Supreme Court is the highest court in Kenya.</p> <p>The Khadis Courts to cater for persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.</p>
Political governance	<p>Kenya is a multiparty democracy. The major political parties are:</p> <p>Jubilee Party (the ruling party), and CORD (Coalition for Reforms and Democracy) including Orange Democratic Movement- ODM, Ford Kenya, Wiper Democratic Movement, Kenya Social Congress, among others.</p>
Administrative structure	<p>A two-system government: the national government and county governments which are distinct and interdependent.</p> <p>There are 47 counties specified under the First Schedule of the 2010 Constitution.</p>

Economy

Kenya's real GDP growth has averaged 5.5 % for the last seven years. The Gross Domestic Product (GDP) grew by 5.6% in 2015 compared to 5.3% growth in 2014. This growth was a result of significant growth in some key sectors among them agriculture; construction; real estate; and financial and insurance. The GDP growth is expected to continue its similar growth trajectory in 2016 and 2017.

Major macroeconomic indicators such as inflation, current account deficit and exchange rate remained relatively stable in the year 2014 & 2015. Inflation eased from 6.9% in 2014 to 6.5% in 2015 due to lower energy and transport prices. The current account deficit as a percentage of GDP narrowed from 10.3% in 2014 to 7.9% in 2015.

Sources: Constitution of Kenya, 2010; Kenya Facts and Figures 2015; Kenya Economic Outlook 2016

KEY ECONOMIC INDICATORS

DATA PROFILE	Year			
	2012	2013	2014	2015
Economy				
Total GDP (nominal) USD Billion	50.41	55.1	61.4	63.4
Real GDP growth %	4.5	5.7	5.3	5.4
GNI per capita, Atlas method (current USD)	1,090	1,180	1,300	1,340
GNI per capita, PPP (current international USD)	2,710	2,830	2,950	3,060
Gross capital formation (% of GDP)	21.5	20.2	22.5	21.2
Gross national savings (% of GDP)	10.7	9.6	11.6	-
Exchange rate	84.53	86.12	87.92	98.17
Budget deficit as a percentage of GDP	-4.7	-5.6	-8	-8.1
CPI-Inflation	9.4	5.7	6.9	6.5
Exports of goods and services (% of GDP)	19.8	18.1	16.9	15.7
Imports of goods and services (% of GDP)	35.4	33.1	34.2	29
Foreign direct investments (Current, Billion USD)	0.16	0.37	0.94	1.4
Net ODA inflows (Current, Billion USD)	2.65	3.31	2.66	-
Revenue, excluding grants (percentage of GDP)	17.57	-	-	-
Cash surplus/deficit (percentage of GDP)	-3.8	-	-	-
Current account balance (% of GDP)	-8.44	-8.84	-10.3	-7.9
Current account balance (BoP, current Billion US\$)	-4.25	-4.87	-6.34	-4.3
Exports of goods and services (% of GDP)	19.8	18.1	16.9	15.8
Trade Balance (USD billion)	-10.2	-10.5	-12.4	-10.1
Exports (USD billion)	6.1	5.9	6.1	5.9
Imports (USD billion)	16.3	16.4	18.5	15.9

Sources: World Bank, <http://data.worldbank.org/country/kenya> accessed on 16 January 2017. Kenya National Bureau of Statistics (KNBS), Kenya Facts and Figures 2015

Sectoral Contributions to GDP (Current Prices)

INDUSTRY	Year			
	2012	2013	2014	2015
Agriculture, forestry and fishing	26.3	26.1	26.4	27.3
Manufacturing	11.8	11.0	10.7	10.0
Wholesale and retail trade; repairs	8.1	7.8	8.1	8.2
Construction	4.4	4.5	4.5	4.8
Transport and storage	7.1	8.0	7.8	8.3
Financial and insurance activities	5.7	5.9	6.6	6.7
Real estate	8.1	8.0	7.9	7.8
Education	5.3	5.4	5.3	5.2
All other economic activities	25.6	23.3	22.7	21.7
Total	100	100	100	100

Source: KNBS, Kenya Facts and Figures 2015

Imports by Principal Commodity, 2011 – 2014 (Values in USD Million)

IMPORTS	2011	2012	2013	2014
Crude Petroleum	1,395.82	805.53	476.48	-
Petroleum Products	2,240.6	2,810.56	2,933.76	3,328.38
Animal/vegetable fats and oils	665.41	649.24	561.63	569.18
Medicinal & Pharmaceuticals Products	446.52	488.71	465.76	592.42
Chemical Fertilizers	259.32	238.80	324.61	219.86
Iron and Steel	554.72	56.38	640.71	684.88
Industrial Machinery	698.65	670.43	937.57	859
Road Motor Vehicles	1,993.71	2,303.12	268.72	2,919.26
All other Commodities	70.75	872.76	96.75	1,157.73
GRAND TOTAL	14,549	16,263	16,409	18,406.7

Source: KNBS, Kenya Facts and Figures 2015

Exports by Principal Commodity, 2011 – 2014 (Values in USD Million)

EXPORTS	2011	2012	2013	2014
Fish and fish preparations	55.76	63.79	39.04	48.52
Horticulture	937.71	959.85	1,037.31	1,104.43
Coffee, unroasted	234.77	263.49	189.58	226.48
Tea	1,150.44	1,200.16	1,215.06	1,069.06
Tobacco and tobacco manufactures	209.67	196.57	159.17	191.38
Soda ash	139.21	115.05	104.46	89.08
Petroleum products	69.96	38.97	30.79	42
Essential oils	155.54	161.18	129.72	123.45
Cement	100.13	96.04	96.28	85.77
Iron and steel	204.41	178.63	180.67	152.89
Articles of plastics	105.21	121.60	119.16	125.05
Articles of apparel and clothing accessories	250.49	244.62	283.06	329.24
All other Commodities	1,838.79	2,035.52	1,706.66	1,650.96
GRAND TOTAL	5,452.09	5,675.46	5,290.96	5,238.32

Source: KNBS: Kenya Facts and Figures 2015

Kenyan Imports by Origin, 2011 – 2014 (Values in USD Million)

DESCRIPTION	2011	2012	2013	2014
Europe	2,868.9	2,955	3142.3	3252,2
America	890.9	1,411.4	980.9	2132,3
Asia	9,104.9	10,133.6	10,411.5	11261,7
Africa	1702	1,665.3	1716.5	1662,1
EAC	622.2	728.5	676.5	686,5
COMESA	495.8	533.8	477.5	478,4
Other African countries	910.3	766.4	904.6	766,8
GRAND TOTAL	14,637.1	16,262.9	16,409.9	18406,0

Source: KNBS: Kenya Facts and Figures 2015

Kenyan Exports by Destination, 2011 – 2014 (Values in USD Million)

DESCRIPTION	2011	2012	2013	2014
Europe	1,533.2	1,481.2	1,431.6	1,580.5
America	310.5	340	392	519.4
Asia	1,075.9	1,247.7	1,248.8	1,137.6
Africa	2,786.2	2,964.7	2,687.6	2,745.1
EAC	1,543.4	1,596.6	1,450.9	1,430.8
COMESA	969	1,027.2	919.7	988.4
Other African countries	273.8	341	317.1	326
GRAND TOTAL	5,768.2	6,126.7	5,832	6,110.3

Source: KNBS: Kenya Facts and Figures 2015

Educational Institutions by Category, 2011 – 2014

	2011	2012	2013	2014
Pre-Primary	39,500	39,758	40,145	40,219
Primary	25,382	26,549	28,026	29,460
Secondary	6,257	7,174	7,834	8,747
Teacher Training Colleges				
Pre-Primary	122	125	131	140
Primary	112	118	123	125
Secondary	236	245	256	267
Public TVET Institutions				
Youth Polytechnics	585	647	701	701
Technical and Vocational Colleges	40	49	49	51
Kenya Technical Training College	1	1	1	1
National Polytechnics	2	2	2	2
Polytechnics University Colleges	2	2	-	-
Sub total	630	701	753	755
Universities				
Public	7	8	22	22
Private	27	27	30	31
Sub total	34	35	52	53
GRAND TOTAL	72,161	74,587	77,197	79,646

Source: KNBS, Economic Outlook 2016a, p. 43.

ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
AMREF	African Medical Research Foundation
APRM	African Peer Review Mechanism
ASDS	Agricultural Sector Development Strategy
AU	African Union
BBSSED	Broad-Based and Sustainable Socio-economic Development
BCP	Basel Core Principles
BPO	Business Process Outsourcing
CACG	Commonwealth Association for Corporate Governance
CAJ	Commission on Administrative Justice
CBA	Commercial Bank of Africa
CBD	Central Business District
CBEF	County Budget Economic Forum
CBF	Constituency Bursary Fund
CBK	Central Bank of Kenya
CBO	Community-based Organization
CCG	Centre for Corporate Governance
CDF	Constituency Development Fund
CEO	Chief Executive Officer
CGS	Credit Guarantee Scheme
CIC	Commission for the Implementation of the Constitution
CIDP	County Integrated Development Plan
CIPEV	Commission for Investigating the Post-Election Violence
CLARION	Centre for Law and Research International
CMA	Capital Markets Authority
COMESA	Common Market for Eastern and Southern Africa
COE	Committee of Experts
CPC	Corruption Prevention Committee
CRA	Commission for Revenue Allocation

CRM	Country Review Mission
CRPWD	Convention on the Rights of Persons with Disabilities
CRR	Country Review Report
CRT	Country Review Team
CSAR	Country Self-Assessment Report
CSR	Corporate Social Responsibility
CT	Container Terminal
DMO	Debt Management Office
DPAC	Directorate of Public Affairs and Communication
DSA	Debt Sustainability Analysis
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
EAD	Economic Affairs Department
EAISA	East African Insurance Suppliers Association
EF	Equalisation Fund
EIA	Environmental Impact Assessment
EPZA	Export Processing Zone Authority
ERS	Economic Recovery Strategy
ETRs	Electronic Tax Register
EU	European Union
FDI	Foreign Direct Investment
FGD	Focus Group Discussion
FGM	Female Genital Mutilation
FRC	Financial Reporting Centre
FSAP	Financial Sector Assessment Program
GDP	Gross Domestic Product
GFS	Government Financial Statistics
GNU	Government of National Unity
GoK	Government of Kenya
HT	HIV/AIDS Tribunal
IAD	Internal Audit Department
IAG	Internal Auditor General

IAO	Integrity Assurance Officer
IAS	International Accounting Standards
IASB	International Accounting Standards Board
ICC	International Criminal Court
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICGLR	International Conference on the Great Lakes Region
ICPs	Insurance Core Principles
ICPAK	Institute of Certified Public Accountants of Kenya
ICPSK	Institute of Certified Public Secretaries of Kenya
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technology
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IEBC	Independent Electoral and Boundaries Commission
IFAC	International Federation of Accountants
IFMIS	Integrated Financial Management Information System
IFRS	International Financial Reporting Standards
IGAD	Intergovernmental Authority on Development
ILO	International Labour Organization
IMF	International Monetary Fund
IPC	Interregional Parliamentary Caucus
IPOA	Independent Police Oversight Authority
IPPD	Integrated Payroll and Personnel Database
IPPG	Inter-Party Parliamentary Group
IPSAS	International Public Sector Accounting Standards
IRMF	Institutional Risk Management Policy Framework
IRA	Insurance Regulatory Authority
ISA	International Standards on Auditing
ITES	IT-Enabled Services
JICA	Japanese International Cooperation Agency
JMVB	Judges and Magistrates Vetting Board
JSC	Judicial Service Commission

JTF	Judiciary Transformation Network
JWCEP	Judiciary Working Committee on Election Preparations
KACC	Kenya Anti- Corruption Commission
KANU	Kenya African National Union
KBC	Kenya Broadcasting Corporation
KCB	Kenya Commercial Bank
KEPSS	Kenya Electronic Payment Settlement System
KEWOPA	Kenya Women Parliamentary Association
KLRC	Kenya Law Review Commission
KNAO	Kenya National Audit Office
KNBS	Kenya National Bureau of Statistics
KNCHR	Kenya National Commission on Human Rights
KRA	Kenya Revenue Authority
Ksh	Kenyan Shilling
KTDA	Kenya Tea Development Authority
LDP	Liberal Democratic Party
MCA	Member County Assembly
MD	Managing Director
MDAs	Ministries, Departments and Government Agencies
MDGs	Millennium Development Goals
MIGA	Multilateral Investment Guarantee Agency
MP	Member of Parliament
MPC	Monetary Policy Committee
MSE	Micro and Small Enterprises
MSMEs	Micro, Small and Medium Enterprises
MTP	Medium Term Plan
MTEF	Medium Term Expenditure Framework
NACCSC	National Anti-Corruption Campaigns Steering Committee
NAK	National Alliance Party of Kenya
NARC	National Rainbow Coalition
NCAJ	National Council for the Administration of Justice
NCIC	National Cohesion and Integration Commission

NDS	National Debt Strategy
NEAP	National Environmental Action Plan
NEMA	National Environmental Management Authority
NGCDF	National Government Constituency Development Fund
NGEC	National Gender and Equality Commission
NHIF	National Hospital Insurance Fund
NLC	National Land Commission
NOFBI	National Optic Fibre Backbone Infrastructure
NPS	National Police Service
NPSC	National Police Service Commission
NSC	National Steering Committee on Peace Building and Conflict Management
NSCE	National Survey on Corruption and Ethics
NSE	Nairobi Securities Exchange
NSE	Nairobi Stock Exchange
NSS	National Social Security
NSSF	National Social Security Fund
NTBs	Non-Tariff Barriers
ODA	Official Development Aid
OECD	Organization for Economic Cooperation and Development
ODM	Orange Democratic Movement
PAC	Public Accounts Committee
PAYE	Pay as You Earn
PBO	Parliamentary Budget Office
PBO	Public Benefits Organisation
PEFA	Public Expenditure and Financial Accountability
PER	Public Expenditure Review
PI	Plan International
PIC	Public Investment Committee
PMLC	Prospecting and Mining Licensing Committee
PNU	Party for National Unity
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
PPDT	Political Parties Dispute Tribunal

PPP	Public Private Partnership
PRSP	Public Sector Reform
PSC	Parliamentary Service Commission
PSC	Public Service Commission
PSRS	Public Sector Reform Strategy
PWDs	People With Disabilities
RBM	Results Based Management
RTG	Rubber Tired Gantry
SACCOs	Savings and Credit Cooperative Societies
SADC	Southern Africa Development Community
SAGAs	Semi-Autonomous Government Agencies
SAPs	Structural Adjustment Programmes
SDGs	Sustainable Development Goals
SIDCs	Sub-County Information Document Centres
SME	Small and Medium Enterprises
SNA	System of National Accounts
SOE	State Owned Enterprise
SRC	Salaries and Remuneration Commission
TA	Transition Authority
TEU	Twenty-foot Equivalent Units
TI	Transparency International
TJRC	Truth, Justice and Reconciliation Commission
TSC	Teachers Service Commission
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
USSD	Unstructured Supplementary Service Data
VAT	Value Added Tax
WEF	Women Employment Fund

WHO World Health Organization
YEF Youth Employment Fund





EXECUTIVE SUMMARY

1. THE APRM PROCESS

1.1 Implementation of the APRM Process in Kenya

- 1.1 Kenya is one of the pioneer countries to accede to the APRM at its inception in 2003. It is also among the first three countries to start the review process. Kenya was peer reviewed by the APR Forum at its meeting held in Banjul, The Gambia, in June 2006, thus becoming the third country to complete the process.
- 1.2 The 2006 APRM Kenya CRR had a significant impact on the articulation of Agenda 4 issues in the National Accord and Reconciliation Agreement (NARA) of 2008, which was brokered following the 2007/2008 post-election crisis the AU Panel of Eminent African Personalities, under the leadership of the former Secretary-General of the United Nations (UN), Mr Kofi Annan. The AU Panel also included former president Benjamin Mkapa of Tanzania and Dr Graça Machel who was the Lead Panellist for the 2006 Kenya review. Dr Machel ably used her intimate knowledge of the CRR to ensure that the APRM findings were part and parcel of the reconciliation agreement.
- 1.3 The Kenya National Dialogue and Reconciliation (KNDR) framework, which formed the basis for NARA, identified four main agenda items for the purpose of ending the crisis. These four areas were critical in terms of addressing the causes of the crisis, reconciling communities and preventing future conflicts in the country. These four agenda items are: i) Agenda 1: Immediate action to stop violence and restore fundamental rights and liberties; ii) Agenda 2: Immediate measures to address the humanitarian crisis, and promote reconciliation and healing; iii) Agenda 3: How to overcome the political crisis; and iv) Agenda 4: Address long-standing issues, including constitutional, legal and institutional reforms; land reforms; youth unemployment; poverty; inequity and regional development imbalances; consolidating national unity and cohesion; and addressing impunity, transparency and accountability. To implement NARA, numerous reform measures were thereafter introduced.
- 1.4 Kenya is the first APRM Member State to pioneer the second review process after its base review in 2006 and the aborted Special Review of 2011, which was commissioned by the APR Forum following the 2007 post-election violence.
- 1.5 In August 2016, Kenya submitted a 872-page second Self-Assessment Report to the APRM Secretariat. The self-assessment used four research methods to obtain data, namely desk research, expert panel surveys, a national household survey, and Focus Group Discussions (FGDs). Activities related to the first two methodologies were carried out by the African Centre for Economic Growth, while the National Household Survey was carried out by the Kenya National Bureau of Statistics (KNBS) and the FGDs were carried out by the APRM Kenya Secretariat and the Ministry of Devolution and Planning.

1.2 Methodology for the Second Review of Kenya

- 1.6 The overriding objective of the second review was to assess progress made in terms of governance and socioeconomic development in the period since the base review of 2006. The specific objectives are to:
- Reinvigorate and institutionalise the APRM process in the country.
 - Appraise to what extent the NPoA has been implemented, and its continued relevance, on the basis of which a new NPoA will be proposed and adopted.
 - Examine whether the identified commendable or best practices in the base review have been reinforced and promoted.
 - Tackle any new and emerging issues relevant to governance and socioeconomic development.
- 1.7 The process for the second review of Kenya followed the methodology of the periodic reviews, as outlined in the Methodology for Periodic Reviews in countries that have undergone the Peer Review Process.¹
- 1.8 This Second Country Review Report presents the findings of the CRT to Kenya, as well as Panel recommendations. The report is structured in seven chapters in addition to the executive summary. Apart from this introductory chapter and the overview, the subsequent four chapters evaluate developments and outstanding challenges in the four APRM focus areas (Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development). Chapter 7 contains a discussion of the cross-cutting issues. These are issues, which require holistic and immediate action due to their impact on governance and socio-economic development.

1.3 Context of the Report

- 1.9 Kenya is often portrayed as the bellwether and key anchor for democracy, development, stability and security for eastern Africa. Over time, this role perception has reflected and affected local realities and elicited global attention and responses in line with Kenya's profile in the community of nations. It is, therefore, not surprising that, in the context of a coincidence of national and regional thinking, Kenya has emerged the first African country to present itself for a second review under the APRM, reflecting its pioneer status as highlighted in Chapter One of this Report.
- 1.10 The full context to this Report comprises two phases in Kenya's political history, and basic lessons and legacies therefrom, viz:
- The short but important period of the struggle to avoid, contain and surmount the political and post-election crises (2006-2007/early 2008), and

¹APRM Secretariat. 2010. *Methodology for Periodic Reviews in countries that have undergone the Peer Review Process*.

- Dovetailing into the period of constitutional, structural, and institutional re-engineering to renew and consolidate Kenya's status as a multi-party democratic state, from 2007 to the present.

2. SUMMARY OF FINDINGS UNDER EACH THEMATIC AREA

2.1 Democracy and Political Governance

- 2.1 The last decade (2006-2016) has been one in which Kenya has moved beyond the post-election violence of 2007/8 to taking steps toward multi-party democratic renewal and consolidation. The result has been a largely commendable display of ingenuity and restraint geared to move the nation more in the direction of civility and restrained engagement for the restoration of peace through a process of negotiations leading to innovative constitutional and institutional re-engineering to restore and sustain Kenya's interrupted march toward multi-party democratic statehood. Within the framework of the 2008 post-crisis National Accord, the government demonstrated its commitment to the implementation of long-standing issues, including constitutional and institutional reforms, police and judicial reforms, socio-economic inequalities, corruption, accountability and youth unemployment and other issues.
- 2.2 Many international standards and codes related to democracy and political governance were ratified and domesticated, and by the time the 2010 Constitution came into force, domestication was no longer required for ratified standards and codes. The Constitution has been hailed as one of the best things to happen to Kenya. It has brought a stronger legal and institutional basis for democracy and good governance, with emphasis on an entrenched and extensive Bill of Rights, rule of law and due process, independent commissions, separation of powers with attendant checks and balances, reduction in executive powers, a system of devolution of powers leading to the creation of 47 County Governments at the local level, bringing government closer to the people with extensive provision for public participation in the governmental process, as well as reforms to strengthen autonomy, transparency, representativeness and inclusiveness of various branches and key institutions of government and of civil society as well as those for election and security governance.
- 2.3 In practice and as reflected in public perception, challenges persist in the full realization of the objectives of the reform process. They include among other things, corruption, poverty, lack of accountability, politically mobilised ethnicity, and historical patterns of marginalization, but the opening of the political spaces has generated a momentum for democracy and good governance difficult to halt, especially coupled as it is by gains in the promotion and protection of political, civil, economic, social and cultural rights, including the rights of women, children, the youth, the elderly, and other vulnerable groups, and a burgeoning and highly plural and vibrant media landscape.

2.2 Economic Governance and Management

- 2.4 Kenya has achieved significant progress in strengthening the economic governance and management of the country. The Government of Kenya has signed and ratified most of the Standards and Codes relating to economic governance and management including the African Union Convention on Preventing and Combating Corruption and is in harmony with international best practice such the IMF public expenditure classification as epitomized in the IMF Government Financial Statistics (GFS) Manual. However, the Government needs to establish a central database of all standards and codes, and the information should be posted on the websites of the Office of the Attorney General, the Kenya Law Reports, and relevant international organisations.
- 2.5 The adoption of the Kenya Vision 2030 in 2008 as the long-term strategy to attaining sustainable socio-economic development has strengthened the economic policy framework. Economic policy is now aligned with the goals of the five-year Medium Term Plans, which is the implementation framework of the Vision 2030, and reflects the government's plans to deliver socioeconomic development. This has allowed the setup of economic policy to be appropriately reoriented towards the developmental goals of securing socioeconomic development much more directly. In the plan, attaining macroeconomic stability is recognized as a key enabler of achieving the goals of the plans. Macroeconomic stability is emphasized. In this regard, monetary policy is tasked to deliver price stability and promote financial system stability, which should anchor the long-term growth of the economy. The sectoral objectives are to be achieved through a range of sectoral policies covering key sectors, supported by a fiscal policy framework that allocates resources in line with the policy objectives.
- 2.6 The reconfiguration of the economic policy framework has facilitated achievement of a number of milestones in terms of macroeconomic performance. Economic growth averaged 5.5 percent during 2011-2015, a strong recovery from the dismal performance in 2008 that followed the post-election violence. The Government of Kenya has succeeded in reducing fiscal deficit to a range of 4% of GDP, but public debt has increased, although it still remains within manageable levels. Inflation has been kept in a single digit. Fiscal policy is aimed at increasing spending on infrastructure to encourage diversification of the economy and to enhance tax collection. Fiscal decentralisation has been an integral part of fiscal reforms. Kenya commands positive investment climate. Kenya's trade policy appropriately spells out the aspiration for poverty reduction and sustainable economic growth.
- 2.7 Despite all these laudable programmes and aspirations, economic policy management faces challenges. The levels of poverty, inequality and unemployment remain high, particularly among vulnerable groups and the rural cohorts. Inequality is high and manifests itself in various forms. This suggests that the current economic policies and management practices have not been inclusive. The economic policy framework therefore needs to incorporate a resource redistribution policy in order for the economic development plans to deliver economic well-being that is inclusive, particularly to address poverty, inequality among different groups and regions, as well as provide productive employment.

- 2.8 The bottom-up planning that the 2010 Constitution provides has improved public participation in the development and implementation of government policies and programmes. Nevertheless, compared to expectations, stakeholders' involvement in planning and implementation still remains very low. Various reasons are responsible for the low public participation. Among them are distance and the high burden of transportation cost, inadequate understanding of the policies and programmes of the government, and poor publicity. Others cover such issues as poor communication, where, in some instances, documents or materials which form the basis of discussions at the public forums are only circulated at the venue of the meetings without prior notice. The low participation in economic decision budget process and planning is a serious impediment to communities to fully own the programmes and projects executed.
- 2.9 The Panel recommends that in order to have the public participating effectively in the design and implementation of development plans, Kenya needs to increase civic education to promote the public's awareness of their rights to participate in such programmes. The country also needs to develop and mainstream effective tools of communicating with the public and invest in the use of various media to do so. Moreover, it is necessary to translate technical documents in reader friendly languages, especially in languages widely spoken by the local population.
- 2.10 Significant developments have occurred in the public finance management domain. In 2004, the Government commenced the use of the Medium Term Expenditure Framework (MTEF) and the annual budget is linked to it. This suggests the acceptance of fiscal planning and it has been sustained. The government has enacted laws with respect to financial management in line with the procedures and timelines prescribed in the constitution. An over-arching legislation is the Public Finance Management (PFM) Act, 2012 stressing transparency and accountability in the use of public resources for efficient service delivery. The Constitution and the PFM Act 2012 have transferred important oversight fiscal functions from the executive and National Treasury to parliament, both at the national and county government levels. In 2009, the Parliamentary Budget Office was established to provide strong technical support for legislators to properly scrutinize the budget at the different stages.
- 2.11 The Public Expenditure Financial Accountability (PEFA) evaluation technique was used to determine the extent of financial management. The budget of the national government shows some degree of comprehensiveness, making it possible for the parliament and the public to examine the budget proposals. Legislative scrutiny of the budget and expenditure tracking has improved. However, the payroll system and the procurement process are hardly described in details to enable adequate assessment of the strengths and weaknesses. A huge wage bill is inclined to weaken financial control and corruption. Effective management of payroll will, to a large extent, put government expenditure under effective check. When the procurement system works well, there is value for money, implying that services are delivered efficiently. Openness, competitive bidding and transparency in the award of contracts are basic requirements of a good PFM. Procurement accounts for 46% of all corrupt cases in Kenya. The Panel recommends that the procurement mechanisms of the national and county governments need to be comprehensively evaluated to inform policy decision.

- 2.12 Several special funds (e.g., Constituency Development Fund (CDF) renamed the National Constituency Development Fund (NGCDF), Constituency Bursary Fund (CBF), Youth Employment Fund (YEF) and Women Employment Fund (WEF) are operated with each having its administrative structure. These and other funds contribute to economic activities and employment. The government is advised to streamline the various development funds to avoid overlap and duplication, and also to enhance efficiency and effectiveness. A comprehensive audit of the funds needs to be carried out. In addition, the full names and addresses of the beneficiaries of each of the funds should be published regularly. Overall, there is need for improved management strategy of the special funds in order to maximize their benefits.
- 2.13 The general perception of the people of Kenya about devolution is strongly positive and profound. Specifically, the consensus across the broad spectrum of the society is that devolution of functions is a good model of governance for the country. The testimonies during the consultative forums by the CRM revealed that infrastructure, health care, roads, education, among others, have all commonly improved with devolution. However, devolution of functions requires that adequate revenue be allocated to the counties to carry out the functions they are assigned. In some of the consultative forums, the CRM was told that the devolution of healthcare services has some challenges. Spasmodic strikes by health workers, arising from the non-payment of salaries, remain a big challenge in some counties. Given that devolution is still at infancy, a careful re-examination of the decentralisation of healthcare is desirable for effective service delivery. The capacity of the county governments is weak to cope with effective service delivery. Openness, accountability and transparency in the use of financial resources remain a major challenge at the county level. Effective participation in the budget and planning process to own the process of economic governance is very low in most of the counties. The consultation process needs to be strengthened to ensure maximum buy-in by a large segment of the society.
- 2.14 Currently, corruption remains a major challenge in Kenya, as it is considered endemic and systemic. Combating money laundering has also gained prominence as part of the war against organized crime, drug trafficking, corruption and terrorism. Although various legal and institutional arrangements for fighting corruption are in place, they have not made significant impact, making the international ratings of Kenya's economic governance fretting. A significant administrative reform is the Huduma initiative. The Government has established Huduma Centres to serve as a one-stop shop for processing services offered by the public sector. The Huduma Centres have improved accessibility to the services provided by the government, reduced personal contact and minimized the opportunity to offer bribes and corruption.
- 2.15 In order to make a success of the anti-corruption war, a Task Force was appointed by the President in March, 2015 to the Review of Legal, Policy and Institutional Framework for Fighting Corruption. The report of the Task Force is very comprehensive and telling as it carried out a situation analysis of the various aspects of the subject matter, identified the problems and made recommendations. The wide-ranging recommendations of the Task Force encompass legal, policy, institutional frameworks in the devolved system of government, partnerships and multi-agency collaboration, technical assistance, capacity-building, strict adherence to the Constitution of Kenya, among others, in the fight against

corruption. The government has accepted the recommendations and advised to prioritize by classifying the recommendations into short run and long-term implementation plans for effectiveness.

- 2.16 The various institutions/organizations are poorly coordinated making follow-through of corruption cases to a final determination a difficult task and time-consuming process. The general perception of the people during the CRM was that the country's judicial process is slow resulting in many cases going without hearing for very long periods of time. However, there is notable improvement with the ongoing judicial reforms. The challenges of money laundering are numerous. Kenya's location and porous borders make it an important transit point for drug trafficking and money laundering, and the limited capacity of financial institutions and relevant bodies to detect, investigate and prosecute money laundering are two major problems that cannot be ignored in the fight against money laundering.
- 2.17 With regard to regional integration, Kenya is a member of the East Africa Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). Kenya is also a member of the World Trade Organisation that came into existence on 1st January 1995. It is the only international institution tasked with overseeing the negotiations and implementation of rules governing the multilateral trading system. In terms of the regional integration process, COMESA entered an FTA in 2000 and became a Custom Union on 8th June 2009. Kenya is up-to-date with regard to the level of implementation of EAC and COMESA integration programmes. The payment system with the EAC member states is being harmonised and Kenya's trade with EAC members has increased; and Kenya is in the forefront of the removal of trade barriers.
- 2.18 Kenya has taken the lead to expand financial services in the regional member countries. However, some challenges are evident, namely, the existence of non-tariff barriers that hinder the free movement of goods and services, limited public awareness and participation in regional trade, lack of reciprocity from other member states of the EAC, and the presence of counterfeits that encumber trade in locally produced goods. The Government of Kenya is advised to spearhead the articulation of a compensatory mechanism whereby any member state that records revenue loss due to the removal of tariffs and trade barriers is adequately compensated.
- 2.19 The Government of Kenya has taken various steps over the years to facilitate trade and investments. This has involved enacting various legislations that have improved the business environment and enhanced the ease of doing business significantly. Capacity has been developed for technology adoption and value addition and integrating MSMES into the market value chains, especially in the agricultural sector. Export products and markets are now diversified, but are still limited to agricultural products.
- 2.20 New discoveries of mineral and oil wealth have reinvigorated the importance of the extractive industry to the economy. Their commercial prospects could potentially provide significant foreign exchange and fiscal resources, and, ultimately, potentially spur faster economic growth and job creation. The viability of the mineral wealth could also have a large impact on investor sentiments and an attractor of trade and investments. However, growth of this

sector has created the challenge of designing an appropriate governance structure, which will ensure that the benefits of the mineral wealth accrue to all the stakeholders.

- 2.21 The Panel recommends that in order to fully reap the benefits of the mineral and oil wealth, and to avoid the pitfalls of other African mineral-rich countries, Kenya needs to reform its legal and regulatory framework for natural resources to enable prudent management of oil and gas resources. The current regulatory and fiscal regime is in need of reform, as it relates to petroleum and dates from 1986. Specifically, full minerals-specific and oil and gas-specific regulatory frameworks are required.

2.3 Corporate Governance

- 2.22 The development of corporate governance in Kenya has led to the establishment of the Centre for Corporate Governance of the Institute of Directors, Kenya Association of Manufacturers, Kenya Private Sector Alliance, and the Kenya National Chamber of Commerce. These developments have influenced the internalization of corporate governance principles and objectives following the Commonwealth model by most companies which are listed in the Nairobi Stock Exchange and that are subject to the Capital Markets Act. Most family-owned businesses, private companies, Micro, Small and Medium Enterprises, as well as the informal sector, largely operate based on the principles of corporate governance contained in the Companies Act. Kenya is making progress on the objectives for corporate governance in the approved APRM Codes and Standards. The approved codes and standards have the potential to:

- Promote market efficiency
- Control wasteful spending
- Consolidate democracy
- Encourage private financial flows

- 2.23 The Government of Kenya has established various guidelines as regulatory mechanisms to strengthen the financial sector and improve corporate governance. These include, Capital Markets Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya, Capital Markets (Registered Venture Capital Companies) Regulations 2007, Capital Markets (Conduct of Business) (Market Intermediaries) Regulations 2011, Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011, Capital Markets (Demutualization of the Nairobi Securities Exchange Limited) Regulations 2012, a Capital Markets Futures Exchanges Licensing Requirements Regulations 2013, Capital Markets Real Estate Investment Trusts Collective Investment Schemes Regulations 2013 and the Capital Markets Guidelines on the Approval and Registration of Credit Rating Agencies.

- 2.24 As a result, Kenya has moved up 21 places in the 2016 World Bank's ease of doing business, as the country made its maiden entry into the top hundred category. It is a huge achievement for Kenya, which has been keen to improve the business environment.

- 2.25 Progress has also been made in terms of effective leadership and accounting of organisations, in the monitoring of ethical conduct within organisations, ensuring that organisations treat stakeholders fairly and equitably, and in the quality and quantity of organisations behaving as good corporate citizens.
- 2.26 Family-owned businesses and Micro, Small and Medium Enterprises (MSMEs) make a vital contribution to the national economy. Examples of family owned enterprises in Kenya include Tuskys Supermarket, NIC Bank and Access Kenya². The companies are owned wholly or substantially by members of the same family. These enterprises are to be found in the financial, agricultural, manufacturing, education and real estate sector. In 2015, the value of the MSME's output is estimated at KSh 3,369.1 billion (US\$33.69 billion) against a national output of KSh 9,971.4 (US\$77.71 billion) representing a contribution of 33.8%.
- 2.27 The informal sector is essential to the Kenyan economy. According to data from Kenya's Economic Survey 2015, the informal sector employed 11.8 million people in 2014 against 2.4 million in the formal sector. The economic surveys further note that the sector had expanded over the years to include people engaged in small-scale manufacturing, transport, information, communication and technology.
- 2.28 However, that is the part of the economy that has been often not taxed or monitored by the government or regulatory bodies and is not included when computing the Gross National Product. A number of the family owned businesses, micro and small sized enterprises fall under this category.
- 2.29 A positive development is that most small firms now register with the County Governments. Kenya Revenue Authority (KRA) indicates that it will be easier to integrate them into the tax bracket enabling the Government to meet its financial obligations. Incorporating SMEs into the tax bracket is part of KRA's move to expand the tax base in an ambitious plan that seeks to raise the number of active tax payers from 1.6 million to 4 million.

2.4 Socio-Economic Development

- 2.30 Kenya has taken significant steps towards sustained socio-economic development since achieving independence in 1963. These efforts, as acknowledged by the APRM 2006 Country Review Report, have contributed to the promotion of high growth and socio-economic advancement.
- 2.31 The country has designed and implemented a series of policies, strategies and programmes to steer the course of its socio-economic development agenda. A new Constitution was promulgated in 2010 to promote good governance as well as address development challenges.

² <http://www.africog.org/blog/transitioning-from-family-owned-to-multi-billion> last accessed on 23rd May 2014 at 4:49 p.m.

- 2.32 Kenya has also made a marked progress in the area of land reform as reflected in the new Constitution. A number of interventions including a National Land Commission, an Environment and Land Court of a similar jurisdiction to the High Court, a Land Registration Act for enhancing land management, and a National Spatial Data Infrastructure for facilitating land administration have been enacted. These mechanisms have created an enabling environment for responding to the vexing land issues that dominated the era of the 2006 Country Review.
- 2.33 Similar accomplishments have been made in the area of broad-based public participation in socio-economic development. Public participation at all levels of social activities in the country has been enshrined in the Constitution of 2010. Active private sector participation in socio-economic development has also been encouraged through the enactment of a Public Private Partnership Law that ensures participation in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government. A National Youth Council has been set up to promote effective youth participation in decisions.
- 2.34 Emerging challenges of rising poverty levels and an inequitable distribution of wealth in Kenya were also noted by the 2006 Report. Since then, Kenya has implemented a number of policies and programmes aimed at addressing poverty, inequitable wealth distribution and unemployment, particularly youth unemployment, through social and economic policies; land reforms and the fight against corruption. The new Constitution contains provisions for addressing poverty eradication, income inequality and regional imbalances. An Ethics and Anti-Corruption Commission Act was enacted in 2011 to fight corruption. In addition, various Funds and National Cash Transfer programmes have been set up to ameliorate social and economic inequalities.
- 2.35 Discrimination against women was found to be deeply entrenched in customary, religious and cultural practices during the time of the 2006 Country Review Mission. To address these negative practices, the Mission's Report suggested, the initiation of a gender sensitive approach in monitoring and evaluation of development programmes, and the enactment of an Affirmative Action and other related gender equity policies. The Report also promoted the idea of the Government dialoguing with the different communities in Kenya on harmful cultural practices, and the outlawing of all forms of discrimination in respect of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- 2.36 The Kenya Government has progressed steadily towards the implementation of these recommendations and gender equality in general in the country. Gender equality was given a new legal meaning in the new Constitution through specific Articles, such as (Article 27(8)) which provides that "no more than two-thirds of the members of elective or appointive bodies shall be of the same gender". Also, legislation on property rights has improved women's access to private property and the right to inheritance.
- 2.37 Despite these accomplishments, Kenya is still faced with some socio-economic challenges in a number of areas. High levels of poverty; inequality, that appears to border on all aspects of life; youth unemployment; worsening pupil teacher ratios as a result of high

gross enrolment rates in primary schools; high levels of corruption; and lack of interest in participating in policy formulation processes persist. Furthermore, resistance to gender equality still lingers on which can potentially jeopardize the legal achievement of the two-thirds gender rule.

3. OVERARCHING ISSUES

2.38 In the process of examining its findings, the CRM discovered that certain issues of a cross-cutting nature kept recurring across these specific thematic areas; issues of a general nature and, therefore, requiring broad vision and holistic approach for full and effective consideration. The issues are:

- Devolution and Diversity Management for National Unity;
- Corruption and the Quest for Transformational Leadership;
- Poverty and Inequality;
- National Security and Terrorism; and
- Gender and the Two-Thirds Rule.

1. Devolution and Diversity Management for National Unity

2.39 It is the consensus that one of the most celebrated innovations in constitutional engineering introduced by the Constitution of Kenya 2010 is its body of provisions for a devolved system of two layers of government, the national and county governments. The two levels of government are distinct and interdependent, and are required to conduct their mutual relations through consultations and co-operation. Under the system, there are forty-seven (47) counties and a national government. As indicated in Chapter Three, the national government is responsible for the provision of goods and services whose benefits are national in scope. Examples are national defence, foreign affairs, international trade, national economic policy and planning, education policy, monetary policy, currency and banking. The functions devolved to the counties are specified in details in the Fourth Schedule of the Constitution. Some of the functions are agriculture, health services, cultural activities and entertainments, trade development and regulation, cultural activities, and pre-primary education and village polytechnics and childcare facilities. The county governments commenced operation in 2013.

2.40 Concomitant with devolution of functions is revenue sharing arrangement to enable each level of government carry out the constitutionally assigned functions. Article 187(2) of the Constitution of Kenya makes it clear that the revenue allocated to the counties should be adequate to carry out the assigned functions. In general, it is known that devolution of functions promotes good governance through participation by various groups, strengthens the civil society, builds social capital, and enhances accountability and probity, and that it is also regarded as an anti-corruption weapon. Economically, devolution permits the design of public policies and programmes (e.g., infrastructure, health and education) to

reflect the local conditions and the preferences of the people. The intents and purposes of the Constitution of Kenya and the various policy documents underscore these attributes directly and indirectly.

- 2.41 The general perception of the people of Kenya about devolution is strongly positive and profound. Specifically, the consensus across the broad spectrum of the society is that devolution of functions is a good model of governance for the country. It is also largely acknowledged that devolution has only operated four years; and so, it is still at the embryonic stage, for it has a high chance of success. The testimonies during the consultative forums by the CRM were that infrastructure, healthcare, roads, education, among others, have improved with devolution.
- 2.42 However, there are threats to devolution. The capacity of the county governments, in terms of institutional structures, is structurally weak to cope with effective service delivery. Inadequate manpower, and lack of openness, accountability and transparency in the use of financial resources are major challenges. Public participation in the budget and planning process is still very low (or not in existence) in most of the counties. The various special funds, which contribute to service delivery and employment, are poorly managed. There is a need for vigorous civic education through radio and television programmes, seminars, debates about all aspects of devolution, stressing the benefits. The consultation process needs to be strengthened to ensure a buy-in by a significant segment of the society. More specifically, some of the other key challenges to devolution include:
- The enormous overall cost of running the devolved system of governance & the runaway wage bill; and
 - The devolved system's evolving role simultaneously as generator of, and solution to, threats to national unity.

Containing the overall cost of the devolved system and the ballooning wage bill

- 2.43 With 47 devolved units and numerous administrative units below the county level, the new system of governance has led to a significant expansion of the public sector wage bill. This is not only as a result of increased employment levels at both levels of government but also the increase in the number of elective positions. There are more than 700,000 workers in Kenya's public sector, majority earning fairly modest wages. However, there have been concerns that due to an increasing wage bill, government is increasingly reallocating funds from the capital budget to recurrent expenditure. The downside is that this undermines development. Moreover, as government tries to borrow in order to maintain a positive economic growth outlook, it increasingly expands the public debt while crowding out the private sector from the domestic money market.
- 2.44 Under the circumstances, rationalization of human resources within the public sector remains critical. The Panel is gratified that Kenya has taken steps to address the issue under the Capacity Assessment and Rationalisation of the Public Service (CARPS). Another area that the Salaries and Remuneration Commission (SRC) will have to rationalise in containing

the wage-bill would be in setting salaries attached to the elective positions. At elections, under the new system of governance, a voter casts up to six (6) ballots, for the President, Senator, Governor, Member of the National Assembly, Women Representative and the Member of County Assembly (MCA). Going by the sheer numbers of political representatives, stakeholders expressed views that Kenyans are in many regards over-represented. The cost of this over-representation in terms of salaries, allowances and the numerous attendant perks constitute a very significant drain on the exchequer.

- 2.45 It is the recommendation of the Review Mission that the Salary and Remuneration Commission (SRC) fast-tracks and deepens the rationalization of the public sector at both the national and county levels, and that the government of Kenya employ deliberate and extra-ordinary strategies aimed at containing the cost of maintaining the numerous elective positions brought about by devolution.
- 2.46 Closely linked to the salaries for political representatives is the issue of the requisite educational qualifications. The overwhelming view from the public appears to be that in a country where there are many university and college graduates languishing in joblessness, leadership should send the right signals regarding the benefits of education. The argument that leaders need not have a college qualification is inconsistent with the societal insistence on the value of education to the country's social-economic development. The complex nature of modern governance as exemplified by technical policy documentation and debates demands that leaders aspiring to hold the elective positions on offer be highly qualified. It is therefore, recommended that Kenya consider setting a minimum educational qualification for those offering their candidature for elective positions from members of County Assemblies upwards.

Devolved System and Management of Diversity for National Unity

- 2.47 The establishment of 47 counties and governments has been hailed as the surest way of promoting national unity by ensuring that all regions that had hitherto been deemed as marginalized finally had the opportunity to participate actively in nation-building in their own areas. Concerns over the possibility of politicians turning the counties into ethnic enclaves and marginalizing minorities among them were supposed to partly be addressed by the provisions of the County Governments Act (2012), Section 65, which requires that not more than 70% of county government employees be from the home county or counties with similar or almost similar ethnic composition. This was supposed to help preserve national unity through the promotion of integration and national cohesion.
- 2.48 Unfortunately, the reports of the National Cohesion and Integration Commission (NCIC) indicate that this piece of legislation has been widely violated by a majority of the counties. Many counties have employees who are ethnically homogenous. Most of the counties appear to have ignored the law and either 'expelled' personnel that were considered 'non-local' or simply intimidated and frustrated them into non-action thereby adversely affecting their job performance. As a result, devolution appears to have had an inadvertent negative effect on Kenya's national unity. These are real concerns that can further threaten the already

fragile national unity. As a result, it is strongly recommended, that Kenya makes urgent steps to address this issue of ethnic representation in a way that preserve national unity. Relevant institutions, such as the Commission for Revenue Allocation (CRA), the National Treasury, and the Senate, should go further and enforce strict compliance with this critical legal provision if Kenya is desirous of preserving its national unity.

2. Corruption and the Quest for Transformational Leadership

- 2.49 The Government of Kenya (GoK) admits that corruption is the main social challenge in the country as it negatively impacts development. It hinders development in two ways. First, corruption limits the resources available to the government to address poverty. Second, it destroys social values and undermines democracy and good governance. The Kenyan Constitution provides the linchpin to check corruption through relevant provisions, such as Article 10 dealing with accountability, transparency, integrity good governance, among others, while Article 232 is pre-occupied with the principles of public service. The Constitution accentuates the separation of power among the three arms of government.
- 2.50 There is widespread perception that corruption permeates all sectors of public life in Kenya as reflected by major governance indicators. There has been slight improvement over the past decade according to transparency International's Corruption Perception Index and the World Bank Governance Indicators but Kenya still scores relatively poorly on both these measures. In 2011, Kenya was ranked 154 out of 182 countries assessed by Transparency International. In contrast, it is noteworthy appreciating that the World Bank has recorded other governance improvements, including progress in terms of governmental effectiveness (from a score of 28.3 in 2002 to 36.0 in 2011) and in relation to voice and accountability, from 25.5 in 2002 to 40.4 in 2011.
- 2.51 The GoK admits that corruption must be fought and it has taken various measures to fight corruption. Among the laws enacted are the Ethics and Anti-Corruption Commission Act, 2011 that led to the establishment of the Ethics and Anti-Corruption Commission, EACC (a body that replaced the Kenya Anti-Corruption Commission, KACC), the Leadership and Integrity Act 2012 and Public Officers Ethics Act 2003. The Constitution of Kenya and laws on financial management underscore the principles of transparency, accountability and integrity.
- 2.52 There are proofs of corruption cases handled and actions taken by the anti-corruption bureau, the Ethics and Anti-Corruption Commission (EACC). The EACC statistics reveal that: 434 cases related to corruption and economic crimes are being investigated; 187 cases being investigated for unethical behaviour; and 536 cases are pending in courts involving 891 persons arraigned for corruption. A total sum of KShs 9.768 billion was traced and recovered by the EACC in the period between 2005 and 2016. The Government has expressed its commitment in the fight against corruption, but makes clear it has to be within the framework of the Constitution of Kenya, and strict adherence to due process and the principles of fair trial.

- 2.53 There are several key challenges hindering the fight against corruption. These include the slow judicial process and adverse court decisions, which affect the operations of the EACC, acute shortage of human capacity for the EACC to carry out its functions nationwide. The situation is exacerbated with the devolution of functions.
- 2.54 In order to make a success of the anti-corruption war, a Task Force was appointed by President Uhuru Kenyatta in March 2015 to the Review of Legal, Policy and Institutional Framework for Fighting Corruption. The report of the Task Force is very comprehensive and telling. The wide-ranging recommendations of the Task Force covered legal, policy, institutional frameworks, partnerships and multi-agency collaboration, technical assistance, capacity-building, strict adherence to the Constitution of Kenya, among others, in the fight against corruption. The Government has accepted the recommendations of the Task Force and has commenced implementation.
- 2.55 Public discourse on corruption has continued right from independence to the present, outlasting governments and the leaders of government business, underscoring the point that perhaps there is no better evidence of the need for the emergence of a critical mass of transformational leadership committed to change in the running of public and not-so-public affairs in a strategic and “business unusual” manner. Leadership matters, and to that extent a change in the orientation of leadership in and outside of government, indeed in all spheres of life, toward providing vision of a future relatively free of corruption and the inspiration for attaining that goal is urgently required. Such a change would help to significantly build on the current level of success recorded in the anti-corruption war in all spheres of Kenyan society.

3. Poverty and Inequality: the Challenge of Inclusive Growth

- 2.56 Kenya’s economy, the biggest in East Africa, sustained robust growth averaging about 5.5% during 2012-2015 and is projected to grow at 6.0% in 2016 (KNBS 2016). The economy is largely private sector-led (accounting for about 87.5% of GDP) and the growth is driven by sustained institutional reform, robust macroeconomic policies, infrastructure investments, strong agricultural and industrial sector production as well as service sector growth (banking, tourism, etc.). Indeed Kenya is emerging as one of East Africa’s growth centres. Estimated at about US\$1,377 in 2015, Kenya’s income per capita has grown at average of about 8% per annum since 2011 (World Bank 2016).
- 2.57 However, poverty and inequality are a major challenge to Kenya’s inclusive and sustained social economic development and transformation. According to the latest national statistics, about 45% of the population (which translates to over 20 million) live below the national poverty line³. Food security is a major concern to many households: 3 out of 10 households do not have enough food or money to buy food in the seven days preceding the survey; and stunting affects over one out every four children under five years (KNBS 2015).

³ *Government of Kenya, June 2016, Progress in Achievement of Millennium Development Goals in Kenya Final Status Report*

- 2.58 Poverty is much more widespread in the rural areas (50.5%) compared to urban areas (33.5%). Poverty levels are worse in the arid and semi-arid lands of North-Eastern Kenya compared to the central and western regions. For example, in Turkana, Mandera and Wajir counties over 80% of the people live below the poverty line compared to Nairobi, and Kiambu counties where poverty levels are less than 25%.
- 2.59 Among some of the causes of poverty and inequality are historical inequalities and marginalization, high levels of unemployment, especially among the youth and women, lack of skills, lack of resources, especially land, and limited access to markets. Shocks including food price inflation, droughts or floods, illness, and death in the family, especially among the poor and most vulnerable are key causes of poverty in Kenya.
- 2.60 Addressing these issues is critical to laying the foundation for Kenya's inclusive and sustained economic growth and development as well as promoting social harmony. Kenya's long-term development strategy, Vision 2030, aims at transformation, industrialization and a high quality of life to all citizens. It emphasizes equity through fast job creation; poverty reduction, and other measures to improve income distribution: promoting the participation of youth, women and persons with disabilities in economic and political processes. These goals are operationalized and progress monitored through the Medium-Term Plans. Critical points to address include the following:
- i. While sustaining the current economic growth rates through stable macroeconomic environment, expanding infrastructure, Kenya needs to pay more attention to improving access to and the quality of basic social services: education and skills training, health care, water and sanitation.
 - ii. Current poverty reduction and equity enhancing measures (especially the special funds and social protection) need to be deepened and widened to reach more people.
 - iii. Improving governance, reigning in on corruption and ensuring adequate monitoring of public programmes are critical to ensure that more people are reached with available resources, especially in the hard-to-reach areas.
 - iv. In addition to the ongoing curriculum review for primary and secondary education, it is important to review the current approach and practices in early childhood development to ensure a comprehensive approach as the foundation for future skills development and a prosperous society.

4. Gender Inequality and the Two-Thirds Rule

- 2.61 Gender inequality in Kenya was an overarching issue in 2006, and was pervasive in all areas of women's lives. In 2016, it is clear that government and non-state actors have paid great attention to redressing a challenge that covers over a half of the population. Strides have been made in developing legal, policy, institutional and programmatic frameworks that address the political, socio-economic and cultural rights of women. Nonetheless, there are persistent challenges flowing from decades of unequal gender relations that are preventing Kenyans from realising the aspiration of gender equality as stated in the Constitution. At the heart of this are cultural and societal norms that perpetuate discrimination against women

in the public and private sphere, weak enforcement of laws and policies and attitudes and biases among men and women that reinforce acceptance and prevalence of violence against women and girls. While there are emerging areas of progress, it should be expected that since gender inequality hinges on decades of systemic and structural issues, change will occur but with sustained efforts over time.

- 2.62 There is evidence that more public service and justice institutions are embracing institutional reforms that create gender responsive environments. The justice law and order institutions are working within the framework of the new laws to address structural and attitudinal barriers to justice. The focus on victim justice models bodes well for vulnerable women and girls who seek justice from an empowered position. Capacitating these institutions with human, financial and technological resources to function optimally at the national and county level is critical.
- 2.63 Affirmative action measures have been undertaken in the area of education, health, and entrepreneurship. There have been gains numerically in women's participation in these sectors and there is hope that good practices will be replicated and upscaled. However, in the political arena, the participation and representation of women has continued to evidence setbacks particularly at the national level. To date, despite Constitutional guarantees for affirmative action from 2010, women's representation in Parliament as a gender is below the constitutional minimum requirement of a third.
- 2.64 The low presence of women in politics has generated a common rhetoric that women are their worst enemies. This is widely subscribed to without due regard to the structural barriers that inhibit women's participation at this level. Part of the problem seems to lie more in the socialization of society whereby both genders view men as natural leaders rather than women. Additionally, in some regions there is so much hostility overall that women who compete with men for political office face physical danger and stigmatisation. The use of money and patronage networks to influence choice in politicians and voters has predisposed those with monetary clout to have an advantage, which in turn affects women negatively.
- 2.65 The Review Mission sensed genuine desire among key respondents, to comply with the constitutional provision popularly referred to as 'the two-thirds gender rule'. Interm of how to practically deal with the matter has been the more challenging part. To Kenya's credit, compliance with the constitutional provision was achieved at the lowest level of representation - the Ward Representatives (MCAs) through the nomination of an extra 700 women as MCAs.
- 2.66 There is need for reforms at the party level to adopt gender inclusive and empowerment practices. Some parties are embarking on identifying, recruiting and training women of from the grassroots to vie for positions in future elections. Other positive practices by parties have been to utilise women leaders to encourage, inspire and mentor experienced women. The urgent compliance with the two-thirds gender rule by legislative and other measures will be critical for the 2017 elections to be deemed legitimate, credible and constitutionally compliant.

5 National security and terrorism

- 2.67 Security has traditionally been the preserve of the state and the government of Kenya has striven to execute its mandate over the years. However, the challenge posed by terrorism as manifested in attacks and against civilians by radical civilian elements creates challenges that even the developed world is still grappling with. This is aggravated by the fact that for the most part, modern warfare as reflected in terrorism has no discernible frontiers, making it virtually undetectable until harm has occurred.
- 2.68 Terrorist related insecurity in Kenya is externally driven and fed by the Al Shabab insurgency in Somalia and radicalisation of Kenyans, particularly the unemployed youth. Kenya's porous borders and proximity to volatile insecure neighbours coupled with the arms proliferation has allowed for weapons and ammunition to be easily attained.
- 2.69 The various spates of terrorist attacks in Kenya have caused immense suffering, including loss of life, insecurity and violation of rights. The Kenya National Human Rights Commission reported that counties under attack faced challenges when service providers such as teachers and medical personnel who felt threatened suspended services, affecting the communities' right to health, education and employment.⁴ Tourism has been affected greatly yet it is a major source of revenue for Kenya. The issuance of travel advisories banning citizens from travelling to major Kenyan tourist destinations has caused a decline of 7% in tourists in 2012 and 2013, cutbacks in employment and a 1.0% decline in GDP growth. These cutbacks affect small business run by youth and women, affecting their livelihoods and socio-economic rights.
- 2.70 It is incumbent on government to undertake preventative and comprehensive strategies to address the crisis caused by terrorism related insecurity. Stronger security laws and the engagement of communities in counter terrorism efforts are key. Further, the capacity of the security entities to respond to acts of terrorism has come under scrutiny, requiring the reinforcement and re-tooling of counter terrorism initiatives and strategies.

4. BEST PRACTICES

- 2.71 The Review Mission has identified eight best practices worthy of emulation. They are highlighted below for peer learning.

1. Kenya Huduma Centres for improving service delivery

- 2.72 Huduma Kenya is an initiative by the Government of Kenya that aims to transform Public Service Delivery by providing access to citizens of the various Public Services and information from One Stop Shop public service centres called "Huduma Centres" and through integrated technology platforms.

⁴Kenya National Human on Rights Commission 'A country under siege: The state of security in Kenya- an occasional report (2010 - 2014)'

- 2.73 As of 2016, there are 11 Huduma Centres across the major cities of Kenya, three of which are in the capital Nairobi. The government plans to establish a Huduma centre in every county. The programme includes also an online e-Huduma web portal to provide integrated services offered by various government ministries, departments and agencies and a unified and integrated Huduma payment gateway to facilitate ease of payment for government services. Others are introduction of m-Huduma platform to offer government services to citizens from their mobile phones and a Huduma call centre to provide customer service using a single dialing prefix.
- 2.74 Services delivered at Huduma centres include, among many others: Renewal of Drivers licenses Status check, duplicate National Identity Card, NHIF Registration and Claims, assessment and Payment of Stamp Duty – Lands, Search and Registration of Business Names, Registration of Welfare Groups, Student Loan Application and Repayment Services; Reporting Corruption, EACC Clearance Certificate; Status of Pension Claims; Kenya Police Abstract, Public Complaints through the Commission on Administrative Justice (Ombudsman).

2. Kenya National Human Rights Commission protecting and promoting the rights of Kenyans.

- 2.75 KNHRC has executed its mandate in a commendable manner and distinguished itself as a beacon of vigilance for human rights monitoring. It has been accredited as an 'A' status national human rights institution by the International Coordinating Committee of National Human Rights Institutions (ICC) that is supported by the Office of the High Commissioner for Human Rights. The KNRC has worked actively and proactively with government departments and civil society to address priority areas for human rights protection and monitoring compliance by government. The establishment of an autonomous and effective human rights institution is a sign of the commitment of the government of Kenya to meet its international and national obligations towards the realisation of rights.

3. Gender-Based Violence Recovery Centres in major public hospitals

- 2.76 The concept of Gender Recovery Centres was started as an initiative of Nairobi Women's Hospital, a private hospital. The Ministry of Health working through public private partnerships since 2007 has replicated this model in public hospitals regionally. Nairobi, Mombasa, Nyeri and Kisumu referral hospitals have these centres. The centres are servicing the regions around them and provide one stop services to SGBV survivors including medical care services, psychosocial support and safe spaces, HIV Testing, post-exposure prophylaxis and referrals to legal services as well as aiding in court preparations and watching briefs. Women who cannot afford treatment utilise these services from trained health care workers, with continuous care being provided in some instances.

4. Devolution

2.77 A very significant transformative change in Kenya's history of governance is devolution of governance that is enshrined in the Constitution. The two levels of government provided for in the Constitution are the national and county governments, which are distinct and interdependent. Both levels of government are required to maintain mutual relationships through consultation and co-operation. The expectation of Kenyans is that the devolved system of government will promote good governance through participation, and enhance service delivery and raise their welfare. Three years in its implementation, the people of Kenya are generally happy with devolution because it has initiated and improved participation and consultation in governance. Also, devolution has increased the provision of social services (e.g. healthcare, education, roads and electricity), especially in the rural communities and counties have now become new centres of economic activities and growth. Indeed, devolution in Kenya, in terms of design, legislative and institutional structures, among others, is capable of promoting inclusive growth.

5. High revenue generation

2.78 Recent statistics show that the revenue ratio gradually rose from 18.8% in the 2012/2013 fiscal year to 20.5% in the 2015/2016 fiscal year. This has enabled the Government of Kenya has been able to underwrite about 80% of its total expenditure from the revenue collected. The increase in government revenue is attributed largely to improved tax administration. Other significant measures taken are tax education, Integrated Tax Management System (ITMS), the holding of a National Tax Day, revision of the legislations relating to excise and income taxes and VAT reforms, and landlords were brought into the tax net. The government amended the Income Tax Act to deal with the issue of tax avoidance by multinational companies. In addition, the Kenya Revenue Authority (KRA) established a Medium Tax Office (MTO) to collect taxes from medium taxpayers as well as to reach the hard-to-tax informal sector of the economy; and a review of the turnover tax regime. The collective effect of these measures was increased revenue generation.

6. Mobile banking through the M-Pesa platform

2.79 Kenya is a world leader in mobile banking. Its landmark M-Pesa platform, a service offered through a partnership between Safaricom and Vodafone, allows a range of money transfer, cash-flow management and banking options through mobile phones. Launched in March 2010, M-Pesa counted more than 9 million customers in January 2010, and has received worldwide acclaim as many countries are working to emulate its successes. A number of African countries have mobile banking platforms modelled on the M-Pesa. Mobile banking has revolutionized banking and assured financial inclusion of majority of Kenyans, who otherwise are left out by mainstream banking systems.

7. Active Corporate Social Responsibility: case of Safaricom all-girls School in Garissa County

- 2.80 In the context of social corporate responsibility, Safaricom, a leading telecommunication company, built an all-girls school in Garissa, in recognition of the challenges facing girls of that region in attending school beyond the primary level. This has increased the enrolment and attendance of secondary school by girls in the county.
- 2.81 The poor enrolment is partly due to the community's nomadic culture and lack of education role models. Cultural practices such as Female Genital Mutilation (FGM), early marriages, and negative attitude towards education are the major challenges that hinder girl child education in the county. Prejudice where the community believes that girls should not mix with boys at adolescence is also a major hindrance.

8. Free Maternity Services

- 2.82 In 2013, the Government initiated and implemented a policy of free maternity services in all public health facilities to address the problem of Kenya's Maternal Mortality Rate (MMR). It reimburses the health facilities by paying the funds directly to them for every delivery that they handle. This covers both normal deliveries, deliveries through caesarean, and complicated deliveries.
- 2.83 Prior to this policy, the MMR was as high as 488 deaths per every 100,000 live births per year. Increasing the percentage of births delivered in health facilities is important for reducing deaths arising from complications of pregnancy. The expectation is that if complications arise during delivery in a health facility, a skilled birth attendant can manage them or refer the mother to the next level of care.
- 2.84 According to the Kenya Demographic and Health Survey 2014 (p. 128), about 61% of births were delivered in a health facility. Approximately 46% of these were delivered in public-sector facilities and the other 15% births were in private-sector facilities. This is a large increase from 43% in 2008 to 2009. In addition, the reported MMR was 362 deaths per 100,000 live births (KDHS 2014, p. 329).







CHAPTER ONE /



CHAPTER ONE

1 INTRODUCTION

1.1 The APRM and its Implementation in Kenya

1. “The mandate of the African Peer Review Mechanism (APRM) is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the participating member governments.”NEPAD/HSGIC/03-2003/APRM/MOU/Annex II

1.2 The APRM Process

2. The APRM is an instrument voluntarily acceded to by Member States of the African Union (AU) as a self-monitoring mechanism for good governance. The African Peer Review (APR) process entails periodic reviews of the policies and practices of participating states to ascertain progress being made towards achieving mutually agreed goals and compliance with agreed political, economic and corporate governance values, codes and standards, as outlined in the AU’s Declaration on Democracy, Political, Economic and Corporate Governance [APRM Base Document, Paragraph 15].

3. The APRM has, at its epicentre, the deepening of democratic practices, with a view to strengthening achievements, disseminating best practices and rectifying underlying deficiencies in governance and socioeconomic development processes among AU Member States. The aim is to encourage and build a transformative leadership through a self-assessment process that is inclusive and participatory, constructive national dialogue, and the sharing of information and common experiences, in order to reinforce successful and exemplary practices among African countries.

4. The evaluation involves a dual process of self-assessment by the participating country, and of external independent evaluation, led by the APR Panel of Eminent Persons (APR Panel), which culminates in a peer review by participating Heads of State and Government.

5. The APRM is open to all Member States of the AU, and so far 35 Member Countries have voluntarily acceded, as indicated in Box 1 Accession entails undertaking to submit to periodic peer reviews, as well as to facilitate such reviews, and to be guided by agreed parameters for good political and economic governance, socio-economic development and corporate governance.

6. The APRM process consists of five interrelated stages, which are defined in the APRM Base Document. They are briefly described below.
7. **Stage One** is the preparatory phase, both at the level of the APRM Secretariat and at the national level. Under the direction of the APR Panel, the APR Secretariat forwards to the country to be reviewed a questionnaire covering the four focus areas of the APRM. On the basis of the questionnaire, the country conducts a self-assessment exercise, produces the report and formulates a preliminary National Programme of Action (NPOA) that builds on existing policies, programmes and projects. Both the Country Self-Assessment Report (CSAR) and the preliminary NPOA are submitted to the APRM Secretariat. During the same period, the APRM Secretariat develops a background document on the country. This is done through desk research and gathering available current and pertinent information on the governance and development status of the country in the four assessment areas.
8. **Stage Two** is the country review visit. Under the leadership of the APR Panel, the Country Review Team (CRT) visits the country concerned and carry out the widest possible consultations with government officials, other state institutions such as the judiciary and parliament, political parties, and representatives of civil society organisations, including the media, academia, trade unions, business and professional bodies. The main objectives are to:
- Learn about the perspectives of the different stakeholders on governance and socio economic development of the country;
 - Clarify the issues identified in the CSAR; and
 - Gather recommendations on how these could be addressed.
9. It is instructive to note that the country mainly plays a facilitating role during the review visit, ensuring that the CRT is able to carry out its review smoothly. The CRT is given full access to all sources of information and stakeholders, as provided for in the MOU for Technical Assessment and the Country Review Visit signed by the country and the APRM.
10. **Stage Three** involves the drafting of the Country Review Report (CRR). It is informed by the CSAR and preliminary NPOA, Background papers prepared by the Secretariat, as well as information made available to the CRT during the country consultations with stakeholders. The draft report:
- Considers the applicable political, economic and corporate governance and socio economic development commitments made in the preliminary NPOA;
 - Identifies any remaining weaknesses; and
 - Recommends further actions to be included in the final NPOA.
11. The draft report is first discussed with the government under review to ensure the accuracy of the information. The government is given an opportunity to react to the findings and

put forward its own view on how the shortcomings can be rectified. These responses are appended to the country report. At this stage, the country finalises its NPOA, taking into account the conclusions and recommendations of the draft report.

12. **Stage Four** begins when the APRM Lead Panel Member who led the country review process submits the final report together with final NPOA to the APR Panel. Upon its approval, the Country Review Report is then submitted to the APR Forum for consideration and formulation of actions deemed necessary in accordance with the Forum's mandate.
13. **Stage Five** entails formal publication and presentation of the CRR to national stakeholders and key African Union regional bodies, such as the Regional Economic Community to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, etc.

Box 1: Status of APRM implementation as of 2016

The APRM is clearly the most innovative instrument for entrenching democracy and good governance in Africa. It is unprecedented in the history of governance in Africa. The key principle of the APRM process is to propel the citizen at the centre of public policy and governance practice in Africa by ensuring broad-based participation of all stakeholders in the review process. In so doing, it heightens public awareness of governance and development processes, and builds a national dialogue and consensus around critical governance issues.

The National Programme of Action (NPOA) that comes out of the review process provides an implementation framework for the state and stakeholders to address governance challenges and meet developmental goals. It is equally a monitoring tool for countries to track progress

National ownership and leadership by the participating countries are essential to the effectiveness of the APRM process. This includes leadership in ensuring consistency and alignment with existing national processes. In Kenya it is critical that APRM NPOA be aligned with Vision 2030, the global Sustainable Development Goals, Medium-Term Expenditure Framework (MTEF), and County Integrated Development Plans at county level. To date, 35 AU Member States have voluntarily joined the APRM. These are

Algeria, Angola, Benin, Burkina Faso, Cameroon, Chad, Republic of the Congo, Cote d'Ivoire, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda and Zambia.

Seventeen have completed the first review process and have been peer reviewed by the APR Forum. Others are at various stages of the review process. Kenya is the first APRM Member State to pioneer the second review process after its base review in 2006.

1.3. The implementation of the APRM process in Kenya

14. Kenya is one of the pioneer countries to accede to the APRM at its inception in 2003. It is also among the first three countries to start the review process. Kenya was peer reviewed by the APR Forum at its meeting held in Banjul, The Gambia, in June 2006, thus becoming the third country to complete the process.
15. After the peer review, ministries and government agencies started implementing the NPoA. A six-month progress report based on submissions from ministries was presented by His Excellency President Mwai Kibaki at the APR Summit in Addis Ababa, Ethiopia, in January 2007. In the report, President Kibaki briefed the APR Forum on the steady progress Kenya had made in addressing macroeconomic fundamentals, especially inflation control and infrastructure development, as well as progress in education and other social sectors. He further reported that a popular version of the Country Review Report (CRR) had been produced in both English and Swahili, as part of a mass sensitisation and ownership initiative undertaken by the Government. The APR Forum lauded Kenya for the progress it had made.
16. The 2006 APRM Kenya CRR had a significant impact on the articulation of Agenda 4 issues in the National Accord and Reconciliation Agreement (NARA) of 2008, which was brokered by the AU Panel of Eminent African Personalities, under the leadership of the former Secretary-General of the United Nations (UN), Mr Kofi Annan. The AU Panel also included former president Benjamin Mkapa of Tanzania and Dr Graça Machel who was the lead panellist for the 2006 Kenya review. Dr Machel ably used her intimate knowledge of the CRR to ensure that the APRM findings were part and parcel of the reconciliation agreement.
17. The Kenya National Dialogue and Reconciliation (KNDR) framework, which formed the basis for NARA, identified four main agenda items for the purpose of ending the crisis. These four areas are critical in terms of addressing the causes of the crisis, reconciling communities and preventing future conflicts in the country. These four agenda items are: i) Agenda 1: Immediate action to stop violence and restore fundamental rights and liberties; ii) Agenda 2: Immediate measures to address the humanitarian crisis, and promote reconciliation and healing; iii) Agenda 3: How to overcome the political crisis; and iv) Agenda 4: Address long-standing issues, including constitutional, legal and institutional reforms; land reforms; youth unemployment; poverty; inequity and regional development imbalances; consolidating national unity and cohesion; and addressing impunity, transparency and accountability. To implement NARA, numerous reform measures were thereafter introduced.
18. In January 2009, at the 10th Summit of the Heads of State and Government participating in the APRM, President Kibaki presented the progress report on the implementation of the NPoA, covering the period June 2006 to January 2009. The APR Forum commended Kenya for the progress it had made in restoring peace and stability after the post-election violence of 2007/2008. In view of the need to consolidate progress made after the post-election violence and the mediation efforts that led to the formation of a Coalition Government, the APR Forum recommended that a special review be undertaken, specifically to assess trends in democracy and political governance in Kenya.
19. The Special Review was carried out from 16 to 31 July 2011. However, by the time the report

was to be tabled at the APR Forum in July 2012 the report had been overtaken by events as Kenya had gone through major governance reforms provided under the 2010 Constitution. Instead, Kenya requested to have a comprehensive second review.

20. In August 2016, Kenya submitted an 872-page second Self-Assessment Report to the APRM Secretariat. The self-assessment used four research methods to obtain data, namely desk research, expert panel surveys, a national household survey, and Focus Group Discussions (FGDs). Activities related to the first two methodologies were carried out by the African Centre for Economic Growth, while the National Household Survey was carried out by the Kenya National Bureau of Statistics (KNBS) and the Focus Group Discussions (FGDs) were carried out by the APRM Kenya Secretariat and the Ministry of Devolution and Planning.

1.4. Methodology for the 2nd Review of Kenya

21. The overriding objective of the second review is to assess progress made in terms of governance and socioeconomic development in the period since the base review of 2006. The specific objectives are to:
- Reinvigorate and institutionalise the APRM process in the country.
 - Appraise to what extent the NPoA has been implemented, and its continued relevance, on the basis of which a new NPoA will be proposed and adopted.
 - Examine whether the identified commendable or best practices in the base review have been reinforced and promoted.
 - Tackle any new and emerging issues relevant to governance and socioeconomic development.
22. The process for the second review of Kenya followed the methodology of the periodic reviews, as outlined in the Methodology for Periodic Reviews in countries that have undergone the Peer Review Process.¹
23. In accordance with the procedures of the APRM process, upon receiving the second Kenya Self-Assessment Report and preliminary NPOA, the APRM Secretariat organised from 3 to 7 October 2016 a Support Mission as well as a Pre-Mission Analysis.
24. The Support Mission main objective was to sensitise the stakeholders on the second Kenya review, assess the level of the country preparedness and get the Memorandum of Understanding on Technical Assessment and Review Visit signed. The MOU was signed on the 4th October 2016 by His Excellency President Uhuru Kenyatta and Professor Al Amin Abumanga, Lead Panellist for Kenya. This paved the way for the 2nd review mission.
25. The Pre-Mission analysis runs concurrently with the Support Mission. It is a new technique which was introduced in the APRM Methodology to improve the actual review mission. Its purpose is to identify the key questions that form part of the Issues Paper, which guided the

¹APRM Secretariat. 2010. *Methodology for Periodic Reviews in countries that have undergone the Peer Review Process.*

Country Review Mission in assessing Kenya's performance in the four thematic areas. The pre-mission was done using different scientific methodologies including online survey, focus groups, and review of statistical data. This facilitated the preparation of the Issues Paper.

26. From 24 October to 12 November, the Country Review Team (CRT) led by Professor Al Amin Abumanga, Lead Panel Member visited Kenya. The CRT was composed of independent African experts chosen for their competence and expertise in the area of governance, particularly in the focus areas of the review mission. The CRT also included experts from APRM strategic partner institutions and a coordinator from the APR Secretariat, as indicated below:

i) On behalf of the APR Panel and APR Secretariat

- Professor Al Amin Abumanga, Member of the APR Panel and Lead Panelist for the second Kenya review.
- Dr Rachel Mukamunana, Head of Division, Country Review Coordination at the APRM Secretariat, and Coordinator of the Kenya review mission.

ii) Independent experts

- Professor Adigun Agbaje, from Nigeria, expert in the area of democracy and political governance.
- Professor Festus Egwaikhide, from Nigeria, expert in economic governance and management.
- Dr Bernard Dasah, a Ghanaian national, expert in the area of socioeconomic development.
- Dr Elvis Mtonga, from Zambia, expert in economic governance and management.
- Professor Kofi Adusei, from Ghana, expert in corporate governance.
- Ms Laura Nyirinkindi, from Uganda, expert in issues of human rights.

On behalf of the APRM Strategic Partner Institutions

- Paul Mpuga, representing the United Nations Economic Commission for Africa (UNECA).
- Mr Charles Akong, representing the United Nations Economic Commission for Africa (UNECA).
- Mr Mayer Ngomesia, representing the United Nations Economic Commission for Africa (UNECA).
- Professor Nehemiah Osoro, representing the African Capacity Building Foundation (ACBF)
- Honourable Isa Ozi Salami, representing the African Union Advisory Board on Corruption (AUABC)

Team A County Visits	Invited Counties	Team B County Visits	Invited Counties
Turkana		Narok	Bomet, Kericho, Kajiado
Machakos	Makueni Kitui	Kisii	Nyamira
Kiambu	Muranga	Homa Bay	Migori
Nyeri	Kirinyaga	Kisumu	Siaya
Meru	Embu Tharakanithi	Kakamega	Vihiga
Isiolo	Marsabit Samburu	Bungoma	Busia
Garissa	Wajir Mandera	Uasingishu	Trans-Nzoia Westpokot
Lamu	Tana River	Nandi	Elgeyo Marakwet
Mombasa	Taita Taveta Kwale, Kilifi	Nakuru	Buringo
		Nyandarua	Laikipia

27. The CRT held consultations with a wide range of stakeholders (representatives of women, youth, farmers, people with disabilities, civil society actors, religious groups, county commission officials as well as county government officers), who provided primary information and data on governance and socioeconomic development of Kenya. The CRT divided into two groups to be able to cover all the 47 counties of Kenya. Neighbouring counties were clustered together.

1.5. CRT County Forum Meetings

28. Both Teams converged in Nairobi on 7 November 2016 to meet state and non-state stakeholders of Nairobi County. The CRT also met top national government officials and heads of independent commissions, the Speaker and Deputy Speaker of the National Assembly, representatives of political parties, the Governor of the Central Bank of Kenya and his team, leaders of the Kenyan private sector, and the United Nations Group operating in Kenya.
29. This Country Review Report presents the findings of the CRT to Kenya, as well as Panel recommendations. The report is structured in seven chapters in addition to the executive summary. Apart from this introductory chapter and the overview, the subsequent four chapters evaluate developments and outstanding challenges in the four APRM focus areas (Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development). Chapter 7 contains a discussion of the overarching issues. These are issues, which require a holistic and immediate action due to their impact on governance and socio-economic development.



CHAPTER

TWO



CHAPTER TWO

2. BACKGROUND

2.1 Overview

30. Kenya is often portrayed as the **bellwether** and **key anchor** for democracy, development, stability and security for eastern Africa. Over time, this role perception has reflected and affected local realities and elicited global attention and responses in line with Kenya's profile in the comity of nations. It is, therefore, not surprising that, in the context of a coincidence of national and regional thinking, Kenya has emerged the first African country to present itself for a second review under the APRM, reflecting its pioneer status as highlighted in Chapter One of this Report.

31. The full context to this Report comprises two phases in Kenya's political history, and basic lessons and legacies from, *viz*:

- The short but important period of the struggle to avoid, contain and surmount the political and post-election crises (2006-2007/early 2008),
- Dovetailing into the period of constitutional, structural, and institutional re-engineering to renew and consolidate Kenya's status as a multi-party democratic state, from 2007 to the present.

32. The next section of this chapter, drawing in part on previous APRM documents, provides an overview of Kenya's political developments, focusing on the period between 2006 and 2016. This is followed up by other sections on macroeconomic performance, challenges in the bid for good governance, and milestones in Kenya's progress in this regard.

2.2. Political Developments

33. The background to the period under review 2006-2016 can be traced back to events after 1990, and constitutional and political reforms that took place then to address the challenges on the country's path toward a settled democratic and developmental state. These reforms included the following:

- Repeal in 1991 of the constitutional provisions making Kenya a de jure one party state;
- Restoration of security of tenure for judges, the Attorney General, the Controller of Budget and Auditor General; and
- Enacting in 1992 of provision for a maximum of two five-year terms for the President.

34. In effect, the sitting President Daniel Moi, having been in power since 1978, could now only seek election to the same office only twice and hold office for a maximum of 10 years beginning from 1992. He did win the 1992 and 1997 elections but was barred by law from contesting the 2002 election, an election that the candidate of his ruling Kenyan African National Union (KANU) party lost to his erstwhile vice-president, Mwai Kibaki who ran on the platform of an alliance of opposition parties called the National Rainbow Coalition (NARC) to emerge new president in December 2002, thus ending KANU's 40-year dominance of the politics and government of Kenya. President Kibaki was re-elected in 2007 in circumstances that led to civil strife and tested his own political platform. The third president to emerge following the reforms initiated in 1992 is the incumbent, President Uhuru Kenyatta, who contested the 2013 election under the banner of The National Alliance to defeat veteran opposition politician, Raila Odinga, of the Orange Democratic Movement (ODM). In effect, subsequent developments from 1990 have shown that while the path to meaningful democracy has been tortuous and often painful, the march has been persistent. Thus, the multi-party elections of 1992, 1997 and 2007 were marred by significant inter-ethnic violence often powered also by deep-seated economic grievances, reflecting the tendencies to perceive political parties along ethnic lines.
35. This was the context in which the 2007 election was held. Although initial reports on the election, including voter turn-out were positive, mounting ethnic tension heightened by the 2005 referendum, corruption and the failure in the bid to put in place a new constitution generated political tension that led to political violence as noted above. The post-election crisis underscored the immediate need to pursue constitutional and political reforms more vigorously. The crisis brought out clearly a number of fundamental governance problems in the country, revolving around:
- The electoral system, especially the first-past-the post system, with its emphasis on winner-takes-all;
 - The negative impact of the political mobilization of ethnicity for competitive electoral politics;
 - Weak separation of power, under an imperial presidency, which saw the diminution of the powers of the legislature, judiciary and independent commissions, such as the electoral commission; and
 - Lack of accountability in and by the public service and the security forces.
36. The two main political parties, the Party for National Unity (PNU) and the Orange Democratic Movement (ODM), subsequently signed an agreement brokered by Mr Kofi Annan and his team of AU Panel of Eminent African Personalities. Thus, was put together in 2008 a National Accord and Reconciliation Bill and a frame for what became known as National Accord and Reconciliation Agreement (NARA). Under the agreement, the two parties accepted to share power with Mr Mwai Kibaki as President and Mr Raila Odinga as Prime Minister. The parties also agreed to set an agenda for political reforms, including a new Constitution and land reforms, and institute a government of national unity. Specifically, it was agreed to:

- End the violence;
- Improve the humanitarian situation;
- Conduct a diagnostic review of the Electoral Commission of Kenya;
- Establish a truth, justice and reconciliation mechanism;
- Review the Constitution within a year; and
- Resolve long-term issues, in particular, land and interethnic inequalities.
- By the end of March 2008, three bodies had been established to implement these agreements, namely:
 - The Truth, Justice and Reconciliation Commission;
 - The Commission of Inquiry on Post-Election Violence; and
 - The Independent Review Commission on the General Elections.

38. A new Constitution of Kenya Review Act, 2008 was also passed establishing a Committee of Experts (CoE) with a 12-month mandate to coordinate the constitutional review process and prepare a draft to be submitted to referendum. In March 2009, the members of the CoE comprising six Kenyans and three Africans were sworn in. On 17 November 2009, the CoE released the draft to the public for comments. Kenyans had 30 days to review the draft and submit their comments to the CoE. In mid-2010 the two principals appeared to call a truce, finding common cause in the campaign for the new constitution and, against their antecedents, outflanking opponents of the unfolding process in their respective parties and mobilizing the country for a referendum which, at 72% of registered voters, turned out to be the highest voter turnout in Kenya's history. The referendum approved the draft constitution which was promulgated on 27 August 2010.

39. The power-sharing agreement did not put an end to divisions among parties in the Grand Coalition Government. The coalition fragmented further in March 2010 after the International Criminal Court (ICC) allowed its prosecutor, Luis Moreno Ocampo, to investigate post-election violence in Kenya. This followed the coalition's failure to put in place an internal mechanism in the form of a Special Tribunal to prosecute perpetrators of the post-election violence as recommended by the Waki Commission of Inquiry into Post-Election Violence. The start of Ocampo's investigations widened the breach in the coalition and provoked further realignments along both political and ethnic lines, principally driven by factional attempts to protect senior politicians whose ambitions for the 2012 elections appeared threatened by possible indictments by the ICC.

40. **His Excellency** President Uhuru Kenyatta and his Deputy, William Ruto, who emerged victorious in the 2013 election under the platform of Jubilee Alliance between The National Alliance (TNA) and the United Republican Party (URP), were the most politically visible Kenyans indicted by the ICC, setting the context for increased tension within Kenya and in Kenya-ICC relations while the trials lasted at the Hague. In December 2014, the ICC dropped charges of crime against humanity earlier made against President Uhuru Kenyatta, following prosecutors' statement that evidence had "not improved to such an extent that Mr. Kenyatta's alleged criminal responsibility can be proven beyond reasonable doubt".
41. Again, in April 2016, the ICC ruled that Deputy President William Ruto, along with co-accused journalist Joshua Sang, had no case to answer following the declaration of a mistrial in the charges brought against them.
42. The period since the promulgation of the 2010 Constitution, and especially since the 2013 election has been one of a cumulative process of institutional and process engineering to consolidate constitutional democracy in Kenya, devolve power to local communities and ensure better separation of powers and checks and balances within and between branches and layers of government, protect the rights of citizens to fully participate in governance, and ensure protection for key public and social institutions and a barrage of fundamental freedoms and guarantees to address discriminations against marginalized groups and regions.

2.3 Overview of Macroeconomic Performance

2.3.1 GDP Growth

43. The Kenyan economy is showing a bright future in terms of sustainable growth which is capable of eradicating poverty and increased employment, reduced fiscal deficits, low inflation and a diversified export base and increased earnings. The Kenyan economy has shown a robust growth in the past seven years. Kenya's real GDP growth has averaged over 5% for the last seven years. The Gross Domestic Product (GDP) grew by 5.6% in 2015 compared to 5.3% in 2014. This growth was mainly attributable to a stable macroeconomic environment as well as improvement in outputs of agriculture, construction, manufacturing, finance and insurance, information communications and technology (ICT), real estate, and wholesale and retail trade. Overall GDP prospects are 6.0% and 6.4% for the years 2016 and 2017 respectively. However, prior to 2011, the economic growth rate was much lower. For instance, it was 3.3% in 2009. Such a low performance was caused by global economic shocks such as global financial and economic crisis and the post-election shocks (e.g. post-election violence). Consumer Price Index (CPI) inflation projections remain at around 6% over the same period (2016/17).
44. It is important to note that the rebasing of GDP in 2014 led to the reclassification of Kenya to lower-middle income status, with a GDP of USD 52.8 billion and per capita income of USD 1,195. The rebasing also saw Kenya become the ninth largest economy in Africa.

2.3.2 Fiscal Policy

45. The government's fiscal framework is targeted at supporting rapid and inclusive growth, ensuring sustainable debt position, and supporting devolution for effective delivery of services. In 2015/16 the fiscal plan was aligned to the second Medium Term Plan (MTP II) and strategic interventions of National interest. The framework entails a continued prudent expenditure management to curb fiscal risks, gradually lower the fiscal deficit and contain growth of recurrent expenditure in favour of productive capital spending. The 2015/16 budget underlined resource allocation towards development programmes in infrastructure, agriculture, security, health, education, social protection and youth empowerment - all aimed at enhancing sustainable and equitable growth and job creation.
46. Public debt has increased but remains within manageable levels. It increased from 36% of GDP in 2008 to 48.6% by the end of 2013. The debt stock of external debt experienced a marginal increase. In contrast, domestic debt stock experienced a faster growth, rising from 16% to 22.3% of GDP over the same period. This is partly attributable to the impact of expansionary fiscal policy coupled with accommodating monetary policy, which resulted in a reduction of interest rates (yield on treasury bills) from 8.6% in 2008 to 2.3% in 2010. This confluence of macroeconomic policies prompted a lending boom. As a result, the credit to the private sector grew rapidly from 19.8% of GDP in 2009 to 30.7% in 2010, the major beneficiary of the credit being the mining sector.
47. The government has succeeded in suppressing fiscal deficit. Total revenue-to GDP ratio over the 2006/07-2012/13 remained strong, averaging 25.9% of GDP. This kept the fiscal deficit around 4% of GDP. At the same time, public spending, including grants, was kept at an average of 35.67% of GDP. The financing of the fiscal deficit by both domestic and foreign borrowing did not affect debt sustainability.
48. Although fiscal deficits have been high, inflation has largely remained low since it mainly depends on demand. This is particularly the case for food and oil prices, which have remained favourable over the last two years. Despite recent discoveries, Kenya is not yet producing oil and has mainly benefited from the falling oil prices, which helped suppress inflation.
49. Total revenue-to-GDP ratio is expected to average 21% in the next two years. In contrast, total expenditure and net lending will remain above 30%, and the average overall budget deficit will remain above 7% of GDP.
50. Total stock of debt by the end of 2014/15 stood at Ksh 2,601.4 billion, of which external debt stock was 54.7%. Debt servicing charges net of repayments from lending were expected to be at Ksh 399.0 billion. Over the period under review, Ksh 259.8 billion were transferred to county Government. The total budgeted expenditure for county government was estimated at Ksh 362.1 billion against estimated revenue of KSh. 343.7 billion.

2.3.3 Monetary Policy

51. The monetary policy is aimed mainly at achieving and maintaining the economy's general price levels with the ultimate goal of achieving an inflation target of 5.0% per year. In the 2011-2014 period, inflation exhibited a drastic declining trend. The inflation rate fell from 14.5% in 2011 to 10% in 2012 and further declined steeply to 4.9% in 2013; and thereafter rose to 7.4% in 2014. The overall decreasing trend of inflation was attributable to prudent monetary policy stance of the Central Bank of Kenya. More importantly, increased food production, together with declining petroleum prices significantly kept inflation down. Inflationary pressures and volatility in exchange rate characterized the year 2015. Consequently, the Monetary Policy Committee (MPC) raised the Central Bank Rate (CBR) from 8.5% to 10.0% in June 2015, and further to 11.5% in July. However, there were mixed performance in interest rates during 2015 arising from the changes in the CBR. The 91-day Treasury bill rate dropped from 8.58% in December 2014 to 8.26% in June 2015 and thereafter rising to 9.81% by December. Commercial bank's loan advances and lending interest rate rose to 17.45% in December 2015 from 15.99% in December 2014 (Economic Survey, 2016).
52. Notwithstanding prudent monetary policy stances of the Central Bank of Kenya, there have been deteriorations arising from rapid currency depreciation in 2015. Strong food production coupled with declining petroleum prices has been more successful at keeping inflation down than deliberate monetary policy intervention. Nevertheless, the CBK continues to use the Central Bank Rate (CBR) to keep in check inflation. Inflation was reduced from 18% in June 2012 to 8.5% in May 2013 and thereafter raised to 11.5% in May 2013 to contain rising fragility in the money market. These efforts have mitigated inflation and proved responses to internal and external shocks, which have led to relative stability of domestic prices of goods and services.

2.3.4 Exchange rate

53. The exchange rate remained stable until 2014, but became volatile in 2015, accompanied by large depreciation resulting in loss of about 10% of the value of the Kenyan Shilling in 2015. This depreciation has been mainly attributed to the global depreciation of the US dollar, which left most of currencies on downward spiral, consequently affecting all the East African Community (EAC) Common Market regional currencies. This exacerbated the challenge facing the EAC Monetary Union and further delayed prospects of convergence.

2.3.5 Credit

54. Credit to the private sector has declined relative to public sector borrowing. Domestic credit from the banking sector increased by 29.2% in June 2015, compared with 14.6% over the same period in June 2014. Over the same period, growth in credit to the private sector decreased to 20.5% from 25.8% in the previous year.

2.3.6 International Trade and Balance of Payments

55. External sector developments have been associated with challenges. There has been a surge in imports causing the current account deficit to widen, engendering external sector vulnerability. Statistically, the current account deficit increased from US\$2.2 billion in 2010 to US\$3.3 billion in 2011 and further to US\$4.5 billion in 2012. The rise in total export earnings compared to the decline in total import bill resulted in the improvement of export-import ratio from 33.2% in 2014 to 36.8% in 2015. Total exports recorded in 2014 rose by 8.2% to KSh 581 billion in 2015. In contrast, total imports declined by 2.5% to KSh 1,578 billion over the same period. Thus, in 2015, the balance of trade improved from a deficit of KSh 1,081 billion registered in 2014 to a deficit of KSh 997 billion. This led to a slight increase in volume of trade from KSh 2,156 billion in 2014 to KSh 2,158 billion in 2015. The rise in total export earnings compared to the decline in total import bill resulted in the improvement of export-import ratio from 33.2% in 2014 to 36.8% in 2015. The leading export earners were tea, horticulture; articles of apparel and clothing accessories and coffee collectively contributing 54.6% of total export merchandise.
56. The main challenges that the country currently faces are in how to make devolution work better to improve the welfare of the people, combat rising inequality, and fight corruption and money laundering. Success in this sphere will catalyse growth and enhance economic prosperity.

2.4 Major Challenges for consolidating democratic governance and socio-economic development

57. With all the success and innovativeness in constitutional and institutional reform that characterized the last decade of change toward consolidating democracy and good governance in Kenya, certain factors continue to undermine progressive improvement in governance. They include, among others:
58. Public disenchantment with the political process arising from:
- A perceived gap between the constitutional and institutional promises of effective public participation in governance and the reality of lack of meaningful public participation;
 - High levels of poverty accompanied by deepening inequality arising from historical imbalances in the distribution of natural and other resources and opportunities;
 - Perceptions of corruption and its debilitating effects on democracy, fairness, equity, and development; and
 - Perception and reality of constitutional and institutional provisions for representation and entitlements for groups marginalized by considerations of history, gender, age, and disability, among others.

59. The nature of much of Kenya's political elite and key political institutions and their predilections for mobilization of ethnic and other sectional symbols for short-term narrow advantage. This has tended to compound Kenya's vulnerabilities, eroded the infrastructure for nurturing cross-ethnic and cross-regional civic and other associational identities that could sustain a more rational basis for modern and effective governance of the public terrain.
60. The legacy of the authoritarian past, encouraging, among the political and other elite, a persistence of a culture of impunity that is difficult to uproot and often rewarded for those that are pro-power structure, and among the mass of the people a culture of scepticism in regard of the chances for meaningful political change that would take dogged effort and leadership by example to successfully address.
61. The damaging effect of instability and political crises in neighbouring states not only in terms of cross-border banditry and terrorist activities but also in terms of demonstration effect on disenchanted groups within the Kenyan political space.

2.5. Milestones in Kenya's political, social and economic progress

- The major milestones recorded in Kenya's march toward enduring democracy, mature politics as well as social and economic development in the period since 2006 and especially since the troubles of 2007-early 2008, revolve around the constitutional, legal and institutional reforms subsequently put in place. Specifically, the constitution of 2010 and related innovations:
- Provided a resilient framework for resolving contentious issues relating to the system of governance for Kenya, including the introduction of devolution to address regional inequalities and boost public participation in government down to the grassroots;
- Established a neater, more vigorous and more workable system of separation of powers with attendant checks and balances by weakening the overbearing executive branch, creating independent commissions, and further empowering the other branches, namely the legislature and the judiciary;
- Addressed the issues of ethnicity, regionalism, gender equality, disability, and age, among others, in the party and electoral systems and in the management of devolution;
- Provided a sustainable platform for enduring process of reconciliation and civic dialogue through a system to encourage fairness and inclusiveness, as well as address and protect the fundamental rights and freedoms of individuals and groups with provisions for an extensive constitutional Bill of Rights.
- On economic front, Kenya formulated and launched the Kenya Vision 2030 in 2008, which is both a long-term vision and strategy, for attaining sustained socio-economic development. Vision 2030 replaced the Economic Recovery Strategy for Wealth and Employment Creation (ERS), which Kenya implemented since 2002. The Vision aspires to turn Kenya into a globally competitive and prosperous nation within 25 years, between 2008 and 2030, and attain a high standard of living for its people. Under the economic pillar of the Vision, the aspiration is to attain and sustain economic

growth rates of 10% starting in 2012 through implementing an economic development programme that prioritizes key growth sectors of the economy.

- Under the vision macroeconomic stability has largely been secured, with sound fiscal and monetary management, which has enabled the delivery of low inflation and withstand a number of vulnerabilities to the economy. Since 2010, the economy has expanded progressively, posting growth rates above 5%.

62. In sum, elements of the political and other elite appear to have finally recognized the need to work toward ensuring that the country moves away from the factors and forces that made the sad events of 2007/2008 possible, committing to a more just society up in arms against poverty, growing inequality, and material, institutional, and process corruption. On the other hand, persisting challenges relate to the lack of strategic vision of an inclusive nation among important segments of the same elite, the recurring role of political mobilized ethnicity in public life, the rising cost of governance and the slow pace of implementation of governmental and socio-economic reform, as well as increasing evidence of lack of capacity and negative competition for power at the local level.
63. A worrying trend in Kenya's political terrain is the agitation, especially from a section of the opposition leadership, against the nascent constitutional commissions, in particular the Independent Electoral and Boundaries Commission. This has the effect of undermining the faith of citizens in these institutions and the general compliance with the rule of law.



CHAPTER THREE /



CHAPTER THREE

3. DEMOCRACY AND POLITICAL GOVERNANCE

3.1 Overview

64. The last decade (2006-2016) has been one in which Kenya has moved from deep political crisis to experiments in democratic renewal. The hallmark of the period has included a capacity of the elite and the people, assisted by the international system, to restore order, good governance, democracy, and the march toward development. The result has been a largely commendable display of ingenuity and restraint geared to move the nation more in the direction of civility and restrained engagement for the restoration of peace through a process of negotiations leading to innovative constitutional and institutional re-engineering to restore and sustain Kenya's interrupted march toward modern, multi-party democratic statehood.
65. It is to the credit of Kenyans and key stakeholders in the international community that the country was able in the wake of 2007 post-election crisis to institute a thorough-going process of immediately restoring peace and embarking on reconciliation by early 2008, followed by more fundamental efforts to re-craft the bases for more inclusive and participatory governance that addressed perceptions of deepening ethno-regional and class inequalities and entrenched hegemonies at the political, social and economic levels, along with attendant anti-democratic and anti-developmental consequences that threatened the peace of the nation.
66. **The** Government's role in all this has been captured in the words of the second Country Self-Assessment Report (2015, p.636), that:
- Within the framework of the 2008 National Accord, the government demonstrated its commitment to the implementation of long-standing issues, including constitutional and institutional reforms, police and judicial reforms, socio-economic inequalities, corruption, accountability and youth unemployment and other issues.
67. This chapter assesses efforts by all stakeholders to address issues of democracy and political governance in Kenya during this period (2006-2016) within the framework of the second Country Review Mission (CRM). The specific objectives covered here involve reviewing Kenya's experience in the period in the following areas:
- Constitutional democracy and the rule of law;
 - The separation of powers;
 - Prevention and reduction of intra and inter-state conflicts;
 - Promotion and protection of civil and political rights;

- Ensuring accountable, efficient and effective public service delivery at the national and decentralized levels;
- Promotion and protection of the rights of women;
- Promotion and protection of the rights of children and young persons; and
- Promotion and protection of the rights of vulnerable groups.

68. In the next section, the chapter outlines the implementation by Kenya of standards and codes. This serves as background to other sections that contain assessments of the country's progress and challenges in regard of the eight objectives listed above against a backdrop of the picture in each instance of the situation as at the last Country Review of 2006. This is followed by a list of recommendations from the CRM on democracy and political governance.

3.2 Implementation of Standards and Codes

3.2.1 Summary of the Country Self-Assessment Report (CSAR)

69. The CSAR offers a very comprehensive and extended picture of the number and nature of standards and codes entered into by Kenya, along with their status. It shows the international, continental, regional and bilateral standards and codes that the country has signed since 2006 in such areas as basic UN and (O)AU instruments, human rights instruments, human rights, rights of women and children, and protection of refugees, internally displaced persons (IDPs) and migrant workers, among others. In addition, it shows evidence (pp.576-584) of a wide range of national policies, laws, administrative arrangements and statutory institutions put in place over time by the Kenyan government "to ensure compliance with codes or standards" ratified by Kenya on such issues as women's rights, children's rights, refugees, internally displaced persons, migrant works, persons with disabilities, and media freedom, among others.

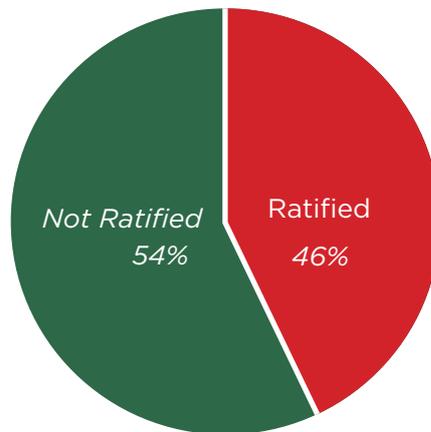
3.2.2 Findings of the Review Mission

3.2.2.1 Progress made since 2006 Review

70. Annex II, at the end of this Report contains an illustrative Table, drawn from the second Country Self-Assessment Report with a list of multilateral and bilateral agreements sourced from the Kenya Ministry of Foreign Affairs in November 2016 by the CRM, provides details, within the context of available information, of standards and codes that touch largely on democracy and political governance that had been ratified and those yet to be ratified since independence in 1963. The Self-Assessment Report did acknowledge that "there is no data base containing the full list of standards and codes" to which Kenya has acceded.

- 71 Under the 1963 Constitution, Kenya was a dualist state, in which international treaties were not considered as part of the law of Kenya and therefore could not be directly applied by the courts, tribunals or administrative authorities in the absence of domestic legislation. Both executive and legislative actions were required before international treaties could take effect. The executive power in this regard was exercised through the Ministry of Foreign Affairs and the Department of Treaties in the Office of the Attorney General, with the president signing only the final documents. Domestication of international instruments occurred through a legislative process, whereby Parliament created new law or amended existing law to comply with international treaties.
72. Article 2 (5-6) of the Constitution of Kenya 2010, provides that ‘the general rules of international law shall form part of the law of Kenya’ and that ‘any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution.’ The provision suggests that those international instruments are still subservient to the Constitution, and Parliament continues to play a key role prior to ratification of any treaty or convention. This process ensures public participation in treaty ratification. As at 2016, verifiable figures showed that the number had gone up to 137. Of these, those verified as having been ratified are 63. Figure 1 gives pictorial comparison of standards and codes ratified and not ratified.

Figure 1: Ratification Status of Standards and Codes



Sources: Second Kenya Self-Assessment Report and Ministry of Foreign Affairs, Mimeo, November 2016

73. While more than half of such international instruments were yet to be ratified as at November 2016, GoK has put in place at the legal, policy and institutional levels, the latter including the National Commission on Human Rights (KNCHR), mechanisms to create awareness of the standards and codes and relevant national laws, monitor compliance and provide oversight on human rights protection. Additional steps have been taken to enhance the capacity of such stakeholders as the private sector and civil society organisations to monitor the implementation of relevant international instruments and domestic legislation. Cross-cutting themes such as gender, youth, and disability are mainstreamed in public sector service delivery.

3.2.2.2 Challenges

74. There are three basic challenges in this area, including:
- Bureaucratic and political stumbling blocks to a more speedy process of ratification;
 - Effective and up-to-date record-keeping in regard of the status of the standards and codes; and
 - Strengthening the institutional and societal capacities for ensuring observance of the standards and codes.

3.2.3 Recommendations of the Panel

75. The Panel recommends that Government:
- i) Sign and ratify relevant outstanding international, regional and bilateral instruments important to the sustenance of democracy and good political governance in Kenya; (Government of Kenya, Parliament)
 - ii) Continuous education and sensitization to enhance public awareness of rights and available institutional arrangements to claim these rights, including complaints mechanisms and providing legal aid; (Kenya National Human Rights, Civil society organizations)
 - iii) Establish a central repository or data base of all International and regional standards and codes, with dates of ratification. (The Office of the Attorney General, the Kenya Law Reporting website)

3.3 OBJECTIVE 1: ENHANCE CONSTITUTIONAL DEMOCRACY AND THE RULE OF LAW

3.3.1 Summary of the Country Self-Assessment

76. The CSAR noted that the Kenyan Government had not only embarked on an ambitious constitutional review process, but had also undertaken specific reforms in the Justice system, anti-corruption and ethics, procurements, recruitments, and establishment of an Ombudsman system.

77. The long journey of constitution review ended in 2010, following a successful referendum that was held on 4 August 2010. As required by the law mandating the referendum, the new Constitution was formally promulgated at a ceremony held on 27 August 2010. The Constitution of Kenya 2010 was in a very significant sense a product of the recommendations

of the 2006 CRR and also reflected lessons learned from the post-election crises of 2007-2008. It altered the governance structure of Kenya by creating a two-tier government - a national government and 47 county governments - and generally strengthened the institutional and legal bases for a more inclusive version of constitutional democracy and the rule of law driven by constitutionally guaranteed public participation in politics and policy.

3.3.2 Findings of the Review Mission (CRM)

3.3.2.1 Progress made since 2006 Review

78. Details of most of the findings contained in the CSAR were confirmed by the CRM. For instance, field consultations across the 47 Counties reflected widely held view that the 2010 Constitution is one of the best things to have happened in Kenya, as well as one of the best constitutions anywhere in the estimation of Kenyans. These assessments were traced to the beneficial impact of the Constitution on different aspects of constitutional governance and rule of law, including:

- Introduction of devolution to the governance architecture of Kenya, and the subsequent transfer of functions and resources to the newly created Counties at the local level;
- The emphasis in the constitution on political participation of the citizenry in the governance of their lives and communities;
- Special provisions to address the political and socio-economic status of citizens who have traditionally suffered marginalization on grounds on gender, disabilities or age;
- The strengthening and creation of institutions of policy, oversight, enforcement, representation, recruitment, regulation, and accountability; and
- Laying down a strong platform for meaningful national rebirth across ethnicities and regional divisions.

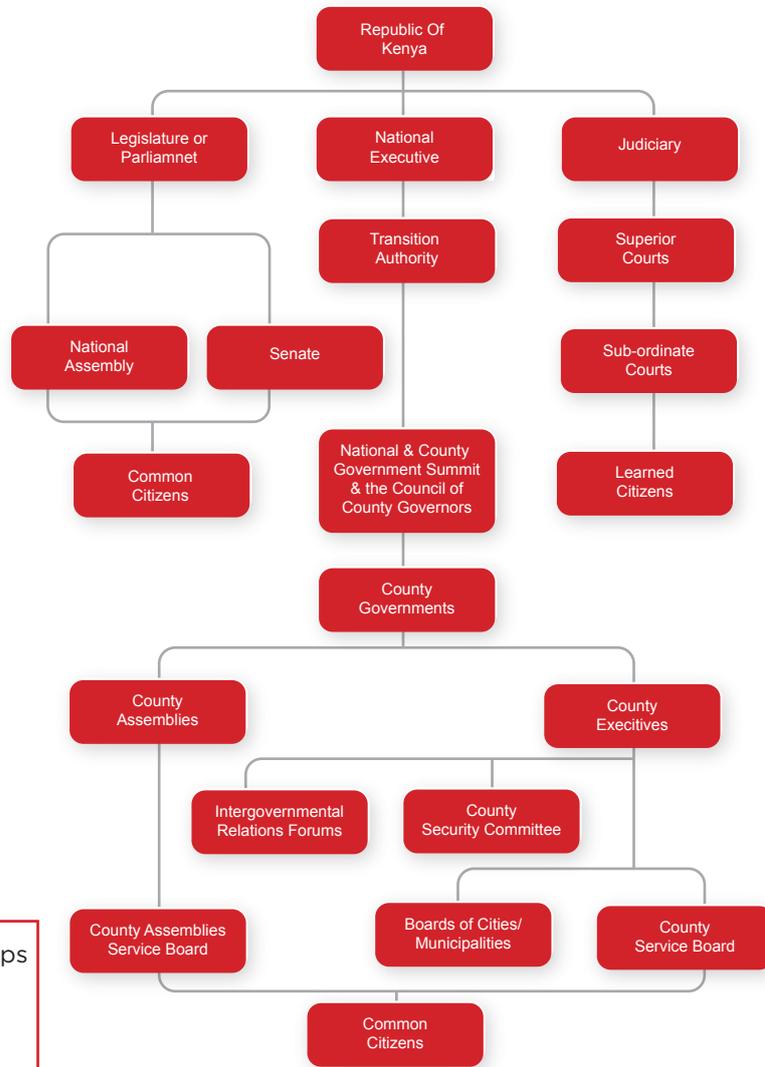
80. Chapter 11 of the Constitution makes extensive provisions for devolution and County Government in its eight parts while the Fourth Schedule of the Constitution allocates 35 functions and powers to the national government and 14 functions and powers to county governments. Figure 2 below provides a picture of the governance structure of an average county in the context of national administration. On the other hand, elements of fiscal devolution for the first half of Fiscal Year 2015/2016 (July to December) as published in March 2016 by the Office of the Controller of Budget provide analysis of local revenues of the counties as a proportion of annual revenue target as well as those on absolute local revenue collections. Thus, analysis of local revenue as a proportion of annual revenue targets for the period indicates that Laikipia County attained the highest proportion at 46.2% followed by Homa Bay (45.9%), and Nandi (43.4%) Counties respectively. On the other hand, counties with the lowest proportion of local revenue against annual targets were Nyamira County (10.9%), Tana River County (9.11%) and Garrisa (9.12%). Nairobi City understandably posted the highest absolute local revenue collections of KShs. 4.97 billion while Tana posted the lowest of KShs. 10.93 million.

81. Nowhere is the overwhelmingly positive public perception of post-2010 governance architecture more dramatically expressed as in the various entitlement and remedial provisions of the Constitution that address the pains of marginalization of women, people living with disability, the elderly, and youth. Related to this is the public appreciation of the fact that the post-2010 constitutional framework seeks to empower people to demand and extract performance from those who govern over them, especially at the local level where devolution has led to more programmes and projects of capacity-boosting proportions in education, economic empowerment, health, and demands for participation in planning and budget procedures.

82. On the other hand, public perception does recognize that much still requires to be done to further improve on the framework for constitutional democracy and the rule of law. The Constitution is premised on the sovereign power of the people and requires a critical public that engages constantly with those in government. However, local understanding of this basic principle remains undeveloped at best. After elections, according to feedback from the counties, the elected tend to literally disappear from their constituencies, and become strangers or at best visitors to their constituents. Success in achieving the targets for representation of women, the disabled, the elderly and youth appropriately in political, economic and social development are not uniform throughout the country, but the general impression is that rhetoric far outstrips concrete results.

83. Similarly, some counties are performing better than others, reflecting a whole series of factors such as historical experiences, resource endowments, and revenue profile in terms of allocations from the national government as well as internally generated revenue, leadership quality, level of institutionalization, and location. The level of public participation in county affairs also differs from county to county for similar reasons.

Figure 2: Kenya County Governments Devolved Structure



Institutional Relationships are:

- Executive
- Accountability
- Work
- Policy Guidance

Source: Gabriel Lubale, An Introduction to the County Governments of Kenya, 2012, p.55.

84. Broadly speaking, institutionalization of the county system remains an unfinished task, with structural weaknesses manifesting in the governance architecture, reflecting the haste and enthusiasm with which the experiment was embraced initially and at the transitional period without enough attention being paid to putting in place appropriate structures and procedures for sustainable governance.

85. The result includes an additional list of challenges for county governance:

- Persistence of nepotism and corruption in appointments and procurements, worsening in-group and out-group tensions, including ethnic tensions, at the local level;

- Public concern over the number of elected and appointed leaders in the county system;
- Tendency of grassroots leaders in the executive branch, and more so in the council assemblies, to lack capacity and to focus more on partisan politics than on economic and social development;
- Need for leadership type that puts people and policy first and is not self-serving.

86. Reports of instances of frustration of public participation in governance at policymaking as well as policy implementation, monitoring and feedback levels. Despite all this, sentiments across the counties indicate a desire to see devolution succeed, emphasizing the need for political will among national and local leaders as well as local buy-in and ownership among the people in this regard. A welcome trend here relates to a generally appropriate level of cooperation and collaboration at the intra-governmental and inter-governmental levels in county government, powered by relevant non-partisan institutional frameworks in planning, budgeting and programme. For instance, there was evidence of capacity building assistance from the National Assembly to County Assemblies, as well as similar collaboration between the Kenya Revenue Agency and some counties over local revenue collection at the county level as voluntarily agreed to by the concerned counties. Of course, there was also evidence of schism, as one between Senators and County Governments over procurement processes. There is also effective collaboration between the Senate and the National Assembly in the National Legislature.
87. At the national level, exceptions were noticed to the general impression that the strengthening of institutions in the context of the 2010 constitution has generally had positive impact on governance and the rule of law. Such exceptions recorded at public forums identified the Police Service, the judiciary (often blamed for taking too long to hear cases, leading to a backlog of such cases, and for corruption), the parliament (occasionally blamed for interfering in judicial matters, and for performing its duties in manners that privilege members' private interests over and above the public interest), the Ethics and Anti-Corruption Commission in light of perception of widespread corruption in government, and the Independent Electoral and Boundaries Commission.
88. Findings, however, indicate that much of the public condemnation of some of these agencies emanate from a failure of the bodies to appropriately communicate their activities to members of the public. For instance, consultations with the Police Service Commission showed that the Commission is as concerned as members of the public with widespread allegations of corruption long levied against police personnel and even concedes that some of such allegations have been proved to be true and such cases have been promptly processed up to the level of the Director of Public Prosecution. However, the Commission is at the moment in a planned transition from being called a Force to being called a Service, with all attendant engineering for better and more ethical performance at the institutional and personnel levels. The Commission is currently conducting life-time audit on police personnel that will take some time, starting with the Traffic Department on to the Directorate of Criminal Investigation and so on.

89. Also, against the backdrop of seeming inaction and vacuum at the Independent Electoral and Boundaries Commission less than a year before the next general election in 2017, findings presented a different picture of a Commission more alive to its responsibilities and drawing appropriate lessons from the past, including the recent past. For instance, following the 2013 elections, the Commission developed a strategic plan for the period 2015-2020 as well as an elections operations plan for the 2017 general elections. The Plan is based on three pillars, namely:
- Election management pillar: Under this pillar is a series of mass voter registration and voter register clean-up through the biometric system leading to the 2017 elections; development of guidelines for nomination of candidates for the elections by political parties to address concern in the past that this exercise had not been done properly and standardized; development of a voter education curriculum, and seeking amendment to the electoral law;
 - Institutional Transformation pillar: This involves reviewing internal systems and policies and developing capacity and performance management systems for staff. Under this pillar, the Commission has also been managing the transition from the Commissioners that tendered their resignations following recent objections to their membership of the Commission. The resignation would be with effect from 30 November 2016. Advertisements for their replacement closed on 07 November 2016, so the hope has been that a new crop of Commissioners should be in place by or around 30 November 2016. Following amendments, the current crop of seven Commissioners and a Chair (eight in all) would be replaced by six Commissioners and a Chair (seven in all). Expectations are that the new commissioners may assume office early in 2017.
 - Trust and Participation Pillar: Under this, the Commission has developed a framework for engagement with key stakeholders, including political parties, civil society and faith-based organisations, and the media.
90. A related set of issues, some traced to the IEBC and others to the Office of the Registrar of Parties, have also been raised. One has to do with whether the absence of national commissioners at the IEBC so close to the 8 August 2017 election is not enough justification for the shifting of the election from August to December 2017. The response of the IEBC secretariat, in the words of its Chief Executive Officer, Ezra Chiloba, especially in the face of threat to boycott the election on the said ground, issued late 2016 by opposition leader Raila Odinga, has been that the IEBC has been operating within the law in its actions while the vacancies in the offices of the chair and electoral commissioners lasted. Mr Chiloba argued that stalling all electoral activities until the new electoral commissioners are appointed could in fact scuttle the 2017 election, given the limited time left for preparations and the fact that electoral commissioners are not involved in such matters currently engaging the commission such as selecting a company to audit the voter register, or procurement of election equipment that requires 120 days for open tender.

91. Two other issues have to do with the mandate of the Registrar of Political Parties in regard of information on the number of registered parties as well as on party finance. By late 2016, the two were subject of a High Court law suit instituted by Senator Kennedy Mong'are, seeking a declaration by the High Court to compel the Registrar, Ms. Lucy Ndung'u, to make public the actual number of registered political parties so close to the elections, and also make public the sources and quantum of funding of the parties and show cause why action had not been taken against parties that had failed to disclose such information.

3.3.2.1 Challenges

92. Challenges in this regard include how to improve on the management of ethnic and regional diversities and widespread perception of corruption while seeking to strengthen inclusionary practices and improve on the capacity of leadership for service delivery at the county level.

3.3.3 Recommendations of the Panel

93. The Panel makes the following recommendations:
- i) Further institutionalization and capacity building for county governments (Government, civil society organisations);
 - ii) Creation and strengthening of the frameworks for civic education and public participation in, and interaction with, governance institutions, (Government, civil society organisations, the media); and
 - iii) Strengthening of the autonomy and expansion in capacity of judicial, policing, oversight, regulatory, representational, advisory and other democratic institutions, including those of the media and civil and political society (Government, universities, IEBC, NPSC, NCAJ, professional associations of the media).

3.4 OBJECTIVE 2: UPHOLDING SEPARATION OF POWERS

3.4.1 Summary of Country Self-Assessment (CSAR)

94. The Constitution of Kenya 2010 underscores the principle of separation of powers between the Executive, Legislature and the Judiciary supported by a system of checks and balances.

3.4.1.1 Independence of the Judiciary

95. Article 160 of the Constitution provides that “in the exercise of judicial authority, the Judiciary shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.”
96. The Constitution has enhanced judicial independence through its entrenchment of the notion of separation of powers in several ways:
- By creating power parity between the Judiciary, the Executive and the Legislature. This parity of has freed the Judiciary from the control and undue influence of the Executive;
 - By securing financial autonomy of the Judiciary through the creation of the Judiciary; Fund. Each financial year, the Chief Registrar of the Judiciary is required to prepare an estimated expenditure for the following year and submit it to the National Assembly for approval. Upon such approval, the funds are paid directly into the Judiciary Fund; and
 - By requiring, in recognition of the fact that judicial decisions greatly affect power and resource relations, that the Judiciary interpret the Constitution in a manner that: (a) promotes its purposes, values and principles; (b) advances the fundamental rule of law, and human rights and good governance; (c) permits the development of law; and (d) contributes to good governance.

3.4.1.2 Independence of the Legislature

97. Chapter 8 of the Constitution provides for the establishment of a bicameral house, i.e. the National Assembly to represent the will of the people at the national level, and the Senate to represent the Counties and their governments. The chapter also outlines provisions to enhance accountability and efficiency in the Legislature. It provides for the privileges, functions and composition of parliament and the procedures for enacting legislation in parliament. Article 95 defines the mandate of the National Assembly as to represent the people of constituencies and special interests.
98. Under the current constitutional order, the President has no role to play in the determining the calendar of Parliament. The Parliamentary Service Commission was established to ensure the smooth functioning of the National Assembly. The executive has no direct representation in Parliament since Cabinet Secretaries are non-political officers appointed from outside Parliament. The President and his Deputy are no longer required to be MPs. Parliament is now expected to make legislative decisions and exercise its vetting role in the appointment of state officers.

99. Standing Orders have been revised to guide how the Parliament operates in compliance with the new constitution, including processes that make the body more accountable and effective. Members of both houses have undergone multiple training and educational events on the Constitution, important bills and various matters of national interest.

3.4.1.3 Independent Commissions

100. The principle of separation of powers has been strengthened by the establishment of independent commissions created by Chapter 15 of the Constitution and various acts of Parliament. The function of independent commissions and offices is to protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles, and promote the rule of law. The Commissions are subjected only to the Constitution and the law, although they are required to submit reports annually to the President and to Parliament - reports that are to be published and publicized.

3.4.2 Findings of the Review Mission

3.4.2.1 Progress made since 2006 Review

101. The findings of the CRM broadly agree with those of the CSAR. In certain respect, new boundaries were set by the 2010 Constitution in terms of the principle and practice of separation of powers within and among the executive, legislature and the judiciary at the national level and between the executive and the legislative branch in the newly created County Government system at the local level in Kenya's constitutional history, with the certainties of old giving way to uncertainties of the new order – no thanks to pressures and lack of clarity as the new boundaries were being worked out.
102. For instance, before the 2010 Constitution, there was overlap between the executive and legislative branches at the national level. Heads of Departments (Ministries) under the executive were drawn from the Parliament while Parliament was often perceived then as being under the Office of the President. With the 2010 Constitution, such dual membership was cancelled. On the other hand, the 2010 Constitution created a bicameral legislature comprising the National assembly and Senate, triggering what a leading member of the National Assembly described as sibling rivalry in terms of jurisdictional partitioning within Parliament.
103. In similar vein, there have been attempts by the National Assembly to dabble into matters of interpretation of the legal order while, at the newly inaugurated County Governments, the executive and the county assemblies also seek to iron out differences in terms of separation of powers. In addition, the system of independent commissions under the new constitution was intended to provide some counterweight to the overbearing powers of the executive branch of government at the national level and to develop a consciousness of limits and shared responsibilities between the executive and the legislature for such powerful bodies.

104. Increasingly, the more complex system of separation of powers has led to interdependence that, while generating tension over its lack of rigid clarity, does provide the required system of checks and balances for democratic governance. This has ensured that democratic space has expanded through the evolving framework that has given the various institutions the ability to hold each other into account with ability to bite if necessary, despite the overarching influence of party loyalties. Yet another complicating factor is public expectation that parliamentarians would also be able to perform executive functions that would bring infrastructure and other benefits to their constituencies. This is often a factor making for cordial relations at the personal level between Members of Parliament and Ministerial Heads of Government Departments.
105. Consultations at county level across the country show that the relationship between County Governors and Members of Constituent Assemblies is not always cordial, since County governors occasionally become the target of impeachment threats from Assembly Members eager to benefit from the perks of office. Public perception of members of the legislature at the national level also cast them as being often driven by selfish considerations of individual comfort in some of their decisions. Corruption allegations also do trail members of the executive and the judiciary, further complicating the working of the system of separation of powers and the attendant checks and balances among these branches of government. In this regard, capacity of members of the legislature is a major challenge, especially at county government level.

3.4.2.1 Challenges

106. Challenges relate to unbridled supremacy contests among the contending power centres, lack of full appreciation and strategic endorsement of the benefits of separation of powers and checks and balances among key stakeholders, developments that could make re-concentration of powers temporarily attractive to segments of Kenya's top political leadership, growing inequalities in capacity among the various branches of government, decline in the culture of civility and restraint, as well as corruption, ineffective civic education and general lack of effective pressure from below in support of holding the various power centres in check. Opportunities abound in the sheer success of the current arrangements in jurisdictional partitioning, and in seeking further clarifications of boundaries.

3.4.3 Recommendations of the Panel

107. The Panel makes the following recommendations:
- i) Building capacity on the operation and management of systems of separation of powers in modern democratic contexts (The Executive, Legislature and Judiciary at national and county levels as appropriate).

3.5 OBJECTIVE 3: PREVENTION AND REDUCTION OF INTRA-STATE AND INTER STATE CONFLICTS

3.5.1 Summary of the Country Self-Assessment

108. In 2006, Kenya's first Country Report under the APRM described it as "a bastion of stability" and a "peace loving nation", in comparison to its neighbours that were then "often plagued by civil unrest and insurrections." Barely a year later, the country was wracked by post-election crisis that degenerated into violence. Almost ten years on, in 2015, its Second Self-Assessment Report under the same APRM described the country as one that had "experienced both internal and cross border conflicts". The Report acknowledges Kenya's recent status in three senses. One is as a country prone to intra-state and inter-state conflict arising from competition for scarce resources, economic inequality, political competition and rivalry for power, and environmental degradation. The second is as host to refugees generated by conflict in East Africa while the third is in regard of its role as facilitator of negotiations to end conflicts in neighbouring states. Against this unique background, the Report highlights how, in the period leading to and beyond the last Country Review in 2006, Kenya has put in place mechanisms to prevent and respond to conflict with neighbouring states and within its own borders, including:

- Membership in regional institutions such as the African Union, IGAD, EAC and the ICGLR .
- Ratification and domestication of regional instruments on peace and stability.
- Diplomatic engagements to resolve regional conflicts.
- Participation in the Great Lakes Parliamentary Forum on Peace (AMANI Forum) that works to promote peace and democracy, and to mitigate conflict in the region.

109. At the national level, it established in 2001 a National Steering Committee on Peace Building and Conflict Management (NSC) as an umbrella inter-agency for government Ministries and Departments, civil society organisations, development partners and UN agencies to manage the following activities:

- Conflict early Warning Systems;
- Capacity Building and Training, and
- Peace coordination.

110. In addition, government went ahead in 2010 to draft a national policy on peace-building and conflict management to drive a peace architecture and vision for promoting peace through collaboration between state and non-state actors. Following the events of 2007-2008, the government disarmed and disbanded armed communities stepped up police patrols in affected areas, to prevent intra and cross border incursions, and enacted the Prevention of

Organised Crimes Act of 2010. Also, within the framework of the 2008 Accord, government addressed longstanding issues of reforms at the constitutional, institutional, land, police and judicial levels along with socioeconomic inequalities, corruption, accountability and youth unemployment, among others while resettling all displaced persons.

111. It set up several independent investigative commissions to unearth the underlying causes of recurrent violence and suggest remedies. The commissions included:

- The Commission for Investigating the Post-Election Violence (CIPEV)
- The Truth, Justice and Reconciliation Commission (TJRC)
- The National Cohesion and Integration Commission (NCIC).

112. Apart from these commissions, provisions for the prevention of conflict were written into the 2010 Constitution through the Constitution Bill of Rights, and Chapter 4 section 34 on freedom and independence of electronic, print and all other types of media as well as article 37 that provides for every person the right to peacefully assemble, demonstrate, picket, and present petitions to public authorities. Other legislations and policy actions, include the Kenya Information and Communication Act, 2009, licensing by the Communication agencies of over 50 media organisations to expand media choice from the single broadcaster and two newspapers of a few years ago, the Employment Act 2007 containing elaborate provisions protecting persons from discrimination in employment, and the ratification of relevant international legal instruments that provide for political rights, including:

- International Covenant on Civil and Political Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and
- Convention on the Rights of Persons with Disabilities (CRPWD).

113. Provisions were also written into the 2010 Constitution on:

- The freedom of the media as guaranteed by Article 34 of the Constitution
- The right to access to information as guaranteed by Article 35 of the Constitution
- The freedom of association as guaranteed by Article 36 of the Constitution
- The right to assembly as guaranteed by Article 37 of the Constitution

- 114 In addition, the Political Parties Act, 2012 “prohibits the registration of any party that is founded on, among other things, ethnicity, or uses words, slogans, emblems or symbols which could arouse ethnic, age, tribal, racial, gender, regional, linguistic, corporatist, professional or religious division. It also prohibits the registration of a party that has a constitution or operational ethic that provides in any way for discriminatory practices contrary to the provisions of the Constitution or of any written law”.

3.5.2 Findings of the Review Mission

3.5.2.1 Progress made since 2006 Review

115. As highlighted by the CSAR, Kenya has put in place mechanisms to prevent and respond to intra and inter-conflicts since the 2006 Review. It promulgated a new Constitution and a strong network of institutions and enabling legislation, based on the unfortunate experience of 2007-2008, to better prevent, reduce and manage intra-state and inter-state conflicts and provide for a more efficient and effective security infrastructure. Specifically, it has changed the environment for political and socio-economic development, providing the required framework for inclusion. Its expanding role as mediator in regional and continental conflicts, has also sharpened its capacity to manage conflict and build peace at home.
116. The Review Mission confirmed that sources of conflicts include poverty, corruption, lack of access to resources, growing inequality youth unemployment, election and election-related ethno-regional tension heightened by fears of domination in a political economy based on a winner-takes-all mindset, criminal and terrorist elements with easy access to light and not so light weaponry often backed by international and regional networks, operating in border communities or crossing into urban communities with suspected local collaborators, and climate-change induced pressure on resources.
117. Consultations throughout the country underscored the positive gains of devolution in the area of security, given its potentials for inclusiveness, enhancing good governance and grassroots participation on socioeconomic development, and for assuaging long-held feelings of historical injustice arising from unequal distribution of national resources. On the other hand, devolution has created new fault lines and in instances worsened old ones in this regard. Perceptions of unequal distribution of resources arising from partisan considerations persist even in the face of evidence to the contrary in terms of well laid out constitutional provisions in this regard. The result is that devolution has worked in specific instances, including opposition strongholds, to deepen ethnic and partisan political cleavages against the backdrop of perceptions of the persistence at local and national levels of a tendency to monopolise power by ethno-regional groups, coupled with fears of drives toward ethnic hegemony and ethnic capture. As a result, there is evidence of a network of intolerant political interests built around key persons and divisive symbols. The situation is made worse by the language of leaders, which requires to be toned down, and the tendency of leaders at all levels to reject unfavourable election outcomes. The relative inactivity of political parties at the county level, largely a reflection of the relative weakness of party structures in the long period between elections, has left the field widely open for mobilization of local communities in manners often contrary to democratic ethics.

118. This premium placed on partisan political interests and activities in which political parties are often not the main instruments at the county level has also led to the relative neglect or politicization of the drive toward socioeconomic development and lack of effective delivery of democracy at the grassroots. Members of County Assemblies and Governments are often divided along partisan lines and distracted from effective governance of such volatile domains as the complex manners in which climate change and environmental challenges impact livelihood, poverty, and social coherence.
119. Increasing misalignment between national and county governments in the security architecture of the country has further generated anxieties among the people. Security is not a devolved function, but local communities bear the brunt of insecurity within and across the country's borders as evidenced by the October 25 2016 Al-Shabaab attack on a Mandera Hotel in which 12 persons were killed while the Country Review was in progress. The evolving system of collaboration and cooperation between national and county administrations has to be firmed up, especially in the context of growing talks about incorporating into the security architecture models of community policing.
120. The youth dimension of intra- and inter-state conflict and security, intermingled with substance abuse, partisan politics, poverty and unemployment, also requires further government and community attention. In this context, youth become easy recruits for partisan, antisocial, and terrorist bands. These issues require urgent attention, along with the incidence of extra-judicial killings, involving the youth as victims more than any other demographic.

3.5.2.2 Challenges

121. As noted correctly in the CSAR, challenges include the following:
- Reduction of cross-border conflicts is hampered by porous borders, the proliferation of small arms and light weapons in the region, and the mixing of genuine refugees with criminal elements and terrorists in camps.
 - Diminishing natural resources such as water and pasture due to climate change force pastoral communities to search further, often across borders where they come into conflict with local communities.
 - Regional peace-building mechanisms take long to resolve disputes over international boundaries. Within Kenya, conflict between groups is triggered by political manipulation of grievances and perception of inequality and marginalisation.
 - Illegal groups and criminal gangs particularly in poor urban neighbourhoods are a source of crime and lack of peaceful coexistence between groups.
 - Failures to implement recommendations of various commissions that have investigated the underlying causes of violence deepen perceptions of impunity.

3.5.3 Recommendations of the Panel

1.2.2 The panel recommends the following:

- i) Continued strengthening of the human and financial capacity of institutions mandated to promote peace and national cohesion (National Cohesion and Integration Commission)
- ii) Implement recommendations of commissions of inquiry into past violence, and support police and judicial reforms (Government, Judicial Service Commission, Police Service Commission)
- iii) Continued participation in regional conflict prevention, conflict management, and peace-building efforts (Government of Kenya)
- iv) Strengthening County Governments as key instruments for preventing and reducing conflict, enhancing local security, and building peace at the community level (National and County government).
- v) The early warning mechanisms in place at the county level to detect incidences of conflict and develop peace building initiatives should be strengthened through appropriate capacity building mechanisms and resourced commensurately. (Government, civil society)

3.6 OBJECTIVE 4: PROMOTE AND PROTECT POLITICAL, CIVIL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

3.6.1 Summary of the Country Self-Assessment

123. The 2006 CRR highlighted the progress made in the enjoyment of civil and political rights by citizens since 2003, including: press freedom, the right to join political associations and space for civil society organisations to operate. However the report found some media houses especially some of the FM radio stations delivered content that had ethnic undercurrents with potential to promote conflict.
124. The Bill of Rights in the Constitution of 2010 contains key provisions on political and civil rights. Incremental legal and institutional reforms have been undertaken to give effect to rights. The Constitution covers economic, social and cultural rights in the area of health, housing, sanitation, and social security among others. There is a Socio-Economic and Poverty Atlas that addresses various themes including population demographics, education, water and sanitation, labour, information and communication technology, and welfare. The Equality Fund promotes affirmative action in access to resources for marginalised and vulnerable groups.

3.6.2 Findings of the Review Mission

3.6.2.1 Progress made since 2006 Review

125. The Bill of Rights contains progressive provisions on the civil and political as well as socio-economic and cultural rights for men, women and vulnerable groups. To oversee the implementation of these rights, the Kenya Human Rights Commission (KNRC) was established. For many reasons some of which are highlighted below, the KNRC stands out as a national human rights institution.

3.6.2.2 Best Practice: Kenya National Human Rights on Commission protecting and promoting the rights of Kenyans.

126. The establishment of an autonomous and effective human rights institution is a sign of the commitment of the government of Kenya to meet its international and national obligations towards the realisation of rights. KNRC has executed its mandate in a commendable manner and distinguished itself as a beacon of vigilance for human rights monitoring. It has been accredited as an 'A' status national human rights institution by the International Co-coordinating Committee of National Human Rights Institutions (ICC) that is supported by the Office of the High Commissioner for Human Rights. The KNRC has worked actively and proactively with government departments and civil society to address priority areas for human rights protection and monitoring compliance by government. Through its extensive research work and judicial activism, it is continuously investigating and analysing de jure and de facto situations of violation by state and non-state actors and publishing findings on the same. KNRC has handled individual and group complaints on violations of human rights based on the Constitutions or international standards.

3.6.2.3 Civil and Political rights

127. **Freedom of assembly:** Overall, Kenyans are guaranteed the right to assemble freely and associate with like-minded people, individually and collectively. This right, together with fundamental rights such as freedom of movement, expression and information is integral to the operations of civil society organisations. However on various occasions in 2016, during the demonstrations against alleged corruption in government and the Independent Electoral and Boundaries Commission, there were incidences of excessive use of force and arbitrary arrests by police. The Independent Policing Oversight Authority (IPOA) and citizens condemned the unlawful incidences of excessive use of force and brutality by the police. Investigations by the IPOA commenced in May 2016.
128. **Equality and non-discrimination:** Government has put in place legislative and programmatic measures to vet movement of persons and finances and registration for passports and identity cards. Unfortunately, this has resulted in perceptions of witch hunting and

discrimination against people of Somali ethnicity or origin and Muslim groups and organisations. The KNHRC in 2007 conducted a hearing, which led to the findings that the vetting process for Kenyan-Somalis, Nubians and Kenyan Arabs as well as Maasais and Tesos was corrupt, difficult and discriminatory and violated the principle of equal treatment.¹ The CRT heard widespread complaints on this issue in the frontier areas such as Isiolo, Garissa, Lamu and Mombasa even though the underlying logic for the security measures was acknowledged. Some of the major problems seem to stem from lack of community engagement and information sharing between affected populations and government agencies, leading to misinformation and misunderstanding.

129. **Access to information:** The Access to Information Bill, 2015 that was passed in August 2016 seeks to consolidate citizen's rights to seek and obtain information from private and public institutions. While it is still early days yet, this law has the potential to give effect to the Constitutional requirement for public participation and inclusive government if well effected and utilised. Another innovation of great value is the Kenya Open Data Initiative set up in 2012 to make accessible data and statistics in digital form accessible to the public via the Internet.
130. **Non State Actors:** The Public Benefit Organisations (PBO) Act, 2013 emerged through consensus building processes between the state and civil society and is well received in civil society and government quarters as promoting transparency and self-regulation for and offering tax incentives to public benefits organisations. The law however faced a three-year delay and was only operationalized in September 2016 although the establishment of the Regulatory Authority and the National Federation of Public Benefits Organisations is pending.
131. **Security and liberty of persons:** Kenyans have suffered immense physical and psychological insecurity as a result of terrorist and criminal activities in Nairobi and Garissa, Mandera, Wajir and other coastal regions. As a result, government has put in place various security measures and programmes to cope with the challenge of insecurity and loss of life. Some of these measures have been a source of discontent in particularly the Kenyan Somali and Arab as well as Muslim communities. The rights of asylum seekers and refugees also came into play as discussed in Objective 8.
132. The Security laws (Amendment) Bill, 2014 raised concerns around grave breaches of civil rights. The Kenya National Human Rights Commission (KNHRC) pointed out that the proposed amendments would infringe on key fundamental freedoms in the bill of rights such as freedom of assembly and association, expression and information, privacy and citizenship rights, access to justice and the rights of refugees. ²The Security Laws (Amendment) Act, No 19 of 2014 became the subject matter of Constitutional Petition No 628 of 2014 lodged by various actors including the KNRC. In this case the state testified about the illegal procurement of identity registration documents by non-citizens who move to urban settlements by exploiting corrupt networks in registration systems. The Court in 2015 declared eight potentially repressive clauses of this law as unconstitutional

¹ Kenya National Human Rights Commission 'An Identity Crisis? A Study on the Issuance of National Identity Cards In Kenya' 2007

² Kenya National Commission on Human Rights 'Advisory on the Security Laws (Amendment) Bill, 2014'

regarding: freedom of expression and of the media; right to a fair trial, the right to bail, the right to stay silent i.e. fair trial and rights of refugees.

133. The Kenya National Human Rights Commission reported on the profiling of Kenyan Somalis and Muslims and subsequent arbitrary arrests, harassment, extortion, forcible relocation and expulsion under since Operation Usalama watch in 2014³. The KNCHR findings resonate with some of the major complaints raised in the frontier counties around the harassment of suspects and their relatives, disappearances of youth, human rights defenders and suspects. The CRT was unable to establish whether in some instances the disappearances of youths was at the hands of security forces or whether the youth are disappearing to be recruited by religious extremists for radicalization, as both issues were raised. In many instance members of those affected communities' cited unlawful detention of those arrested beyond the constitutional timelines.
133. Government has laid emphasis on citizen-community participation in security management since terrorists tend to reside and conceal themselves in communal settings. The Nyumba Kumi Community policing initiative in Kenya is buttressed by the National Police Service Act and is potentially a viable community strategy in security management, crime and violence prevention. However, there has been a tendency for communities to leave these matters solely to the police. The transboundary nature and activities of organised crime also poses a challenge for community based policing.
134. **Freedom of information and expression:** Freedom of information is guaranteed in the Constitution although certain forms are proscribed, including hate speech and inciting violence. The media in Kenya is vibrant as manifested in the existence of diverse print and electronic media. There are several media houses operating publications radio and television stations simultaneously and some media houses have a regional outreach in East Africa.
135. In terms of electronic media, there are 126 Commercial Radio stations, 39 Community radio stations, two Broadcast Signal Distributors, six Cable TV stations, 53 Commercial TV stations, one Community TV station, one IPTV, and two Lending Rights licensees. There is one Satellite TV, one Subscription Management Service, and one Terrestrial Subscription Broadcast.

³Kenya National Human on Rights Commission 'A country under siege: The state of security in Kenya- an occasional report (2010 - 2014)'

*Profile of print and electronic media in Kenya***PRINT MEDIA****Dailies:**

Business Daily, Daily Nation, People Daily, Taifa Leo, The Standard, The Star.

Weeklies:

Coast Week, Financial Post, Inside Kenya Today , Standard on Sunday, Sunday Nation, The Standard Group's The County Weekly, which in August 2013 was replaced by The Counties, The East African, The Sunday Express, The Weekly Citizen, Truth Weekly.

Monthlies:

Business Monthly EA, Business Woman, CEO Africa, CIO East Africa, Drum, Kenyan Kitchen, Management, The Nairobi Law Monthly, Parents, Passion, Prime Parenting, Small and Medium Enterprise, Sports Monthly, The Diplomat, The Insyder, True Love, Finance, Healthy Woman, Salon, Motors, African Woman, Africa Medical Review, Animal Welfare, Business Post, Construction News, Destination, Travel, Expression Today, Focus on Getaways, Focus on Property, Homes Kenya, Nairobi Business, Pregnant, Sacco Review, Smartlife, Swara, Agrolink, Corporate Intelligence Africa, The Exchange, Property Zone, Think Business, Tupike, Twende Tu, Unique Homes

Bi-monthlies:

Biashara Leo, Business Africa, Business Post, Go Places, Safari Digest, Sokoni Regional and county publications The Sun (Kabamet), The Eye/Mwangaza (Siaya), The Eastern Star (Machakos), Ngao (Nakuru), Sauti (Kericho), Sauti ya Gusii (Kisii), Nuru (Isiolo), Nyota ya Magharibi (Vihiga), Sauti ya Pwani (Mombasa), Maarifa (Murang'a), Habari (Garissa), The Truth and Education News (Nairobi), Kajiado County News and Narok County News, The Link (Migori), South Rift Times (Kericho), the Nyanza Weekly (Kisumu), Horizon Weekly (Bungoma), Trans Nzoia Magazine, Trans Nzoia Times. Slopes Weekly, County Leader, Highlands Tribune, and Business Express are found in Central Kenya, while The Anchor is in Machakos. Imenti News, Wembe, and County Focus are found in Meru, while Mombasa has Coast Week and Pambazuko.

TV Stations

KBC, NTV, KTN, Citizen TV, K24 are the biggest TV stations in Kenya in terms of coverage and viewers. Kiss TV is also on air.

136. Kenya has demonstrated a remarkable growth in the use of social and digital media by members of the public, bloggers and media houses. Social media platforms have been used to cultivate societal discourses on socio-political issues, helping to disseminate information widely and expeditiously.

137. Increasingly there have been fractious relations between the media and the executive and legislature over laws that were passed. The National Assembly (Powers and Privileges) Bill 2014 was widely criticized by the media and civil society as having the effect of gagging media reporting on the activities of the legislature. The draft law imposed criminal sanctions and fines for false or libellous publications or defamation of Parliamentary proceedings or committees. Following a public outcry from the media the penalising provisions were withdrawn.
138. Equally controversial was the Kenya Information and Communications (Amendment) Act, 2013 that was seen as curtailing press freedoms and constitutional guarantees of the media to disseminate information to the public. In particular, media practitioners condemned the imposition of a fine of KShs 20,000,000 on a media enterprise and of KShs 500,000. Stakeholders also contended that establishing the establishment of the Communication and Multi-Media Appeals Tribunal undermined the constitutional guarantees of free and independent media under the principle of self-regulation and co-regulation and sidelined the role of the Media Council. A constitutional case (Judicial Review Miscellaneous Application 30 & 31 of 2014) lodged by media stakeholders challenging the constitutionality of this law and the Media Council Act was however unsuccessful. However the court found two provisions the Media Council Act that amounted to an unjustifiable limitation of the right to freedom of expression and declared them unconstitutional.
139. Part of the triggers of ethnic conflict, societal unrest and the post-election violence were rooted in hate speech and violent, discriminatory utterances which were disseminated using print, digital and electronic media and text messages. Complicit in this were individuals and some media houses as noted in the Post-Election Violence Report. In response the National Cohesion and Integration Commission was established in 2008 to encourage cohesion and integration by outlawing discrimination on ethnic grounds, and hate speech in particular.
140. However incidences of hate speech continue to flare up and acted on by the National Cohesion and Integration Commission while monitoring rallies, campaigns and individual speech for compliance. The Commission moved the office of the Director of Public Office to commence criminal proceedings against a number of politicians in 2015 but reports continue to reflect the resort to hate speech, particularly in the race to elections in 2017. The Kenya Media council in 2016 indicated its concern over the reporting and propagation of hate speech through mainstream and social media.⁴
141. **Access to Justice:** It is noteworthy that rule of law in Kenya has improved with the institutionalisation of judicial reforms such competitive appointment processes and vetting in which 42 judges were removed. There has been remarkable resort to strategic litigation in Kenya by individuals, human rights organisations and government institutions. Public institutions such as National Gender and Equality Commission, the Independent Policing Oversight Authority and the Kenya National Human Rights Commission as well as the Attorney General of Government have sought advisory opinions or judgments from the judiciary. In the majority of cases, government has striven to comply with court judgments. This signals respect for constitutional governance and the autonomy of the Judiciary in consolidating the rule of law.

⁴ *Media Council of Kenya: Press releases <http://www.mediacouncil.or.ke/en/mck/index.php/press-release> (accessed 11 November 2016)*

141. There has been an increased focus on victim-centered justice beyond the narrow parameters of criminal justice. The Victim Protection Act 17 of 2014 operationalizes Article 50 (9) of the Constitution addresses barriers to justice often faced by vulnerable people and the law focuses on overcoming them through material and psychosocial support and due process rights to victims.
142. Transitional justice for victims of the post-election violence has been faced with procedural challenges. Following the recommendations of the Truth, Justice and Reconciliation Commission, Government undertook to recompense victims of election related violence reaching as far back as 1963; Ksh10 billion (US\$9.5 million) was earmarked for this. However out of the 6000 cases that had been lodged on post-election violence, by 2012 only 445 cases had been prosecuted to completion with only 26 convictions; government cautioned that most cases would not be prosecuted for want of evidence.⁵
143. **Right to life:** The right to life is guaranteed in the Constitution. However, unlawful deaths at the hands of non-state actors or state security agents have registered significantly on the national scene. The police in Kenya have been victims of criminality and terrorism in which officers too have suffered fatalities.
144. Extra judicial killings, torture and enforced disappearances in Kenya have been associated for a while with police impunity, neglect and abuse of office. ⁶The Truth, Justice and Reconciliation Commission documented allegations of massacres, unlawful killings, enforced disappearances, torture and ill-treatment perpetrated mainly by the Police and Military forces particularly in the post-election violence, tribal clashes and military operations. The Kenya National Human Rights Commission reported that 264 complaints received and investigated between 2010 and 2014 related to deaths occasioned by disappearance of persons, extra- judicial killings, police shootings and murder; 10 of these complaints alleged involvement of the Anti-terrorist police unit.⁷ The Government committed to investigate and punish occurrences, provide remedies to victims and build the capacity of the security forces but the accountability mechanisms have not effectively addressed these issues.
145. Functional reviews by the Police Task Force indicated high levels of distrust and low confidence in the police force arising from corruption, excessive use of force and harshness to the public and ineffectiveness.⁸ On the other hand, police morale has been low due to low material and financial resources required to function optimally. The National Taskforce on Police Reforms in 2009 made over 200 recommendations on areas for reform, some of which significantly featured in the Constitution of 2010 and many others which are still ongoing. The police is emphasising a paradigmatic shift from its image as a police force to a police service and has been in the process of vetting police officers recruitment to ensure the right calibre of officers are employed. However the August 2015 timelines for completion of vetting have been exceeded and the police are facing challenges with verifying the character of the police officers without public participation in providing much needed information.

⁵ Kenya Government 'Universal Periodic Review of the United Nations Human Rights Council: National Mid Term Report' September 2012

⁶ Kenya National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1* A/HRC/WG.6/8/KEN/1

⁷ Kenya National Human Rights Commission 'A country under siege: The state of security in Kenya- an occasional report (2010 - 2014)' 2014

⁸ Report of the Kenya National Taskforce on Police Reforms, 2009

146. The Independent Policing Oversight Authority (IPOA) is mandated to ensure accountability in the police service and improve trust and image in the public; however it only has investigative powers and can only refer cases for prosecution. The Prevention of Torture Bill 2014 is yet to be passed, an important law in further prevention abuse of power and office by police office against civilians, although the Police Act prohibits the use of Torture by the Police. Nonetheless given the role of civilians in engaging in organised crime and torture in the past, there is a gap in protecting citizens from torture. The IPOA in response to allegations of human rights violations against civilians by police has undertaken several investigations but complaints of misconduct by the public continue.
147. The National Police Service embarked on a police vetting exercise using the parameters of finances and human rights record; to date 1566 officers have been vetted and only one officer was found to be unfit after the human rights vetting. In June 2016, 302 police officers that evaded the vetting exercise were dismissed from the force. Referrals of suspicious cases have been made to the appropriate agencies including the Ethics and Anti-Corruption Commission. The Commission has focused on the traffic department and vetted those in the coast region, Nyanza and rift valley and intends to target the directorate of criminal investigations too.
148. The recruitment of police officers has been a priority reform area but the process faced procedural hurdles, delaying the recruitment and training of officers. In June, 2014, the National Police Service Commission (NPSC) undertook the recruitment of 10,000 Kenyans for service in the Kenya Police, Administration Police and General Service Unit countrywide. However after the recruitments there were complaints and allegations corruption, tribalism, nepotism and other malpractices surrounding the exercise. The Independent Policing Oversight Authority (IPOA) recommended to the NPSC and the National Police Service (NPS) the cancellation of the recruitment process and the undertaking of a new one. The NPSC refused and instead established a Multi-Agency Working Committee to investigate the claims of alleged irregularities and misconduct relating to the recruitment exercise, which led to the cancellation of recruitment results of 36 recruitment Centres.
149. However the IPOA filed a case in court (Petition No 390 of 2014) seeking to nullify the overall exercise on the basis that the NPSC had delegated its recruitment function to Sub-County Recruitment Committees and the exercise was undertaken without the NPS developing policies, regulations and procedures for the proper conduct of the recruitment exercise. For example the IPOA alleged that a number of women were disqualified from the exercise on the grounds that they were pregnant thus contravening Article 27 of the Constitution. The Court declared the entire recruitment exercise illegal and ordered for a repeat of the recruitment. After the Recruitment and Appointment Regulations, 2015 were published; the Police recruitment exercise was conducted with KNRC and the Police Reform Working Group monitoring the process. The KNRC raised its concerns about the failure of the second recruitment exercise to adhere to regulations and place appropriate emphasis on academic excellence and gender parity and ethnic balance among other things as a means of transforming the police service and breaking with its past image.⁹

⁹ Kenya National Human Rights Commission 'Disservice to the service: Report of the Monitoring of the 2016 Recruitment of Police Constables to the NPS' 2016

150. Attacks on human rights defenders have raised concerns, particularly where human rights defenders lost their lives in an unlawful manner at the hands of state agents. The state has committed to prosecuting the killing of Hassan Guyo and other cases.¹⁰

3.6.2.4 Socio-economic and cultural rights

151. The 2010 Constitution guarantees economic and social rights. These are: the highest attainable standard of health; accessible and adequate housing, and to reasonable standards of sanitation; freedom from hunger and to have adequate food of acceptable quality; clean and safe water in adequate quantities; social security; and education.
152. Some initiatives stand out in regard to the protection of socio-economic rights. The Women's Enterprise Development Fund, Youth Enterprise Development Fund and Uwezo Fund are significant government programmes in place that have potential to uplift the socio-economic status of women, youth and persons with disabilities (PWDs). The Women's Development Fund is discussed in Objective 7.
153. The Uwezo Fund was established to facilitate the participation of women, youth and persons with disability through accessing public finances for entrepreneurship. The Fund was meant to enhance the situation of groups that had been previously disadvantaged by unfair competition or discrimination. For the most part, vulnerable and marginalised individuals met during the CRM hearings were aware of the existence of opportunity but its implementation was perceived as not adhering to important principles of fairness and transparency and corruption was often cited as re-victimising and exploiting the intended groups. It was also felt that the major beneficiaries of these schemes are not the most vulnerable women and youth and PSWs but rather favours patronage and clientelism.
154. Drought has caused hardship to people from arid and semi-arid areas that have historically been marginalised such as Turkana, Isiolo, Mandera and Wajir. In some of these areas, food and water insecurity has created very difficult living conditions. This is discussed in more detail in Objective 8.
155. **Health Rights:** Government has sought to provide health care insurance for all through the National Health Insurance Fund. This insurance scheme provides accessible health insurance for employees in the public and private sector earning Ksh 1,000 and above. The majority of the informal sector has not been to join the scheme in large numbers due to lack of funds or appreciation of the benefits. To make health services more amenable to the indigent, there is an insurance subsidy in place and user fees for those accessing primary health facilities have been abolished. The National Hospital Insurance Fund seeks to extend to Universal Health Coverage although there have been fears over the financial sustainability of this innovation.

¹⁰ Republic of Kenya Universal Periodic Review Second Cycle Implementation Matrix 2015-2019

156. While the right to the highest attainable standard of health care is guaranteed for all, there remain challenges in the implementation of service provision. Statistics reveals skewed patterns of health care expenditure with the urban areas where 20% Kenyans live getting 70% of healthcare.¹¹ Further, only 51% of the 6,194 health care facilities in the country are government owned, with 49% ownership falling in the hands of faith-based organizations and private entities. The non-state health care facilities charges often lead the indigent and vulnerable to adopt poor health seeking behaviour especially for preventative and inpatient services.
157. Health care professionals; doctors and nurses continue to complain and agitate over low salary pay and lack of adequate facilities as well as human resources. Frequent strikes at the national and county level have affected the quality of services that citizens can enjoy.

3.6.2.5 Challenges

158. The basic challenges relate to:

- The level of public awareness of these rights, facilities and opportunities;
- The institutional arrangements that may pose stumbling blocks to the implementation of the rights regime; and
- The political, socio-cultural and economic contexts that detract from the full observance of the rights.

3.6.3 Recommendations of the Panel

158. The Panel recommends that

- i) Government institutions charged with public and civic education together with civil society should intensify efforts to promote awareness on human rights and legal literacy critical (Government, Civil Society Organisations).
- ii) Government should intensify community-policing efforts and boost the capacity of communities to self-monitor, with a strong focus on counter-terrorism. (Government, Civil Society Organisations)
- iii) The capacity of the National Cohesion and Integration Commission to monitor hate speech and ethnic discrimination to ensure compliance with the law is strengthened. (Government)

¹¹ *The 7th Periodic Report of the Government of the Republic of Kenya on Implementation of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 2015*

- iv) Police officials should be held accountable for human rights violations and the reform processes to transform and re-orient the police service to embrace a culture of respect for human rights should be expedited. (Independent Policing Authority, Police Reform Working Group)
- v) The Prevention of Torture Bill should be passed into law expeditiously (Parliament, Civil Society)

3.7 OBJECTIVE 5: ENHANCE ACCOUNTABLE, EFFICIENT, AND EFFECTIVE PUBLIC SERVICE DELIVERY

3.7.1 Summary of the Country Self-Assessment

159. As indicated by the CSAR, “the presence or absence of good governance practices and quality of services delivered to citizens depends a great deal on the public service”. Enhancing the service’s accountability, sufficiency, and effectiveness is, therefore, central to any serious bid for good governance. As the CSAR noted, a major highlight of developments leading to 2006 was the ruling government’s introduction in 2005 of what it called “Results for Kenyans” under its Public Sector Reform Strategy (PSRS) coordinated by the Public Sector and Development Secretariat. Among the goals of the PSRS were to:

- Validate and operationalize public sector values, ethics, core and managerial competencies;
- Mainstream public management accountability framework across all levels of public service;
- Re-establish a cohesive governance and leadership for transforming public service
- Benchmark public service delivery with best practices; and
- Review and strengthen organizational management systems and practices including human resource, procurement, management information systems, participatory models, as well as crosscutting issues such as HIV/AIDs, gender and environment management.

160. This led to the introduction of a Public Sector Integrity Programme and the appointment of Integrity Assurance Officers (IAO), Corruption Prevention Committees (CPC), as well as the introduction of performance contracting in all government departments. In a context in which government cabinet was considered over-bloated, performance contracting aimed to, among others:

- Increase responsiveness, public trust, and confidence in government;
- Enhance efficiency and effectiveness in delivery of services to the public; and
- Entrench a culture of accountability, transparency and ethics in public service management and service delivery.
- Subsequently, the Kenya's Public Sector Reform Programme has been based on the vision enunciated in the 2010 Constitution and in the Vision 2030 document. The Constitution turned the Public Service Commission (PSC) into an independent body with far-reaching powers to create and abolish offices, appoint and discipline staff, ensure efficiency and effectiveness, and develop human resources, in the service. Subsequently, the PSC has embarked on reforms in the service, including:
 - i) Introduction of performance contracting in the civil service;
 - ii) Required all Government departments/agencies to align their strategic plans to Vision 2030 and its first Medium Term Plan.
 - iii) Facilitation of expeditious recruitment of specialized talents for the Kenya vision 2030 flag ship projects - 941 officers recruited under the Economic Stimulus program.
 - iv) Implementation of the policy on equitable regional representation to address regional imbalances and enhance equity in employment across all the regions.
 - v) Ensuring adherence to the 2/3 principle on gender balance, 5% principle on recruitment of persons with disabilities, and regional and county balance in recruitment.
 - vi) Development and dissemination of provisions of the code of practice on mainstreaming issues and concerns of persons with disability in the workplace.
 - vii) Enforcement of the Public Officer Ethics Act through compliance enforcement of the code of conduct and ethics and financial disclosures.
 - viii) Development of Public Service Commission's communication strategy to receive feedback from the citizens.

161. On its own part Vision 2030 advocates for improved transparency and accountability while also calling for performance management with a focus on merit and performance for improved efficiency. Over the years, therefore, the public service has been oriented toward results and quality service to the extent that, in the words of the CSAR, by 2010, the three arms of government, namely, the Executive, the legislature, and the judiciary, had embraced performance contracting.

3.7.2 Findings of the Review Mission

3.7.2.1 Progress made since 2006 Review

162. Based on the 2010 Constitution and Vision 2030, vigorous steps have been taken to boost accountability, efficiency and effectiveness in the public service. In seeking to address service delivery at the local level, Huduma Centres have been established as a one-stop IT-driven interface of various components of the public service with the public. Attempts have been made to meet the staffing requirements of the service while seeking to minimize if not avoid over-bloating in this regard. Capacity building has equally attracted attention, along with reforms to improve financial management, enhance transparency, and leverage on ICT with a view to creating and strengthening organisational management systems and practices, including those for:

- Human Resource Management Systems;
- Procurement Management Systems;
- Management Information Systems;
- Participatory Programme/Project formulation and implementation;
- Crosscutting issues such as HIV/AIDs, Gender and Environment Management; and
- Enhancing transparency and accountability.

163. With the full take-off of devolution in 2013, along with the county system of government at the local level, issues of quality assurance and overstretched public service capacity have become even more pronounced as a test of the resilience and adaptability of the Kenyan public service

Best practice: Huduma Centre improving public service delivery

Huduma Kenya is an initiative by the Government of Kenya that aims to transform Public Service Delivery by providing access to citizens of the various Public Services and information from One Stop Shop public service centres called “Huduma Centres” and through integrated technology platforms.

As of 2016, there are 11 Huduma Centres across the major cities of Kenya, three of which are in the capital Nairobi. The government plans to establish a Huduma centre in every county. The programme includes also online e-Huduma web portal to provide integrated services offered by various government ministries, departments and agencies and a unified and integrated Huduma payment gateway to facilitate ease of payment for government services. Others are introduction of m-Huduma platform to offer government services to citizens from their mobile phones and a Huduma call centre to provide customer service using a single dialing prefix.

Services delivered at Huduma centres include: Renewal of Drivers licenses Status check, duplicate National Identity Card, NHIF Registration and Claims, assessment and Payment of Stamp Duty – Lands, Search and Registration of Business Names, Registration of Welfare Groups, Student Loan Application and Repayment Services; Reporting Corruption, EACC Clearance Certificate; Status of Pension Claims; Kenya Police Abstract, Public Complaints through the Commission on Administrative Justice (Ombudsman).

During CRM visits to the counties, stakeholders expressed their satisfaction of Huduma centres in the way they have eased access to government services and brought them closer to the people. The use of technology platforms has reduced personal contact and minimized the opportunity to offer bribes and above all improved revenue collection.

164. Generally speaking, there is a good relationship between the leadership and public services of the national and county governments at the level of planning. The collaboration is rooted in the 2010 Constitution, although evidence points to the need to fine-tune the instruments and frameworks for that relationship, including enacting further legislation in this regard. Relatedly, the CRM learned that this collaboration extends to tax matters, and that the national Kenya Revenue Authority has stepped in on invitation to assist County Governments in operational and capacity building functions related to tax. Similarly, the National Assembly has stepped in to assist County Government Assembly member and their staff in capacity building.
165. Jurisdictional matters still do arise, however, between national and county government public services either because of lack of constitutional clarity in jurisdictional partitioning or due to matters arising from operations of specific policy guidelines. For instance, it is not yet clear whether there is a consistent position on the implementation of health under devolution, but there is agreement that health has suffered in specific areas under the devolution regime.

166. The issue of an over-bloated public service remains a major challenge, especially at the County government level, given its implication for the wage bill. As a result of poor transition planning, many County governments carried forward the burden of staff high on numbers but low in capacity from the pre-devolution period and invariably compounded this through fresh recruitments on their own. This practice of employing without the required establishments needs has understandably led to a situation in which recurrent needs tend to outstrip development expenditure in county government budgets.
167. Another important perception in this regard relates to the salience of partisan consideration and nepotism over and above merit and skills in the appointment into key offices at the political level in the national and county government levels, cascading into and distorting public service profiles. Even at the national level, the point is made that ministerial deployment often does not reflect competencies and skills. At the county level, it is also acknowledged that a sizeable number of the members of the various County Assemblies lack even the constitutional minimum educational qualifications for the positions.
168. Incursion of politics into such key functions as those of procurement and budgeting has also worked against the realisation of an effective and efficient public service. A common complaint relates to lack of full understanding of the budget and policy process by citizens who are required by the constitution to participate in governance. Such citizens often prioritise roads and health without fully appreciating other areas in which the public service could be required to act in the public interest.
169. Additionally, consultations across the counties highlighted the challenge of non-optimal consultation, collaboration and coordination between county commission officers and county government officials as the major impediment to service delivery, despite provisions in the constitution and appropriate legislations for such consultation, collaboration, cooperation and coordination. At one level, as indicated earlier, the recency of the devolution regime could be blamed for this situation.

3.7.2.2 Challenges

170. Some challenges have been appropriately highlighted in the CSAR while others have been identified. They include:
- Organizational structure of government is in transition; there are some teething problems resulting from awareness of which public services are devolved or shared between county and national government;
 - Wage bill: despite efforts to reduce the high wage bill, it continues to be a challenge in the reform process;

- Coordination and Alignment of Reform Programmes: The development and implementation of a comprehensive and cohesive Public Sector reform strategy at the national level has enhanced the coordination and alignment of reform programmes, but this needs to be aligned with reform efforts at the county level; and
- The widespread perception of corruption and ethno-regional and partisan political loyalties as major elements in the culture of government business.

3.7.3 Recommendations of the Panel:

171. The Panel recommends the following:

- i) Deepen rationalization: Deepening the ongoing public service rationalization both at national and county levels will streamline the operations of ministries departments and agencies, and this, along with introducing an integrated staff appraisal system, will contribute to addressing the challenge of the high wage bill (GoK and County Governments, Salaries and remuneration Commission);
- ii) Enhance Collaboration with Strategic Partners: Foster existing good will and facilitative support from development partners and other stakeholders to support public sector reforms, particularly in the context of devolution (GoK and County Governments, Development Partners);
- iii) Expedite decentralization of resources and authority to local governments to enhance participation and inclusion. A good balance between centralization and decentralization has to be sought and maintained to avoid lapses in service delivery (Commission for Revenue Allocation);
- iv) Strengthen existing constitutional and legal provisions for consultation, collaboration, coordination and cooperation at the county level between county commission and county government officials through the creation of a service-delivery driven and development-centred platform to be called County Development Forum (GoK, County Governments, Parliament); and
- v) Continue to specially focus on corruption and other forms of unethical tendencies in the ecology of the public services (Attorney General, Ethics and Anti-Corruption Commission).

3.8 OBJECTIVE 6: PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN

3.8.1 Summary of the Country Self-Assessment

172. The 2006 CRR identified various government measures to empower women including establishing the Women Enterprise Development Fund, the President Gazette Notice directing that women constitute a minimum of 30% of all newly recruited public servants, enacting the Sexual Offences Act 2006, mainstreaming gender issues through a designated ministry of Gender, ring-fencing 5% of the Secondary School Bursary Fund for girls at the constituency level, and enhancing the enforcement of the Children's Act, 2001 which abolished harmful traditional cultural practices that affect the girl child.
173. Progress made to empower women extended to for women through devolved funds such as CDF, the Constituency HIV/Aids Fund, the Constituency Bursary Fund and the Constituency Roads Fund. More gender responsive treaties have been made, however challenges are faced with discriminatory laws and practices that disenfranchise women.
174. The CSAR speaks of the strategies in place to address women's civil and political rights. Political parties are required to observe gender parity and the state is enjoined to take legislative and other measures to ensure that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender including at county government level. Implementation of this rule faced challenges and the Supreme Court held that the rule would be progressively achieved by 2015.
175. Among the challenges highlighted in the CSAR is the continued male domination in the National Assembly that constrains the passing of gender-friendly legislation and policies. Lack of capacity and resources of institutions charged with implementation of gender equality to execute their mandates compound this. While progressive laws have been enacted around land rights, implementation is constrained by ignorance or cultural beliefs that challenge enjoyment of rights. The realization of the two-thirds gender rule is a challenge because of social discrimination of women; instances of appointment of men only in disregard of constitutional provision have continued in some departments.

3.8.2 Findings of the Review Mission

3.8.2.1 Progress made since 2006

176. **Enabling frameworks:** The Constitution of 2010 recognises and protects women's civil and political rights and socio-economic rights on an equal basis with men. Women are entitled to own and inherit land, own matrimonial property and secure it during and at the dissolution of a marriage. Significantly, the role of culture in subjecting women to discriminatory practices and stereotypes is addressed in the Constitution. Under Article 2 (4), any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.

177. Affirmative action programmes and policies consolidated through a National Affirmative Action Policy were adopted rectifying any disadvantage suffered by individuals or groups because of past discrimination. Affirmative action extends to women among other categories and under the Constitution entails such measures that are necessary to overcome or ameliorate inequities or the systemic denial or infringement of a right or fundamental freedom.
178. Women in the political and public arena: For women's issues to be articulated and mainstreamed in public discourse, policymaking and resource allocation, the presence of women in public office is critical. However, women in Kenya continue to be underrepresented in elective and appointive offices. In 2009, female ministers were 16.7%, assistant ministers 11.5%, ambassadors 27.5%, permanent secretaries 15.9%, Provincial Commissioners 0%, Deputy Secretaries 26.4% and councillors 15.8%. Available data shows that the figures in appointive offices remain low at the higher levels of leadership as reflected in the table below.

Table 1: Women representation in appointive public office at 2012

Positions	Total	Male	Female
Cabinet Secretaries	18	12 (67%)	6 (33%)
County secretaries	46	40 (87%)	6 (13)
Principal Secretary	26	19 (73%)	7 (27%)
Chair- Independent Offices	2	1 (50%)	1 (50%)
Chair- Constitutional Commissions	12	7 (58)	5 (42%)
Heads of Parastatals	36	34 (94%)	2 (6%)
Magistrates (Within Nairobi)	90	39 (43%)	51 (57%)

Data source: NGECC database, 2013

179. In 2009 the judiciary was dominated by men: 90% of the 10 Court of Appeal judges were male; of the 16 High Court judges, women constituted only 25.0% and female public officers in the judiciary constituted 33.5%.¹² The Task Force on Judicial Reforms set up in 2010 found too that women were grossly under-represented in the judiciary particularly at the level of the Court of Appeal and Khadi courts.
180. Despite the promise of affirmative action in elective positions, women are still underrepresented, particularly in the legislature. The adoption of affirmative action measures resulted in an increase of women legislators at the county assembly level but not at the national assembly level. The table below is instructive.

¹² Republic of Kenya 'Ministry of Gender, Children and Social Development 2nd Bi-annual Report on 30% Affirmative action on employment and recruitment of women in the public service

Table 2: Women representation in the National Assembly

Position	Category	Women	Men	Total	% Female
Members of Assembly	Elected Members of Parliament	16	274	290	5.5
	Nominated Members of Parliament	6	6	12	50.0
	Women Representatives	47	0	47	100.0
	Ex officio (speaker)	0	1	1	0.0
Total		69	281	350	19.7
Senate	Elected	0	47	47	0.0
	Nominated	18	2	20	90.0
	Ex officio (speaker)	0	1	1	0.0
Total		18	50	68	26.5

Source: Kenya Women Parliamentary Association (KEWOPA) 2013

181. As at 2013 only 2 out of 10 (20%) top positions in parliament were filled by women (Deputy Speaker and Deputy Majority Leader) and 7 out of 27 (25%) committees were chaired by women.
182. The CSAR touches on the Constitutional conundrum posed by the failure of the legislature to be constituted around the two-thirds gender principle. Analyses reveal that this problem flows from: (i) Failure of government to put in place laws to actualise the two thirds gender rule and of government institutions (ii) political parties to nominate women in significant numbers to vie for elections on party platforms and of the relevant government institutions to ensure compliance with the two third rule (ii) lower figures of women vying for elective office in comparison to men and (iii) failure of the public to vote women in adequate numbers.
183. In December 2012 the Attorney General sought an advisory opinion on the implementation of the two-thirds gender principle in parliament ahead of the 2013 elections. The Supreme Court held that since there were no measures in place to implement the two-thirds gender principle in Parliament before the 2013 elections, the principle would have to be realised progressively but in any event not later than 27 August 2015. On 26 June 2015 Constitutional petition 182 of 2015 was filed contending that within a short time to 27th of August 2015, no legislative measures had been undertaken by the executive and legislature to have an effect on the two thirds gender representation rule in the National Assembly and Senate. The High Court determined that there was a threatened violation of the Constitution if the parliamentary gender deficit remained unresolved and directed for a bill on the same to be published within 40 days of the ruling. In April and May 2016 there were unsuccessful attempts to pass Constitutional Amendment bill No 4 regarding the two-thirds principle and

to date, there is no law.

184. Parliament extended the deadline for enacting this law by a year from 27 August 2017. At the time of the CRM, the issue had not yet been resolved. However, Constitutional Petition 371 was filed on 5 September 2016 by two prominent women's organisations. The essence of the petition is that less than a year from the date of filing, parliament has not enacted a law to implement the two thirds gender principle despite the deadline being extended by Parliament to 27 August 2016 from the unmet deadline of 27 August 2015. The petition contends that Parliament no longer has powers to make another extension and yet the two-thirds gender principle must be implemented before the next general elections are held. The petition seek among other things a declaration that both the Senate and the National Assembly have failed in their Constitutional obligations to give effect to the two thirds gender principle and that the Parliament together with the Attorney General should enact the required legislation within the stipulated time, failing which the Chief Justice would advise the President to dissolve the Parliament.
185. At the county level, adherence to the two-thirds gender principle yielded positive results. 82 women (5%) were elected out of the total 1,450 seats for the ward assemblies and 680 were nominated in order to meet the two-thirds rule, leading to 34% women in county assemblies. However only 6 women were elected out of 47 Deputy Governors and no female governor or senator woman was elected.
186. The available statistics indicate that women did not vie for elective posts in large numbers. Six women vied for the position of governor (3%), 17 for senate (7%), 124 women for parliament (6%), and 632 women for county assemblies (6%). Reasons ascribed to this low turnout all point to deliberate and sustained hostile environments that threaten gender based violence and intimidation and harassment overall from male opponents. Notwithstanding, women are not being voted for by fellow men and women largely because of the way societies are constructed; leadership is viewed as male territory and preserve. There were also reports of communities being misinformed that women could only stand within the dedicated affirmative action seats and not in the mainstream seats. However, the role of parties in the low number of female candidates came under scrutiny.
187. Observers and critiques of the conduct of elections at the political party level cited failure in complying with prescribed regulations and procedures to consolidate the two-thirds gender principle, absence of fair and transparent internal elections and marginalisation of women in the governing bodies. These failures resulted in many parties not fronting a minimum of thirty percent of women on the party list for elections for the public to vote for. The Political Parties Act 2011 did not specifically allocate affirmative action seats for women although the Registrar of Political Parties issued gender responsive guidelines to the political parties in this respect. While most parties have women leagues, political parties do not seem willing or prepared to share power to women and nominate them apart from seats for women representatives.

188. The Registrar of Political Parties and the Independent Electoral and Boundaries Commission (IEBC) did not hold political parties accountable for non-compliance with the two-thirds gender principle. The National Gender and Equality Commission (NGEG) filed a case against the IEBC in 2013 to temporarily restrain the IEBC from proceeding to allocate special seats to political parties on the basis of submitted lists, contending a breach in adhering to the principles of article 90 of the Constitution. The Court faulted IEBC for failing to meet its obligation to conduct and supervise the conduct of the election for special seats under Article 90 by failing to publicize the party lists submitted to it under regulation 54 the Election (General) Regulations, 2012. The Court further found that the IEBC also failed to issue sufficient guidelines that consistent with its obligation to observe, respect, protect, promote and fulfil the rights of persons identified as vulnerable and marginalised to participate in the political process. The court consequently directed the IEBC, constitutional and statutory commissions and political parties to develop policies and measures to increase the participation of women, youth, persons with disabilities, marginalised groups and other vulnerable persons to effectively participate in political processes.
189. Using political Platforms to promote gender agendas: Evidence abounds to show that female representatives in Parliament are advancing a gender empowerment agenda. The Kenya Women's Parliamentarian Association (KEWPA) consisting of women from across political parties contributed to the discourse around to gender equality and affirmative action during the last Constitution making process. Working with stakeholders and civil society partners, KEWOPA has significantly contributed to gender responsive laws in some instances despite having minority numbers. Laws such as the Sexual Offences Act of 2006, the Marriage Act 2014, the Matrimonial Property Act of 2013 and the Protection Against Domestic Violence Act as well as the 2011 Prohibition of Female Genital Mutilation Act are examples of KEWOPAs lobbying work. KEWOPA has lobbied for gender inclusive practices in the house such as women starting to chair parliamentary committees as well as the establishment of the Equal Opportunities Committee of Parliament. The funding of sanitary towels by government for school-going girls also owes a lot to the intense lobbying by female parliamentarians.

3.8.2.2 Addressing violence against women and girls

190. The high prevalence of sexual and gender based violence against women and girls presents serious challenges for women's rights and gender equality in Kenya. Even though government has undertaken comprehensive legal reforms and is adopting multi-stakeholder frameworks of engagement to tackle the situation, systemic negative cultural practices that promote gender stereotypes continues to feed violence against women and girls.
191. Violence against women and girls violence continues to be rampant. The Kenya Demographic and Health Survey (KDHS) 2014 both revealed that 45% women experienced physical violence since age 15, and 20 within the 12 months prior to the survey. Given that the KDHS 2008-9 data showed that 39% of the women had experienced violence since they were 15, this is indicative of either a rise in gender based violence or a rise in reporting of gender based violence. KDHS 2014 shows that 39% of ever-married women had experienced

spousal physical or sexual violence. The major perpetrators are husbands, indicating the pervasiveness of intimate partner violence. Women with disabilities continue to suffer from multiple forms of SGBV but as a result of their marginalisation in mainstream society, under reporting and recourse to legal remedies is the norm.

192. The government has passed several laws with intense lobbying by women's groups and activists to regulate against violence in the private and public sphere. The Protection against Domestic Violence Act 2 of 2015 contains an expansive definition of domestic violence in the private and cultural sphere and outlaws various harmful traditional practices; it is one of the comprehensive laws in this regard in the region. Despite these positive laws, a large proportion of Kenyan women and girls remain unaware of the laws that protect them, and underreporting of violence occurs as a result. Other reasons for under reporting intimate partner violence is due to social taboos that discourage reporting and economic dependence on the perpetrators.
193. The enactment of the Sexual Offences Act, 2010 widened the spectrum of protections available against sexual and gender based violence (SGBV) including sexual harassment, child trafficking, prostitution and sex tourism. The absence of SGBV specific sentencing guidelines in the Judiciary has often contributed to inconsistencies in sentencing crimes of SGBV. In laying down mandatory minimum sentences and maximum sentences for crimes the Sexual Offences Act ensures that the judiciary must apply justice for victims and this is emphasised in the Sentencing Policy Guidelines of the Judiciary.
194. FGM is on the decline in Kenya; in 2012 the UN ranked Kenya highest among the countries with FGM reduction in Africa.¹³ The KDHS 2014 Report showed that 21% of women age 15 to 49 had been circumcised; this is a decline from the statistics indicated in the KDHS 2008 to 2009 that noted a gradual decline in circumcised women, from 38% in 1998 to 32% in 2003 and to 27% in 2008 to 2009. The Prohibition of Female Genital Mutilation Act, 2011 provides a legal framework in stamping out this harmful traditional practice. A multi-dimensional stakeholder National Committee for the Abandonment of Female Genital Mutilation (FGM) was established to address the elimination of the practice and has developed multipronged strategy to convince communities to abandon this practice in girls. The work of CSOs in this regard has underpinned government efforts.
195. The various conflicts in Kenya have negatively affected women's rights to bodily integrity to extreme lengths in the past. The overall number of women and girls raped during the post-election violence was estimated at 1500 and women and girls constituted 63.9% of the IDPs in six camps. Fourteen victims and witnesses testified to the Inquiry on post-election violence to being raped both by civilian individuals, organised gangs and security forces and to being sexually exploited by humanitarian workers and IPD service providers.¹⁴

¹³ UN Joint Programme On Gender Equality And Women's Empowerment Annual Report 2012

¹⁴ Post-Election violence Report page 253-50

196. Access to justice for victims: The response of the police to electoral violence crimes of sexual violence reflected an attitudinal barrier to deliver justice for women. The Commission of Inquiry into the Post-Election Violence for example rued the fact that despite overwhelming evidence of the occurrence of sexual violence and the several charges levelled against police officers, there was apparent lack of interest of the police in sexual violence crimes in general and inaction towards police officers accused of perpetrating the crimes.¹⁵ Also, the police reports to the Commission omitted data on sexual violence.
197. There are gender desks established in police stations although they comprise of either gender, which could deter traumatised women from seeking recourse. The desks tend to be underfunded and lacking in trained personnel with gender responsive skills. Prosecution rates for sexual offences are still low due to evidentiary requirements that place a burden on victims and the majority of the victims are unaware of their legal rights and procedural requirements.
198. The Directorate of Public Prosecutions established a Sexual Offences, Gender Violence and Victim's Rights Section, which is run by Special Prosecutors. In June 2016 the Director of Public Prosecutions indicated that under his mandate to gazette competent professionals as prosecutor, competent professionals such as the lawyers of the Federation of Women Lawyers (FIDA) Kenya would attain powers to prosecute SGBV.
199. Likewise, the Judiciary has placed due emphasis on developing Sexual Offences Rules of Court 2011 to guide judicial officers handling cases of sexual and gender based violence. The National Legal Aid and Awareness Programme established in 2007 was piloted in some regions with a Women and Family Division to help indigent women to claim their rights. The Legal Aid Act No 6 of 2016 seeks to institutionalise the provision of legal aid in Kenya in the promotion of access to justice and social justice; it holds the potential to provide access to justice for vulnerable women and girls who may otherwise fail to seek meaningful remedies when their rights are infringed on. The critical role of diverse legal aid service providers for victims of SGBV in Kenya must also be acknowledged as helping to provide social justice to vulnerable and indigent survivors of gender based violence.

¹⁵ *Post-Election violence Report page 249*

Box 2: Best practice: Gender Based Violence Recovery Centres in major public hospitals

While the concept of Gender recovery centres were started as an initiative of Nairobi Women's Hospital, a private hospital, the Ministry of Health working through public private partnerships since 2007 has replicated this model in public hospitals regionally. Nairobi, Mombasa, Nyeri and Kisumu referral hospitals have these centres. The centres are servicing the regions around them and provide one stop services to SGBV survivors including medical care services, psychosocial support and safe spaces, HIV Testing, post-exposure prophylaxis and referrals to legal services as well as aiding in court preparations and watching briefs. Women who cannot afford treatment utilise these services from trained health care workers, with continuous care being provided in some instances.

200. One of the overarching challenges in combating SGBV has been lack of evidence-based analyses and data collection to aid planning and programming for appropriate responses. NGEN developed a comprehensive National Monitoring and Evaluation Framework towards the Prevention of and Response to Sexual and Gender Based Violence in Kenya. In addition, it established a data management system to address gaps in institutional data collection on SGBV.

3.8.2.3 Right to the highest attainable standard of health

201. In providing for the highest attainable standard of health, which includes the right to health care services and reproductive health care, the 2010 Constitution made novel guarantees for women's health care. The removal of user fees for maternal health is a positive measure in this regard as it has allowed more women to access professional health care facility, and use of these services has increased from 43% to 67%. Government noted declining child mortality rates from 100,000 in 2013 to 70,000 in 2016 while mortality for mothers giving birth has declined from 6,000 in 2013 to 4,300 in 2016. Government has increased its financial allocations; in the financial year 2016/17 government provided Ksh 4.3 billion for free maternal healthcare¹⁶ up from Sh3.8 billion in 2013. The issue of maternal mortality nonetheless remains a continuing problem in Kenya, with a maternal mortality rate of 7700 fatalities annually and 362 per 100,000 births.
202. The MDGs Final Report of Kenya 2016 indicates progress in accessing family planning needs and increasing resort to contraceptive use of 58% in 2014. It is also commendable that contraceptives from government facilities or those supplied by government to private facilities are free, although some health facilities levy charges on them. Adolescence pregnancy is still high and 15% of women aged 15-19 had already given birth in 2014. In North Eastern Kenya where it is estimated that 68% births are without professional care, while efforts have been made to put in place level 4 hospitals and maternal health care is free, the long distances to health care centres contribute to high mortality rates.

¹⁶ Kenya Budget statement for the Fiscal Year 2016/17

203. Abortion continues to be linked to high maternal mortality rates. In response the government issued National Standards and Guidelines for the Reduction of Maternal Mortality from Unsafe Abortion in 2012 as well as a National Training Curriculum for the Management of Unintended, Risky and Unplanned Pregnancies but it still accounted for 6% of maternal mortality incidence, and this is for the known cases.
204. Other challenges arise from lack of adequate health professionals and equipment to cater to maternity services and other health services, leading to overcrowding in hospitals. Only 1% of women reported of having suffered from fistula in the Kenya Demography Household Survey 2014 and there is free screening of cancer in public hospitals as well.
205. Women continue to have higher prevalence of HIV/AIDS than men, with the incidence recording at 6.9 % for women and men at 4.2% in the population aged 15-24 years in 2014; the incidence is highest in urban women. Percentage use of condoms remains lower in women at 7.1% in 2012 compared to men at 27.1%. This is indicative of risky sexual behaviour that is often caused by low awareness of HIV status of partners, weak female condom use, limited access to HIV presentation care and inability of women to negotiate safe sexual practices.

3.8.2.4 Women's economic rights

206. Government established the Women's Economic Development fund in 2007 to improve access to credit with a view to promoting women's enterprise as well as wealth creation, in recognition of MDG 3 on gender equality and women's empowerment. The funds are administered to groups of 10 members and above that have registered for self-help. Members of the group offer non-complicated guarantees for the loans acquired, such as household items and business products. In addition to funding, many women groups were able to complementary training and entrepreneurship and business skills from government and civil society actors. The Youth Enterprise Fund guidelines also require that a third of the group beneficiaries and the group's managing committees must be women.
207. However, from the outset, the demand has outstripped the available funds. During the CRM public hearings many women complained that the figure advanced of KShs 50,000 is too little to meaningfully transform their business projects; however the money is given on a graduated basis of KShs 50,000 first loan, KShs 100,000 thereafter, and KShs.200,000 as the third loan. In addition to these skills women, particularly those in rural areas, lack access to market networks. The CRT also heard complaints of corruption and partisan considerations surrounding allocations of funds. Other challenges faced include delays in financial disbursements to the groups, which limit the impact of the fund.
208. However, despite the innovation of Uwezo and WEDF, the demand for credit is still very high and women are seeking alternative sources of financial top ups using other financial institutions where they can. In these institutions they still face systemic barriers to accessing much-needed funds including technical and discriminatory gender based barriers. Women for the most part still lack access to land, which is a key factor in production and access

to loans; in 2004, women held only 1% of land titles and 5-6% jointly¹⁷. Even though the Constitution enjoins land use and management in a manner that promotes the elimination of gender discrimination in law, customs and practices related to land and property; women are still affected by patriarchal patterns of control and inheritance that favour men over women.

209. The Employment Law was amended with positive provisions that protect women's rights in the formal employment sector. The Employment Act of 2007 provides for equal pay for work of equal value, and full pay on three months maternity leave. It outlaws sexual harassment, although requiring employers to take steps only if there are 20 employees dilutes the effect. Employers are not allowed to discriminate against or harass an employee or a potential employee on grounds of sex or pregnancy.
210. Women's representation in wage employment in the public sector rose to 36.5% in 2014 from 29.5% in 2000, owing largely to the directive for all public institutions to enforce the thirty percent of women in employment. However the private sector tells a different story; only 15% women's representation in wage employment was registered in manufacturing, building and construction, electricity and water sectors by 2013.¹⁸

3.8.2.5 Challenges

211. The basic challenges here relate to entrenched cultural practices and institutions, which generally reflect patriarchal influences, compounded by the marginalisation of women in the economic and social spheres of life, and institutionalized by public and private bureaucracies and the legal system.

3.8.3 Recommendations of the Panel

212. The Panel makes the following recommendations:
- i) Expedite the operationalization of the two thirds gender principle through enactment of appropriate laws and regulations and the IEBC and Registrar of Political Parties should issue directives and guidelines to political parties on operationalization of the same and ensure accountability in this regard. (Attorney General, Parliament, IEBC, Registrar of Political Parties, Political Parties.)
 - ii) The IEBC, Registrar of Political Parties and relevant constitutional and statutory commissions and political parties should work collectively to develop policies and strategies for increasing the participation of women and all other marginalised and vulnerable groups (IEBC, Registrar of Political Parties, NGEC, KEWOPA, Political Parties and statutory bodies)

¹⁷ World Bank. 2004. *"From Periphery to Center: A Strategic Country Gender Assessment."* Washington, DC.

¹⁸ NGEC Annual Report 2013

- iii) Land management systems and institutions should develop procedures and strategies to promote gender equity in public land allocation, management and use. Education programmes and information campaigns for the public should emphasise the rights of women to inherit land (Government, Civil Society)
- v) Government should strengthen the capacity of law enforcement agencies to combat gender based violence in accordance with the law and increase awareness on the legal rights of victims to access justice through the national legal aid education programmes. (Government, civil society)

3.9 OBJECTIVE 7: PROMOTE AND PROTECT THE RIGHTS OF CHILDREN AND YOUNG PERSONS

3.9.1 Summary of the Country Self-Assessment

213. Since 2006, Constitutional provisions have sought to protect youth and children from violations such as forced labour, slavery, and servitude, The Counter Trafficking in Persons Act, 2012 criminalises all forms of trafficking and the amended Education Act outlaws corporal punishment in schools. The Employment Act 2007 sets the minimum age for employment at 16 years and prohibits the employment of children less than 18 years. The Basic Education Act 2013 makes education compulsory up to secondary school level. Several other laws, policies and action plans have been established to protect the rights of children, including vulnerable children.
214. The (former) Ministry of Gender, Children and Social Development set up a toll-free hotline, “child line” so that the public could report cases of child abuse. The Legal Aid Bill 2013 recognises children as being eligible for legal aid. The National Registration and Identification Act, 2012 makes birth registration compulsory and free.
215. There is lack of awareness of recourse by victims and persistent neglect and violence against children. Children continue to bear the brunt of poverty, particularly those with HIV/AIDS. While education is free and compulsory, constraints include inadequate teachers and classrooms and teaching resources; teachers and classes are few.
216. The 2006 CRR noted the existence of the National Youth Policy which provided a framework for youth including those with disability, street youth, youth affected by HIV/AIDS, female youth, unemployed youth and out-of-school youth were to be effectively addressed and coordinated. High levels of youth unemployment were noted and the CRR found that the government undertaken various measures including enacting laws to protect children from defilement, rape, female genital mutilation and early marriage; a national action plan to combat violations of children’s rights and intensification of civic awareness programmes on the rights of children and young people, as well as a multi-dimensional programme to cater for youth issues.

217. The Ministry of Youth Affairs and Sports established the Development Fund to encourage enterprise development and labour exportation. In March 2009, the government introduced the Kazi Kwa Vijana initiative to provide labour-intensive employment for the youth, employing 59,853 youth by end of 2010. Challenges were noted in regard to promoting the rights of youth, such as the high proportion of educated unemployed, high rural-urban migration in search of jobs resulting in more unemployment and pressure on public services in urban areas; a largely unregulated informal sector in which the youth are mainly employed, employers' preference for casual, temporary, part-time, contract, sub-contracted and outsourced workforces to reduce labour costs, work place exploitation and abuse, and job selectivity and demand for high salaries for entry level jobs.

3.9.2 Findings of the Review Mission

3.9.2.1 Progress made since 2006

218. Under Article 53 of the Constitution, the rights of children are guaranteed and in all matters concerning the child, the principle of the child's best interests is overarching. In regard to youth, the Constitution undertakes to promote access to relevant education and training; opportunities to associate, be represented and participate in political, social, and economic and other spheres of life; access employment; and protection from harmful cultural practices and exploitation.

3.9.2.2 Education of children and young persons

219. The Early Childhood Development Education Policy is premised on universal education and its implementation so far has seen higher numbers of Kenyan children accessing education. The enrolment rate in primary school in 2009 was 83.2% though it declined to 78.5% in 2014¹⁹
220. Government has scaled up its efforts to increase the enrolment and retention of children and young persons in school. The innovation of mobile schools to cater to the needs of pastoralist communities is a good innovation in extending flexible education services to communities. The guarantee for free and compulsory primary education until the age of 14 has been impactful on children in Kenya and in the CRM public hearings, communities were vocal in their gratitude for the education bursaries from county governments and also the private sector that allow more children and young persons to access the education system. In 2016/17 financial year for example, government disbursed KShs 0.4 billion for the Presidential Secondary School Bursary Scheme.
221. In 2008, free education was provided in public day secondary schools in order to facilitate a higher transition of school children from primary to secondary school level. The ratio of girls to boys in secondary education increased from 0.86 in 2011 to 0.89 in 2013 and at tertiary level from 0.63 in 2000 to 0.81 in 2013.

¹⁹ *Progress in Achievement of MDGs in Kenya, Final status report 2016*

222. There are social gender, regional, lingual and physical inequalities associated with the education systems that are causing dropouts from the education system. Universal education has not been achieved for all children and regional disparities exist, particularly affecting children from arid and semi-arid lands, which are registering low enrolment rates as noted in the MDGs Final Status, report, 2016. Learners with special education needs face challenges in accessing institutions that meet their needs. By 2010 there were only 10 public secondary schools for learners with hearing disabilities, 3 for learners with physical disabilities and 4 for learners with visual disabilities in all of Kenya.²⁰
223. Overall, the cost of simultaneously funding free primary and public secondary education is immense. High pupil-teacher rates are the norm in public schools and this is aggravated by inadequate building infrastructure and school facilities. In 2016, 759,000 students obtained places in form one in public and private secondary schools, leaving out over 167,000²¹. Teacher absenteeism and high pupil teacher ratios were also identified as a cause of poor quality education that many feel is symptomatic of the education system. In the insecure regions, children drop out of school or parents cluster closer to urban and secure educational facilities, resulting in congestion in the classroom. The prolonged droughts and insecurity have aggravated the drop-out rates, especially in the arid and semi-arid lands. Poverty is a factor in drop-out rates as children leave class to look for money, food, or work to feed selves. Many children still lack scholastic materials and also Universal primary education does not cover pre-primary education, which is costly for the poor.
224. **Gender parity in education:** Enrolment and retention of girls in primary school has been problematic in the past. In the past few years, gross enrolment rates for girls have increased and the challenge remains that of retention. For example in 2006 to 2008 girl child enrolment increased to 49.1% but retention dropped by almost a half. By 2009, the net enrolment rate rose to 92.9%, 95.9% in 2013 and fell to 88.2% in 2014 with a gender parity index of 0.89.²² In 2015 the male female enrolment ratio in primary, secondary and tertiary school stood at 1.0.
225. In order to address the gender inequalities in education, the Ministry of Education, developed a Gender Policy in Education in 2007. The policy emphasised gender responsive research and measures to address gender-based violence and sexual harassment in education. Institutional responses involved establishing a National Task Force for Gender and Education, a Ministerial Task Force on Girls' Education and a Gender Desk within the Ministry of Education. Government sought to address the lower numbers of admission of girls in university by lowering entry points for females in public universities; in 2007 the Universities Joint admission board in affirmative action measures lowered entry points for girls by two points. The Kenya Budget Statement for the fiscal year 2016/2017 allocated KShs 0.4 billion for sanitary towels for girls in school in a bid to increase the retention of girls in school.

²⁰ Kenya Government 'Universal Periodic Review of the United Nations Human Rights Council: National Mid Term Report' September 2012

²¹ Speech by His Excellency Hon. Uhuru Kenyatta, C.G.H., President and Commander in Chief of the Defence Forces of the Republic of Kenya during the State of the Nation Address at Parliament Buildings, Nairobi on 31st March, 2016

²² Progress in achievement of Millennium Development Goals in Kenya-Final Status Report, June 2016

226. **Vulnerable children and young persons:** The 2009 census revealed that 43% of the Kenyan population is under 15. Infant mortality rate declined to 39 deaths per 1,000 live births in 2014 and under-5 mortality is 52 deaths per 1,000 live births according to KDHS 2014. This is a decline from the KDHS 2008-9 statistics indicating under-five mortality and infant mortality have declined from 115 and 77 to 74 and 52 deaths per 1,000 live births respectively. The registration of children at birth helps to attach important rights to children such as healthcare and education; however a high number of children in the rural areas have not benefitted from births registration. Only 68% children are registered and about only a quarter of these have birth certificates.
227. It is estimated that there are over 2.4 million orphans resulting from HIV & AIDS deaths alone.²³ Cash transfers of KShs 4000 have been made to families with orphans and vulnerable children to promote community driven childcare and protection. Government has placed emphasis on this programme, funding it to the tune of KShs 2.8 billion in 2011/2012, KShs 4.4 billion in 2012/2013, KShs 8 billion in 2013/2014 and KShs 7.9 billion in 2016/17.
229. The incidence of violence against children is still high. Vulnerable and poor children and young persons continue to face exploitation, neglect and abuse. The most common forms include child labour, trafficking, sexual violence and harassment in education institutions and domestic violence. The 2010 National Survey on Violence against Children sponsored by UNICEF revealed that 32% of females and 18% of males experience sexual violence: 66% of females and 73% of males experienced physical violence and 26% of females and 32% of males had experience a form of violence. It also found that 76% of women aged between 18 and 24 had experienced gender-based violence at least once by the time they were 18. Although the law prohibits corporal punishment in the private and public sphere it is still practiced in some form. The establishment of specialised courts is improving access to justice for children and other vulnerable groups but poor and vulnerable children are not able to access the justice, law and order mechanisms.
230. Trafficking children and young persons across borders and internally for domestic work has continued to present challenges for protecting vulnerable children. This is despite the intensified efforts of the counter trafficking network comprising of government and civil society and development partners to combat it. The large numbers of victims and resource constraints cause difficulties in providing shelters and significant victim assistance.
231. The KDHS 2014 report reveals that circumcision of girls at younger ages is trending; 8% of girls had their genital area sewn up by the age of 14. The cultural premium on this ritual remains high and many children are taken to hospital to have the procedure far from the watchful eyes of law enforcement. Government has exerted concerted efforts to eradicate this practice together with civil society through awareness raising, community engagement among other strategies.

²³ Republic of Kenya 'Special Programmes Sector MTEF 2011/12 - 2013/14 Sector Report

232. Child marriage prevalence was rated at 23% in 2016 and is driven by poverty and parents who see girls as economic burdens or capital. It affects the development, survival and welfare of the girl child and results in early and unwanted pregnancies that are also linked to high maternal mortality rates.

3.9.2.3 Promoting entrepreneurship for young persons

233. Young persons are the majority demography in Kenya; those aged 25 years and below are 62% of the population. As noted in the CSAR 2015, emphasis has been placed on creating enabling environment for youth self-employment and enterprise, pursuant to the Public Procurement & Asset Disposal Act, 2015, government earmarked a 30% procurement Preferences and Reservations quota for goods, services and works to be reserved for the youth and other vulnerable groups and this is being implemented at county level.

234. Youth have been saving monies collectively in SACCOs as a means of resource mobilisation. Government has also dedicated resources to youth empowerment in the form of the Youth Enterprise Development Fund allocation to facilitate low interest loans to youth. The allocations increased to Ksh 12.7 billion in 2015/2016 and the Uwezo fund for which youth are eligible increased to KShs 6.4billion. Among the achievements registered by 2012 was the creation of over 300,000 new jobs, training in entrepreneurship abilities and linking youth to products markets.²⁴ However in some counties, the youth complained in the CRM public hearings inability to access these funds due to lack of connections and capacity to meet the complex procedural requirements for eligibility for the loans.

235. In recognition of the limitations of formal education, government has placed emphasis on up scaling the number and quality of Technical Institutes and Polytechnics. There is also a national youth service that is providing training in business and entrepreneurial skills to promote the right to employment.

3.9.2.4 Challenges

236. The challenges include:

- Cultural practices that limit visibility of children and youth as victims;
- Lack of awareness of recourse by child and youth victims;
- Widespread poverty, with children and youth bearing the brunt, especially those suffering from disability and such diseases that attract stigmatization as HIV/AIDS;

²⁴ Republic of Kenya Universal Periodic Review of the United Nations Human Rights Council: National Mid Term Report 2012

- High proportion of educated but unemployed youth;
- High proportion of youth engaged in urban-rural migration in search of jobs, leading to more unemployment and pressure on public services in urban areas; and
- Youth being mainly employed in the largely unregulated informal sector.

3.9.3 Recommendations of the Panel

237. The Panel makes the following recommendations:

- i) The institutions in charge of eradicating child labour and anti-trafficking in children and young persons should increase their monitoring role and work with the institutions in charge of primary education to ensure that children of school going age go to school (Government, civil society)
- ii) The law enforcement agencies should work with communities and schools to prosecute incidences of violence and abuse against children in the home, communities and school institutions. (Government and law enforcement agencies, schools, community actors and civil society)
- iii) Youth should be trained in business skills and income generation activities to build their capacity to access funds and undertake business projects. (County governments, civil society, private sector)
- iv) Registration of births and issuance of birth certifications should be intensified in the rural and urban areas (Government, civil society)

3.10 OBJECTIVE 8: PROMOTE AND PROTECT THE RIGHTS OF VULNERABLE GROUPS, INCLUDING INTERNALLY DISPLACED PERSONS AND REFUGEES

3.10.1 Summary of the Country Self-Assessment

238. The 2006 CRR traced the link between poverty reduction programmes and vulnerable categories of orphans of HIV/AIDS, the youth, women, the physically challenged, older persons and the ageing. The Constitution and the Second Medium Term Plan 2013-2017 identify vulnerable persons as the population requiring social protection from the state. Since 2009, vulnerable populations have been helped through establishment of rehabilitation centres, cash transfer programmes, emergency food distribution, supplementary feeding programmes, price subsidies, short-term work contracts, and waivers and exemptions on fees for public services.

239. Between 2008 and 2014, government assigned financial and non-financial resources to assist the return of Internally Displaced Persons (IDPs) including transportation and resettlement costs. By the end of 2010, all camps with internally displaced persons had been officially closed and the number of displaced persons who had not returned to their former homes gradually declined.
240. The Constitution outlaws discrimination on the basis of disability in public and private spheres and makes specific provision for the protection of the rights of persons with disability. At least 5% of the members of public in elective and appointive bodies should be persons with disabilities. Several other laws and policies providing for the special protection on the human rights of persons with disabilities have been enacted since 2007, indicating responsiveness to the situation of People Without Disabilities (PWDs). However the 2008 Disability Survey shows that persons with disabilities are disproportionately represented among the poor and are marginalized as a result of the prohibitive financial costs, environments that are violent and hostile to persons with disabilities and a failure by political parties to implement affirmative action in the favour persons with disabilities.
241. Kenya hosts the fourth largest refugee population in the world; by the end of 2013 there were 604,700 refugees and asylum seekers in addition to an unknown number of unregistered refugees. The 2006 CRR revealed that the UNHCR was responsible for the bulk of refugee management activities and the CSAR 2 states that the government has taken over the responsibility for refugee management. Terrorist attacks in Kenya have resulted in a more stringent asylum policy. After closing the border with Somalia in 2012, The Government of Kenya required all refugees living in urban areas to relocate to designated camps. In November 2013, the governments of Kenya and Somalia, and the UNHCR signed a Tripartite Agreement outlining both procedures for the voluntary repatriation of Somali refugees and it obliges Kenya to continue providing security to Somali refugees until they leave.

3.10.2 Findings of the Review Mission

3.10.2.1 Progress made since 2006

242. The Constitution of 2010 introduced several new and comprehensive provisions that protect the rights of vulnerable groups, including people with disabilities (PWDs), older persons, and minorities, indigenous as well as marginalised groups. The Constitution also recognises the rights of all to social security.
243. The poverty index in 2014 was 46% with the ratio of people living below dietary energy consumption at 51% in 2005. In this regard, social protection provided by the government is important for vulnerable groups. The establishment of the Social Protection Fund in 2012 aimed to support the most vulnerable groups under the social pillar of Vision 2030. Government allocated over KShs 18 billion in cash transfers in 2016 and KShs 14 billion in 2015, benefitting vulnerable groups including the older persons and PWDs. There is also a health insurance subsidy in place for older persons and PWDs.

244. The cash transfer programmes in place are: Older Persons Cash Transfer: the Cash Transfer for Orphans and Vulnerable Children: the Hunger Safety Net Program: the Urban Food Subsidy Cash Transfer: and the Persons with Severe Disability Cash Transfer. However, there have been mixed results in the expected outcomes. An audit of the cash transfers indicates that women and girls have benefited more than men as 73% of the beneficiaries across the board, and that 70% recipients are actually the poorest of the poor.²⁵ However complaints of backlog in receiving funds of up to 5 months or even a year as well as of hidden costs borne by recipients could lead to counterproductive results.²⁶ The NGENC has shared concerns on the lack of information on the administration of the cash transfer programme that makes it hard to track the disbursements.²⁷
245. The Uwezo fund was geared at promoting the right to employment of the working vulnerable and marginalised groups and 30% of the Political Parties fund was earmarked for the participation of vulnerable and marginalised groups. These and several other initiatives put in place by government are an indicator of prioritisation of the affirmative action gender principle. The practice and implementation however has not yet yielded the desired results.
246. In general, the participation of vulnerable groups in political activities and representation through affirmative action measures was embedded in the Constitution 2010. However implementation thereof became troubled by failure of political parties to ensure inclusive nominations thus marginalizing vulnerable groups at this level. Party lists and nominations that did not conform to Constitutional guarantees formed the grounds of a petition by NGENC (Constitutional Petition 147 of 2013), which challenged the IEBC for failing to conduct the elections of special seats to the National Assembly, Senate and the County Assemblies. The court ordered the IEBC to publish county assembly lists in the local dailies and based on that, interest groups were able to lodge complaints with the tribunal.

3.10.2.2 Persons with disabilities (PWDs)

247. The Kenya National Population Census, 2009 estimated that there were about 1,330,312 PWDs. The Constitution recognises the rights of PWDs to live dignified and empowered lives through various measures including affirmative action. While Kenya has committed to give effect to the Bill of Rights through various legislative reforms, the Persons with Disabilities Act 2003 is outdated and the Persons with Disabilities Bill 2015 has not been passed to reflect rights based approaches for PWDs.
248. In general, data on the situation of PWDs is inadequately captured in mainstream planning and governance indices. Thus the 2012 Analytical report on Disability XIII based on the 2009 Kenya Population and Housing Census is a positive measure in capturing the profile of this group.

²⁵ National Gender and Equality Commission 'Participation of Vulnerable Populations in their own Programmes: the Cash Transfers In Kenya' 2014

²⁶ *ibid*

²⁷ <http://www.ngeckenya.org/news/6164/share-data-on-cash-transfer-program-ngec>

249. **Right to fair representation:** The Constitution enjoins the State to progressively implement the principle that at least five percent of the members of the public in elective and appointive bodies are PWDs. The figures below indicate that the affirmative action principle has yielded the required figures in terms of representation by PWDs.

Table 3: Representation of PWD at County and National Assemblies

Representation of PWD at County and National Assemblies						
Category	County Assemblies		Senate		National Assembly	
	M	F	M	F	M	F
Number by Gender						
Nominated by political parties	31	30	1	1	2	1
Elected persons	10	0	1	0	5	1

Source: NGEC database, 2013

250. Some of the reasons for low participation relate to failure of political parties to ensure an inclusive list for purposes of primary elections as per the Constitutional requirements. Low awareness of opportunities and processes among PWDs also arose out of inadequate voter education due to physical and language barriers that PWDs face. The long distances to polling stations; the lack of inclusive communicative formats and; inaccessible buildings continues to disenfranchise voters with disabilities, although the IEB commendably ensured that polling stations were accessible to PWDs.
251. There have not been enough efforts made to ensure that PWDs participate meaningfully in public life based on affirmative action measures. For example, a petition was lodged by a disabled people's organisation in the High Court at Garissa (Constitutional petition no. 4 of 2013) protesting the appointment of the Garissa County Executive Committee in disregard of the constitutional requirement that at least 5% of the Committee are PWDs. An important point made by the judiciary in this case related to the duty by government to take proactive measures to ensure the participation of the marginalised and vulnerable groups. The court pointed out that 'for the five percent principle to be realized, appointing authorities ought to do more when advertising for certain statutory appointments to ensure the minorities, marginalized and special groups apply'. It further stated that 'Care needs to be taken to ensure the appointing authorities do not take the short cuts in making appointments but that advertisements where these apply, or sensitization where applicable, is aimed at the marginalized and special groups to ensure they are aware of their rights to apply for such positions". This is an important standard of care and responsibility that if implemented will cater for inclusive participation in public life by PWDs.
252. Representation to appointed bodies by PWDs is also low. According to NGEC statistics, by 2013 only 1 out of the 26 Principal Secretaries was a PWDs, as well as 2 Judges and 5 Commissioners. The Employment Act 2007 does not allow an employer to discriminate or harass directly or indirectly, against an employee or prospective employee on ground of disability or mental status. Nonetheless, PWDs are underemployed in the private and public sector. In an exemplary move, the NGEC engaged the Kenya Revenue Authority and other institutions over the Persons with Disabilities Income Tax Exemption Order 2010 leading to 4,448 persons with disabilities to benefit from tax exemption certificates.

253. There have been important accommodations made for PWDs in the public sector. The Public Service Commission has developed a Code of Practice on Mainstreaming Disability that addresses equal opportunity for recruitment, training, and promotion of PWDs and while the general retirement age is 60, for PWDs the age is 65. This is buttressed by integrating within performance contracts an indicator on disability mainstreaming. However, a public service Review 2014/15 revealed that only 3% (6 out of 243) Ministries, Departments and Agencies (MDAs) met the constitutional threshold of 5% PWDs in the labour force and 13% i.e. 74 MDAs had no PWDs in their workforce.²⁸ Within these figures, disabled female workers were fewer by far than the disabled male workers.
254. The UN has commended Government's affirmative action measures in employment of PWDs and cash transfers for those with severe disabilities.²⁹ Government disbursed to the cash transfer programme KShs 385 million in 2012/2013, KShs 770 Million in 2013/2014 and KShs 1.5 billion in 2016/17. Although the cash transfer programme for PWDs is opportune, the coverage of 94 persons with severe disabilities per constituency and monthly sums of KShs 2000 per month is inadequate to meet the needs of the severely disabled.³⁰
255. Multiple Vulnerability: Women and children with disabilities continue to suffer from multiple forms of vulnerability. Families of children with disabilities continue to hide them from the public, thus making it hard for designed interventions and programmes to reach them. Women and girls with disabilities are at a high risk of sexual violence and victims of sexual violence do not report these crimes. This makes it hard for them to access services for justice, health care and support services.

3.10.2.3 Older persons

256. Article 57 of the Constitution touches on the rights of older members of society, requiring the state to undertake measures to ensure protection of the rights of older persons in various ways. These include full participation in the affairs of society; the pursuit of personal development; the right to live in dignity and respect and be free from abuse; and to receive reasonable care and assistance from their family and the State. Older persons are persons aged sixty years and above and are estimated to be 1.9 million in 2009.

²⁸ Kenya Public Service Commission 'Evaluation Report on Public Service Compliance with the Values and Principles in Articles 10 & 232 of the Constitution for the Year 2014/2015'

²⁹ UN Committee on the Rights of Persons with Disabilities 'Concluding observations on the initial report of Kenya' CPRD /C/KEN/CO/1

³⁰ Kenya National Commission on Human Rights 'From Norm to Practice: A status report on implementation of the Rights of Persons with Disabilities' 2014

257. The Government has put in place cash transfer programmes to boost the welfare of older persons, however these target persons aged sixty-five and, approximately above 33,000 households benefitted from cash transfers of KShs 2,000 per household under the Older Persons Programme by 2014.³¹ However, older persons, including widow or female headed households tend to have dependents whose needs they must meet, placing a demand on the sums of monies they received. Further, the challenges of growing older include increased need of adequate health care, domestic support, water, sanitation and nutrition, which given the high poverty levels may be unattainable.
258. A situational analysis conducted by the NGEC revealed a high incidence of violence against older persons in the private and domestic sphere, a problem that is under reported.³² This is attributed to the pressures of poverty and declining moral values that cause the elderly to be vulnerable to abuse and neglect from relatives. The analysis also noted the prevalence of other forms of exploitation such as robbing older persons of property including land; sexual and physical assaults and even killings. These forms of violence are insidious, hidden and rarely reported by family members who may be the perpetrators or fear embarrassment due to public exposure. As a result, the older persons who are victims or at risk of victimisation are not being identified for care and protection. There are also sporadic but significant attacks on older persons suspected to be involved in witchcraft, which has resulted in mob justice at the community level.

3.10.2.4 Internally Displaced Persons (IDPs)

259. The history of IDPs in Kenya stretches back to the early 1990s; over three decades, people have been displaced as a result of natural and man-made disasters. It was estimated that at the end of 2007 there were approximately 380,000 IDPs from the clashes of the 1990s alone.³³ The 2007 post-election violence elicited the highest number of IDPs estimated at 663,921 people (245,416 households)³⁴ with about 250,000 in camps. The table below captures some of the data around the various categories of IDPs in Kenya³⁵

³¹ Kenya National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* A/HRC/WG.6/21/KEN/1 November 2014

³² National Gender and Equality Commission 'Whipping wisdom: A rapid assessment on violence against older persons in Kenya' 2014

³³ UN Human Rights Council 'Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani-Mission to Kenya February 2012 A/HRC/19/54/Add.2

³⁴ UN Human Rights Council 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21* Kenya' 2014 A/HRC/WG.6/21/KEN/1

³⁵ Kenya National Human Rights Commission 'Homeless at Home: a Human rights assessment of situation of internally displaced persons in Kenya' 2011

Table 4: Summary of major displacement statistics

Cause of displacement	Year	Population affected	Source
Floods 2011	2011	100,000 persons	Kenya Red Cross Society
Forest evictions	2002-2009	7,527 families	Government of Kenya
Post-election violence	2007/2008	600,000 persons	Government of Kenya
Flooding, cattle rustling, development projects	1997-2007	300,000 persons	UNOCHA
Political violence	1997-2007	380,000 persons	UNOCHA
Political violence	1992-1993	300,000 persons	UNDP, IDMC, KHRC

Source: Kenya National Human Rights Commission 2011

260. According to Red Cross estimates in January 2008, there were 331 spontaneous IDP sites located in the Rift Valley, Western, Nyanza and Nairobi Provinces.³⁶ These figures presented serious challenges for government and required medium to long-term resource and policy measures. By 2010 all IDP camps relating to victims of the post-election violence of 2008 had closed. Challenges arose from the integration of IDPs into other communities outside of designated areas and camps; without effective determination of their numbers for planning and programming purposes, these IDPs live in difficult circumstances. Concerns around the registration and vetting process of claimants as well as delays in vetting and resettling IDPs have been a source of discontent. In the 2015/2016 financial year, the government allocated Ksh 1.2 billion to cater for final resettlement of IDPs and to provide social protection for the displaced persons categorized as 'disadvantaged'.
261. Even as old IDP issues are being resolved, new ones arise. Between 2009 and 2010, efforts by government in Northern Kenya to disarm pastoralist communities and defuse clashes between various ethnic communities saw more waves of displacement occur. Settler communities in the Mau East and West forest were evicted in 2009 to protect one of the five water towers and to prevent environmental degradation; however some communities faced challenges with resettlement, as these had been their ancestral homes. At the time of the review, Kenya was facing a severe drought that had affected pastoralist communities in the arid and semi-arid land, causing some nomadic communities to relocate. A conflict arose between Borana and Gabra communities of Moyale in 2011-2012 resulting in more than 10,000 IDPs. These are some examples of the complex problems continually resulting in IDPs in Kenya.
262. Government has made several efforts to respond to the plight of IDPs. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act No. 56 of 2012 is a rights based responsive law that goes beyond individual needs and assistance to collective groups. The Community Land Bill, 2013 seeks to promote recognition, protection, management and administration of community land and to guide the county governments' powers in relation to unregistered community land. The Evictions and Resettlement Bill 2014 intends to provide procedures for evictions of unauthorized occupants from private or public land and the resettlement of displaced persons that involuntarily displaced.

³⁶ UNHCR Supplementary Appeal for Internally Displaced Persons in Kenya 2008

263. A good practice that was identified by the UN Special Rapporteur on IDPs was the establishment of a multi stakeholder early warning system to detect triggers for displacement ahead of the 2010 Constitutional referendum. The National Steering Committee on Peace-Building and Conflict Management working with a network of District Peace Committees, the UN and various stakeholders have utilized field monitors nationally to detect early warning signs including forced movements, sexual and gender-based violence, and set up centres to address violence. However monitoring capacity at the county level is low and more resources and actors are required to ensure vigilant monitoring.

3.10.2.5 Refugees

264. Kenya has the second highest refugee population in Africa after Ethiopia, with refugees and asylum seekers Ethiopia, South Sudan, Somalia and the Democratic Republic of the Congo. According to UNHCR estimates, in 2015 there were approximately 591,570 registered refugees and asylum seekers overall; 346,428 in Dadaab and Alinjugu; 183,023 in Kakuma and 62,119 in Nairobi. The total number of refugee seekers was 551,604 and total asylum seekers were 39,966.
265. Kenya has traditionally been hospitable to refugees, but with the complex challenges posed by terrorism and the perceived links to refugee camps, the checks and security measures have become more stringent. In Constitutional Petition No 628 of 2014 the state testified to the illegal procurement of identity registration documents illegally and fraudulently by non-citizens who move to urban settlements by exploiting corrupt networks in registration systems; the hearing of the KNHRC in 2006 had similarly found prima facie evidence issuance of national identity cards to Somali refugees in Dadaab Refugee Camp. Some of these elements at large are suspected to have been involved in terrorist acts.
266. UNHCR and other human rights observers were concerned about the government decision made on May 6, 2016 to close the Dadaab camp which hosts Somali refugees by November 2016 as this would cast doubt on the voluntary nature of the returns refugees to Somalia. In December 2012, government instructed that all asylum seekers/refugees would be hosted at the refugee camps with immediate effect. This was linked to a chain of grenade attacks that had been staged in urban areas. All asylum seekers and refugees from Somalia were directed to Dadaab refugee camps and those from other countries to Kakuma refugee camp. The government further instructed UNHCR and other partners serving refugees stop providing direct services to asylum seekers and refugees in urban areas and transfer the same services to the refugee camps. A high level inter-ministerial committee was established to oversee the relocation process.
267. Constitutional petition No. 115 of 2013 was lodged contesting this government decisions with the petitioners contending that this would amount to a violation of the 1951 United Nations Refugee Convention as domesticated by the Refugees Act, 2006 and the International Convention on Civil and Political Rights. The government in explaining the basis of its policy decision expounded on challenge posed by unregistered refugees in urban areas, many of whom were in violation of time-restricted movement passes and living outside designated areas without appropriate travel documents and had not returned to camps risking lawful

arrests and prosecution. Nonetheless the Court found that the Government directive infringed on refugees and asylum seekers' freedom of movement, right to dignity, right to fair and administrative action and a threat to the non-refoulement principle incorporated by section 18 of the Refugees Act, 2006 as well as violating the State responsibility to persons in a vulnerable situations. The UNHCR and Kenya government have supported 35,000 Somali refugees from the Dadaab camp to return in voluntarily to Somalia since 2014.

3.10.2.6 Minority groups

268. **The Makonde:** The descendants of the Makonde living in Kenya originated from Mozambique in the 1930s. The present day Makonde in Kenya numbering about ten thousand however had not been naturalized due to lack of supporting documents. As a result they faced various challenges relating to lack of citizenship status. Following sustained support by Kwale county government for the Makonde to attain citizenship and intense lobbying from citizens and civil society, the government of Kenya has undertaken to issue them national identification cards by December 2016 so that they can claim citizenship.
269. The Endorois: the Endorois community lodged a complaint before the African Commission on Human and People's rights in November. The community alleged violations of their collective socio-economic and cultural rights in 1973 flowing from their displacement from their ancestral lands around Lake Bogori and surrounding areas in favour of the establishment of a wild life sanctuary. In February 2010, the Commission found violation of Articles 1, 8, 14, 17, 21 and 22 of the African Charter on Human and People's Rights. The Commission recommended the restitution of their rights, access to important sites, compensation for the past and royalties for existing economic activities and, where employment possibilities within the Reserve existed, they should benefit. An inter-agency taskforce to advise on how to implement the decision of African Commission on Human and Peoples' rights was set up by the President. It consists of among others the Kenya National Commission on Human Rights, government institutions and the concerned county government.
270. **The Ogiek:** The Ogiek who are hunter-gatherers lodged a case before the African Court on Human and Peoples' Rights in November 2014 claiming arbitrary forced evictions of the Ogiek without their consultation or compensation from the Mau Forest. The Ogiek assert that the forest is their ancestral home and is critical to their very survival as an indigenous people, providing a source of food, shelter and identity.
271. On the other hand the state position was that the Ogiek had transitioned to livestock farming and the state accordingly planned to resettle men in designated areas of the Mau Forest. A case referred by the African Commission on Human and People's rights before the African Court on Human rights is still pending.

3.10.2.7 Challenges

272. These include:

- Deeply held cultural beliefs for stigmatization of many vulnerable groups, especially IDPs and refugees;
- Tendency to perceive such vulnerable groups as IDPs and refugees as a burden to the host community;
- Widespread poverty and growing inequality that impact more disproportionately on vulnerable groups, and especially so on IDPs and refugees;
- The very large population of refugees that Kenya had hosted;
- Transparency, public awareness, adequacy and sustainability issues linked to cash-transfer programmes for the elderly, orphans, and vulnerable children; and
- Poor observance of constitutional provisions guaranteeing participation of marginalised groups such as women in political activities and their representation through affirmative action measures.

3.10.3 Recommendations of the Panel

273. The Panel recommends that:

- i) All forms of discrimination against vulnerable and marginalised groups should be outlawed and victims should be prioritised within the national legal aid scheme for assistance and compensation as well as the Victims Fund. (Government, civil society organisations)
- ii) The Persons with Disabilities Act 2003 should be amended expeditiously and all laws not in conformity with the UN Convention on the Rights of Persons with Disabilities should be amended to adopt the rights based approach. (Government, civil society organisations)
- iii) All public institutions should adhere to the Constitutional and affirmative action measures guaranteed for PWDs in the employment, political and social sector (Government)
- iv) Government, civil society and opinion leaders should continue with initiatives for conflict resolution, peace building and reconciliation in the communities that have been prone to conflict and ethnic tensions. (Government, Civil society)





CHAPTER
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CHAPTER FOUR

4. ECONOMIC GOVERNANCE AND MANAGEMENT

4.1 Overview

274. The significance of the economic governance and management pillar derives from the recognition by African Heads of State and Government that good economic governance, including transparency in financial management, is an essential pre-requisite for promoting socio-economic development and reducing poverty. Against this backdrop, Kenya has, in recent times, taken steps that have strengthened the economic governance and management of the country. It has signed and ratified most of the Standards and Codes relating to economic governance and management including the African Union Convention on Preventing and Combating Corruption. However, the classification of government expenditure data is yet to be harmonized with international best practice as epitomized in the IMF Government Financial Statistics (GFS) Manual. The Government needs to establish a central database of all standards and codes, and the information should be posted in the websites of the Office of the Attorney General, the Kenya Law Reports, and relevant international bodies.
275. Adoption of the Kenya Vision 2030 in 2008 as the long-term strategy to attaining sustained socio-economic development has strengthened the economic policy framework. Economic policy is now aligned with the goals of the five-year Medium Term Plans, which is the implementation framework of the Vision 2030, and reflects the government's plans to deliver socioeconomic development. This has allowed the setup of economic policy to be appropriately reoriented towards the developmental goals of securing socioeconomic economic development much more directly. In the plan, attaining macroeconomic stability is recognized as a key enabler of achieving the goals of the plans. Therefore, design and setup of macroeconomic policy is appropriately directed at achieving and sustaining macroeconomic stability. In this regard, monetary policy is tasked to deliver price stability and promote financial system stability, which should anchor the long-term growth of the economy. The sectoral objectives are to be achieved through a range of sectoral policies covering each of the six key sectors, supported by a fiscal policy framework that allocates resources in line with the policy objectives.
276. The reconfiguration of the economic policy framework has facilitated achievement of a number of milestones in terms of macroeconomic performance. Economic growth averaged 5.5% during 2011-2015, a better record from the slow growth prior to 2011. The government of Kenya has succeeded in reducing fiscal deficit to a range of 4% of GDP, but public debt has increased, although it still remains within manageable levels. Inflation has been kept in a single digit. Macroeconomic stability has generally been sustained, with monetary policy tasked to achieve price stability to maintain long-term growth. Fiscal policy is aimed at increasing spending on infrastructure to encourage diversification of the economy and to enhance tax collection. Fiscal federalism has been an integral part of fiscal reforms. Kenya

commands positive investment climate. The national Trade policy appropriately spells out the Government's aspiration for poverty reduction and sustainable economic growth.

277. Despite these laudable successes, economic policy management faces challenges. The levels of poverty, inequality and unemployment remain high, particularly among vulnerable groups and the rural cohorts. Inequality is high and manifests itself in various forms. This suggests that current economic policies and management practices have not been inclusive. The economic policy framework therefore needs to incorporate a resource redistribution policy in order for the economic development plans to deliver economic well-being that is inclusive, particularly to address poverty, inequality among different groups and regions, as well as provide productive employment.
278. The bottom-up planning that the 2010 Constitution has provided has improved public participation in the development and implementation of government policies and programmes. Nevertheless, compared to expectations, stakeholders' involvement in planning and implementation policies still remains very low. Various reasons are responsible for the low public participation. Among them are distance and the high burden of transportation cost, inadequate understanding of the policies and programmes of the government, and poor publicity. Others cover such issues as poor communication, where, in some instances, documents or materials which form the basis of discussions at the public forums are only circulated at the venue of the meetings without prior notice, and at times, notifications were only given a number of days after the day of the consultation. The low participation in economic decision budget process and planning is a serious impediment to communities to fully own the programmes and projects.
279. Significant developments have occurred in the public finance management domain. In 2004, the Government commenced the use of the Medium Term Expenditure Framework (MTEF) and the annual budget is linked to it. This suggests the acceptance of fiscal planning and it has been sustained. The government has enacted laws with respect to financial management in line with the procedures and timelines prescribed in the Constitution. An over-arching legislation is the Public Finance Management (PFM) Act, 2012 stressing transparency and accountability in the use of public resources for efficient service delivery. The Constitution and the PFM Act 2012 have transferred important oversight fiscal functions from the executive and National Treasury to parliament, both at the national and county government levels. In 2009, the Parliamentary Budget Office was established to provide strong technical support for legislators to properly scrutinize the budget at the different stages.
280. The Public Expenditure Financial Accountability (PEFA) evaluation technique was used to determine the extent of financial management. The budget of the national government shows some degree of comprehensiveness, making it possible for the parliament and the public to examine the budget proposals. Legislative scrutiny of the budget and expenditure tracking has improved. However, the payroll system and the procurement process are hardly described in details to enable adequate assessment of the strengths and weaknesses. A huge wage bill is inclined to weaken financial control and corruption. Effective management of payroll will, to large extent, put government expenditure under effective check. When

the procurement system works well, there is value for money, implying that services are delivered efficiently. Openness, competitive bidding and transparency in the award of contracts are basic requirements of good PFM. Procurement accounts for 46% of all corrupt cases in Kenya. The procurement mechanisms of the national and county governments need to be comprehensively evaluated to inform policy decision.

281. Currently, corruption remains a major challenge in Kenya, as it is considered endemic and systemic. Combating money laundering has also gained prominence as part of the war against organized crime, drug trafficking, corruption and terrorism. Although, various legal and institutional arrangements for fighting corruption are in place, they have not made significant impact, making the international ratings of Kenya's economic governance fretting. A significant administrative reform is the Huduma Initiative. The Government has established Huduma Centres to serve as a one-stop shop for processing services offered by the public sector. The Huduma Centres have improved accessibility to the services provided by the government, reduced personal contact and minimized the opportunity to offer bribes and corruption.
282. In order to make a success of the anti-corruption war, a Task Force was appointed by the President in March, 2015 to the Review of Legal, Policy and Institutional Framework for Fighting Corruption. The report of the Task Force is very comprehensive and telling as it carried out a situation analysis of the various aspects of the subject matter, identified the problems and made recommendations. The wide-ranging recommendations of the Task Force encompassed legal, policy, institutional frameworks in the devolved system of government, partnerships and multi-agency collaboration, technical assistance, capacity-building, strict adherence to the Constitution of Kenya, among others, in the fight against corruption. The government has accepted the recommendations and advised to prioritize by classifying the recommendations into short run and long-term implementation plans for effectiveness.
283. The various institutions/organizations are poorly coordinated making follow-through of corruption cases to a final determination a difficult task and time-consuming process. The general perception of the people during the CRM was that the country's judicial process is slow, resulting in many cases going without hearing for very long periods of time. The challenges of money laundering are numerous. Kenya's location and porous borders make it an important transit point for drug trafficking and money laundering, and the limited capacity of financial institutions and relevant bodies to detect, investigate and prosecute money laundering are two major problems that cannot be ignored in the fight against money laundering.
284. Regarding economic integration, Kenya is a member of the East Africa Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA). Kenya is also a member of the World Trade Organisation that came into existence on 1st January 1995. It is the only international institution tasked with overseeing the negotiations and implementation of rules governing the multilateral trading system. In terms of the regional integration process, COMESA entered an FTA in 2000 and became a Customs Union on 8th June 2009. With regard to the level of implementation of EAC and COMESA integration programmes, Kenya

is up-to-date. The payment system with the EAC member states is being harmonised and Kenya's trade with EAC members has increased; and it is in the forefront of the removal of trade barriers.

285. Kenya has also taken the lead to expand financial services in the regional member countries. However, some challenges are evident, namely, the existence of non-tariff barriers that hinder the free movement of goods and services, limited public awareness and participation in regional trade, lack of reciprocity from other member states of the EAC, and the presence of counterfeits that encumber trade in locally produced goods. The Government of Kenya is advised to spearhead the articulation of a compensatory mechanism whereby any member state that records revenue loss due to the removal of tariffs and trade barriers is adequately compensated.
286. Kenya has taken various steps over the years to facilitate trade and investments into the country. This has involved enacting various legislations that have improved the business environment and enhanced the ease of doing business significantly. Capacity has been developed for technology adoption and value addition and integrating MSMEs into the market value chains, especially in the agricultural sector. Export products and markets are now diversified, but are still limited to agricultural products.
287. New discoveries of mineral and oil wealth have reinvigorated the importance of the extractive industry to the economy. Their commercial prospects offer great promise for significant earnings in foreign exchange and fiscal resources, and, ultimately, great potential to spur faster economy growth and job creation. The viability of the mineral wealth could also have a large impact on investor sentiments and an attractor of trade and investments. However, growth of this sector has created the challenge of designing an appropriate governance structure that should ensure that the benefits of the mineral wealth benefit all the stakeholders.
288. To reap the benefits of the mineral and oil wealth, and to avoid the pitfalls of other African mineral-rich countries, Kenya needs to strengthen its legal and regulatory framework for natural resources to enable prudent management of oil and gas resources. The current regulatory and fiscal regime is in need of reform, as it relates to petroleum and dates from 1986. Specifically, full minerals-specific and oil and gas -specific regulatory frameworks are required.

4.2 IMPLEMENTATION OF STANDARDS AND CODES

4.2.1 Summary of the Country Self-Assessment (CSAR)

289. The CSAR presents a summary of the relevant conventions, standards and codes. It shows those that were signed, ratified and enacted; and that a sizeable number of the treaties has been signed and enacted. The specific standards discussed are Code of Good Practices on Fiscal and Budget Transparency, International Standards in Auditing and Accounting,

Code of Good Practices in Monetary and Financial Affairs, Principles for Payment Systems, Core Principles for Security and Insurance Supervision and Regulations, Core Principles for Effective Banking Supervision and National Accounting Standards. The expert rating of compliance with each of the various international standards and codes discussed was highlighted in the CSAR. Ostensibly, the degree of compliance varied widely across the international standards and codes with the Principles of Payment System recording the highest of 48%. The CSAR notes that the East African Insurance Supervisors Association (EAISA) was peer-reviewed, as required by the East African Community protocol in 2012 and reported that Kenya's level of compliance with ICPs was high.

4.2.2 Findings of the Country Review Mission

4.2.2.1 Progress made since 2006

290. Most of the standards and codes relating to economic governance and management have been signed and ratified.
291. *Code of Good Practices on Fiscal and Budget Transparency.* The CRM found that some progress has been made in the implementation of the Code of Good Practices on Fiscal and Budget Transparency. For instance, in addition to the 2003 Public Audit Act, other laws [Independent Offices (Appointment) Act, 2012 and the Public Finance Management Act, 2012] were passed to strengthen the oversight functions of parliament over budget, and financial management and control.
292. *Core Principles for Security and Insurance Supervision and Regulations.* The CRM confirmed that the Insurance Core Principles (ICPs) have been revised, and following the joint IMF-World Bank mission in 2006, the Insurance Act was amended in 2006. There is the Insurance Act 2014 enacted to ensure the operations of insurance institutions are in conformity with International Association of Insurance Supervisors (IAIS) and ICPs.
293. *Core Principles for Effective Banking Supervision.* In 2007, a joint IMF-World Bank mission undertook a review of the Financial Sector Assessment Programme (FSAP). It was reported that Kenya was compliant with most of the principles. The Central Bank of Kenya has revised its Prudential and Risk Management guidelines to meet the requirements of the revised Basel Core Principles of Effective Banking Supervision. The Microfinance Act 2006 became operational two years later. The Savings and Credit Co-operative Societies (SACCOs) regulatory act has brought deposit-taking SACCOs under its regulatory authority.
294. *General data standards.* The Kenya authorities, in collaboration with the IMF, have made effort to improve the quality of data. For instance, the System of National Accounts (SNA) has been revised and rebased using the 2008 SNA. The CRM commends this development. However, it is still the case that public finance data are not fully reported in line with the international best practice as epitomized in the IMF Government Financial Statistics (GFS) Manual. The GoK has a programme of action (e.g., the Statistical Master Plan) to address

data collection and improve the quality. It is understood that the implementation of the Statistical Master Plan is beset by capacity constraints and paucity of fund.

295. *Code of Good Practice on Transparency in Monetary and Financial Affairs.* The CBK continues to perform its statutory functions of formulating monetary policy, maintaining price stability and issuing currency; and has autonomy in carrying out its functions. A Monetary Policy Committee (MPC) was established in 2007 to formulate monetary policy. The CBK is building internal capacity to undertake forecasting preparatory for the adoption of a forward-looking approach to monetary consistent with the East African Central banks' inclination.
296. *Principles for Payment Systems.* The GoK enacted the National Payment System in 2011. The payment system in Kenya is the Kenya Electronic Payment Settlement System (KEPSS), which is currently the only systemic payment system and it has registered a high usage.
297. *AU Convention on Preventing and Combating Corruption.* The Government ratified the African Union Convention on Preventing and Combating Corruption in February 2007. In addition, Kenya has implemented some economic reforms to foster trade relations in the East African Community. Some positive developments have been reported with respect to public debt management. A National Debt Strategy (NDS) is contemplated and the Debt Management Office (DMO) is to consolidate debt management operations. The publication of debt management reports has commenced. The national programme of action promises to consolidate and improve debt management strategy and enhance public information on debt.

4.2.2.2 Challenges

298. An organized system of monitoring external debt data is yet to be instituted. Therefore, it is common to find discrepancies in the data collected on external debt and domestic arrears, and the balance of payments by different government institutions such as the National Treasury, Kenya National Bureau of Statistics (KNBS) and CBK.

4.2.3 Recommendations of the Panel

299. The Panel recommends the following:
- i. The Government needs to establish a central database of all standards and codes and the information should be posted in the websites of the Office of the Attorney General, the Kenya Law Reports. (*Ministry of Foreign Affairs and International Trade*).
 - ii. The Government is advised to increase education and sensitization activities to enhance public awareness of rights and available institutional arrangements to claim rights such as complaints mechanisms and legal aid. (*Office of the Attorney General*).

4.3 OBJECTIVE ONE: DESIGN AND IMPLEMENT ECONOMIC POLICIES FOR SUSTAINABLE DEVELOPMENT

4.3.1 Summary of the Country Self-Assessment (CSAR)

300. The CSAR outlines the policy framework that anchors the design of economic policies to promote sustainable development. It indicates that the government's economic policy is drawn from Kenya's Vision 2030, which is both a vision and a blueprint to transform Kenya into a globally competitive and prosperous country with a high quality of life by the year 2030. The Vision is based on three pillars, namely, the economic, the social, and the political. Under the economic pillar, the aspiration is to secure an average economic growth rate of 10% per annum from 2012 and sustaining it till 2030. This is premised on sustaining macroeconomic stability and interventions in key sectors, specifically, tourism, agriculture, manufacturing, wholesale and retail trade, business process outsourcing (BPO) and financial services. The Vision 2030 is implemented through a series of successive five-year Medium Term Plans (MTP), which lay out the priority programmes and projects and the financing framework for the period.
301. The CSAR discusses a wide range of sectoral policies and programmes in the sectors identified as priorities to spur growth and human development. It is noted that agriculture accounts for 24% of national output, 65% of total exports and absorbs the bulk of the workforce (18% of formal employment). The trade sector is also key to the economy. According to the CSAR, it contributed about 10% of GDP in 2008-2012, and is a major contributor (95%) to job creation by the private sector. The manufacturing sector is a key job creator but has remained small. It constitutes only about 12.4% of national output and has grown modestly, at an annual average of 3.2% between 2006 and 2012. Growth of formal employment in the sector was also modest, only 5% between 2008 and 2012. However, informal employment grew faster, by 17% between 2007 and 2011. The Business Process Outsourcing (BPO) and IT-Enabled Services (ITES) is growing and contributes about 7.5% of output in 2013-2014 and added 4,100 direct jobs to the economy in 2010-2011, against the target of 2,200 envisaged.
302. Tourism is a leading foreign exchange earners in Kenya. In 2008-2012, tourist arrivals rose from 1.2 million to 1.78 million, which saw an increase in earnings from KShs. 52.7 billion to KShs. 96.02 billion. The banking and financial institutions contribute about 10.4% to GDP, while the oil and minerals resources sector currently accounts for only one of GDP and three percent of total export earnings. However, with the recent discoveries of oil, gas, and other mineral resources the sector promises to be a major source of revenue and foreign exchange earner. The Government has scaled up investments in infrastructure in an effort to reduce major constraints on growth. The first Medium Term Plan 2008-2012 for Vision 2030 set strategies and measures to support the development of the infrastructure sector. Kenya aims at providing cost-effective physical infrastructure and ICT facilities and services that are efficient, affordable and reliable, supporting sustainable economic growth through the construction, modernization, rehabilitation and effective management of infrastructure facilities.

4.3.2 Findings of the Country Review Mission

4.3.2.1 Progress made since 2006

(i) Kenya Vision 2030

303. The government has made laudable progress. It formulated and launched the Kenya Vision 2030 in 2008, which is both a long-term vision and strategy, for attaining sustained socio-economic development. Vision 2030 replaced the Economic Recovery Strategy for Wealth and Employment Creation (ERS), which Kenya implemented since 2002. The Vision aspires to turn Kenya into a globally competitive and prosperous nation within 25 years, between 2008 and 2030, and attain a high standard of living for its people. Under the economic pillar of the Vision, the aspiration is to attain and sustain economic growth rates of 10% starting in 2012 through implementing an economic development programme that prioritizes key growth sectors of the economy. The key growth stimulating sectors to drive the ambitious 10% economic growth rates per annum are tourism, agriculture, manufacturing, wholesale and retail trade, business process offshoring (BPO) and financial services. Attaining and sustaining macroeconomic stability and infrastructure development are recognized as the growth enablers.

(ii) Medium-Term Plans

304. Delivery of the Vision is through a series of 5-year Medium Terms Plans (MTPs), designed to link policy objectives to their implementation and allocation of resources. The first Medium-Term Plan (MTP-I) was implemented for the period 2008-2012. It focused on addressing the development constraints experienced under the ERS. It emphasized (i) fast job creation; (ii) poverty reduction; (iii) improved income distribution; and (iv) related themes of regional inequality, youth and gender. The second MTP (MTP-II) covers the period 2013-2017 and is currently being implemented. It seeks to build on the progress achieved under the MTP-I.

(iii) Economic policy

305. The economic policy framework is aligned with the goals of the MTPs and reflects the government's plans to deliver socioeconomic development through high growth rates over the period of the MTP. Attaining macroeconomic stability is recognized as a key enabler of achieving the goals of the plans. Therefore, the design and setup of macroeconomic policy is appropriately directed at achieving and sustaining macroeconomic stability. In this regard, monetary policy is tasked to deliver price stability and promote financial system stability, which should anchor the long-term growth of the economy. To that end, the Central Bank of Kenya is continuing efforts to modernize the monetary policy framework to lay the ground work for transition to a full-fledged inflation targeting regime in order to anchor inflation expectations more directly. The sectoral objectives are to be achieved through a range of sectoral policies covering each of the six key sectors, supported by a fiscal policy framework that allocates resources in line with the policy objectives. In particular, the fiscal

policy framework prioritizes allocating more resources to infrastructure development, in order to anchor the growth in the sectoral sectors.

306. The CRM found that each of the 47 Counties had developed their own five-year development plans, the County Integrated Developed Plans (CIDPs), based on the flagship projects elaborated in the Medium term Plans. These project focus on a range of socioeconomic development issues, primarily: (i) addressing equity and balance in development across all regions; (ii) increasing community empowerment; (iii) minimizing differences in income opportunities and access to social services; (iv) enhancing wealth creating opportunities for disadvantaged groups and regions; (v) increasing the availability of affordable and accessible credit; and (vi) improving health infrastructure in underserved areas in the country.
307. This alignment of economic policy making with the Kenya Vision 2030 is praiseworthy. It has allowed the setup of economic policy to be appropriately reoriented towards the developmental goals of securing socioeconomic economic development much more directly. By advocating for sustained high growth rates and identifying the priority sectors that can deliver the growth, the Kenya Vision 2030 on the right course.

(iv) Impact of economic policies

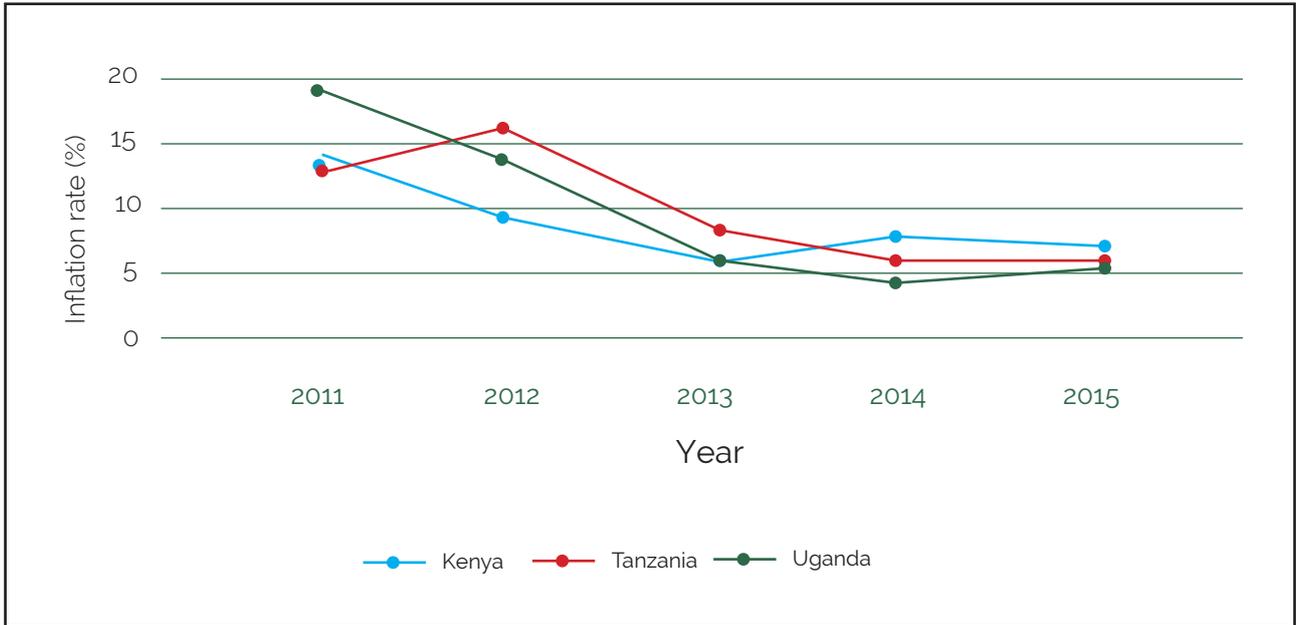
308. The government’s economic programme has delivered a number of notable successes:
- Macroeconomic stability has largely been secured, with sound fiscal and monetary management, which has enabled the delivery of low inflation and withstand a number of vulnerabilities to the economy;

Figure 3: Kenya: Evolution of inflation rates (% change in consumer price index)



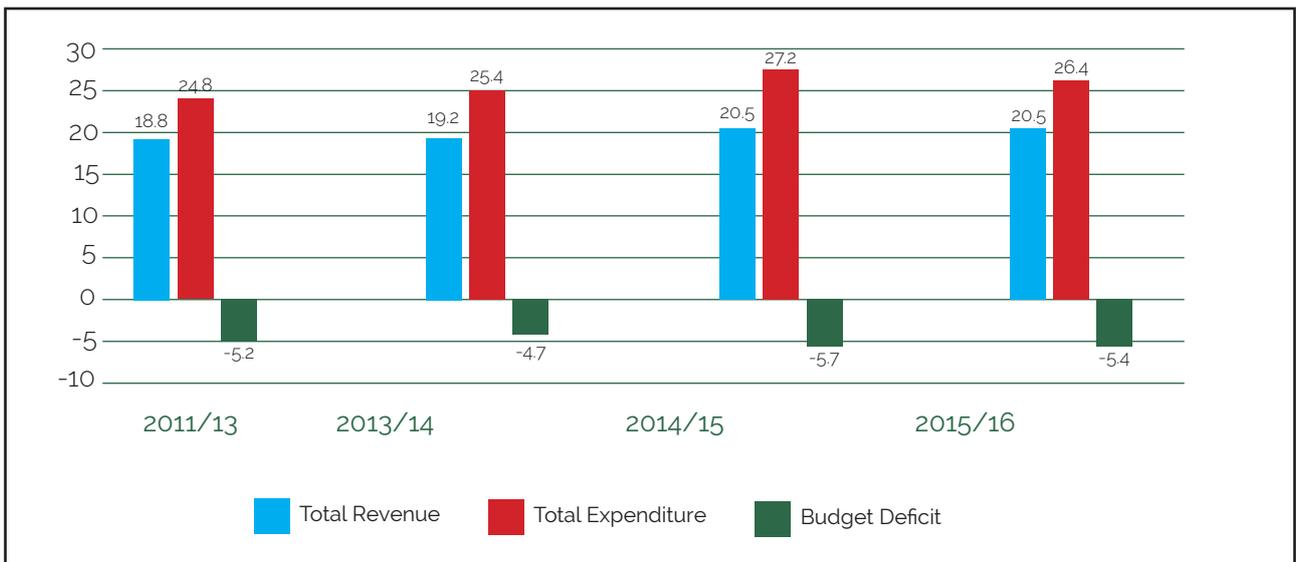
Source: Kenya National Bureau of Statistics (2016), Economic Survey 2016

Figure 4: Consumer price Index (CPI) - Inflation rate (%) for Kenya, Tanzania and Uganda, 2011-2015



- The national government’s fiscal deficit is largely manageable, below 6% of GDP, but the increased expenditure responsibilities arising from the ongoing process of devolution of government responsibilities pose fiscal risks. The fast-track implementation of devolution has introduced strains in the government’s cash management, which will need to be managed. Therefore, fiscal discipline is required;

Figure 5: Kenya: National government fiscal operations (% of GDP): 2012-2016



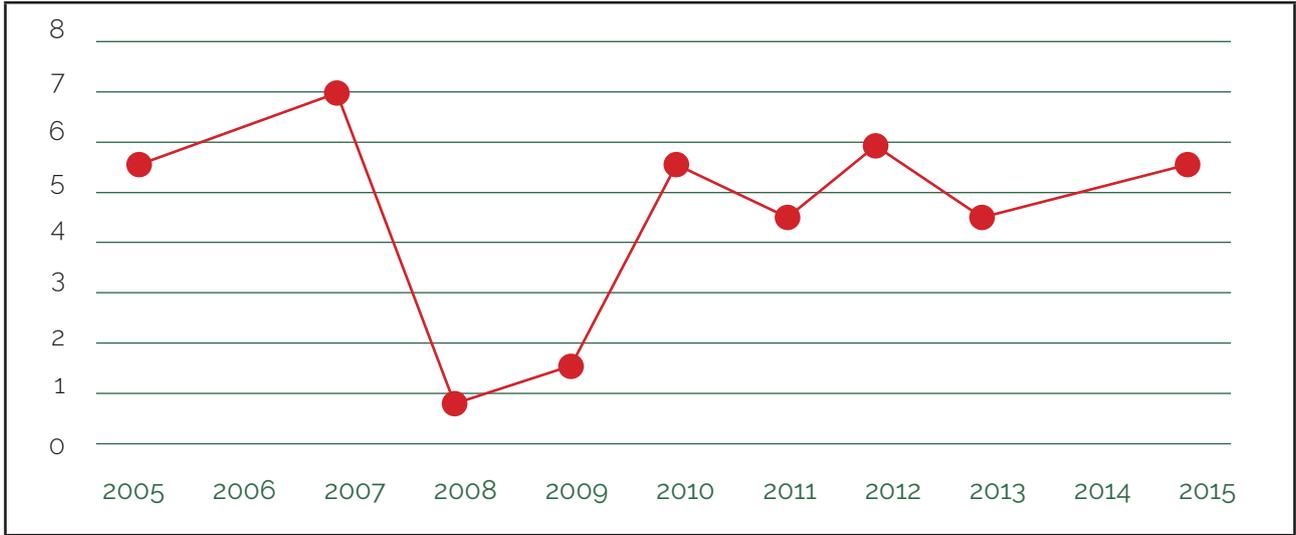
Source: IMF (2014), Country Report No. 14/302

- The roll out of devolution in line with the 2010 Constitution provides an opportunity to positively impact on social welfare across the countries, especially reducing poverty, and also to foster improvements in the delivery of key services. However, the extent

to which redistributive impact of fiscal policies will be felt at the county level, will depend on the fiscal policies that the 47 counties put in place as well as the efficiency and accountability in the use of the devolved resources;

- The economy has continued to expand progressively, posting strong growth rates in the range of an average of 5% annually since 2010;

Figure 6: Kenya: Real GDP growth: 2005-2015



Source: Kenya National Bureau of Statistics (2016), Economic Surveys 2016

Figure 7: Annual Growth Rates of Real GDP for Kenya, Tanzania and Uganda, 2011-2015

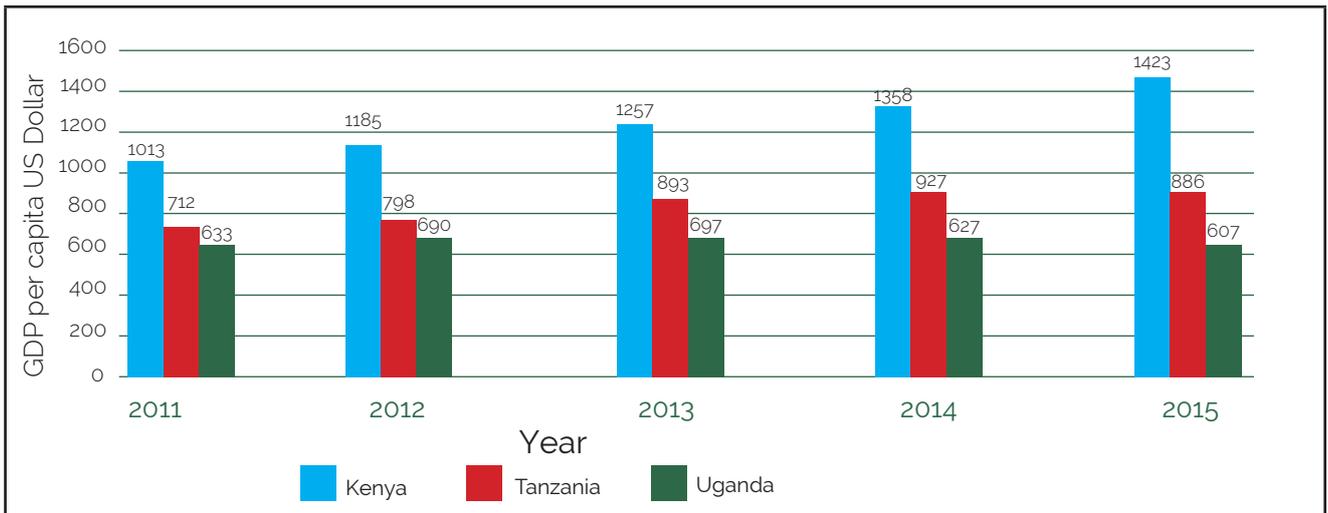
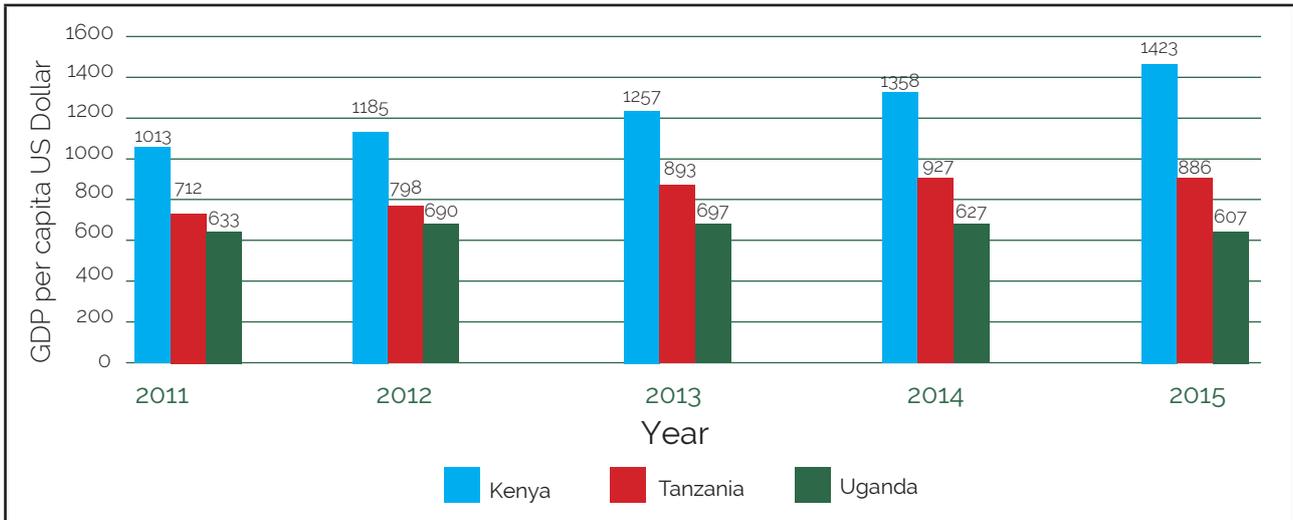


Figure 8: GDP per capita (US Dollar) for Kenya, Tanzania and Uganda, 2011-2015



- Kenya’s financial sector has shown resilience. Ongoing deepening financial inclusion, through banking mobile phone - the M-Pesa network of money transfers by mobile phone - has seen a rapid increase in financial inclusion and small business access to credit, which has fostered a more dynamic small and medium-sized enterprise sector. The reduced overall transaction cost that has arisen from the low-cost technology of mobile banking has had a positive impact on social welfare, as it has particularly helped the poor most. Farmers, for example, now benefit from schemes to acquire capital equipment that allow payment by mobile banking and various other services can be paid for via the same platform;

Figure 9: GDP per capita (US Dollar) for Kenya, Tanzania and Uganda, 2011-2015

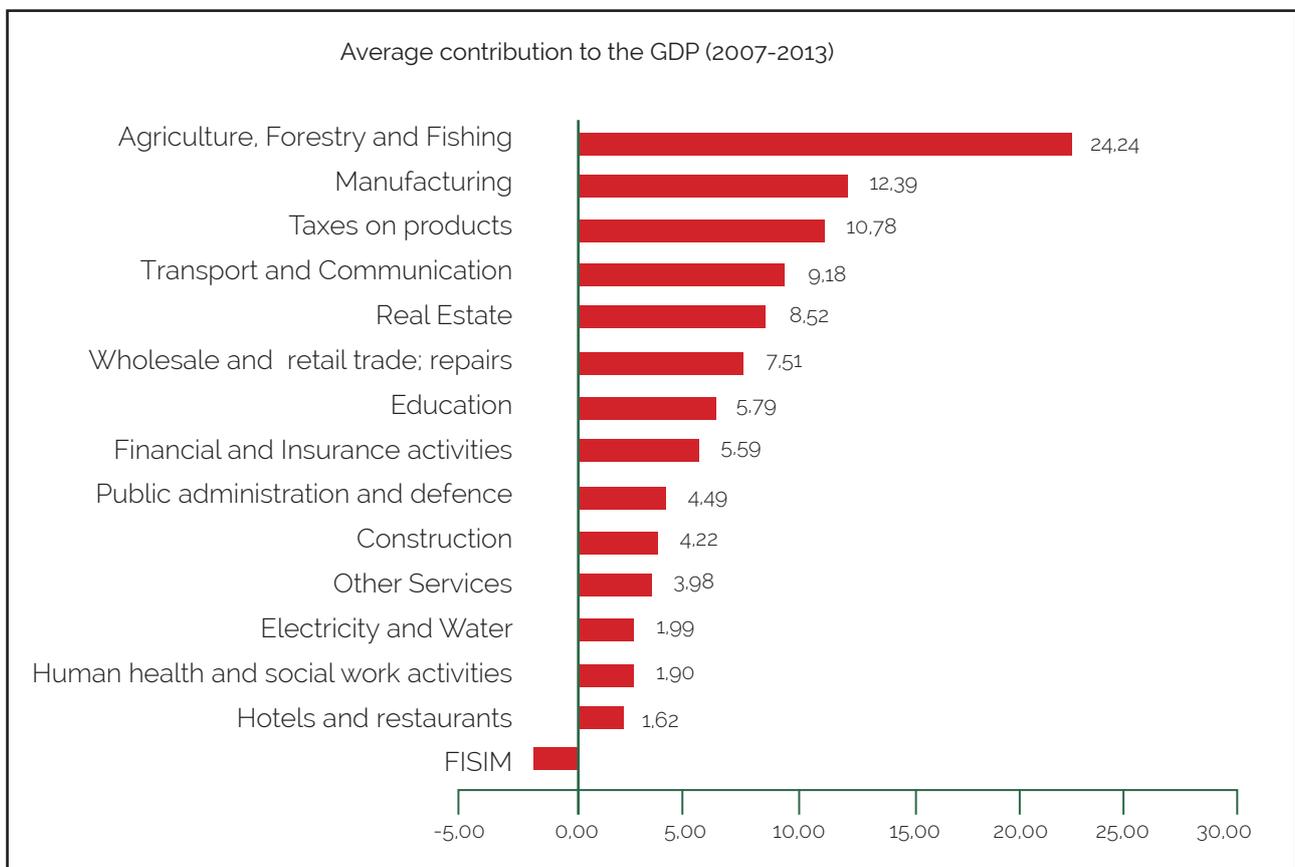


Source: APRM, 2nd Kenya Self-Assessment Report, February 2015

- In addition, Kenyan banks have expanded their outreach in East Africa and are becoming dominant players in that market. In this regard, the Central Bank of Kenya has shown commitment to strengthening prudential and regulatory oversight of the banking industry;

- Agriculture by far continues to remain a major driver of growth in the economy (Figure 10). The sector contributes about 24% to GDP, accounts for 65% of total exports and employs about 18% of formal employment. The factor responsible for this is largely policy-induced, which has witnessed a gradual shift away from rain-fed agriculture. This has been pursued through a combination of dynamic influences, namely, increased budgetary allocations to multiple-purpose dams to support irrigation in both the arid and semi-arid regions, improvements in extension services and subsidization of farm inputs. Though small, the manufacturing sector second in importance (12.4% of GDP). It is an important source of informal employment and the sector recorded a remarkable growth of 17% in 2007-2011.

Figure 10: Sectoral Contributions to the GDP Growth, 2007-2013

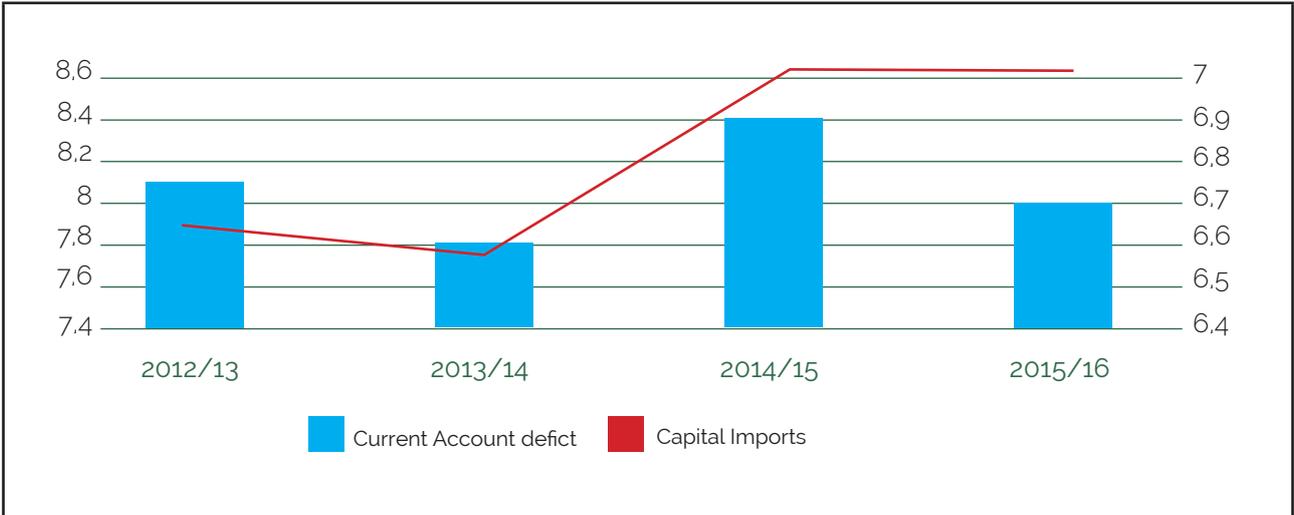


Note: Financial Intermediation Services Indirectly Measured (FISIM)

Source: APRM - The 2nd Kenya Self-Assessment Report, February 2015

- While, strong capital imports because of rising infrastructure spending in energy and transportation has driven a relatively high current account deficit, the diversified nature of exports and their destination, mainly to region, and capital inflows, attracted by a stable macroeconomic environment, has shielded the economy against adverse external vulnerabilities; and

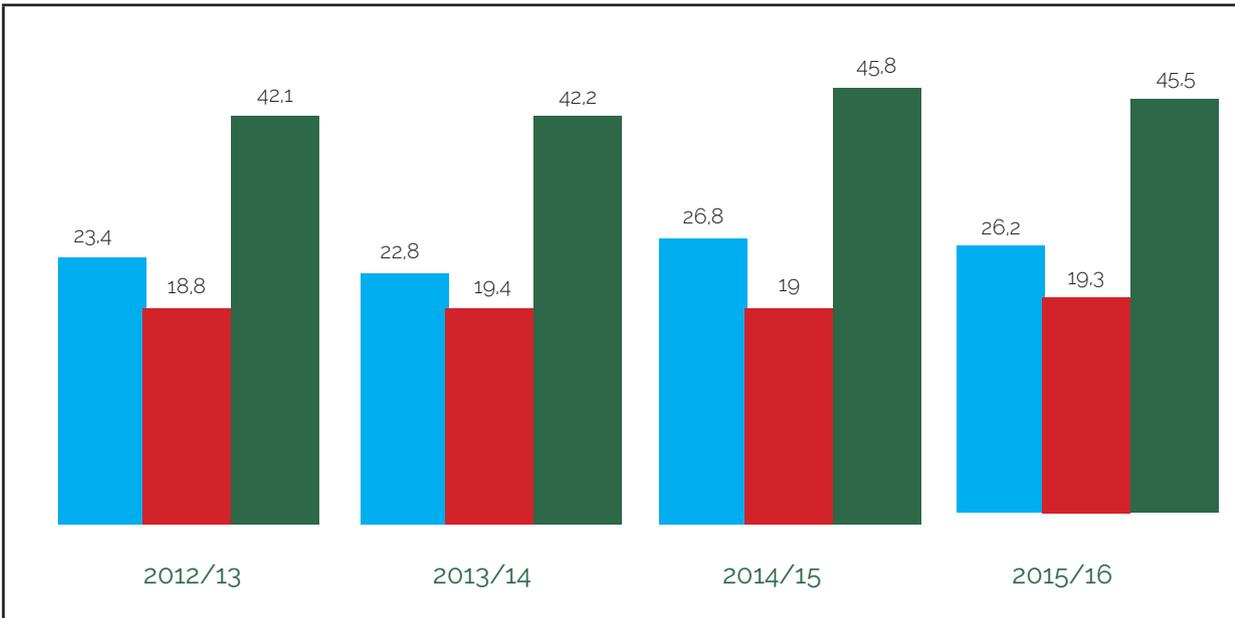
Figure 11: Kenya: External current account deficit (lhs) and capital imports (rhs) (%of GDP)



Source: IMF, Country Report No. 14/302.

- Kenya has maintained a broadly stable and sustainable level of debt, below 50% of GDP.

Figure 12: Kenya: Evolution of public debt (% of GDP)



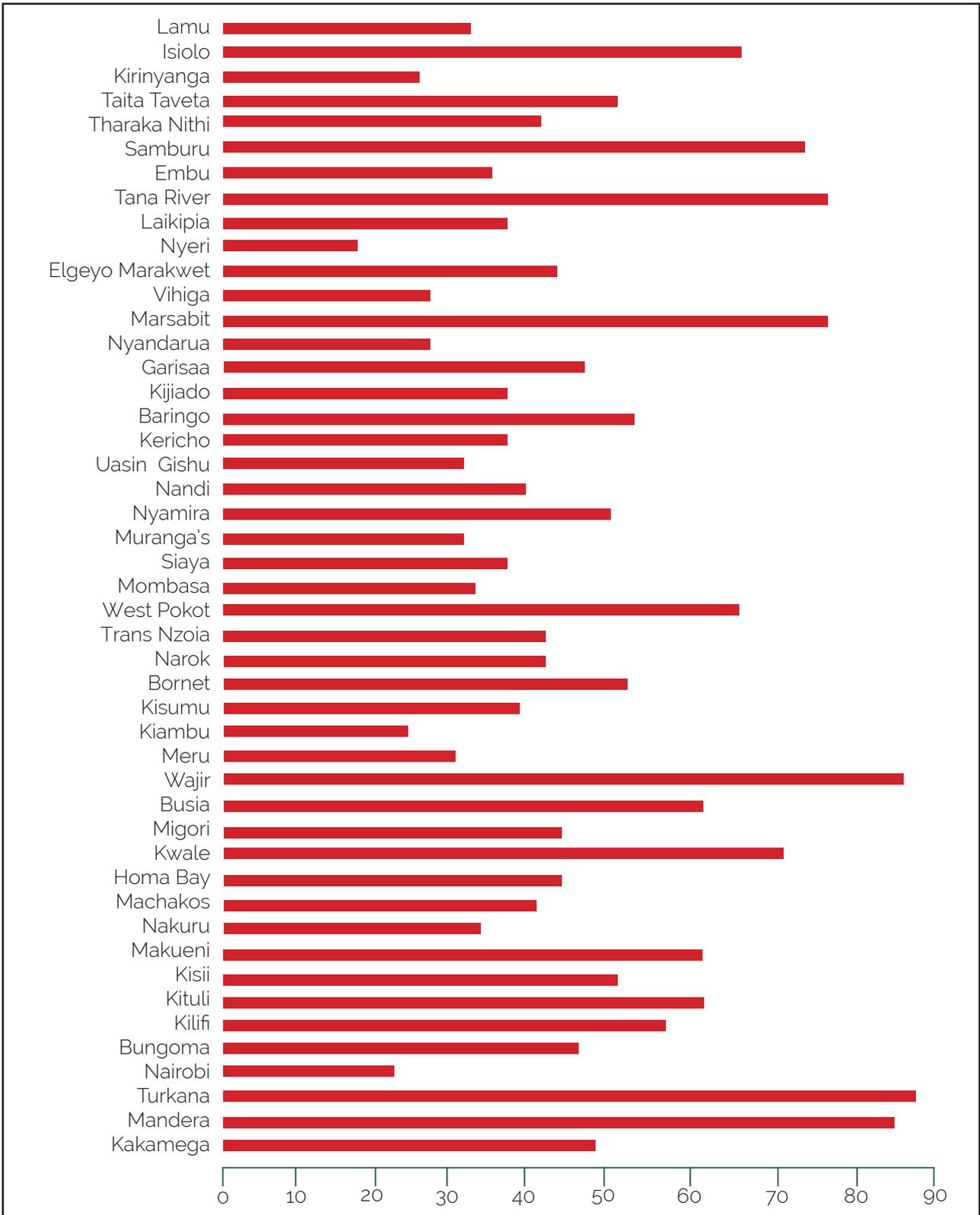
Source: IMF Country Report No. 14/302

4.3.3.2 Challenges

Unequal development outcomes

309. The CRM found that the implementation framework of the Vision 2030 through the Medium Term Plans needed to incorporate a framework for redistribution policies that should anchor an approach for simultaneously addressing issues of resource allocation, wealth, and income distribution in order for the economic development plans to deliver economic well-being that is inclusive, particularly addressing poverty, inequality not only among different groups in society but also among regions, as well as productive employment. In that context, the CRM observes that several challenges remain, despite laudable progress of attaining high economic growth rates that have averaged above five percent during the course of the first Medium Term Plan.
310. The CRM found from consultations with stakeholders that:
- Poverty remains high and widespread and the incidence is highest in the rural Counties, which are the majority in the country. Across counties, there are considerable differences (figure below). Poverty estimates for 2009 show that 45.2% lived below the poverty line, with 33.5% living in urban areas (about 3.9 million individuals), and 50.5% in rural areas (about 13.1 million individuals);

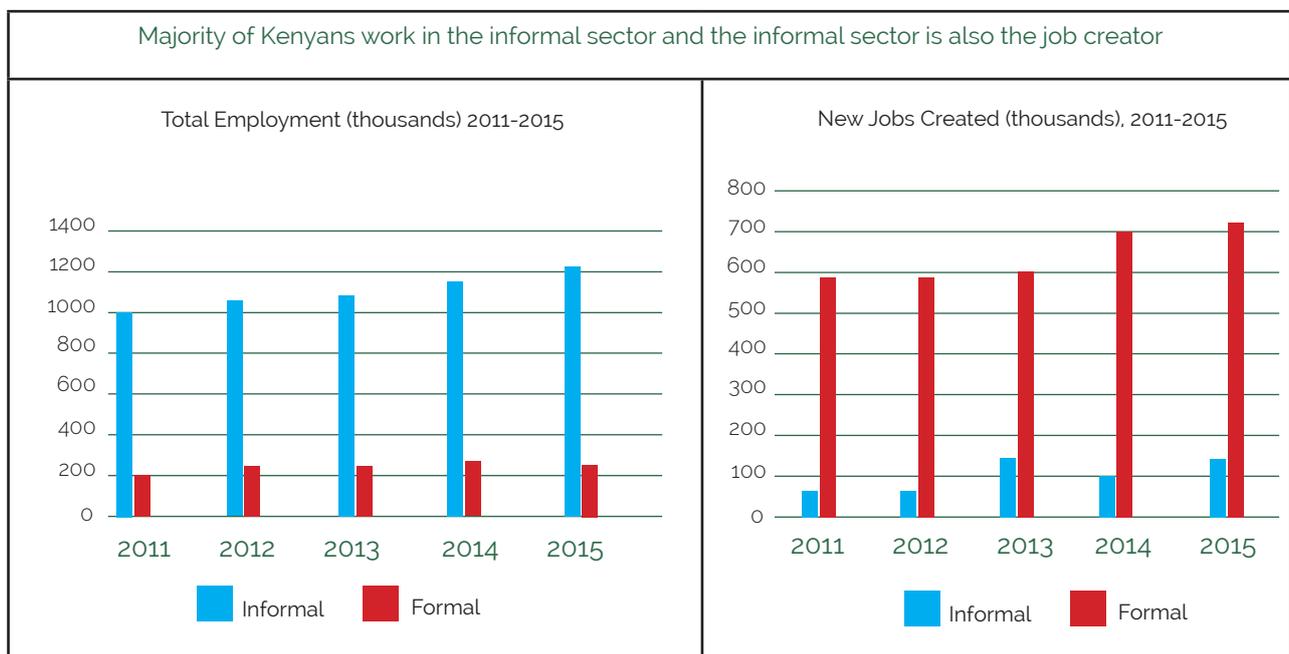
Figure 13: Poverty rates across Counties (headcount index), 2009



Source: Kenya National Bureau of Statistics (2014), Economic Surveys 2014

- Inequality has increased and its incidence is highest between regions and the vulnerable groups;
- Unemployment is very high and the incidence is highest among the youth and vulnerable groups such as persons with disabilities. Although the government reports an increase in overall employment, the bulk of this is informal employment. This form of employment is often vulnerable, as workers work under precarious conditions and provides low incomes. As a result, the majority of the poor cohorts are the working poor;

Figure 14: Kenya: Employment and job creation, 2011-2015



Source: Kenya National Bureau of Statistics (2016), Economic Surveys 2016

- The cost of living has increased since the last review in 2006; and
- Growth of the small business sector, which absorbs the majority of the workforce, is severely impeded by lack of access to capital and a high cost of contacting the business.

4.3.3 Recommendations of the Panel

311. The Panel recommends that Kenya:

- i) Integrate a resource redistribution framework into the policy making and implementation processes and mechanisms of the Medium Term Plans for redistributing resources to poorer sections of the society to address the challenges of poverty and inequality (*Ministry of Devolution and Planning*)

- ii) Actively support and create an effective enabling environment for growing small and medium size enterprises (SMEs), especially in rural areas through appropriate policy measures, (especially supporting the creation of economic opportunities upon which these sectors can leverage and increase demand profitably). (Ministry of Devolution and Planning, Kenya National Chamber of Commerce & Industry).
- iii) Address unemployment by deliberately promoting development of labour absorbing sectors by not only expanding the use of labour intensive methods in both public and the private sectors, but also explicitly targeting those sectors as a matter of deliberate policy (Ministry of Devolution and Planning, Vision 2030 Secretariat)
- iv) Promote the SMEs sector as the job creator through deliberately addressing measures that promote its productivity so as to increase earnings from such activities. While the Vision 2030 and the MTP framework targets creation of decent jobs, Kenya's economic transformation that is required to delivered this is not occurring fast enough to absorb a rapidly growing population and work force. As a result, the majority of new entrants to the labour force will continue to find work in the informal sector that will remain a key sector of the economy for a long time (Ministry of Devolution and Planning, Vision 2030 Secretariat)

4.4 OBJECTIVE 2: FACILITATE THE PARTICIPATION OF KEY STAKEHOLDERS IN POLICY AND PROGRAMME DISCUSSIONS AND IMPLEMENTATION

4.4.1 Summary of the Country Self-Assessment (CSAR)

The CSAR elaborates on a number initiative the government has taken to promote public participation of key stakeholders in policy and programme discussions and implementation.

Key Institutions and Stakeholders involved in Formulating and Implementing Economic Policies

- 312. The CSAR points out that the Government has taken laudable steps to enhance access to and improve participation of Kenyans in a wide range of Government policies and programmes. This has involved providing information on the levels of national debt, the government's financial position, government financial obligations and government revenue and expenditure. A case in point is the formulation and implementation of the budget process. Currently, this is done within the confines of the Medium Term Expenditure Framework (MTEF) budgeting framework, which requires ministries to prepare their budget proposals based on priorities identified by Sector Working Groups comprising various stakeholders of the sector.
- 313. Furthermore, Kenya's line ministries are synthesized into the Public Expenditure Review, which is now recognized as an important input in achieving better value for the Kenyan public's taxes. In these public expenditure reviews analysis, sector working groups and line ministries are engaged extensively in reviewing the proposals and deciding the trade-offs and bid for budget allocations.

314. Various methods are used in disseminating information, including: Sectoral and Ministerial Bulletins; Dissemination Seminars; Conferences and Workshops; and press releases. At the local level, open forums are held where various groups (the public, public barazas) are informed of the government's programmes; and they are required to provide inputs regarding their feelings on specific or general projects and programmes. At the county government level, similar open forums are held at which the public is informed of the policies and programmes the government is implementing. Likewise, the national government has established a Public Communication Secretary Office that informs, clarifies and responds to various information gaps and misrepresentations concerning government policy.
315. Another forum being used for public participation is the internet. The CSAR notes that the use of the Internet service to deliver policy messages by the government is now widespread. Every government ministry has a website where policy issues are posted for use by the public and other interested stakeholders. At the Sub-county level, Sub-county Information documentation centres (SIDCs) have been established to disseminate information on the government's policies. However, effective use of SIDCs faces a number of challenges which have undermined their effectiveness as a tool for public participation. These primarily relate to a lack of human and financial resources to operate effectively in providing the required service. Added to this is the operationalization of Official Secrets Act (CAP 187) that provides for preservation of state secrets, which has limited the scope of public access to information and may need to be reviewed to make it more specific on information classification.
316. In terms of legislation, section 207 of the PFM Act, 2012 requires the government to develop regulations to prescribe further guidelines for stakeholder participation in public financial management. This legislation now provides a single legal framework for PFM in the new system of government for all levels of government. This is a first for Kenya. The operationalization of the PF Act 2012 has also brought about some critical changes in budget execution whereby an increase in one appropriation must be offset by a reduction in another, and any savings from reduction in expenditure will go to reduce the deficit. Another notable change brought out by the PFM Act 2012 is the adoption of programme based budgeting to performance targets. The Act also envisages a greater role for parliament in scrutinizing the budget and a change in the budget calendar to allow it to do so.
317. Another legislation is the Constitution of Kenya 2010. This has brought in the role of parliament in monitoring the implementation of the budget by providing expressly that parliament can allow the Cabinet Secretary in charge of the National Treasury to withhold funds from any agency reported to have misappropriated resources. The legislative oversight in Kenya is no longer restricted to budget approval and the review of audit findings. It now includes continuous oversight.

Procedures and Legislative Initiatives to Ensure Effectiveness of Policy Making Bodies

318. The CSAR highlights some milestones in strengthening the effectiveness of various oversight bodies. It explains that the oversight roles of the Controller of Budget and Auditor General and their reporting responsibilities, and the National and County Assemblies over public finances at the national and county government are now explicitly provided for in the Constitution of Kenya 2010 and the PFM Act 2012. The oversight functions of these bodies cover ensuring adherence to principles of public finance and fiscal responsibility; approval of the establishment of public funds; reviewing the BPS (national) and County Fiscal Strategy (county) and approving budget estimates. The parliament (as a joint entity of both the National and County Assemblies) is also empowered by the Constitution of Kenya and the PFM Act 2012 to exercise various oversight responsibilities, including regarding the terms on which the national and county governments can borrow and issue guarantees for County Governments. In this regard, the PFM Act 2012 provides for creation of a Parliamentary Budget Office, which should provide professional services in respect of budget finance and economic information to the committees of parliament.
319. Through the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), parliament ensures that the executive is accountable in the use of public finances. These oversight committees release reports regularly as to the use of public resources and performance of government institutions and investments. However, the major challenge that these committees continue to encounter include delayed submission of audited accounts and poor implementation of their recommendations. This undermines the effectiveness of the committees in preventing possible embezzlement.
320. The government has undertaken audit reforms that have culminated in the formation of the Kenya National Audit Office (KNAO), after the C & AG and the Auditor General Corporations were merged. This has resulted in a stronger and independent audit body. Among the key functions of the office is the promotion of economy, efficiency and effectiveness (value for money auditing), which has strengthened financial accountability and reduced fiduciary risk. For many years, there have been delays in reporting to parliamentary oversight bodies. The backlog is now being addressed through the strengthening of KNAO.
321. The internal control and auditing in Kenya is the responsibility of the Internal Auditor General's (IAG) Office. This office is responsible for monitoring the compliance of ministries and their departments with the various financial regulations, instructions and accounting procedures. There are also internal auditors stationed in each ministry and who ensure that Accounting Officers carry out all the ministry's financial activities in full compliance with the government's financial regulations and extend rules.
322. The Internal Audit Department (IAD) in the National Treasury has undergone major strengthening and its mandate has been expanded. It has adopted a risk-based audit approach and spearheaded the development of the Institutional Risk Management Policy Framework (IRMPF) in the public sector. The adoption of IRMPF is envisioned to enhance risk identification and management by MDAs and provides a policy framework for risk-

based auditing for GOK's internal audit. The IAD has also introduced IT supported audits and roll out of The Audit Management Systems (TEAMMATE).

323. Despite the significant achievements, the IAD faces a number of challenges. The new systems have not been uniformly introduced or supported by the various public entities, the financial and performance reports by government entities are not adequately accessible and understandable, and the audit reports are difficult to understand and do not prioritize recommendations. While the government has managed to control and record its indebtedness well, it has yet to link the debt to IFMIS.
324. Internal Audit in the government still faces both human and physical constraints that have affected its effectiveness. The office has inadequate qualified and well-motivated personnel to carry out the task of auditing technical government investments. Financial resources are inadequate to train personnel and to carry out its mandate effectively. Institutions like the IMF and the World Bank and other development partners, do conduct periodic audits of accounts of different government agencies, especially those agencies with projects and programmes they support.
325. Progress towards International Public Sector Accounting Standards (IPSAS) adoption in Kenya has been slow. A full set of consolidated annual financial statements is not prepared, only appropriation accounts are submitted for audit. The current parliament has an opportunity to make use of the provisions of the Constitution of Kenya 2010 and the PFM Act to ensure audit reports inform the decisions of the budget, as the parliamentary budget committee is fully and legally entrenched in the budget process. The PAC could also be more active in the review of the auditor general's report.

Consultations and Predictability of Economic Policies

326. The Constitution of Kenya 2010 requires public participation in county public finances. There is the specific requirement that every county set up a County Budget and Economic Forum (CBEF). The CBEF is mandated by the Public Finance Management (PFM) Act 2012 to provide a means for consultation by the county governments' budget and other related matters.
327. In implementing this constitutional requirement, the government consults various stakeholders, including neighbourhood associations, specifically the Nairobi Central Business Organization on development issues of policy that affect the private sector within the Central Business Districts (CBDs). A Public Private Partnership (PPP) unit was created in the National Treasury dedicated to formulating policies on how the interest of the private sector can be incorporated into the affairs of the country's development.

4.4.2 Findings of the Country Review Mission

4.4.2.1 Progress made since 2006

328. The government has made laudable progress in its quest to promote public participation in government policies and programmes. It has enacted various laws that have provided significantly scope for participation of ordinary Kenyans in the development and implementation of various development policies and programs. Both the Constitution and the PFM Act 2012 now require the public to be involved in the design and implementation of the government's policies and programmes through a bottom-up planning process that empowers communities to petition or challenge the government in the courts of law if they are left out of the decisions made. This is clearly a significant milestone.

Box 3: Best Practice: Devolution of Functions

A very significant transformative change in Kenya's history of governance is devolution of government that is enshrined in the constitution. The two levels of government provided for in the constitution are the national and county governments, which are distinct and interdependent. Both levels of government are required to maintain mutual relationships through consultation and co-operation. The expectation of Kenyans is that the devolved system of government will promote good governance through participation, and enhance service delivery and raise their welfare. Truthfully, the people of Kenya are generally happy with devolution because it has initiated and improved participation and consultation in governance. Also, devolution has increased the provision of social services (e.g., healthcare education, roads and electricity), especially in the rural communities. Indeed, devolution in Kenya, in terms of design, legislative institutional structures, among others, is capable of promoting inclusive growth.

329. However, during the consultative forums, the CRT found that public participation at all levels of the decision making process of developmental programs is very low. Stakeholders provided various reasons for the low public participation. These included distance and the high burden of transportation cost, inadequate understanding of the policies and programmes of the government, and poor publicity. In some instances, documents or materials which formed the basis of discussions at the public forums are only circulated at the venue of the meetings without prior notice, and at times, notifications were only given a number of days after the day of the consultation. The low participation in economic policy making decision (budget process and planning) is a serious impediment to communities to fully own the programmes and projects executed.

4.4.2 Challenges

330. Major challenges remain in involving all stakeholders in planning and implementation process, especially in fostering effective participation of stakeholders at the grassroots. There is still inadequate consultation with stakeholders to ensure effective participation in development programmes.

4.4.3 Recommendations of the Panel

331. The panel recommends the following actions to promote public participation:

- i) Conduct civic education to promote public awareness of their rights to participate in the designing and implementation of government's development policies and programmes (national and county governments, civil society);
- ii) Develop effective tools of communicating to the public (national and county governments);
- iii) Issue sufficient notifications for the public forums (national and county governments);
- iv) Use various media to communicate to the public (national and county governments); and
- v) Translate technical documents in reader friendly languages widely spoken by the local population, particularly Kiswahili and Braille for the visually impaired members of the community) (National and County Governments).

4.5 OBJECTIVE THREE: PROMOTE SOUND PUBLIC FINANCIAL MANAGEMENT

4.5.1 Summary of the Country Self-Assessment (CSAR)

332. The CSAR notes that the Kenyan government recognizes the importance of sound financial management by mobilizing revenue for service delivery as well as to provide public goods and services. In reference to the constitution and laws, the CSAR indicates that fiscal oversight functions have been transferred from the executive branch of government and traditional institutions to the legislative arm. The Economic Affairs Department (EAD) of the National Treasury monitors policy implementation, revenues and expenditure performance of the government. The government established the Parliamentary Budget Office (PBO) in 2007, later created by an Act of parliament in 2009 through the PFM Act. The PBO provides strong technical support for parliament to adequately scrutinize the budget. The CSAR informs that the Public Accounts Committee (PAC) of the parliament has been operationalized and that the review of audit reports is up-to-date. However, the CSAR points out that the final accounts of the government are not prepared in conformity with the IPSAS or similar standards.

333. Fiscal decentralization featured prominently in the CSAR's reports and makes clear that the Government has pursued several reforms so as to strengthen the management of the decentralised fiscal resources. In its submission, the CSAR acknowledges that the devolution of functions has created new challenges with respect to PFM; and stresses that there should be new financial rules and practices to effectively manage sub-national borrowing in order to ensure fiscal discipline and sustainability. It notes that the county governments have embraced the need for citizen engagement in developing budgets but little has been done in the area of transparency with most budgets not publicly available.

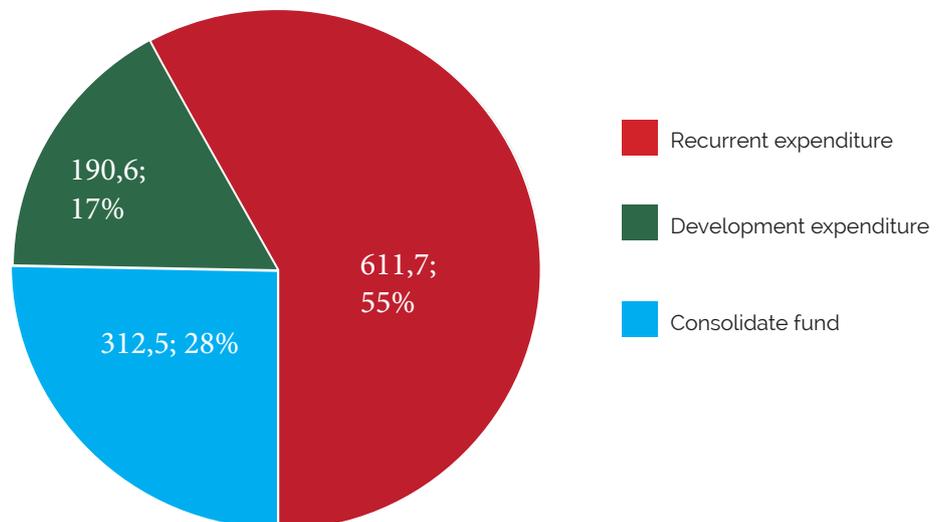
4.5.2 Findings of the Country Review Mission

4.5.2.1 Progress Made Since 2006

Fiscal Outlook

334. Contours of fiscal performance are instructive. The total revenue of the government averaged 25.9% of the Gross Domestic Product (GDP) between 2006 and 2013. The ratio of total expenditure (including net lending) to GDP rose from 29.2% in 2010/2011 to 30.9% in 2013/2014 and fell to 29.8% in the fiscal year 2014/2015. Compositionally, the recurrent expenditure-GDP ratio, which averaged declined 20.6% annually in between 2010/2011 and 2011/2012 fell to 19.6% in 2013/2014–2014/2015 period. Over the same periods, the proportion of development (capital) expenditure in GDP increased from 9.0% to 10.3%. Therefore, emphasis has shifted to development expenditure so as to accelerate economic growth. This is good and there is need to sustain this budget culture. Budget deficit has climbed from 4.0% of GDP in the period of fiscal stimulus to 6.5% in 2014 and it was financed through domestic and external borrowing. Public debt has risen but it remains within manageable levels as it rose from 36% of GDP in 2008 to 48.6% at the end of 2013. Debt sustainability analysis (DSA) shows that Kenya has a favourable debt outlook.

Figure 15: Summary of Actual Expenditure Accounts (KShs billion and Percent), 2012/2013



335. Table 5 summarizes the Kenyan tax structure. In the fiscal year, 2013/2014, taxes on income profit and capital gains were the major revenue earner in Kenyan economy contributing over 49% of total tax revenue. PAYE contributed 27% of total taxes compared to corporate income tax 22%. The second revenue earner was VAT, 25.5%. VAT on imports (13.7%) generated more revenue than VAT on domestic goods (11.8%). Taxes on other goods and services contributed about 14% of total tax revenue. Taxes on international trade transactions, other than VAT on imports, accounted for a little over 10% of total tax revenue. A salient feature of Kenyan tax structure is that domestic taxes (taxes on income, profit and capital gains, VAT on domestic goods and services) contribute three-quarters of total tax revenue. In contrast to most countries in the region, taxes on imports contribute less than 25% of total tax revenue. The reliance on consumption taxes decreases, a trend consistent with the level development.

Table 5: Kenya Composition of tax revenue, 2007/2008-2013/2014 (KSh millions)

	2007/08	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	%Tax rev.
Taxes on Income, Profit and Capital Gains	165,078.00	194,154.50	219,496.84	272,263.87	328,908.78	383,086.04	449,590.07	49.31
PAYE	85,953.00	110,164.81	121,524.51	144,267.92	174,774.70	199,847.16	249,872.80	27.40
Corporation Income Tax	79,125.00	83,989.69	97,972.33	127,995.95	154,134.08	173,238.88	199,717.27	21.90
Taxes on property	331.90	327.52	269.37	352.10	490.80	653.73	0.00	0.00
Value Added Tax (VAT)	111,904.51	126,854.07	141,970.70	171,880.75	176,386.07	184,916.31	232,630.32	25.51
VAT on domestic goods and services	58,277.00	66,216.49	78,859.16	90,211.14	81,495.51	90,713.83	107,737.35	11.82
VAT on imported goods and services	53,627.51	60,637.58	63,111.53	81,669.61	94,890.56	94,202.48	124,892.97	13.70
Taxes on other good and services	80,736.09	93,051.89	99,335.01	108,701.54	105,771.60	114,821.86	125,363.91	13.75
Excise taxes	61,905.51	69,872.12	74,112.08	80,566.54	78,884.26	85,660.29	102,029.10	11.19
Taxes on International Trade transactions	45,857.70	49,094.03	57,205.80	66,670.45	76,473.85	81,812.59	94,232.51	10.33
Customs duty	32,944.35	36,180.60	41,271.12	46,271.12	51,711.78	57,649.68	67,554.64	7.41
Other taxes on international trade transactions	12,913.42	12,913.12	15,934.69	20,598.64	24,162.91	24,162.91	26,677.87	2.93
Total Tax Revenue	408,444.66	468,151.70	523,633.34	626,668.74	695,887.71	763,828.34	911,803.70	100.00

Source: Kenya Economic Surveys (2014, 2015 and 2016)

Box 4: Good Practice – Revenue Generation

Recent statistics show that the revenue ratio (that is, total revenue/GDP) gradually rose from 18.8% in the 2012/2013 fiscal year to 20.5% in the 2015/2016 fiscal year. Consequently, the Government of Kenya has been able to underwrite about 80% of its total expenditure from the revenue collected. This is good. The increase in government revenue is attributed largely to improved tax administration. It should be recalled that the Kenya Revenue Authority (KRA) granted tax amnesty in which interest payment on all tax arrears was waived in 2004. Thereafter, there was increased emphasis on the principle of self-assessment and the use of personal identification number and electronic tax registers (ETRs). Other significant measures taken are tax education, Integrated Tax Management System (ITMS), the holding of a National Tax Day, revision of the legislations relating to excise and income taxes and VAT reforms, and landlords were brought into the tax net. The government amended the Income Tax Act to deal with the issue of tax avoidance by multinational companies. In addition, the KRA established a Medium Tax Office (MTO) to collect taxes from medium taxpayers as well as to reach the hard-to-tax informal sector of the economy; and a review of the turnover tax regime. The collective effect of these measures was increased revenue generation.

Legislative Framework

336. Sound financial management is emphasized and significant progress has been made. The government has made laws with respect to PFM in line with the procedures and timelines prescribed in the constitution. Some of the laws are the Commission for Revenue Allocation Act 2011, the Salaries and Remuneration Commission Act 2011, the Independent Offices (Appointment) Act 2011, the National Government Loans Guarantees Act 2011 (repealed), the Contingencies Fund and County Emergency Funds Act 2012 (repealed) the Transition to Devolved Government Authority Act 2012, and the Public Finance Management (PFM) Act, 2012. These laws are to ensure that there is prudent financial management at the national and the county levels in order to have value for money.

Institutional Reforms

337. In order to enhance the efficiency and effectiveness of budget execution, the Office of Controller and Auditor-General was split into two, namely, the Controller of Budget and Auditor- General as constitutionally required. In order to strengthen the oversight functions of the parliament over budget matters, the Government established the Parliamentary Budget Office to provide technical support. The PFM Act 2012 has also strengthened the audit committees. The Act provides that the various Ministries, Departments and Agencies (MDAs) and county governments should constitute an audit committee whose membership will be outsiders.

Other Reforms

338. Other important PFM reforms include the introduction of Treasury Single Account by the national and county governments. In order to improve cash management practices, harmonized unitary charts of accounts have been instituted.

Comprehensiveness of Budget and Public Access to Information

339. The budget of the national government is fairly comprehensive to enable the parliament and the public to scrutinize the budget proposals. However, there is scope for improvement, as some of the PEFA indicators were not met. Public access to fiscal information has improved.

Expenditure Tracking

340. There is improved tracking of budget implementation. The Government, in collaboration with European Union (EU) and Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), carried out a study in 2012 to assess the public expenditure and the degree of financial accountability and transparency. The PEFA evaluation apparatus, which is internationally recognized, was employed. This assessment, for example, helped to determine the extent to which the budget has been realistic and checks whether it is implemented as intended. It also enables one to gauge the extent of fiscal discipline.

Parliamentary Oversight and Public Participation

341. The Constitution and the PFM Act 2012 have transferred important public finance responsibilities from the executive and Treasury to parliament, both at the national and county government levels. Public participation in economic policy making is stressed in the constitution and PFM Act 2012. For example, at the county level, there is the County Budget and Economic Forum comprising the Governor, the County Executive Committee, and several persons from the business community, labour, women, PWDs and professional organisations. Overall, participation in economic decision making has improved relative to 2006.

Plan-Budget Link

342. Policy-based budgeting is being embraced. This is because it facilitates fiscal and financial management. The national government has attempted to prepare its annual budget within the framework of medium term expenditure framework (MTEF).

Special Funds

343. The CRM finds that there are several devolved funds dispensed. Examples of the funds are Constituency Development Fund (CDF) renamed the National Constituency Development Fund (NGCDF), Constituency Bursary Fund (CBF), Youth Employment Fund (YEF) and Women Employment Fund (WEF). The objectives of these funds are good as they are drivers of economic activities and employment. The CRM found from various reports, including that of the Task Force on Review of Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, submitted to Government in 2015 and during consultative forums that each of the funds has its own administrative structure with their operations lacking transparency and accountability, low participation of the people, and gross mismanagement. The general perception is that the funds are prone to corrupt practices. In the case of NG-CDF, for instance, the CRM was informed during the consultative forums that it was a success story in the initial years of its establishment. However, it was said that the Government and powerful members of parliament manipulate the fund for electoral gain. This defeats the main purpose of establishing the fund.

Improved Revenue Collection

344. Huduma Centres have been established by the Government to serve as a one-stop shop for processing services offered by the public sector. This initiative is driven by the Presidency through the Ministry of Devolution and Planning. Among the services provided in the Huduma Centres are issuance of identity cards and birth certificates, assessment of stamp duties, registration of business name, police clearance certificate, National Social Security (NSS) member registration, and tax clearance certificate. The Huduma Centres, which are available across the country, have improved accessibility to the services provided by the government, reduced personal contact and minimized the opportunity to offer bribes and above all improved revenue collection.

Participation in Budget Process

345. The CRM found, during the consultative forums, that participation of the people in the budget process at the county level is very low (this finding is consistent with the APRM Household Survey Report, 2014, p. 78). In some counties, the structural framework for participation was not articulated. It was also revealed that in many of the counties where there is participation, the participants in the forums were usually handpicked, and in most cases they are friends or allies (or associates) of those in authorities. Some of the reasons listed for the low participation were distance and the high burden of transportation cost, inadequate understanding of the policies and programmes of the government, and poor publicity. The CRM was also informed that the documents or materials, which form the basis of discussion during public forums by counties where participation took place, are only circulated at the meetings. It follows that issues to be discussed are not known until the day of consultation. The low level of participation in economic decision making process undoubtedly makes it difficult for the communities to claim full ownership of the programmes and projects executed.

Procurement Issue

346. During the consultations, the CRM was told that women are awarded contracts in some counties in consonance with the extant laws. The CRM was further informed that the women who get contracts are not local women, but those that are resident in urban centres with web of connections. Also, People Living with Disabilities (PWDs) and youth were hardly considered for the award of contracts in line with the law. That, the complaint of county officials is that local women do not have the capacity in terms of finance, experience, among others, to undertake procurement.

Service Delivery

347. The main objective of the budget is to deliver public services effectively and efficiently. Budget transparency and accountability is stressed because it will strengthen government institutions involved in public service delivery (e.g., health, education, water and roads). Participation in economic policy decision-making is to ensure that public goods and services that meet the needs of the people are considered in plan documents and in the annual budget used to execute the development plans. The GoK is concerned about improving the welfare of its people and recognizes the importance of sound financial management of resources for service delivery. Various legal and regulatory frameworks have been instituted to ensure that financial resources are used for the purposes intended. The Government also understands that it must fight corruption so that public resources are not diverted for private use and encumber service delivery.
348. The decentralisation of functions to forty seven (47) counties in 2013 is partly to bring government closer to the people and accordingly promote local democracy. Likewise, devolution is expected to foster competition and promote efficiency in the provision of public goods and services. The CRM was informed during the consultative forums that with devolution, the provision of socio-economic facilities such as roads, education, health care, water and electricity has improved. This is good and laudable. However, the improvements are not without caveats. Education and health care are used for illustrations. The participants at the consultative forums stated that the number of schools built or renovated has increased, leading to enrolment of pupils/students and high teacher/student ratio. In some communities, it is said, the schools do not have adequate teachers. On health care, improvements were with references mainly to: free maternity programme that has reduced maternal mortality rate in the rural areas in particular; and the purchase of some health care scanning machines and equipment. However, it was further disclosed that there is inadequate health care personnel to effectively deliver services. In some of the counties, it was said that intermittent strikes by health workers have been recorded due mainly to the non-payment of salaries.

4.5.2.2 Challenges

Huge Wage Bill

349. The wage bill of the government is very high in Kenya. On this issue, reference is made to the International Monetary Fund’s study in 2014. Figure 16 is instructive, clearly revealing that in fiscal years, 2012/2013-2013/2014, the wage bill as a proportion of the GDP was as high as 7%. When related to the total domestic revenue generated, the wage bill was remarkably higher, in the range of 35-40%. This is undoubtedly very high for a country desirous of promoting economic growth. However, two major negative effects of the phenomenon of high wage bill are discernible. Firstly, less amount of financial resources is allocated to development expenditure generally considered as an important motor of economic growth. Secondly, it has severe repercussions on the social services sector that provides merit goods and services - education, health, water, and infrastructure - as the government is unable to render these social goods and services to the fullest degree possible because of reduced budgetary allocation. The story here is that the wage bill is crowding-out budgetary allocations to key sectors that can drive long term growth and at the same time shrinks the resources available to effectively address the big issue of absolute poverty through the provision social goods and services.

Figure 16: General Government Wage Bill (in percentage of GDP)

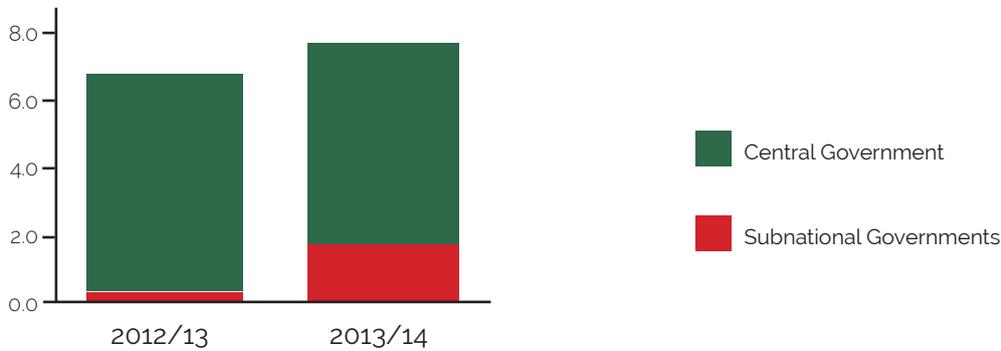
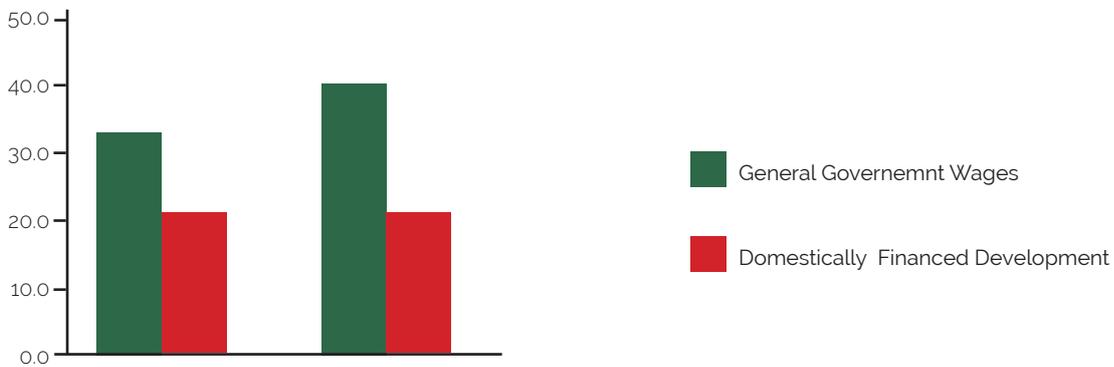


Figure 17: General Government Wages and Domestically Financed Development (in percentage of GDP)



Source: IMF (2014), Country Report No. 14/302

350. Some of the proximate determinants of the wage bill are identified. They are:

- Public sector is a major employer of labour;
- The creation of additional structures arising from the devolution of functions to the county governments;
- The rising average annual earnings per worker in the public sector (partly explained by payment of allowances) relative to the private sector of the economy, thereby widening wage gap between the two sectors; and
- Over-bloated staff. During the consultative forums, the CRM was told that some counties inherited a substantial number of workers from the defunct local authorities.

351. During the consultative forum with the officials of the national government, the CRM was informed that the government acknowledges the existence of a huge wage bill and it is concerned about it. That already, the government had started the process of staff rationalization. The IMF had earlier advised the government to streamline allowances and also ensure that the eligibility for the allowances is tightened to reduce wage bill.

Payroll System of National and County Governments

352. The PEFA review in the CSAR is comprehensive and revealing. However, there was no specific description of how the payroll system works at the national (though, payroll controls were reported to have improved) and county government levels. This is very important because the wage bill is a substantial component of total expenditure of the government. A huge wage bill is inclined to weak financial control.

Public Procurement at the National and County Levels

353. The CSAR hardly discusses procurement in the management of public finances, both at the national and county levels, adequately. The CRM learnt that procurement manual and guidelines were introduced, however this is not sufficient to gain insight into the contract award process and the control mechanisms. When the procurement system works well, there is value for money, implying that services are delivered efficiently. Openness, competitive bidding and transparency in the award of contracts are basic requirements of good PFM. It is said that procurement accounts for 46% of all corrupt cases in Kenya (see EACC, 2016). For this singular reason, a brief description of the effectiveness of the procurement procedures at the national and county levels is de rigueur. The high percentage of corruption cases that is procurement-related is suggestive of the weak regulatory framework governing the award of contracts.

354. The CRM found that the perception of the general public during the consultations that the government procurement system at the county level is not open and transparent. That most government tenders are awarded on the “whom do you know basis”, and bribes. Besides, the tenders are awarded in exaggerated prices. The perception of people is that the huge sums of money which could have been used to execute projects and programmes to productively affect the lives of people are lost.

Revenue Collection and Accountability

355. There is adequate evidence of revenue performance and discussion of reforms carried out to boost revenue by the national government. However, there is very little narrative, if any, of how revenue is accounted for. At the county level, budgetary statistics were not discussed. Data on the internally generated revenues of counties were not provided. This made it difficult to assess the fiscal capacity of the county governments. However, it is known that many counties do not have adequate capacity to efficiently administer their own taxes. It follows that there is heavy dependent on the revenue shared by national government.

Project Execution

356. Participation in Economic Policy Making. The Constitution of Kenya and the enabling legislations (for example, Public Finance Management (PFM) Act 2012) provide for public participation. By law, every county is expected to set up a County Budget and Economic Forum (CBEF). This idea is good. However, the budgetary process and planning at the county level, it is reported, is generally not open and participatory, and accountability is very limited. The CRM was informed that even when consultations are held, the projects proposed by the communities are hardly considered for execution. Furthermore, the CRM was apprised that those invited to participate in economic policy decisions making are usually selected based on their loyalty to those in the authorities.

Special Fund - Equalisation Fund

357. During the consultations, specifically in Isiolo County, where participants were drawn from three counties (Isiolo, Marsabit and Moyale), the CRM was informed that the Constitution of Kenya provides for Equalisation Fund (EF), which the national government can use to provide socio-economic amenities - health facilities, water, roads and electricity - in areas that are marginalised. The CRM was further informed that the constitution specifies that 0.5% of the national budget should be paid into the EF. This provision (see Article 204 and also see Article 216) was confirmed from the Constitution of Kenya by the CRM. The intent of this fiscal instrument is just and good as it will enable the beneficiary counties meet the national minimum standards and further inclusive development. However, the CRM was informed that the EF is yet to be implemented because the authorising law to operationalize it has not been passed by parliament. During the consultative forum with the national government officials, the CRM learnt that the National Treasury had passed regulations in 2015 under the PFM Act, 2012 to administer the EF; and that the EF Board was established thereafter. The CRM further learnt that there is a court case on the matter; and that further action can only be taken after the pronouncement of the court.

Budget Holdback by Parliament

358. A major challenge in some of the counties visited by the CRM is that it takes a long time before the annual budget is passed by parliament. The delay in budget approval, it is explained, was due to the misunderstanding between the executive (the Governor) and members of the county assemblies (parliament). A direct effect of this is the inability to fully utilize the approved budget at the end of the fiscal year.

4.5.3 Recommendations of the Panel

359. The Panel recommends the following:

- i) At the moment, emphasis on good public finance management tends to focus more on the national government. Huge financial resources are disbursed to the county governments. The counties are expected to spend in line with financial rules and regulations, and treasury circulars. Constant checking and verification of the financial records is obligatory. Accordingly, the Government needs to establish effective internal control mechanisms of PFM at the county level. A comprehensive study of the financial management of the counties is vital to identify the weaknesses to take corrective measures. *(The National Treasury, and Ministry of Devolution and Planning)*
- ii) The Government needs to address capacity constraints. Fiscal transparency requires that information on all aspects of the budget should be available to the public. A sizable proportion of the general public needs a clear understanding of budget issues because of the technical and highly specialised nature of the subject matter. Therefore, the Government needs to embark on fiscal literacy of the general public about budget and planning. Also, it is necessary for the Government to engage the media, community-based organisations and the civil society organisations to participate in the budget process since their roles can foster transparency and accountability in the use of public resources. *(The National Treasury)*.
- iii) Devolution of functions requires that adequate revenue be allocated to the counties to carry out the functions they are assigned. In some of the consultative forums, the CRM was told that the devolution of health care services has some challenges. The counties do not have the financial resources to adequately provide health care services and that the matter should be revisited. Incessant strikes by health workers, arising from the non-payment of salaries, remain a big challenge in some counties. Given that devolution is still at infancy, a careful re-examination of the decentralisation of health care is desirable for effective service delivery *(The National Treasury and Ministry of Devolution and Planning)*
- iv) The procurement mechanisms of the national and county governments need to be comprehensively evaluated to inform policy decision *(National Treasury and Ministry of Devolution and Planning)*.
- v) The consultation process needs to be strengthened. This is to ensure a buy-in by a significant segment of the society to guarantee ownership and acceptability of

the policies and programmes, which will in turn promote participatory governance. *(Ministry of Devolution and Planning)*

- vi) The government is advised to streamline various development funds to avoid overlap and duplication, and also to enhance efficiency and effectiveness. A comprehensive audit of the funds needs to be carried out. In addition, the full names and addresses of the beneficiaries of each of the funds should be published regularly. *(The National Treasury, Ministry of Devolution and Planning)*
- vii) Payroll audits (both at the national and county levels) need to be carried out on a regular basis to identify ghost workers (if any), fill data gaps and identify control weaknesses for corrective measures *(Salaries and Remuneration Commission)*.
- viii) There is need to check the rising huge wage bill that constitutes a significant proportion of the domestically generated revenue. The policy of staff rationalization is good and needs to be sustained, and the allowances paid to staff be curtailed, while eligibility also needs to be tightened. Similar measures need to apply to elective posts. *(Salaries and Remuneration Commission, National Treasury, Parliament)*

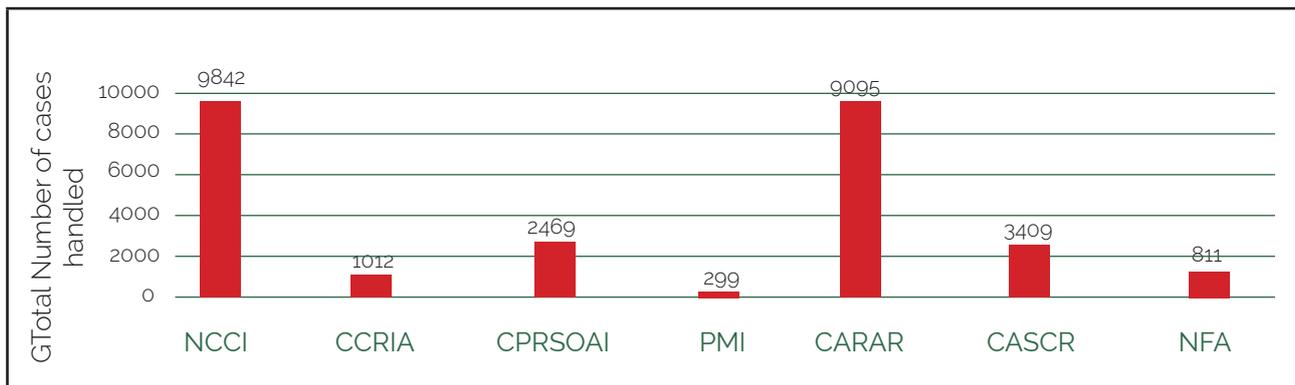
4.6 OBJECTIVE FOUR: FIGHT CORRUPTION IN PUBLIC ADMINISTRATION AND MONEY LAUNDERING

4.6.1 Summary of the Country Self-Assessment (CSAR)

360. The CSAR notes that corruption is a major social challenge in the country because it hinders development, because corruption limits the resources available to the government to address poverty. Also, corruption destroys social values and enfeebles democracy and good governance. The CSAR presents the various measures taken to fight corruption. Among the measures are the Ethics and Anti-Corruption Commission Act, 2011 that led to the establishment of the Ethics and Anti-Corruption Commission, EACC (a body that replaced the Kenya Anti-Corruption Commission, KACC), the Leadership and Integrity Act 2012 and Public Officers Ethics Act 2003. There is the National Anti-Corruption Campaign Steering Committee (NACCSC), established by the President to co-ordinate the anti-corruption campaign across the country.
361. The CASR explains that the sources of laundered money come from corruption, fraud, human and firearms trafficking, cattle rustling, robbery, tax evasion, insider trading and market manipulation and a host of others. Three key stages (placement, layering and integration), according to the CSAR, are involved in money laundering. The Proceeds of Crime and Anti-Money (POCAMLA) Act, 2009, the Mutual Legal Assistance Act 2011 and the Prevention of Terrorism (Amendment) Act, 2012 are some of the laws enacted to check money laundering. In 2012, the Financial Reporting centre (FRC) was created.

362. Figure 18 summarises the cumulative number of cases handled by EACC and action taken over the period 2008-2013. The CSAR presents that the total number of cases heard by EACC fell from 7,326 in 2011 to 3,592 in 2012. Over the same period, the number of cases where EACC advised the complainants to seek civil redress fell by 64.3%. The CSAR also provides statistics of the total number of convictions and acquittals of economic crimes over two financial years, namely, 2011/2012 and 2012/2013. The number of convictions and acquittals in 2011/2012 stood at thirty (30) and fifty (50), respectively and the figures for 2012/2013 were correspondingly seven (7) and thirteen (13).

Figure 18: The Cumulative Number of Cases Handled by EACC and Action Taken, 2008-2013



Sources: The Data used were derived from 2nd Kenya Self-Assessment Report, 2016, Chapter 3 and EACC's Annual Reports

Notes: NCCI means Number of corruption cases investigated; CCRIA means Criminal cases referred to other investigative agencies; CRPSOAI means Cases referred to public service organizations for administrative intervention; PMI means Pending more information; CARAR means Complainants advised on the right authority to report; CASCR Complainants advised to seek civil redress; NFA means No further action.

363. Some key challenges inhibiting the fight against corruption were contained in the CSAR. They include the slow judicial process and adverse court decisions which affect the operations of the EACC, acute shortage of human capacity for the EACC to carry out its functions nationwide (the situation is exacerbated with the devolution of functions), and the very lack of an anti-corruption policy that should serve as a point of reference in the war against corruption by the anti-corruption watch-dogs.

4.6.2 Findings of the Country Review Mission

4.6.2.1 Progress Made Since 2006

364. Legislative and Institutional Framework. The CRM found that the GoK in the fight against corruption has recorded some achievements. This is evident from the various laws passed to strengthen the institutional framework for dealing directly and indirectly with corruption. The GoK is committed to fighting corruption as it continued to implement new legal and institutional frameworks that promote ethics and integrity, and also encourages access to

information. For instance, the Constitution of Kenya and laws on financial management emphasize the principles of transparency, accountability and integrity.

365. Similarly, several specific legislations were passed to check money laundering. Some examples are: the Proceeds of Crime and Anti-Money (POCAMLA) Act, 2009; Mutual Legal Assistance Act 2011; and the Prevention of Terrorism (Amendment) Act, 2012. The Government also established Financial Reporting Centre (FRC), considered as the country's financial intelligence unit, in 2012.
366. Huduma Initiative. The Government has established Huduma Centres to serve as a one-stop shop for processing services offered by the public sector. The Huduma Centres have improved accessibility to the services provided by the government, reduced personal contact and minimized the opportunity to offer bribes and above all improved revenue collection.
367. Evidence of Corruption Cases. There are proofs of corruption cases handled and actions taken by the anti-corruption bureau, the EACC, in the period 2006 to 2016. However, statistics on convictions and acquittals are available for only two financial years (2011/2012 and 2012/2013) in the CSAR. Further enquiry by the CRM shows that a total sum of KShs 9.768 billion was traced and recovered by the EACC in the period between 2005 and 2016 (EACC, 2016). In terms of distribution of this amount, the sum of KShs 9.171 billion was recovered from fixed assets and the balance of KShs. 597 million was in cash. The EACC statistics also reveal that: 434 cases related to corruption and economic crimes are being investigated; 187 cases being investigated for unethical behaviour; and 536 cases are pending in courts involving 891 persons arraigned for corruption.
368. A National Anti-Corruption Plan (NACP) had been developed and it is being implemented. The EACC conducts surveys on ethics and corruption, undertakes system reviews on corruption and risk assessments, public education and awareness creation. In one its surveys in 2012, findings revealed that greed, poor remuneration, poverty and shortcuts in trying to access government services were the major factors responsible for corruption. The ethics and anti-corruption surveys enable the government to ascertain the perception of the general public about corruption. The development of a National Ethics and Anti-Corruption Policy is in progress.
369. Recent Efforts in Fighting Corruption and Economic Crimes. Piqued by the ugly development about corruption and the concern about how to make a success of the anti-corruption war, a Task Force on the Review of Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (hereafter referred to as Task Force) was appointed by the President in March, 2015 with the Attorney-General as its Chairperson. The terms of reference of the Task Force was to review the existing legal, policy and institutional arrangements to fight corruption and make recommendations to strengthen the anti-corruption mechanisms. The report of the Task Force is very comprehensive and telling as it carried out a situation analysis of the various aspects of the subject matter, identified the problems and made recommendations. The wide-ranging recommendations of the Task Force encompassed legal, policy, institutional frameworks in the devolved system of government, partnerships

and multi-agency collaboration, technical assistance, capacity-building, strict adherence to the Constitution of Kenya, and the rule of law and due process, among others, in the fight against corruption.

370. Some of the recommendations of The Task Force are: (i) fighting corruption within the framework of the Constitution of Kenya, and the adherence to due process and the principles of fair trial irrespective of the pressure from the society on the fight against corruption; (ii) the development of new laws to support the fight against corruption; (iii) all public and private entities are required to put in place measures to prevent bribery and corruption, and would be held liable for failure to do so; (iv) the membership of Ethics and Anti-Corruption Commission (EACC) be increased to five and the terms of service should be part time; (v) the capacity of the key agencies directly involved in fighting corruption and those of other institutions whose functions contribute to the fight against corruption be strengthened; (vi) multi-agency linkage and collaboration in the fight against corruption; (vii) a whistleblower be protected; and (viii) improve the capacity of various institutions to fight corruption and economic crimes.
371. During the consultative forums, the CRM was informed that the Government has accepted the recommendations of the Task Force and that implementation of some of the proposals had commenced. Indeed, the CRM was told that pursuant to the recommendations of the Task Force, the Ethics and Anti-Corruption (Amendment) Act, 2016 was enacted, the establishment of a High Court Division on Anti-Corruption and Economic Crimes through Gazette Notice No. 136 of 11th December 2015 to hear and conclude cases speedily, while several anti-corruption bills (the Anti-Corruption Laws (Amendment) Bill, 2016 to operationalize the legislative framework for fighting corruption, Whistle Blower Protection Bill, 2016, Computer and Cyber Crimes Bill, 2016, Data Protection Bill, Electronic Transactions Bill and Bribery Bill, 2016) are underway and the appointment of an inter-agency committee to oversee the implementation of the recommendations of the Task Force. The CRM acknowledges the various recommendations of the Task Force and the positive steps taken thereafter by the Government.

4.6.2.2 Challenges

372. In spite of the achievements in creating the tool-kit to deal with corruption, which includes the creation of numerous institutions dealing with the matter, including EACC, Parliamentary PAC and PIC, DPP, AG, KENAO, Police, Judiciary, the Controller of the Budget, the public and the financial sector regulatory authorities (and attendant laws), the fight against corruption has continued to face serious challenges and is far from being won.
373. The participants in most of the consultative forums expressed that the level of corruption is very endemic and systemic, more than ever recorded in the country's history. The CRM found that the various ratings on Kenya's economic governance are fretting (examples are: the Global Ease of Doing Business Report 2014 that ranked Kenya 136 out 189 countries considered in its sample; and that Kenya occupied 115 position out 144 countries evaluated by the Global Competiveness Report for the year 2014. That, also in 2014, Kenya's position in the Global Corruption Perception Survey Index was 145 out of the 174 countries rated).

374. *Poor Co-ordination.* The various institutions/organizations are poorly coordinated making follow-through of corruption cases to a final determination a difficult task and time-consuming process. While the original Ethics and Anti-Corruption Bill and the Leadership and Integrity Bill initially set a higher threshold for the conduct of state/public officers in accordance with the spirit of the constitution, the subsequent Parliamentary Acts passed to implement them were watered down thereby reducing their effectiveness significantly.
375. *Weak vetting Mechanism.* The new process of appointing state and public officers and the concomitant vetting mechanism turned out to be elusive with various integrity challenges facing the appointing authorities. Difficulties are encountered in initiating lifestyle audits, establishing authenticity of background checks of prospective appointees/employees (especially those residing outside the country) and monitoring state officers' bank accounts opened and operated abroad.
376. Conflict of Interest. There is the unresolved issue of conflict of interest. For example, in relation to state officers engaged in other duties in alternative employment such as those who are directors of private companies or are running the companies through proxies.
377. Slow Judicial Process. It is generally acknowledged that the country's judicial process is very slow, resulting in many cases going without hearing for a very long period of time. This impairs the wheel of justice and gives corrupt public officers a favourable comfort zone.

Challenges in fighting money laundering

378. The main challenge in combating money laundering is inadequate administrative capacity, including limited capacity of financial institutions and other relevant bodies to detect, investigate and prosecute money laundering.
379. Other challenges include: (i) Kenya's location and porous borders which make the country an important transit point for drug trafficking and money laundering; (ii) a lack of robust co-operation among countries in the fight against money laundering; (iii) a limited capacity in the financial institutions and relevant bodies to detect, investigate and prosecute money laundering; and (iv) inadequate public sensitization about the dangers and perils of money laundering.
380. The perception is that Government statements about the willingness and commitment to combat corruption have fallen far short of actual action. The elaborate tool-kit, which has been put in place (in terms of institutions, structures and legal provisions), does not seem to be working effectively.

4.6.3 Recommendations of the Panel

381. The Panel recommends the following:

- i) The capacity of investigators needs to be enhanced to ensure that they have the requisite skills to fight money laundering. There is need for proper coordination between law enforcement agencies and the Financial Reporting Centre to ensure success in their investigative efforts. (Office of the Attorney General, EACC)
- ii) The Government needs to continue to sensitise the general public on the dangers of money laundering and strengthen anti-money laundering compliance. (Office of the Attorney General, EACC)
- iii) The Government needs to develop a robust mechanism for collecting and maintaining comprehensive statistics on investigations, prosecutions and convictions related to money laundering. (Office of the Attorney General, EACC)
- iv) Data on cases of money laundering need to be compiled and published quarterly and annually by the Ethics and Anti-Corruption Commission. (Office of the Attorney General and the EACC)
- v) The Government is advised to fully implement the recommendations of the Task Force on the Review of Legal, Policy and Institutional Framework for Fighting Corruption in Kenya. For effectiveness, there is need to prioritize by classifying the recommendations into short run and long-term implementation plans (Office of the Attorney General).

4.7 OBJECTIVE FIVE: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONISATION OF MONETARY, TRADE AND INVESTMENT POLICIES AMONG THE PARTICIPATING STATES

4.7.1 Summary of the Country Self-Assessment (CSAR)

382. The CSAR states that Kenya is a member of the East African Community, the Common Market for Eastern and Southern Africa (COMESA), the Inter-Governmental Authority on Development (IGAD) and part of the twenty-six (26) countries negotiating the COMESA-EAC and Southern Africa Development Community (SADC) Tripartite Free Trade Area that has market Integration, infrastructural and industrial development as its major planks. In the CSAR, there was a discussion of the measures being taken to promote regional integration. Some of the instruments include infrastructural development (e.g., the Lake Victoria development programme), trade liberalisation programme involving reduced tariffs, elimination of exchange rate controls and non-trade barriers (NTBs), harmonisation of payments system with EAC states, and the implementation of the EAC regional Competition Policy and Law, and regional initiatives to harmonise banking supervision.

4.7.2 Findings of the Country Review Mission

4.7.2.1 Progress Made Since 2006

383. Membership of IGAD. Kenya has signed and ratified the EAC regional treaty. The country is now a member of the Inter-Governmental Authority on Development (IGAD). The sustained implementation of trade liberalization has fostered trade relations. The payment system with the EAC member states has been harmonised. The quantum of trade with EAC members has increased.
384. Increase Exports and Mutual Agreements. Cross border rules have improved, thereby facilitating free movement of goods and services, and people between Kenya and member states of the EAC. Kenya's exports to the EAC as a percentage of the total exports stood 24-47% since 2006. Kenya's exports to COMESA region currently is estimated at 35%. These exports are largely destined to Zambia (13%), Uganda (10.2%), Rwanda (2.2%), Egypt (5.1%), and Tanzania which is a non-COMESA but Tripartite member (6.3%).
385. The member states of the EAC have signed Mutual Recognition Agreements (MRAs) such as the mutual recognition of academic qualifications and the elimination of payment of fees for work permits. Kenya is a major player in the regional initiatives to harmonise banking supervision.
386. Establishment of EAC Market. The protocol on establishment of the East African Community Common Market provides for the free market movements of goods, labour, services and capital. From the time the protocol was adopted, the EAC continues to embrace the free movement of labour. In addition, some of the member countries have signed to a single entry visa for non-EAC member countries. The EAC Customs Union Protocol likewise provides service suppliers, providers and consumers from across the region with guarantees of equivalent treatment to local providers. It was expected that Partners States would progressively open up some sub-sectors within the following seven broad sectors:
- i) Business and professional services;
 - ii) Communications services;
 - iii) Distribution services;
 - iv) Educational services;
 - v) Financial services;
 - vi) Tourism and related services; and
 - vii) Transport services.

387. In addition, partners are expected to make commitments on the remaining following sectors:
- i) Health and social services;
 - ii) Construction and related services;
 - iii) Energy services;
 - iv) Environment services; and
 - v) Movement of natural persons.
389. ***Regional Expansion of Banking and Financial Services.*** Kenya is undoubtedly in the forefront of the removal of economic barriers. It has taken the initiative to expand financial services in the regional member countries. Some Kenyan financial institutions have established branches in the other EAC member countries. They are Kenya Commercial Bank (KCB), Equity Bank and Fina Bank, among others. These branches are in addition to the mobile telephony financial services, which extend across the region including M-Pesa services. Furthermore, Kenya continues to play an important role in promoting peace and security and is participating in ongoing efforts to restore stability in both Somalia and South Sudan.
390. ***Conflict Resolution.*** Other notable achievements include institutionalization of mechanisms for early warning about conflicts, refugee management, control of the proliferation of small arms, electro monitoring within member states and information exchange for monitoring external threats to the region.
391. ***Finance and Investment.*** There is significant leveraging of the regional programme in the promotion of trade and investments as well as development of regional infrastructure. The Customs Union's positive impact on increased intra-EAC trade and growth of revenue is felt and shared in all the Partner States. All the EAC countries have reported increased revenues since the operations of the EAC Customs Union were launched.
392. ***Transport and Communications.*** In the Infrastructure sub-sector, steady progress is maintained on the East African Road Network Project, in particular the Mombasa - Gatuna Road (Northern Corridor) and the Dar-es-Salaam - Mutukula Road (Central Corridor), which have been taken to the implementation stages. The completion of the re-construction of the Arusha- Namanga- Athi River road has boosted trade. Kenya continues to invest in improvement of the Northern corridor road network. In 2014, Kenya launched the LAPPSET road network, which links the Port of Lamu to South Sudan and Ethiopia, with the construction of berths at Lamu already in progress.
393. On the Railways sub-sector, there is the East African Railways Master Plan Study. Similarly, the projects of railways concession have been well sustained.

394. In the Civil Aviation sub-sector, the East African Community established the regional agency to oversee the implementation of the International Civil Aviation Organization's (ICAO) standards and practices towards the enhancement of aviation safety and security.
395. *Agriculture and Food Security.* EAC continues to place emphasis on agriculture and food security. During 2006, the EAC Partner States adopted and signed the instruments for the development of Agriculture and attainment of Food Security for the Community, including the Agriculture and Rural Development Policy and the Agriculture and Rural Development Strategy.
396. *Energy.* The serious effects of the drought on the regional economies experienced in the recent past have galvanized attention on urgent measures to redress the energy deficit in the region. The East African Power Master Plan envisages a timeframe of up to seven years to a full-fledged Regional Power System with the creation of a Power Pool as a central feature.
397. *Tourism and Wildlife Management.* A major breakthrough has been made in the tourist sector with the launching of joint marketing of East Africa as a single tourist destination. Discussions on modalities for the introduction of Single Tourist Visa are almost completed.
398. *Good Governance, Private Sector and Civil Society.* The EAC regional integration process is anchored on a firm foundation of peace, stability and prosperity, based on good governance, rule of law, respect for democratic and human rights; and the participation of the people in a market-led regional integration process. This recognition has placed good governance at the centre of East African regional integration and development.

4.7.2.1 Challenges

399. The EAC member states have been working on various fronts to deepen economic cooperation. However, significant efforts are required in establishing a customs union and a common market; putting in place a clear road map for a comprehensive regional infrastructural development; discussing the protocols of a monetary union; and initiating the process of harmonization of monetary and exchange rate policies, payment and settlement systems, financial sector supervision, fiscal policies, coordination and harmonization of statistics, and regionalization of the financial sector.
400. There are also challenges encountered in the process of integration. These include: lack of clear and shared policy priorities, for example, the recent launch of a new education policy in Tanzania that is not in harmony with those of the other member states; practical handles in advancing customs union and common market; limited public awareness and participation; fear of loss of control over national policies; and uncoordinated policies at the regional level, for instance, Vision 2030 for Kenya and Vision 2025 for Tanzania.

401. Furthermore, there are several pending issues that require resolution. They comprise the existence of non-tariff barriers; enhancement of free movement of labour, capital and goods and services, development of cross-border infrastructure, financial and fiscal integration, and effective public involvement. The business community, especially the manufacturing sector, has identified other challenges. Among the leading issues are the delay to gazette the revised EAC rules of origin that were adopted by the Council of Ministers in 2014, double taxation with adverse implication for revenue generation, lack of reciprocity from other member states of the EAC and the presence of counterfeits that encumber trade in locally produced goods.

4.7.3 Recommendations of the Panel

402. The Panel recommends the following:

- i) Kenya is a major player in the EAC. The Government of Kenya is, therefore, advised to spearhead the articulation of a compensatory mechanism whereby any member state that records revenue loss due to the removal of tariffs and trade barriers is adequately compensated (The National Treasury, Labour & EAC Affairs, CBK).
- ii) An important recommendation in the 2006 APRM report was that Kenya's activities in regional integration be made known to the general public through sensitisation using radio and television programmes, debates and discussions, among others. The idea is to promote regional integration between Kenya and her neighbours. This has not been achieved to the fullest degree possible. There is need for the Government of Kenya to intensify awareness about regional integration [Ministry of Labour & EAC Affairs, The National Treasury, CBK]

4.8 OBJECTIVE 6: DEVELOP AND IMPLEMENT TRADE AND INVESTMENT POLICIES THAT PROMOTE ECONOMIC GROWTH

4.8.1 Summary of the Country Self-Assessment (CSAR)

Trade and Investment Policies

403. The CSAR discusses the various legislations that Kenya has enacted to promote trade, investment and economic growth. It indicates that the Investment Promotion Act (IPA) of 2004 is institutional and legislative framework governing Kenya's efforts at promoting investment. Other important regulatory institutions on investment in Kenya are the Central Bank of Kenya (CBK), the Export Processing Zones Authority (EPZA), the Capital Markets Authority (CMA), and the Nairobi Securities Exchange (NSE), the National Environment Management Authority for environmental certification and audit, and the Communications Commission of Kenya on regulation of investments in the ICT sector. The CSAR draws attention to government's reforms (competition policy, tax administration and labour legislation) directed at promoting trade and investment. The government has prioritized human capital development over the past five years, through vocational training, and

modernizing infrastructure in order to reduce the cost of doing business. Efforts at promoting foreign direct investment (FDI) have not been very successful, particularly in manufacturing, services and agro-processing. To boost FDI inflows, Kenya joined the Multilateral Investment Guarantee Agency (MIGA) and the African Trade Insurance Agency which guarantees investors against non-commercial risks, and the International Centre for Settlement of Investment Disputes (ICSID). Also, Kenya has extended its network of international investment agreements to several countries.

404. Historically, Kenya's trade policy development has evolved through import Substitution Policies (1960s-1980s), trade liberalization through Structural Adjustment Policies (SAPs) of the 1980s, and export-oriented policies since the 1990s. Presently, Kenya's trade regime is guided by market-driven principles of liberalization under the World Trade Organization (WTO).

Extractive Industry Management

405. The CSAR indicates that Kenya has long been endowed with a variety of minerals, including gold, diamond, ruby, titanium, gemstones, soda ash, fluor spar and rare earth. Until now, mapping and exploitation of these minerals either through small-scale artisanal activity or large-scale commercial operations. Oil and other mineral resources have been identified as an additional priority sector under the Economic Pillar of Kenya Vision 2030. Due to the high number of applications for various exploration/mining licenses, the Ministry established criteria for vetting applications before they are forwarded to the Prospecting and Mining Licensing Committee (PMLC) for consideration.
406. New discoveries of oil in Turkana have reinvigorated the importance of the extractive industry to Kenya's economy and have the potential to spur faster economic growth, job creation and to be an important source of fiscal revenues. However, growth of this sector brings forth sector-specific challenges regarding the need to design an appropriate governance structure that should ensure that the benefits of the mineral wealth benefit all the stakeholders

4.8.2 Findings of the Country Review Mission

4.8.2.1 Progress made since 2006

Trade and Investment

407. Kenya has taken steps to facilitate trade and investments into the country. It has enacted various legislations that have improved the businesses environment and enhanced the ease of doing business significantly. Yet, FDI inflows continue to remain modest.

408. Various steps have been taken to develop capacity for technology adoption and value addition and integrating MSMEs into the market value chains, especially in the agriculture sector. While export products and markets are now diversified, this is still limited to agricultural products.
409. The country's membership to the EAC has enabled it to conduct its external trade engagements at the EAC level and allows it to take into account commitments at the regional level. However, despite successfully using Export Processing Zones (EPZ), the Manufacturing Under Bond (MUB) and the Duty Remission Scheme to promote exports, Kenya has lost its share in exports of manufactured products to the regional because of fierce competition.

Extractive industry

410. Kenya is undertaking broad-based reforms to ensure the extractive sector develops sustainably. A comprehensive set of legal and policy instruments have been adopted, which includes the Mineral and Mining Policy 2016, approved by cabinet, and a consolidated and progressive Mining Act 2016, enacted by Parliament. The Petroleum Bill passed by the National Assembly is awaiting approval by the Senate. Kenya has also drafted and validated through stakeholder processes a set of Mining Regulations to provide more specific guidance for implementing mineral-led development.
411. The legal frameworks include core principles for mineral sector governance which considers ownership, transparency, equity, participation and environmental sustainability as well as linkages. For example, the recently adopted Mining Act vest ownership of all minerals "in the Republic in the national government, in trust for the people of Kenya." The Act includes provisions for small scale mining and areas reserved for people-oriented artisanal and small scale mining operations. The Act also established the National Mining Corporation which shall be the investment arm of the national government in respect to minerals. To facilitate transparency through price discovery, the Act further establishes a Metal Commodity Exchange as well as a geoscience database. Holders of large scale mining license with capital expenditure exceeding a prescribed threshold are obliged to list 25% of their equity on the local stock exchange. The policy frameworks include strategies to ensure that benefits accruing from mineral exploitation are shared equitably between the national and county governments including local communities. It also include provisions for a stable, transparent and predictable and competitive fiscal regime, that is able to maximize revenues from mining while at the same time attracting long term investment in the mining sector.
412. Kenya operates a contractual mineral regime through provisions for mineral development agreements for large scale mining operations beyond \$500million. However, in the interest of good governance, the principles guiding the negotiation of such contracts are spelt out transparently in the law. The contracts negotiated between government and mining companies remain secondary and do not substitute for the law or constitution of Kenya. The contracts agreed to with the government have to be ratified by the parliament and the senate as well as made public.

413. With the support of the World Bank, the Government is implementing the Kenya Petroleum Technical Assistance Project (KEPTAP), which is a six-year project launched in 2015 to strengthen the GoK's capacity to manage the petroleum sector and wealth for sustainable development. The project priorities include: reform and capacity building; revenue and investment management; sustainable impact of oil and gas industry; and project management.
414. In addition to the policy and legislative frameworks, there are also specific regulations to guide implementation for a broad-base and sustainable mining sector. Key among them includes local content and strategic minerals regulations. There are institutional innovations to better implement the frameworks including the Mineral Board to guide allocation of licensing.
415. Progress has been made to mobilize greater revenues from the sector. The GoK has stepped up its institutional toolbox to minimize revenue leakages through illicit financial outflows from the economy including the extractive sector. Kenya has adopted the Tax Procedures Act of 2015, which aims to harmonize tax administration processes in ways that make tax compliance easier. The Act includes provisions to punish individuals who assist tax payers to create tax avoidance scheme or abets a tax payer to evade taxes. It provides the Tax Commissioner with additional powers to investigate transfer mispricing arrangement between related parties, where the Commissioner is of the view that the arrangements are designed primarily with the intent to avoid or reduce tax liability. Royalty collection has increased from Ksh 21 million to Ksh 1.35 billion, making mining the second highest growth sector at 14.7%. It was also noted during the stakeholder consultations that revenue collection from transfer pricing audits has doubled from \$52million in June 2012 to \$107million in June 2014. The effort of GoK in this respect is commendable.

4.8.2.2 Challenges

416. Despite recent improvements in the business environment, the growth of trade and investments is constrained by lack of harmonized rules and regulations and poor business regulatory framework.
417. Other challenges are a narrow export base comprising mainly of primary products, limited value addition and high costs of production. Similarly, foreign direct investments are constrained by challenges to accessing land for investment.
418. Kenya is emerging as an important mineral-rich economy in the region. Although the share of minerals to the economy is currently relatively small, less than 1.0% of GDP, it remains the fastest growing sector in the economy, with over 13% growth rate in 2014¹. However, translating the transformative potential of mineral based development into concrete benefits for citizens and the economy will require addressing a number of binding constraints in the sector:

¹ Kenya National Bureau of Statistics and others (2015). *Kenya Demographic and Health Survey 2014: Key Indicators*. Nairobi.

419. There is need to manage the expectations that have emerged as another governance priority for the extractive sector. The experience of other mineral-rich African countries shows that compared to other sectors, the mining sector creates relatively little direct and productive employment. Indeed, the share of mining jobs in a typical mineral economy is only about 1-2% of the overall employment. Kenya will therefore need to look beyond the direct employment provided by the sector, and instead seeks to develop effective strategies for leveraging the potentially massive number of indirect industries that could develop around mining, which could catapult the employment needs of the economy.
420. Land use planning and management also emerged as an important challenge. Balancing surface rights to land and sub-surface access to minerals resources is key to the sustainable development. Some riverine communities along extractive projects consulted pointed at incidents of displacement, environmental degradation and conflicts between locals and investors over access to community land for grazing. Left unaddressed, the conflicts around land may degenerate into society-wide crisis.
421. Ensuring the efficiency of land markets is a key challenge. Stakeholders informed the CRM that the mining, petroleum exploration and associated infrastructure projects are shaping land markets with resultant increase in prices. As a result of speculation, areas earmarked for mineral exploration and their linked infrastructure have witnessed increases in the prices of goods and services with adverse effects mostly on the poor and landless segments of the communities. The artificially induced high value of land imposes additional cost to project development through higher than average compensation for displacement and expropriation. Addressing the land use challenge will therefore require better coordination between the activities of the line administration including National Land Commission and the Ministry of Mines, Ministry of Petroleum as well as Transport, Agriculture and Infrastructure.
422. Capacity building came up as key area for strengthening mineral sector governance. Implementing local content policies will require targeted efforts to build capacity along the mineral value chain including skills development and training that meet the needs of the industry. Science, technology, engineering and maths should remain an important priority for repurposing the training curricular in schools to support efforts at developing broad-based linkages into the sector. Vocational skills will also be needed to maximize the planned infrastructure opportunities around extractive industry including pipelines and railways.

4.8.3 Recommendations of the Panel

423. The Panel recommends the following:
- i) Continue to improve the business environment, reduce red tape and provide a predictable regulatory framework for business. This will enhance the ease of doing business. (Government of Kenya, Ministry of Industrialisation and Enterprise Development)

- ii) Establish an information system on goods and services that will collect, collate and disseminate trade information through Business Information Centres (BICs). (Ministry of Industrialisation and Enterprise Development)
- iii) Develop and institutionalize capacity building and training programmes on technology, value addition and business procurement negotiation skills for the traders association and their members. (Ministry of Industrialisation and Enterprise Development, Producer Business Groups/Business Membership Organizations)
- iv) Develop and implement policies and strategies for adding local content, including value addition to minerals, and strengthen the link between the implementation of the Mining and Mineral Policy and Mining Act of 2016 with Vision 2030 and the National Industrialization Policy Framework, so as to provide an opportunity to transform the economy. (Government of Kenya)
- v) Develop and implement measures for strengthening the linkages of the extractives sectors with other sectors of the economy through promoting value addition activities in the extraction of the minerals. (Government of Kenya)
- vi) Develop and implement specific measures to prevent and minimize corruption in the sector, given the vulnerability of the mining industry to corruption, including addressing corporate corruption and the scourge of illicit financial outflows, which commonly occurs through transfer mispricing and trade mis-invoicing. (Office of the Attorney General, EACC).



SAMSUNG

EXIT





CHAPTER

FIVE



CHAPTER FIVE

5. CORPORATE GOVERNANCE

423. “Good corporate governance is not an end in itself. It is a means to support economic efficiency, sustainable growth and financial stability. It facilitates companies’ access to capital for long-term investment and helps ensure that shareholders and other stakeholders who contribute to the success of the corporation are treated fairly.” G20/OECD Principles of Corporate Governance¹.

5.1 Overview

424. Consultative Corporate Sector seminars held in November 1998 and March 1999 resolved that a Private Sector Initiative for Corporate Governance be established to:

- Formulate and develop a code of best practice for corporate governance in Kenya;
- Explore ways and means of facilitating the establishment of a national apex body [the National Corporate Sector Foundation] to promote corporate governance in Kenya;
- Co-ordinate developments in corporate governance in Kenya with other initiatives in East Africa, Africa, the Commonwealth and globally.

425. On October 8, 1999, the national code of best practice for Corporate Governance was adopted to guide corporate governance in Kenya, and mandated the Private Sector Initiative to establish the Corporate Sector Foundation, and collaborate with the Global Corporate Governance Forum, the Commonwealth Association for Corporate Governance, the African Capital Markets Forum, Uganda and Tanzania, in promoting good corporate governance.

426. The development of corporate governance in Kenya has also led to the establishment by the Centre for Corporate Governance of the Institute of Directors. These developments have influenced the internalization of corporate governance principles and objectives following the Commonwealth model by most companies which are listed in the Nairobi Stock Exchange and that are subject to the Capital Markets Act. Most family owned businesses, private companies, Micro, Small and Medium Enterprises, as well as the informal sector largely operate based on the principles of corporate governance contained in the Companies Act, which is modelled along the 1948 English Companies Ordinance. A new Companies Act, No 17 was passed in 2015 and has brought into operation corporate governance principles and objectives which reflect the APRM definition of corporate governance using the stakeholder inclusive approach.

¹ <https://www.oecd.org/corporate/principles-corporate-governance.htm>

427. This chapter is organized as follows: Implementation of the Standards and Codes of Corporate Governance is presented followed by an assessment of the APRM five objectives for guiding corporate governance.

428. APRM Corporate Governance Assessments are undertaken along five main objectives:

- Objective One: Promoting an Enabling Environment and Effective Regulatory Framework for Business Organizations and other entities.
- Objective Two: Ensuring Effective Leadership & Accountability of Organizations.
- Objective Three: Ensuring Ethical Conduct within Organizations.
- Objective Four: Ensuring that Organizations treat Stakeholders fairly and Equitably
- Objective Five: Organizations as Good Corporate Citizens

5.2 Implementation of Standards and Codes

5.2.1 Summary of the Country Self-Assessment

429. The CSAR indicates that over the years, Kenya has signed and ratified a wide range of international standards and codes which have since been domesticated and applied in Kenya. There are also continental and regional standards and codes to which Kenya has signed and ratified.

5.2.2 Findings of the Country Review Mission

5.2.2.1 Progress Made since 2006

430. The CSAR points out that before the passing of the Constitution in 2010, the ratification of an international instrument had to be followed by a domestic legislation in order for it to be authorised to be law in Kenya. This meant that the ratification of the instrument did not make it law and as a result, there were a number of standards and codes that Kenya had ratified but were not operative as no domestic legislation had been passed.

431. The passing of the Constitution in 2010 saw a total different dimension in how Kenya treats international instruments. International law is now recognized as part of Kenyan law. Article 2(5) of the Constitution provides that “the general rules of international law shall form part

of the law of Kenya.” Further, Article 2(6) provides that “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.” The implication of this is that as soon as Kenya signs a treaty, it takes effect in Kenya without there being a need for a domestic legislation to be passed. This has simplified Kenya’s approach to international instruments.

432. The Table 6 below indicates the Standards and Codes that need signing and ratification; and Table 7 shows the Standards and Codes that do not need ratification.

Table 6: Standards and Codes that have been signed and/or ratified

Standards and Codes	Adopted/ Signed	Ratified	Enacted	Date last reported	Reservations/ Notes
Worst Forms Of Child Labour Convention, 1999	June 17th 1999	May 7th 2001	May 7th 2001	28th August 2005	National legislation in place e.g. section 53 of the Employment Act.
Minimum Age Convention, 1973	June 26th 1973	April 9th 1979		27th August 2014	National Legislation in place e.g. Sections 56,57,58,59 of the Employment Act and Section 4 of the Children’s Act, Articles 27 &41 of the Constitution
Discrimination (Employment and Occupation) Convention (1958) ILO	June 25th 1958	May 7th 2001		26th August 2013	National legislation in place, e.g. section 5 of the Employment Act
Abolition of Forced Labour Convention (1957) ILO	May 12th 1954	January 13th 1964		National legislation in place e.g. Section 4 of the Employment Act, section 5 of Labour Relations Act and Article 30 of the Constitution.
Equal Remuneration Convention, 1951.	June 29th 1951	May 7th 2001		26th August 2013	National legislation in place e.g. Section 5(4) of the Employment Act.
Right to Organize and Collective Bargaining Convention (1949) ILO	July 1st 1949	January 13th 1964		30th August 2008	National Legislation in place e.g. section 54 of the Labour Relations Act.

Standards and Codes	Adopted/ Signed	Ratified	Enacted	Date last reported	Reservations/ Notes
Freedom Of Association And Protection Of The Right To Organize Convention, 1948.	July 9th 1948	Not ratified		N/A	The principles of this convention have been captured in national legislation e.g. section 4, 6&8 of the Labour Relations Act. Article 41 of the constitution 2010 recognizes these provisions. The East African Community member states have ratified the Convention and with the adoption of the East African Common Market Protocol there is need to ratify the convention so as to harmonize our labour regime with the rest of East Africa member states to facilitate free movement of persons, labour and services.
Forced Labour Convention (1930)	June 28th 1930	January 13th 1964		2011 (There is reference to the 2011 report though the report itself could not be traced thus no indication of a specific date.	There is in place a National Action Plan for the Elimination of Child Labour (2004-2015); Vision 2030 Second Medium Plan (2013-2017) identifies Child Labour as a challenge
Extractive Sector					
Extractive Industries	NO	NO	NO		
Transparency Initiative					

Source: APRM Kenya 2nd Self-Assessment Report February 2015

NB: There are no specific dates on when these conventions were enacted as most of the provisions in them have been incorporated in various legislations in Kenya.

Table 7: Standards and Codes That Do Not Need Ratification

Standards and Codes	Adopted	Notes
Accounting and Financial Reporting		
International Standards in Auditing - The Handbook of International Quality Control, Auditing Review, Other Assurance and Related Services Pronouncements (2010) International Federation of Accountants (IFAC)	Adopted	Kenya has recently made progress in closing the gap between national accounting and auditing practices and international standards, notably by adopting the IASs and ISAs as national requirements. However, compliance with the requirements of IASs and ISAs is partial, due to enforcement mechanisms that continue to evolve and are inadequate resources
International Financial Reporting Standards (IFRS) (2001) IASB (and updates to 2010)	1998	The Banking Supervision Department of the Central Bank of Kenya used its legal authority to require individual banks to disclose information in compliance with IASs. However, due to limited resources and the lack of supervision in Kenya, there are gaps between applicable accounting standards and the actual accounting practices. In the Self-Assessment Questionnaire submitted to IFAC by ICPAK in 2005, it was further confirmed that the requirement for adopting IFRS has been legalized for both listed and non-listed companies in the Companies Act in the latest amendment in 2002
Codes on industrial Safety and Hygiene, WHO		
Codes on industrial Safety and Hygiene, WHO		
Safety And Health In Mines Convention, 1995		National Legislation in place e.g. Work Injury Benefits Act section 12
Safety And Health In Agriculture Convention, 2001	Adopted	National legislation in place e.g. the occupational safety and Health Act of 2007
Protocol Of 1995 To The Labour Inspection Convention, 1947	Adopted	National legislation in place e.g. Labour Institutions Act Cap 234 Section 34,35,36 &37 of part V and the Industrial Training Act section 24
Prevention Of Major Industrial Accidents Convention, 1993	Adopted	

Source: APRM Kenya 2nd Self-Assessment Report February 2015

433. The countries representing the African continent including Kenya on the International Federation of Accountants (IFAC) possess many promising opportunities for growth and prosperity in the global economy and also present many distinct obstacles in their effort to embrace and implement the IFAC initiatives including the International Financial Reporting System (IFRS).
434. Kenya has adopted the IFRS. The CSAR points out that according to the UN, Kenya's biggest challenge is to guarantee trained persons who understand the use of IFRS and International Standards on Auditing (UNCTAD, 2008: 91). The other practical challenge that Kenya faces is that the body in charge of the qualification process and ICPAK are 2 different bodies. The disconnect raises challenges in ensuring that the qualification process keeps up with the application of IFRS issued by the IASB (UNCTAD, 2008:92) and therefore professional accountants may qualify without the proper understanding of IFRS.
435. The Private Sector Corporate Governance Trust published in 2002 the Sample Code of Best Practice for Corporate Governance in Kenya. The Code is neither prescriptive nor mandatory and is meant to assist companies develop their own governance codes. This code therefore is meant to act as a guide to Kenyan companies while developing their own codes on issues relating to corporate governance².
436. The Sample Code is inspired by various corporate governance principles including Principles of Corporate Governance in the Common Wealth (1999) CACG and the King Code of Governance for South Africa (I, II and III). Though the Code does not make specific reference to these principles it is acknowledged that these are central principles of corporate governance³.
437. One of the recommendations of the 2006 APRM Review Report was that the Central Bank should implement the Basel II principles which are applicable to Kenya. An updated Financial Sector Assessment Program (FSAP) conducted in 2009 noted tremendous progress in CBK's implementation of the recommendations of the 2003 FSAP relating to the Basel Core Principles for Effective Banking Supervision (BCPs). An EAC FSAP was also conducted in 2013 indicating tremendous progress in banking supervision. In 2013, the World Bank conducted a review of CBK's compliance with revised Basel Core Principles for Effective Banking Supervision issued in 2012 and the technical note is being finalized.

5.2.2.2 Challenges

438. There exists a gap between accounting education and the IASB's requirements in terms of the IFRS. There is no synchronization between the conventional university training and professional programs (UNCTAD, 2008:92). During the CRM meeting with the private sector, it was indicated that there are not enough properly trained accountants in Kenya to address IFRS requirements. The universities and training institutions have the opportunity to train accountants to meet the IFRS requirements

² http://www.ecgi.org/codes/documents/sample_code.pdf last accessed on 5th June 2014 at 11:58 a.m.

³ *Principles of Corporate Governance in Kenya and Sample Codes of Best Practice for Corporate Governance published by Private Sector Initiative for Corporate Governance.*

439. Accountants and professional bodies in Kenya have been unable to remain abreast of the standards (and changes) as issued by the IASB. As noted by UNCTAD (2008) Kenya lacks representation in the standards setting process. There are not enough professional accountants and organizations to contribute to the standards setting and as such, Kenya receives complete standards that must be adopted, some of which may not comply with local legislations and accounting requirements.

5.2.3 Recommendations of the Panel

440. The Panel recommends the following:

- i) Train more accountants and ensure that they meet the IASB's requirements in terms of the IFRS. *[Universities; accounting training institutions; and Institute of Certified Public Accountants of Kenya]*
- ii) Professional bodies should endeavour to stay abreast of international standards and codes. *[Institute of Certified Public Accountants of Kenya]*
- iii) Professional bodies should seek representation on standards and code setting process to ensure changes reflect their local legislation and requirements. *[Institute of Certified Public Accountants of Kenya]*

5.3 OBJECTIVE ONE: PROMOTE AN ENABLING ENVIRONMENT AND AN EFFECTIVE REGULATORY FRAMEWORK FOR BUSINESS ORGANIZATIONS AND OTHER ENTITIES

5.3.1 Summary of the Country Self-Assessment Report

441. The 2006 review identified various issues and came up with an action plan. This action plan entailed hasten and carry out judicial and legal reforms, increase efficiency in the judiciary so as to reduce the backlog of cases and introduce the use of technology in courts; review the Companies Act and other business related laws such as Bankruptcy Act, and the Insurance Act; develop and implement a legal framework to entrench Alternative Dispute Resolution (ADR) mechanism in the administration of justice; strengthen the numerous professional bodies and business organizations to improve on their regulatory role; simplify and reduce bureaucracy and cost of setting up business; strengthen the human, technical and administrative capacity of the Registrar General's office; improve access to and cost of credit, Strengthen micro finance institutions in order to improve access to credit to rural communities, create specialised institutions to provide credit to the various SME sub-sectors; increase the rate of road construction and repair, increase funding for maintenance of urban roads, expand, revitalize and modernize the railway network; remove inhibitors and create enablers to attract more business to list in the Nairobi Stock Exchange; improve the facilitation and the enabling role of the Capital Markets Authority; fight increased crime and insecurity; eliminate corruption; reduce taxation; upgrade and improve business and entrepreneurial skills.

442. According to CSAR since 2006 there has been substantial progress that has been made in promoting an effective regulatory framework for business organizations and other organizations. These include: the number of companies that are listed on the NSE has grown from 48 in 2006 to 60 in 2014. The CMA has been instrumental in the approval of the listing of the companies including Umeme Ltd, a company primarily registered in Uganda.
443. On the 7th November 2013, the government launched the Huduma Centre⁴. The services available at the Centres include assessment and payment of stamp duty for land, single business permit and search and registration of business names. This has made the access to these services easier.

5.3.2 Findings of the Country Review Mission

5.3.2.1 Progress Made since 2006

Regulatory framework

444. Since the last APRM review in 2006 and the promulgation of 2010 Constitution, various guidelines have been established as regulatory mechanism to strengthen the financial sector in Kenya. These include Capital Markets Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya Capital Markets (Registered Venture Capital Companies) Regulations 2007, Capital Markets(Conduct of Business) (Market Intermediaries) Regulations 2011, Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011, Capital Markets (Demutualization of the Nairobi Securities Exchange Limited) Regulations 2012, a Capital Markets Futures Exchanges Licensing Requirements Regulations 2013, Capital Markets Real Estate Investment Trusts Collective Investment Schemes Regulations 2013 and the Capital Markets Guidelines on the Approval and Registration of Credit Rating Agencies.
445. In addition, the Government made a significant step in implementing alternative dispute resolution provisions of the Constitution by the enactment of the Nairobi Centre for International Arbitration Act, No. 26 of 2013. The Act is in operation because the Government has appointed the Board of Directors for the Nairobi Centre for International Arbitration. The government also established the Insurance Regulatory Authority (IRA) in 2006 as a governmental agency tasked with the regulation, supervision and development of the insurance industry in Kenya. It is also mandated to assist in the administration of the Insurance Act Cap 487 Laws of Kenya. IRA also provides advice to the government on insurance policy issues.
446. All these steps have contributed to enhancing the enabling environment for business operations. Consequently, Kenya has moved up and breaks into the top 100 countries in World Bank's ease of doing business⁵

⁴ <http://www.deputyresident.go.ke/index.php/president-uhuru-kenyatta-launches-huduma-kenya-centre>.

⁵ <http://www.standardmedia.co.ke/brandingvoice/kcb/article/41/kenya-breaks-into-the-list-of-top-100-countries-in-world-bank-s-ease-of-doing-business>. November 9, 2016.

Box 5: Ease of Doing Business

Kenya has moved up 21 places in the World Bank's ease of doing business, as the country made its maiden entry into the top hundred category. It is a huge achievement for the Jubilee administration which has been keen to improve the business environment.

- Kenya moved to position 92 having put in place regulations that made it easier for small investors in Nairobi to start business, get electricity, register property, protect minority investors and resolve insolvency.
- Kenya's largest improvement came in the areas of resolving insolvency after it enacted the Insolvency Act 2016. The country moved up 44 places in this parameter.
- The Companies Act 2016 which makes it easier for minority shareholder to sue the company made the country to move up 25 places on the index of protecting minority shareholders.
- It is also easier to start a business with entrepreneurs taking on average 22 days to start a business. Kenya moved up 34 places on the ease of starting a business, with the government scrapping stamp duty fees for the nominal capital, memorandum and articles of association.
- Getting electricity went up by 21 places and protecting minority investors went up by 25 places.
- The reforms also saw the country bag prize of the third most reformed country in the world for the second year in a row.

The most significant changes are discussed below:

447. **Resolving Insolvency:** Insolvency Act 2015 has been published in the Kenya Gazette and it permits continuation of contracts for supply of essential goods or services during reorganization of the company.
448. **Starting a Business:** Currently Business Name Search and Reservation is being done online through e-Citizen portal and through mobile USSD code. Investors now do not have to travel to State Law Offices to do Company Name Search and Reservation. In addition, the Business Name Search and Reservation has been decentralized to the Huduma Centres established in major towns in Kenya. Applicants are also required to submit a unified company registration form (KRA, NSSF, and NHIF) with only Ksh. 10,000 (US\$100) regardless of nominal capital. All stakeholders confirm that the Huduma centre has eased doing business in Kenya, considerably.

449. With regard to Business Permit by the County Government of Nairobi, an online system has been developed that enables businesses to carry out a self-assessment to establish the fee to be paid and make payments using mobile phone money transfer.
450. **Registering Property:** Under property transfer, Digitization of land records in Nairobi Registry has been completed so as to allow online search for titles. Furthermore, a faster and simpler way to transfer property when application for land rent certificates consent to transfer/lease/charge and valuation for stamp duty is done in one simplified form. This has had the effect of reducing customer interactions points; hence make service delivery more efficient. This re-organization of processes has had the effect of reducing the number of procedures from 9 to 6. In addition, Title Search and Land Rent application process have been automated and investors are now to carry out Land Search using the e-citizen portal.
451. **Getting Electricity:** The re-engineering undertaken under this indicator has reduced number of days it takes to get electricity connection to business from 158 days as measure by World Bank to 78 days. The number of procedures reduced from the previous 6 processes to 3. The Kenya Power and Lighting Company has also set new service timelines which seek to have business customers get connected in less than 30 days. The recent initiative by Government entitled the “Last Mile” connectivity aims to enhance the electricity distribution network so as to avoid the past practice where investors were required to invest in building the transmission infrastructure.
452. **Getting Credit:** several measures have been implemented that resulted in wide coverage by the Credit Reference Bureaus. The Finance Act 2016, which was signed into law, amends the Banking Act to allow power, water and telecommunications firms to refer defaulters to credit reference bureaus. The Act which has been gazetted also allows lenders, the utility firms and credit reference bureaus to share borrower information with their counterparts in the East African region. Currently non-banking entities are now required to share the credit data for their customers. This has increased the threshold of people covered by the Credit Reference Bureaus to 9% by January 2015 as compared to 4.9% in 2014.
453. **Paying Taxes:** Continued implementation of the I-Tax system to allow for online filing of returns has simplified businesses compliance to payment of taxes. The improvements to the I-Tax system have reduced the filing periods of PAYE and VAT to 51 and 61 minutes respectively. The I-Tax system is also able to provide instant feedback as an acknowledgment to transactions triggered by taxpayers. Taxpayers are now able to file for refunds for VAT and Corporate Income Tax online using the I-Tax system eliminating the burden of having to make manual copies of documents to be submitted. From April 2015, KRA eliminated manual NIL returns for VAT and PAYE. All these are meant to ease compliance by taxpayers and encourage on-line filing.
454. KRA has been piloting the combination of employee related deductions for NSSF, NHIF and PAYE into one deduction. Effective 1st April 2015, the Tax Appeals Tribunal is operational following the appointment of the Chairperson and Members in line with the Tax Appeals Tribunal Act, 2013. This will allow for a faster resolution of past and present tax appeal cases.

455. **Dealing with Construction Permit:** To improve efficiency in the award of construction permits, the County Government of Nairobi is using an on-line system for contractors to apply for construction permits. The e-Construction permit has been operational since 2014 and has been integrated with on-line payment system called “e-Jijipay”. The Nairobi City County Finance Act 2015 has reduced the cost of obtaining building permits in Nairobi County from 1.1% of the construction cost to 0.5%.
456. **Trading Across Borders:** The Government has rolled out the National Single Window, an electronic system that is meant to enhance goods clearance at border points. The Government has also established a single command system and operationalized the 24/7 customs operations at the Mombasa Port. This has had effect of enhancing service delivery and improved the turnaround time at the Port. As a result it now takes 2 days to clear imports and 1 day for exports.
457. **Protecting Minority Investors:** The Government has enacted a new Companies Act 2015 which protects minority shareholders against director’s misuse of corporate assets for personal gains thereby strengthening shareholder rights and role in corporate decisions.
458. **Enforcing Contracts:** The Judiciary launched a Performance Management system in March 2015 where service standards have been set. Time limits to prosecute a case, make rulings and enforce judgments have been set. This will have the effect of eliminating the backlogs in the court system. Introduction of court mandated mediation promises a faster and less laborious way of settling family & commercial disputes. The enactment of Small Claims Court Act creates a Small Claims Court to deal with commercial disputes of less than Ksh. 200,000 (US\$2,000) and allows self-representation of parties.

Box 6: Business Environment in Kenya

The Government of Kenya has initiated specific policies for private sector development. These including the following:

Government has invested, and continues to invest, in the improvement of transport infrastructure. The Government has invested more than Ksh500 billion (about US\$5 billion) in the ICT, Energy and infrastructure related Ministries and State agencies to foster economic growth. The funds are meant for the execution and operationalization of Vision 2030.

The Economic Survey Report of 2016 indicates that the construction industry posted a 13.6% growth, which was twice the national average economic growth. The construction sector played a pivotal role in creation of the much needed youth employment and absorption of locally manufactured construction products such as cement.

Government's intention to increase public-private partner-ships (PPPs), particularly in large infrastructural projects presents an opportunity for private sector involvement in national development, and the multiplier effects of these developments will improve growth across the economy.

Government actions emerging from the Micro and Small Enterprises (MSE) Act will present opportunities for the inclusion of small enterprises in the formal economy.

459. Kenya has embarked on major infrastructure development and the recently completed Mombasa port second container terminal (CT2), one of the biggest projects in East Africa, is considered part of the Jubilee administration's flagship projects under Vision 2030. The terminal lies on a 100 acre piece of land which was reclaimed from the sea to create a 900-meter long quay. The project is set to be done in three phases.
460. The terminal would boost cargo volumes handled by East Africa's largest port by 50%. It can handle 550,000 twenty foot equivalent units (TEUs) per year and will ramp up Mombasa's existing annual cargo handling capacity from the current 1.05 million TEUs to 1.6 million TEUs.
461. The Government of Kenya has signed an agreement with JICA for credit worth US\$320 million for the construction of the second phase. It is expected that the cargo handling capacity would hit 2.5 million TEUs after completing the second phase. A bigger cargo capacity for Mombasa is crucial because of the recent discovery of oil and gas in the region. In addition, Mombasa port is the gateway to east Africa and funnels imports of fuel and consumer goods as well as exports of commodities like tea from land locked Kenyan neighbours, Uganda and Rwanda. In addition, the Government has invested over Kshs 10 Billion (USD100 million) towards the LAPSSSET project, which is a transport and infrastructure project bringing together Kenya, Ethiopia, and South Sudan. Among the seven key infrastructure projects of LAPSSSET is a thirty-two (32) berth port at Lamu which is expected to ease congestion at the Mombasa port and the Northern transport corridor, as well as lower the cost of shipping and movement of goods and trade in the region.

Category of organisations

462. The CSAR points out that there are a total of 60 listed companies on the Nairobi Stock Exchange⁶. These companies have invested in various sector including insurance, investment, manufacturing and allied, growth enterprise, energy and petroleum, construction and allied, commercial and services, telecommunication and technology, automobile and accessories and banking. These are public companies (within the private sector) and as such any individual or company is free to invest in them by buying shares offered by the Nairobi Stock Exchange.
463. There are a number of multinational companies in Kenya including Standard Chartered Bank, Barclays Bank of Kenya, East Africa Breweries and Kenol Kobil.⁷ The Governor of the Central Bank of Kenya and CEOs from the private pointed out during discussion with the CRT that a number of international corporations are sighting their headquarters in Nairobi due the improved enabling environment, regulatory framework and the business friendly atmosphere in Kenya.
464. One of the recommendations of the APRM Kenya first Self-Assessment Report in 2006 was the privatization of State Owned Enterprises (SOEs). The Privatization Act was passed in 2005 but only became operational on 1st January 2008. Since its coming into force, parastatals such as Kenya Electricity Generating Company (KenGen), Telkom Kenya, and Kenya Re-Insurance have been privatized. The government sold 25% of Safaricom (10 billion shares) in 2008, reducing its share to 35%. These are government linked entities. Although not a majority shareholder, the government still holds a substantial stake in these entities, and is able to control most Board and shareholder decision making processes. Safaricom has since turned to be the most profitable company in the East African region and the largest taxpayer in Kenya. It is anticipated that other SOEs will be privatized in the near future.
465. Family-owned businesses and micro, small and medium enterprises (MSMEs) make a vital contribution to the national economy⁸. Examples of family owned enterprises in Kenya include Tuskys Supermarket, NIC Bank and Access Kenya⁹. The companies are owned wholly or substantially by members of the same family. These enterprises are to be found in the financial, agricultural, manufacturing, education and real estate sector.
466. The informal sector is the part of the economy that is often not taxed or monitored by the government or regulatory bodies and is not included when computing the Gross National Product. A number of the family owned businesses, micro and small sized enterprises fall under this category. Some of the activities associated with the informal sector include selling fruits and vegetables, food operation, sale and processing, selling clothes and shoes

⁶ <https://www.nse.co.ke/listed-companies/list.html?start=50> last accessed on 23rd May 2014 at 3:41p.m.

⁷ <http://www.businessdailyafrica.com/Multinational-companies-pump-cash-into-subsidiaries/-/539552/2305826/-/fa285/-/index.html>.

⁸ <http://www.kpmgfamilybusiness.com/kenya-east-africa/> last accessed on 23rd May 2014 at 4:40 p.m.

⁹ <http://www.africog.org/blog/transitioning-from-family-owned-to-multi-billion> last accessed on 23rd May 2014 at 4:49 p.m.

(both second hand and new), kiosk selling various items, water kiosks, small retailers or hawkers who sell cereals, home suppliers, fuels and other goods, small manufacturing, production, construction and repair of goods¹⁰. The contribution to the Kenya economy by the various categories of organizations is presented in Table 8 below.

Table 8: Contribution to the Economy and Employment by Category of Organization

Category of Organisation	Contribution to the economy	Contribution to Employment
Listed Companies	As at 2012, the market capitalization of the listed companies stood at 36.3% of the GDP ¹ .	Several employees are employed in these companies. For example British American Tobacco Kenya Limited, one of the 60 listed companies, has 500 employees in Kenya ²
Micro, Small to Medium Enterprises	They play an important role to the economy mainly through their contribution to the country's GDP ³ . The sector's contribution to the Gross Domestic Product (GDP) has increased from 13.8% in 1993 to about 40% in 2008 ⁴ .	The sector is a source of livelihood for a high proportion of Kenya's labour force ⁵ .
Large unlisted companies	Although the contribution of these companies to the GDP is not documented, their contribution is substantial as they are some of the most dominant firms in their sectors of investment.	They employ quite a number of employees. For example, Nakumatt Supermarket one of the leading chains of supermarkets in Kenya has 4,700 employees in Kenya ⁶
Informal sector businesses	In 2012, the informal sector's contribution to the economy was estimated at 34 % of the GDP ⁷	The sector is the largest employer in Kenya. This is according to successive economic surveys. It accounts for more than 80% of new jobs created every year ⁸ .

Source: APRM Kenya 2nd Self-Assessment Report, February 2015; KNBS, 2016. Micro, Small & Medium Establishments

467. Several companies have listed their shares on the NSE by way of initial public offers. The initial public offers have been very successful. They include Safaricom's in 2008 which was oversubscribed by 532%¹¹. The market capitalisation in the NSE has also grown substantially and has surged crossing the KShs.1.9 trillion (US\$0.019 trillion) mark¹². The number of companies listed has increased from 48 to 60.

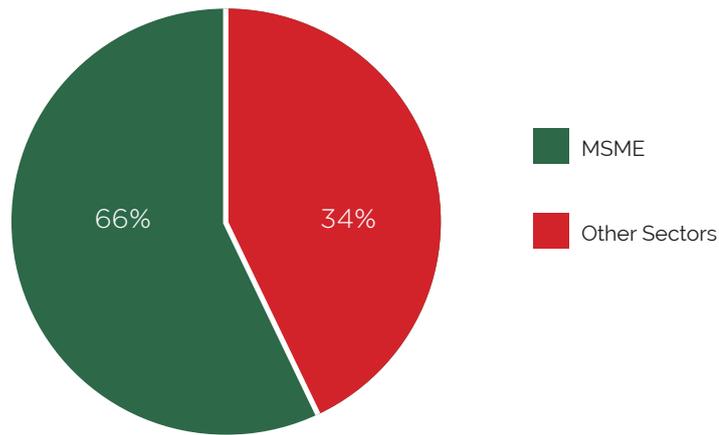
¹⁰ <http://www.nayd.org/PDF/The%20informal%20sector%20in%20Kenya.pdf> last accessed on 23rd May 2014 at 5:11p.m.

¹¹ http://news.xinhuanet.com/english/2008-05/31/content_8290022.htm last accessed on 30th May 2014 at 4:17 p.m.

¹² <http://www.businessdailyafrica.com/-/539552/2064388/-/a4nxif/-/index.html> last accessed on 14th June 2014 at 9:15 a.m.

468. The Micro, Small to Medium Enterprises (MSMEs) make tremendous contribution to the Kenya economy. The value of the MSME's output is estimated at KSh 3,369.1 billion (US\$33.69 billion) against a national output of KSh 9,971.4 (US\$ 99.71 billion) representing a contribution of about 34% in 2015. In terms of gross value added, the MSME are estimated to have contributed KSh 1613.0 billion (US\$16.13 billion) compared to KSh 5,668.2 billion (US\$56.68 billion) for the whole economy.

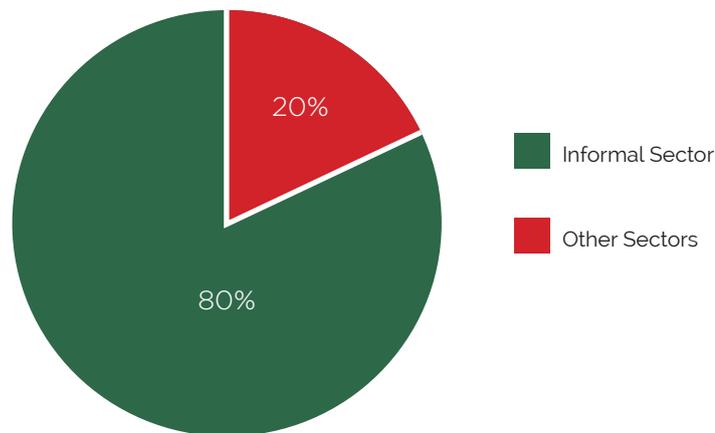
Figure 19: Contribution of MSME to Kenya's National Output



Source: KNBS, 2016. Micro, Small & Medium Establishments

469. The informal sector is a major driver in the Kenyan economy and 2012 generated 80% of all new jobs that were created as depicted in Figure 20 below.

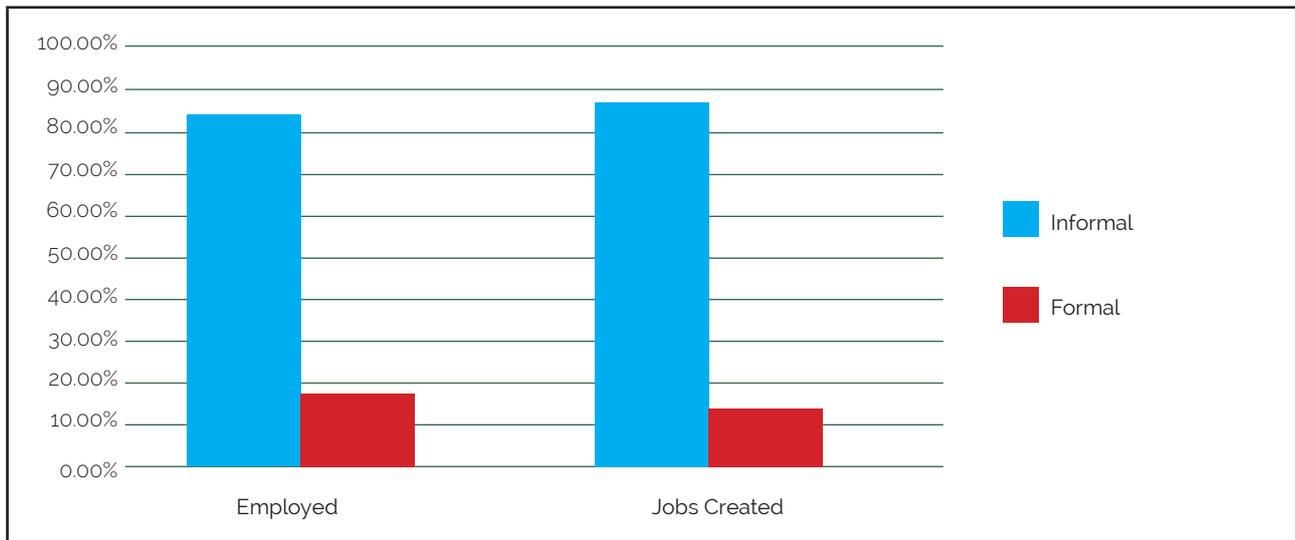
Figure 20: Contribution of the Informal Sector to Kenya's New Jobs Created



Source: KNBS, 2016 Micro, Small & Medium Establishments

470. The Economic Survey 2016 highlights that in 2015, total number of new jobs generated in the economy is estimated to have increased by 4.9% to 841.6 thousand, of which 128.0 thousand jobs were in the formal sector. The informal sector employment rose by 6.0% to 12.6 million persons, with a share of 82.8% of total persons engaged.¹³

Figure 21: Percentage Distribution of Employment and Jobs Created in 2015



471. The 2015 survey indicates that the wholesale and retail trade put together with hotels and restaurants form the largest part of the informal sector with 6,733,200 people employed, followed by manufacturing with 2,236,300 people while the community, social and personal services sub sector employs 1,089,500 people. There are 991,000 people employed in the transport and communications sector.

472. The government recognizes the role played by informal sector. In this regard, the government has formulated policies and strategies that facilitate this sector to “graduate into the formal sector” to become major players in the creation of employment and promoting economic growth. Since small firms now register with the County Governments, Kenya Revenue Authority (KRA) indicates that it will be easier to integrate them into the tax bracket enabling the Government to meet its financial obligations. Incorporating SMEs into the tax bracket is part of KRA’s move to expand the tax base in an ambitious plan that seeks to raise the number of active tax payers from 1.6 million to 4 million.

473. Sources of enterprise capital are critical for the growth of the private sector and the economy as a whole. As of May 2014, Kenya’s banking sector comprised of 43 commercial banks, 1 mortgage finance company, and 99 foreign exchange bureaus. The sector witnessed an increase in the branch network from 772 branches in June 2008 to 930 in June 2009 representing a growth of 20.5%. Assets of the banking sector rose by 15% from June 2008 to stand at KShs. 1,263 billion in June 2009, which included deposits at KShs. 954 billion. The banking sector in Kenya continues to be dynamic with many banks showing interest in lending to SMEs in Kenya. Kenya has pioneered the use of technology in mobile banking.¹⁴

¹³ Economic Survey 2016 Kenya National Bureau of Statistics. <http://www.mygov.go.ke/?p=9133>

¹⁴ <http://fsdkenya.org/blog/m-shwari-vs-kcb-m-pesa-convergence-or-divergence/>

Best practice: Kenya pioneers mobile banking: M-pesa platform

Box 7: Kenya Pioneers Mobile Banking

Kenya is a world leader in mobile banking. Its landmark M-Pesa platform, a service offered through a partnership between Safaricom and Vodafone, allows a range of money transfer, cash-flow management and banking options through mobile phones. Launched in March 2010, M-Pesa counted more than 9 million customers in January 2010, and has received widespread acclaim as many countries are working to emulate its successes. A number of African countries have mobile banking platforms modelled on the M-Pesa.

Since the Commercial Bank of Africa (CBA) and Safaricom launched M-Shwari in late 2012, a mobile phone based savings and loan product, there has been a lot of buzz about how it has helped to scale formal financial inclusion, scoring Kenya another first at the global stage. On 6th March 2015, it was reported that CBA had signed the 10 millionth customer to M-Shwari, having handled a total of Sh153 billion (US\$1.53 billion) in deposits. This is no small feat for a product just 2 years old. M-Shwari has received a lot of attention, locally and internationally.

On March 10, 2015, Safaricom and KCB jointly launched the KCB M-PESA account. The KCB M-Pesa account had registered 640,000 subscribers in three weeks, translating to an average of 40,000 sign-ups a day, according to a media release available on the bank's website. In that same period, customers deposited KShs 36 million (US\$360,000), and borrowed KShs 380 million (US\$3.8 million). The average loan was KShs 3,500 (US\$35), according to the release. In total, KShs 90 million (US\$900,000) moved from M-Pesa to the KCB M-Pesa account in the same period, while transfers from KCB M-Pesa to M-Pesa were KShs 380 million (US\$3.8 million).

Challenges

474. The GoK is making tremendous amount effort to create an enabling and a conducive environment for various organizations in the private sector to operate in the country. However, there are a few challenges that need to be addressed and paramount among them there is access to capital for SMEs. Many SMEs in Kenya are still finding it difficult to access credit. This is despite an expansion in lending to SMEs by commercial banks and dedicated SME sub-units in most banks, a new report from the World Bank shows. The World Bank singles out the high interest rate spread — the difference between the interest charged by banks on loans and the interest paid by banks on deposits — as one key factor constraining credit access. However, banks are not the only problem. The poor quality of financial records and high informality lock out many SMEs from accessing credit. There is legislation to cap interest so as to make it relatively cheaper for SMEs to borrow from the banks.
475. The GoK is considering a Credit Guarantee Scheme (CGS) to mitigate the credit challenges of SME. The CGS would enable SMEs to access credit based on export documents and invoices submitted to clients.
476. Discussions with government officials and the private sector indicate that the insurance sector is operating below expectation since a large number of Kenyans are not insured under various products offered by the insurance companies. There is therefore the need to sensitize and educate the citizen on the importance and need for various types of insurance products.

5.3.3 Recommendations of the Panel

477. The Panel makes the following recommendations:

- i) The government should continue to be actively engaged in promoting an enabling environment for ensuring effective regulatory framework for business organizations and entities in the private, public and not-for-profit sectors. *[Government of Kenya; Registrar of Companies]*
- ii) Hasten judiciary reforms so that the backlog of cases can be reduced. *[Judiciary]*
- iii) Improve access to credit as well as reduce the cost of credit. The introduction of Credit Guarantee Scheme should be implemented to enhance business opportunities for the SMEs. Other efforts should include strengthening micro finance institutions in order to improve access to credit to the informal sector and rural communities. *[Central Bank of Kenya and The National Treasury]*
- iv) Implementation by Government of the measures contained in the 2008 report of the Working Committee on Regulatory Reforms for Business Activity in Kenya as well as the enactment of national standards and regulations for business regulation under the County Governments Act will significantly address the investment climate and create major opportunities for investment in Kenya. *[Government of Kenya; the National Treasury; Ministry of Devolution and Planning; and Parliament]*

5.4 OBJECTIVE TWO: ENSURE EFFECTIVE LEADERSHIP & ACCOUNTABILITY OF ORGANIZATIONS

5.4.1 Summary of the Country Self-Assessment Report (CSAR)

478. The CSAR points out that Kenya's main approach towards ensuring effective leadership and accountability has been through legislation as well as subsidiary legislation; Chapter Six of the Constitution being the most prominent. The Leadership and Integrity Act, Capital Markets Authority Act, Public Officers Ethics Act and Companies Act are the principal sources of law on leadership and integrity. Others include the Non-Governmental Organizations Coordination Act and the Public Benefits Organizations Act which laid down the framework for leadership and the basic requirements relating to accountability. One of the purposes and objectives of the Public Benefits Organizations Act is to encourage public benefit organizations to maintain high standards of good governance, transparency and accountability and to even improve those standards.

479. One of the critical components of ensuring effective leadership and accountability is continuous training of persons in leadership position. The CSAR recognizes this and discusses in the detail the opportunities available to both government and non-government officials to avail themselves for training and continuous improvement in the management of various organizations.

480. In addition, the CSAR sites examples of sanctions that have been applied by the various Kenya Authorities. These indicate that some the legislations are beginning to have the desired effect on establishing good corporate governance in Kenya.

5.4.2 Findings of the Country Review Mission

5.4.2.1 Progress made since 2006

481. During the CRM visits, government officials and champions of the private sector indicated that appointments to the Board of SOEs have changed from political patronage to selection by formal application by citizens. Private corporations have also strengthened their selection process and procedures by enforcing the criteria set out in the company codes for governance.

482. The three major documents on business leadership and accountability in Kenya are:

- MWONGOZO, the Code of Governance for State Corporations
- Code of Governance for Private Organizations in Kenya
- The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015

483. These documents spell out, in detail, the requirements and obligations of leadership of organizations in Kenya. These documents are readily available. The documents present in detail the following:

- Appointment of Board of Directors
- Transparency and Disclosure
- Accountability, risk management and internal control
- Ethical leadership and corporate citizenship
- Shareholder rights and obligations
- Stakeholder relationships
- Sustainability and performance management
- Compliance with laws and regulations

- Sample Board Charter
- Code of conduct and ethics

484. In addition to the documents, the Board members of various organizations have access to training in Kenya. The Centre for Corporate Governance (CCG) conducts trainings in corporate governance, governance, leadership and management in 5-Day, 3-Day and 1-Day courses. The CCG clientele includes Directors of Kenya Reinsurance Corporation Limited, Directors of Kenya Police SACCO Society, Directors of Consolidated Bank, Directors of AKI member companies, Directors of National Lands Commission, Directors of Agricultural Society of Kenya, Directors of Architectural Association of Kenya, Directors of Kenya Power and Directors of AIG Insurance.
485. The CCG has developed and disseminated seven guidelines on corporate governance principles and practices for shareholders; state owned corporations; the banking sector; cooperatives; disclosure and reporting; and the Universities in Kenya. The guidelines for the State owned enterprises brought about the implementation of Performance Contracts in the public sector. The Institute of Directors also offers training programmes for Board of Directors.
486. In spite of the documents and the training opportunities, citizens indicated that there is the need for government officials to increase adherence to the tenets of Chapter 6 of the Constitution of Kenya, 2010.
487. According to the FGD APRM County Report, 2014, there is a general perception that there is more corruption in the public than in the private sector. The communities felt that there was only 10% corruption in the private sector while the public sector was 90% corrupt. The common incidences of corruption in the public sector include misuse of government vehicles especially at night, reporting to duty late, flouting tendering process by county government, police soliciting bribes specifically traffic police, government officers demanding bribes to deliver services and hiring of incompetent staff. However, there is no scientifically verifiable evidence to prove this perception and it is necessary for a study to be conducted in order to determine and verify the levels of corruption in the public and private sectors.
488. Citizens' views on the monitoring and evaluation of the principles of good governance are mixed. The APRM civil society survey report shows that when evaluating the monitoring and evaluation of the implementation of the principles of good corporate governance in the public, private and not-for-profit organizations, a large majority of 85.1% indicated that "No" there is not an effective monitoring and evaluation of these principles, while 9% "Yes" there is effective monitoring and evaluation and 6% indicated that they "Don't Know".

489. The KNBS Household Survey indicated that 84% of Kenyans said that they receive annual accounting reports from their companies with only 16% stating otherwise. Out of the 84%, 86% considered the results as true, with 10% considering the reports as false while 4% indicated they did not know.
490. According to the APRM household survey, the accountability of companies to their members on matters relating to the accounts of the organization is satisfactory. Majority of the respondents were satisfied with the level of accountability by companies in their dealings. Experts were also asked about accountability in corporate actions and they said it was good.
491. It should be noted, however, that Kenya has laws to safeguard against these acts by county and national government officials. Kenyan authorities have been able to sanction some companies for violation of various laws.
492. The CSAR points to these notable examples: East Africa Portland Cement was on 2nd May 2012 issued with a financial Penalty of KShs. 50,000.00 for failure to disclose material information in respect of the change in the Board of directors contrary to the requirements of Regulation 19(2) as read with Regulation 19(3) of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002, as amplified by Paragraphs A01(a), G05(1)(b) and G05(3) of the Fifth Schedule of Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002.
493. In 2012, the Capital Markets Authority (CMA) took enforcement action against 2 executive and 5 non- executive directors who were found to have flouted the capital markets legal and regulatory requirements in the matter of CMC Holdings Limited (CMCH). The Board of the CMA disqualified from appointment as a director of any listed company or licensed or approved person, including a securities exchange in the capital markets in Kenya.
494. On 15th November 2011, the Capital Markets Authority issued a reprimand over Mabati Rolling Mills for late submission of audited financial accounts contrary to Paragraph B.19, Fifth Schedule of the Capital Markets (Securities) (Public Offers, Listing and Disclosure) Regulations, 2002. East Africa Portland Cement also received a KSHS. 50,000 penalty for failure to inform CMA on change of its directors within twenty four hours of the happening of the event contrary to Paragraph G05 (1)(b) and paragraph G05 (3) of the Fifth Schedule of Capital Markets (Securities) (Public Offers, Listing and Disclosure Regulations, 2002).
495. In June 2012 CMA penalized CENTUM Limited a fine of KSHS. 50,000 for failure to issue Profit Warning contrary to Miscellaneous Obligations under Paragraph G.05(1)(f) of the Fifth Schedule of the Capital Markets (Securities, Public Offers and Disclosure Regulation, 2002). In October 2011, CMA issued a Cease and Desist Directive to Cannon Asset Managers Limited for holding itself out as a licensed fund manager despite being unlicensed by the Authority for the period, contrary to section 23 (1)of the Capital Markets Act.

5.4.2.1 Challenges

496. As pointed out in the CASR, the notable challenges are that there are no specific and clear guidelines to implement the constitutional and legislative guarantees; there is multiplicity of institutions involved in the implementation of constitutional and legislative measures aimed at ensuring effective leadership and accountability meaning that citizens do not have clear guidance on where to report and where action is to be taken to ensure effective leadership and accountability within public, private and not-for-profit organizations. The multiple agencies include the Ethics and Anti-Corruption Commission, the Director of Public Prosecutions, the regular Kenya Police Service, the specialized Criminal Investigation Department falling under the Kenya Police, the Office of the Attorney-General, and the Financial Reporting Centre.
497. Within the country there is lack of an effective mechanism to ensure that the implementation of the principles of good corporate governance within organizations is regularly and consistently monitored and evaluated.

5.4.3 Recommendations of the Panel

498. The Panel makes the following recommendations:
- i) Enhance systems of asset tracking and recovery. The Proceeds of Crime and Anti-Money Laundering Act in 2009 should be fully implemented and the institutions established under it e.g. the Anti-Money Laundering Advisory Board should be empowered to combat money laundering. The operations of the Anti-Money Laundering Advisory Board and the Asset Recovery Agency in the State Law Office should be properly coordinated. *[Central Bank of Kenya; Anti-Money Laundering Advisory Board and Asset Recovery Agency in the State Law Office]*
 - ii) Publish and publicize specific and clear guidelines to implement the constitutional and legislative guarantees on effective leadership and accountability within organizations including the Constitution (Chapter 6), the Leadership and Integrity Act, the Capital Markets Act, the Public Officer Ethics Act, the Companies Act, the State Corporations Act, and the Non-Governmental Organizations Act. *[Government of Kenya, county governments and Parliament]*
 - iii) Establish a clear mechanism for coordination, reporting, database and feedback between the multiple institutions involved and the public in order to ensure an effective implementation of the constitutional and legislative measures aimed at ensuring effective leadership and accountability. *[Multi-Governmental Agency]*
 - iv) Create the framework and build the capacity within the organizations to ensure effective and sustainable institutions in the monitoring and evaluation on a regular and consistent basis of the principles of good corporate governance within the public, private and not-for-profit sectors. *[Centre for Corporate Governance; Institute of Certified Public Accountants of Kenya; and Institute of Certified Public Secretaries of Kenya]*

5.5 OBJECTIVE THREE: ENSURE ETHICAL CONDUCT WITHIN ORGANIZATIONS

5.5.1 Summary of the Country Self-Assessment Report

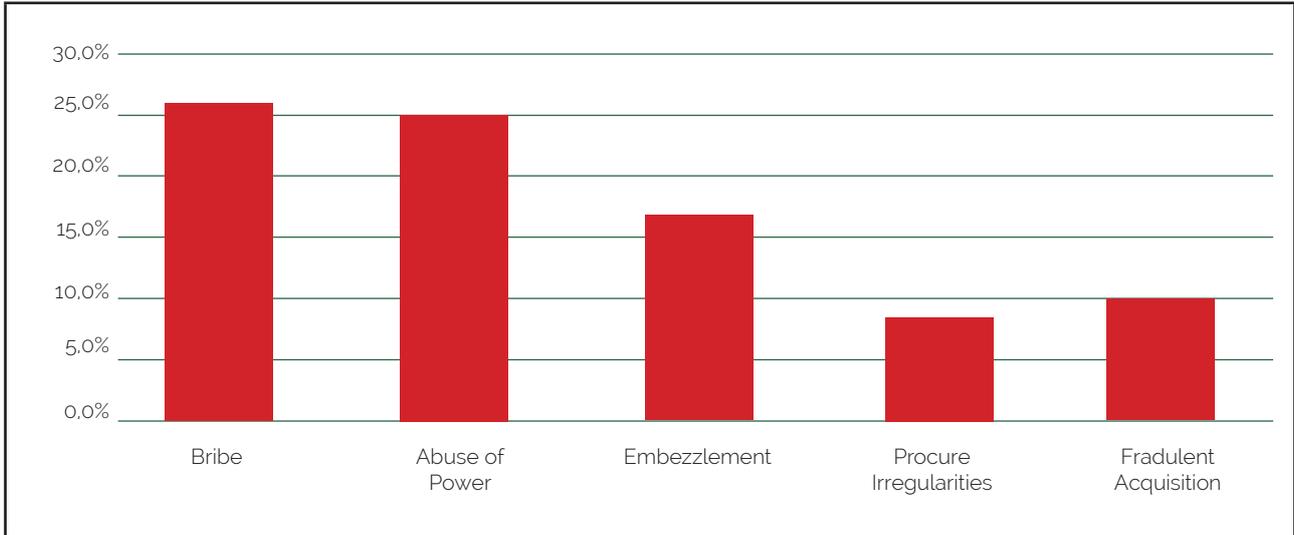
499. The Constitution of Kenya 2010 represents a key milestone for the fight against corruption, strengthening the protection of civil and political rights, limiting executive powers, strengthening legislative oversight, increasing the judiciary's independence and devolving central administration to 47 county governments. The constitution also now grants the right to access and communicate information.
500. Chapter 6 of the Constitution sets high standards of integrity for office holders and call for an independent ethics and anti-corruption commission, but the success of such institutions will depend on investigatory/prosecutorial powers as well as resources it is granted.
501. The CSAR presents an analysis on corruption via the annual reports of the Ethics and Anti-Corruption Commission; the available legislation and the challenges of fighting corruption.

5.5.2 Findings of the Country Review Mission

5.5.2.1 Progress Made since 2006

502. The Ethics and Anti-Corruption Commission is implementing its mandate to fight unethical and corrupt practises prepares monthly, quarterly and yearly reports among other publications on the states of corruption and ethics in Kenya. Without a doubt the Commission is the best placed organization to give an assessment on the overall ethics within organisations.
503. According to the EACC 2012/2013 Report the Commission received and analysed a total of 3,355 reports at its headquarters and its five Regional Offices. Out of these, 1,423 were within the Commission's mandate which represents 46% of the total reports received. The number of reports received dropped by 36% from 5,230 in 2011/2012 to 3,355 in the reporting period. The drop in the reports may be attributed to recent reforms in government which have created institutions with mandates that complement the work of the Commission. For example, the creation of the Commission on Administrative Justice (CAJ) and the Independent Police Oversight Authority (IPOA) has given the general public in Kenya avenues for reporting acts of maladministration which ordinarily do not fall under the Commission's mandate.
504. The Commission however notes that bribery incidences took the larger share of the reported complaints at 26%, followed by abuse of office at 25%, embezzlement of public funds at 18%, public procurement irregularities at 8% and 10% coming from fraudulent acquisition and disposal of public property.

Figure 22: Percentage Distribution of Complaints



Source: EACC 2012/2013 Report

505. With regard to the Judiciary, a study conducted by the EACC again revealed that seventy three% (73%) of the court users reported laxity as the main form of unethical behaviour within the Judiciary; followed by discourtesy (39%), greed (28%), lateness (19%), rudeness (19%) and indifference (11%).The judicial staff on the other hand cited bribery, laxity and nepotism as the three most prevalent types of misconduct within the judiciary. This was reported by 22%, 19% and 17% of the respondents respectively.

506. The Commission also conducted a National Survey on Corruption and Ethics (NSCE) with the objective of monitoring the progress in the fight against corruption and unethical conduct. This report was published in June 2013. The following are the highlights of the survey findings:

- According to 67.7% of the respondents the level of corruption in Kenya is perceived as high, 21.7% consider it as moderate and 8.3% rate it to below.
- According to 50.8% of the respondents, the Kenya Government was perceived to be committed to fight corruption and while 45.2% perceived the government has not committed.
- Thirty five percent of the respondents cited greed as the leading cause of corruption in Kenya while 12% cited poor remuneration, culture (12%), poverty (11%) and the tendency for taking shortcuts in seeking government services (6%)
- In the Survey, respondents were asked to state if they have witnessed a violation of government ethical standards, regulations, policy or the law by public officers. In response, 41.4% indicated that they have witnessed public officers violating government ethical standards while 35.6% indicated that they have never witnessed such an occurrence.

- With regard to the most corrupt Government departments, The Kenya Police leads Government Departments perceived to be very corrupt in the country as mentioned by 48.1% of the respondents. The Traffic Police (18.7%), Government Hospitals (15.7%), Local Authorities (15.4%), Registration of Persons (13.2%) and Provincial Administration (10.3%) are Government Departments where one is most likely to encounter acts of corruption.
- Slow service delivery leading to delays and frustrations was cited the leading unethical conduct in the public service. This was cited by 26.5% of the respondents followed by bribery (12.3%), discrimination (7.8%), tribalism (7.1%), unprofessionalism (6.1%) and harassment (5.8%).

507. Kenya takes its financial sector very seriously and as result has taken punitive actions against offenders. In 2011, the Kenyan Capital Markets Authority suspended CMC Holdings Limited from insider trading and commissioned an independent investigation into the affairs of the company following allegations of misconduct by the company's directors. The investigations revealed that the directors were indeed guilty of violating the capital market's legal and regulatory requirements and breaching their fiduciary duties to shareholders. Their "indiscretions" included (amongst others) self-dealing transactions such as operating off shore arrangements to their own benefit, providing false information to the public and failure to exercise effective oversight over the management of the Company resulting in weak internal controls on the operations of the Company.

508. In August 2012, the Kenyan Capital Markets Authority banned seven directors of CMC from ever sitting on the Board of any listed company in Kenya. The directors are required to recompense the company and pay a penalty amount equivalent to two times the amount of the benefit accruing to them by virtue of their violations. In meting out this stern enforcement action against the directors, the Chairman of the market regulator reiterated the significance of sound corporate governance practices and quoted the words of Mr. Arthur Levitt, Former Commissioner of the US Securities and Exchange Commission - "If a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere"

509. In the interest of good corporate governance and to ensure steady capital flow to Kenya, the country has conducted assessments on Ethical Conduct including:

- Assessment of the Procurement System in Kenya Public Procurement Oversight Authority October 2007;
- A Corruption Risk Assessment for UN-REDD+ in Kenya, 2013;
- The Executive Leaders Network (ELNET) Mark of Ethics, 2013; and

- African Peer Review Mechanism 2006.

510. In addition, there are bodies in all economic sectors actively engaged in promoting a positive culture of ethical conduct. Among them are:

- Kenya Ethics and Anti-corruption Commission
- The Judiciary
- Kenya National Commission on Human Rights
- Federation of Kenyan Employers
- The Kenya Association of Manufactures and the Kenya Private Association (through the code of ethics for business in Kenya).
- Transparency International
- The Advocates Disciplinary Tribunal
- The Medical Practitioners and Dentists Board Tribunal
- The Public Benefit Organizations Disputes Tribunal

5.5.2.2 Challenges

511. Kenya is strategically positioned to take advantage of the numerous opportunities within the East African community. However, the high perception of corruption, if not nipped in the bud, would be a major challenge to economic growth and prosperity. The print, radio and television together with social media are constantly broadcasting news about graft in Kenya on daily basis. This must be a source of worry for the leadership of the country. Indeed, the President of Kenya, during the State of the Nation Address at Parliament Buildings, Nairobi on 31st March 2016 stated that “While still on the subject of accountability, our Nation has for a long time been involved in a protracted war against corruption. Previous administrations attempted to eliminate the vice, but with mixed results that did not meet our justified expectations.” And he goes on to say that “Everywhere I have gone the people have spoken clearly demanding that corruption must be eliminated. I believe that the war must, and will, be eventually won.”

512. Kenya has put in place a number of good measures and is also promulgated a new Constitution with strong legal framework to eliminate corruption. It is up to the leaders to have the political to grab the bull by the horn and uproot this vice once and for all.

5.5.3 Recommendations of the Panel

513. The Panel makes the following recommendations:

- i) Government should publish and publicize specific guidelines on how the various legislations governing ethical conduct within organizations are to be implemented. *[Government of Kenya]*
- ii) Train the Kenya Police in particular the Criminal Investigation Department officers on matters relating to money laundering and asset recovery by civil and criminal asset forfeiture. *[National Police Service Commission; and the Central Bank of Kenya]*
- iii) Strengthen through effective capacity building the oversight mechanisms within business and professional organizations and hold them accountable for the ethical behaviour of members in their profession. *[Centre for Corporate Governance, Institute of Certified Public Accountants of Kenya; and Institute of Certified Public Secretaries of Kenya]*
- iv) Provide adequate capacity building in order to strengthen audit in public, private and not-for-profit sectors and to promote transparency and accountability in those organizations. *[Institute of Certified Public Accountants of Kenya]*

5.6 OBJECTIVE FOUR: ENSURE THAT ORGANIZATIONS TREAT STAKEHOLDERS FAIRLY AND EQUITABLY

5.6.1 Summary of the Country Self-Assessment Report

514. The CSAR points out that this objective seeks to show the relationship between organizations and the stakeholders in Kenya. The mechanisms put in place for this relationship, the compliance or failure of it and the sanctions thereof form a part of this objective. It also contains description on human rights in Kenya which are inclusive of gender equity and labour laws.
515. Whereas corporations are in business to make profits there is a need for accountability to its stakeholders. A stakeholder may also be concerned with the outcome of a specific project, effort or activity, such as a community development project or the delivery of local health services. This is because a stakeholder may contribute directly or indirectly to an organizations business activities and as such have an interest in the affairs of such an organization.

5.6.2 Findings of the Country Review Mission

5.6.2.1 Progress Made since 2006

516. Available documents and CRM discussions with stakeholders indicate that shareholders rights are well observed and shareholders are protected under the laws of Kenya and also by the companies' codes.
517. The Constitution which is the supreme law in Kenya contains the Bill of Rights under Chapter 4. The Bill of Rights deal with Kenya's human rights and labour laws. Also the Employment Act, 2007 deals with matters dealing with labour matters. Other legislation include Work Injury Benefits Act (repealed the Workmen's Compensation Act (Cap 236)), Occupational Safety and Health Act, 2007 (repealed The Factories Act (Cap 514)), Licensing Laws (Repeals and Amendment) Act, 2006 (repealed The Shop Hours Act (Cap 231)), Labour Relations Act, 2007 (repealed Trade Unions Act (Cap 233) and Trade Disputes Act (Cap 234)), Industrial Training Act (Cap 237), Industrial Court Act, 2011 (repealed the Labour Institutions Act,2007 which had repealed The Regulation of Wages and Conditions of Employment Act (Cap 229)), National Hospital Insurance Act (Cap 255), National Social Security Act (Cap 257), The Law of Contracts Act (Cap 23), Income Tax Act (Cap 470), and the Children's Act.
518. Kenya has laws to adequately protect the rights of stakeholders in various organizations. The rights of stakeholders in Kenya are summarized in Table 9 below.

Table 9: Protection of the Rights of Stakeholders

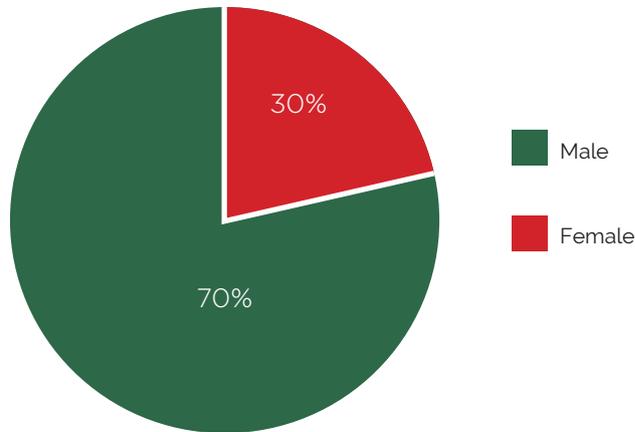
	RIGHTS OF STAKEHOLDERS	LAWS CONFERRING STAKE HOLDER RIGHTS	REGULATIONS CONFERRING STAKE HOLDER RIGHTS
Public organizations	<p>To secure methods of ownership registration;</p> <p>To convey or transfer shares;</p> <p>To obtain relevant information on the corporation on a timely and regular basis;</p> <p>To appoint members of the Board; and</p> <p>To share in the residual profits of the company.</p>	<p>State Corporations Act</p> <p>The various state corporations have Acts of Parliament establishing them e.g. Moi University Act, Kenya Broadcasting Corporation Act...</p> <p>Companies Act</p> <p>Capital Markets Act</p> <p>Bankruptcy Act</p> <p>Labour Relations Act</p> <p>Employment Act</p> <p>The Societies Act</p>	<p>Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011</p> <p>The Principles for Corporate Governance and Sample Code of Best Practice in Kenya</p> <p>Microfinance Regulations</p> <p>National Environment and Co-ordination regulations for all forms of pollution</p>
Private organizations	<p>To secure methods of ownership registration;</p> <p>To convey or transfer shares;</p> <p>To obtain relevant information on the corporation on a timely and regular basis;</p> <p>To participate and vote in general shareholder meetings;</p> <p>To vote members of the Board; and</p> <p>To share in the residual profits of the company.</p>	<p>Companies Act</p> <p>Capital Markets Act</p> <p>Bankruptcy Act</p> <p>Labour Relations Act</p> <p>Employment Act</p> <p>The Societies Act</p> <p>Partnerships Act</p> <p>Microfinance Act</p>	<p>Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011</p> <p>The Principles for Corporate Governance and Sample Code of Best Practice in Kenya</p> <p>Microfinance Regulations</p> <p>National Environment and Co-ordination regulations for all forms of pollution</p>
Non-profit Organizations	<p>To secure methods of ownership registration;</p> <p>To convey or transfer shares;</p> <p>To obtain relevant information on the corporation on a timely and regular basis;</p> <p>To participate and vote in general shareholder meetings;</p> <p>To vote members of the Board; and</p> <p>To share in the residual profits of the company.</p>	<p>Public Benefits Act, 2013</p> <p>Bankruptcy Act</p> <p>Labour Relations Act</p> <p>Employment Act</p>	

Source: APRM Kenya 2nd Self-Assessment Report, February 2015

- 519.** MWONGOZO the Code of Governance for State Corporation; Code of Governance for Private Organizations in Kenya; and The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 document the rights of stakeholders, clearly.

520. However, during the CRM visits to the counties, citizens expressed very limited awareness with respect to the rights of stakeholders in business organizations. It should be emphasized that the business community in the counties are very much aware of the rights of stakeholders. In addition, the private sector and GoK officials expressed great awareness of the rights of stakeholders.
521. The following are the avenues available to shareholders in addressing shareholder treatment:
- Removing directors at Annual General Meetings and Extra Ordinary (Special) General Meetings as per the Companies Act, Cap. 300.
 - One could also dispose of their shares.
 - Petitioning the Government, the office of the Attorney-General, the Registrar of Companies or the Commissioner of Cooperatives to intervene, appoint inspectors and/or otherwise take appropriate remedial measures.
 - Going to court.
 - Using the press to seek the attention of government, regulatory bodies or interested stakeholders
522. Minority shareholders have the rights of other shareholders to the extent of their shareholding. In corporate democracy, those with more or have controlling shares can overrule the decisions of minority shareholders because rights are determined by the extent of shareholding. However, the Board of Directors shall ensure that there is equitable treatment of all shareholders.
523. But minorities (women, the youth and disabled) participation in the economy and corporate Board participation reveal some important patterns and trends. These include the fact that female labour force participation in the modern sector has remained below 30% over the last several years compared to men who hold a disproportionately larger share of the modern sector jobs.

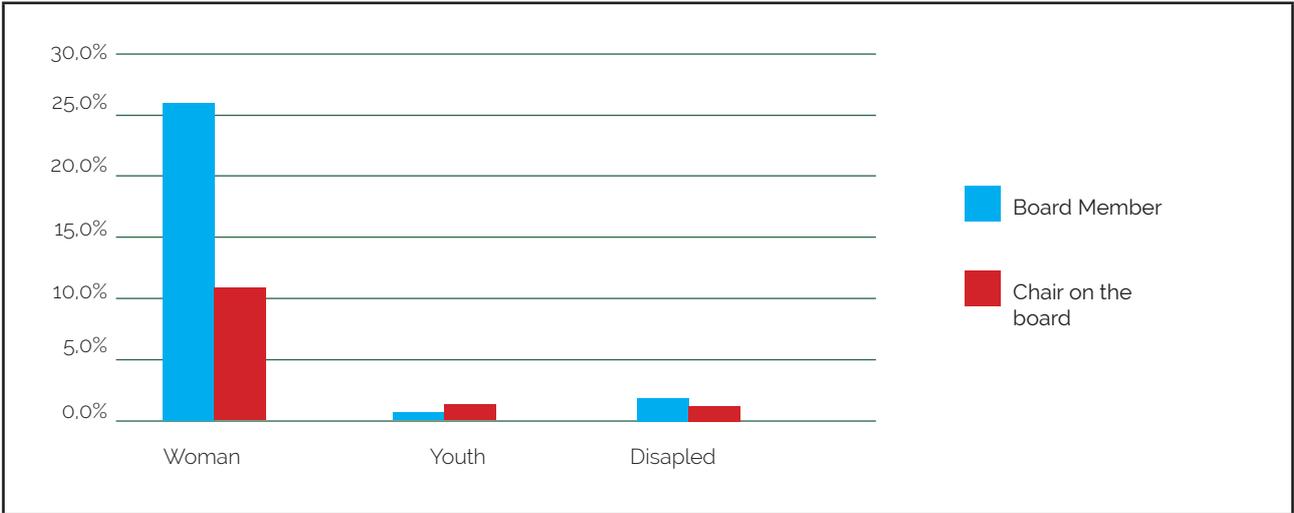
Figure 23: Percentage Distribution of Female and Male Participation in the Kenya Labour Force



Source: KNBS, Labour Statistics various years.

524. The majority of women are employed in the education and informal sectors. Those who work in the agricultural sector are usually engaged as casuals.
525. Generally there has been a trend in the private sector for parity in gender when hiring employees though the statistics are not really defined as compared to those by the government. A clear initiative in the private sector is a program by the Federation of Kenyan employers called Female Future. The program aims to strengthen gender equality in the workplace, improve women's representation in management and control, as well as draw more women to the top echelon of the private and public sectors as part of the efforts to ensure sufficient qualified woman power in all organizations and leadership positions.
526. It is interesting to note that, at the Board level, minorities fare very poorly. Within the SOEs, women, youth and disabled persons constitute 26.8%, 0.42% and 0.9% respectively on the Board of Directors; and as a chair of the Board, women are 11.1%, the youth 0.65% and disabled persons 0.65%.

Figure 24: Board Membership by Minority Groups

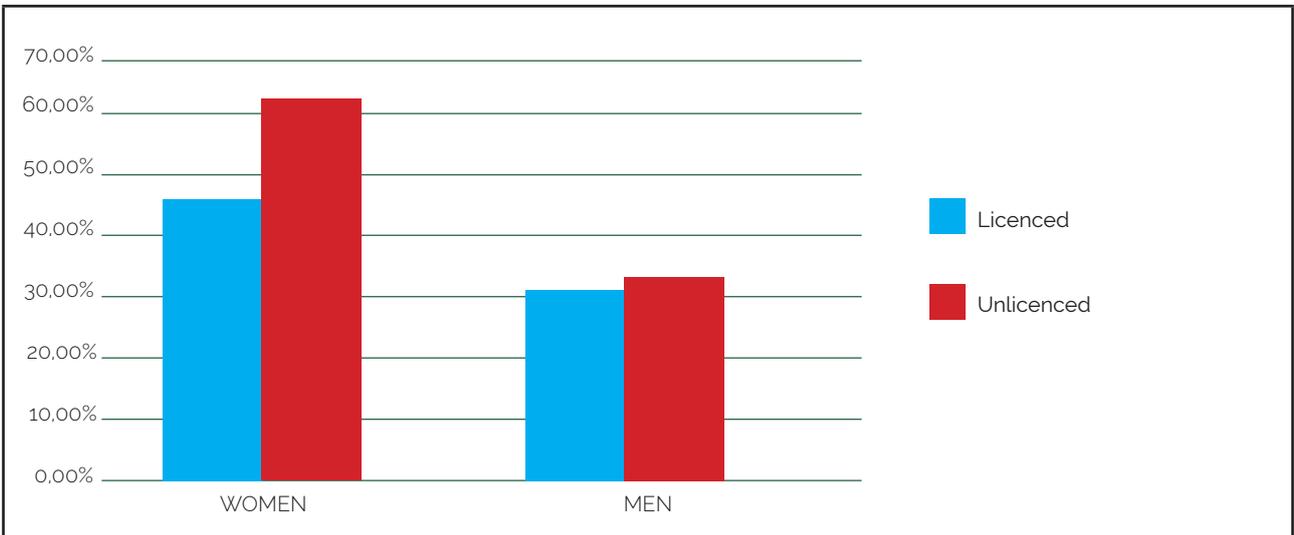


Source: Compiled from The National Gender and Equity Commission Report

On Equity and Inclusion in State Corporation Leadership in Kenya. Dec. 2015.

527. Women fare better in the informal and MSME sectors. Women owned 47.9% of licensed establishments and men owned 31.4%; and women owned 60.7% of unlicensed establishments and men 32.9%.

Figure 25: Percentage Distribution of Business Ownership by Sex



Source: Compiled from Micro, Small & Medium Establishments, KNBS 2016

5.6.2.2 Challenges

- Among the major obstacles impeding shareholder exercise of rights is the lack of information on the part of the shareholders.

- The participation of stakeholders in decision-making of corporate organizations is limited by the legislative framework contained in the Companies Act as corporate information (including financial statements) is not required to be presented in plain language and manner.
- While there is some mechanisms albeit inadequate for the protection of the minority shareholders in the Companies Act, the majority of minority shareholders are not aware and the mechanisms for enforcing them including winding up procedures are complex, time consuming and expensive.
- Minority shareholders have limited access to financial and legal advice in view of the cost of effective financial and legal services and this limits their rights of access to legal redress whenever their rights are infringed by organizations.
- The penalties for breach of company legislation are too low and outdated as they have not been reviewed for many years.

5.6.3 Recommendations of the Panel

528. The Panel makes the following recommendations:

- Provide mechanisms within the Companies legislation for financial information and reports to be published in both English and Kiswahili in addition to building the capacity of organizations to provide financial and corporate civic education to stakeholders. *[Registrar of Companies; Centre for Corporate Governance]*
- Observe the provisions of the Constitution and the Civil Procedure Act in particular Order 46 of the Civil Procedure Rules in order to safeguard the interests of the minority in organizations through alternative dispute resolution mechanisms considered to be more cost effective than litigation. *[Judiciary]*

5.7 OBJECTIVE FIVE: ORGANIZATIONS AS GOOD CORPORATE CITIZENS

5.7.1 Summary of the Country Self-Assessment Report

529. Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large. This also includes the environment as well. In Kenya this has been evidenced by corporations such as Safaricom coming up with initiatives like Safaricom Foundation which are geared towards ensuring better lives for the society at large.

530. The CSAR indicates that CSR activities by different companies and organizations in Kenya have contributed immensely to social and economic wellbeing of many people in the country. Owing to the status of Kenya (as a developing state) where poverty is high, low literacy levels, poor living standards, inadequate medical facilities, extreme hunger among other epidemics, CSR has contributed greatly towards reducing these social economic problems. Equity Bank Group for instance, embarked on sponsoring top district students in their varsity education.
531. The CSAR points out that perhaps the largest, most visible CSR drive was “Kenyan for Kenya” initiative, a fundraiser that was started in July 2011 by corporate leaders and the Red Cross in response to media reports of famine and deaths from starvation in Turkana County.
532. The key focus areas for this objective are environment, alleviation of poverty and the welfare of employees and their families. To determine how CSR manifests itself in Kenya, analysis of the corporate websites was done to understand the extent to which companies practice CSR, the issues addressed, the CSR processes used and what explains the drivers for CSR inclusion and practice of companies.

5.7.2 Findings of the Country Review Mission

5.7.2.1 Progress Made since 2006

533. CSR has been provided for in Mwongozo, the Code of Corporate Governance for State Corporations, Capital Markets Authority Code of Corporate Governance for Listed Companies and the ICPSK Code of Corporate Governance for Private Organizations in Kenya. In each of these codes, each Corporation is required to have a CSR policy and to report results on the basis of the Triple Bottomline concept, which requires the pursuit of a balance in economic, social, and environmental aspects in the management of an organization.
534. During the CRM visit to Garissa County, the participants indicated that Safaricom has built an all-girls secondary school in County. Given that girls are heavily disadvantaged in this community for a number of reasons including cultural, social and economic where boys are favoured over girls in attending school beyond the primary, this is a recommendable undertaking since it has increased the enrolment of girls in secondary school in the county.

Box 8: Best Practice: An all-girls Safaricom school in Garissa County

Safaricom, a leading telecommunication company recognizes the challenges facing girls in attending school beyond the primary level builds an all-girls secondary school in Garissa County. This has increased the enrolment and attendance of secondary school by girls in the county.

Fafi District did not have a single girls' secondary school until Fafi Girls' Secondary was established. The new school is set to increase access to girl secondary education within the district and the entire North Eastern. Fafi District has the lowest school enrolment rates in Kenya with nine% for girls and eleven% for boys. In 2008, out of the 14 girls who sat Kenya Certificate of Primary Education (KCPE), only four enrolled for secondary education. The poor enrolment is partly due to the community's nomadic culture and lack of education role models. Cultural practices such as Female Genital Mutilation (FGM), early marriages, and negative attitude towards education are the major challenges that hinder girl child education in the district. Still, prejudice where the community believes that girls should not mix with boys at adolescence is also a major hindrance. Fafi Girls' Secondary School will, therefore, play a major role in increasing the number of girls who complete secondary education which has in the past, been compromised by poverty, forcing them to drop out of school. Fafi will act as role models for other girls in the district and will motivate them to finish their studies.

535. Generally, the banks have done very well in offering bursaries and scholarships to disadvantaged and needy students to pursue education to the tertiary level and beyond. Equity Bank has over the last five years provided scholarships to thirteen thousand (13,000) orphans in secondary schools, supported five thousand six hundred (5600) students at the university level, assisted six thousand (6000) farmers to transform their farming activities from subsistence to commercial level and two thousand five people in entrepreneurship programs.
536. The APRM civil society survey illustrates a divided view on corporate social responsibility in Kenya. Fifty-three percent of respondents indicated that "Yes" corporations in Kenya have taken up corporate social responsibility, by providing support to education, health, environmental protection, alleviation of poverty and the welfare of their employees. While 43.4% indicated that "No" these corporations are not taking up this responsibility and 3% indicating that they "Don't Know".
537. When evaluating whether government should provide tax incentives to corporations who engage in corporate social responsibility, a majority of respondents agreed with this. 35.8% "strongly agree". 32.8% "agree" and 10.4% were neutral and did not agree or disagree. However, just under a quarter disagreed with this tax incentive, with 9% of respondents who said they "disagree" and 11.9% said they "strongly disagree".
539. The APRM Household survey findings showed that 46.9% of the respondents felt that Kenya had adequate mechanisms to protect the environment while 53.9% were of a different opinion that the mechanisms were inadequate. Majority (70.8 %) of the respondents

rated enforcement of environmental law as being fairly effective. In contrast, 23.3% of the respondents poorly rated the Ministry of Interior and Coordination of National Government in effectively managing the environment.

540. The survey sought respondents' opinion with regard to the involvement of corporations in various areas of social responsibility. Funding HIV/AIDs programmes by these organizations was rated highly by 41.0% of the respondents followed by sponsorship of education and training programmes (38.4%), paying taxes (38.3%) and making donations to charities and disadvantaged members of the society (37.9%). Sponsorship of education and training programmes was rated highly (42.9%) in the urban areas while 40.6% of the rural respondents rated funding of HIV/AIDs programmes highly. On the other hand, complementing Government infrastructure was rated very lowly by 16.9% of respondents.
541. Some of the projects noted by the community were; Kenya commercial bank in assisting hospitals, schools infrastructure and bursaries, Equity bank giving scholarships to students, BAT master plan were applauded for their work in planting trees and providing bursaries, Sony sugar for developing roads infrastructure, whilst a Gold exploration company was supplying water to the citizens, Safaricom education, social, and health sectors, Kenya Tea Development Authority (KTDA), Hotels along the coast for bursaries and scholarships to the bright pupil from poor families etc.
542. A public corporation such as National Oil has partnered with the Kenya Red Cross Society and Amiran Kenya and is currently implementing an ambitious food security project in Coast Province where Anadarko, one of the world's top oil and gas exploration companies, is exploring offshore in Lamu.
543. The Mater Hospital has set up The Mater Heart Run Program which was started in 2004. The aim is to assist children from families who cannot afford the cost of cardiac surgery. It has become an annual event and is known countrywide for helping families with heart issues that were out of reach of the specialised medical care. They have done this with an international partner Terres Des Hommes, a Dutch NGO which subsidizes a specified number of surgeries and catheterization in children each year.
544. Britam on the other hand, has the Britam Foundation which is a non-profit charity. It was incorporated as a Limited Liability Company as the vehicle through which Britam and its subsidiary Companies carry out corporate social responsibility (CSR) activities. Britam offers scholarships in education, medical, public benefit, social and humanitarian cause, sports and environment and sustainable development.¹⁵
545. The East African Breweries Limited (EABL) is one of the most respected companies within East Africa Region for its sound management policies on CSR programs. The company established the EABL Foundation in 2005 whose goal is commitment to enriching the lives and livelihoods of less fortunate and marginalized people in a sustainable manner. The "communities should view us as a company not only interested to invest, but to believe

¹⁵ <http://britam.co.ke/site/index.php/britam-foundation> As at 3rd April 2014

in". The need to have a strong foundation was driven by the belief that communities have a wide range of unsatisfied needs requiring commitment of resources. It is the company's policy to allocate 1% of profit after tax towards social activities.¹⁶

546. Thus it can be conclusively stated that CSR activities by companies whether in private or public sector contribute greatly to the lives of people of Kenya.
547. However, there has been public concern about the activities of organizations in Kenya. Largely public concern in terms of picketing due to poor wages has been experienced. This has mostly been exercised in the agricultural sector for example the big flower farms in Naivasha where workers have felt they did not get their dues as deserved.¹⁷
548. These protests have also been about the deplorable conditions of the surrounding environment. There have been concerns about the pollution of the environment by the activities of the entities which leads to destruction of agricultural plants and farming generally. Mumias Sugar Company for instance has been accused for dumping wastes in River Nzoia which has negative effects to crops and animals. Similarly, Webuye Pan Paper has had great negative impact to the environment due to dark smoke emitted in the air.
549. During the visit of the CRM, one community indicated that a stench emanating from a meat processing has been reported to the county and national governments but nothing has been done to resolve the situation. This puts citizens' health at risk.
550. Kenyan authorities in some instances have taken punitive action against offending companies. Sanctions are provided for in the Environmental Management and Co-ordination Act and also in the subsidiary legislation which contains the regulations for all forms of pollution. An example of a company that has been sanctioned for not being environmentally compliant is the Dagoretti Slaughter House which was closed by NEMA for 6 months for releasing waste to Kabuthi River.

5.7.2.1 Challenges

- There is no regulatory framework and legal regime for CSR activities in Kenya which obligate the organizations to act as good citizens in the country.
- There is little government support for CSR activities both in public and private sectors. This is largely due to lack of legal regime for CSR and regulatory framework.

¹⁶ Wanyama James Wafula, *Corporate Social Responsibility: A Perspective of Kenyan Firms: International Journal of Research in Management, Economics and Commerce*, Vol 2 Issue 10 122-137 at 132

¹⁷ <http://www.the-star.co.ke/news/article-54693/naivasha-farm-strike-as-of-2nd-May-2014>

- There have been concerns about the deplorable surroundings. Whereas some organizations have undertaken CSR activities in other sectors, they have contributed to pollution of the environment.
- There is little awareness among people and organizations on CSR and as such, organizations will use the opportunity to reap heavily from customers in the name of CSR.
- There is little effort from the organizations to comply with law on disability, equality and equity. The number of persons with disability in the employment and corporate board of directors are yet to increase as well as for women and the youth.

5.7.3 Recommendations of the Panel

The Panel makes the following recommendations:

551. There is the need to inculcate ethical values to the employees, managers, administrators, CEOs, MDs and owners of the business organizations even as corporate governance trainings are undertaken. Kenya needs to comply with various principles especially in environmental, labour and employment. Accordingly, the following is recommended for good corporate governance particularly CSR activities:
- i) Provide legal regime for CSR and regulatory framework within which the activities can be carried out by organizations. [The National Treasury and Parliament]
 - ii) Proactive government participation in good corporate governance through implementation of commonwealth principles of good governance and the Kampala resolutions of 1998 and 1999. [Government of Kenya]
 - iii) Enforce existing laws relating to environment, employment and labour (National Environmental Management Authority; and Ministry of Labour Social Security and Services)
 - iv) Create nationwide awareness of CSR and its purpose to all organizations in both public and private sectors through media. (all organisations, government, media)





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CHAPTER SIX

6. SOCIO-ECONOMIC DEVELOPMENT

6.1 Overview

552. After achieving independence in 1963, Kenya embarked on Five Development Plans, implemented between 1964 and 1988, to rectify inherited abnormalities in the economy of the pre-independence period. The central theme of the Development Plans was to expand the economy as fast and as much as possible and generate prosperity for all. Both the First and Second Plans emphasized import-substitution economy. The next Plan was aimed at growing and redistributing wealth while the Fourth Plan promoted industrialization in general and production for domestic consumption and export in particular. The last Plan, implemented from 1984 - 1988, focussed more on investment distribution. Although these Plans made some impact on the economy, their general effect was a shift in the economic base from agriculture to manufacturing, leading to a steady decline in the fortunes of agriculture both in agricultural production and in agricultural employment.
553. From the year 1991 to 1993, the economy performed the worst ever since the year of independence. Between 2003 and 2007, Kenya implemented its far-reaching home grown socio-economic reform programme, the Economic Recovery Strategy for Wealth Creation (ERS), 2003 - 2007. The Government committed itself to align the ERS sectoral policies and programmes, and, by extension, the budgeting, monitoring and evaluation frameworks, to the Millennium Development Goals (MDGs) and the NEPAD framework. Among the successes of the ERS were the introduction of both a free primary education system and a constituency development fund (CDF). The CDF is a tool for redistributing and decentralising national resources through the constituencies. Also, the ERS facilitated a rapid economic growth from 2.9% in 2003 to 7%¹ in 2007 and a reduction in the poverty level from 52% in 2000 to 46% in 2007. A post-election violence in 2008 that led to a dismal growth rate of 1.7% was a major hindrance to Kenya's efforts in socio-economic development. Economic growth furthermore, rebounded in 2012 to 6.1%.
554. With the devolution agenda firmed in place as the basis for political stability, the Government has demonstrated a strong commitment to ensuring that the country achieves the highest possible standards of education, health and other social amenities. There has been a general rise in the number of educational institutions since 2011 to meet increasing enrolments. Also, the health sector has realized considerable achievements. There have been declining under-five mortality and infant mortality rates. The HIV/AIDS prevalence has consistently declined from 13% over time to 5.6% and the immunization coverage for infants has increased from 78% in 2009 to 80% in 2011. There has, however, been a decline in maternal mortality rates and improvements in births attended by skilled health personnel. Furthermore, recorded high positive GDP growth rates have failed to ameliorate poverty, leaving the prevailing levels of poverty and inequality in the country to remain still very high. Corruption, terrorist attacks with negative impact on the tourism industry, large public wage bills, and high cost of

¹ *Government of Kenya, First Medium Term Plan (2008 - 2012), Nairobi, 2008, p. 2.*

agricultural production due to high costs of transportation are some of the red flags of Kenya's socio-economic development needing attention.

6.2 Implementation of Standards and Codes

6.2.1 Summary of the Country Self-Assessment Report

555. According to the CSAR, Kenya has ratified all the standards and codes listed in the APRM Questionnaire for Socio-economic Development thematic area and as recommended by the 2006 Country Review Report. The CRM had emphasized that the implementation of the codes' and standards' provisions could lead to higher standards of socioeconomic development, raise awareness and help building consensus and ownership of reform processes. In this context, Kenya had established a number of institutions, to promote these codes and standards. They include the Kenya National Commission on Human Rights, the National Commission on Gender and Development and the Economic and Social Council in the Presidency.

556. The 2006 Review Report recommended the publication and dissemination of the adopted standards and codes at the national and district levels; the translation of them into the Kiswahili, the national language; periodic reporting on compliance on them be included in Government departments' reports; and the need for the sensitisation of Kenyans on the objectives and implementation process of these instruments.

6.2.2 Findings of the Country Review Mission

6.2.2.1 Progress Made Since 2006

557. The Country Review Team (CRT) has noticed that many Kenyans still remained mostly unaware of these important standards and codes. Nevertheless, Annexure 6.1 presents the key standards and codes of the African Union that relate to socio-economic development that Kenya has adopted and ratified. Six of them were ratified after the 2006, during the period under review.

6.2.2.2 Challenges

558. The CRT has learnt that by a Constitution provision, any Treaty or Convention ratified by Kenya forms part of the Kenyan laws and, therefore, is legally enforceable as a law in Kenya. Parliament enacted 'The Treaty Making and Ratification Act No. 45 of 2012' to make provision for the procedure of making and ratifying treaties. Before ratification, both the Cabinet and Parliaments' approval must be obtained, and the treaty must also be subjected to public awareness.

559. These requirements tend to delay the ratification process and domestication of agreements. The requirements need lengthy constitutional procedures, political consensus and coordination between various arms of Government. These form some of the reasons some agreements have not been domesticated. In this regard, delays in drafting domesticating legislations because of the technically complex nature of the texts of adopted treaties are also a prime reason.

6.2.3 Recommendations of the Panel

560. The Panel makes the following recommendations:

- i) The Government of Kenya publish the standards and codes at the national and county levels (*National Government of Kenya; County Governments*).
- ii) Translate the standards and codes into Kiswahili, the national language to create awareness of them among the general society of Kenya (*National Government of Kenya; County Governments*).

6.3 OBJECTIVE ONE: PROMOTE AN ACCELERATED BROAD-BASED SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT

6.3.1 Summary of the Country Self-Assessment Report

561. According to the Country Self- Assessment Report (CSAR), the 2006 Country Review Report noted that Kenya had made efforts to implement a socio-economic development strategy. The processes were participatory and had produced notable benefits such as the introduction of free primary education, resulting in increased enrolments. Budget allocations to some social programmes were also increased and the monitoring process enhanced. Ministries and state corporations were required to sign performance management contracts to ensure efficiency in service delivery. Notwithstanding this, Kenya still needs to address issues of drivers of growth and other socio-economic challenges in order to achieve development in a sustainable way.

562. The CSAR maintains that a 2008 APRM Progress Review indicated that poor implementation of policies and programmes were one of the greatest challenges in this regard. The Government developed and implemented Vision 2030 which helped to address these challenges. This, the CSAR opines, had led to evident increased access to education, health and water services, and a positive impact on agriculture. There were also improvements in the general mortality rates. The CSAR warns of land ownership structure resulting in a large proportion of the population remaining landless, increased population density and blatant corruption as some of the likely constraints on broad-based socio-economic development.

6.3.2 Findings of the Country Review Mission

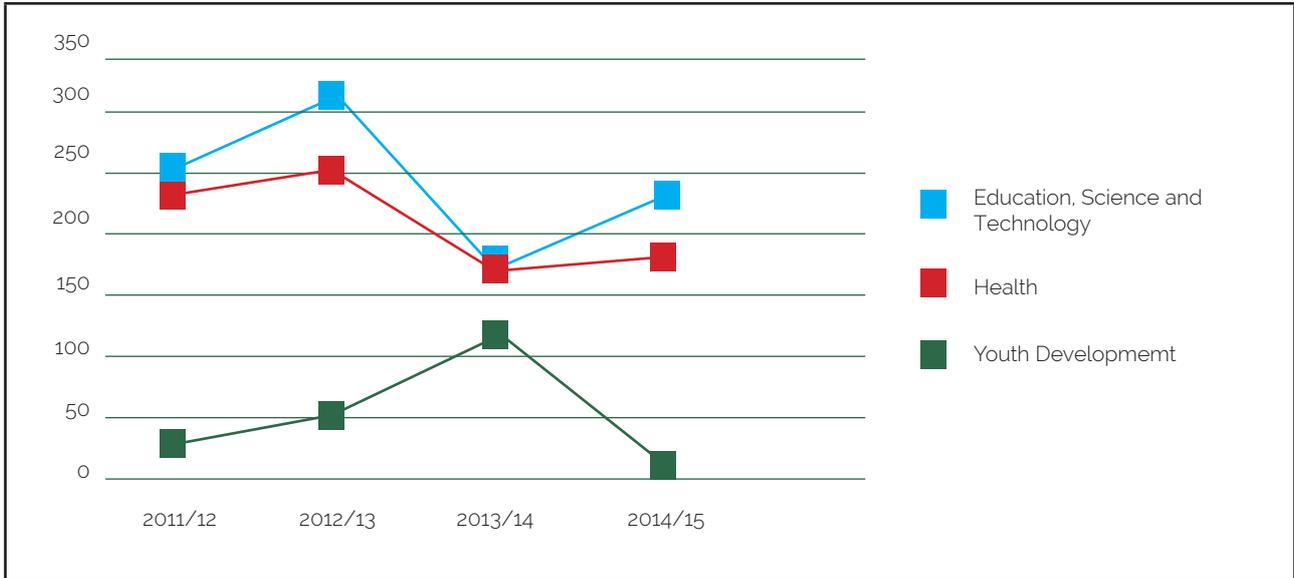
6.3.2.1 Progress Made Since 2006

563. The Country Review Team has observed that Kenya has taken a multi-faceted approach to addressing issues of Broad-based Sustainable Socio-economic Development identified by the 2006 Country Review Report. According to the Report, poor implementation of policies and programmes, corruption, reliance on external aid, stakeholder's inability to influence decisions and capacity constraints were the major causes of unmet self-reliance in improving development and increasing local incomes.
564. Kenya has taken some bold and laudable steps towards addressing the above challenges. It formulated and launched a guiding policy document for development, popularly referred to as Kenya Vision 2030, to make the country a globally competitive and prosperous nation with high standards of living within 25 years. By comprising five successive Five-Year Development Plans to be implemented sequentially between 2008 and 2030 and resourced by public and private sector, both local and Foreign Direct Investment, the Plan enticed the private sector into the narrative of the promotion of an accelerated broad-based sustainable socio-economic development. A Public Private Partnership (PPP) policy was thus developed and implemented to consolidate this relationship. From all considerations, this was a commendable idea considering the size, contribution and resilience of the private sector in Kenya.
565. The approach taken to develop and implement the Plan itself was based on the concept of broad-based participatory development, enabling stakeholders to contribute to the Plan. So it came out as a product of highly participatory, consultative and inclusive stakeholders' process. Before finalization, the contents of the Vision were again subjected to review and consultations in all the then provinces of Kenya. This process ensured ownership among Kenyans.
566. The promulgation of a new Constitution in 2010 also helped in addressing the challenges of development issues. The Constitution provides the basic principles of governance for the country to move forward in its quest for general governance and accelerated broad-based sustainable socio-economic development. Particularly, its general parameters for devolved government, public finance, formulation of development plans and budgeting, and public participation in decision making processes are very germane to Kenya's broad-based sustainable socio-economic development. Assigning responsibility for 14 functions to the County level, while the national government holding on to 35 functions, the Constitution has devolved broad-based sustainable socio-economic development to 47 County Governments.
567. Although these two levels of government are still learning to coexist and sometimes experience considerable friction between them, especially in the area of financing, nevertheless the arrangement is a positive step towards broad-based sustainable socio-economic development. The arrangement has made socio-economic development a shared

responsibility between the national and county governments. It has replaced old concepts of rural development with a well- coordinated county-wide development paradigm that harmonises county governance and socio-economic development. In this process each county has become an economic growth pole with the capacity to bring services to the people.

568. In the area of corruption, several actions have been initiated to fight and rid it from the Kenyan society in order to reduce loss of development resources and hence give the poor a chance to access the opportunities for prosperity and dignity. The key mechanism for implementing corruption prevention programmes is the Ethics and Anti-Corruption Commission Act (EACC) of 2011. It conducts public education and awareness campaigns, offers advisory services to promote integrity in the public service, promotes standards and best practices, builds partnerships and coalition against corruption and undertakes research on corruption and governance related issues.
569. An interesting innovation of fighting corruption adopted by Kenya is the mainstreaming of anti-corruption in the school curriculum. This attempt is aimed at disabusing the minds of students off corruption at their tender age. However, the fight against corruption still faces various challenges and resources meant for social development are still being diverted into private coffers.
570. The CSAR observed that unlike in the period of the First Country Review when Kenya relied heavily on external aid to financial development budgets, it now does so from predominantly domestically mobilized funds. For example, 83.6% of the National Budget for the year 2012/13 was financed through domestic resources. Currently, the country spends about 45% of export earnings in servicing the national debt (The 2nd Kenya Self-Assessment Report, February 2015, p. 57).
571. A number of policies and programmes have been implemented to contain the problem of capacity constraints and poor implementation of policies and programmes. A Results Based Management (RBM) system with annual performance contracts for all government ministries, agencies and institutions has been implemented in an effort to enhance capacity constraints. All institutions are required to report on performance on a quarterly basis. Each institution is evaluated and rated by independent experts and the performance and ranking are reported and publicized with good performance being recognized and rewarded. Steps have also been taken in the areas of education, health, agriculture, environment, energy, and roads and transportation to address the country's capacity constraints.
572. The 2010 Constitution mandated basic education as a right for every school-age going child. Prior to that, the government launched a Free Primary Education programme in 2003, dramatically increasing enrolment. For example, both expenditure on education and the number of educational institutions have been trending up since 2006. As indicated by Figure 26, educational expenditure rose sharply between years 2011/12 and 2012/13. Although it dropped in fiscal 2013/14, it again rose sharply between 2013/14 and 2014/15, emphasizing the attention attached to education.

Figure 26: Development Expenditure on Education, Health, and Youth Development (US\$ Million)



Source: Constructed from Table 3.3, Kenya National Bureau of Statics, 2016a, p. 41.

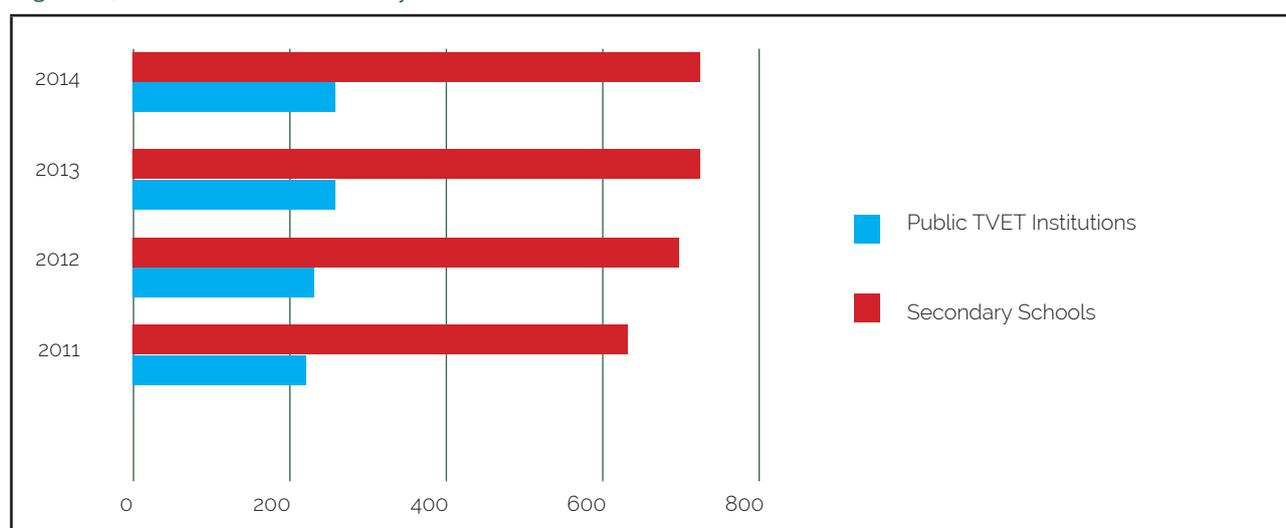
573. Also, Table 10 shows that between 2011 and 2014 the number of educational institutions generally experienced a rising trend. These developments in expenditures on education and the number of educational institutions illustrate the commitment to resolve capacity constraints through education. Appropriately, emphasis has been placed on skills development as exemplified in Figure 27 where more Technical and Vocational Education and Training (TVET) institutions than Secondary institutions have been provided. In this regard, the emphasis was on the provision of Youth Polytechnics and their number rose from 585 in 2011 by almost 20% to 701 in 2014 (Kenya National Bureau of Statics, 2016a, p. 43). The institutions provide skills to the youth, making them potentially self-reliant and capable of seeking employment in the private sector either as employees or even as self-employed. Therefore, the critical role of this approach is the provision of necessary skills for catalysing the industrialization processes to contribute positively to broad-based and sustainable socio-economic development in Kenya.

Table 10: Educational Institutions by Category, 2011 – 2014

EDUCATIONAL INSTITUTION	2011	2012	2013	2014
Pre-Primary	39,500	39,758	40,145	40,219
Primary	25,382	26,549	28,026	29,460
Secondary	6,257	7,174	7,834	8,747
Teacher Training Colleges				
Pre-Primary	122	125	131	140
Primary	112	118	123	125
Secondary	236	245	256	267
Public TVET Institutions				
Youth Polytechnics	585	647	701	701
Technical and Vocational Colleges	40	49	49	51
Kenya Technical Training College	1	1	1	1
National Polytechnics	2	2	2	2
Polytechnics University Colleges	2	2	-	-
Sub total	630	701	753	755
Universities				
Public	7	8	22	22
Private	27	27	30	31
Sub total	34	35	52	53
GRAND TOTAL	72,161	74,587	77,197	79,646

Source: Compiled from Table 3.3, Kenya National Bureau of Statics, 2016a, p. 43.

Figure 27: Number of Secondary Schools and Public TVET Institutions



Source: Constructed from Table 3.3, Kenya National Bureau of Statics, 2016a, p. 43.

Health

574. Similar to education, there has been an expansion in the health sector to ensure the existence of a healthy citizenry that can contribute to the enhancement of the capacity of the country in its attempts to promote accelerated broad-based socio-economic development. In 2014, the number of registered medical personnel stood at 121,578 and in 2015 it was 133,002 (Kenya Bureau of Statistic, 2016a, p. 61), indicating a 9.4% rise in that period alone. With this increase in the availability of registered medical personnel, the ratio of registered medical personnel per 100,000 people improved from 282 in 2014 to 301 in 2015. On the other hand, the total number of medical students in-training increased from 14,751 in 2014/16 to 14,826 in 2015/16 (*ibid.*), underscoring that the ratio of registered medical personnel per 100,000 people will even become better beyond 2016. This suggests that there is the potential for the quality of the health of all Kenyans to be enhanced and lead them to make higher positive contribution to the development of the country.
575. The veracity of this observation may be underscored by the decrease in the prevalence of some deceases such as HIV/AIDS. The 13% prevalence rate of HIV/AIDS of the first Country Review period of 2006 has consistently declined over time to 5.6% in 2012 (Country Self-Assessment Report, p. 32). However, regional variations of the prevalence of the pandemic range from as high as 25.7% in Homa Bay to only 0.2% in Wajir. Nevertheless, fewer Kenyans now are ailing from this scourge and are thus potential contributors to socio-economic development. In the area of addressing high levels of Maternal Mortality Rates, the Government has implemented a praiseworthy policy as shown in Box 8.

Box 9: Best Practice: Free Maternity Services

In 2013, the Government initiated and implemented a policy of free maternity services in all public health facilities to address the problem of Kenya's Maternal Mortality Rate (MMR). It reimburses the health facilities by paying the funds directly to them for every delivery that they handle. This covers both normal deliveries, deliveries through caesarean, and complicated deliveries.

Prior to this policy, the MMR was as high as 488 deaths per every 100,000 live births per year. Increasing the percentage of births delivered in health facilities is important for reducing deaths arising from complications of pregnancy. The expectation is that if complications arise during delivery in a health facility, a skilled birth attendant can manage them or refer the mother to the next level of care.

While it is too early yet to assess completely all the impact of the policy, there are some signs that it may be generating a positive impact on maternal behaviour. According to the Kenya Demographic and Health Survey 2014 (p. 128), about 61% of births were delivered in a health facility. Forty-six% of these were delivered in public-sector facilities and the other 15% births were in private-sector facilities. This is a large increase in facility deliveries from 43% in 2008-09. In addition, the reported MMR was 362 deaths per 100,000 live births (KDHS 2014, p. 329). In other words, for every 1,000 live births in Kenya, about 4 women died during pregnancy, during childbirth, or within two months of childbirth as compared to 5 women who suffered the same fate prior to the policy.

Even though the policy faces challenges regarding limitedly resourced, slow distribution of the funds that are available, poor infrastructure and staffing, it has the potential to impact positively on the maternal mortality rates of the country in the near future.

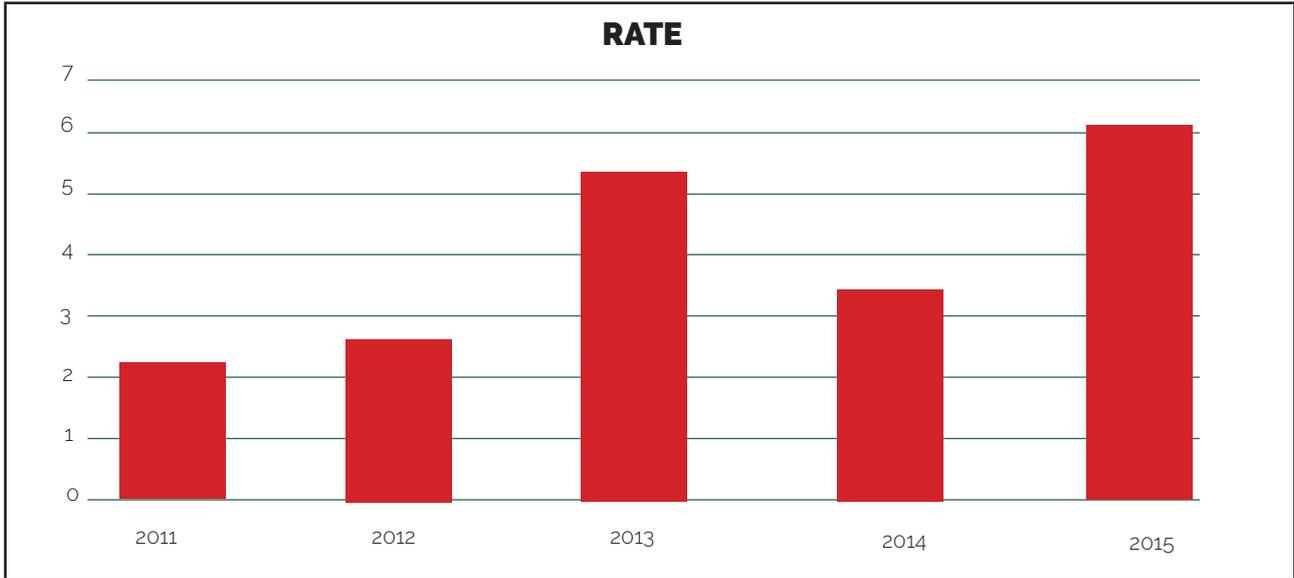
Agriculture

576. Agriculture is the golden goose of Kenya's economy and the golden egg of its socio-economic development. The sector accounts for about 30% of GDP (Kenya Bureau of Statistics, 2016b, p. 3), 75% of industrial materials and contributes 60% of export earnings (Country Self-Assessment Report, p. 44).
577. In order to regulate the sector more efficiently and ensure a better contribution to the economy that would promote socio-economic development, Parliament reviewed and consolidated 131 pieces of legislation into the Agriculture, Fisheries and Food Authority (AFFA) Act of 2013, Crops Act, 2013, and Kenya Agricultural Research and Livestock Act 2013. The AFFA particularly is aimed at instituting structures for transforming the agricultural sector into a commercially-oriented and internationally competitive industry. This is helping in modernizing agricultural production, improving service delivery, and harmonizing the regulatory and legal framework of government programmes.
578. The Agriculture, Fisheries and Food Authority Act encompasses the Agricultural Sector Development Strategy (ASDS), 2010-2020 and the Vision 2030 objectives for agriculture. ASDS outlines agricultural policy goals and provides guidance to the public and private sector efforts in overcoming the outstanding challenges facing Kenya's agricultural sector. The Act establishes modalities and an authority for overseeing the operation of the

agricultural sector that includes licensing, law enforcement and registration of farmers, and for promoting and regulating the production, processing, marketing and transportation of agricultural products. The authority also advises the government on agricultural policy and capacity enhancement of county governments to implement viable agriculture programmes.

579. Furthermore, the government enacted a Land Act to enhance policies, regulation and investment to ensure higher agricultural yields. Due to the inaction of a Crops Act, policies were formulated for: the development of scheduled crops, facilitating marketing and distribution of crops, training for farmers, and the establishment and enforcements of crop standards. The potential of these Acts include rapid economic growth, higher employment in the agriculture and other related industries, and sustainable incomes to the people that would contribute to poverty reduction and socio-economic development.
580. Actions have also been taken to promote fish farming enterprises through the adoption of aquaculture. The “Njaa Marufuku” Kenya (Eradication of hunger in Kenya) is helping in the capacity building of farmers to increase food productivity and improve food security at the household level. Specifically, it supports the enhancement of private sector food security innovations through Public Private Partnerships (PPP). Kenya has also embarked on an expanded irrigation programme with the view to bringing under irrigation an estimated 1.342 million Hectares. So far, 81 irrigation schemes, including the launch of the Tana Delta Irrigation Scheme, with 3,800 acres of land under crop have been operationalized.
581. National Accelerated Agricultural Inputs Project (NAAIAP), designed and implemented in 2009, provides farmers with fertilizer and seeds at a subsidized price. It is a collaborative venture of both the public and private sectors together with development partners. Its primary objective of improving input accessibility and affordability of the key inputs for millions of smallholder farmers is an enabler of such farmers to get out of poverty and participate in agriculture as a business enterprise. A study by Bett, K. E. R. (2011) documented that this programme influences maize production significantly. This finding was corroborated by stakeholders in some of our discussions. These actions in the agricultural sector were definitely one of the contributory factors in the nearly 4% average gross value added growth rate between the years 2011 and 2015 (Figure 28).

Figure 28: Agricultural Gross Value Added (2009 Prices), Growth Rate, 2011-2015



Source: Kenya National Bureau of Statics, 2016a, p. 145.

Land

582. Land in Kenya has been a constraining factor in both agricultural production and in socio-economic development. The country's high potential agricultural land is only 20% of its total area of 582,646 sq. km (Kenya National Bureau of Statistics, 2014, p. xiii). The rest of the area is marginal with most of it found in the arid and semi-arid counties. So shortage of productive land and its effective use have always been a contentious issue.
583. The 2006 Country Review Report for Kenya identified such land issues of the time as needing close attention. It observed that land is a central economic, social and cultural factor in societal relations in Kenya. It further noted that Kenya had been grappling with land questions since the colonial era, which subsequent regimes had been unable, or unwilling, to resolve. Even with the transfer of power from the colonial administrators to indigenous Kenya elites, there had been no fundamental restructuring of the land system. The Report opined that rather, there had been a general re-entrenchment and continuity of colonial land policies, laws and administrative infrastructure. Therefore, the country was faced with landlessness on a large scale and with recurrent land disputes among individuals and between communities. This, the Report pointed out, had resulted in environmental, social, economic and political problems including deterioration in land quality, squatting and landlessness, disinheritance of some groups and individuals, urban squalor, underutilization and abandonment of agricultural land, tenure insecurity and conflict. The Report observed that these persisted because Kenya did not have a clearly defined or codified National Land Policy in place, leading to a very complex land management and administration system. The Government, as a matter of urgency, was advised to adopt and implement redistribution and reallocation policies to enforce equitable access to the land and the right to use it.

584. This recommendation was taken to heart and was translated into action. A National Land Policy was approved by Parliament in 2009. The framework of this policy was incorporated into the 2010 Constitution. In addition to this, the Constitution addressed longstanding grievances over land, including the centralised, corrupt and inefficient system of administration. It declared that “All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals” (Article 61). The Constitution also classified all land into three categories - public, community or private for easy management. It recognised and entrenched the right to individual ownership of land (Article 40 (3a)).
585. Secondly, a National Land Commission mandated by the Constitution (Article 248) has been created to: manage public land on behalf of the national and county governments; recommend a national land policy to the national government; investigate current or historical land injustices and recommend redress; encourage the application of traditional dispute resolution mechanisms in land conflicts; and conduct research on land and the use of natural resources. The establishment of County Land Management Boards at the 47 sub-national levels is particularly a remarkable step towards the addressing of contentious land issues in the country. These Boards are better situated to understanding the pressing land issues of their respective counties than the National Land Commission in Nairobi.
586. Furthermore, an Environment and Land Court Act was enacted in 2011 by repealing the Land Disputes Tribunals Act No. 18 of 1990. Through this Act, a court of a similar jurisdiction to the High Court was established to have jurisdiction over cases and disputes on matters relating to land and the environment.
587. In 2012, a Land Act was passed which embodies all the substantive land laws in one statute to make easy reference. The Act provides the body of Kenya’s substantive law, earlier found scattered in different pieces of legislation like the Indian Transfer of Property Act 1882, The Government Lands Act, and the Registered Land Act.
589. In the same year, Kenya also enacted a Land Registration Act 2012 to help enhance land management. This law guides the registration of title to land in the country and thus replaced various statutes such as the Land Titles Act Cap 282 that applied to properties within the ten mile Coastal strip and the Registration of Titles Act Cap 281 that operated under a Centralized Land Registry at Nairobi for properties surveyed under precise boundaries. It also repealed the Registered Land Act Cap 300 which applied to most rural properties surveyed under general boundaries and some few urban properties surveyed under the “fixed boundary” provisions of the Act. Unlike these repealed laws, the application of the Land Registration Act 2012 is to result in a uniform land registration system and uniform registries countrywide to help ease land transactions and land development in the country.
590. Land administration is now facilitated by a National Spatial Data Infrastructure. By combining surveyors’ data with other vital records, such as the owner’s land reference number, water and electricity connections, and rates payments to establish land ownership, this framework enhances land dispute resolution mechanisms. In the past such disputes had been handled by a number of institutions, leading to the emergence of challenges, such as conflicting interpretation of the law derived from multiple land statutes.

591. Of a very recent development is the approval of a new land policy by the Cabinet and Parliament. This policy recognises land not just as a commodity for trade, but also as a principal source of livelihood. By emphasising the livelihood aspect of land, the policy has the potential for correcting the injustices against women, children and minority groups regarding land ownership because land is now classified among, as it were, basic needs. In this regard, the Policy will protect the rights of widows, widowers and divorcees by providing the right to co-own matrimonial property. The broad embracing objective of the Policy in balancing different, yet related, concerns such as food security, human settlements, environmental protection and climate change; and other economic pursuits underscores this view. This objective incorporates all activities that are likely to have an impact on the use of land and its resources. The Policy's repeal of the Group Representatives Act and its recognition of individual rights that ensure they maintain their unique land use will also benefit Pastoralists. Its plans to stop hoarding of land or speculation by introducing taxes to discourage ownership of idle land is also a commendable idea because land speculation has replaced land grabbing of yester years as a serious challenge.
592. The above implemented mechanisms have created an enabling environment for responding to the various vexing land issues identified by the 2006 Country Review Report, such as: (i) illegally or irregularly privatised public land; (ii) unresolved historical problems that had been compounded by the accretion of new issues; (iii) obstruction of water flow especially by upstream agrarian communities and its impact on downstream pastoralists; (iv) complex and multiple systems of laws that deepen conflict and undermine the serviceability of titles and collateral; (v) bureaucratic and excessive centralisation of land registries leading to abuse and corruption; and (vi) abuse of discretionary powers to allocate public land to politically connected individuals and subsequent difficulties of recovering such lands.
593. Despite these remarkable land reforms, Kenya still faces some challenges in the area of land. With increased population density and continuous land fragmentation through sub divisions, land is soon going to be an even scarcer commodity that could affect agricultural production. Land scarcity is also being promoted by informal settlements in most cities and towns. This is a sore point capable of sparking future conflicts over land. Therefore, there is need for population control and for addressing the issue of informal settlements. The challenge that the country faces is the difficult task of striking a balance between satisfying human livelihood needs and sustainable use of land resources for posterity. Desertification which reduces the productivity of land and leading to food insecurity, reduced income and non-accumulation of economic assets - even though a natural phenomenon is also a source for concern.
594. Although the new Land Policy has targeted land hoarding or speculation through taxation the CRT was informed that the practice still continues. This is having an effect on manufacturing, road construction and, in fact, on the country's accelerated broad-based sustainable socio-economic development agenda. The incidence of speculative investment in land in anticipation of big government projects is impacting negatively on production while contributing to increase in land prices above what their production capacity justifies the need.

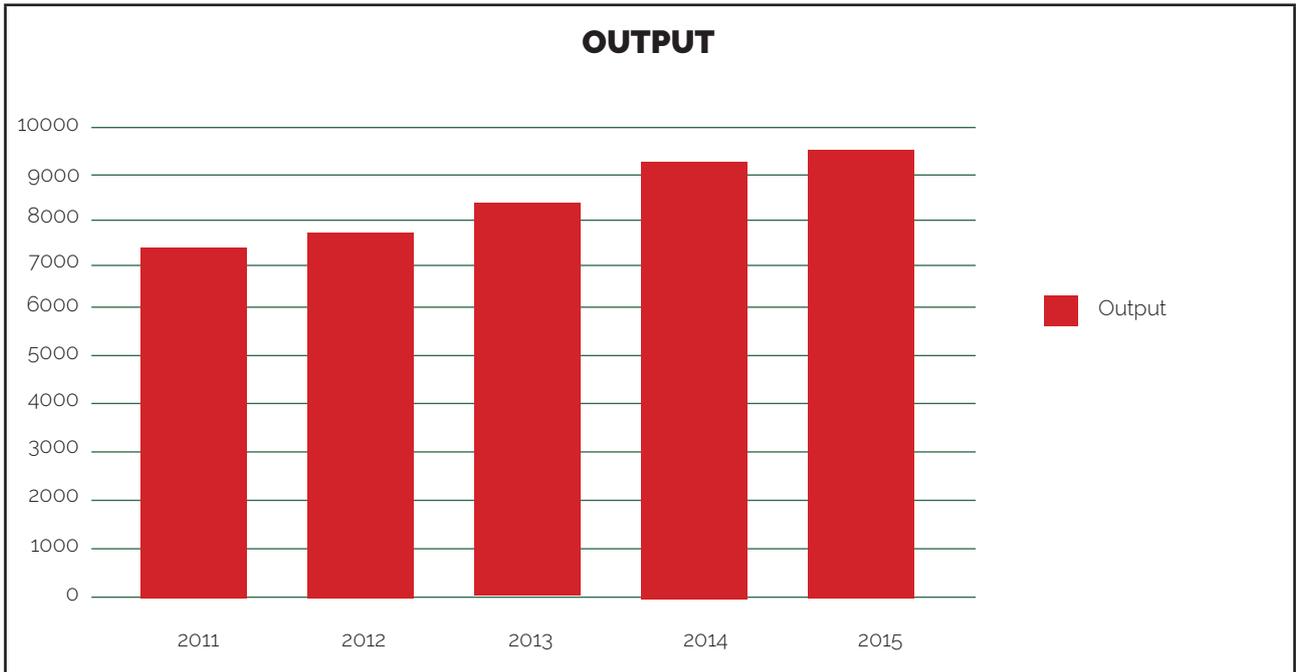
Environment

595. Since the period under review, a second National Environmental Action Plan (NEAP), covering the years 2009 to 2013 was prepared in 2009 and implemented. The Plan together with the first Plan ensure that the sustainability of Kenya's economic and social development depend on proper and responsible management of the natural resource base and the environment in general. Specifically, the NEAP presented interventions for identified major environmental issues. The proportion of land covered by forest increased marginally from 6.3% in 2003 to 6.6% in 2011. Even though this is still far short of the target of 10% anticipated for 2015 (Ministry of Devolution and Planning, March 2014), the increasing trend suggests that Kenya has recognized the importance of the environment as a capacity constraining resource that must be nurtured for broad-based sustainable development.

Energy

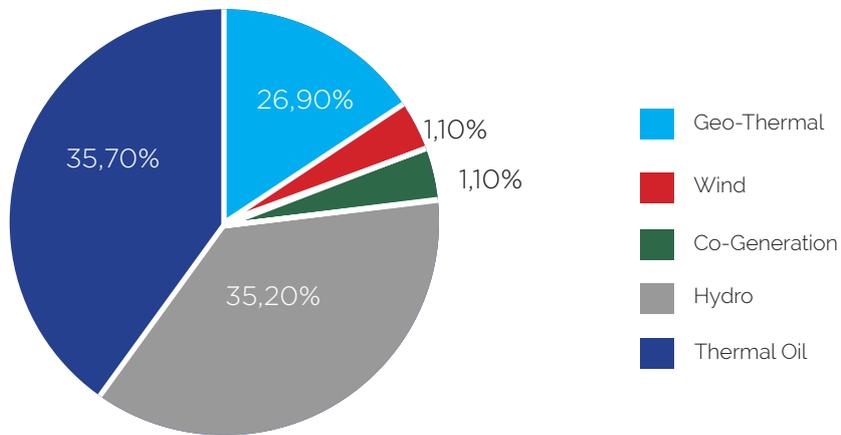
596. In the area of energy, the country has been experiencing rising output of electricity since the last Country Review. As illustrated by Figure 29, electricity output has been increasing since 2011. From an output of 7,559.9 GWH in 2011, the supply of electricity rose by nearly 26% to 9,514.6 GWH in 2015. According to the Managing Director and CEO's Annual Report 2015/2016 provided to CRT, a total of 42.37 MW of new generation capacity was added into the grid during the year under review. This capacity consisted of 34MW of geothermal, 2MW of biogas and 6.37 MW of thermal power. An additional capacity of 0.37 MW was injected to off-grid systems thereby raising total installed capacity to 2,341MW up from 2,299MW the previous year (Kenya Power, Annual Report 2015/2016, Managing Director and CEO Report, p. 5). At this rate, Kenya is on its way to achieving the Constitutional requirement of equalization in energy and is thus laying a solid foundation for sustainable development.
597. In this regard, the country has created some flexibility in the generation and supply of energy by diversifying its sources of energy to include thermal oil, geo-thermal, and hydro. As shown by Figure 30, thermal oil and hydro are the greatest sources of energy in the country, accounting for 70.7% (35.7% and 35.2%, respectively) of the total installed energy capacity in 2015. They were followed by geo-thermal with the capacity of 26.9%. The recent discovery of natural resource deposits, especially in the petroleum sector, has the potential for boosting the country's energy supply and development agenda to reduce poverty in the long run.

Figure 29: Output of Electricity from 2011-2015



Source: Constructed from Table 3.3, Kenya National Bureau of Statics, 2016b, p. 14.

Figure 30: Contribution of Sources of Energy to Effective Capacity



Source: Kenya National Bureau of Statics, 2016b, p. 15.

Roads and Transportation

598. Roads and Transportation are a key component of communication and socio-economic development in Kenya. A major aspiration of the Vision 2030 is for the country to be interconnected through a network of roads, railways, communication ports, airports, and waterways by 2030. The general objective is that by this year, there should be no part of Kenya that should be referred to as a remote region.

599. In pursuit of this objective, the government has engaged in road infrastructural development with unyielding zeal. This was evidenced by the various road expansions and interchange constructions observed by the CRT during its travel around the country. The CRT was informed that the country was provided with 2,600km of tarmac roads in two years. Although the average length of the new roads of 1,300km per year falls short of the government's target of over 3,000km annually, nevertheless it is a clear indication of the government's intention to develop the necessary road infrastructure for its broad-based sustainable development agenda.
600. The CRT was also informed of some flagship transportation projects that are either being, or are about to be, rolled out soon. They include: (i) the Mombasa-Malaba standard gauge railway line, which was launched on 28 November 2013. It involves the construction of a 472 km railway line; (ii) the Lamu, Port South Sudan-Ethiopia Transport Corridor (LAPSSET) project. This would encompass the construction of a port at Lamu, a railway line from Lamu through Juba to Addis Ababa, an oil refinery and a pipe line connecting the oil fields in South Sudan to the refinery as well as air ports in resort centres; and (iii) the Dongo Kundu Free Port that would operate on 24-hour basis similar to what is obtainable in Dubai.
601. By all indications, the accomplishment of these projects will have the potential for launching accelerated broad-based socio-economic development in the country onto a much higher plane. This, though, may be tapered by certain current realities. Kenya will have to compete with both Tanzania and Ethiopia each of which appears to be a more commercially viable alternative pipeline option, partly due to cost of land because of land speculation. Besides, oil prices need to rise above their current levels to make especially the LAPSSET project very attractive and viable. Above all, the country will need to resolve the insecurity caused by terrorism to create the enabling environment for the projects to take a strong foothold.
602. Of immediate concern, though, is the complaint to the CRT of dairy farmers in Nyandarua that they have been pouring milk away because they cannot access markets due to lack of roads in their area. This complaint and the severe food insecurity in North Eastern Kenya during the Country Review Team's visit while farmers in certain areas of country had surplus harvest, suggest that the overall picture of success that emerges in road construction is still faced by assorted challenges of connectivity.

Information and Communication Technology (ICT)

603. Information and Communication Technology (ICT) is increasingly becoming an important enabling factor of economic growth and development in the country. The implementation of e-government is enhancing the uptake of ICT in the operations for effective and efficient delivery of services to citizens. The successful conclusion of the digital migration for TV broadcasting ahead of the global deadline of 17 June 2015 was a boost to effective delivery of services.

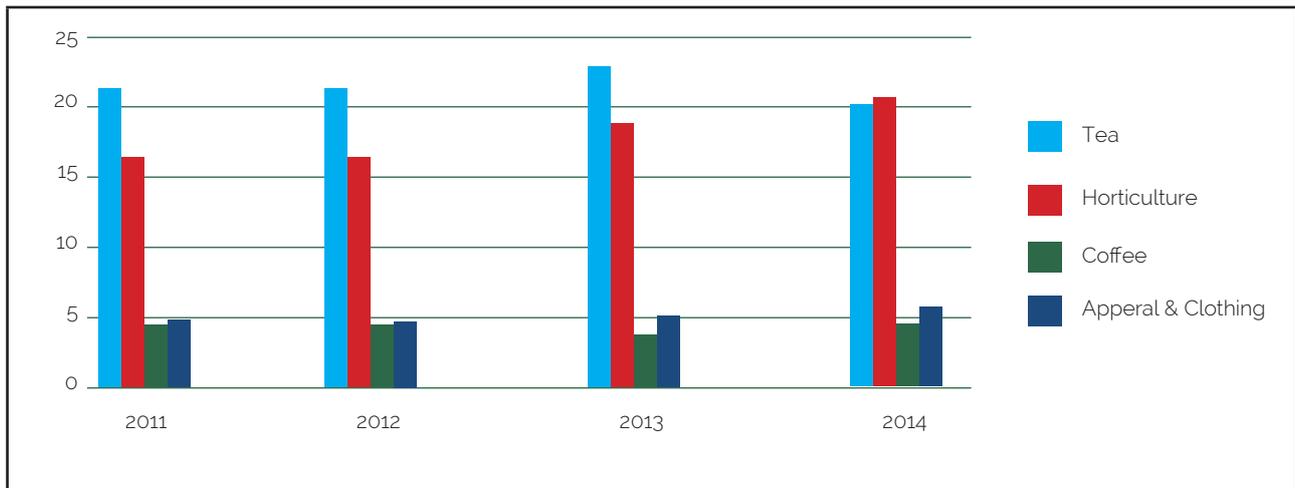
604. Although key ICT indicators may show that the sector's growth slowed in 2015 compared to 2014, the growth was strong enough and robustly resilient in the expansion of mobile telephony networks and increased uptake of internet services to more than meet and sustain the country's needs. The increased internet and broadband penetration is a sure contributory factor to sustainable development. Available data indicate that the number of messages sent via SMS rose from under 5 million in 2011 to over 25 million in 2015 (Kenya Bureau of Statistics 2016b, p. 16). The positive aspects of this high penetration rate are enormous regarding broad-based socio-economic development. All parts of the country are now interconnected and linked to Nairobi, the capital city. This promotes and increases average productivity.
605. Acting as facilitators, the above policies, strategies and programmes implemented by the government since the First Country Review in 2006 contributed positively to economic growth. GDP grew 6.1% in 2011, 5.7% in 2013 and 5.3% in 2014 (Kenya Bureau of Statistics 2016b, page 3).

6.3.2.2 Challenges

606. However, the positive growth rate of GDP was not an entirely inclusive growth, that is, a growth for all. The prevailing levels of poverty and inequality in the country remain still very high, suggesting that the growth did not filter down to the needy in society. The main challenge in this regard is widening gender inequality and regional disparities in terms of poverty levels and access to social services and economic opportunities.
607. Also, the increased numbers of educational infrastructure and increases in other resources, especially at the primary school level, are not commensurate with the increased numbers of pupils. The CRT was informed that the number of classrooms is not adequate, making most schools to have more than 40 pupils per classroom and that in most schools, teacher/student ratios worsened. This observation is confirmed by hard statistics. As reported by the Kenya Bureau of statistics (2016a, page 47), public primary school pupil teacher ratio was 43:1 in 2014. However, the ratio improved slightly to 41:1 in 2015. These ratios make it hard for teachers to give individual attention to pupils. Supply of desks and textbooks, including exercise books and other accessories is said to be over stretched. In addition, the fast expansion of TVET institutions has led to an excess demand for qualified TVET teachers. The situation is exacerbated by the inability of these institutions to attract and retain high calibre academic staff. All in all then, there is the potential for declining quality of staff that will affect the ability of TVET institutions to accomplish their role in society effectively.
608. The Country Review Team's findings indicate some discontent and maladjustment among doctors and other health workers at the county level. The devolution has subjected many health workers to a very uncertain environment. Instead of the stable and predictable environment of regular pay that they enjoyed at the national level, the devolved health workers to the counties are faced with irregular pay schedules and an uncertain environment with regard to promotion and other benefits and conditions of service.

609. Water hyacinth infestation in Lake Victoria, identified by the 2006 Report, appears to have expanded more than it was then. Given the importance of the Lake to fishing and the economic activities of the Lake basin, the Review Team was informed that the infestation is now contributing substantially to a decline in fishing output and the endangering of fish species more than ever. This is becoming a serious challenge to broad-based economic development.
610. The heavy reliance of the exports of Kenya on only three agricultural products is yet another area of concern in Kenya’s quest for accelerated broad-based socio-economic development. About 47% and 43% of the total export earnings were derived from tea, horticulture and coffee in 2015 and 2013, respectively, with tea as the leading source attracting as much 23% of total export revenue in 2013 (Figure 31). Due to the wide gyrations of prices of primary products on the world market, this export composition appears to make Kenya vulnerable in the achievement of its accelerated sustainable socio-economic development agenda. While the CRT is conscious that other countries may envy Kenya’s position, such vulnerability has the potential for retarding some of the country’s good records of socio-economic development.

Figure 31: Values of Principal Domestic Exports 2011-2014 (Percentage of Total Exports)

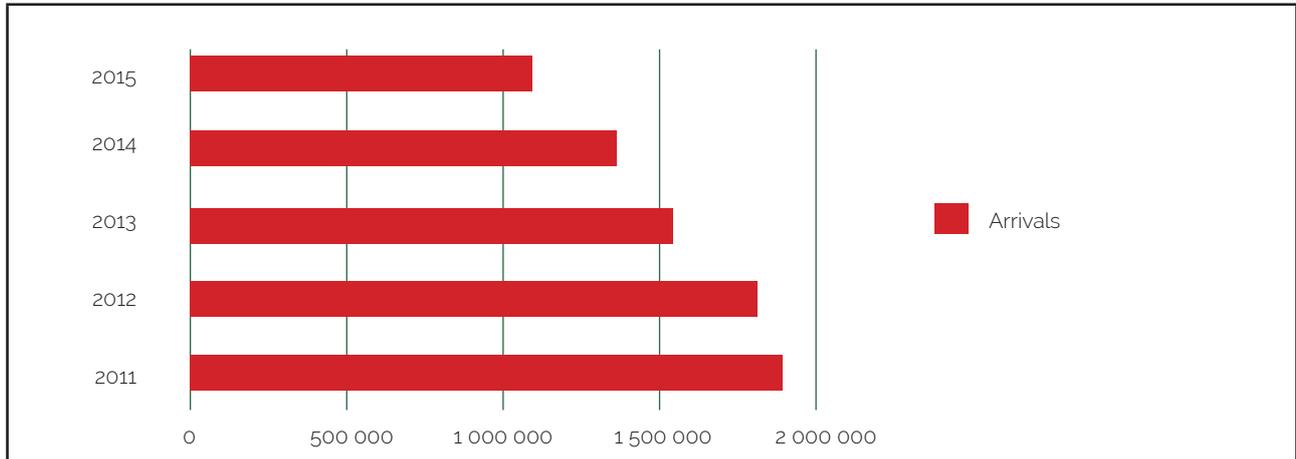


Source: Constructed From Kenya Bureau of Statistics, 2016a, Economic Survey, Table 7.4(a), p. 126.

611. The country’s large public wage bills are affecting the efforts to accomplish accelerated broad-based sustainable socio-economic development. These bills account for about 54% of all government revenue and about 55% of revenue collection (Country Self-Assessment Report, p. 61). These high bills as well as an estimated 30% productivity of workers are a major drawback on the quest for rapid socio-economic development. Besides, the practice of allocating on the average only 7% of the budgets of the counties to development is a worrying concern about efforts in socio-economic development. For one thing, the county levels are the flex points for intervention of direct and meaningful socio-economic development and should therefore receive substantial funding.

612. The tourism industry has been recording very noticeable decreases in the number of visitors arriving in Kenya in recent years. From as many as 1,822,900 in 2011 the figure declined by 35% to 1,180,500 in 2015 (Figure 32). This induced tourism earnings to fall by almost 14% during the same period.

Figure 32: Visitor Arrivals 2011-2015



Source: Kenya National Bureau of Statics, 2016b, p. 13.

613. A major contributory factor is terrorism, such as the Mpeketoni, Lamu County incident of June 2014, the 21 September 2013 Nairobi's Westgate Shopping Mall, massacre as well as the Garissa University College killings in April 2015. The CRT is well aware that terrorism is now a world-wide phenomenon and no one country can be blamed for it. Besides, the Review Team was made aware of the seriousness the Government attaches to the security of the country as any government would.
614. In all the discussion fora of the CRT, corruption was said to be rampant in accessing services and a menace in the management of development projects. The fight against corruption has faced several challenges, including inadequate financial and human resource, and managing the transition process.
615. The agricultural sector is experiencing high cost of production due to high costs of transportation, and poor infrastructure that constrains investment in the sector. Though the government has been subsidizing farm inputs, this does not appear to be commensurate with these costs as indicated by our discussion with stakeholders. Farmers lack the necessary capacity to increase production to take the sector into the next stage of modern integrated agricultural system, which Kenya is capable of accomplishing in the not too distant future with a little bit of dedication.

6.3.3 Recommendations of the Panel:

616. The Panel makes the following recommendations:

- i) The Government of Kenya: take measures to strengthen the investigative capacity of the Ethics and Anti-Corruption Commission (EACC); foster synergy with oversight and law enforcement institutions such as the judiciary, the police and the Office of the Director of Public Prosecutions; scale up anti-corruption campaigns and promote ethical leadership; and equip and modernize investigative capacity of the police and the EACC, including the use of ICT (National Government, the Judiciary, the Office of the Director of Public Prosecutions; and Country Governments).
- ii) The Government take steps to improve the primary schools system by directing more resources to the sector (National Government, Ministry of Education, and Country Governments)
- iii) The county governments and national government should address the issues facing the health sector, particular the grievances of the medical personnel. (Ministry of Health, County governments)
- iv) Adopt and implement strategies addressing the high wage bill (National Government and Country Governments).

6.4 OBJECTIVE TWO: ENCOURAGE BROAD-BASED PARTICIPATION IN DEVELOPMENT

6.4.1 Summary of the Country Self-Assessment (CSAR)

617. The CSAR identified and discussed the legal, political and institutional pro-participation factors of broad-based participation in the governance of Kenya. It regarded Kenya's 2010 Constitution as a grand design document for public participation in all the spheres of sustainable socio-economic development in the country. It argued that Kenya's adoption of participatory planning and development prior to the Constitution as a means to reduce poverty and empower disadvantaged communities had not been very successful with regard to the desired empowerment, transformation and sustainability effect. Consequently, the provisions in the Constitution of strong legal platform for local participation in decision making are meant to address this issue. Some specific Articles of the Constitution including Articles: 1, 10, 35, 174 (c), 196 and 232 of the Constitution, and Article 201 of the Public Finance Act were discussed as pillars of the need for public participation in Kenya's socio-economic development. In this regard, Article 232, for instance, perceives Public Participation as one of the values and principles of public service.

618. The CSAR underscored that in the interest of openness and accountability in the management of public affairs, these Articles require the provision to the public of "full access to information concerning the development of plans, budgets, fiscal out turn reports, performance against predetermined objectives, and financial reports issued in terms of

a financial reporting framework issued by the Accounting Standards Board”. Therefore, Treasuries, it observed, were expected to arrange for effective public participation during the development of their annual budget estimates including the publication of citizen’s budgets which explain and summarize the budget proposals.

6.4.2 Findings of the Country Review Mission

6.4.2.1 Progress Made Since 2006

619. Kenya has taken some commendable steps towards addressing challenges of broad-based participation in socio-economic development since the 2006 Review. These have been predicated on the recommendations of the 2006 Country Review Report.
620. The Report had observed legal, administrative and practical challenges as needing adequate policy, political and legal frameworks to mandate broad-based public participation in socio-economic development in the country. There was a lack of adequate structures, especially at the grassroots, to enhance stakeholders’ participation in the development process. The situation was exacerbated by limited decentralization of administrative processes and resources, inadequate capacity building and resource allocation, and lack of feasible mechanisms to attain effective beneficiary participation in development. These challenges hampered stakeholder participation in the development processes, acted as a major deficiency in programme planning and implementation, and generated negative impact on promoting the empowerment of the population. The general conclusion was that a major cause of many unsuccessful Kenya’s development programmes resided in the lack of active, effective and lasting participation of the programmes’ intended beneficiaries.
621. The APR Panel therefore recommended that the Government of Kenya develop a national approach and common guidelines for public participation, provide effective guidelines to local authorities for ensuring broad participation in the selection of representatives in CDC, and enhance the engagement of CSOs and the public in the preparation of national budgets. It further recommended that Local Authorities encourage public participation in projects and programmes by soliciting inputs from members of the public early in the project planning process in order to capture and include their concerns in the project cycle.
622. Kenya’s reaction to these recommendations to enhance broad-based participation in socio-economic development has been very positive. The inclusion of effective participation of stakeholders at the grass roots as a major activity in the National Plan of Action was a positive step towards these challenges of involving all stakeholders in planning and implementation process. Also, the promulgation of a new Constitution in 2010, the enactment of a law on Devolution in 2012 and the passing of a Public Private Partnership Law in 2013 were intended to meet the letter and spirit of these recommendations to enhance broad-based participation. The new Constitution ensured the enshrining in law of public participation at all levels of social activities in the country. By conferring sovereign power, democracy and participation and the right to information on all Kenyans, the Constitution provides legal and political provisions that give adequate guarantee to public participation in both national and county governments.

623. These guarantees have been extended to Non Governmental Organisations NGOs thus empowering them in the area of public participation. A number of them, such as Plan International (PI) and African Medical Research Foundation (AMREF), collaborate with the national government in fields such as HIV/AIDS, child survival and land issues. Also, the Kenya National Union of Teachers, another beneficiary of the guarantee, participates in shaping the educational policies of the country while Parent- Teacher Associations help in the management of schools.
624. The Public Private Partnership policy provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government. It does this through concession or other contractual arrangements, and through the establishment of the relevant institutions for regulating, monitoring and supervising the implementation of project agreements.
625. The Devolution Act, through its provision of guidelines on the operations of County Government and Public Finance Management, also encourages broad-based participation at the county level. Its demand for openness and accountability in the management of public affairs and the requirement of County Planning to promote public participation by incorporating non-state actors in the planning process ensures broad-based participation. Development committees, where the decision making on development matters is made, grant slots to members of devolved funds, such as the Constituency Development Fund (CDF), and local Community-based Organizations (CBOs).
626. Broad-based participation has also been extended to the youth. A National Youth Policy was finalized and enacted by Parliament in November 2007, culminating in the setting up of a National Youth Council. The Council lobbies for legislation on issues affecting the youth. Above all the Council provides a voice and bridges to the youth to ensure that the Government and other policy makers are kept informed of their views and aspirations.
627. Furthermore, the broad-based public participation efforts extend into religious boundaries. Kadhi Courts are provided for by the 2010 Constitution to cater for persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.
628. The National Government has employed the deaf people and sign language interpreters in courts, police stations, hospitals, education centres, and national media houses and in different ministries. It has also ensured other non-governmental institution like media houses, NGOs, CBOs leading business entities like Safaricom and others have employed a sign language interpreter to meet the communication needs of the deaf people. However, all this appears not to be reflected at the county government level, The CRT was informed that the deaf community at this level have not benefited from this type governance. They are not effectively integrated in the various county government and development structures, making it impossible for them to address their most pressing problems and development aspirations.

629. In the various forum discussions, stakeholders said that even though National Development Plans were expected to be subjected to broad-based participation, community inputs often times were not incorporated into the Plan. They maintained that they were often called to be involved in order to rubber stamp decisions of the planning officers to enable them avoid any future legal implications.

6.4.2.2 Challenges

630. Stakeholder discussion suggested that while young people constitute a substantial portion, 65% of the population, they do not actively participate because they believe that their views will not be taken into consideration. Furthermore, the expectation of incentives to attend public meetings has eroded the culture of public participation.

631. Another challenge is that the Government has ratified all international instruments that promote broad-based sustainable socio-economic development and a number of laws have been passed to operationalize some of the standards and codes. But lack of awareness by Kenyans on the various standards and codes remains a problem. This is a reflection of not adequately involving them in the preparation of the implementation plans. The CRT was informed that domesticated codes were not translated into Kiswahili, the National language.

6.4.3 Recommendations of the Panel:

632. The Panel makes the following recommendations:

- i) Generate and implement practical policies and related programmes to engage the youth effectively in all aspects of the socio-economic development of the country (*Ministry of Public Service, Youth and Gender Affairs*).
- ii) Government of Kenya publish the relevant laws for operationalizing the standards and codes and disseminate as well as translate them into Kiswahili to enhance the promotion of broad-based sustainable socio-economic development and also (*The Government of Kenya, Ministry of Devolution and Planning, Ministry of Public Service, Youth and Gender Affairs*).

6.5 OBJECTIVE THREE: POVERTY, INEQUALITY AND UNEMPLOYMENT

6.5.1 Summary of the Self-Assessment Report

633. The CSAR maintains that Kenya has relied on constitutional/legal provisions, general economic policies as well as various sectoral strategies to reduce poverty, inequality and unemployment. In this regard, the Bill of Right of the Constitution confers a wide range

of rights to the citizens. These include: highest attainable standard of health, accessible and adequate housing and to reasonable standards of sanitation; freedom from hunger, adequate quantities of clean and safe water; social security; and education. These are operationalized by a devolved system of governance to ensure that services are brought closer to the people.

634. The CSAR regards Kenya's Vision 2030 as the key document for addressing poverty. It is believed that the achievement of its goal of propelling Kenya into a middle-income through rapid industrialization by 2030, will lead greatly to a higher quality of life for all Kenyans. The CSAR believes that the Second Medium Term Plan, covering the period of 2013 to 2017, of the document is geared at accomplishing, through accelerated and inclusive economic growth, higher living standards, better education and health care, increased job creation especially for the youth, commercialized agriculture that would provide higher rural incomes and affordable food, improved manufacturing sector and more diversified exports. However, it maintains that some of the major targeted goals did not materialize by the year 2012. The economy's growth rate was at 4.7% in 2013 against the targeted rate of 10% and the overall poverty level declined only marginally from 46% to only 45% against a target of 28%.
635. The CSAR discussed the dimensions of water and other social amenities of poverty and inequality and maintains that Kenya is still a scarce water country and needs new and vigorous policies to rectify the situation. It points out that the country planned to enhance the situation by: raising the standards of the overall water resource management, installing storage and harvesting capability through the rehabilitation of hydro meteorological data gathering network, and the construction of multipurpose dams and other smaller dams throughout the country.

6.5.2 Findings of the Country Review Mission

6.5.2.1 Progress Made Since 2006

636. The 2006 Report noted the challenges of rising poverty levels and an inequitable distribution of wealth in Kenya. Other forms of poverty and inequality were identified by the Report. They included: (i) youth unemployment; (ii) serious regional imbalances; and (iii) inter-ethnic inequalities.
637. The Kenya Government was encouraged to consider, as a matter of urgency, addressing poverty, inequitable wealth distribution and unemployment through social and economic policy; land reforms and the fight against corruption.
638. Kenya has initiated calculated policies and programmes towards the implementation of these suggestions for addressing the scourge of poverty, inequality and unemployment since the last review. The focus of these programmes is on (i) job creation; (ii) poverty reduction; and (iii) improved income distribution. Key programmes in this regard are the

Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) and the Kenya Vision 2030. Although the Economic Recovery Strategy for Wealth and Employment Creation (ERS) preceded the 2006 Country Review, its central focus of eradicating poverty, income inequality and regional imbalances was on the recommendation of the 2006 Report. In addition to these, it embarked on extensive initiatives to accelerate socio-economic development. Through its central pillars of: (i) restoring economic growth within the context of a stable macroeconomic environment; (ii) rehabilitating and expanding infrastructure; (iii) enhancing equity and reducing poverty; and (iv) improving governance it underscored poverty reduction and the creation of an equitable society in Kenya. Its strategies included needs for arid and semi-arid areas and allocating resources for meeting these needs. Other programmes and initiatives undertaken to reduce poverty under the ERS included: (i) a Social Action Fund; (ii) a Slum Upgrading Programme; (iii) a Low Cost Housing Scheme; and (iv) a Vulnerability Programme.

639. The Vision 2030 on its part emphasizes similar strategies as the ERS. Equity issues such as (i) accelerated job creation; (ii) poverty reduction; (iii) improved income distribution; and (iv) related themes of regional inequality, youth and gender were including among the strategies.

640. Furthermore, the 2010 Constitution contains provisions for addressing poverty eradication, income inequality and regional imbalances. It provides for (i) the promotion of social and economic development and the provision of proximate, easily accessible services throughout the country; and (ii) ensuring equitable sharing of national and local resources throughout the country. In the area of addressing regional imbalances, the Constitution mandates that the Equalization Fund be used strictly in eradicating regional imbalances. In this regard, Article 204 (2) emphatically states that:

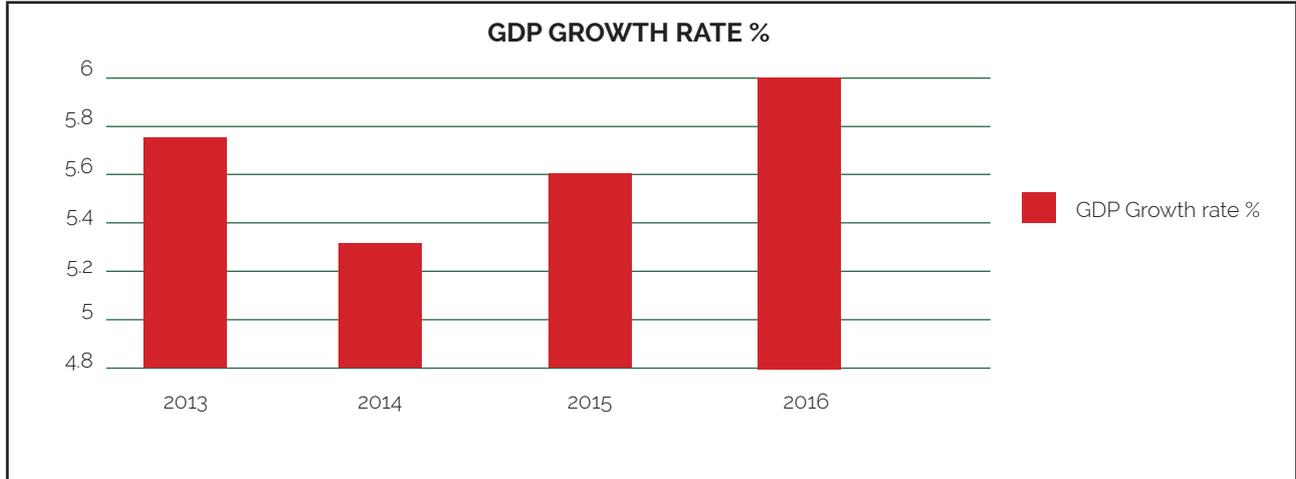
“The national government shall use the Equalisation Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible”.

641. The Fund benefits historically marginalised areas. Other commendable funds introduced by the Government include: the Youth Enterprise Development Fund and the Uwezo Fund, focusing on boys and girls and the Women Development Fund which targets young women. Women Fund: provides affordable and accessible credit to women for enterprise development and encourages capacity building of women entrepreneurs and their institutions. The Uwezo Fund is a revolving Fund for both the youth and women. Commendable programmes such as National Cash Transfers Programmes for persons with severe disability, the elderly, orphans and vulnerable children have been implemented to contribute to reducing social and economic inequities.

642. As well, other socio-economic policies on agriculture, livestock and fisheries, farmer organizations, education, environment and natural resources, water and sanitation, health, housing, information communication and technology, public-private partnerships, human resource development, and monitoring and evaluation have also been designed and implemented since 2006.

643. These various programmes and policies facilitated in contributing to robust GDP growth as depicted in Figures 33. GDP grew at 5.7% in 2013, 5.3% in 2014, 5.6% in 2015 (KNBS 2016), with projections for sustained high growth at 6.0% and 6.4% in 2016 and 2017, respectively (AfDB 2016).

Figure 33: GDP Growth Rates (%) 2013-2016



Source: AfDB 2016

644. However, poverty is still a challenge for Kenya's inclusive social economic development. According to the 2016 Report on Progress in Achievement of MDGs in Kenya, the "country's proportion of population living below the national poverty line (<\$1.25 a day) has not improved significantly since the 1990s" (Government of Kenya, June 2016, p. 18).

645. The national percentage of individuals living below the poverty line was 45.9 per cent in 2014 compare to 52.3 per cent in 2000, while those of rural and urban areas were 50.5 and 33.5, respectively, as shown in Table 11.

Table 11: County Rankings by Poverty Indicators

Kenya	45.2	HEADCOUNT INDEX: PERCENTAGE OF INDIVIDUALS BELOW POVERTY LINE					
Rural	50.5						
Urban	33.5						
County	Top 10 Counties		Median County		Bottom 10 Counties		
	Score	County	Score	County	Score		
Turkana							
Mandera	87.5	Laikipia	47.9	Mombasa	34.8		
Wajir	85.8	Nakuru	47.9	Uasin-Gishu	33.8		
Marsabit	84.2	Murang'a		33.5			
Tana River	75.8	Lamu		33.2			
Samburu	75.6	Meru		32.3			
Kwale	71.4	Nyeri		31.0			
West Pokot	70.7	Karinyaga		27.6			
Isiolo	66.3	Kiambu		25.9			
Makueni	65.3			24.2			
	60.6	Nairobi		21.8			
Kenya	12.2	POVERTY GAP AS PERCENTAGE OF POVERTY LINE					
Rural	14.1						
Urban	8.1						
County	Top 10 Counties		Median County		Bottom 10 Counties		
	Score	County	Score	County	Score		
Tana River							
Kwale	46.1	Laikipia	10.5	Siaya	7.6		
Mandera	41.8	Narok	10.5	Nandi	7.5		
Wajir	32.4	Nyeri		7.1			
Kilifi	31.9	Nakuru		6.2			
Turkana	31.4	Meru		6.1			
Marsabit	29.0	Uasin-Gishu		6.0			
Isiolo	22.9	Kiambu		6.0			
Garissa	19.0	Karinyaga		5.9			
Samburu	18.7	Nairobi		5.7			
	17.4			4.1			

Kenya	4.9	SEVERITY OF POVERTY AS PERCENTAGE OF POVERTY LINE					
Rural	5.8						
Urban	3.0						
County	Top 10 Counties		Median County		Bottom 10 Counties		
Tana River	Score	County	Score	County	Score		
Kwale	30.8	Baringo	3.3	Kiambu	2.1		
Kilifi	28.8	Trans-Nzoia		Nyeri	2.0		
Wajir	20.8	Nandi		2.0			
Mandera	15.3	Karinyaga		2.0			
Turkana	15.2	Narok		1.8			
Lamu	11.4	Meru		1.7			
Marsabit	9.6	Nakuru		1.6			
Garissa	8.8	Uasin-Gishu		1.6			
Taita-Taveta	8.0	Nairobi		1.5			
	7.2			1.2			

Source: Constructed from Kenya National Bureau of Statistics and Society for International Development, 2013, Exploring Kenya's Inequality Pulling Apart or Pooling Together? National Report, p. 37.

646. This measure varied widely among counties. In Turkana, for example, 87.5% of the people lived below the poverty line in that year. This was followed closely by Mandera with 85.5% and Wajir with 84.8%. The Table indicates a difference of 65.7 percentage points between Turkana's score and that of Nairobi and an almost 40 percentage-point difference from that of Laikipia, the county that received the median score. The poverty gap figures and those for the measure of severity of poverty also exhibit similar huge disparities with financial implication. For example, the big differences in the poverty gap illustrate the extent of county requirements to pull the population out of poverty. So counties such as Tana River, Kwale, Mandera and Wajir need massive infusion of funds to pull the people out of poverty. It is in this light that the inclusion of the equalisation fund provision in the Constitution should be commended.

647. Kenya's 2015 Human Development Index score was 0.548 and that ranked it at 145 out of the 188 countries (UNDP 2015). Thus, the country remains in the Low Human Development category by this indicator. Life expectancy at birth which was 60 years in 1989 declined to 56.6 years in 1999 before rising marginally to an assumed level of 58 years in 2014 which is still lower than its level in 1989 (KDHS 2014, p. 2). Although all early childhood mortality rates declined between 2003 and 2014, the infant mortality rate of 39 deaths per 1,000 live births, and under-5 mortality of 52 deaths per 1,000 live births indicate that about one in every 26 children dies before reaching age one, and about one in every 19 does not survive to his or her fifth birthday (KDHS 2014, p. 111). On regional basis, a child born in the Central part of Kenya is almost twice as likely to survive until age 5 than a child born in the Nyanza region. Besides, 26% of children under age 5 are stunted, 4% are wasted, and 11% are underweight. And there are wide variations at county level. The stunting rates of some of the counties in 2014 were: 15% in Garissa, 16% in both Kiambu and Nyeri counties, 18% in each of Kisumu, Kirinyaga, Nairobi, Kajiado and Homa Bay, 39% in Kilifi, 45% in West Pokot, and as high as 46% in Kitui (KNBS 2014).

648. Food security is also a concern to some households. According to Kenya Demographic and Health Survey 2014 Report, 3 in 10 households did not have enough food or money to buy food in the seven days preceding the survey. The Report further asserts that more “than 3 in 10 rural households (36%) and households in Western (45%), Nyanza (42%), North Eastern (38%), and Eastern (38%) reported lacking food or money to purchase food (KDHS, 2014. p. 19).
649. Other forms of poverty and inequalities also persist. Table 12 indicates that the majority (64%) of Kenyan households, nationally, do not have electricity and as many as 87% of rural households are in the same fate. Most of these (75%) households therefore depend on solid fuels for cooking. Of this proportion, wood constitutes 56% and charcoal accounts for 17%. While this proportion is a decrease from the 84% of households that used solid fuels reported in the 2008-09 KDHS (p. 23), slightly over 95% of rural households continue to use solid fuels. Also, nearly 2 in 3 of households use a non-improved toilet facility.

Table 11: Socio-economic Status Indicators

Indicator	2014			2008-09		
	National	Urban	Rural	National	Urban	Rural
Access to Water	71	88	59	63	91	54
Improved Toilet	25	43	22	22	30	20
Cement Flooring	46	70	28	41	77.8	27.9
Use of Solid Fuel	75	45.5	95.3	84	41	97
Electricity	36	68.4	13	23	65.6	8.1

Source: Compiled from Kenya Demographic and Health Survey 2008-09 and 2014.

650. Table 12 also shows a noticeable improvement in the area of access to improved drinking water in 2014 from that for 2008-09. Slightly over 7 in 10 (71%) of households have access to an improved source of drinking water. Almost 40% of the households have the source for their drinking water on their premises, but nearly 28% spend 30 minutes or longer to obtain their drinking water. In rural settings, 4 in 10 households spend 30 minutes or more to obtain their drinking water, as compared with only 1 in 10 urban households (ibid., p. 13).
651. There is also a slight improvement regarding dwelling. Nearly half (46%) of households live in dwellings with cement floors, suggesting an improvement over the 41% reported in 2008-09. However, this implies that the majority of Kenyans (54%) cannot afford such flooring. The urban-rural dimension of this indicator of poverty is even more concerning. Cement floors are much more common in urban households, accounting for 70% of the total households, than in rural households where they are available in only 28% of the households (KDHS 2014). As many as 43% households make use of earth and sand for their flooring. These data suggest a lack of decent housing in rural Kenya and even in some of the urban areas. Added to this is the issue of overcrowding with its concomitant effect of spreading and contracting infectious diseases. According to available data (KDHS 2014, p. 14), the proportion of households using one room for sleeping has increased from 48% to 53% in the last five years but the housing sector still faces a series of challenges before Kenya can eliminate the current housing deficit.

652. The CRT learned that Kenya is proposing a housing policy with the goal of facilitating the provision of adequate shelter and healthy living environment at affordable costs for all the socio-economic groups in the country. The policy will also aim at promoting sustainable human settlements and it will be expected to limit the sprawling of informal settlements especially in the major towns. It will also contribute to the alleviation of poverty by creating employment among the poor as well as promoting income-generating activities. The CRT was informed that the National Housing Corporation is building houses in Nairobi, Nyeri, and Mombasa. This, together with programmes to create awareness about the importance of living in a clean environment and the establishment of health centres, will help improve the living conditions in the urban informal settlements.

Inequality

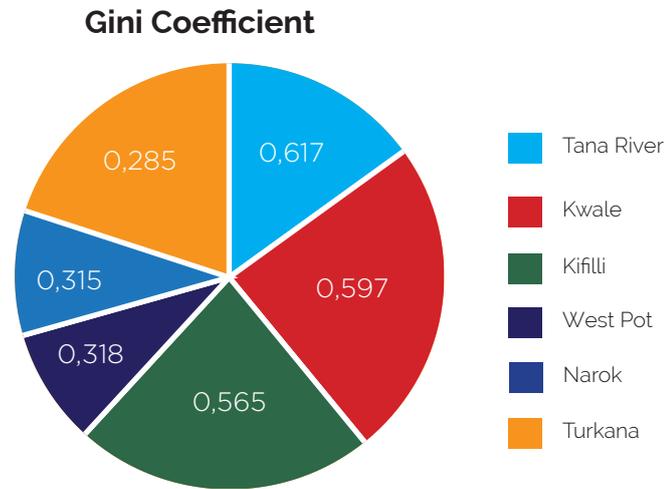
653. Discussions held by the CRM suggested that inequality in Kenya is pervasive, touching on all facets of life. There is inequality in: poverty, income and wealth distribution, life expectancy, unemployment and child mortality. As illustrated in Table 12, inequality exists in the poverty levels between rural (50.5%) and urban (33.5%) areas. Poverty inequality is even more pronounced among the counties. For example, 87.5% of people live below the poverty line in Turkana while the shares of Kiambu and Nairobi are 24.2% and 21.8% respectively (Table 12).

654. Kenya also experiences wide variations in wealth distribution. Three-quarters of urban residents are in the two highest wealth quintiles, while more than three-quarters of rural residents (78%) are in the lowest three quintiles (KDHS 2014, p.18). On regional basis, 90% of Nairobi dwellers are in the two highest wealth quintiles while 70% of people in North Eastern are in the lowest wealth quintile.

655. With regard to income distribution, as measured by the Gini coefficient, evidence suggests that inequality in Kenya has risen over the years. The Gini coefficient which was 0.42 in 1994 increased to 0.425 in 1997 (CSAR, p. 139) and has since risen to an estimated value of 0.445. Although the Gini coefficient of 0.361 for rural area is smaller than the urban centres' 0.368, the inequality in rural Kenya is much more burdensome than it is in the urban centres because of population effect. With the rural population as high as 220.51% of the urban population (68.8%: 31.2%), but it controls only 45.4% of the consumption expenditure. This consumption gap makes the impact of the rural index far greater than that of the urban index. For example, despite the disproportionately higher rural population, the household expenditure per adult equivalent per month in urban areas is 264.76% of that of rural areas (KNBS and SID, 2013, p. 37).

656. Similar to poverty, the inequality index of counties varies tremendously. The highest income inequalities, as indicated in Figure 34, are in Tana River, Kwale and Kilifi. The most equal areas are counties such as Turkana, Narok, and West Pokot with Gini coefficients of 0.283, 0.315, and 0.318, respectively. These data indicate that the most equal counties, such as Turkana and West Pot, are among the 10 poorest counties presented in Table 12, signifying that high poverty is not necessarily equivalent to high inequality. Even though the most unequal counties are not the poorest, they tend to be unequal in both rural and urban areas, thus requiring a set of transfers from national government that are redistributive.

Figure 34: Counties with the Highest and Lowest Income Inequality



Source: KNBS and SID, 2013, Exploring Kenya's Inequality Pulling Apart or Pooling Together? National Report, p. 41.

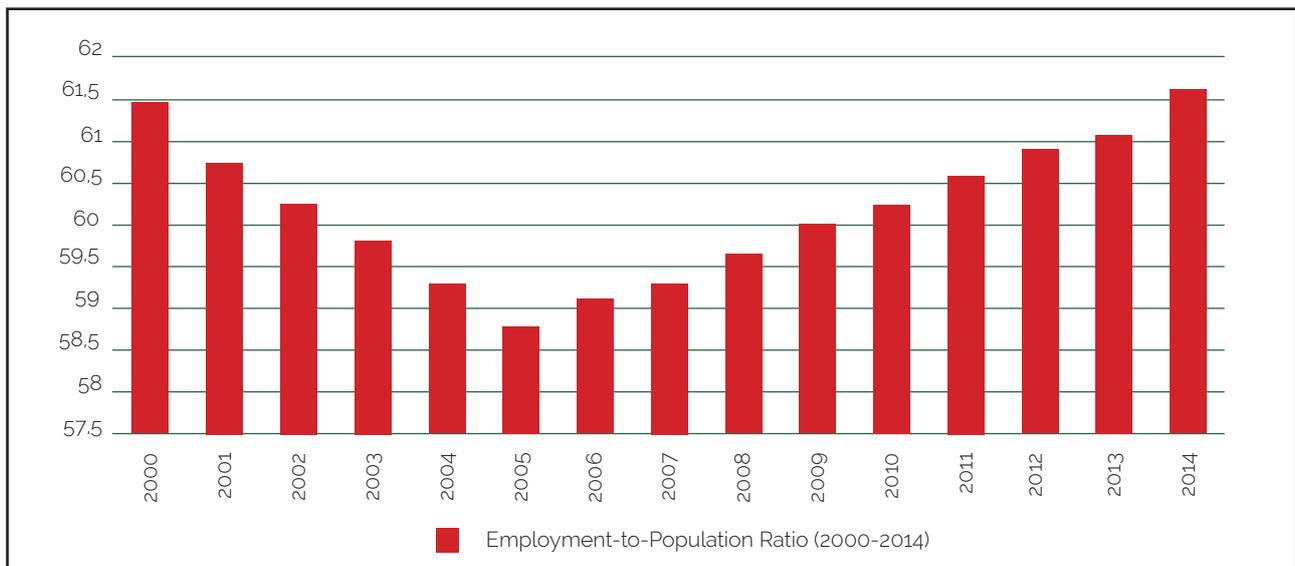
657. Several reasons can be advanced for differences. During the Country Review Mission, various stakeholders gave the impression that the major drivers of poverty and inequality include: (i) lack of employment, especially among the youth, women and persons with disabilities; (ii) intra-household allocations; (iii) food insecurity in some parts of the country, such as the arid areas; (iv) low education and literacy levels; (v) limited access to land and other productive resources; (vi) poor infrastructure coupled with difficult terrain, particularly in the hard-to-reach areas; and (vii) historically marginalised counties. In Nakuru, for instance, stakeholders underscored the collapse of industries as the major reason for increasing unemployment, poverty and inequality in their country.
658. The Government of Kenya is well aware of these causes and has implemented policies and programmes for addressing them. However, the programmes have a long gestation period, in some cases up to a decade. Therefore, the CRT could not assess their efficacy on reducing poverty and inequality.

Unemployment

659. Available data indicate the overall unemployment rate in Kenya is about 12.7% of the adult population and at about 25% (that is, slightly more than that twice that of the adult population) of the youth population. Female youth unemployment rate, which is at 27%, is even higher (KNBS 2016). These two data points for the youth strongly suggest that unemployment in Kenya is mainly a youth problem. According to a UNDP study, 80% of the currently 2.3 million unemployed are young people between 15 and 34 years. Unemployment is highest among the youth of about 20 years of age. While the youth of younger ages such as 15 to 16 years start with a high unemployment rate, unemployment is significantly higher for the youth between 18 and 22 years of age. It tapers off, albeit, slowly among the youth of 22 of age until among those of age of 30 and then gets aligned with the national unemployment rate.

660. Youth unemployment is high in both urban and rural areas but the rate is much higher in urban than in rural areas because of rural to urban migration of the youth in search for opportunities in the cities.
661. Several reasons have been advanced about this phenomenon of high youth unemployment in the country. A UNDP study in 2013 established that youth aged 15 to 34 comprised two-thirds of the workforce, illustrating the dominating nature of the youth in the labour market. The working age population comprised around 20 million in 2011 (UNDP, 2013) which was nearly 50% of the country’s estimated population of 41 million in that year.
662. Also, employment in Kenya is tied to the fortunes of the agricultural sector. Since the sector accounts for about 82.7% of the total employment, any slowdown of activities in the sector has a direct impact on total employment. In this regard, each of the frequent droughts in the country has varied agricultural activities and thus employment opportunities. These variations and the entry of large numbers of youth annually into the job market, have led the employment-to-population ratio for 2014 to remain the same as it was in 2000 (Figure 35).

Figure 35: Employment-to-Population Ratio (%) - Kenya (2000-2014)



Source: Government of Kenya, June 2016, Progress in Achievement of Millennium Development Goals in Kenya Final Status Report, p. 20.

663. In addition, most of the youth lack the skills required in the labour market. For example, participants in Nairobi County decried the fact that most employers require applicants for jobs to have job experience of two to five years. The participants advocated for attachments, internships and other such programmes that would help the youth acquire basic experience after graduating from tertiary institutions. While the Government’s policy on TVET may help address some of these concerns, employment policies need to distinctively target rural youth and female youth unemployment; which requires a distinctively female focus of youth employment policies.

6.5.2.2 Challenges

664. A major challenge for the Government of Kenya with regard to poverty, inequality and unemployment is their wide variations and large gaps. The stabilisation of the variations and the elimination of the gaps require substantial funding that is definitely a challenge to both the National and County Governments. In addition to this, both levels of government face the challenges of: (i) high population growth rate; (ii) rapid urbanization; (iii) high cost of financing housing development; (iv) high cost of building materials; and (v) shortage of land.

6.5.3 Recommendations of the Panel

665. The Panel makes the following recommendations:

- i) Both levels of governments facilitate and improve the delivery of public services that are critical for increased production, especially in agricultural production (*Government of Kenya, County Governments, Ministry of Agriculture*);
- ii) The Government of Kenya through the Kenya Bureau of Statistics conducts a capacity assessment to identify the skills demanded by employers in comparison to what is offered in training institutions (*Government of Kenya, County Governments, Kenya Bureau of Statistics, Ministry of Education*).
- iii) The two levels of governments sustain improvements in infrastructure. Improved infrastructure access is associated with movements out of poverty. Households that are closer to service points such as a motorable roads, piped water, healthcare, education, etc. are more likely to move out of poverty through diversification of agriculture, engaging in trade, etc. (*Government of Kenya*)

6.6 OBJECTIVE FOUR: PROGRESS TOWARDS GENDER EQUALITY, PARTICULARLY EQUAL ACCESS TO EDUCATION FOR GIRLS AT ALL LEVELS

6.6.1 Summary of Country Self-Assessment Report

667. The CSAR noted that Chapter Four of the Constitution of Kenya, which deals with the Bill of Rights, guarantees every person certain rights and fundamental freedoms and specifically safeguards women's rights. The CSAR then identified and presented brief discussions on the relevant and pertinent Acts of the Constitution that safeguard the rights of women. This was followed by a discussion on the progress made with regard to women inclusion in various aspects of the economy.

668. In discussing women representation at the National Government and Country levels, it opined that the current number of women in Parliament is the highest representation of women ever to have been elected and nominated in Kenyan history. But the number still falls short of the expected number needed to lead to a more gender-responsive Parliament. It concluded that in spite of an enabling constitution and legislation, women in Kenya still endure an inordinate number of hurdles and an environment void of political will, resulting in fewer than expected women competing and winning seats in general elections.

6.6.2 Findings of the Country Review Mission

6.6.2.1 Progress Made Since 2006

669. The 2006 Country Review Report indicated that while Kenya had made significant progress in mainstreaming gender issues in the development process and in the adaptation of international provisions into national policies and programmes, gender disparities still persisted. It identified unequal access to productive resources, social attitudes, cultural differences, unequal educational opportunities and poor participation in the decision making process by women - both in the political and economic sectors as some hindering factors of gender equality in the broader realm of the Kenya society. It underscored the issue of gender marginalisation by pointing out the vastly women underrepresented in Parliament and in local leadership positions. Women at the time held only 8.3% of the total number of seats in the National Assembly.

670. Also, women were not adequately protected under the law. This allowed the application of harmful cultural practices, such as female genital mutilation (FGM), early marriage, widow cleansing, forced evictions, widow inheritance and discriminatory property inheritance practices which exacerbated women's vulnerability to abuse. In addition to the practice of wife inheritance restricting a woman's right to choosing her mate, it also placed her at a high risk of contracting sexually transmitted diseases including HIV/AIDS. Overall, some Kenyan women had less access to social services and productive resources compared to men.

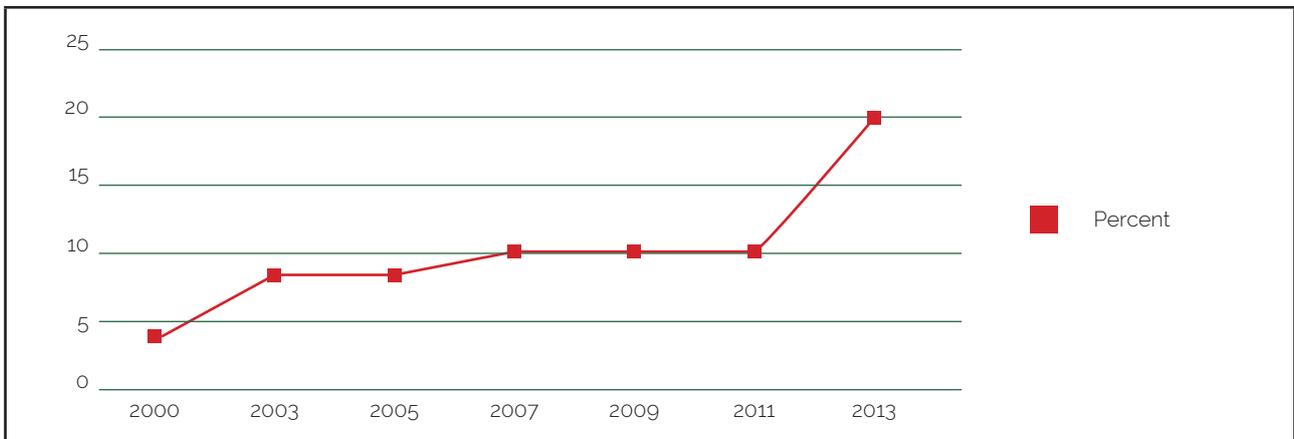
671. Under a newly sworn-in government at the time of the Review, the gender dimension gained momentum, as demonstrated by some policy initiatives - including the creation of the Ministry of Gender, Sports, Culture and Social Services in 2002 and the National Gender Commission in 2004. The Government also appointed several women to key posts in the Cabinet, the Civil Service and state corporations. Nevertheless, the gender situation had yet to reach the level envisaged under the various gender conventions and declarations ratified by the Government of Kenya. Laws disenfranchising women were still intact and the values and cultures of the societies that fostered gender discrimination were far from being changed.

672. So the 2006 Country Review Report suggested: the initiation of a gender sensitive approach in monitoring and evaluation of development programmes; the enactment of an Affirmative Action Bill and other related gender equity bills; the dialoguing with the

different communities in Kenya on harmful cultural practices; and the outlawing of all forms of discrimination in respect of the CEDAW Convention (i.e., Convention on the Elimination of All Forms of Discrimination Against Women).

673. Based on these suggestions, the Government passed the Sexual Offences Act in 2006 and also established in 2007 the Women Enterprise Fund. Furthermore, it adopted a National Plan of Action for the Abandonment of Female Genital Mutilation as well as a National Land Policy in 2009 which affirmed women's rights to land ownership. The Sexual Offences Act, 2006, made provisions about sexual offences, their definition, prevention and the protection of all persons from harm and unlawful sexual acts. This Act provided the legal basis that made sexual offences illegal in Kenya. Set up in 2007, the Women Enterprise Fund benefits women of at least 18 years old. The Fund applies to individuals as well as groups. In this case, men can also be beneficiaries for the funds but they must belong to a women's group but most of the leadership positions must be held by women. With the adoption of the National Plan of Action for the Abandonment of Female Genital Mutilation the Government acted to ban the practice of FGM through the introduction of two other Acts - the Children's Act 2001 and the Prohibition of Female Genital Mutilation Bill of 2011. The former made those who facilitated or practiced FGM punishable by law for the first time in Kenya. This enabled the prevalence of the practice to decline from 38% of women in 1998 to 27% in 2009 (Kenya Demographic and Health Survey). All these Acts were given a new legal meaning in the 2010 Constitution through specific Acts. For example, protection from harmful cultural practices is guaranteed by Article 2(4) of the Constitution while the transferring of citizenship by Kenyan women to their children of even non-Kenyan husbands has been protected by Article 14(1). Article 21(3) identifies and recognizes women as a vulnerable group whose needs should be addressed by all the state organs and public officers. Gender equity in the governance of Kenya has been given a new meaning by the Constitutional provision that "no more than two-thirds of the members of elective or appointive bodies shall be of the same gender" (Article 27(8)).
674. There have been very noticeable changes in gender equity in many sectors of the Kenyan society since the 2006 Report. There has been progress in ensuring better women representation at some levels of the government. The number of women Members of the National Assembly has been trending up since 2000, albeit, very gradually. In that year, women represented only 4.1% of the total Members of Parliament (Figure 36). This representation rose to 8.1% in 2011 and then jumped to almost 19.7% in 2013. Women representation in the senate comprises 26.5%, 18 of whom are nominated senators. The combined representation of women in both the Senate and the National Assembly comprises 20.8% (Ministry of Devolution and Planning, p. 13) or a combined total of 87 women compared to 331 men. Although this representation is much better than those of previous years, it is clear that it does not meet the Constitutional provision for gender equality and may require some Constitutional interpretation.

Figure 36: Women Members of the National Assembly



Source: Ministry of Devolution and Planning, Millennium Development Goals Status Report for Kenya 2013, p 14.

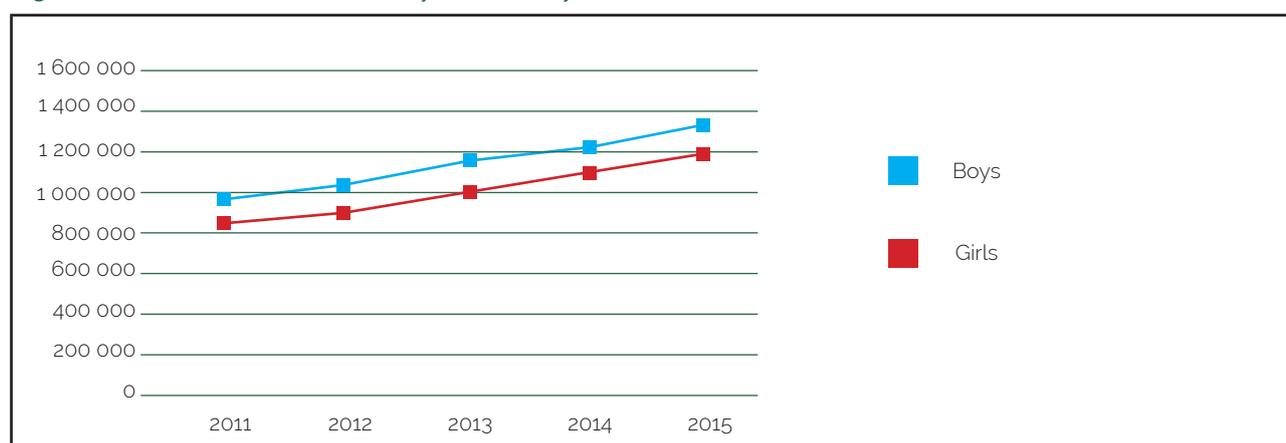
675. Women appear to be better represented in wage employment in non-agricultural sector as illustrated in Table 13. However, this bright picture may be the result of women being employed in traditional female occupations.
676. Women representation in the education sector through the child-girl appears to fare better. There have been increased completion rate of primary education by girls. The Gender Parity Index (GPI) in education has progressively improved over time, establishing almost gender parity in recent times. For example, the ratio of girls to boys in primary schools rose from 0.95 in 2003 to 0.98 in 2013. The ratio of girls to boys in secondary education increased from 0.86 in 2011 to 0.89 in 2013 but the gender parity gap has been maintained beyond 2013 to 2015 as shown by Figure 6.14. At the tertiary level, the gender parity ratio of female to males experienced the highest increase by rising from 0.63 in 2000 to 0.81 in 2013.

Table 13: Wage Employment in Non-Agricultural Sector by Industry and Sex, 2013

INDUSTRY	MALE	FEMALE	TOTAL	% FEMALE
	(IN THOUSANDS)			
Mining and Quarry	7.6	1.8	9.4	19.1
Manufacturing	201.5	78.8	280.3	28.1
Electricity, gas, steam and air conditioning supply	10.7	4.0	14.7	27.2
Water supply; sewerage, waste management & remediation activities	6.3	3.2	9.5	33.7
Construction	106.7	23.6	130.3	18.1
Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles	159.2	53	212.4	25.0
Transportation and Storage	63.9	12.5	76.4	16.4
Accommodation and Food Service Activities	48.1	25.6	73.7	34.7
Information and Communication	57.3	35.4	62.7	38.2
Financial Activities	37.2	29.8	67.0	44.5
Real estate activities	2.2	1.6	3.8	42.1
Professional, scientific and technical activities	46.9	18.5	65.4	26.3
Administrative and support service activities	3.6	1.3	4.8	25.0
Public administration and defence; compulsory social security	141.6	76.2	217.8	35.0
Education	232.4	268	400.8	42.0
Human health and social work activities	45.3	67.5	112.8	59.8
Arts, entertainment and recreation	4.3	2.4	6.7	35.8
Other Service Activities	18.5	11.0	29.8	37.9
Activities of households as employers; undifferentiated goods- and services producing activities of households for own use	40.6	69.1	109.7	63.0
Activities of extraterritorial organizations and bodies	0.8	0.3	1.1	27.3
TOTAL	1,234.7	684.3	1,919.0	35.9

Source: Ministry of Devolution and Planning, Millennium Development Goals Status Report for Kenya 2013, p 13.

Figure 37: Enrolment in Secondary Schools by Sex 2011-2015*



Source: Constructed from Table 3.8, Kenya National Bureau of Statics, 2016a, p. 49.

677. Therefore, it is not surprising that internationally compiled statistics indicate that in recent times, Kenya compares favourably on the gender equality score in the community of nations. The Global Gender Gap Report 2014 ranked Kenya 37th out of 142 countries with an overall score of 0.726. Both the economic participation and political empowerment categories were satisfactorily ranked. Nevertheless, the match towards Gender Equality still faces a number of challenges.

Legend: (0.00 = inequality; 1.00 = equality)

Table 14: Parity Index

Gender Gap Index	Overall		Economic Participation		Educational Attainment		Health Survival		Political Empowerment	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
2014 (out of 142 countries)	37	0.726	49	0.810	115	0.923	80	0.973	48	0.197
2013 (out of 136 countries)	78	0.680	44	0.715	107	0.923	102	0.968	85	0.116
2012 (out of 135 countries)	72	0.677	35	0.724	106	0.937	103	0.968	103	0.079
2011 (out of 135 countries)	99	0.649	83	0.616	101	0.936	102	0.968	100	0.077
2010 (out of 134 countries)	96	0.650	82	0.615	102	0.940	101	0.968	98	0.077
2009 (out of 134 countries)	97	0.651	50	0.683	106	0.909	110	0.968	122	0.045
2008 (out of 130 countries)	88	0.655	41	0.693	102	0.926	105	0.968	121	0.032
2007 (out of 128 countries)	83	0.651	59	0.649	97	0.934	104	0.968	104	0.053
2006 (out of 115 countries)	73	0.649	40	0.657	88	0.918	96	0.966	93	0.053

Source: World Economic Forum 2013, The Global Gender Gap Report 2014, p. 227.

6.6.2 Challenges

678. The biggest challenge for the government and women of Kenya is the operationalization of the progressive provisions of the 2010 Constitution in order to change the poor representation of women and address other cultural, social and economic discriminations they face. Institutions charged with implementing gender equality policies and programmes are not fully effective because of lack of capacity and inadequate resources. Most of these institutions are new and still lack capacity and financial and material resources as well as face relationship problems with bodies which have similar mandates.
679. While legislation on property rights has improved women's access to private property and the right to inheritance, resistance due to ignorance or cultural beliefs remain a challenge. This places the realisation of the two-thirds gender rule as a challenge because of social discrimination of women. The Country Review Team was informed of instances of the continuation of appointment of men only in disregard of this constitutional provision in some fora.
680. County governments have performed relatively poorly with regard to gender equality. Men dominate the executive posts (secretaries). In fact, there is no single elected woman governor in the country. There are only nine deputy women governors in office. By being the 'running mates of the governors' and not being directly elected by the people these deputy women governors are not qualified to be regarded as publicly elected officials on their own accord.

6.6.3 Recommendations of the Panel:

681. The Panel makes the following recommendations:
- i) The Government of Kenya address, clarify and institute the legal framework to achieve in the National Assembly, Senate and County Assemblies the two thirds gender rule enshrined in the Constitution (*the Executive Branch, the National Assembly, the Senate, and County Assemblies*).
 - ii) The Government ensure that policies and programmes on gender equality and women's empowerment are widely disseminated and publicised (*Ministry of Public Service, Youth and Gender Affairs*).
 - iii) Institute mechanisms to deal with retrogressive cultures that discriminate against women and the girl child (*Ministry of Public Service, Youth and Gender Affairs; the Executive Branch; the National Assembly; the Senate; and County Assemblies*).



CHAPTER
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7. OVERARCHING ISSUES

7.1 Overview

682. In the preceding pages, the Country Review Mission laid out its findings and recommendations in regard of the four core thematic areas of Democracy and Political Governance, Economic Management and Governance, Corporate Governance, and Socio-Economic Development. In the process, certain issues of a cross-cutting nature kept recurring across these specific thematic areas. These are issues that are of a general nature and, therefore, requiring broad vision and holistic approach for full and effective consideration. In addition, virtually all of them were highlighted in the 2006 Report of the First Kenyan Review Mission in one form or the other. This further underscores their enduring nature. This concluding chapter calls attention to these overarching issues, namely:

- Devolution and Diversity Management for National Unity;
- Corruption and the Quest for Transformational Leadership;
- Poverty and Inequality;
- National Security and Terrorism; and
- Gender and the Two-Thirds Rule.

7.2 Devolution and Diversity Management for National Unity

683. It is the consensus that one of the most celebrated innovations in constitutional engineering introduced by the Constitution of Kenya 2010 is its body of provisions for a devolved system of two layers of government, the national and county governments. The two levels of government are distinct and interdependent, and are required to conduct their mutual relations through consultations and co-operation. Under the system, there are forty-seven (47) counties and a national government. As indicated in chapter three, the national government is responsible for the provision of goods and services whose benefits are national in scope. Examples are national defence, foreign affairs, international trade, national economic policy and planning, education policy, monetary policy, currency and banking. The functions devolved to the counties are specified in details in the Fourth Schedule of the Constitution. Some of the functions are agriculture, health services, cultural activities and entertainments, trade development and regulation, cultural activities, and pre-primary education and village polytechnics and childcare facilities. The county governments commenced operation in 2013.

684. Concomitant with devolution of functions is revenue sharing arrangement to enable each level of government carry out the constitutionally assigned functions. Article 187(2) of the Constitution of Kenya makes it clear that the revenue allocated to the counties should be adequate to carry out the assigned functions. In general, it is known that devolution of functions promotes good governance through participation by various groups, strengthens the civil society, builds social capital, and enhances accountability and probity, and that it is also regarded as an anti-corruption weapon. Economically, devolution permits the design of public policies and programmes (e.g. infrastructure, health and education) to reflect the local conditions and the preferences of the people. The intents and purposes of the Constitution of Kenya and the various policy documents underscore these attributes directly and indirectly.
685. The county governments have some taxing powers. Accordingly, they can collect and spend revenues from property and entertainment taxes, and any other taxes authorised by an Act of Parliament. Counties can also collect revenue from user charges and fees approved by county laws. The other sources of revenue to the counties include conditional or unconditional allocations from the national government out of the revenue allocated to it, and grants and donors from development partners.
686. Remarkably, several legislations have been passed to support the smooth operations of devolution of functions. Among the laws enacted are the County Government Act, 2012, Urban Areas and Cities Act, 2012, Inter-Governmental Relations Act, 2012, Transition to Devolved Government Act, 2012, Division of Revenue Act, 2013, Contingencies Fund and County Emergency Fund Act, 2011. The basic institutional structures to ensure devolution runs well are also being erected.
687. In general, it is known that devolution of functions promotes good governance through participation by various groups, strengthens the civil society, builds social capital, and enhances accountability and probity, and that it is also regarded as an anti-corruption weapon. Economically, devolution permits the design of public policies and programmes (e.g. infrastructure, health and education) to reflect the local conditions and the preferences of the people. The intents and purposes of the Constitution of Kenya and the various policy documents underscore these attributes directly and indirectly.
688. The general perception of the people of Kenya about devolution is strongly positive and profound. Specifically, the consensus across the broad spectrum of the society is that devolution of functions is a good model of governance for the country. It is also largely acknowledged that devolution has only operated four years; and so, it is still at the embryonic stage, for it has a high chance of success. The testimonies during the consultative forums by the CRM were that infrastructure, healthcare, roads, education, among others, have improved with devolution.
689. However, there are threats to devolution. The capacity of the county governments, in terms of institutional structures, is structurally weak to cope with effective service delivery. Inadequate human resources and lack of openness, accountability and transparency

in the use of financial resources are major challenges. Public participation in budgeting and planning process to ensure people-centred development is still very low (or not in existence) in most of the counties. The various special funds, which contribute to service delivery and employment, are poorly managed. Vigorous civic education through radio and television programmes, seminars, debates about all aspects of devolution, stressing the benefits, need to be pursued.

- More specifically, some of the other key challenges to devolution include:
- The enormous overall cost of running the devolved system of governance and the run-away wage bill; and
- The devolved system's evolving role is simultaneously a generator of solutions and a solution to threats to national unity.

i.) Containing the overall cost of the devolved system and the ballooning wage bill

690. With 47 devolved units and numerous administrative units below the county level, the new system of governance has led to a significant expansion of the public sector wage bill. This is not only as a result of increased employment levels at both levels of government but also the increase in the number of elective positions.
691. There are more than 700,000 workers in Kenya's public sector, majority earning fairly modest wages. However, there have been concerns that due to an increasing wage bill, government is increasingly reallocating funds from the capital budget to recurrent expenditure. The downside is that this undermines investments in development projects. Moreover, as government tries to borrow in order to maintain a positive economic growth outlook, it increasingly expands the public debt while crowding out the private sector from the domestic money market.
692. Under the circumstances, rationalization of human resources within the public sector remains critical. The Panel is gratified that Kenya has taken steps to address the issue under the Capacity Assessment and Rationalisation of the Public Service (CARPS).
693. Another area that the Salaries and Remuneration Commission (SRC) will have to rationalise in containing the wage-bill would be in setting salaries attached to the elective positions. At elections, under the new system of governance, a voter casts up to six ballots, for the President, Senator, Governor, and Member of the National Assembly, Women Representative and the Member of County Assembly (MCA). Going by the sheer numbers of political representatives, stakeholders expressed views that Kenyans are in many regards over-represented. The cost of this over-representation in terms of salaries, allowances and the numerous attendant perks constitute a very significant drain on the exchequer.

694. Even as the Salaries Remuneration Commission (SRC) continues to contend with the rationalization of the public sector wages, it is the recommendation of the Review Mission, that the government of Kenya employ deliberate and extra-ordinary strategies in order to contain the cost of maintaining the numerous elective positions brought about by devolution.
695. Closely linked to the salaries for political representatives is the issue of the requisite educational qualifications. The overwhelming view from the public appears to be that in a country where there are many universities and college graduates languishing in joblessness, leadership should send the right signals regarding the benefits of education. The argument that leaders need not have a college qualification is inconsistent with the societal insistence on the value of education to the country's social-economic development. The complex nature of modern governance as exemplified by technical policy documentation and debates demands that leaders aspiring to hold the elective positions on offer be highly qualified. It is therefore recommended that Kenya consider setting a minimum educational qualification for those offering their candidature for elective positions from members of County Assemblies upwards.

ii.) **Devolved System and Management of Diversity for National Unity**

697. The establishment of 47 Counties and governments had been hailed as the surest way of promoting national unity by ensuring that all regions that had hitherto been deemed as marginalized finally had the opportunity to participate actively in nation-building in their own areas. Concerns over the possibility of politicians turning the counties into ethnic enclaves and marginalizing minorities among them were supposed to partly be addressed by the provisions of the County Governments Act (2012), Section 65, which requires that not more than 70% of county government employees be from the home county or counties with similar or almost similar ethnic composition. This was supposed to help preserve national unity through the promotion of integration and national cohesion.
698. Unfortunately, the reports of the National Cohesion and Integration Commission (NCIC) indicate that this piece of legislation has been widely violated by a majority of the counties. Many counties have employees who are ethnically homogenous. Most of the counties appear to have ignored the law and either 'expelled' personnel that were considered 'non-local' or simply intimidated and frustrated them into non-action thereby adversely affecting their job performance. As a result, devolution appears to have had an inadvertent negative effect on Kenya's national unity. These are real concerns that can further threaten the already fragile national unity. As a result, it is strongly recommended that Kenya makes urgent steps to address this issue of ethnic representation in a way that preserve national unity. Relevant institutions, such as the Commission for Revenue Allocation (CRA), the National Cohesion and Integration Commission (NCIO), the National Treasury, and the Senate, should go further and enforce strict compliance with this critical legal provision if Kenya is desirous of preserving its national unity.

7.3 Corruption and the Quest for Transformational Leadership

699. The Government of Kenya (GoK) admits that corruption is the main social challenge in the country as it negatively impacts development. It hinders development in two ways. First, corruption limits the resources available to the government to address poverty. Second, it destroys social values and undermines democracy and good governance. The Kenyan Constitution provides the linchpin to check corruption through relevant provisions, such as Article 10 dealing with accountability, transparency, integrity good governance, among others, while Article 232 is pre-occupied with the principles of public service. The Constitution accentuates the separation of power among the three arms of government.
700. There is widespread perception that corruption permeates all sectors of public life in Kenya as reflected by major governance indicators. According to Transparency International's Corruption Perception Index and the World Bank Governance Indicators there has been slight improvement over the past decade according to although Kenya still scores relatively poorly on both these measures. In 2011, Kenya was ranked 154 out of 182 countries assessed by Transparency International. In contrast, it is noteworthy appreciating that the World Bank has recorded other governance improvements, including progress in terms of governmental effectiveness (from a score of 28.3 in 2002 to 36.0 in 2011) and in relation to voice and accountability, from 25.5 in 2002 to 40.4 in 2011.
701. The GoK admits that corruption must be fought and it has taken various measures to fight corruption. Among the laws enacted are the Ethics and Anti-Corruption Commission Act, 2011 that led to the establishment of the Ethics and Anti-Corruption Commission, EACC (a body that replaced the Kenya Anti-Corruption Commission, KACC), the Leadership and Integrity Act 2012 and Public Officers Ethics Act 2003. The Constitution of Kenya and laws on financial management underscore the principles of transparency, accountability and integrity.
702. There is evidence of corruption cases handled and actions taken by the anti-corruption bureau, the EACC, in the period 2006 to 2016. The EACC statistics reveal that: 434 cases related to corruption and economic crimes are being investigated; 187 cases being investigated for unethical behaviour; and 536 cases are pending in courts involving 891 persons arraigned for corruption. A total sum of KShs 9.768 billion has been traced and recovered by the EACC in the period between 2005 and 2016.
703. The Government has established Huduma Centres (see Chapter Three) to serve as a one-stop shop for processing services offered by the public sector. The Huduma Centres have improved accessibility to the services provided by the government, reduced personal contact and minimized the opportunity to offer bribes and above all improved revenue collection.
704. There are several key challenges hindering the fight against corruption. These include the slow judicial process and adverse court decisions which affect the operations of the EACC, acute shortage of human capacity for the EACC to carry out its functions nationwide. The situation is exacerbated with the devolution of functions.

705. In order to make a success of the anti-corruption war, a Task Force was appointed by President Uhuru Kenyatta in March, 2015 to the Review of Legal, Policy and Institutional Framework for Fighting Corruption. The report of the Task Force is very comprehensive and telling. The wide-ranging recommendations of the Task Force covered legal, policy, institutional frameworks, partnerships and multi-agency collaboration, technical assistance, capacity-building, strict adherence to the Constitution of Kenya, among others, in the fight against corruption. The Government has accepted the recommendations of the Task Force and has commenced implementation.
706. Public discourse on corruption has continued right from independence to the present, outlasting governments and the leaders of government business, underscoring the point that perhaps there is no better evidence of the need for the emergence of a critical mass of transformational leadership committed to change in the running of public and not-so-public affairs in a strategic and “business unusual” manner. Leadership matters, and to that extent a change in the orientation of leadership in and outside of government, indeed in all spheres of life, toward providing vision of a future relatively free of corruption and the inspiration for attaining that goal is urgently required. Such a change would help to significantly build on the current level of success recorded in the anti-corruption war in all spheres of Kenyan society.

7.4 Poverty and Inequality: the Challenge of Inclusive Growth

707. Kenya’s economy, the biggest in East Africa, sustained robust growth at about 5.7% during 2012-2015 and is projected to grow at 6.0% in 2016 (KNBS 2016). The economy is largely private sector-led [accounting for about 87.5% of Gross Domestic Product (GDP)] and the growth is driven by sustained institutional reform, robust macroeconomic policies, infrastructure investments, strong agricultural and industrial sector production as well as service sector growth (banking, tourism, etc.) Indeed Kenya is emerging as one of East Africa’s growth centres. Estimated at about US\$1,377 in 2015, Kenya’s income per capita has grown at average of about 8% per annum since 2011 (World Bank 2016).
708. However, poverty and inequality are major challenges to Kenya’s inclusive and sustained social economic development and transformation. As witnessed from the Arab awakening and uprising since 2011, large inequalities and exclusion can threaten the stability of economic and political progresses of the country. According to the latest national statistics, about 45% of the population (which translates to over 20 million) live below the national poverty line. Food security is a major concern to many households: 3 out of 10 households do not have enough food or money to buy food in the seven days preceding the survey; and stunting affects over one out of every four children under five years (KNBS 2015). Inequalities by income, age, sex and geographical location are widespread. With the Gini coefficient at 0.47, Kenya ranks among the most unequal countries in Africa.
709. Poverty is much more widespread in the rural areas (50.5%) compared to urban areas (33.5%). Poverty levels are worse in the arid and semi-arid lands of North-Eastern Kenya compared to the central and western regions. For example, in Turkana, Mandera and Wajir counties over 80% of the people live below the poverty line compared to Nairobi, and Kiambu counties where poverty levels are less than 25%.

710. Among some of the causes of poverty and inequality are historical inequalities and marginalization, high levels of unemployment, especially among the youth and women, lack of skills, lack of resources, especially land, limited access to markets, etc. Shocks including food price inflation, droughts/floods, illness, and death in the family, especially among the poor and most vulnerable are key causes of poverty in Kenya (World Bank 2008).
711. Addressing these issues is critical to laying the foundation for Kenya's inclusive and sustained economic growth and development as well as promoting social harmony. Kenya's long-term development strategy, the Vision 2030, aims at transformation, industrialization and a high quality of life to all citizens. It emphasizes equity through fast job creation; poverty reduction; and other measures to improve income distribution: promoting the participation of youth, women and persons with disabilities in economic and political processes, etc. These goals are operationalized and progress monitored through the Medium-Term Plans. Critical points to address include the following:
- While sustaining the current economic growth rates through stable macroeconomic environment, expanding infrastructure, Kenya needs to pay more attention to improving access to and the quality of basic social services: education and skills training, health care, water and sanitation.
 - Current poverty reduction and equity enhancing measures (the special funds and social protection, etc.) need to be deepened and widened to reach more people and more efficiently.
 - Improving governance, reigning in on corruption and ensuring adequate monitoring of public programmes are critical to ensure that more people are reached with available public resources, especially in the hard-to-reach areas.
 - In addition to the ongoing curriculum review for primary and secondary education, it is important to review the current approach and practices in early childhood development to ensure a comprehensive approach as the foundation for future skills development and a prosperous society.
 - Enhance agriculture productivity through promoting agro-processing, climate smart agriculture (irrigation schemes, greenhouse farming, e.t.c).

7.5 Gender Inequality and the Two-Thirds Rule

712. Gender inequality in Kenya was an overarching issue in 2006, and was pervasive in all areas of women's lives. In 2016, it is clear that government and non-state actors have paid great attention to redressing a challenge that covers over a half of the population. Strides have been made in developing legal, policy, institutional and programmatic frameworks that address the political, socio-economic and cultural rights of women. Nonetheless, there are

persistent challenges flowing from decades of unequal gender relations that are preventing Kenyans from realising the aspiration of gender equality as stated in the Constitution. At the heart of this are cultural and societal norms that perpetuate discrimination against women in the public and private sphere, weak enforcement of laws and policies and attitudes and biases among men and women that reinforce acceptance and prevalence of violence against women and girls. While there are emerging areas of progress, it should be expected that since gender inequality hinges on decades of systemic and structural issues, change will occur but with sustained efforts over time.

713. There is evidence that more public service and justice institutions are embracing institutional reforms that create gender responsive environments. The justice law and order institutions are working within the framework of the new laws to address structural and attitudinal barriers to justice. The focus on victim justice models bodes well for vulnerable women and girls who seek justice from an empowered position. Capacitating these institutions with human, financial and technological resources to function optimally at the national and county level is critical.
714. Affirmative action measures have been undertaken in the area of education, health, and entrepreneurship. There have been gains numerically in women's participation in these sectors and there is hope that good practices will be replicated and upscaled. However in the political arena, the participation and representation of women has continued to evidence setbacks particularly at the national level. To date, despite Constitutional guarantees for affirmative action from 2010, women's representation in Parliament as a gender is below the constitutional minimum requirement of a third.
715. The low presence of women in politics has generated a common rhetoric that women are their worst enemies. This is widely subscribed to without due regard to the structural barriers that inhibit women's participation at this level. Part of the problem seems to lie more in the socialization of society whereby women and men view men as natural leaders rather than women. Additionally, in some regions there is so much hostility overall those women who compete with men for political office face physical danger and stigmatisation. The use of money and patronage networks to influence choice in politicians and voters has predisposed those with monetary clout to have an advantage, affecting women negatively.
716. The Review Mission sensed genuine desire among key respondents, to comply with the constitutional provision popularly referred to as 'the two-thirds gender rule'. However, how to practically deal with the matter has been the more challenging part. To Kenya's credit, compliance with the constitutional provision was achieved at the lowest level of representation – the Ward Representatives (MCAs) through the nomination of an extra 700 women as MCAs.
717. There is need for reforms at the party level to adopt gender inclusive and empowerment practices. Some parties are embarking on identifying, recruiting and training women of from the grassroots to vie for positions in future elections. Other positive practices by parties have been to utilise women leaders to encourage, inspire and mentor experienced women. The urgent compliance with the two thirds gender rule by legislative and other

measures entailing re-orientation of social norms to embrace gender equality as well as empowerment of women in society will be critical for the 2017 elections to be deemed legitimate, credible and constitutionally compliant.

7.6 National Security and Terrorism

718. Security has traditionally been the preserve of the state and the government of Kenya has striven to execute its mandate over the years. However the challenge posed by terrorism as manifested in attacks and against civilians by radical civilian elements creates challenges that even the developed world is still grappling with. This is aggravated by the fact that for the most part, modern warfare as reflected in terrorism has no discernible frontiers, making it virtually undetectable until harm has occurred.
719. Terrorist related insecurity in Kenya is externally driven and fed by the Al Shabab insurgency in Somalia and radicalisation of Kenyans, particularly the unemployed youth. Kenya's porous borders and proximity to volatile insecure neighbours coupled with the arms proliferation has allowed for weapons and ammunition to be easily attained.
720. The various spates of terrorist attacks in Kenya have caused immense suffering, including loss of life, insecurity and violation of rights. The Kenya National Human Rights Commission reported that counties under attack faced challenges when service providers such as teachers and medical personnel who felt threatened suspended services, affecting the communities' right to health, education and employment.⁸ Tourism has been affected greatly yet it is a major source of revenue for Kenya. The issuance of travel advisories banning citizens from travelling to major Kenyan tourist destinations has caused a decline of 7% in tourists in 2012 and 2013, cut backs in employment and a 1.0% decline in GDP growth. These cut backs affect small business run by youth and women, affecting their livelihoods and socio-economic rights.
721. It is incumbent on government to undertake preventative and comprehensive strategies to address the crisis caused by terrorism related insecurity. Stronger security laws and the engagement of communities in counter terrorism efforts are key. Further, the capacity of the security entities to respond to acts of terrorism has come under scrutiny, requiring the reinforcement and re-tooling of counter terrorism initiatives and strategies.

7.7 The Way Forward

722. As indicated in this Report, the period since the last (2006) APRM Report on Kenya has witnessed tremendous constitutional, legal and institutional engineering comprehensive in its boldness and innovative in its import for the attempt during the period under review to firmly establish Kenya as a modern democratic and developmental state. Challenges do persist, some flowing from the country's political history and character, and it is important that these challenges continue to be addressed in the years ahead. This requires determined and transformative leadership to propel the country faithfully along the reform pathway

charted by the 2010 Constitution. The resolve shown by the people and the government to address overarching issues and build a strong rule of law foundation shows that Kenya is on the right trajectory to recovery and transformation.

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Annex II: Agreements of the African Union to which Kenya is Party

NO	NAME OF THE AGREEMENT	DATE OF ADOPTION	DATE OF RATIFICATION
1	The Constitutive Act of the African Union	May 25, 1963	May 25, 1963
2	General Convention on the Privileges and Immunities of the Organization of African Unity	October 25, 1965	April 12, 1965
3	African Convention on the Conservation of Nature and Natural Resources	September 15, 1968	May 12, 1969
4	African Civil Aviation Commission Constitution	January 17, 1969	April 25, 1981
5	OAU Convention Governing The Specific Aspects Of Refugee Problems In Africa	September 10, 1969	June 23, 1992
6	Cultural Charter For Africa	July 05, 1976	October 28, 1981
7	African Charter on Human and Peoples' Rights	June 01, 1981	January 23, 1992
8	African Charter on the Rights and Welfare of the Child (ACRWC)	July 01, 1990	July 25, 2000
9	Treaty Establishing the African Economic Community,	June 03, 1991	June 18, 1993
10	African Maritime Transport Charter	June 11, 1994	December 17, 2003
11	The African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty)	April 11, 1996	November 15, 2000
12	Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	June 10, 1998	February 04, 2004
13	OAU Convention on the Prevention and Combating of Terrorism	July 01, 1999	November 28, 2001
14	Constitutive Act of the African Union	November 07, 2000	July 04, 2001
15	Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament	March 02, 2001	May 22, 2007
16	Convention of the African Energy Commission	July 11, 2001	December 29, 2006
17	Protocol Relating to the Establishment of the Peace and Security Council of the African Union	July 09, 2002	December 19, 2003
18	African Union Convention on Preventing and Combating Corruption	July 01, 2003	February 03, 2007

19	Protocol of the Court of Justice of the African Union	July 01, 2003	December 17, 2003
20	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	July 01, 2003	October 06, 2010
21	Protocol on Amendments to the Constitutive Act of the African Union	July 11, 2003	May 22, 2007
22	African Youth Charter	July 02, 2006	January 23, 2014
23	African Charter on Statistics	February 04, 2009	January 25, 2010
24	Revised African Maritime Transport Charter	July 26, 2010	March 28, 2014
25	African Charter on Values and Principles of Public Service and Administration	January 31, 2011	August 17, 2011
26	Agreement for the Establishment of the African Risk Capacity (ARC) Agency	November 23, 2012	January 28, 2013
27	Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights	June 27, 2014	January 27, 2015

Source: Supplied by The Ministry of Foreign Affairs and International Trade, Kenya, on 11/11/2016





THE GOVERNMENT OF THE REPUBLIC OF KENYA RESPONSE

TO THE SECOND APRM REVIEW REPORT JANUARY 2017



RESPONSE ON FINDINGS AND RECOMMENDATIONS OF THE REPORT

INTRODUCTION

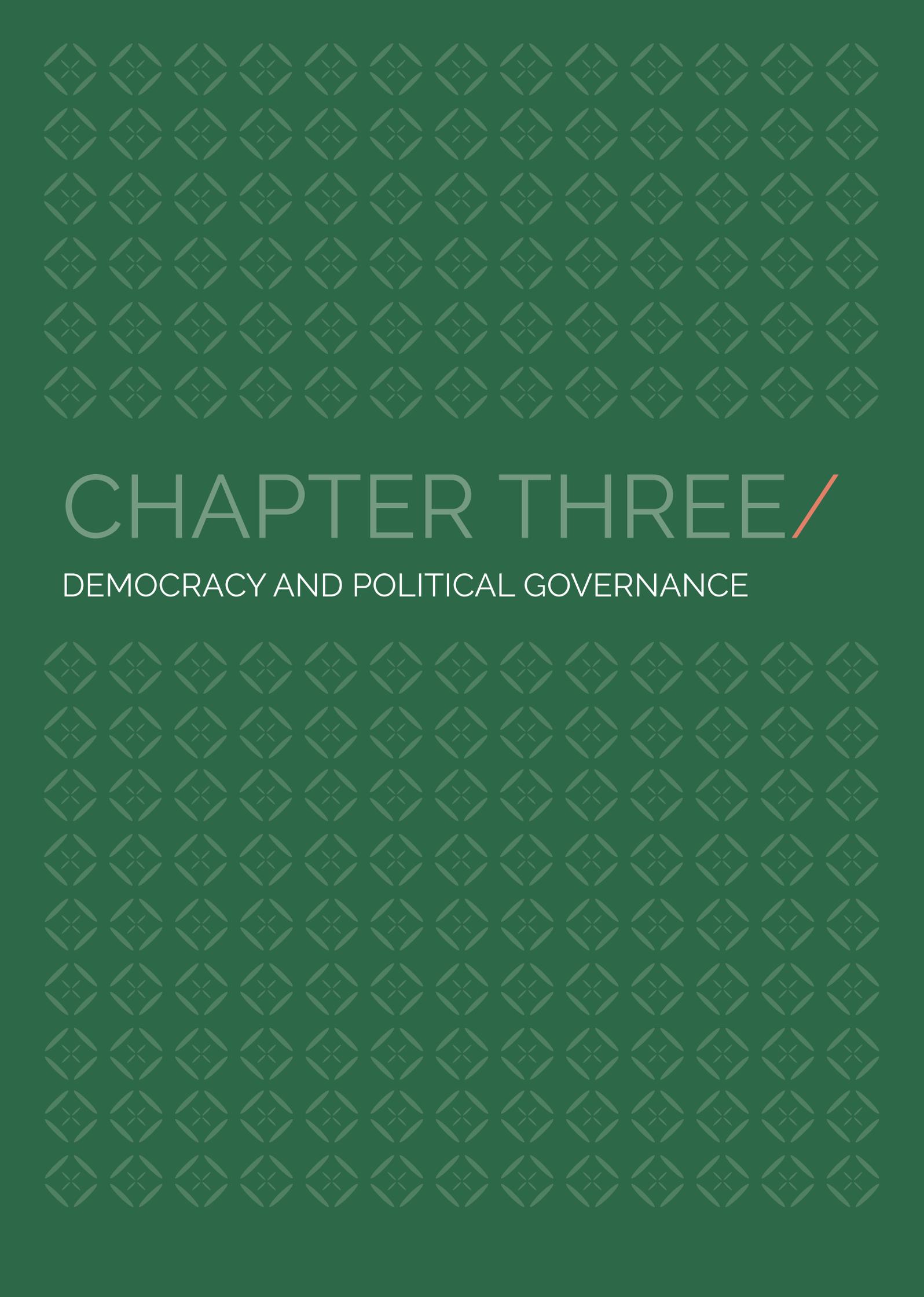
Kenya is the first APRM Member State to pioneer second review process after its base review in 2006. The report conveys that Kenya has made tremendous progress in governance and socio-economic development especially following the promulgation of one of the most progressive constitutions in the world in August 2010. The report extensively delves into the devolved system of government and opines that in spite of the teething problems associated with its implementation, Kenyans have fully embraced it as part of the antidote to past complaints over marginalization.

The main objective of the 2nd review was to assess progress made in terms of governance and socio-economic development in the period since the base review of 2006. It also aimed at examining whether the identified best practices in the base review have been reinforced and promoted. Additionally, the review would help identify any new emerging issues relevant to governance and socio-economic development and offer suggestions on how the challenges in question can be tackled.

The report rightly acknowledges that the period since the promulgation of the 2010 Constitution, and especially since the 2013 election has been one of a cumulative process of institutional and process engineering to consolidate constitutional democracy in Kenya, devolve power to local communities and ensure better separation of powers and checks and balances within and between branches and layers of government, protect the rights of citizens to fully participate in governance, and ensure protection for key public and social institutions and fundamental freedoms and guarantees to address discriminations against marginalized groups and regions.

The overall view is that although the Kenya's 2nd Country Review Report (CRR) contains many objective and balanced observations on Kenya. The factual errors which were contained in the draft Report have been corrected.

This Government of Kenya response contains additional information and explanations to clarify some CRR findings and in some cases to provide the context in order for the reader to understand the governance landscape in Kenya.



CHAPTER THREE /

DEMOCRACY AND POLITICAL GOVERNANCE

CHAPTER THREE: DEMOCRACY AND POLITICAL GOVERNANCE

3.1 CRR finding: “Persistence of nepotism and corruption in appointments and procurements, worsening in-group and out-group tensions, including ethnic tensions, at the local level;” Para 85 page 47

COUNTRY RESPONSE:

Recruitment of county staff is done by County Public Service Boards. These Boards work in accordance with the guidelines from the Public Service Commission of Kenya that revised the Human Resource Manual and procedures in 2016. Governors, county executives have been summoned to appear before the Senate Public Accounts Committee where the Auditor General has given qualified audit reports. Further investigations have also been mounted and prosecutions are on-going in a few Counties.

The County Public Service Boards guided by the Public Service Commission Human Resource Policy and Guidelines ensure transparent and accountable human resource practices. To ensure compliance with the guidelines, the commission mandated under the EACC Act 2011 Section 11 to institute measures to strengthen systems, build capacity and enhance ethical cultural practices and behavior in County government operations.

The National Cohesion Integration Commission (NCIC) undertakes ethnic and diversity audits with an aim of enhancing equality of opportunity for all, reducing discrimination on the basis of ethnicity in the recruitment of staff in public institutions, and promoting affirmative action for excluded communities in public employment.

The NCIC has established inter-ethnic dialogue for reconciliation and peaceful coexistence through the use of community elders. They have therefore setup a county elder’s forum and community peace and cohesion committees to address the ethnic tensions.

The NCIC has developed an elaborate compliance handling procedure to re-dress inequality, exclusion and intolerance. The complaints are handled by the compliance, legal and enforcement department.

The Integrated Public Complaints and Referral Mechanism (IPCRM) which comprises of all institutions that have a mandate of receiving public complaints from Commission like the National Cohesion and Integration Commission, Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, Commission on Administrative Justice, National Anti-Corruption Campaign Steering Committee is a complaints mechanism that receives and processes complaints from the public. This mechanism has an e-based referral mechanism that is real time. Transparency International who help with monitoring and evaluation, and Deutsche Gesellschaft für Internationale

Zusammenarbeit (GIZ) which supports with resources are also members. The mechanism has received, referred and processed complaints.

The National Cohesion and Integration Commission started the Ethnic Audit process of Government institutions both at the National and County levels. This process has opened discussions on inclusivity and has seen a change in practice of recruitments in this institutions.

Examples are: comparison of the Ethnic Audit Report of Universities in 2012 and that of 2016 indicates that there was improvement in the ethnic representation of employees in compliance to the NCI Act section 7 (2). Data indicates that 13 institutions improved compliance. The most improved institution was Meru University which improved from having 83% of the dominant ethnic group in 2012 to 70.9% of the dominant ethnic group in 2016.

The National Police Service Act has been amended to establish a mechanism that requires the service to refer to the Kenya National Census Report in its efforts to be inclusive, and to also undertake an Audit within its service to understand the levels of inclusivity in reference to ethnic representation. This amendment was implemented in the last police recruitment efforts where National Cohesion and Integration Commission (NCIC) was invited to support the process by observing and monitoring the efforts towards inclusion.

In its efforts to address community and other violent conflicts, the Government established the National Cohesion and Integration Commission (NCIC) through an Act of Parliament, the National Cohesion and Integration (NCI) Act, No. 12 of 2008. The objective and purpose for which the Commission was established is to facilitate and promote equality of opportunity, good relations, harmony and peaceful coexistence between persons of different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof. As part of its mandate and powers NCIC enhances equality by promoting various initiatives that facilitate the achievement of its objective such as promoting the elimination of all forms of discrimination.

Continuous initiatives to address community tensions and dialogues platforms have been undertaken. Peace structures have been established, engaged and often facilitated to undertake peace work. For instance, the District Peace Committees, Cohesion Monitors, Alternative Dispute Resolution Mechanisms, etc.

As another example, the conflict at the Nandi-Kakamega border between the Nandi and Luhya people has been successfully managed. A Joint Peace Committee comprising of 15 persons from Nandi and 15 persons from Kakamega (both male and female) is a structure that continues to address issues causing tensions, hence the conflicts in the area have drastically reduced.

Peace agreements have been discussed, agreed upon and signed by communities and their representatives. The implementation of this agreements has been witnessed and conflicts reduced.

For instance: the implementation of the Elgeyo Marakwet and Baringo Peace agreement has seen at least 40 Kenya Police Reservists recruited; the opening of the Kolowa Market and the Kolowa bridge which were inaccessible due to the conflicts; allocation of land for the construction of a police post; all which were resolutions in the Peace Agreements.

There are coordinated efforts between the Commission, the County Commissioners Office and Civil Society institutions that have yielded success.

3.2 CRR Finding: ‘Public concern over the number of elected and appointed leaders in the county system’ Para 85 page 48

COUNTRY RESPONSE:

Whilst the 2010 Constitution remains one of the most progressive documents in the world, Kenyans are openly debating the optimal numbers at both national and county governments. Article 177 of the Constitution determines the level of representation at the county level, while the objects and principles of devolved government are:

To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. Article 174(c)

Reviewing the level of representation at national and county level would require a national referendum. In addition, through the Salaries and Remuneration Commission, an independent constitutional commission, the government is in the process of rationalizing county government personnel salaries in consultation with the county governments.

3.7 CRR finding: “... challenge of non-optimal consultation, collaboration and coordination between county commission officers and county government officials as the major impediment to service delivery...” Para 172 Page 71

COUNTRY RESPONSE:

There is no need to establish an additional commission or institution since there is an existing mechanism for mediation of conflicts. The apex inter-governmental mechanism between is the National and County Governments Coordinating Summit, comprising of the President and the 47 governors. (Section 8 of the Intergovernmental Relations Act, 2012) There also exists the Council of Governors, consisting of the 47 governors, which is a forum for consultations amongst counties, dispute resolution between counties, considering matters of common interest to county governments, sharing information on the performance of counties, facilitating capacity building for governors, among other functions are outlined in Section 20 of the Intergovernmental Relations Act, 2012. The Intergovernmental Relations Technical Committee (IGRTC) is the secretariat of the

Summit and Council of Governors. IGRTC, cabinet secretaries and the council of Governors are all permitted by the Act to form sectoral working groups on matters of common interest to enable better carrying out of intergovernmental relations.

3.8 CRR finding: “...youth become easy recruits for partisan, antisocial, and terrorist bands. These issues require urgent attention, along with the incidence of extra-judicial killings, involving the youth as victims more than any other demographic” Para 120 page 57

COUNTRY RESPONSE:

This is indeed a regional and global problem. On its part, the Government of Kenya has put in place elaborate mechanism for dealing with the issue of vulnerability of youth as target for recruitment into terrorism and other anti-social groupings. Among these measures include:

- Addressing the underlying socio-economic grievances that are used by recruiters to ensnare disenfranchised youths... these include: job creation, affirmative action in favour of vulnerable groups such as youth and women in government and other public sector contracts.
- Implementing the Counter Violent Extremism (CVE) strategy launched by H.E. the President in 2016.

3.9 CRR finding: “Right to life: The right to life is guaranteed in the Constitution. However, unlawful deaths at the hands of non-state actors or state security agents have registered significantly on the national scene.” Para 145 page 64

COUNTRY RESPONSE:

The Government of Kenya does not permit, condone or sanction extra-judicial killings, arbitrary detentions, or the enforced disappearance of its people, carried out by police officers or any other person acting in public or personal capacity.

The Government of Kenya also recognizes its legal obligation under various treaties to respect, fulfil and protect the right to life, right to security and freedom from torture and other cruel, inhuman, and degrading treatment of punishment. This protection finds full expression in the Constitution of Kenya.

The Constitution particularly safeguards the freedom and security of a person, protects the right to life and prohibits torture as well as cruel, inhuman or degrading treatment. Article 49(1) (c) of the Constitution guarantees the right of an accused person. The Constitution also provides for the

right to life in Article 26(1). This right is qualified in Article 26(3) which states that, “A person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or other written law.”

3.10 CRR finding: “Extra judicial killings, torture and enforced disappearances in Kenya have been associated for a while with police impunity, neglect and abuse of office...” Para 146 page 64

COUNTRY RESPONSE:

Kenya is working on measures to ensure that prompt, impartial and effective investigation of all allegations of human rights violations are comprehensively-investigated and prosecuted. Those found guilty are convicted or face heavy penalties.

The Government of Kenya appreciates the role played by human rights defenders and civil society organizations in the country. Any defender whose rights have been violated have a right to promptly record a complaint at a Police Station to facilitate investigations. In addition, the Independent Police Oversight Authority (IPOA) provides another avenue where defenders can report any grievances that they may have against the Kenya Police. With regard to the protection of witnesses, Kenya has established an independent Witness Protection Agency (WPA), established under the Witness Protection Act, 2010.

The Internal Affairs Unit of the National Police Service (NPS), an internal mechanism of the NPS, is responsible for investigating any police officers against whom complaints over human rights violations have been made. However, IPOA also considers complaints of police misconduct from the public. Where investigations show that a Police Officer has a case to answer the matter is referred to the Office of the Director of Public Prosecutions.

It is noteworthy that the National Coroners Service Bill, 2011 has been prepared. It will further strengthen the investigations of deaths caused by violent criminal acts, extra-judicial killings, or deaths in prison or police custody. In addition, the victims of such crimes or their relatives are now provided with or entitled to reparations in accordance with the provisions of the Victims Protection Act, 2014. Guidelines to operationalize the Act have already been developed and are under implementation.

As a further demonstration of the country’s commitment to dealing with allegations of torture or extra-judicial killings, Kenya has come up with a Prevention of Torture Bill, which once passed into law will provide the necessary legal framework for the prevention, prohibition and

punishment of acts of torture and ill-treatment in line with the Constitution and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

- 3.11 CRR finding: “Attacks on human rights defenders have raised concerns, particularly where human rights defenders lost their lives in an unlawful manner at the hands of state agents. The state has committed to prosecuting the killing of Hassan Guyo and other cases.¹⁵” Para 152page 66

COUNTRY RESPONSE:

As acknowledged in the CRR report finding paragraph 161 - 164, the Kenya Government has already undertaken considerable measures to deal with these problems. In this regard the holistic reforms recommended by the National Taskforce on Police Reforms, which was established by the President in 2009, and are supported by the Constitution have been operationalized as follows:

1. Independent Police Oversight Authority

The Independent Police Oversight Authority, created by the Independent Police Oversight Authority Act 2011 is as such crucial as it provides much needed accountability and monitoring functions over the Police Service. The Authority is mandated to inspect police premises, including detention facilities under the control of the National Police Service. It is also mandated to investigate any death or serious injury occurring or suspected of having occurred as a result of police action. Where appropriate, the Authority provides relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income. The body plays a major role in restoring public confidence in the police.

2. The National Police Service

The National Police Service (NPS) is established under the National Police Service Act, 2011. The Service holds a constitutional duty to train its staff to respect human rights, fundamental freedoms and dignity of the human person. The Police must comply with constitutional standards of human rights and fundamental freedoms. Towards this end, a training curriculum which includes the prohibition against torture and ill-treatment as one of the examinable subjects has been prepared and more than 18,000 police officers have been subjected to this training module. The Act defines and criminalizes acts of torture or any cruel, inhuman and degrading treatment of punishment committed by police officers. It also provides sanctions for the offence.

3. The National Police Service Code of Conduct

The Code of Conduct establishes the standard for professional and ethical behaviour for the Police. Every Police officer is under an obligation to subscribe to the National Police Service Code of Conduct.

4. The Prevention of Torture Bill

The Prevention of Torture Bill which has been tabled in Parliament is at committee level hearing. It was prepared to provide the necessary legal framework for the prevention, prohibition and punishment of acts of torture and ill treatment.

5. The National Coroner's Service

Kenya has come up with The National Coroners Bill, which is currently pending debate in Parliament. The Bill provides for a National Coroner's Service, which shall have jurisdiction to investigate the cause of death where the deceased person is reported to have died; a violent or an unnatural death; a sudden death of which the cause is unknown; in police custody; in prison, or in such a place and in such circumstances as to require an inquest under any other law, and shall as soon as practicable hold an inquest into such death.

Further, the Bill provides that whenever a person dies while in custody, the person in charge shall forthwith notify the Coroner with jurisdiction in the area where the prison is situated and shall not dispose of the body except with a warrant issued by such Coroner. The Bill is currently undergoing stakeholder consultations.

In the 2016 case where a Human Rights Advocate, one Mr. Willie Kimani, was murdered alongside his client and their taxi driver, the Government strongly condemned the murders. The Inspector General of Police was ordered to conduct an immediate, thorough, impartial and transparent investigation into these killings and to properly prosecute those responsible, as well as to grant adequate reparations to the families of the deceased. This was done. The act of condemning the murders not only shows the commitment of the Government to bring justice to victims of extra-judicial killings but also to fight and or otherwise completely stop the vice. At least three suspects, all Police officers, were arraigned in court over the murder of the three men. The matter is still in court.

The Government is also seeking technical support to further train Police Officers on human rights and the importance of compliance with human rights norms.

- 3.12 CRR finding: "Poor observance of constitutional provisions guaranteeing participation of marginalized groups such as women in political activities and their representation through affirmative action measures" Para 274 page 98 last bullet

COUNTRY RESPONSE:

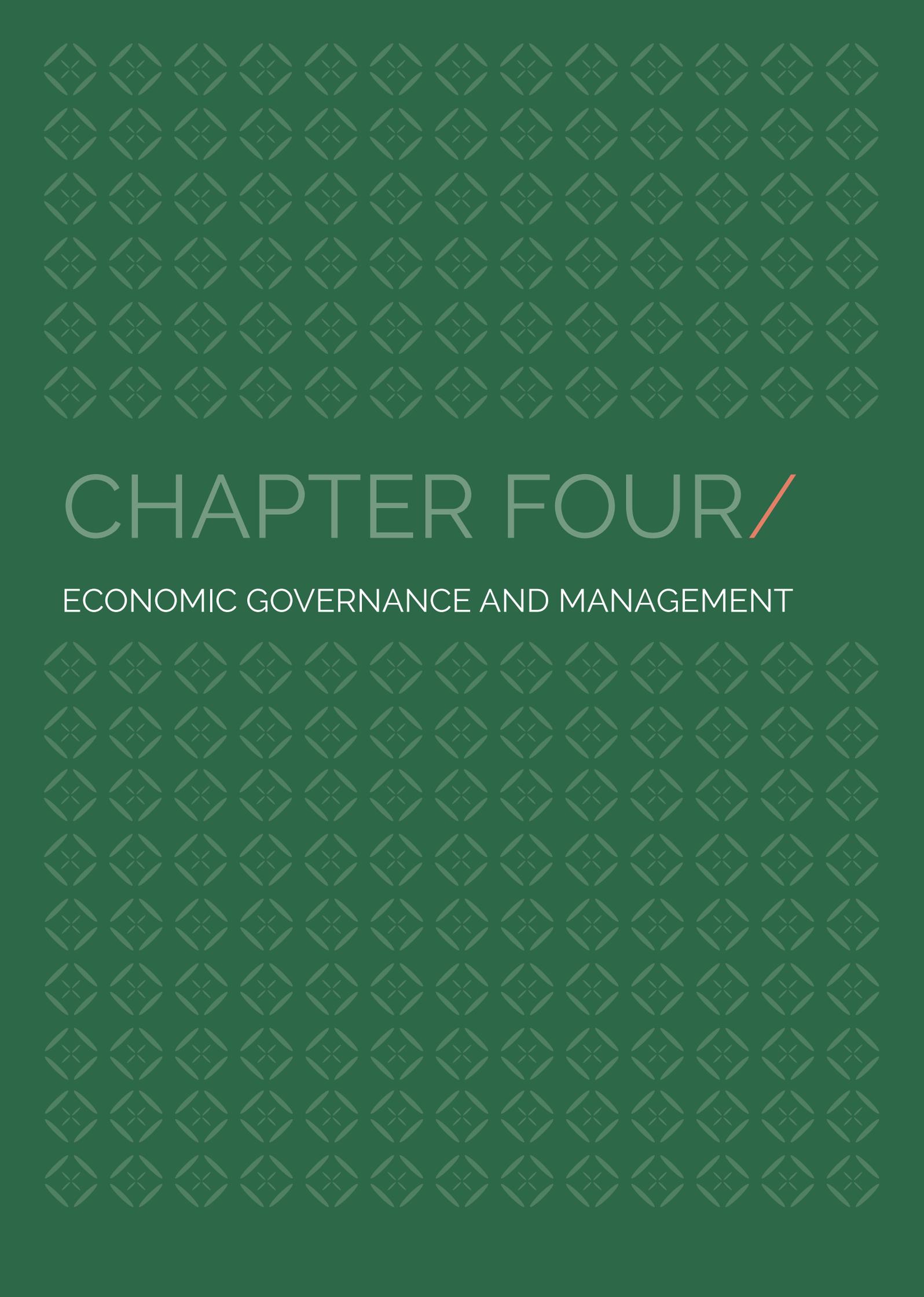
Efforts are being made to ensure citizen participation at all levels of government is enhanced through various affirmative actions, including; endeavoring to meet the two-thirds gender rule. Government is also implementing a number of initiatives and procurement regulations meant to accord women, youth, and people with disability (PWDs) economic empowerment. This is being done through preferential access to 30% access to Government procurement opportunities (AGPO) of all supply of goods and services to the government.

All Ministries, Departments and Agencies (MDAs) are expected to implement the two-thirds gender rule constitutional provision in their Performance Contracts e.g. in all recruitments, appointments and promotions. Ongoing review of the regulations and restructuring of the Access to Government Procurement Opportunities (AGPO) continues to enhance access to government procurement opportunities for women, youth and PWDs.

3.13 CRR finding: “Expedite decentralization of resources and authority to local governments to enhance participation and inclusion. A good balance between centralization and decentralization has to be sought and maintained to avoid lapses in service delivery” Page 72 para 174

COUNTRY RESPONSE:

This has been ongoing since March 2013 general elections with the implementation of the devolved system of governance. The Commission for Revenue Allocation (CRA) developed a formula for



CHAPTER FOUR /

ECONOMIC GOVERNANCE AND MANAGEMENT

sharing revenue, which was reviewed in 2015.

CHAPTER FOUR: ECONOMIC GOVERNANCE AND MANAGEMENT

4.1 CRR Recommendation “Actively support and create an effective enabling environment for growing small and medium size enterprises (SMEs), especially in rural areas through appropriate policy measures, (especially supporting creation of economic opportunities upon which these sectors can leverage and increase demand profitably).” Para 327, Page 116

COUNTRY RESPONSE:

The government has been actively supporting SMEs through the following initiatives / facilities:

- Women Enterprise Fund (WEF).
- Youth Enterprise Development Fund (YEDF).
- UWEZO Fund.
- National Government Constituency Development Fund (NG-CDF).
- National Government Affirmative Action Fund (NG-AAF).
- 30% Access to government Procurement opportunities for youth, women and PWDs
- Huduma Centres.
- Government has provided an enabling environment for private sector to extend credit to SMEs e.g. M-shwari (Mobile Banking and Loans facility).
- Kenya Industrial Estates (KIE), a state agency, has established incubation centers that provide entrepreneurs with specific services to nurture and encourage growth of their enterprises to sustainable levels.

4.2 CRR Recommendation “Develop effective tools of communicating to the public” Para 347, Page 122

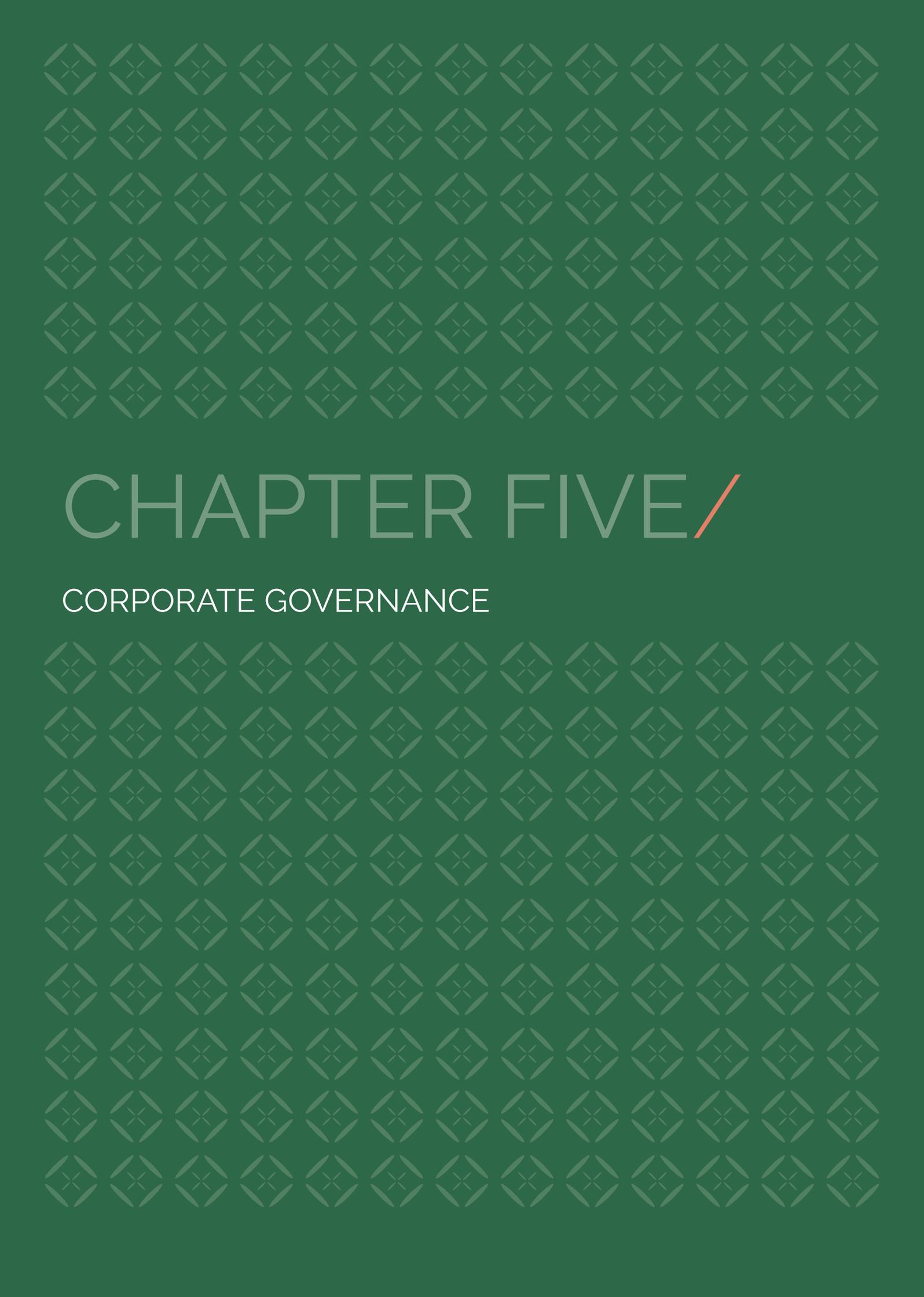
COUNTRY RESPONSE:

The government through the Ministry of Devolution and Planning has developed, launched and disseminated the County Public Participation Guidelines – 2016; Civic education trainers’ curriculum for 6 and 13 weeks’ programs and executive program. The Ministry has also developed a Civic Education Trainers’ Manual for the general public and for learning institutions as well as civic education trainers manual which is a handbook for the participants. Counties have developed their own policy guidelines for public participation.

The National Assembly of Kenya has passed key laws that enhance public participation, namely:

- The County Government Act, 2012 which provides for citizen participation based on the principles of timely access to information, data, documents, and other information relevant or related to policy formulation and implementation.
- The Urban Areas and Cities Act, 2011 providing for citizen fora in principle of governance and participation of residents in urban areas and cities.
- The Public Finance Management Act, 2014 which elaborates the relationship between the respective roles of the national and county government on budget and economic matters.

On planning and budgeting, the Constitution of Kenya calls for involvement of the public in



CHAPTER FIVE /

CORPORATE GOVERNANCE

formulation of policies and plans. This is done through county consultations forums in all the 47 counties to obtain views from different stakeholders.

CHAPTER FIVE: CORPORATE GOVERNANCE

5.1 CRR finding: “KRA has been piloting the combination of employee related deductions for NSSF, NHIF and PAYE into one deduction” Para 471 Page 159

COUNTRY RESPONSE:

The unified return has so far been completed for NSSF and PAYE and was successfully piloted in April 2016 through the I-Tax system. The NHIF component is still pending but will be integrated once the process is complete.

5.2 CRR finding: “Many SMEs in Kenya are still finding it difficult to access credit. This is despite an expansion in lending to SMEs by commercial banks and dedicated SME sub-units in most banks, a new report from the World Bank shows. ” Para 491 Page 166

COUNTRY RESPONSE:

The government has made great strides in ensuring that women and the youth who mainly run the SMEs have access to affirmative action funds like UWEZO fund, Youth Enterprise Development Fund and Women Enterprise Fund. In addition to this, the government has set aside 30% of all government procurement to women, youth and persons with disabilities. Kenya’s banks also have special credit facilities dedicated to SMEs.

Further, both banking and non-banking entities are now required to share the credit data for their customers. This has increased the threshold of people covered by the Credit Reference Bureaus to 9% by January 2015 as compared to 4.9% in 2014.

5.3 CRR Recommendation: “Improve access to credit as well as reduce the cost of credit. The introduction of Credit Guarantee Scheme should be implemented to enhance business opportunities for the SMEs. Other efforts should include strengthening micro finance institutions in order to improve access to credit to the informal sector and rural communities. [Central Bank of Kenya and National Treasury] ” Para 494 bullet iii Page 167

COUNTRY RESPONSE:

There has been increased awareness of the affirmative action funds by the Ministry of Public Service, Youth and Gender Affairs as well as simplification of the application process for the funds. Further, the Government has enacted a law capping interest rates charged by Commercial banks

and SACCOs.

The Micro and Small Enterprise Authority (MSEA) has and still is undertaking training to the sector. It has also built sheds to be able to accommodate the SME sector in all the 47 counties and continues to help the entrepreneur's access credit through the MFIs and banks by linking them and helps them to formalize their enterprises by having associations also conduct Business Development Services training.

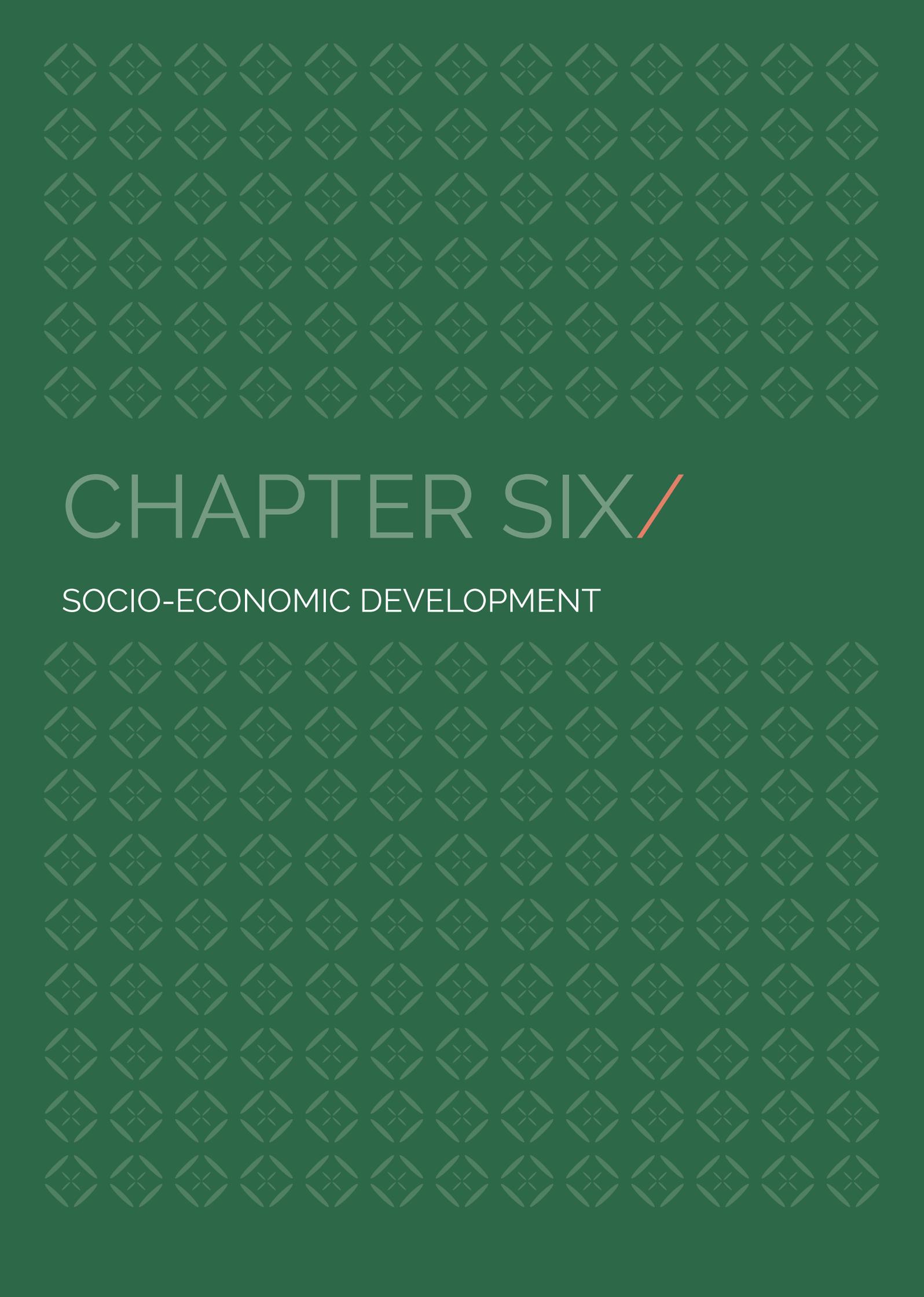
Kenya Industrial Estates also provides training in Business Development Services and credit to this sector. The County Industrial Officers and Enterprise Development Officers conduct Business Development Services (BDS) training and skills.

5.4 CRR Findings: "There is multiplicity of institutions involved in the implementation of constitutional and legislative measures aimed at ensuring effective leadership and accountability meaning that citizens do not have clear guidance on where to report and where action is to be taken to ensure effective leadership and accountability within public, private and not-for-profit organizations." Para 514 Page 171

COUNTRY RESPONSE:

Although there are multiple institutions involved in the implementation of constitutional and legislative measures aimed at ensuring effective leadership and accountability, these institutions have distinct and clear mandates on how to deal with issues of leadership and accountability. There are also clear guidelines on how the different institutions interrelate with each other for synergy and avoidance of duplicating roles.

The EACC has also continued to build partnerships, networks and coalitions in the fight against corruption and unethical conduct. This is spearheaded through the Kenya Leadership and Integrity Forum (KLIF) which is a national integrity system set up to coordinate a unified sector-based strategy for preventing and combating corruption. It brings together fifteen sectors in the Country



CHAPTER SIX /

SOCIO-ECONOMIC DEVELOPMENT

namely; the Legislature, Judiciary, Executive, EACC, Education, Watchdog Agencies, County Governments, Private Sector, Media, Enforcement Agencies, Professional Associations, Labour, Civil Society, Religious Sector and Constitutional Commissions.

CHAPTER SIX: SOCIO-ECONOMIC DEVELOPMENT

6.1 CRR findings: “ Many Kenyans still remained mostly unaware of these important standards and codes.....6 standards and codes of the African Union that relate to socio-economic development have been adopted and ratified, Para, 584 page 189

COUNTRY RESPONSE:

- The implementing agencies of the standard and codes are working on the issues and a number of the institutions, Acts, rules and regulations to implement the standard and codes are in place.

Examples:

- i) Africa Union Convention on Preventing and Combating Corruption 2007. Kenya already has Ethic and Anti- Corruption Commission (EACC) which is a public body that combats and prevents corruption, whose work is well known to the public.
- ii) Protocol to the African Charter on Human and Peoples Rights on the rights of women in Africa - there is Kenya National Human Rights Commission (KNHRC) and National Gender and Equality Commission (NGEC).

- The ratified standards or codes are published in the Kenya Gazette for public knowledge (The National Gender and Equality Commission Act 2011).
- It should also be noted that several more standards and codes have been adopted and ratified not only six (6) as reported.

1.1 Kenya has ratified the AU Convention on prevention of corruption. The President also reports annually to Parliament on the AU obligations during the widely televised State of the Nation address, watched by millions of Kenyans.

6.3 CRR findings: The country’s large public wage bills are affecting the efforts to accomplish accelerated broad-based sustainable socio-economic development, Para 637 page 206

COUNTRY RESPONSE:

The finding is not accurate. The Government, through the Salary and Remuneration Commission (SRC) has undertaken a job evaluation exercise and determined optimal staff levels for public service salary rationalization. There is also a freeze on government employments meaning that there is no replenishment in the civil service of positions occurring from natural attrition or retirements. Implementation of the recommendations of the SRC is therefore on-going. The wage bill is growing fastest in areas that deliver critical social services notably health, education and security.

6.4 CRR finding There was a lack of adequate structures, especially at the grassroots, to enhance stakeholders' participation in the development process, Paragraph 646 page 209

COUNTRY RESPONSE:

The Constitution of Kenya emphasizes the involvement of the public/stakeholders in all government programmes and projects. It illustrates clearly how the public participation is to be carried out. The preparation of development plans entails wide consultations and draft plan can only be implemented after validation by the public.

The Public Private Partnership (PPP) Law provides for the participation of the private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Government. (Refer to Country response 3.5)

6.5 CRR Findings: Youth lack the skills required in the labour market. For example, participants in Nairobi County decried the fact that most employers require applicants for jobs to have job experience of 2 to 5 yearsPara 689 page 220

COUNTRY RESPONSE:

The government has introduced attachments and internships in all Ministries, Departments and Agencies (MDAs) in line with the Human Resource Policies and Procedures Manual for Public Service (2016) and the Internship Policy and Guidelines for Public Service (2016). The government has also reviewed the education curriculum to be able to address the gaps that existed within the older system. The system is also geared towards addressing skills gaps that would encourage industrialization.





NATIONAL PLAN OF ACTION



DEMOCRATIC AND POLITICAL GOVERNANCE

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
OBJECTIVE I: ENHANCING CONSTITUTIONAL DEMOCRACY AND THE RULE OF LAW										
To Institutionalize and capacity build county governments	Training of County government staff on planning, Public finance Management, Human resource Management, M&E, budgeting and legislations	No. of staff trained	Training reports	Review of national capacity building framework	Ministry of Devolution & Planning (MoDP)	County Governments, Civil Society, Private Sector, Development partners, National Government	2017-2021	Improved Public Service Delivery	1,000 (Ksh. 100m)	MoDP
	- Implementation of Public Finance Management Act 2012 - Resource mobilisation for county governments	- No. of programmes with delayed implementation - % funds released - % funds mobilised	- Public statements - Quarterly reports	- Public-Private partnerships	- National Treasury	- National and County Government	2017-2021	- Timely implementation of planned activities - Public satisfaction with service delivery	0	- CRA, SRC - Auditor General
	- Rationalisation of staff in both National and County governments	- No. of functions merged - No. of staff retrenched or redeployed	- Rationalisation report	- Transfers of functions to county govts - Staff audits	- County Govts - Public Service Commission, County Public Service Commission	- Citizens - County govts	2017-2020	- Lean and efficient public service at all levels	2,000 (Ksh.200 m)	- Public Service Commission - County Public Service Boards
	Continuous civic education in all counties on the Constitution of Kenya 2010	No. of awareness trainings No. Of officers	- IEC materials - Training reports	- KNICE - Judiciary Training Institute programme	- County governments	- Kenyan citizens - MDAs - Media - Development partners - Independent commissions	2017-2020	- Increased awareness of constitutional provisions	- 750 (Ksh. 75 m)	MoDP State Law Office
To create and strengthen frameworks for civic education and public participation in the counties	Targeted training of public officers on the constitution	trained by county		- Civic education by IECB - Public Service reforms - Advisories of the Supreme Court						
	Continuous civic education on devolution	No. of Civic Education Forums	Training Reports IEC materials	- Dev. Of Civic education strategy - Establishment of civic education units in counties	- MoDP	- Citizen, Civil Society, Development Partners, Media	2017-2020	- Enhanced knowledge on devolution	- 750 (Ksh. 75 m)	
	Develop Public Participation Legislation	Public Participation Act	Public Participation Act	Dissemination of Public participation guidelines	- MoDP	AG Parliament The Presidency, KLR, County Governments, Kenyan Citizens Development partners,	2017-2020	Increased public participation of citizens in decision making	200 (Ksh. 20m)	

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
OBJECTIVE 2: UPHOLDING SEPARATION OF POWERS										
To building capacity on the operation and management of systems of separation of powers in modern democratic contexts.	- Develop mechanism for engagement between the legislature executive and Judiciary	- Number of conflicts between the 3 arms resolved - Executive actions reversed by courts - Number of cases where Acts or section of Acts passed by parliament but annulled by the courts - Number of Acts passed by Parliament but presidential ascent declined	- Court reports, Parliamentary reports	- Informal consultations	- Parliament - Executive - Judiciary - AG	- The Presidency, - Judiciary - State Law Office - National Assembly	2017-2020	- Efficient delivery of services - Uphold the rule of law	- 750 (Ksh. 75 m)	- LSK - AG - Judiciary - ICJ - CSOs
	- Develop a structured framework for executive to respond to questions from Parliament and follow up of implementation of Parliamentary decisions	Number of guidelines developed. Honouring of summons by parliamentary committees	Parliamentary records		Parliament	Parliament Executive		Guidelines, Manual	100 (Ksh. 10 m)	Parliament
OBJECTIVE 3: PREVENTION AND REDUCTION OF INTRA-STATE AND INTERSTATE CONFLICTS										
To strengthen human and financial capacity of institutions mandated to promote peace and national cohesion	Operationalization of NCIC regional offices	Number of regional offices operationalised	Quarterly and Annual Reports	Facilitation and support to regional peace initiatives	National Cohesion and Integration Commission	- Communities affected by conflict	2017-2020	A cohesive society	2,500 (Ksh. 250 m)	- CSOs - NPS
	Increased funding towards NCIC activities	Budgetary allocation to NCIC	Funds transfers	Increased fundraising efforts		- Peace actors at regional and County levels - Relevant government ministries				
To participate in regional conflict prevention, conflict management, and peace-building efforts	Strengthen diplomatic relations and mutual defence to increase security along borders	- Number of mutual defence pacts signed - Diplomatic negotiations to address cross-border disputes - Joint border patrol - No. of incidents of cross-border attacks	- IGAD, EAC reports	Participation in peace keeping missions	Government of Kenya	- Ministry of Defence - Ministry of Interior & Coordination of National Government - Ministry of Foreign Affairs - The Presidency	2017-2020	Peaceful co-existence among communities living in border areas	3,651 (Ksh. 365.1 m)	The Presidency CSOs NPS IPOA IGAD EAC AU
	Invest in border security			Ratification & domestication of regional instruments on peace and stability						
				Diplomatic engagement to resolve regional conflicts						

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
To establish and operationalize alternative dispute resolution mechanism for inter-county disputes	Establish an inter-county ADR mechanism	- Number of disputes resolved through ADR	- Annual dispute resolution assessment reports	Government has been supporting out of court dispute resolutions	MoDP	- MDAs, Development Partners, County Governments	2017-2020	Improved inter-county relations	1,000 (Ksh. 100 m)	MoDP
To strengthen early warning mechanisms at the county level	Strategic engagement with County Government Support regional and local early warning and peace structures Dissemination and implementation of existing peace agreements Undertake the National Social Cohesion Index Study	Number of functional County peace offices/ desk Number of supported programmes or collaborative initiatives Number of resolutions implemented Study	Workplans and program concepts Activity Reports Activity and Media reports Report of the Study	Engagement with County Commissioners to stem conflicts On a needs basis engagement Monitoring cohesion effort at the community level To facilitate dialogue between worrying communities	Government of Kenya County governments National Police Service NCIC Local administration/elders Civil society	Government of Kenya County governments Affected community members National Police Service	2017-2020	Synergy in conflict prevention Coordinated early warning and early response Progressive conflict management at the community level	780 (Ksh. 78 m)	Government of Kenya CSOs NPS AU
OBJECTIVE 4: PROMOTE AND PROTECT POLITICAL, CIVIL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS										
To intensify efforts to promote awareness on human rights and legal literacy	Civic education Increased funding	- Number of cases prosecuted for violation of rights - Enhanced observance of human rights - Number of Human Rights violations/complaints reported	Media and NGO/CSO reports Police records Court records KNCHR reports	Established National Human Rights Policy developed International and regional Human Rights instruments ratification Prosecution of implicated public officers Periodic reporting on international compliance with human rights instruments	Government of Kenya Civil society NPS and NPSC CAJ KNCHR	Citizens NPS and NPSC Judiciary State law office Independent commissions CSOs Donors	2017-2020	- Awareness of mechanisms to file complaints or seek redress - Respect for human rights by all,	1500 (Ksh. 150 m)	- KNCHR - CSOs NPS

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
To strengthen capacity of the National Cohesion and Integration Commission to discharge its mandate	Continuous capacity building for staff and stakeholders Increased human personnel of NCIC Establish a system for monitoring cyber space Establish an early warning response system	Number of capacity building initiatives developed Number of recruited staff System developed System developed	- NCIC Reports of initiatives Terms of reference for staff Operationalization of the system Operationalization of the system	Staff and stakeholder training manuals developed Mentorship Programmes Manual monitoring of cyber space hate speech and incitement Engagement with field cohesion monitors and peace actors	National Cohesion and Integration Commission Government of Kenya	- Staff and partner institutions The Commission and the public The Public and the Commission The public, communities affected by lack of cohesion	2017-2020	Increased capacity of human resource Increased programmatic initiatives Reduced levels of cyber hate speech and incitement Increased coordination in responses to conflicts	1200 (Ksh. 120 m)	- CSOs - NPS - Government of Kenya (State Law Office)
To enact the prevention of torture Act	Parliament to expedite passage of Prevention of Torture bill	Enactment of the Prevention of Torture bill	The Prevention of Torture Act	Bill awaiting enactment	Parliament, civil society	Parliament KNHRC Government of Kenya (State Law Office) PSC IPOA	2017-2020	Legislation in place	0	- CSOs - NPS - IPOA - NPSC - State Law Office - KNHRC
OBJECTIVE 5: ENHANCE ACCOUNTABLE, EFFICIENT, AND EFFECTIVE PUBLIC SERVICE DELIVERY										
To strengthen ongoing public service rationalization both at national and county levels	Undertake job evaluations both at national and county government levels Clean the payroll	Reduced Wage bill Alignment of staff by qualifications, job description, performance appraisal and remuneration	Budget Reports SRC reports Controller of Budget Report PSC Reports	Job evaluation by SRC Performance Appraisals for all civil service Cleaning the payroll through biometric registration (Capacity Assessment and Rationalization of the Public Service - CARPS)	Government of Kenya, County Government and Salaries and Remuneration Commission Public Service Commission (PSC)	MODP National Treasury	2017-2020	A reduction in the wage bill An efficient and effective public service	500 (Ksh. 50 m)	Salaries and Remuneration Commission Public Service Commission Controller of Budget Parliament

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
To eradicate corruption and unethical tendencies in the public service	Strengthen the EACC through enhanced human and financial capacity Review existing laws and regulation that govern the measures aimed at curbing corruption Strengthen the collaboration between implementing agencies (the Judiciary, ODPP and State Law Office, Ombudsman, EACC, Police) to investigate and prosecute corruption cases Create awareness on mechanisms of reporting	Number of corruption cases prosecuted Number of EACC staff trained Budgetary allocations to EACC Number of corruption cases reported by the citizens	EACC reports Law reports	Several corruption cases are in court Senior government officials removed from office pending investigation	Attorney General and the Ethics and Anti-Corruption Commission	The citizens Private sector The Judiciary The State Law Office	2017-2020	Reduced incidences of corruption	1750 (Ksh. 175 m)	Government of Kenya Civil Society
To enhance Collaboration with Strategic Partners	Initiate strategic partnerships to explore possible areas of collaboration/ engagement	Number of MoUs signed	Project implementation reports	Engagement with strategic partners on possible areas of collaboration	National and County Governments Development Partners Private sector	Government of Kenya Private sector Development Partners	2017-2020	Enhanced collaboration with strategic partners	1000 (Ksh. 100 m)	Relevant government ministries and department agencies
OBJECTIVE 6: PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN										
To promote and Protect the Rights of Women	Operationalisation of the two thirds gender principle	% of women in appointed and elective posts	Enacted laws, regulations, directives and guidelines that promote gender equity PSC Annual reports	Legislative processes Judicial Interpretation Judicial processes Establishment of gender focal points and committees in all ministries. Monitoring 30% gender representation on appointment, promotion & employment Allocation of 30% of government procurement to women, youth and PWDs	IEBC, Registrar of Political Parties, NGEC, KEWOPA, Political Parties Attorney General, Parliament Public Service Commission	Judiciary Parliament CSOs	2017-2020	Gender parity in all spheres of governance	600 (Ksh. 60 m)	Ministry Public Service, Gender and Youth Affairs Public Service Commission

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
	Strengthen capacity of law enforcement agencies to combat gender based violence	No. of awareness programmes	Awareness reports		Government, Civil society CAJ (Ombudsman) Judiciary National Police Service	FIDA LSK FKE Judiciary	2017 - 2020	Increase awareness of rights	34.7 (Ksh. 3.47 m)	Ministry of Public Service, Gender & Youth Affairs
	Increase awareness on the legal rights of victims to access justice through the national legal aid education programmes.									
OBJECTIVE 7: PROMOTE AND PROTECT THE RIGHTS OF CHILDREN AND YOUNG PERSONS										
	Eradicate child labour and trafficking of young persons.	No. of children withdrawn from child labour No. of young persons rescued from trafficking	Reports from State Department of Labour	Implementation of the National Policy on Child Labour	Local law enforcement communities Civil society	FKE Trade Unions Ministry of East African Community, Labour and Social Protection Ministry of Public Service, Gender & Youth Affairs UNICEF	2017 - 2020	Child labour and trafficking free environment	500 (Ksh. 50 m)	Ministry of East African Community Labour and Social Protection
	Ensure that children of school going age go to school	School Enrolment rate No. of Students under various bursary programmes	Reports from Ministry from Education Reports from Ministry of Interior & Coordination of National Government Economic Surveys	Free primary and subsidised secondary education Bursary Schemes	Government, Civil society organizations, schools	Private Sector CSOs PTA Boards of Management	2017 - 2020	Increased enrolment	3846.95 (Ksh. 384.695 m)	Ministry of Education
To promote and protect the rights of children and young persons	Prosecute incidences of violence and abuse against children in homes, communities and school institutions.	No. of child abuse cases reported and prosecuted	National crime surveys	Foster care services Monitoring operations of Children Charitable Institutions (CCIs) Rehabilitation and re-integration of children with their families Construction/ rehabilitation of Children rehabilitation schools, Children remand homes, Children rescue centres and children foster care centres	NPS, ODPP, County governments, Civil society, Private sector, Children Department	Schools CSOs	2017 - 2020	Prosecution of child offenders	3030 (Ksh. 303 m)	NPS, ODPP

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
	Build youth capacity to access funds and undertake business projects.	Amount of money allocated through the YEDF Value of procurement allocated to the youth Youth unemployment rates	Records from Ministry of Public Service, Gender & Youth Affairs	Training through the National Youth Service Institutionalization of Youth Development Fund Uwezo fund 30% procurement rule for youth Women & persons with disabilities	Ministry of Public Service, Gender & Youth affairs, County governments, Civil society, Private sector	Youth groups SACCOs County Governments Institutions of learning	2017 - 2020	Empowered youth	2575 (Kshs. 257.5 m)	Ministry of Public Service, Gender & Youth affairs
OBJECTIVE 8: PROMOTE AND PROTECT THE RIGHTS OF VULNERABLE GROUPS, INCLUDING INTERNALLY DISPLACED PERSONS AND REFUGEES										
To Promote and Protect the Rights of vulnerable groups	Outlaw all forms of discrimination against vulnerable and marginalised groups, prioritise national legal aid scheme for assistance and compensation of victims.	- No. of IDPs resettled - No. of refugees voluntarily repatriated	Government statistics and reports	Peace-building and reconciliation efforts in areas affected by displacement Voluntary repatriation of Somalia refugees	Ministry of Devolution & Planning Ministry of Interior and Coordination of National Government	IDPs Citizens MDAs NGOs UN agencies	2017 - 2020	Peace and National Cohesion	98300 (Kshs. 9.83 bn)	Ministry of Devolution & Planning, Ministry of Interior & Coordination of National Government
	Amend The Persons with Disabilities Act 2003 to conform with the UN Convention and Adhere to the Constitutional and affirmative action measures guarantee for PWDs	Amended Disability Act	Amended Persons with disabilities Act	Allocation of 30% of government procurement to women, youth and PWDs Consolidated Social Protection Fund and National Fund for Persons with Disabilities (PWDs) have been established Sunscreen lotion programmes for PWDs	Government, civil society organisations	KRA, PWDs Groups & Institutions	2017-2020	Mainstreamed disability issues	10,770 (Kshs. 1,077 bn)	PWDs Organizations dealings with PWDs
	Provision of cash transfers to orphans and vulnerable children (OVC) and older person (OP)	No. of beneficiaries receiving cash transfer	Government Reports	Consolidated social protection fund for OVC and OP Bursaries for OVCs in Secondary schools	Ministry of East Africa Community, Labour and Social Protection	UN agencies, World Bank	2017-2020	Vulnerable persons living dignified lives	107,040 (Kshs. 10,704 bn)	Ministry of East Africa Community, Labour and Social Protection

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
	Enhance peace building initiatives amongst communities prone to conflict/ethnic tensions.	No. of community conflicts cases resolved	Free movement of people and goods Joint management of Natural Resources	- Sub County Peace Committees - Disarmament operations Studies on causes of conflict and peace-building mechanisms Promoting of reconciliation dialogue at the community level	NCIC Nyumba Kumi Ministry of Interior & Coordination of National Government	Government, Civil society and Opinion leaders	2017-2020	- Peaceful coexistence amongst communities	21651 (Kshs. 2,1651 bn)	NCIC Ministry of Interior & Coordination of National Government Nyumba- Kumi Initiative
TOTAL									268,342.65	

ECONOMIC GOVERNANCE AND MANAGEMENT

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
OBJECTIVE 1: DESIGN AND IMPLEMENT ECONOMIC POLICIES FOR SUSTAINABLE DEVELOPMENT										
To design and implement economic policies for sustainable development	Promote the SMEs sector as the job creator so as to promote productivity	No. of jobs created by SME.	List of beneficiaries		MoDP, National Treasury, Ministry of Trade, county government, Private Sector	County Govts, Civil Society, Private Sector, Development partners, National Government	2017-2020	increased productivity from SME	1,000 (Ksh. 100m)	MoDP
	Support SMEs in rural areas through appropriate policy measures	No. of productivity Programs implemented No. of policies that support SME developed No. of SMEs supported	Policies on SME, SMEs supported		Ministry of Devolution and Planning Vision 2030 secretariat	MoDP, county government, private sector	2017-2020	Coordinated policy framework for SMEs		
OBJECTIVE 2: FACILITATE THE PARTICIPATION OF KEY STAKEHOLDERS IN POLICY AND PROGRAMME DISCUSSIONS AND IMPLEMENTATION										
To facilitate stakeholder participation in policy formulation and implementation	Conduct civic education to promote public participation	No. of Public trainings conducted	Training / civic education reports	Development of public participation guidelines	National and county governments, civil society	-National Government County Governments Public	2017-2020	Enhanced public participation	1000 (Kshs. 100 m)	MoDP
	Establishment of effective internal control mechanisms of PFM at the county level.	No. of internal controls established	Reports	IFMIS	National Treasury, and Ministry of Devolution and Planning	National Government, County Government, Public	2017-2020	Improved Public Finance Management	0	National Treasury
To promote sound public financial management	Sensitization of the public on fiscal literacy, budgeting and planning	No. of sensitization forums held No. of people sensitized	Reports	Development of public participation guidelines	National Treasury	National & County Governments	2017-2020	-Improve public participation.	1000 (Kshs 100 m)	National Treasury
	Conduct regular Payroll audits (both at the national and county levels)	No. of audits conducted	Audit Reports	Regular Audits Development of audit manuals	-Salaries and Remuneration Commission (SRC) Public Service Commission	National & County Government,	2017-2020	Accurate payrolls in Public Service	1500 (Kshs 150 m)	SRC Public Service Commission
	Streamline various development funds to avoid overlap and duplication. Conduct a comprehensive audit of various funds meant for development.	No. of funds streamlined	Reports Audit Reports	Implementation of vision 2030 and its MTP Implement of CIDP	National Treasury, Ministry of Devolution and Planning	County governments, public	2017-2020	Efficient utilization of resources	2000 (Kshs. 200 m)	MoDP
OBJECTIVE 3: PROMOTE SOUND PUBLIC FINANCIAL MANAGEMENT										

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY	
OBJECTIVE 4: FIGHT CORRUPTION IN PUBLIC ADMINISTRATION AND MONEY LAUNDERING											
To enhance the fight against corruption and money laundering	Enhance capacity of investigating agencies	No. of officers trained	Training reports	Many cases under investigation analysis and forwarded for prosecution Tracing and recovery of illegally acquired assets	Office of the Attorney General, EACC, ODPP	Office of the Attorney General, EACC, Judiciary, other law enforcement agencies - CID, ODPP, police etc	2017-2020	Enhanced skills for investigators. Reduced number of cases for money laundering	5,000 (Kshs 500 m)	Office of the AG	
	Promote proper coordination between law enforcement agencies and the Financial Reporting	No. of cases successfully investigated	Reports		Office of the Attorney General, EACC			Improved coordination between law enforcement agencies		EACC	
	Develop a robust mechanism for collecting and maintaining comprehensive statistics on investigations, prosecutions and convictions related to money laundering.	Tool developed	Data collected	Establish an online anonymous reporting system	Office of the Attorney General, EACC	Office of the Attorney General, EACC, CID, ODPP, Police etc	2017-2020	Reduced incidents of corruption and money laundering	500 (Kshs. 5 m)	Office of the AG	
To enhance Regional integration	Implement the recommendations of the Task Force on the Review of Legal, Policy and Institutional Framework for Fighting Corruption in Kenya.	No. of recommendations implemented	Reports on implementation	Development of the Leadership and Integrity Act 2012 Regulations 2015	Office of the Attorney General	Office of the Attorney General, EACC, CID, ODPP, Police etc.	2017-2020	Reduction on corruption	1000 (Kshs. 100 m)	Office of AG	
	OBJECTIVE 5: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONISATION OF MONETARY, TRADE AND INVESTMENT POLICIES AMONG THE PARTICIPATING STATES										
	Sensitize the public on regional integration	No. Radio and Television programmes No. of debates and discussions held	Reports	Publicity of EAC requirements in all countries	Ministry of East African Community, Labour and Social Protection National Treasury CBK	Industries, County Governments, Traders and Education Institutions	2017-2020	Enhanced awareness of EAC integration	430.94 (Kshs 43,094 m)	Ministry of East African Community, Labour and Social Protection	
Develop compensatory mechanism for member states that record revenue loss due to the removal of tariffs and trade barriers	No. of compensated member states	Compensation reports		National Treasury, Ministry of East African Community, Labour and Social Protection, CBK	Member states	2017-2020	Improved Regional Trade			Ministry of East African Community, Labour and Social Protection	

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
OBJECTIVE 6: DEVELOP AND IMPLEMENT TRADE AND INVESTMENT POLICIES THAT PROMOTE ECONOMIC GROWTH										
To enhance trade and investment policy	Improvement of business environment, reduction of red tape and provision of a predictable regulatory framework for business.	No. of policies Reviewed to promote business environment	Policies reviewed		Ministry of Industrialization and Enterprise Development	Ministry of Industrialization and Enterprise Development, NT, MoDP, FKE, Private sector	2017-2020	Improved business environment	1000 (Kshs. 100 m)	Ministry of Industrialization and Enterprise Development
	Establishment of Business Information Centers (BICs).	Information system established	Report on BICs		Ministry of Industrialisation and Enterprise Development	Ministry of Industrialization and Enterprise Development, NT, MoDP, FKE, Private sector	2017-2020	Improved access on business	1000 (Kshs. 100 m)	Ministry of Industrialization and Enterprise development
TOTAL									114,430.94	

CORPORATE GOVERNANCE

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
IMPLEMENTATION OF STANDARDS AND CODES										
To ratify standards and codes	Train more accountants and ensure that they meet the IASB's requirements in terms of the IFRS / IPSAS	No. of accountants trained.	Periodic training reports		Universities, Accounting training institutions, ICPAK	Private and public organisations	2017-2020	Integration of IFRS / IPSAS in accounting practice	1,000 (Ksh. 100m)	ICPAK National Treasury
	Representation on standards and code setting processes	No. of accountants and organisations in the code setting processes	Reports		ICPAK, National Treasury	Private and public organisations	2017-2020	Standards that reflect local legislation and requirements		
OBJECTIVE 1: PROMOTING AN ENABLING ENVIRONMENT AND EFFECTIVE REGULATORY FRAMEWORK FOR BUSINESS ORGANIZATIONS AND OTHER ENTITIES										
To promote an effective framework for doing business	Hasten judiciary reforms to reduce case backlog	Period of time taken to conclude a case	Annual Judiciary reports	Opening of new court stations and appointment on new judges.	Judiciary	Public	2017-2020	Reduction in case backlog	40,000 (Kshs. 4 bn)	Judiciary
	Improve access to credit as well as reduce the cost of credit.	Amount of credit available to SMEs	CBK reports	Affirmative action funds	CBK, National Treasury, MPSYG	SMEs, women Youth, PWDs	2017-2020	Expanded credit to SMEs	200 (Kshs. 20 m)	CBK Treasury MPSYG
OBJECTIVE 2: ENSURE EFFECTIVE LEADERSHIP AND ACCOUNTABILITY										
To enhance leadership and accountability	Enhance systems of asset tracking and recovery.	Number of assets recovered	Financial disclosure reports	Training of NPS on Anti-money laundering	CBK, Anti Money Laundering Advisory board, Asset Recovery Agency, State Law Office, EACC	General public, CSOs	2017-2020	Improved leadership and accountability	4000 (Kshs. 400 m)	EACC, State Law Office
	Establish a clear mechanism for coordination, between the institutions involved	No. of cases resolved satisfactorily through inter-agency co-operation	Inter-agency reports	Joint meetings on various issues.	Multi Governmental Agency	General public, MDAs	2017-2020	Harmonious resolution of cases through multi-agency effort.	2000 (Kshs. 200 m)	EACC

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
OBJECTIVE 3: ENSURE ETHICAL CONDUCT WITHIN ORGANIZATIONS										
To promote ethical conduct within organizations	Publication of specific guidelines for implementation of ethical conduct.	No. of approved code of ethics	EACC reports Evaluation reports on values and Principle (Article 10 & 232 of the Constitution)	EACC surveys on corruption and ethics Administration of financial disclosure S Promotion of values in Public service	EACC, IPOA, CAJ, Public Service Commission	Government of Kenya, General public	2017-2020	Improved standards of integrity for office holders Ethical Public Service	2500 (Kshs. 250 m)	EACC Public Service Commission
	Train the EACC and the Kenya Police Staff on anti-money laundering and asset recovery	No. of officers trained	Training reports	Training on anti-money laundering and asset recovery	NPS, CBK, EACC	General public, NPS, EACC	2017-2020	Professionalism in handling money laundering and asset recovery cases.	5000 (Kshs. 500 m)	EACC
	Capacity building to strengthen internal audit in public, private organizations	No. of skilled auditors in public and private organisations	Internal audit reports	Internal audit reports		Institute of internal auditors	Public and private organisations	2017-2020	Improved accountability in public and private organizations	1000 (Kshs. 100 m)
OBJECTIVE 4: ENSURING THAT ORGANIZATIONS TREAT STAKEHOLDERS FAIRLY AND EQUITABLY										
To promote equity and fairness in organizations	Build capacity of organizations to provide financial and corporate civic education to stakeholders.	No. of stakeholders trained	Organisational training reports		Register of companies, CCG	General public	2017-2020	Well informed stakeholders	200 (Kshs. 20 m)	Registrar of Companies
OBJECTIVE 5: ORGANIZATIONS AS GOOD CORPORATE CITIZENS										
To promote good CSR among corporates	Provide legal regime for CSR and regulatory framework within which the activities can be carried out by organizations	No. of legislations on CSR passed	Kenya Law Reports		National Treasury, Parliament, State Law Office	Public and private organizations	2017-2020	CSR activities regulated by law	100 (Kshs. 10 m)	State Law Office
	Enforce existing laws relating to environment, employment and labour	% increase in the level of compliance with the set Regulations	Reports from relevant ministries		NEMA and Ministry of East African Community, Labour and Social Protection	General Public	2017-2020	Increased environmental awareness	1385 (Kshs 138.5 m)	Ministry of East African Community, Labour and Social Protection, Ministry of environment
	Create nationwide awareness of CSR and its purpose to all organizations in both public and private sectors through media.	Number of Corporations with CSR programmes	Reports from FKE	Several CSR initiatives currently ongoing	GoK, Media, All Organizations	General public	2017-2020	Increase CSR initiatives	500 (Kshs. 50 m)	FKE
TOTAL									57685	

SOCIO ECONOMIC DEVELOPMENT

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
STANDARDS AND CODES										
To ratify To Adopt and Deposit Standards and Codes that were Ratified (10)	Disseminated to public Translate into Kiswahili	No. of Standards and Codes disseminated No. translated	Dissemination report No. translated	All the S&Cs have been ratified. Government building a database in order to track them and report performance	MoFA, MoALF, MITC	Parliament, AG Office, County Governments, The General public	2017-2020	Adopted and deposited standards	500 (Kshs. 50 m)	MoDP
OBJECTIVE 1: PROMOTE AN ACCELERATED BROAD-BASED SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT										
To strengthen the investigative capacity of EACC and other institutions	Capacity built EACC staff to carry out anti-corruption campaign Equip and modernize investigations	No. Staff trained New modern equipment's acquired	Training report Area covered in campaigns Campaigns report	Recruitment of investigation and technical staff at EACC	EACC, Judiciary, NPS, ODPP	National Government County Government, EACC	2017-2020	Enhanced No. of competent technical staff Improved and faster investigation mechanism	5000 (Kshs. 500 m)	EACC MoDP
To enhance the education system	Increase budget allocation to the sector	Budget allocation to education	Percentage Increase in productivity per education budget	Reform of the education curriculum	National Treasury, Kenya institute of curriculum development, Ministry of Education, and County Government	National Treasury, Minister of Education, and County Government	2017-2020	Improved pupils teacher ratio Increased educational facilities Improved quality of education	25,000 (Kshs. 2.5 bn)	Min. Education, Kenya institute of curriculum development
OBJECTIVE 2: ENCOURAGE BROAD-BASED PARTICIPATION IN DEVELOPMENT										
To engage the youth effectively in all aspects of socio-economic development	Establish mentorship programme Enhance youth empowerment	No. of youth mentored No. of youth empowered	Youth mentorship and empowerment reports	Youth Empowerment initiatives	Ministry of Public Service, Youth and Gender Affairs	Ministry of Public Service, Youth and Gender Affairs National Government County Government	2017-2020	Empowered youth	5800 (Kshs. 580 m)	Ministry of Public Service, Youth and Gender Affairs
OBJECTIVE 3: POVERTY, INEQUALITY AND UNEMPLOYMENT										
To streamline delivery of public services at both national and county level especially in agricultural production	Improve extension services, Supply subsidized agricultural inputs, promote use of modern farming technology, Caution farmers against risks	No. of sub counties with extension officers Tonnes of fertilizer/seeds subsidized and distributed, No. of tractors No. of beneficiary farmers	Sub county extension officers deployed. Seeds, fertilizers availed to farmers, importation and distribution of tractors, insurance policies taken by farmers	Bulk fertilizer procurement and subsidies Establishment of fertilizer factory in Eldoret NAAIAP project Provision of certified seeds and THVC Mechanisation of crop production	Government of Kenya, Ministry of Agriculture	Government of Kenya, County Governments, Ministry of Agriculture	2017-2020	Increased agricultural production	247504.32 (Ksh. 24,750,432 bn)	Ministry of Agriculture

OBJECTIVE	REQUIRED ACTIONS	MONITORABLE INDICATOR(S)	MEANS OF VERIFICATION	ONGOING INITIATIVES	IMPLEMENTING INSTITUTIONS	STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$) THOUSANDS	M & E AGENCY
To conduct capacity assessment to identify the skills demanded by employers	Survey to identify the skills demanded by employers	No. of surveys	Survey report	Labour market information system established	Kenya Bureau of Statistics, Ministry of East African Community, Labour and Social Protection	National, County Governments, Kenya Bureau of Statistics, Ministry of Education	2017-2020	Integrated national human resource development strategy	4000 (Kshs. 400 m)	MODP Min. Ed.
To improve infrastructure roads to service both at the national and county level	Increase access roads to service centres	No. of new roads Km of New roads tarmacked	new roads opened Tarmacked roads done	Opening of county access roads Tarmacking of main roads	National Government, County Government	General public, National Government, County Government	2017-2020	Improved access in term of infrastructure connectivity	500,000 (Kshs. 50 bn)	Ministry Roads and transport
OBJECTIVE 4: PROGRESS TOWARDS GENDER EQUALITY, PARTICULARLY EQUAL ACCESS TO EDUCATION FOR GIRLS AT ALL LEVELS										
To publicise policies and programmes on gender equality and women's empowerment	Disseminate policies implement programme on women empowerment	No. of forums held	Policies Disseminated Women empowerment programme	Awareness creation on Gender equality	Ministry of Public Service, Youth and Gender Affairs		2017-2020	Gender awareness created More women taking up Key positions and in elective position	102,900 (Kshs. 10.2 bn)	Ministry of Public Service, Youth and Gender Affairs
To institute mechanisms against retrogressive cultures that discriminate women and the girl children	Awareness creation Enforcement of the relevant laws	Awareness created case retrogressive cultures prosecuted	Areas covered No of cases prosecuted	Anti-FGM campaign Women empowerment programmes Implementation of the Children right	Ministry of Public Service, Youth and Gender Affairs; the Executive Branch; Judiciary The Police	Ministry of Public Service, Youth and Gender Affairs; the Executive Branch; Judiciary The Police The General public	2017-2020	Elimination of the backward cultural practices and reduce cases of child abuses	27600 (Kshs 2.76 bn)	Ministry of Public Service, Youth and Gender Affairs
TOTAL									918,304.32	

USD TOTAL = 1,358,762.91

KENYA SHILLINGS TOTAL = 135,876,291,000 billion



PEER REVIEW REPORT



REPORT OF THE PEER REVIEW OF THE REPUBLIC OF KENYA BY THE COMMITTEE OF HEADS OF STATE AND GOVERNMENT PARTICIPATING IN THE APRM (APR FORUM)

I. INTRODUCTION

The Peer Review of Republic of Kenya was conducted at the 26th Summit of Heads of State and Government which took place on the 28 January 2017, in Addis Ababa, Ethiopia. H.E. Uhuru Kenyatta, President of the Republic of Kenya and Chairperson of the APR Forum, presided over the Summit. This report provides a summary of the deliberations on the Peer Review of Kenya.

II. ATTENDANCE

The following Heads of State and Government were in attendance.

- i. H.E. Uhuru Kenyatta, President of the Republic of Kenya and Chairperson of the APR Forum;
- ii. H.E. Idriss Deby Itno, President of the Republic of Chad;
- iii. H.E. Ismaïl Omar Guelleh, President of the Republic of Djibouti;
- iv. H.E. Teodoro Obiang Nguema Mbasogo, President of the Republic of Equatorial Guinea;
- v. H.E. Hage Geingob, President of the Republic of Namibia;
- vi. H.E. Mahamadou Issoufou, President of the Republic of Niger;
- vii. H.E. Macky Sall, President of the Republic of Senegal;
- viii. H.E. Edgar Lungu, President of the Republic of Zambia;
- ix. H.E. Daniel Kablan Duncan, Vice-President of the Republic of Côte d'Ivoire
- x. H.E. Abdelmalek Sellal, Prime Minister of Republic of Algeria; and
- xi. H.E. Hailemariam Desalegn, Prime Minister of the Federal Democratic Republic of Ethiopia.
- xii. H.E. Modibo Keita, Prime Minister of the Republic of Mali

Angola, Benin, Burkina Faso, Cameroon, Republic of Congo, Egypt, Gabon, Ghana, Lesotho, Liberia, Malawi, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, São Tomé and Príncipe, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia and Uganda were represented at the Summit by their ministers.

Members of the APR Panel of Eminent Persons (APR Panel) attended the Summit: Dr. Mustapha

Mekideche, (Chairperson), Professor Mahamoud Youssouf Khayal (Vice-Chairperson), Ambassador Fatuma Ndangiza, Ambassador Mohamed Ashraf Rashed, Professor Al-Amin Abu-Manga, Honourable Brigitte Sylvia Mabandla and Honourable Joseph Tsang Mang Kin.

III. PEER REVIEW OF KENYA

The peer review of Kenya started with a summary presentation of the key findings of the second evaluation of Kenya by Professor Alamin Abumanga, Lead Panelist for Kenya. This was followed by a response of His Excellency Uhuru Kenyatta, President of the Republic of Kenya. The Forum deliberations then ensued.

i. Presentation of key findings by Prof Alamin Abumanga

Professor Abumanga began by congratulating Kenya for being the first country to kick-start the second cycle APRM review.

He noted that the country self-assessment report (CSAR) was prepared in line with the approved methodology for second reviews, and accordingly it reported on progress which Kenya has made since the Base Review in 2006. The review exercise was participatory and the Country Review Mission met with a wide range of state and non-state stakeholders from all the 47 counties of Kenya to discuss the state of governance.

He further informed the Forum that Kenya has undertaken major restructuring of its governance system since the 2006 review and tremendous progress has been made in all the four areas of APRM assessment.

The Constitution of Kenya 2010 was acknowledged by all Kenyan stakeholders as the most important milestone. It has brought a stronger legal and institutional basis for democracy and good governance, provided appropriate separation of powers and checks and balances, and devolved the power to local communities through the county system with extensive provision for public participation in the management of public affairs. The Constitution was lauded for the provision of fundamental freedoms and guarantees to address discriminations against marginalized groups and regions.

Professor Abumanga further highlighted the strong performance of the economy, which has recorded an average growth of 5.5 per cent for the period 2011 to 2015. This has been attributed to reforms and improvements of the macroeconomic framework as well as the creation of a conducive environment for the private sector to thrive.

Best practices were also highlighted for peer sharing. They include the Huduma centres, (a one stop-shop for delivery of public services); high revenue generation, the M-pesa platform, and free maternity services, to name just a few.

The Panelist noted that despite laudable progress, which has been made since the base review in 2006, Kenya has also a number of challenges to address. They include corruption and accountability, diversity management, in particular politically mobilised ethnicity, historical patterns of marginalization, poverty and growing inequalities and unemployment, especially among the youth.

ii. Response from H.E. President Uhuru KENYATTA

President H.E Uhuru Kenyatta started off by applauding the Panel of Eminent Persons for steering the APRM process in Member States. He particularly congratulated Professor Abumanga and the team of experts who conducted the second review of Kenya.

The President noted that Kenya was pleased to pioneer the second generation of peer reviews, which was an indication of his government confidence in the APRM and commitment to continuing improving governance and socio-economic development. The President response centred on the following key points highlighted below.

The Constitution of 2010: the President told his peers that he was pleased that the panel acknowledges that the promulgation of the Constitution of Kenya in 2010 introduced a new paradigm and fundamental reforms geared to consolidate constitutional democracy, devolve power to the counties and ensure clear separation of powers. He informed the APR Forum that the government has remained on course and has observed all stipulated timelines for the implementation of the Constitution.

Regarding Corruption, the President acknowledged that it remains a challenge in Kenya as it is in many countries. The President mentioned the various measures which his government has taken to fight corruption. The Constitution of 2010 provides a solid legal and ethical framework to combat corruption in government and society at large. Numerous institutions, including the Ethics and Anti-corruption Commission (EACC), Parliamentary Public Accounts Committee (PAC) and Public Investment Committee (PIC), Directorate of Public Prosecutions have also been established to deal with the issue. In addition, the judiciary has been transformed to better fulfill its role in line with the Constitution.

Diversity management for national unity: in his response the President Uhuru Kenyatta remarked that while diversity in Kenya is a source of pride and strength, Kenyans also are aware that if not properly harnessed it could be easily exploited for social disharmony. In this regard, the government created and operationalized the National Cohesion and Integration Commission whose main mandate is to promote national unity, enhance equality of opportunity for all and eliminate discrimination on the basis of ethnicity.

On the challenge of poverty, inequality and youth unemployment, He highlighted the most important measures Kenya has taken to address the issue, starting with devolution which is entrenched in the constitution and the provision for equitable share of national revenue up to 15% to all the 47 county governments. In addition, an Equalization Fund of 0.5% of the national revenue is provided for in the Constitution to address the resource gap in previously marginalized areas. Several funds and programs have been established to reduce poverty especially among vulnerable groups such as people with disabilities, women and youth. They include the Women enterprise fund (WEF), Constituency Bursary Fund (CBF), Youth Enterprise Development Fund (YEF), and Uwezo Fund. However, the President acknowledged that youth unemployment remains a challenge in Kenya, which the government is committed to address.

iii. APR Forum Discussion

The Heads of State and Government (HOSG) at the peer review started by applauding President Kenyatta's leadership in steering the revitalization agenda of the APRM and for pioneering the second review, which affirms continued Africa's commitment to good governance.

The Forum commended the progress Kenya has made in many areas since the 2006 review, especially high economic performance. The Heads of State and Government (HOSG) congratulated Kenya for being a good model in e-banking which has been facilitated by the utilization of technologies, such as the much-celebrated M-Pesa platform. This has enabled high financial inclusion of poor people.

Kenya government was further applauded for significant progress in infrastructure development particularly in expanding road network and railways in Kenya, protection and conservation efforts of the biodiversity. The HOSG also commended President Kenyatta for spearheading regional integration in East Africa, especially regional infrastructure development and trade.

With regard to the key issues highlighted in the Kenya second Review Report, the Heads of State and Government observed the following.

On corruption, HOSG concurred that corruption was a big challenge impeding socio-economic development in Africa. In addition to putting in place the necessary legal and institutional framework responsible to combat corruption, the peers observed that concerted effort of public education was imperative since corruption is an issue of society.

The HOSG deplored the insecurity caused by Al-Shabaab terrorism and radicalization and commended the government and the people of Kenya for their efforts in combatting terrorism and radicalization.

President Kenyatta thanked his peers for their comments and commendation. He assured the Forum of Kenya's commitment to implement the National Plan of Action (NPOA) recommendations.

