TAX JUSTICE NETWORK AFRICA

"HANGING ON A PRECIPICE"

Public Debt Management Research – Kenya

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ACRONYMS AND ABBREVIATIONS

CBK	Central Bank of Kenya
CI	Composite Indicator
CPDA	Citizen Public Debt Audit
CSO	Civil Society Organisation
DMS	Debt Management Strategy
DSA	Debt Sustainability Analysis
DSSI	Debt Service Suspension Initiative
EAC	East African Community
FDI	Foreign Direct Investment
FFDI	Financing for Development in the Era of COVID-19 and Beyond Initiative
FY	Financial Year
GDP	Gross Domestic Product
IFFs	Illicit Financial Flows
IMF	International Monetary Fund
KDAN	Kenya Debt Abolition Network
KES	Kenya Shilling
KNBS	Kenya National Bureau of Statistics
MDA	Ministries Departments and Agencies
MDG	Millennium Development Goals
MTDMS	Medium-Term Debt Management Strategy
MTP	Medium-Term Plan
NGEC	National Gender and Equality Commission
PDMO	Public Debt Management Office
PFMA	Public Finance Management Act
SDG	Sustainable Development Goals
SDR	Special Drawing Rights
SGR	Standard Gauge Railway
SSA	Sub-Saharan Africa
TISA	The Institute for Social Accountability
UN	United Nations

From Commitments to Actions – Increasing Public Accountability in the lead up to Monterrey+20

SECTION ONE: INTRODUCTION

1.0. Background and Rationale for the Study

The project 'From Commitment to Actions-Increasing Public Accountability in the lead up to Monterrey +20' aims to turn political promises on financing for development into action and strengthen public accountability and good governance at the national, regional and global levels.

The European Network on Debt and Development (Eurodad), which is implementing the project, is facilitating national-level research to monitor and assess countries' performance within the following three core issues:

- Fair taxation, tax exemptions and revenues from natural resource extraction
- Fight against tax evasion and illicit financial flows (IFFs), and
- Debt management

As such, Eurodad commissioned a study to examine Kenya's performance on the third component, that is, debt management.

1.1. Objectives of the Study

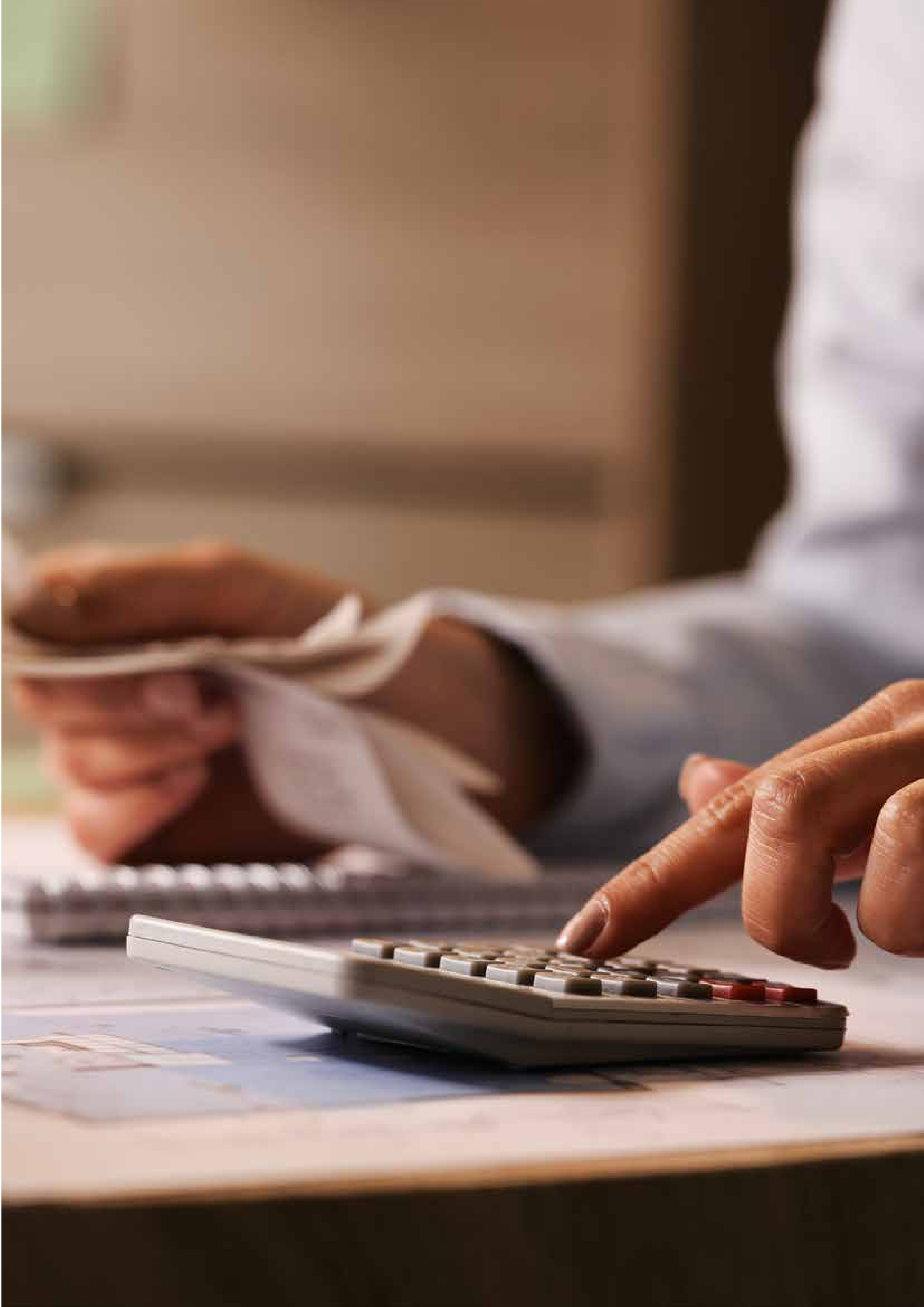
The study sought to assess the implications of Kenya's debt management on the advancement of human rights, and the 2030 Agenda. This necessitated the assessment of Kenya's debt management frameworks, analysis of the implications of public debt on citizens, and assessment of the level of adoption of the 2030 Agenda in different facets of Kenya's public finance space. The study was guided by research themes developed from the research questions. The research themes included:

- Debt servicing and expenditure on sectors of the economy (including pro-poor sectors)
- Integration of human rights and the 2030 Agenda in Kenya's planning and budgeting frameworks
- Kenya's Debt data transparency
- Kenya's Debt sustainability
- Kenya's involvement in the multilateral agenda on debt

1.2. Methodology

The study adopted an overall exploratory approach, relying largely on desk research. Desk research entailed the review and assessment of various publications with relevant information on policies, statistics and data relating to Kenya's public finance, human rights and the 2030 Agenda. Data on indicators such as public debt levels, government expenditure, government revenues and debt servicing were used to describe the status of Kenya's public debt management, debt transparency and sustainability.

The data also aided in assessing the relationship between debt management and the advancement of human rights. These statistics were obtained from local sources which include the National Treasury, Central Bank of Kenya (CBK), Kenya National Bureau of Statistics, Civil Society Organisations (CSO) publications and relevant publications from government Ministries, Department and Agencies. Global data sources were utilised to assess international commitments and legislation on issues such as human rights, debt and the 2030 Agenda. Data on the identified indicators was analysed and the findings presented in the form of tables and graphs. Additionally, relevant information addressing the different research themes was incorporated into the findings of the study.



SECTION TWO: DEBT MANAGEMENT AND ADVANCEMENT OF HUMAN RIGHTS AND THE 2030 AGENDA IN KENYA

2.0. Introduction

Kenya, like every other country across the globe, faces multiple policy choices concerning public debt and public finance management objectives. The country continues to grapple with debt management policies that can promote economic development into the future whilst guaranteeing equity, respect and realisation of the human rights of citizens. This section seeks to, (i) explore the framework for debt management in Kenya and its implications on the access of public goods and services in the broader context of the 2030 Agenda, and (ii) to assess the nexus between debt management and the realisation of human rights.

2.1. Policy and Legal Framework for Public Finance and Debt Management in Kenya

Kenya possesses an elaborate legal and institutional framework that guides public finance management including policy decision-making, oversight and accountability for the acquisition and utilisation of resources obtained through debt. These include the Constitution of Kenya 2010, the Public Finance Management Act (PFMA) of 2012, Regulations on the Public Finance Management Act (No. 18 of 2012), and the Public Debt and Borrowing Policy of 2020. These have been discussed extensively in Table 1 below.

The legal framework outlines provisions for: (i) the separation and coordination of debt and monetary management objectives and accountabilities, (ii) requirements for the establishment of credible institutions and comprehensive policies for reducing the country's vulnerability to epidemics and financial shocks, (iii) the country's debt ceiling, (iv) clear delegation of responsibilities and requisite accountabilities among key authorities within the public finance space, and (v) directives on how to manage refinancing and market risks, as well as interest costs of debt burdens. Additionally, the legal framework for debt management in Kenya envisages the institutional arrangements governing public debt management in the country that involves several institutions to enhance accountability and transparency.

Table 1: Legal Foundations for Debt and Public Finance in Kenya

Legal Foundations for Debt and Public Finance in Kenya
The Constitution of Kenya 2010[1]: Chapter 12 of the Constitution, which is exclusively dedicated to Public Finance prioritises national interest, specifically the national debt obligation. This chapter outlines the principles and framework of public finance in the country and defines revenue-raising powers and allocations, budgets and spending, as well as the control of public finances. **Article 206** of the constitution establishes the Consolidated Fund into which all money raised or received by or on behalf of the National Government shall be paid, whereas **Article 214 (1)** highlights public debt as a charge on the Consolidated Fund, an act of parliament may provide for charging all or part of the public debt to other public funds. **Article 222 (1)**, highlights that if the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorise the withdrawal of money from the Consolidated Fund. Further, the Constitution of Kenya 2010, also sets out the principles of public finance that are relevant to public debt. These principles are meant to ensure that the purpose for which public debt is incurred is effected.[2]
The Public Finance Management Act (PFMA), 2012[3]: Serving as the key primary legislation regulating Kenyan public finance PFMA covers all aspects of the law regarding public finance in Kenya, including budget processes and the responsibilities of the two levels of government concerning the management and control of public finances. It provides for effective management of public finances by national and county governments and gives a detailed breakdown of the oversight responsibility of parliament and County Assemblies. **Section 11** establishes the National Treasury, which is responsible for the handling of public finances and fiscal policies in the country. **Sections 28 and 29** mandate the National Treasury to establish a Treasury Single Account and the associated cash management framework, whereas **Sections 47 to 65** prescribe for the receipt and use of grants and loans, lending money, the establishment of the Public Debt Management Office in the National Treasury, and guides how the government enters into derivative transactions. Altogether, the policy seeks to ensure that all revenue, expenditure, assets, and liabilities of the government are managed efficiently and effectively, and provides for the responsibilities of persons entrusted with financial management in the government.

1. The Constitution of Kenya (2020). Chapter 12 – Public Finance. https://www.constituteproject.org/constitution/Kenya_2010.pdf
2. International Budget Partnership (2020). The State of Kenya's Public Debt: The thin line between a rock and a hard place. https://internationalbudget.org/wp-content/uploads/state-of-public-debt-Kenya-october-2020.pdf
3. The Public Finance Management Act, 2012. http://www.parliament.go.ke/sites/default/files/2017- 05/Legal_Notice_No._34_National_Govt_Regu.pdf

Legal Foundations for Debt and Public Finance in Kenya

Regulations on Public Finance Management Act (No. 18 of 2021)[4] and subsequent amendments) provides guidelines and clarity on all matters concerning public finance at both the national and county level. **Legal Notice No 34. of 2015**, set the overall debt limit at the present value of 50% of the Gross Domestic Product (GDP) for the national government and 20% of the audited total county government revenue collected within a year and approved by county assemblies. **Section 192** of the Public Finance Management Regulations allows the government of Kenya to borrow to refinance the outstanding debt or repay a loan before its date of repayment. **Section 200** of the regulations prescribes the need for the Cabinet Secretary to prepare and submit a report to the parliament on public debt detailing, (i) composition of debt (external debt, publicly guaranteed debt, on-lent loans and contingent liabilities), (ii) review of the previous year's financing on budget deficit, (iii) debt strategy and debt sustainability, and (iv) outlook for the medium term, and (v) any commitment fees and penalties paid on any undisbursed amounts of a loan.

The Public Debt and Borrowing Policy, 2020[5]: The policy serves as a guide for public debt and borrowing practices of the National and County governments, including the issuance process and management of the debt portfolio. One of the key objectives of the debt and borrowing policy is to ensure government financing needs and payment obligations will be contracted at the lowest possible cost over the medium to long term, consistent with a prudent degree of risk. Further, the policy guides for the establishment of a structure of public debt that mitigates/balances the costs and risks including refinancing risk, foreign exchange risks, size of the economy, public revenues, debt liabilities currency vis-à-vis revenue currency, etc. Under **Section 3**, the policy highlights provisions for the settlement of debt service obligations. Within the clauses in this section, public debt service is to be settled on the due date in accordance with the provisions of the underlying loan contracts/agreements and all laws governing public debt management operations and laid down procedures. This must be strictly followed in the settlement of public debt.

A review of Kenya's legal framework on public finance and debt management indicates that it envisages salient features of a sound and progressive public debt management legal framework as provided for by the International Monetary Fund (IMF) and World Bank[6]. This is an indication that the PDM legal framework, as embraced in the Constitution of Kenya 2010, the Public Finance Management Act, PFMA Regulations, and Public Debt and Borrowing Policy, are well designed and taking into consideration international best practices.

Nonetheless, regarding debt prioritisation, it is evident that the legal and institutional framework of public debt and finance management prioritises public debt over other budget commitments. Being a part of the consolidated fund services (CFS), Kenya is obligated to pay its debt before spending money on other government functions. Additionally, as highlighted in the Constitution, the government can only take loans to fund capital expenditure. With debt repayment being the first charge in the CFS when determining shareable revenue between the two levels of government, other budget commitments and service-related expenditures often compete for domestically raised revenues. As such, high debt service reduces the equitable share (as provided for in Article 202 of the Constitution of Kenya 2010[7]) available to the county and national government, which in turn affects the provision and quality of public services.

2.2. Public Debt Trends in Kenya

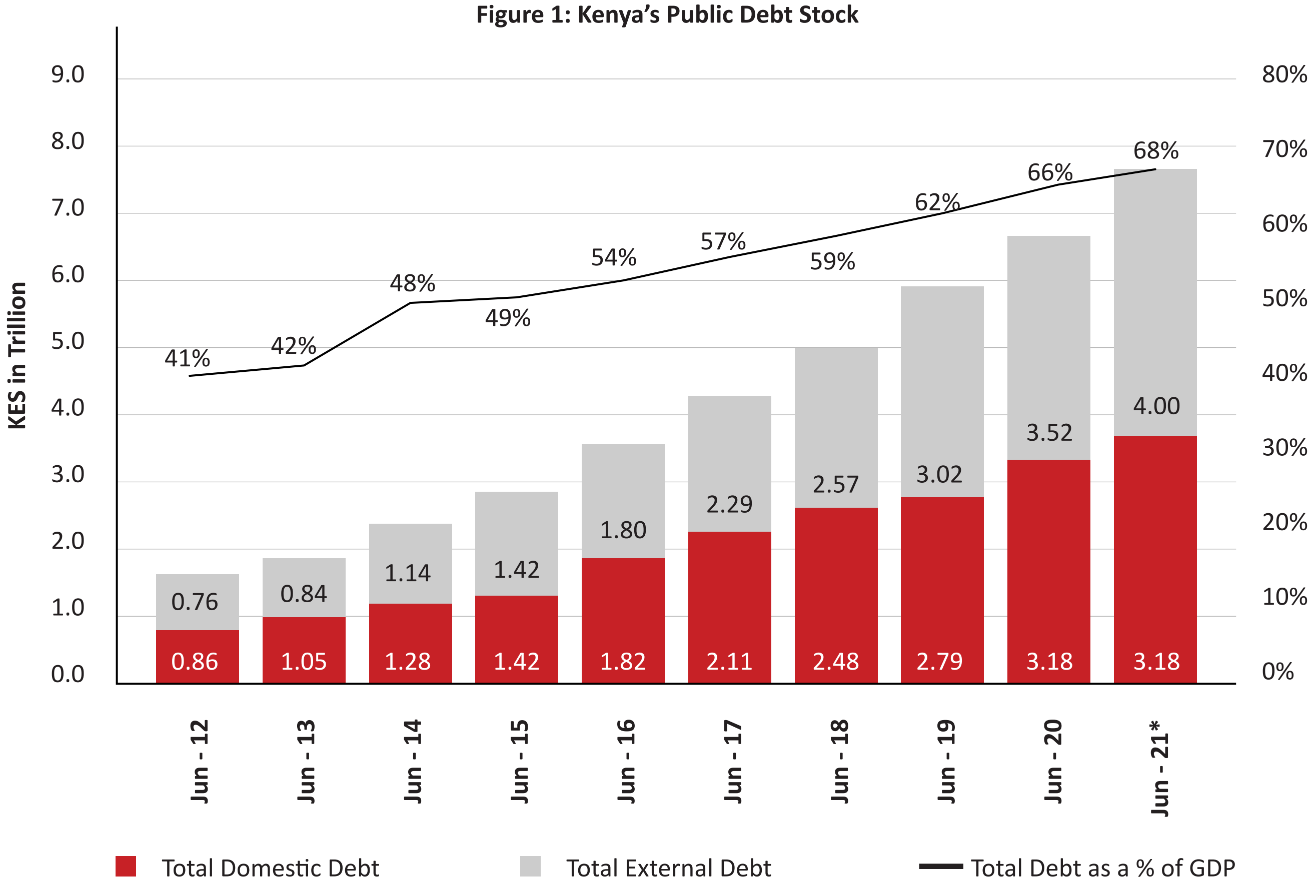
2.2.1. Kenya's Public Debt Stock

There has been exponential growth in the stock of Kenya's public debt over the past decade. According to Central Bank of Kenya data, the country's public debt stock has sharply grown - rising from KES. 1.6 trillion (US$ 18.9 billion) in June 2012 to KES 7.7 trillion (US$ 70.2 billion) in June 2021.[8] Public debt currently makes up 80.1% of the KES.10 trillion debt ceiling recently revised by legislators9. The debt stock forecasted to range between KES. 8.6 trillion and KES. 8.8 trillion by June 2022 is set to cross the KES. 10 trillion mark by the end of 2024. This is especially after the government raised the debt ceiling to

4. The Public Finance Management Act, 2012. http://www.parliament.go.ke/sites/default/files/2017- 05/Legal_Notice_No._34_National_Govt_Regu.pdf
5. The Public Debt and Borrowing Policy, 2020. https://www.treasury.go.ke/wp-content/uploads/2021/02/Debt-and-Borrowing-Policy- 2020-Final-June-2020.pdf
6. The World Bank and International Monetary Fund (2014). Revised Guidelines for Public Debt Management. https://www.imf.org/external/np/pp/eng/2014/040114.pdf
7. Constitution of Kenya, 2010. Article 202: Equitable Sharing of National Revenue. https://www.klrc.go.ke/index.php/constitution-of- kenya/147-chapter-twelve-public-finance/part-1-principles-and-framework-of-public-finance/371-202-equitable-sharing-of-national- revenue

KES. 10 trillion in the month of June 2022. Between 2012 and 2021, the debt-to-GDP ratio increased from 40.7% to 68.1%.[10] A joint debt sustainability analysis conducted in 2020 by the IMF and World Bank categorised Kenya at a high risk of debt defaulting following the shocks occasioned by the global COVID-19 pandemic. Kenya's debt-carrying capacity assessment was also revised from strong to medium (International Monetary Fund, 2021).

Figure 1: Kenya's Public Debt Stock



Source: National Treasury

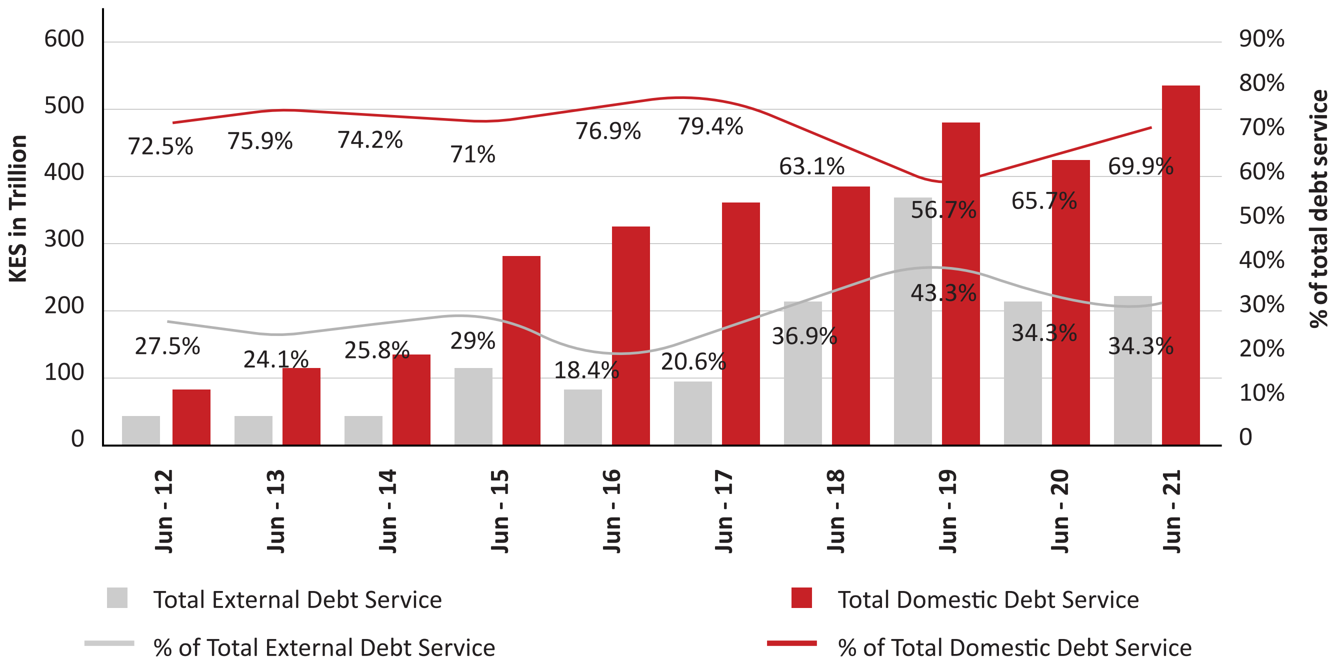
2.2.2. Kenya's Public Debt Stock

Following the exponential growth in the country's public debt stock, there has been an equivalent sharp rise in the country's debt servicing obligations that threatens public expenditures on necessary social services and other investments crucial for investment and growth. The cost of servicing the country's external debt portfolio increased from KES.113.6 billion to KES.780.6 billion between June 2012 and June 2021 as shown in Figure 2. Debt servicing costs for domestic debt increased from KES.82.3 billion to KES. 546 billion between June 2012 and June 2021. According to the Kenya Medium Term Debt Management Strategy, debt repayment costs are expected to increase to KES. 1.36 trillion, or 63% of total ordinary revenue for FY2022/23.[11] Being part of Consolidated Fund Services, debt is included among the items that the government is obligated to pay in the first charge of budget payments.

The more resources spent on repaying debt, the smaller the amount remaining to provide basic services which include allocations to ministries, department agencies (MDAs) and county governments.[12] Overall, the debt servicing obligations have increased substantively over the duration under review. See Figure 2 below.

11. Parliament of Kenya, 2021. Unpacking of the 2022 Medium-Term Debt Management Strategy. Parliamentary Budget office. http://www.parliament.go.ke/sites/default/files/2021-12/2022%20MTDS%20Unpacking.pdf
12. International Budget Partnership. The State of Public Debt in Kenya. (2020). https://www.internationalbudget.org/wp- content/uploads/state-of-public-debt-Kenya-october-2020.pdf

Figure 2: Kenya Domestic and External Debt Service Cost



Source: Annual Public Debt Reports FY2020/21 and FY 2014/15, National Treasury

Total debt service as a proportion of revenue collected increased from 16.5% in 2012 to 56.7% in 2019, when Kenya used up KES. 850.1 billion in debt repayment in the year ending June 2019. Whilst the proportion declined to 41.4% in 2020, which is attributed to debt service suspension occasioned by the pandemic the proportion rose to 50% in the financial year ending June 2021. In FY2020/21, external debt service amounted to KES. 234.6 billion while domestic debt service was KES. 546 billion. This is shown in Figure 3 below:

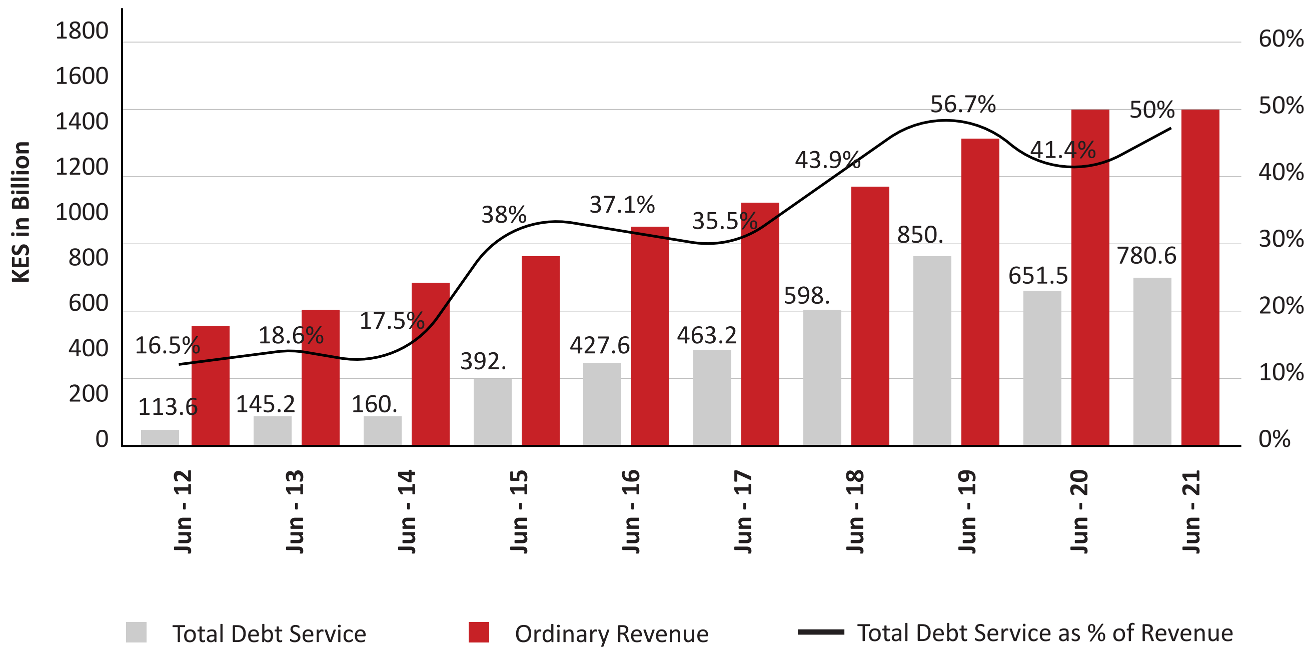
With government revenues being increasingly used up in debt servicing, there have been limited funds to sustain government expenditure on key public sectors of the economy. This has hampered government effectiveness in the delivery of essential goods and services which as a result remain largely inaccessible to citizens. Additionally, competing debt servicing demands limits funding for programs and projects that aim at the realisation of the Sustainable Development Goals (SDGs). This largely contributes to delays in the implementation of SDGs and realisation of the 2030 Agenda.

2.2.3. Evolution of Debt Servicing and Government Budgets for Pro-poor sectors

Pro-poor spending refers to the allocation of resources to basic social and economic sectors that directly reach poor people and enhance their access to social and economic opportunities.[13] There is evidence that expenditure on basic social services (like health, nutrition, education, social protection, agriculture, water and sanitation) can be progressive and reach the poor[14] because they cover the largest share of spending by poor households. Notably, there has been considerable pro-poor public spending in Kenya over the past decade. As shown in Figure 4 below, Kenya's expenditure on education, healthcare, agriculture and social protection increased substantively between 2012 and 2020, rising from KES. 267.2 billion to KES. 653.4 billion as shown in Figure 4. It is however notable that funding for these sectors, except for education, has been erratic across the years under review. As a result of shifts in sectoral needs owing to changes such as increased population, the prevalence of non-communicable diseases (like cancer) and climate change, budgetary allocations to such pro-poor sectors have been insufficient, despite nominal increases over the years. This has had a stifling effect on access and quality of public service in these sectors, especially for poor segments of the population.[15]

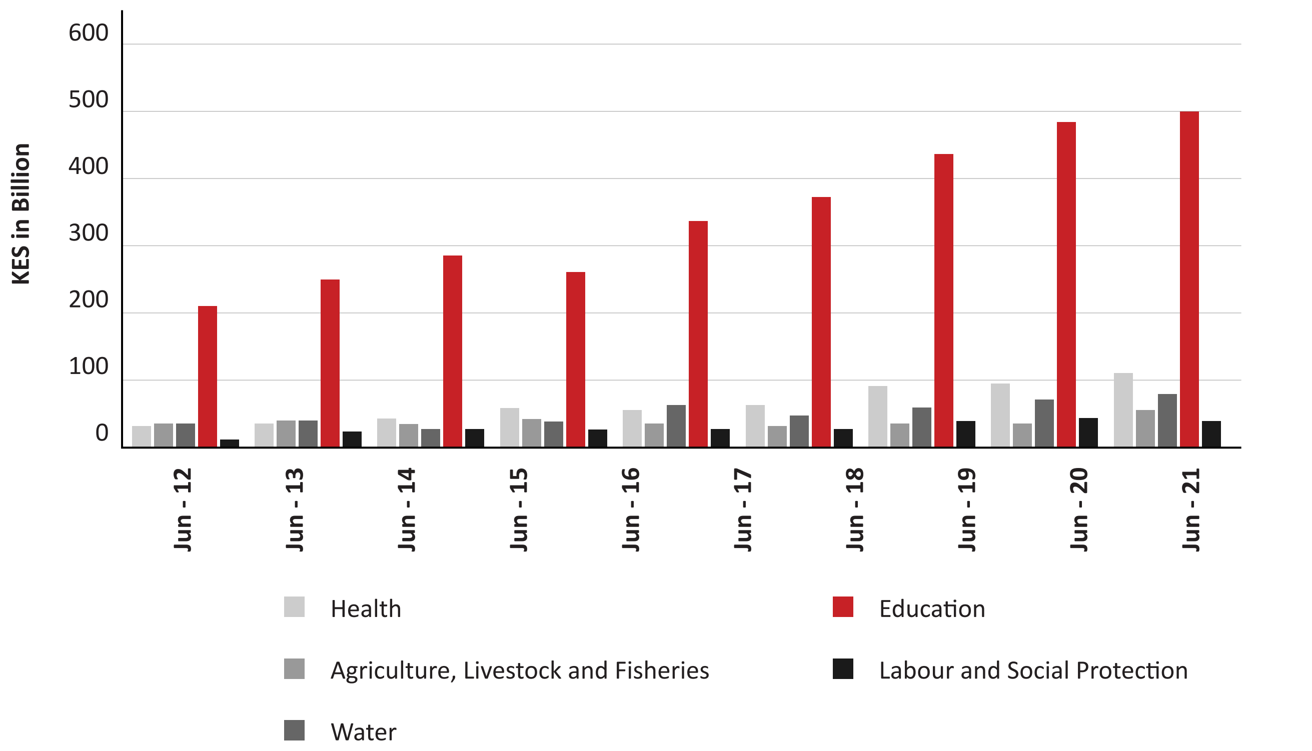
13. Development Initiatives, 2016. Briefing Paper: Towards Pro-Poor Spending, http://devinit.org/wp- content/uploads/2016/06/Towards-pro-poor-budgeting-Kenya%E2%80%99s-budget-allocations-Briefing-report-June-2016.pdf
14. Global and Social Development Resource Centre, Pro-poor National Budgets, http://gsdrc.org/docs/open/hdq1202.pdf
15. Development Initiatives, 2021. Briefing Paper: Domestic Financial Flows in Kenya before and during COVID-19 pandemic https://devinit.org/resources/domestic-financial-flows-kenya-COVID-19/

Figure 3: Kenya Debt Service Cost as a Proportion of Revenue



Source: The National Treasury

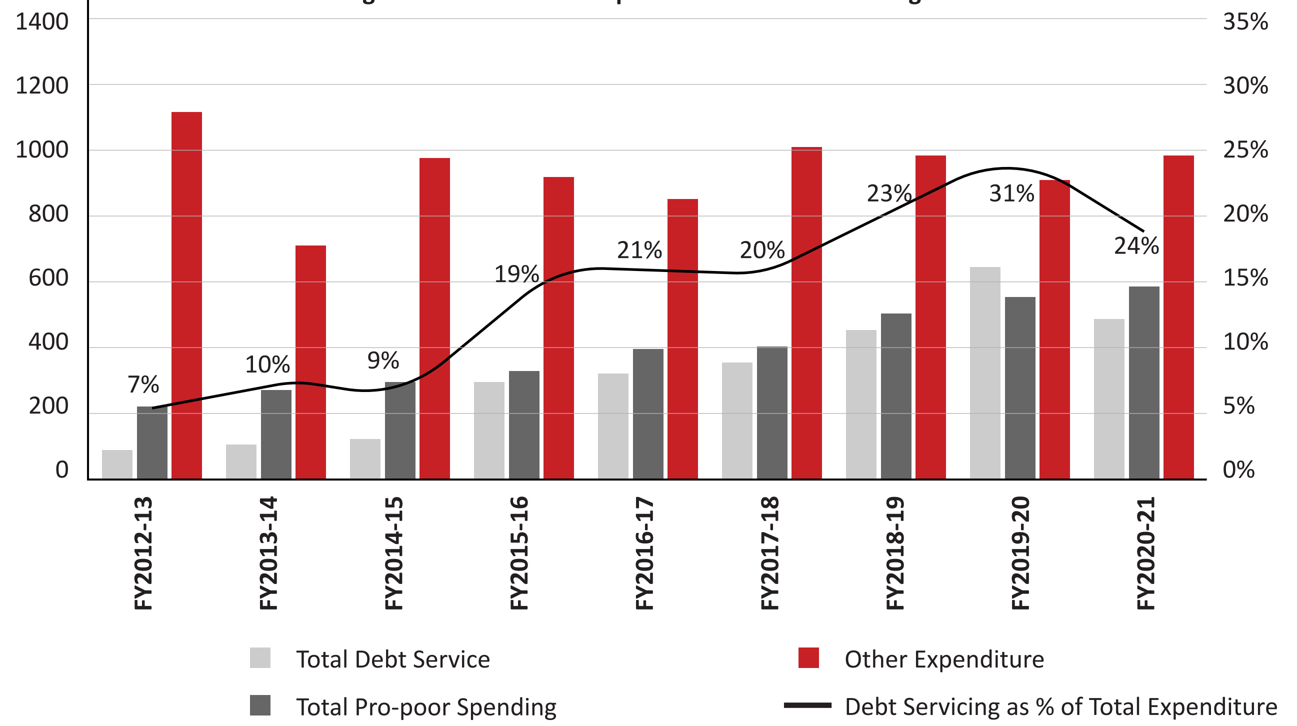
Figure 4: Pro-poor spending over the past decade



Source: The National Treasury

Studies have shown that increasing debt levels raises the risk of crowding out development expenditure as revenues raised are dedicated to debt repayment. Cecchetti, et al. (2011) argue that moderate levels of debt improve the welfare of citizens and enhance growth, but high and rising levels of debt can be damaging to a country and can impair governments' ability to deliver essential services to its citizens.[16] Kose, et al. (2020) further argue that high debt levels are likely to make countries more vulnerable to crises, limit the size and effectiveness of fiscal stimulus during cyclical downturns and weigh on investment and longer-term growth.[17] Lumina & Tamale (2021) note that excessive foreign debt burden impacts the realisation of human rights and development in indebted countries by diverting resources that are meant for the provision of public services[18]. As shown in the figure below, debt service obligations increased from KES. 113.6 billion in FY2012/13 to KES. 651.5 billion in FY2020/21. It is also notable that in FY2019/20, debt service obligations amounted to 30.7% of total government expenditure and exceeded expenditure on pro-poor sectors by KES. 123.4 billion.

Figure 5: Government Expenditure Vs Debt Servicing



Source: The National Treasury

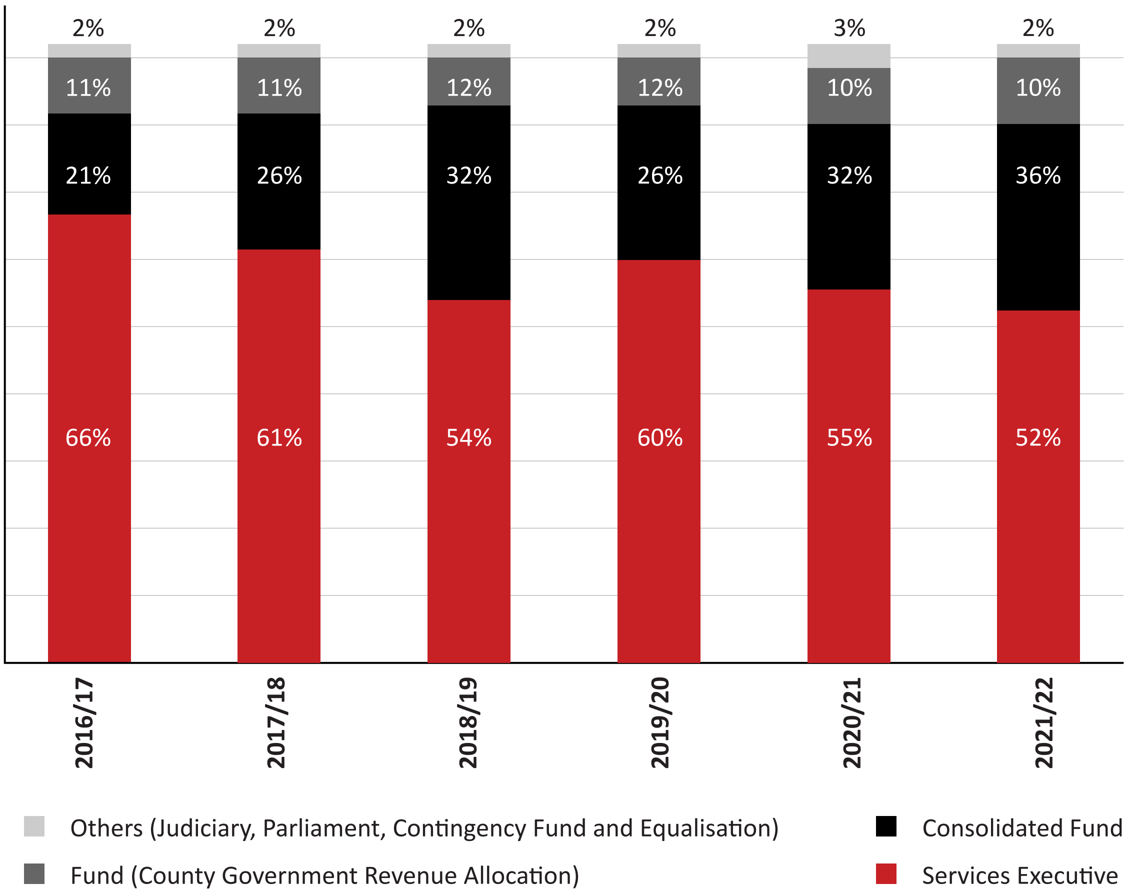
Practitioners, especially in the civil society argue that the public debt situation in Kenya can be construed to be violating citizens' rights to accessible and affordable public service as debt servicing competes and stifles expenditure on essential sectors such as health and social protection. The rise in debt service costs has limited the volume of investments to pro-poor sectors.[19] This can be seen in the level of government's adherence to global commitments. For example, in the health sector, government expenditure between FY2016/19 and FY2020/21 averaged 7.2% of the total budget, against the Abuja target of 15%.[20] Similarly, in the education sector, despite the government commitment to meet the global benchmark of spending at least 6% of GDP on education in line with the Global Partnership for Education commitment, the education sector

16. Cecchetti, S. Mohanty, M. and Zampolli, F. The Real Effects of Debt. 2011. https://www.bis.org/publ/othp16.pdf
17. Kose, A., Ohnsorge, F and Sugawara, N. Debt: The Dose Makes the Poison. (2020) https://www.brookings.edu/blog/future- development/2020/02/28/debt-the-dose-makes-the-poison/
18. Lumina, C. and Tamale, N. 2021.Sovereign Debt and Human Rights-A Focus on Sub Saharan Africa. https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/sovereign-debt-and-human-rights-focus-sub
19. KIPPRA, 2020. Kenya Economic Report: Creating an Enabling Environment for Inclusive Growth in Kenya. Kenya Institute for Public Policy Research and Analysis (KIPPRA) https://kippra.or.ke/wp-content/uploads/2021/02/Kenya-Economic-Report-2020- Popular-Version.pdf
20. Ministry of Health, 2020. Health Sector Report: Medium Term Expenditure Framework (MTEF) for the Period 2021/22-2023/24. https://www.treasury.go.ke/wp-content/uploads/2021/05/REVISED-HEALTH-SECTOR-REPORT.pdf

spending averaged 4.3% of the GDP between FY2018/19 and FY2020/21.[21] The overall challenge in aligning expenditures with global commitment across pro-poor sectors demonstrates that accessibility and affordability of key public goods and services that directly impact the quality of life and the livelihoods of citizens has declined. This has furthered inequalities and worsened living conditions. The decline in debt service costs for FY2020/21 depicted in Figure 5 may be attributable to the Debt Service Suspension Initiative by the World Bank and the IMF aimed at supporting governments in their fight against the COVID-19 pandemic.

Debt servicing has not only limited spending on pro-poor sectors but limited the fiscal space in general. Budget allocations to the Consolidated Fund Services, which claims the second-largest budget allocation and within which debt servicing funds are earmarked have increased significantly over the past five years.

Figure 6: Trends in Budget allocations for National and County Governments

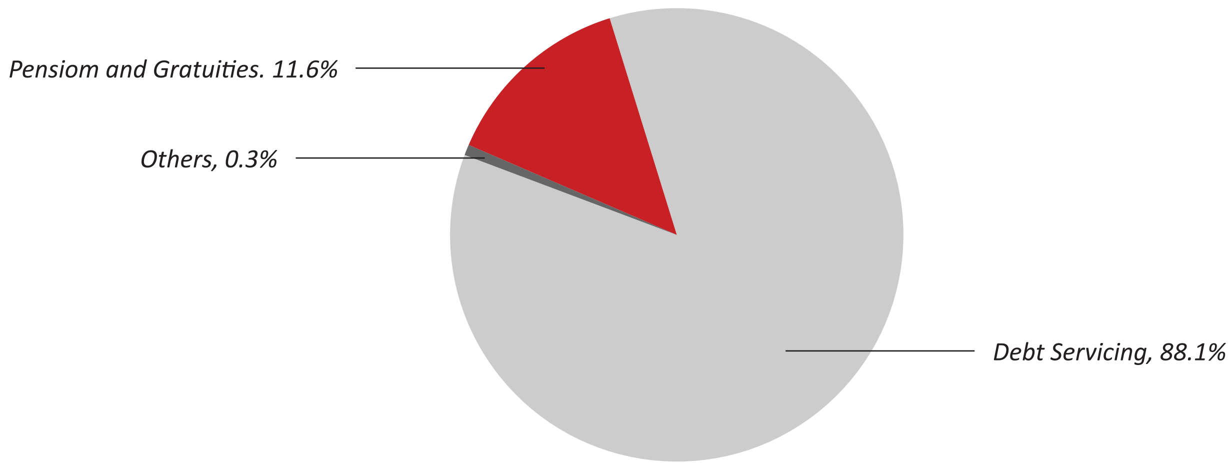


Source: The National Treasury

Further, an analysis of the composition of allocations to the Consolidated Fund Services indicates that most of the funding goes to debt servicing costs. As illustrated in Figure 6, allocations for the Consolidated Fund Services (CFS) amounted to 36% of the total budget in the 2021/22 fiscal year. Even for allocations within the Consolidated Fund Services, debt servicing appears to be eclipsing other equally essential investments like pensions, gratuities and risks. A significant component of the debt service cost is interest repayment accrued on the acquired debt. Data from the National Treasury, on external debt service costs, shows that payment of interest has increased from KES. 7.4 billion in June 2012 to KES. 106.3 billion in June 2021, representing a 1336.4% increase.

21. Based on Acepis computations with data from National Budgets and World Bank.

Figure 7: Composition of Consolidated Fund Services for FY 2021/22



Source: Office of the Controller of Budget | Budget Implementation and Review Reports (BIRR)

2.3. Impact of the COVID-19 pandemic on pro-poor spending and government debt

2.3.1. Government borrowing during the COVID-19 pandemic

The COVID-19 pandemic slowed down economic activity in most developing economies. Some East African states resorted to borrowing to support the economy from the effects of the pandemic consequently increasing their level of debt stock. For example, Kenya's debt-to-GDP ratio increased from 62.1% in 2019 to 68.7% in 2020, Rwanda's debt-to-GDP ratio rose from 61.4% in 2019 to 66.1% of GDP in 2020 while Uganda's debt-to-GDP ratio increased from 42.3% in 2019 to an estimated 49.7% in 2020.[22]

Since the first case of the COVID-19 pandemic was reported in Kenya in March 2020, the country's public debt levels increased from KES. 6.28 trillion in 2019 to KES. 7.34 trillion in March 2021.[23] This increase is attributed to government efforts to cushion the economy which was hard hit by the disruption in global trade and travel, and the containment measures put in place to limit the spread of the virus.

Government measures such as temporary cuts in Personal and Corporate Income Tax, cut in mobile money transaction rates by the Central Bank of Kenya, and reduction in Value Added Tax (VAT) rates saw a decline in the tax revenues collected during the period.[24] The country was thus unable to meet the revenue target by an average of 11.59% between quarter three (Q3) of 2019/20 and Q2 of 2020/21 and thus revenues collected, including grants, could only finance an average of 70% of the budget.

This insufficiency in tax revenues compounded with the need to revise budgetary allocations to accommodate more spending on health and social protection necessitated government borrowing. As such, Kenya borrowed KES. 420 billion in Q4 of 2019/20 and approximately KES. 600 billion in the first half of 2020/21. This further led to an increase in external debt stock from multilateral loans by 41.01%, bilateral by 6.21%, commercial loans by 5.16%, and export credit by 4.62%.

Additionally, Africa Development Bank approved a EUR. 188 million loan to Kenya to help contain the pandemic.[25] The World Bank approved US$1 billion

22. Deloitte, Economic Impacts of COVID-19 Pandemic on East African Economies, https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/finance/Economic%20Impact%20of%20the%20COVID- 19%20Pandemic%20on%20East%20African%20Economies-Volume%202.pdf
23. KIPPRA, Kenya's Public Debt with the COVID-19 Pandemic Report, https://kippra.or.ke/kenyas-public-debt-with-the-COVID-19-pandemic/#:~:text=Status%20of%20Public%20Debt%20in%20Kenya%20During%20the%20Pandemic&text=Public%20debt%20stock%20increased%20from,trillion%20to%20KES%201.66%20trillion
24. IMF, 2021. News Article: IMF Loan to Support Economic Recovery in Kenya, https://www.imf.org/en/News/Articles/2021/03/17/na031721-imf-loan-to-support-economic-recovery-in-kenya.
25. AfDB, 2020. News Article: Kenya: €188m African Development Bank loan to boost COVID-19 response,https://www.afdb.org/en/news-and-events/press-releases/kenya-eu188m-african-development-bank-loan-boost-COVID-19-response-35735#:~:text=COVID%2D19%20response-,Kenya%3A%20%E2%82%AC188m%20African%20Development%20Bank,to%20boost%20COVID%2D19%20response&text=The%20Board%20of%20Directors%20of,economic%2C%20health%20and%20social%20impacts.

financing to Kenya which comprised of US$ 750 million credit from the International Development Association and US$ 250 million loan from the International Bank for Reconstruction and Development (IBRD).[26] The IMF also approved the disbursement of Special Drawing Rights of US$ 739 million to be drawn under the Rapid Credit Facility (RCF).[27] Overall, debt acquisitions from various financers as a result of the COVID-19 pandemic contributed to a rise in the country's public debt stock.

2.3.2. Expenditure on pro-poor sectors during COVID-19

During the FY 2019/20, the government increased allocations to some of the sectors in response to the impacts of the COVID-19 pandemic. Through supplementary budgets, allocations to agriculture, health, education, water and sanitation sectors as well as on social protection increased during the COVID-19 pandemic period. In the health sector, additional government allocations through the supplementary budgets, aimed at enhancing surveillance, finance the purchase of medical supplies, construct isolation centres and recruit more health personnel. Additionally, the Disease Surveillance and Response sub-programme was added to the budget in FY 2019/20 to finance the Kenya COVID-19 Emergency Response Project.[28] Allocations to the labour and social protection sector increased in FY 2018/19 as the government spent more on the National Safety Net Programme. It is however notable that expenditure on labour and social protection declined in FY 2020/21.[29]

Overall, the COVID-19 pandemic necessitated an increase in pro-poor spending. These was aimed at bolstering people's livelihoods through the provision of employment opportunities and improving access to social amenities such as clean water, affordable health and a conducive learning environment for school-going children.[30] The National Hygiene Program, popularly known as Kazi Mtaani, was initiated as a strategy of cushioning residents in informal settlements from the negative impacts of the COVID-19 pandemic. The program provided employment opportunities as the beneficiaries were involved in community hygiene projects.[31]

2.4. The 2030 Agenda and advancement of Human Rights

The 2030 Agenda for Sustainable Development, which aims at eradicating poverty, was launched in 2015. The Agenda entails 17 SDGs (building on the successes of Millennium Development Goals (MDGs)) and 169 targets that outline expectations and guidelines for all countries to end all forms of poverty, fight inequalities and tackle climate change, while ensuring no one is left behind.[32]

Being a signatory to the 2030 Agenda for Sustainable Development, Kenya has endeavored to implement programmes and policies that aim to steer the country towards meeting the targets at the national level. Consequently, to review progress, Kenya has had a complete assessment of the 2030 Agenda, analysing the extent to which the SDGs are relevant to Kenya's context and the extent to which they link up with Kenya's development objectives as outlined in Kenya Vision 2030. The SDGs have been localised and included in the national development plans - like the second and third medium-term plans, and the county-integrated development plans. Through these plans, programmes and projects that serve to achieve the SDG targets are financed in the annual budgets.

2.4.1. Kenya's assessment of the 2030 Agenda

Kenya has made significant progress towards aligning the 2030 Agenda with the implementation of the Sustainable Development Goals (SDGs). The country developed the SDGs Road-Map[33] covering seven broad areas that would guide the transition process from MDGs to SDGs. The key interventions from the roadmap included: (i) mapping of stakeholders to be involved in implementing and establishing partnerships, (ii) advocacy and sensitisation activities to increase

26. World Bank, May 2020. Press Release: World Bank Approves $1 Billion Financing for Kenya, to Address COVID-19 Financing Gap and Support Kenya's Economy, https://www.worldbank.org/en/news/press-release/2020/05/20/world-bank-approves-1-billion-financing-for-kenya-to-address- COVID-19-financing-gap-and-support-kenyas-economy
27. IMF, IMF Executive Board Approves a US$739 Million Disbursement to Kenya to Address the Impact of the COVID-19 Pandemic, May 2020. https://www.imf.org/en/News/Articles/2020/05/06/pr20208-kenya-imf-executive-board-approves-us-million-disbursement-address- impact-COVID-19-pandemic
28. Tabitha Ngaga, 2021. Impact of COVID-19 Measures on Kenya's Health System. African Economic Research Consortium. https://www.africaportal.org/documents/22102/AERC-Working-Paper-COVID-19_012.pdf
29. Development Initiatives, 2020. Briefing Paper: Kenya's COVID-19 budget: Funding for health and welfare. https://devinit.org/resources/kenyas-COVID-19-budget-funding-for-health-and-welfare/
30. Development Initiatives,2021. Briefing Paper: Domestic Financial Flows in Kenya Before and During COVID-19 Pandemic. https://devinit.org/resources/domestic-financial-flows-kenya-COVID-19/
31. Kenya State Department of Housing and Development, 2020. The National Hygiene Program, https://housingandurban.go.ke/national-hygiene-programme-kazi-mtaani/
32. Council of Europe, UN Agenda 2030, https://www.coe.int/en/web/programmes/un-2030-agenda#:~:text=The%202030%20Agenda%20for%20Sustainable,equality%20and%20non%2Ddiscrimination%E2%80%9D.
33. SDGs Forum Kenya, Roadmap to Sustainable Development Goals (SDGs) Kenya's Transition Strategy 2016–2018, https://sdgkenyaforum.org/content/uploads/documents/Roadmap_to_SDGs_Kenyas_Transition_Strategy_2016%E2%80%932018_ 7afe7578.pdf

awareness of SDGs, (iii) localisation of SDGs, (iv) mainstreaming and accelerating implementation, (v) resource mobilisation for effective implementation, (vi) tracking and reporting of indicators, and (vii) capacity building of all staff involved in the delivery of the SDGs. Regarding the financing of the 2030 Agenda, the road map proposed increasing budgetary allocations and mobilisation of more resources from development partners and the private sector. The roadmap suggested the training of county staff and legislators on the need to prioritise and increase budget allocations towards the implementation of the SDGs.

Despite the initiatives established to increase budgetary allocations for SDG implementation, a report[34] by the Council of Governors highlights inadequate county funding as a barrier to implementation and notes the need for adequate resource allocation for SDG-related activities at all county levels. Notably, donor collaboration has helped in mobilising resources for funding some of the SDG-related programs. An example is the Sustainable Development Goal Philanthropy Forum which has established pathways to engage philanthropy in national SDG planning and implementation[35].

Following the assessment of the 2030 Agenda, spearheaded by the Government of Kenya, there was a resolution to localise and mainstream the SDGs in the country's Vision 2030 through the Medium-Term Plans at the national level and County Integrated Development Plans at the county level. The Kenya National Bureau of Statistics (KNBS) identified various indicators to report on the progress of the implementation of SDGs.[36] A policy gap analysis was also initiated in 2018 to identify gaps that would limit the effective and efficient achievement of the SDG targets.[37] The analysis also assessed institutional arrangements necessary for the execution of the SDGs and provided recommendations on frameworks for ensuring the execution and monitoring of the SDGs.

There have also been three Voluntary National Reviews by CSOs to assess and present national progress made in implementing the 2030 Agenda in Kenya, including progress on the achievement of the SDGs. These were conducted in 2017[38], 2019[39] and 2020[40].

The reviews highlight progress made, gaps and challenges, good practices and recommendations for consideration. These are highlighted for each localised SDG. The major challenges identified in the implementation of the SDGs include funding gaps, poor reporting of identified indicators by some ministries, departments and agencies (MDAs) and vices such as corruption, which continue to deepen poverty and inequality. Some of the recommendations from the reviews include strengthening data collection for better reporting and tracking of indicators, diversification of avenues for financial resources as Official Development Assistance (ODA) declines, and collaboration with civil society to ensure the development and enactment of policies guiding the implementation of various SDGs.

The reports highlight some of the best practices documented in the various counties in Kenya that have made good progress in implementing the SDGs noted by the report on tracking indicators.

Apart from the reviews done by CSOs, there have been other reviews spearheaded by the government through the Ministry of Devolution and Planning and the National Treasury. These were conducted in 2017[41] and 2020[42]. The progress reviews highlighted inadequate funding as a significant factor that limited Limited the implementation of SDGs; it recommended on the need for the diversification of the funding portfolio. The recommendations were limited s on some of the financing modalities that could be explored.

Although various studies have been commissioned by the government to assess the suitability of SDGs implementation in Kenya and identify policy gaps that may limit their effective implementation, it is not clear whether there has been a comprehensive cost assessment of the implementation of the SDGs.

34. The Council of Governors, 2020. Localization of Sustainable Development Goals by County Governments In Kenya https://maarifa.cog.go.ke/assets/file/1a0ceb1d-localization-sustainable-development.pdf
35. Sustainable Development Goal Philanthropy Forum, https://www.sdgphilanthropy.org/Kenya
36. KNBS, SDGs Indicators, https://www.knbs.or.ke/sdgs/
37. SDGs Kenya, Policy Gap Analysis Study for Sustainable Development Goals, 2019. http://sdgs.planning.go.ke/wp- content/uploads/2021/02/Policy-Gap-Analysis-Study-for-SDG-2019.pdf
38. SDGs Kenya Forum, Voluntary National Review of Progress on Sustainable Development Goals in Kenya, 2017. https://sdgkenyaforum.org/content/vnr/2017-csos-vnr-report.pdf
39. SDGs Kenya Forum, The Second Progress Report On Implementation of SDGs in Kenya, 2019. https://sdgkenyaforum.org/content/vnr/2019-csos-report.pdf
40. SDGs Kenya Forum, The Third Progress Report On Implementation of SDGs in Kenya, 2020. https://sdgkenyaforum.org/vnr- 2020
41. Ministry of Devolution and Planning, Voluntary National Review on the Implementation of the Sustainable Development Goals, 2017. https://digitallibrary.un.org/record/3866830?ln=en
42. National Treasury and Planning; State Department for Planning, Second Voluntary National Review on the Implementation of the Sustainable Development Goals, 2020. https://sustainabledevelopment.un.org/content/documents/26359VNR_2020_Kenya_Report.pdf

2.4.2. Medium Term Fiscal Framework, the 2030 Agenda and considerations for Human Rights

A Medium-Term Fiscal Framework contains a statement of fiscal policy objectives and a set of integrated medium-term macroeconomic and fiscal targets and projections.[43] Kenya has had a series of medium-term plans: First Medium-Term Plan (MTPI), 2008-2012[44], Second Medium-Term Plan (MTPII), 2013-2017[45] and Third Medium-Term Plan (MTPIII), 2018-2022 [46]. These plans outline policies, reform measures, projects and programmes towards the realisation of Vision 2030. Vision 2030 is Kenya's blueprint for development.

Kenya's Medium-Term Plans include provisions for programs and plans that target the upholding of human rights and implementation of the 2030 Agenda. Human Rights are largely addressed in the MTPII as compared to the other two plans. The MTPI described the status of upholding human rights in Kenya and highlighted the need for updating policies on human rights to reflect on the prevailing circumstances. The plan advocated for the completion of the government's primary policy on human rights, which is the National Action Plan on Human Rights.[47]

Following the background established by the MTPI on having a primary policy on human rights, MTPII outlined the plans to oversee the implementation of the National Human Rights Policy and Action Plan. It also addressed the implementation of capacity building and human-rights-based approaches to development and service delivery over the period 2013-2017. Additionally, there is a provision for the development of reports on national, regional and international obligations on human rights treaties based on a defined human rights reporting mechanism. MTPIII emphasises on the prioritisation of human rights during the entire period of its implementation (2018-2022); it also integrates Aspiration 3 (respect for human rights) of Africa's Agenda 2063.[48] The Plan also proposes a review of the National Human Rights Policy and Action Plan.

Additionally, as the 2030 Agenda and the SDGs are underpinned by human rights treaties and standards, Kenya domesticated UN Guiding Principles on Business and Human Rights through a National Action Plan on Human Rights and Business.[49] It was developed in 2019 to ensure the upholding of human rights for businesses even as the country pursues sustainable development. MTPI only focused on the MDGs and Kenya's Vision 2030 as it was drafted before the adoption of Agenda 2030 in 2015. MTPII addressed the integration of the SDGs into the country's development objectives. It is MTPIII that adequately makes provision for Agenda 2030 and the SDGs. The Plan recognises the SDGs as a priority area during the period 2018-2022 and highlights the implementation of policies, programmes and projects that are targeted to promote and facilitate the attainment of the 17 SDGs. MDAs and counties are also tasked with reporting relevant SDG monitoring indicators identified by the KNBS.

Overall, there are considerations for human rights and the 2030 Agenda in Kenya's Medium-Term Plans (MTPs). The medium-term plans also have provisions for debt management over the period under review. This is especially in MTPIII which proposes maintaining public debt at sustainable levels. The Plan also proposes fiscal consolidation driven by cutting of ministerial expenditures and enhanced revenue mobilisation. There is however an implementation gap as the country is experiencing high levels of fiscal debt and is classified by the IMF as under a high risk of debt distress.[50]

Despite the National Development Plans to have considerations for human rights and the 2030 Agenda, there have been notable violations on the right to public participation which is accorded by the Constitution of Kenya 2010. The Medium-Term Plans are normally drafted by the government with limited involvement of citizens yet they underpin prioritisation, development planning and resource allocation. Moreover, The Public Finance Framework has no provision for public participation in debt acquisition and management. As such, public debt policy decisions taken by the government over the past decade have been largely confined to the government (mostly the Executive) even though the repercussions of debt are felt by citizens who

43. https://mof.govmu.org/Documents/Documents/Budget%202007-2008/Programme%20Based%20Budget/Annex.pdf
44. Kenya Vision 2030, First Medium-Term Plan (2008-2012), https://vision2030.go.ke/2008-2012/
45. Kenya Vision 2030, Second Medium Term Plan (2013-2017), https://vision2030.go.ke/2013-2017/
46. Kenya Vision 2030, Second Medium Term Plan (2018-2022), https://vision2030.go.ke/publication/third-medium-term-plan-2018- 2022/
47. Kenya National Commission on Human Rights, 2014. National Action Plan on Human Rights, http://www.knchr.org/Portals/0/Bills/National%20Human%20Rights%20Policy%20and%20Action%20Plan.pdf
48. African Union, Goal and Priority Areas of Agenda 2063, https://au.int/en/agenda2063/goals
49. OHCHR, 2019. A National Action Plan on Human Rights and Business, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/2019_FINAL_BHR_NAP.PDF
50. IMF, 2021. IMF Kenya Report: Joint Bank-Fund Debt Sustainability Analysis, https://www.imf.org/-/media/Files/DSA/external/pubs/ft/dsa/pdf/2021/dsacr2172.ashx

are the ultimate guarantors of public debt. Further, the exclusion of citizens from mainstream public debt policy-making processes is understood to result in a disconnect between government priorities and investments in debt-financed programmes and the real needs, challenges and aspirations of citizens. CSOs in Kenya are increasingly advocating for fiscal justice in public debt management and overall public finance management to ensure that debt policies do not stifle government expenditure on important sectors such as health, social protection, agriculture and education and limit financing for private sector growth and development of SMEs. Public debt is increasingly considered a human rights issue as its continued unsustainability contributes to the violation of citizens' rights to quality and affordable public services – healthcare, education, nutrition, and social protection, among others.

2.4.3. Integration of the 2030 Agenda into the Budget Process

The government of Kenya develops Medium Term Plans (MTPs) that outline national development priorities. MTPII and MTPIII outline policies, programs and projects that target to facilitate the implementation of localised SDGs. The plans also provide implementation matrices indicating, among other things, relevant costings towards the attainment of the goals. It is from the MTPs that county governments generate and align their County Integrated Development Plans (CIDPs) supported by guidelines developed by the National Treasury and Ministry of Finance. Through the CIDPs, programs and plans that are geared towards the attainment of the SDGs targets are submitted for consideration and financing.[51] As such, costing for SDGs is through various plans and projects in the MTPs and the CIDPs . Essentially, as required by law,[52] the MTPs and CIDPs guide development of annual national and county government-integrated development plans that then determine the shape and form of annual budgets at both levels of government. The National Treasury also issues guidelines that direct ministries, departments and agencies to prioritise funding for projects that target the attainment of MTPs which are ideally localised SDGs. The voluntary national reviews for SDGs are done after every two years. After the voluntary national reviews, the findings are disseminated and action plans drawn. The point at which recommendations from these reviews are adopted and integrated into the MTP and CIDPs are still unclear.

2.5. Gender Budgeting in Kenya

According to the Organisation for Economic Cooperation and Development, gender budgeting refers to "integrating a clear gender perspective within the overall context of the budgetary process through special processes and analytical tools, to promote gender-responsive policies."[53] The Council of Europe defines gender budgeting as "a gender-based assessment of budgets, incorporating a gender perspective at all levels of the budgetary process and restructuring revenues and expenditures to promote gender equality"[54]. Gender budgeting is generally construed in international development parlance and public finance management practice as the integration of gender perspectives at all levels of the budget-making process - planning, drafting, implementation and evaluation - to promote gender equality[55]. This entails restructuring revenues and expenditures toward the promotion of gender equality and equity.

Kenya has notable provisions that aim at mainstreaming gender equity in the distribution of resources, both at the national and sub-national levels. Some of the policy frameworks on this include Article 201 of Chapter 12 of the Constitution of Kenya 2010, which outlines the principle of equity that should guide the aspects of public finance.[56] It states that: (i) revenue raised nationally shall be shared equitably among national and county governments; and (ii) expenditure shall promote the equitable development of the country, including by making special provisions for marginalised groups and areas.

Additionally, there are government entities established to oversee the integration of principles of equality and inclusion. These include the National Gender and Equality Commission (NGEC) and the State Department for Gender. NGEC developed gender-responsive budgeting guidelines which address the roles of key departments within the Ministry of Devolution and Planning and the National Treasury, based on the key stages of budget formulation.[57] Also included

51. National Treasury and Planning; State Department for Planning,2020. Second Voluntary National Review on the Implementation of the Sustainable Development Goals https://sustainabledevelopment.un.org/content/documents/26359VNR_2020_Kenya_Report.pdf
52. The Constitution of Kenya 2010 provides that no budget shall be developed without a corresponding development plan.
53. Downes, R., Trapp,L. and Nico,S. 2017. OECD Journal on Budgeting: Gender Budgeting in OECD Countries, https://www.oecd.org/gender/Gender-Budgeting-in-OECD-countries.pdf
54. The Council of Europe, Gender budgeting, https://rm.coe.int/1680596143
55. UNESCO Glossary, Gender Responsive Budgeting, https://policytoolbox.iiep.unesco.org/glossary/gender-responsive-budgeting- grb/
56. Article 201, Constitution of Kenya, https://www.klrc.go.ke/index.php/constitution-of-kenya/147-chapter-twelve-public-finance/part-1- principles-and-framework-of-public-finance/370-201-principles-of-public-finance
57. National Gender and Equality Commission, 2014. Guidelines for Gender Responsive Budgeting in Kenya, https://www.ngeckenya.org/Downloads/NGEC-GRB-Guidelines-for-National-Govt-in-Kenya.pdf

in the guidelines is a checklist of questions that inform the integration of gender equality issues during the stages of budget preparation. To ensure the promotion of gender equality and monitoring at the county level, NGEC developed an Integration of Gender Equality, Inclusion in County Development guide.[58]; it is, however, yet to be adopted. There have also been efforts to develop a comprehensive aid information management system (e-ProMIS) to track internationally funded initiatives targeting gender equality.

Aside from NGEC, the State Department for Gender has gender focal points and officers in every ministry and county to monitor gender programs and the compliance to project plans and budgets with gender equality requirements. Through programme-based budgets, funding to projects and programmes that aim at advancing gender equality can be tracked. Other programmes targeting gender equality can also be drafted and tabled for funding. As such, Kenya's programme-based budgets provide an entry point for gender-responsive budgeting and tracking.

Further, the Constitution of Kenya 2010, mandates Parliament to play a key role in the budget-making process. As such, legislators can advocate for mainstreaming of gender equity considerations (including projects and programmes) in the budget during the presentation of the Budget Policy Statement by the National Treasury. This provides an avenue for influencing gender-responsive budgeting.[59] Additionally, the country's planning process provides avenues for the inclusion of development priorities that address gender equity. This is through the specification of programmes and plans that aim at addressing gender equality in Kenya. Since the budgets and Medium-Term Expenditure Frameworks are developed from the MTPs and CIDPs, these plans provide avenues for influencing the budgets to include gender-responsive programmes.

Overall, noteworthy guidelines and initiatives promoting gender-responsive budgeting exist in Kenya. Implementing gender-responsive budgets, however, remain a challenge. Based on reports by the National Treasury and Office of the Controller of Budget, government ministries, departments and agencies do not specify their allocations as gender-responsive budgets. There is also limited information on how various allocations support the National Policy on Gender and Development. It is ,therefore, difficult to have a clear picture and detailed description of government funding that supports Kenya's gender equality commitments.[60]

57. National Gender and Equality Commission, 2014. Guidelines for Gender Responsive Budgeting in Kenya, https://www.ngeckenya.org/Downloads/NGEC-GRB-Guidelines-for-National-Govt-in-Kenya.pdf
58. National Gender and Equality Commission, Guide for County Government Leadership: Integration of Gender Equality, Inclusion in County Development, https://www.ngeckenya.org/Downloads/County%20Leadership%20Guide%20on%20Integration%20of%20Gender%20Equality%20a nd%20Inclusion%20 in%20County%20Development%20Revision%20Draft.pdf
59. Society for International Development- Kenya, Gender Responsive Budgeting Kenya, http://sidint.net/docs/GenderResponsiveBudgeting_booklet.pdf
60. Publish What You Fund, Gender Financing in Kenya, March 2021. https://www.publishwhatyoufund.org/wp- content/uploads/dlm_uploads/2021/03/Gender-Financing-in-Kenya.pdf


Performance Index
Forecast
CPI
SPI
ETC
EAC
VAC (%)
VAC ($)

SECTION THREE: DEBT DATA TRANSPARENCY IN KENYA

3.0. Introduction

Debt data transparency involves providing timely and comprehensive data on the level and composition of debt by government which serves to build early warning systems to limit the impact of debt crises, contributing further to debt sustainability, financial stability, and good governance. Governments are required to provide an accessible, exhaustive and reliable debt database that covers all aspects of the evolving debt portfolio. Debt data transparency has two principles. (i) the quality of data and level of public reporting on public debt and (ii) the transparency requirements associated with debt loan agreements and information made available on new loans that have been contracted.[61]

3.1. Frameworks for Debt Data Transparency in Kenya

There exist various international and national guidelines and requirements that call for debt data transparency which are observed or taken to account by Kenyan authorities (MDAs) with relevant mandates related to public debt management. These are succinctly discussed below.

- **The IMF's Guidelines for Public Debt Management:** The International Monetory Fund (IMF) lays out an open process for formulating and reporting of debt management policies. According to the guidelines, materially important aspects of debt management operations should be publicly disclosed. The public should be provided with information on the past, current, and projected budgetary activity, including its financing, and the consolidated financial position of the government. The government is also required to regularly publish information on the stock and composition of its debts and financial assets, including their currency, maturity, and interest rate structure. Moreover, to enhance accountability and assurance of integrity, debt management activities should be audited annually by external auditors.[62]
- **Kenya's Legal and Policy Framework for Public Debt Transparency:** The Constitution of Kenya 2010,[63] provides that there will be openness and accountability in borrowing and management of public debt, and that fiscal reporting is clear. The Public Finance Management Act (PFMA), 2012[64] obligates the Public Debt Management Office (PDMO) to maintain a reliable database of all loans taken by national government, county governments, and their entities, including other loans guaranteed by the national government. The PFMA Regulations, 2015[65] direct national government entities and county treasuries to submit to the National Treasury a report on public debt as prescribed by the Accounting Standards Board within two months after the end of the financial year. The Public Debt and Borrowing Policy, 2020 [66] also provides that public debt and borrowing be conducted transparently and openly.

Overall, there seems to be an elaborate framework of policies, laws and guidelines that shape and impact debt data transparency in Kenya. Nonetheless, there are frequent concerns, from parliamentarians, CSOs and media, among other stakeholders, about limited transparency of debt data, especially those concerning contracts and specific details of some loans. The next subsections provide an assessment of the level of debt data transparency.

3.2. Assessment of Level of Debt Data Transparency in Kenya

3.2.1. Availability and Accessibility of Public Debt Data

Kenya has a publicly available database on public debt with the National Treasury and the Central Bank of Kenya (CBK) being the main data sources. There is a general impression that data on the country's debt stocks, both domestic and foreign, and the various instruments pursued to acquire debt are generally accessible. Some of this data is made available through websites of respective government MDAs like the CBK and the National Treasury. The data sources are explained in detail below:

- **The Central Bank of Kenya (CBK):** Although not mandated by the law to report on public debt, the CBK plays a significant role in Public Debt Management since it promotes the development of government bond markets. The government issues debt of various maturities to finance fiscal deficits, whereas the CBK issues its securities to finance the acquisition of assets, particularly foreign exchange reserves. The CBK also conducts Open Market

61. WFD, E-Course on Public Debt Management https://www.wfd.org/what-we-do/resources/e-course-public-debt-management 62 International Monetary Fund, March 21, 2001: Guidelines for Public Debt Management https://www.imf.org/external/np/mae/pdebt/2000/eng/guide.pdf
63. Kenya Law Review Commission, Constitution of Kenya: 211. Borrowing by National Government https://www.klrc.go.ke/index.php/constitution-of-kenya/149-chapter-twelve-public-finance/part-3-revenue-raising-powers-and-the- public-debt/380-211-borrowing-by-national-government
64. National Treasury, The Public Finance Management Act, 2012 https://www.treasury.go.ke/wp-content/uploads/2020/11/Public- Finance-Management-Act-2012.pdf
65. Engineers Board Kenya, The Public Finance Management (National Government) Regulations, 2015 https://ebk.go.ke/resource/the-public-finance-management-national-government-regulations-2015
66. National Treasury, June 2020: Public Debt and Borrowing Policy, 2020 https://www.treasury.go.ke/wp- content/uploads/2021/02/Debt-and-Borrowing-Policy-2020-Final-June-2020.pdf

Operations, which involve sales and purchases of government debt. The nature of the information provided by the CBK concerning public debt includes the amount owed to external and domestic lenders. Also, the CBK provides monthly information on domestic debt for instruments such as treasury bills, treasury bonds, government stocks, overdrafts at the CBK, advances from commercial banks, and other domestic debt.[67]

- T**he National Treasury:** The Public Debt Management Office (PDMO) domiciled within the National Treasury is mandated to maintain a reliable debt database for all loans taken by the national government, county governments and their entities, including other loans guaranteed by the national government. It also monitors and reports on the disbursement of loans and grants.[68] To fulfil its mandate, the PDMO prepares annual Medium-Term Debt Management Strategies, annual Debt Management Reports, Monthly Debt Statistical Bulletins and a Public Debt Register.

3.2.2. Conduct of Available Public Debt Data in Kenya

- **Instrument and Sectoral Coverage:** The periodic reports prepared by the National Treasury cover the composition of domestic and external debt, a review of the previous year's financing of the budget deficit, on-lent loans and contingent liabilities, debt strategy and sustainability, the outlook for the medium term, and commitment fees and penalties paid on undisbursed amounts of a loan. The information provided also classifies the major domestic and external creditors, including commercial lenders. The available data covers both external and domestic debt and guarantees by the national government. The National Treasury reports also show debt across all sectors of government, including county governments and State-Owned Enterprises (SOEs).
- **Debt Servicing:** The Medium-Term Debt Management Strategy (MTDMS), the annual Debt Management Reports, and the national budget estimates have projections on debts service. MTDMS articulates borrowing and refinancing measures necessary to reduce the costs and risks of borrowing, including the government's objectives, strategy, and borrowing plans. Essentially, these documents outline the total external debt service (external principal and external interest), domestic service (domestic interest and treasury bonds redemption), the total debt service, the total debt service to revenue, the total ordinary revenue, and the total expenditure. The total debt service was KES. 946.5 billion in the FY 2021/22 and is projected to reach KES. 1153.2 billion in the FY 2022/23.[69] As such, information on debt servicing is generally available publicly and is accessible by the legislature and other non-state actors who may be interested in tracking and reviewing it.
- **Quality and accessibility of Public Debt Data in Kenya:** Information on public debt should be publicly accessible in a centralised format rather than on multiple sources. The National Treasury reports on public debt through information dispersed across multiple sources.This information is, therefore, not easily available for the public to view and scrutinise since they may not be aware of the existence of all the sources. Moreover, the data available is based only on pdf reports. The absence of an automated function for generating standard reports limits access to data. As a result, it is impossible to access real-time information on debt instruments, disbursements, servicing, arrears, and the nature of the guarantee given. Key data needed to meet the requirements of specific Debt Transparency Scorecard indicators such as debt service, government expenditures, foreign exchange reserves, and new deficit financing are also concealed in medium-term fiscal frameworks, central bank balance of payment reports, and the annual medium-term debt management strategies. The information, though technically available, cannot be easily found by an ordinary/average person.
- **Periodicity and Time Lag:** Periodicity refers to the frequency of government reporting on public debt while time lag is the length of time it takes government to publish data after it becomes available. The Public Debt report is produced annually and therefore does not contain up-to-date information. For instance, the public cannot get more information on the recent KES. 85 billion loan granted to Kenya by the World Bank to support the government's budget.[70]
- **Transparency of Loans Contracted:** The Constitution of Kenya 2010, provides that public entities should

67. Central Bank of Kenya, Domestic Debt by Instrument https://www.centralbank.go.ke/domestic-debt-intrument/
68. The National Treasury and Planning. Public Debt Management Office. https://www.treasury.go.ke/public-debt-management/
69. The National Treasury, 2021. Medium-Term Debt Management Strategy 2022, https://www.treasury.go.ke/wp- content/uploads/2022/04/Medium-Term-Debt-Management-Strategy-2022.pdf
70. Guguyu, O. Kenya gets Ksh. 85 billion World Bank Loan as cost of foreign debt doubles. Business Daily, Friday 18th March 2022. https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-and-eac-sued-over-usd2-34b-imf-loan-3429776

publish, on their websites or any other suitable media, the contracts they have signed. However, the government has not published loan contracts, treaties and agreements signed. For instance, the President of Kenya, in December 2018, promised to present the contract between the government and the Chinese Exim Bank which funded the Standard Gauge Railway Project. The state,however, rescinded on this promise by stating that the agreement signed by the two institutions was bound by confidentiality clauses[71] and that the data available is incomplete. A leaked report by the Auditor General's office, in 2013, which revealed that the port of Mombasa was used as collateral for the Chinese loan raises the worry that there may be unrecorded ('hidden') debt instruments / contingent liabilities.[72]

Whilst the Kenyan government has done considerably well in reporting the composition and nature of public debt, according to the internal legal provisions and the guidelines provided by the IMF, there are still serious concerns about the accessibility, completeness, timeliness, and the overall transparency associated with borrowing agreements. Loan contacts and agreements signed, including the collaterals put against loans borrowed from external creditors, remains shrouded in secrecy. This limits parliamentary and public scrutiny since parliament needs this information to analyse the government's treatment of sovereign debt portfolio risks, while the public requires correct information to inform advocacy on public debt.

According to the World Bank Debt Reporting Heat Map[73], Uganda scores reasonably well in accessibility and completeness of public debt reporting. Rwanda ranks higher than Kenya because it has a partial annual borrowing plan, and a comprehensive reporting of other debt statistics/ contingent liabilities compared to Kenya's partial reporting. Burundi has the least score, in terms of accessibility and reporting, while Tanzania ranks lower than Kenya because of its limited reporting on other debt statistics/ contingent liabilities; it also publishes its Debt Management Strategy (DMS) without targets for external and domestic debt.

3.3. Citizen Debt Audits and Debt Management Transparency in Kenya

Debt audits inform citizens about the scale and nature of their country's debts, which are often not openly publicised in most low-income developing countries. Audits can be carried out by citizen groups as well as the government. Nevertheless, the emerging use of citizen-led initiatives to scrutinise public debt is due to the fact that government-led initiatives are not transparent because of conflict of interest, and may not yield the desired results.

A Citizen Public Debt Audit (CPDA) refers to deliberate efforts by citizens to make public debt transparent by scrutinising the beneficiaries and the conditions of the debt, including what it should be used for and how it should be repaid. A CPDA empowers citizens with the knowledge of "what and whom is driving the debt that is in their name." If used prudently, public debt can lead to higher economic growth, thereby assisting the government to accomplish its social and development goals. However, not all political leaders accrue public debt in the interests of their citizens. Corrupt leaders borrow money to finance personal expenditures and secure patronage for elites. Also, international lending institutions like the IMF and the World Bank offer financially unstable government loans to fund economic development but compel them to pay theis debts at the expense of the current and future welfare of the country's citizenry. The general population pays a country's public debt through heavy tax burdens and inadequate public services since budgetary resources are redirected to pay debt obligations. In this regard, citizen participation in debt audits is absolutely essential.

Below are some of the initiatives conducted by the civil society and other entities to demand accountability and transparency in public debt management in Kenya:

- **The Institute for Social Accountability (TISA)** has been running a Social Accountability Program that seeks to support active and meaningful citizen engagement by enhancing the effectiveness of transparency, accountability, and participation in governance processes. Through this program, TISA is promoting public awareness, civic mobilisation, and opportunities for public discourse on the issue of public debt and its consequences on the livelihoods of citizens. Its aim is to have visible public processes which will encourage discussions on accountability, the responsibility of political leaders regarding public debt management, and to create avenues for the public to hold the government accountable on these issues. To enhance this, TISA, together with other partners in the civil society, formed a campaign dubbed *Okoa Uchumi* which is committed to resolving Kenya's public debt crisis. The campaign advocates for balanced and equitable budgets as a

71. Mwithaga, M, (2019) Uhuru tells NTV's Mark Maasai to forget about SGR Contract. Pulselive [online], April 30th, 2019. https://www.pulselive.co.ke/news/president-uhuru-kenyatta-will-not-give-ntvs-news-anchor-mark-masai-a-copy-of-the-sgr/tnwtxsg
72. Odhiambo, M. China Could Sieze Mombasa Port over KES. 364 billion SGR loan, The Star, 15th March,2021. https://www.the- star.co.ke/news/2021-03-15-china-could-seize-mombasa-port-over-sh364bn-sgr-loan/
73. World Bank, Debt Reporting Heat Map, https://www.worldbank.org/en/topic/debt/brief/debt-transparency-report

means of achieving debt sustainability and economic inclusion. Further, this campaign seeks to bolster constitutional safeguards in public debt management and to push for the accountability of political leaders in the same. TISA also worked on a citizen manifesto which is a concerted voice of various citizens calling for public debt accountability, and for the resolution of Kenya's debt crisis. The manifesto expounds in detail the concerns that affect ordinary Kenyan citizens and demands for, (i) the strengthening of transparency, (ii) public participation in public debt, and (iii) enhancing the oversight role of parliament.[74]

This initiative by TISA, under the *Okoa Uchumi Coalition*, has been embraced by a section of Kenyans who joined them in a peaceful demonstration on Thursday, December 9th, 2021, to mark International Anti-Corruption Day.[75] The citizen movement cited budgeted corruption, misplaced priorities, violations to finance management laws, and oversight failure as some of the issues driving the public debt high. On 5th May 2022, TISA and the Kenya Human Rights Commission sued the Cabinet Secretary, National Treasury as well as the Auditor General compelling them to produce information on Kenya's debt treaties, agreements, and contracts.[76]

- **Kenya Debt Abolition Network (KDAN)** is a social movement of Kenyan individuals and organisations whose main aim is to call for the abolition of Kenyan illegal, illegitimate and odious debts through evidence-based processes like Citizen Debt Audit and calling for public participation in the process of incurring debts.[77] KDAN has been hosting Zoom Dialogues that take place fortnightly to highlight the Kenyan debt crisis. The Peasants League Limited Company (PLLC) and the KDAN also sued the government and the East African Community (EAC) at the East African Court of Justice over Kenya's International Monetary Union loans.[78] The two institutions accused the government of failing to observe the public debt ceiling as provided in the EAC Monetary Union in its decision to borrow KES. 2.34 billion from the IMF in April 2021.
- **The Kenyan Social Movements for the Abolition of Illegitimate Debts (KSM-AID) and the Kenyan Peasants League (KPL)** are planning a citizen audit of the Standard Gauge Railway (SGR) debt to establish its legitimacy. The audit will seek to find out the purpose of the SGR loan, who decided to contract the SGR loan on behalf of Kenyans, whether Kenya received the entire amount of the loan, who has so far profited from the loan, and the interest rate of repayment. Also, to be established is the amount of interest paid so far, the portion of Kenyan budget that is used to service the debt, the creditors' conditions, how Kenya is financing repayment of the debt, and the social, economic, ecological, gender and regional effects of the SGR loans as well as the impact of the loans on the livelihoods of the people of Kenya.[79]

The above citizen-led initiatives are some of the notable citizen-led audits of public debt management in Kenya. Some of them have been instrumental in informing the public on the drivers of public debt unsustainability in Kenya, and the socio-economic consequences of irresponsible public borrowing. Through such initiatives, citizens have been empowered to understand and claim their role in the Public Finance Management process, and hold their leaders to account for their role in public debt to improve service delivery.

Concerted efforts are needed to build the capacity of CSOs to promote the public debt discourse so as to enhance debt data transparency. CSOs act as external oversight institutions, serving the broader interest of citizens. A greater understanding of debt issues, debt statistics, and special analyses will assist CSOs to play a more meaningful and impactful role in demanding for and contributing to a more inclusive framework for prudent and accountable public debt management in Kenya.

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74. The Institute for Social Accountability, The Okoa Uchumi Campaign: A Citizen's Manifesto for Elections 2022 https://okoauchumi.com/wp-content/uploads/2022/04/Okoa-Uchumi-Campaign-Citizen-Manifesto.pdf
75. The Institute for Social Accountability (2022) Okoa Uchumi Coalition leads a peaceful demonstration in celebration of the World's Anticorruption Day 2021 https://tisa.co.ke/okoa-uchumi-coalition-leads-a-peaceful-demonstration-in-celebration-of-worlds-anti- corruption-day-2021/
76. The Institute for Social Accountability, TISA sues the Cabinet Secretary for Treasury and Auditor General https://tisa.co.ke/tisa- sues-the-cabinet-secretary-for-treasury-and-the-auditor-general/
77. Kenya Debt Abolition Network, Kenyan activists raise questions about debt. Committee for the Abolition of Illegitimate Debt, 29 January 2021 https://www.cadtm.org/Kenyan-activists-raise-questions-about-debt
78. Anami, L. Kenya and EAC sued over $2.34b IMF loan, The East African,8th June 2021. https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-and-eac-sued-over-usd2-34b-imf-loan-3429776
79. Caleb Otieno, Only a Citizen's Audit of SGR debt will unravel public heist of resources. Committee for the Abolition of Illegitimate Debt, 29 February 2020 https://www.cadtm.org/Only-a-citizen-s-audit-of-SGR-debt-will-unravel-public-heist-of-resources

SECTION FOUR: DEBT SUSTAINABILITY IN KENYA AND THE MULTILATERAL AGENDA ON DEBT AND DEVELOPMENT

4.0. Introduction

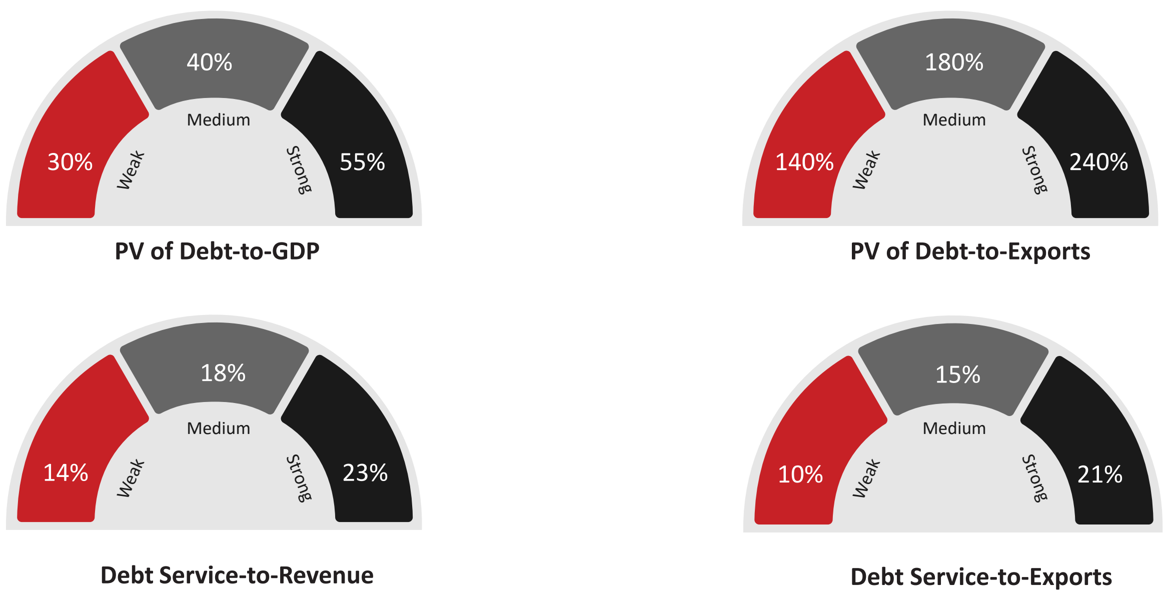
Under the Sustainable Development Goals (SDGs), Goal 17, target 4, aims at assisting developing countries attain long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring by addressing high levels of external debt and reducing debt distress among highly indebted countries.[80] To measure debt sustainability, it is important to monitor debt trends of a country alongside emerging domestic and external vulnerabilities that may threaten debt sustainability. In this regard, the IMF and World Bank conduct periodic Debt Sustainability Analyses (DSA) for market access countries.[81] The analyses incorporate standardised, forward-looking analysis of debt and debt service dynamics under baseline and alternative scenarios; it also produces a risk rating for external debt distress for each country. This section explores debt sustainability in Kenya and how the multilateral agenda on debt and development has shaped the trajectory of debt in the country.

4.1. Assessment of Public Debt Sustainability in Kenya

According to DSA reports by IMF and the World Bank, Kenya's debt carrying capacity was assessed as "medium", and given an estimated Composite Indicator (CI) of 3.01 in 2021. This is a decline in Kenya's debt carrying capacity as the 2020 assessment estimated Kenya's debt carrying capacity as strong, with a composite indicator of 3.12.[82] The CI captures the impact of various factors, through a weighted average of World Bank's Country Policy and Institutional Assessment (CPIA), remittances, international reserves and global and domestic growth[83]. The CI then classifies a country's debt carrying capacity as weak, medium or strong depending on the score. CI less than or equal to 2.69 indicates weak debt carrying capacity, 2.69 - 3.05 denotes medium debt carrying capacity while a greater score denotes strong capacity.[84]

The DSA reports have different debt burden indicators for external debt, such as debt to GDP ratio, debt to exports ratio, debt service to revenue ratio, and debt service to exports ratio. The indicators undergo standard scenarios or shocks to project whether one or more of them will cross estimated thresholds. The thresholds for each of the indicators vary depending on the assessed debt carrying capacity (weak, medium or strong) for each country as shown in Figure 8 below.

Figure 8: Thresholds for External Debt Sustainability



Source: Derived from World Bank Guide on Debt Sustainability Framework

80. UN Sustainable Development Goals. Goal 17, Target 4. https://sdgs.un.org/goals/goal17
81. IMF, Republic of Kenya, Debt Sustainability Analysis Reports. https://www.imf.org/en/Publications/DSA?country=KEN&fm=1&fy=1999&tm=12&ty=2022 #search-section
82. IMF, 2021. Review of the Debt Sustainability Framework for Market Access Countries, https://www.imf.org/en/Publications/Policy- Papers/ Issues/2021/02/03/Review-of-The-Debt-Sustainability-Framework-For-Market-Access-Countries-50060
83. World Bank. Debt Carrying Capacity. https://www.worldbank.org/content/dam/LIC%20DSF/Site%20File/station4.html
84. World Bank. Interactive Guide on Debt Sustainability Framework for Low Income Countries: Station 4- Debt Carrying Capacity. https://www.worldbank.org/content/dam/LIC%20DSF/Site%20File/station4.html

Before 2020, Kenya's debt carrying capacity remained strong and as such, the applicable thresholds for the different indicators for external debt are as shown in Table 2 below against the actual measurements. Between 2015 and 2019, Kenya's external debt sustainability remained within sustainable levels, however, there was a breach in one of the debt sustainability indicators in 2019 (debt service to export ratio) which was 29.3, above the set threshold of 21. This signalled the country was at moderate risk of external debt distress.

Notably, in 2020, Kenya's debt carrying capacity was revised from strong to medium and as such the applicable thresholds changed to those shown in Table 3 below. Debt sustainability indicators, debt to exports ratio and debt service to export ratio breached the set thresholds of 180 and 15 respectively to 288.3 and 26.5 as shown in the table below. This was due to the worsening of the global environment resulting from the COVID-19 pandemic which led to a sharp decline in export growth. As a result of the indicator breaching the threshold, Kenya's risk of debt distress shifted from moderate to high.

Table 2: Kenya's External Debt Sustainability Indicators 2015 - 2019

Indicators	Thresholds	2015	2016	2017	2018	2019
PV of debt-to-GDP ratio	55	21.7	24.8	25.9	31.4	27.2
PV of debt-to-exports ratio	240	188.5	140.9	165.4	191.1	224.8
Debt service-to-exports ratio	21	6.4	8.0	16.5	19.9	29.3
Debt service-to-revenue ratio	23	5.9	6.9	13.3	16.2	20.4

Source: National Treasury, Medium Term Debt Management Strategy Report[85]

Table 3: Kenya's External Debt Sustainability indicators in 2020

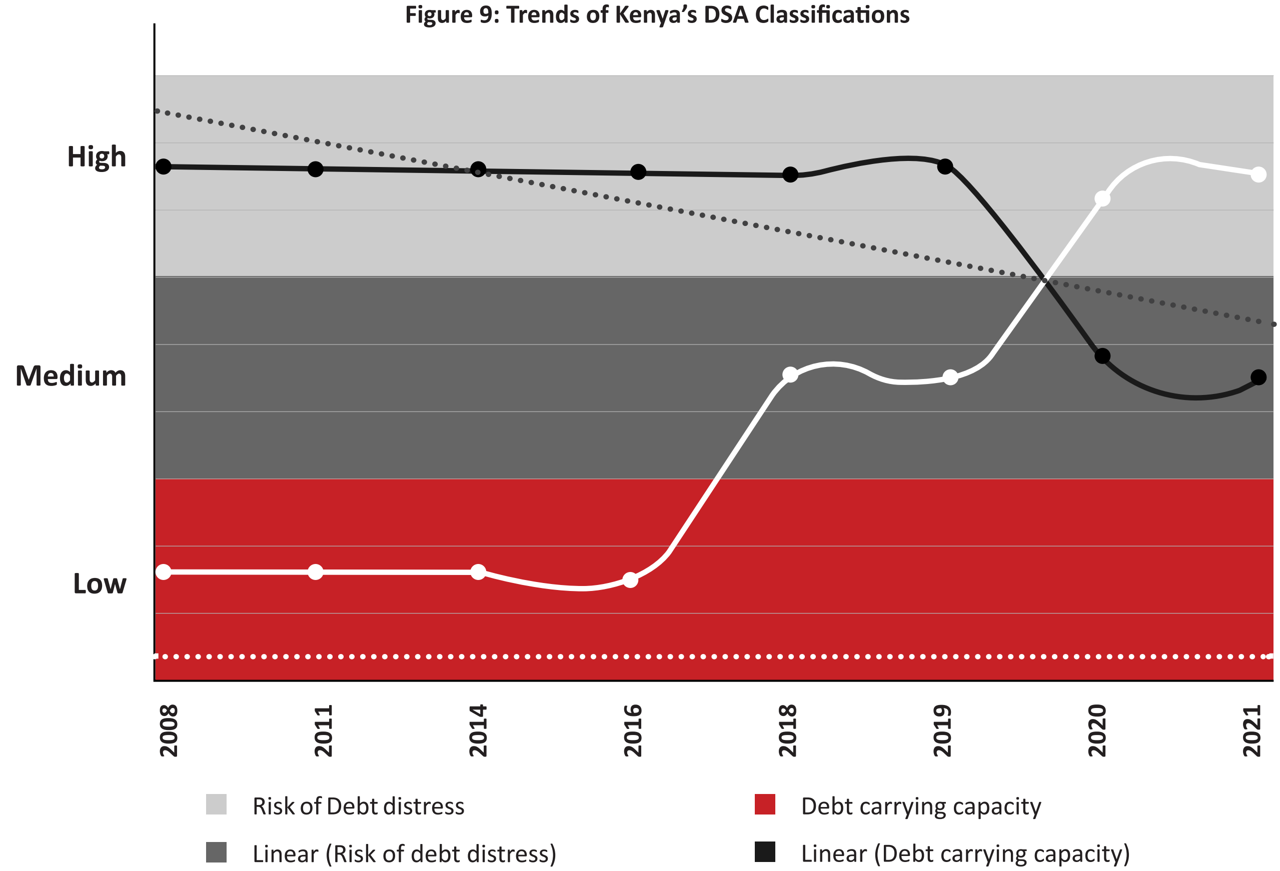
Indicators	Thresholds	Actual	Projections			
		2020	2021	2022	2023	2024
PV of debt-to-GDP ratio	40	28.7	28.7	28.3	27.3	26.3
PV of debt-to-exports ratio	180	288.3	255.8	239.2	219.8	204.2
Debt service-to-exports ratio	15	26.5	19.1	22.7	20.1	29.7
Debt service-to-revenue ratio	18	15.5	13.0	15.8	14.0	21.0

Source: IMF Country Report April 2021

85. National Treasury and Planning. Medium Term Debt Management Strategy Reports. https://www.treasury.go.ke/medium-term- debt-management-strategy/

Beyond the Debt Sustainability Analysis (DSA) conducted by IMF and World Bank, the National Treasury produces Medium Term Debt Management Strategy reports annually that embed a debt sustainability analysis of the country dependent on the DSA report by the IMF and World Bank. The debt sustainability analysis reports are based on selected macroeconomic assumptions that check for real GDP growth, primary fiscal deficit and the current account deficit. Over the years, Kenya's public debt has remained sustainable. However, the risk of debt distress has increased from being at low risk in 2008, to moderate in 2018 and being at high risk in 2020 while Kenya's debt carrying capacity assessment has been revised from strong in 2008 to medium in 2020 as shown in Figure 9 below. The shift in the debt sustainability classification in 2020 is mainly attributed to an increase in Kenya's external debt vulnerabilities resulting from high budget deficits in the past and a decline in economic growth due to the COVID-19 crisis.

Figure 9: Trends of Kenya's DSA Classifications



Source: IMF Country Reports

In efforts to improve debt sustainability, the IMF, through the extended arrangements under the Extended Fund Facility (EFF) and Extended Credit Facility (ECF), disbursed US$ 2.34 billion after the second review of the program which is aimed at supporting Kenya's program to address debt vulnerabilities, support response to the COVID-19 crisis and enhancing governance.[86] The economic programme aims at reducing debt vulnerabilities through a multi-year consolidation effort centred around broadening tax revenue mobilisation[87], tightly controlling spending and safeguarding resources to protect vulnerable groups.[88] From the two programme reviews conducted, there are indications that the government is committed to the programme. There also is confidence from the IMF in the instituted economic policies and reforms. The programme has helped Kenya navigate various global shocks and address key debt vulnerabilities.[89]

86. Sayeh, A. M. IMF Executive Board Completes the First Reviews of the Extended Arrangement under the EFF and ECF Arrangements for Kenya. June 2021 https://www.imf.org/en/News/Articles/2021/06/23/pr21195-kenya-imf-executive-board- completes-first-reviews-extended-arrangement-eff-ecf-arrangements#:~:text=Kenya's%20economic%20program%20aims%20to,resources%20to%20protect%20vulnerable%20groups.
87. The National Treasury. Mwananchi Guide for FY2022/23 Budget. https://www.treasury.go.ke/wp- content/uploads/2022/04/Mwananchi-Guide-for-FY-2022-23-pdf.pdf
88. The National Treasury. Kenya's progress on IMF supported reforms. June 23 2021. https://www.treasury.go.ke/wp- content/uploads/2021/06/Press-Statement-23rd-June-2021-Kenyas-Progress-on-IMF-Supported-Reforms.pdf
89. Mombrail, N. IMF Reaches Staff Level Agreement on the Third Review of the Extended Fund Facility and Extended Credit Facility for Kenya. April 25, 2022. https://www.imf.org/en/News/Articles/2022/04/25/pr22132-imf-reaches-staff-level-agreement-on-third- review-of-fund-and-credit-facility-for-kenya

4.2. Debt Swaps in Kenya

Debt swaps are considered to be instruments used by debtor countries that provide financial relief in the form of debt cancellation or reduction and provide an opportunity for new commitments into which the forgone debt is converted.[90] Debt swaps can be divided into two categories, (i) debt for development swaps, which are in the form of pledges from the debtor country to fund agreed-upon development-oriented projects and policies (e.g., debt-for-education, debt-for-health), and (ii) debt for environment swaps which are pledges by the debtor country to finance environmentally friendly programs, projects and policies. (e.g., debt-for-nature, debt-for-climate). Table 4 below shows other examples of various debt swaps used in different forms.

Berensmann (2007) argues that debt swaps could be used to offer relief to highly indebted countries and steer available scopes for debt relief toward development-related uses.[91] In Kenya, debt swaps could offer relief from debt servicing costs and in return provide opportunities for fighting climate change threats and biodiversity loss;[92] this has the potential of boosting the tourism and agriculture sectors.

Debt swaps are not new to Kenya. The Kenya Italy Debt for Development Program (KIDDP)[93], is an example of a debt-for-development swap that was launched in 2007. The total value of debt subject to the swap amounts to US$ 1.3 million and translates to an estimated 126 initiatives completed or in progress. The resources raised from the program have been used to support economic growth in the country, in line with national policies in the water, health, education and urban development sectors.

With the expiry of the Debt Service Suspension initiative, there have been increased efforts by the government to pursue opportunities for debt swaps to support post-pandemic recovery.[94] For instance, Kenya has been exploring a debt-for-climate swap to devote resources to fighting environmental problems.[95] The increased use of debt swaps, especially from international financial institutions, can be attributed to the potential they hold of being a scalable solution to help address debt, climate, bio-diversity crises and as a means of providing additional financing towards the achievement of the SGD.

Table 4: Different Types of Debt Swaps

Type of Debt Swap	Definition	Purpose
Debt for Equity	Conversion of debt into equity shares.	Attracting Foreign Direct Investment (FDI).
Debt for SGDs	Conversion of debt into a commitment to fund development or environmental policies or projects in the debtor country.	Freeing up resources from external debt service to invest them into local development or sustainability projects, programs, or policies.
Debt for climate	Broader than debt-for-nature swaps, they emerged in the 2010s and have recently gained increased traction.	Climate adaptation action can also include nature conservation programs.
Debt for education	Conversion of debt to fund educative centres, schools and school furniture, trainings, and other related public investments to foster education.	Financing for education.
Debt for water Sanitation	Resources are allocated towards water and environmental sanitation infrastructure projects.	Investing in water sanitation facilities.

Source: Derived from European Commission Debt Swaps for SGDs 2021.

91. Berensmann, K. (2007). Working Paper Debt swaps: An Appropriate Instrument for Development Policy? The Example of German Debt Swaps Discussion Paper, No. 5/2007, https://www.econstor.eu/handle/10419/199266
92 Goering, L. 2020. Debt swaps could free funds to tame climate, biodiversity and virus threats. Reuters. https://www.reuters.com/article/global-debtrenegotiation-nature-climatec-idUKL8N2G43U3
93. Kenya Italy Debt for Development Program (KIDDP) https://nairobi.aics.gov.it/en/home/countries/kenya/debt-swap/
94. Nyawira, S. (2021) Uhuru calls for debt swap to finance Africa's COVID-19 recovery. https://www.the- star.co.ke/business/kenya/2021-05-19-uhuru-calls-for-debt-swap-to-finance-africas-COVID-19-recovery/
95. Goering, L. (2020) Kenya: Debt Swaps could free funds to tame climate, bio-diversity and virus threats. Reuters. https://allafrica.com/stories/202009090024.html

Since the decision for debt swaps are ultimately taken by creditors interested in supporting the attainment of the SDGs, bilateral debt can be easily swapped. However, debt swaps might not be well suited for those creditors who want to offer discretionary debt relief. As such, debt swaps should not be considered as instruments to restore debt sustainability but as a flexible mechanism for debt relief towards the achievement of specific objectives.[96] Debt sustainability can be achieved through strengthening the capacity of the government in external debt management and in debt tracking. Additionally, preventing and resolving unstainable debt situations can be achieved through responsible sovereign borrowing and lending.[97]

4.3. The Multilateral Agenda on Debt and Development in Kenya

International financial institutions and multilateral agencies have been instrumental in supporting countries in their debt management by offering debt sustainability analyses, classifying debt risks and outlining strategies/pathways for debt restructuring and reduction.[98] In the era of COVID-19, multilateral agencies have supported governments to mobilise resources to respond to the pandemic and to cushion households and businesses against its effects. Regarding high levels of debt burden for low-and-medium-income countries, the G20 Debt Service Suspension Initiative and the United Nations (UN) Initiative on Financing for Development in the Era of COVID-19 and Beyond have been notable instruments by multilateral agencies.

4.3.1. G20 Debt Service Suspension Initiative (DSSI)

The COVID-19 pandemic severely impacted the global economy, with majority of key economic sectors crippled which resulted in loss of income and livelihoods. Low-income countries were particularly impacted negatively, with most experiencing a recession and millions of people pushed to extreme poverty. In the wake of these effects, the IMF and World Bank pushed for the G20 group of rich nations and emerging powers to establish the DSSI. The initiative was targeted at helping low-income countries, with a narrow fiscal space, to navigate the pandemic by concentrating their resources on mitigating the pandemic and safeguarding the lives and livelihoods of their populations.[99] DSSI was approved in April 2020, offering temporary suspension of government-to-government debt payment.[100] 73 low-and lower-middle-income countries were eligible to participate in the initiative, although only 48 countries participated. This included countries in the United National List Developed Countries (UN LDC) and active International Development Association (IDA) members.[101] The initiative was initially scheduled to last from May 1, 2020 to December 2020, but was extended twice to June 30, 2021 and end-December 2021.[102]

4.3.2. Benefits and challenges of DSSI

The DSSI came at a critical time when the COVID-19 pandemic had worsened economies and fiscal space in low and middle-income countries, which were already grappling with high public debt and debt service burdens. As such, the immediate impact of the initiative was expanding the fiscal space and make resources available to countries to combat the pandemic. Over the first six months of the DSSI, US$ 12.9 billion in debt- service payments was suspended.[103] US$ 4.6 billion of the total amount suspended was owed to Paris Club creditors by 42 low-income countries.[104] China also contributed substantively to DSSI, deferring US$ 2.1 billion in debt service from DSSI countries.[105] Further, the World Bank Group disbursed US$ 31.1 billion to countries eligible for the DSSI, and US$ 8.8 billion offered as grants between April 2020 and June 2021.[106]

Overall, the debt service suspension, augmented by funding and grants from the IMF, World Bank and Multilateral Development Banks (MDBs), helped countries respond to the pandemic more effectively by having more resources to spend on health and key economic sectors that had been crippled by the pandemic containment measures. Whilst the DSSI proved to be an important instrument in supporting eligible economies navigate the pandemic and its socio-economic effects,

96. Lazard. (2021) Debt for SGDs swaps in indebted countries: The right instrument to meet the funding gap? https://europa.eu/capacity4dev/paramos/file/120008/download?token=U1eoc0ac
97. UN, 2015. Debt and Debt Sustainability. https://www.un.org/esa/ffd/wp-content/uploads/2016/03/2016-IATF-Chapter2E.pdf 98 World Bank, 2022. World Bank Development Report 2022. https://openknowledge.worldbank.org/bitstream/handle/10986/36883/9781464817304_Ch05.pdf
99. World Bank, 2022. Debt Service Suspension Initiative https://www.worldbank.org/en/topic/debt/brief/COVID-19-debt-service- suspension-initiative
100. Reuters, 2020. Factbox: How the G20's Debt Service Suspension Initiative works https://www.reuters.com/article/us-imf- worldbank-emerging-debtrelief-fac-idUSKBN27021V
101. World Bank, 2022. Debt Service Suspension Initiative: Q&As https://www.worldbank.org/en/topic/debt/brief/debt-service- suspension-initiative-qas
102. IMF, 2021. Questions and Answers on Sovereign Debt Issues https://www.imf.org/en/About/FAQ/sovereign-debt 103 G20, 2020. Communiqué - G20 Finance Ministers and Central Bank Governors Meeting https://www.bi.go.id/en/G20/Documents/G20-Communique.pdf
104. Paris Club, 2022. The Paris Club has fully and successfully implemented the DSSI and its extensions https://clubdeparis.org/en/communications/press-release/the-paris-club-has-fully-and-successfully-implemented-the-dssi-and-its
105. YUE, Mengdi & Nedopil, Christoph, 2022. China's Role in Public External Debt in DSSI Countries and the Belt and Road Initiative (BRI) in 2020. Green Finance & Development Center, FISF https://greenfdc.org/wp-content/uploads/2022/03/YUE-and-NEDOPIL- 2022_Debt-situations-in-DSSI-Countries.pdf
106. World Bank, 2022. Debt Service Suspension Initiative: Q&As https://www.worldbank.org/en/topic/debt/brief/debt-service-suspension- initiative-qas

several concerns impacted its effectiveness and overall allure to target beneficiary countries.

- Negative impact on credit worthiness of participating countries: Countries with a high debt burden are more reliant on debt to meet their debt service costs and address budget deficits. However, participation in the DSSI raised concerns of negative implications on credit worthiness of participating countries. Some countries feared that this would limit their ability to access more affordable loans with friendlier terms and from a wider pool of creditors. However, the World Bank and IMF argue that there is no evidence to support the claim that DSSI participation has a negative impact on credit ratings of the participating countries. Fuje et. al (2021) findings, while assessing whether DSSI helped lower sovereign bond spreads in sub-Sahara Africa (SSA), support the position of IMF and the World Bank. They established that while DSSI did not have adverse effects on borrowing for SSA countries as initially feared.[107]
- Minimal participation of private creditors: At the onset of the initiative, there were elaborate engagements between the IMF, World Bank, G20 countries and private creditors to encourage private sector creditors to participate in the initiative. The Institute of International Finance (IIF) was also active in guiding engagements and deliberations by private creditors.[108] This resulted in an agreement in the form of a Term of Reference that defined a framework for the participation of the private creditors.[109] However, their participation in the initiative was limited throughout its tenure. The DSSI framework provided no concrete measures to induce participation of private-sector creditors, only providing room for voluntary participation.[110] Only one private creditor participated in the DSSI.[111]
- Uneven implementation among official bilateral creditors: The degree of participation and flexibility, with regards to terms of participation, emerged as a concern. At the onset, there was vague clarity regarding the treatment of arrears, limits on non-concessional borrowing, application of higher fees, interest and penalties, and treatment of syndicated loans.[112]
- Cross-default clauses and the absence of a bilateral legal agreement to formalise non-payment to key creditors were also among the key concerns raised by countries eligible to participate in the DSSI.

107. Habtamu Fuje, Franck Ouattara, & Andrew Tiffin, 2021. Has the DSSI Helped Lower Sovereign Spreads of Participating SSA Countries? https://www.imf.org/-/media/Files/Publications/covid19-special-notes/en-special-series-on-COVID-19- has-the-dssi-helped-lower-sovereign-spreads-of-participating-countries.ashx
108. World Bank, 2022. Debt Service Suspension Initiative: Q&As https://www.worldbank.org/en/topic/debt/brief/debt-service- suspension-initiative-qas
109. Institute of International Finance, 2020. Terms of Reference for Voluntary Private Sector Participation in the G20/Paris Club Debt Service Suspension Initiative ("DSSI") https://www.iif.com/Portals/0/Files/content/Regulatory/Voluntary%20Private%20Sector%20Terms%20of%20Reference%20for%20DSSI_vf.pdf
110. Bolton Patrick, Mitu Gulati and Ugo Panizza, 2020. G20: Promoting Private Sector Cooperation for Debt Suspension. Institute for International Political Studies (Istituto per gli studi di politica internazionale) https://www.ispionline.it/it/pubblicazione/g20-promoting-private- sector-cooperation-debt-suspension-29955
111. World Bank, 2022. Debt Service Suspension Initiative: Q&As https://www.worldbank.org/en/topic/debt/brief/debt-service- suspension-initiative-qas
112. IMF, 2021. World Bank Group and International Monetary Fund Support for Debt Relief Under the Common Framework and Beyond. International Monetary Fund https://www.imf.org/-/media/Files/Publications/PP/2021/English/PPEA2021022.ashx

Box 1: Eligibility Criteria for the G20 Debt Service Suspension Initiative (DSSI)

Scope of beneficiary countries

- All IDA-countries, that are current on any debt service to the IMF and the World Bank.
- All least developed countries, as defined by the United Nations, that are current on any debt service to the IMF and the World Bank.

Setting the right incentives. Access to the initiative will be limited to countries who:

- Have made a formal request for debt service suspension from creditors, and;
- Are benefiting from, or have made a request to IMF management for, IMF financing, including emergency facilities (Rapid Financial Instrument-RFI/ Rapid Credit Facility- RCF).

Each beneficiary country will be required to commit:

- To use the created fiscal space to increase social, health or economic spending in response to the crisis. A monitoring system is expected to be put in place by the International Financial Institutions (IFIs);
- To disclose all public sector financial commitments (debt)[2], respecting commercially sensitive information. Technical Assistance is expected to be provided by IFIs as appropriate to achieve this;
- To contract no new non-concessional debt during the suspension period, other than agreements under this initiative or in compliance with limits agreed under the IMF Debt Limit Policy (DLP) or World Bank Group (WBG) policy on non-concessional borrowing.

Scope of creditors

- All official bilateral creditors will participate in the initiative.
- Private creditors will be called upon publicly to participate in the initiative on comparable terms.
- Multilateral development banks will be asked to further explore options for suspension of debt service payments over the suspension period, while maintaining their current rating and low cost of funding.

Duration of the suspension of payment

- The suspension will last until end-2020.
- Creditors will consider a possible extension during 2020, taking into account a report on the liquidity needs of eligible countries by the World Bank and IMF.

Perimeter of maturities and cut-off date

- The suspension period will start on May 1st, 2020.
- Both principal repayments and interest payments will be suspended.
- A cut-off date protecting new financing in case of possible future restructuring will be set on March 24th, 2020.

Modalities for the debt service suspension

- The suspension of payments will be net-present value (NPV)-neutral.
- The repayment period will be three years, with a one-year grace period (four years total).
- Treatment will be achieved either through rescheduling or refinancing.

Implementation process

- Creditors will implement, consistent with their national laws and internal procedures, the debt service suspension initiative as agreed in this term sheet to all eligible countries that make a request.
- Creditors will continue to closely coordinate in the implementation phase of this initiative. If needed, creditors will complement the elements in this term sheet as appropriate.

Source: Adapted from G20 Research Group, 2020.[113]

113. G20 Research Group, 2020. G20 Information Centre. University of Toronto http://www.g20.utoronto.ca/2020/2020-g20-finance- 0415.html#top

4.3.3. Kenya's Eligibility and Participation in DSSI

As per the DSSI terms sheet, Kenya was considered eligible to benefit from the initiative. However, at the onset, Kenya had reservations regarding joining the G20 debt relief initiative.[114] The reservations were premised on the concerns that participation would negatively impact the country's access to international financial markets.[115] According to an earlier statement by the national treasury, the terms of participation in the DSSI were too restrictive. However, the position changed with the extension of the DSSI to December 2021, with the National Treasury indicating that the benefits outweighed the risks.[116]

Kenya's decision to participate in the DSSI has yielded substantive benefits and eased pressures on the fiscal space. Foremost, Kenya's participation targeted to defer up to US$ 686 million in debt repayment. World Bank Statistics on potential DSSI Savings indicate that between January and December 2021, the period during which Kenya opted into the initiative, the country would save an estimated US$ 1189.5 million.[117] In January 2021, Kenya made deals with Paris Club countries and other creditors to suspend up to US$ 361 million (0.3% of its GDP).[118] The most significant of the benefits was an agreement with China on a US$ 245 million repayment holiday, thereby providing the country with much-desired liquidity.[119] Notably, there are disparities with regard to the actual volume of debt suspended since Kenya joined the initiative. According to the CBK, Kenya deferred up to US$ 600 million under DSSI.[120] However, according to IMF, Kenya deferred US$ 425 from all creditors between January and June 2021.[121]

The further extension of DSSI to the end of December 2021 meant that Kenya would save an additional US$ 361 million.[122] Kenya is reported to have requested further suspension of its debt service obligations from all its bilateral creditors during this last phase of the DSSI.[123] The total debt suspension requested during this phase amounted to US$ 379 million.[124] However, China rejected Kenya's request to provide further relief. Additionally, the China Development Bank, one of China's major lenders and Kenya's creditor, did not participate in the DSSI. Consequently, Kenya only managed to obtain relief of US$ 89 million during the third phase of the DSSI. China's reluctance to extend debt relief to Kenya significantly impacted Kenya's fiscal space and debt outlook. With the additional debt repayment obligation, the country was forced to utilise its dollar reserves to repay its loan obligations. The decline in dollar reserves impacted the currency negatively, weakening the Kenyan shilling against the dollar through the second half of 2021 through to 2022.

Presently, the country is grappling with a shortage of dollar reserves. This is impacting the ability of manufacturers to access dollars at official market rates to import raw materials, thus raising the cost of production.[125] Additionally, the dollar shortage has triggered emergence of parallel exchange rates and enhanced the volatility of the exchange rate market.[126] In essence, Kenya's debt repayment obligations forced the government to utilise its dollar reserves in debt servicing. This impacted negatively on the Kenyan currency and has resulted in a dollar shortage in the country. Consequently, the Kenyan market is characterized by high manufacturing costs, coupled with weak purchasing power. This has had a negative effect on Kenya's outlook as a favourable investment destination and may force investors out of the Kenyan market; this will translate to loss of jobs for citizens and revenue by government.

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114. Debt service suspension initiative for the poorest countries: Term Sheet https://www.tresor.economie.gouv.fr/Articles/009a4adf- 23c2-4283-b88f-83ce405e1272/files/ec1895a7-ac0d-4eaf-a300-e8d8a057a2fd
115. Robert Ssuuna. Kenya, COVID-19 and Debt. European network on debt and development, November 5, 2020. https://www.eurodad.org/kenya_covid_19_debt
116. Kenya makes U-turn on joining G20 debt relief initiative. Reuters, November 18, 2020 https://www.reuters.com/article/kenya- debt-g20-idUSL8N2I43LV
117. Debt Service Suspension Initiative. World Bank, March 10, 2022. https://www.worldbank.org/en/topic/debt/brief/COVID-19-debt- service-suspension-initiative
118. Constant Munda. Kenya gets extension of public debt service relief to December. Business Daily. June 29, 2021. https://www.businessdailyafrica.com/bd/economy/kenya-gets-extension-of-public-debt-service-relief-to-december-3454242
119. Jevans Nyabiage. China, Kenya agree repayment holiday on US$245 million worth of debt. South China Morning Post. Jan 23, 2021. https://www.scmp.com/news/china/diplomacy/article/3118845/china-kenya-agree-repayment-holiday-us245-million-worth-debt 120 China Africa Research Initiative. Global Debt Relief Dashboard. http://www.sais-cari.org/debt-relief
121. IMF, 2021. Country Report No. 2021/275https://www.imf.org/en/Publications/CR/Issues/2021/12/22/Kenya-2021-Article-IV- Consultation-Second-Reviews-Under-the-Extended-Arrangement-Under-the-511263
122. Constant Munda. Kenya gets extension of public debt service relief to December. Business Daily. June 29, 2021. https://www.businessdailyafrica.com/bd/economy/kenya-gets-extension-of-public-debt-service-relief-to-december-3454242 123 China Africa Research Initiative. Global Debt Relief Dashboard. http://www.sais-cari.org/debt-relief
124. Dominic Omondi. China rejected Kenya's request for Sh 32.8b debt moratorium. The Standard. December 31, 2021 https://webcache.googleusercontent.com/search?q=cache:odFy15NHCpwJ:https://www.standardmedia.co.ke/business/news/article/ 2001433080/china-rejected-kenyas-request-for-sh328b-debt-moratorium+&cd=1&hl=en&ct=clnk&gl=us
125. Vincent Owino. Traders in Kenya feel pain of dollar shortage. The EastAfrican. June 5, 2022. https://www.theeastafrican.co.ke/tea/business/traders-in-kenya-feel-pain-of-dollar-shortage-3837802

Overall, Kenya's participation in the DSSI was beneficial in easing pressure on its already constrained fiscal space. Further, its participation in the initiative provided Kenya with the opportunity to access further support and resources from the World Bank and IMF.[127] However, the benefits accrued, particularly during the third phase of the initiative, offered limited relief to Kenya compared to the expected returns, as Kenya was forced to fulfil most of its debt repayment obligations during the second half of 2021.

4.4. Financing for Development in the Era of COVID-19 and Beyond Initiative (FFDI)

The UN's initiative on FFDI was premised on the actualisation and pursuance of "The Secretary General's Strategy and Roadmap for financing the 2030 Agenda for Sustainable Development."[128] At the onset of the pandemic, it was estimated that developing nations required US$ 2.5 trillion in external financing to combat the pandemic and mitigate its effects.[129]

Dialogue between different stakeholders engaged in policy dialogue on FFDI culminated in 200 policy proposals targeting aid countries to raise the necessary resources needed to cope with the crisis occasioned by the pandemic. Five of the most impactful proposals with immediate impact on the debt situation for countries included: (i) Issuing and redistributing Special Drawing Rights (SDRs), (ii) Debt relief to expand fiscal space, (iii) raising taxes by curbing tax dodging and harmful tax competition, (iv) exploring less costly multilateral financing facilities, and (v) redirecting private finance.[130]

Considering the narrow fiscal space that is a result of the high debt service obligations, Kenya has been vocal in supporting global measures and initiatives to address the debt challenges in developing nations. Its participation in the DSSI and IMF financing programmes is a demonstration of its commitment to address its public debt, expand its fiscal space and increase investments in development. With the DSSI lending in in December 2021, Kenya has also been vocal, as expressed by the Ministry of Foreign Affairs, in supporting a renewed push by developing countries and the United Nations Economic Commission for Africa (UNECA) to extend the debt service relief.[131] This support stems from the fact that, while Kenya and the African continent as a whole, have made efforts to recover from the socio-economic effects of COVID- 19, they still remain exposed to global economic shocks, such as the war in Ukraine and its effects on the global markets, and climate change. Prior to the onset of the COVID-19 pandemic, many countries in the continent, including Kenya, faced the risk of falling into debt distress. The pandemic worsened the debt sustainability outlook with the constrained economic space limiting domestic revenue mobilisation.

Improved access to vaccines and relaxation of containment measures sparked hopes for economic recovery. However, current events globally continue to weaken the effectiveness of recovery efforts.

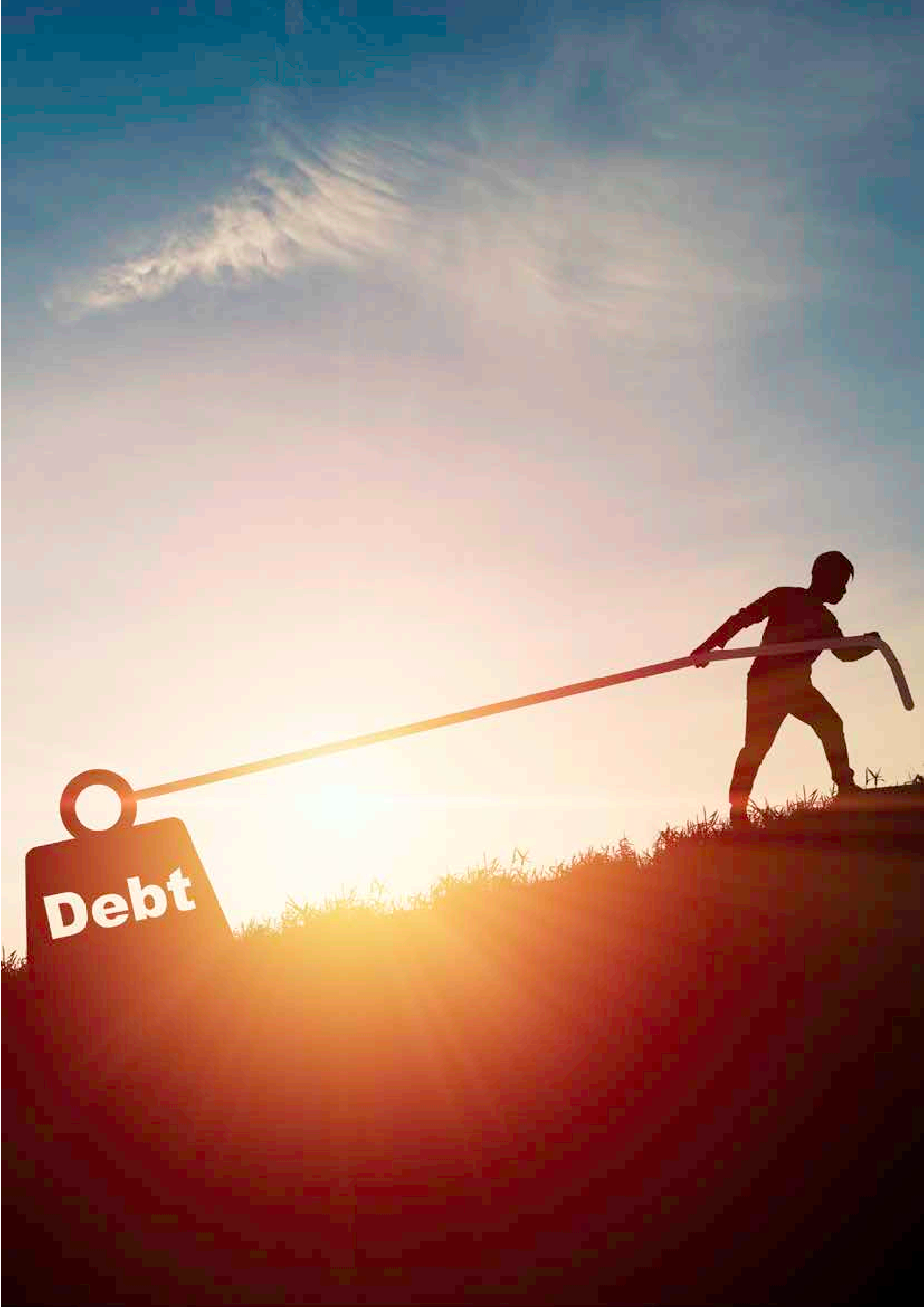
Regarding UN's initiative on FFDI, Kenya has been more proactive in pursuing debt relief opportunities by leveraging incentives such as the Debt Service Suspension Initiative and restructuring its debt portfolio by renegotiating the terms. In 2021, Kenya was actively involved in reviewing its external debt currency composition to reduce foreign exchange costs.[132] Since 2019, Kenya's currency has depreciated by over 14% against the US dollar. This depreciation has resulted in a substantive increase in the public debt portfolio. For instance, between June 2021 and April 2022, the devaluation of Kenya's currency resulted in an increase in the country's debt obligations by KES. 271 billion.[133] Cognisant of these risks and strains on the fiscal space, Kenya's national treasury has ramped up efforts to renegotiate the terms of its debt payment, pursuing more concessional loans and minimising the portfolio of expensive and foreign-dominated commercial loans.[134] For instance, the government abandoned plans to

126. Constant Munda. Dollar shortage sparks parallel exchange rates. Business Daily. May 31, 2021. https://www.businessdailyafrica.com/bd/economy/dollar-shortage-sparks-parallel-exchange-rates-3832788
127. Duncan Miriri. UPDATE 2-In U-turn, Kenya plans to defer $690 million in debt payments under G20 initiative. Reuters. November 18, 2020. https://www.reuters.com/article/kenya-debt-g20-idINL1N2I411M
128. One Planet Handle with care. Initiative on Financing for Development in the Era of COVID-19 and Beyond. https://www.oneplanetnetwork.org/news-and-events/news/initiative-financing-development-era-COVID-19-and-beyond
129. Ellmers Bodo, 2020. Financing Sustainability Development in the Era of COVID-19 and Beyond: An analysis and assessment of innovative policy options. Bischöfliches Hilfswerk MISEREOR https://unctad.org/system/files/non-official- document/20210127_Igefd_GlobalPolicyForumEurope_contribution.pdf
130. Ellmers Bodo, 2020. Financing Sustainability Development in the Era of COVID-19 and Beyond: An analysis and assessment of innovative policy options. Bischöfliches Hilfswerk MISEREOR https://unctad.org/system/files/non-official- document/20210127_Igefd_GlobalPolicyForumEurope_contribution.pdf
131. Brian Ngugi. Why Kenya backs UN debt service relief call. Nation. May 31, 2022. https://nation.africa/kenya/business/why-kenya- backs-un-debt-service-relief-call--3832670
132. James Anyanzwa. Kenya moves to reduce interest on foreign debt. The EastAfrican, April 25, 2022. https://www.theeastafrican.co.ke/tea/business/kenya-moves-to-reduce-interest-on-foreign-debt-3791468
133. Victor Amadala. Shilling fall pushing up Kenya's foreign debt. The Star, April 5, 2022. https://www.the- star.co.ke/business/kenya/2022-04-05-shilling-fall-pushing-up-kenyas-foreign-debt/
134. Vincent Owino. Kenya abandons proposed $1b eurobond citing cost. The EastAfrican. June 11, 2022. https://www.theeastafrican.co.ke/tea/business/kenya-abandons-proposed-eurobond-citing-cost-3845008

issue a US$ 1 billion Eurobond on account of rising financing costs and high capital market volatility.[135] Instead, the government has actively sought grants from development partners and shifted to public-private partnerships (PPP) in financing projects. Further, participation in the G20 DSSI, including differing payments of up to US$ 600 million to China to be paid over a five-year period, helped ease pressures and expanded the fiscal space to allow the government to invest more in other key economic sectors. There have also been strong considerations for cashing in on Kenya's SDRs. In September 2021, Kenya announced plans to use its SDR allocated by IMF to plug the budget deficit, specifically facilitating payment of its debt obligations.[136]

Overall, Kenya's debt management strategy between 2020 and 2022 aligns with key policy recommendations suggested within the UN's initiative on FFDI, and other multilateral debt workout mechanisms. This suggests that these initiatives have informed policy options and the debt management strategy and restructuring efforts.

135. Vincent Owino. Kenya abandons proposed $1b eurobond citing cost. The EastAfrican. June 11, 2022. https://www.theeastafrican.co.ke/tea/business/kenya-abandons-proposed-eurobond-citing-cost-3845008
136. Constant Munda. Kenya seeks to use IMF reserves to plug budget holes after paying China debt. The EastAfrican, June 17, 2022 https://www.theeastafrican.co.ke/tea/business/kenya-imf-reserves-3557710


Debt

SECTION FIVE: SUMMARY OF FINDINGS

5.0 Debt Management and Advancement of Human Rights, and the 2030 Agenda in Kenya

1. Kenya has an elaborate legal and institutional framework that guides public finance management. These provisions are entrenched in the Constitution of Kenya 2010, the Public Finance Management Act (PFMA) of 2012, Regulations on the Public Finance Management Act (No. 18 of 2012), Public Finance Management (Amendment) Bill, 2019 and the Public Debt and Borrowing Policy of 2020.
2. Kenya's debt stock has grown exponentially over the last decade, rising from KES. 1.6 trillion in June 2012 to KES. 7.7 trillion in June 2021. Between 2012 and 2021, the debt-to-GDP ratio increased from 40.7% to 68.1%, thereby, putting Kenya at high risk of debt default. The country's public debt portfolio increased sharply during the pandemic period, from KES. 6.28 trillion to KES. 7.34 trillion in March 2021. According to national authorities, the increased borrowing was necessitated by decreased economic activity that impacted the government's ability to mobilise sufficient revenues and increased spending needs for health and social protection.
3. Following the exponential growth in the country's public debt stock, there has been an equivalent sharp rise in the country's debt servicing obligations that threatens public expenditures on necessary social services and other investments crucial for investment and growth. The cost for servicing external debt increased from KES. 113.6 billion to KES.780.6 billion between June 2012 and June 2021. Total debt service as a proportion of revenue collected increased from 16.5% in 2012 to 56.7% in 2019 and 50% in 2021.
4. Despite the overall increase in pro-poor spending (education, health, social protection, agriculture and water), a sharp rise in debt service obligations has limited the government's investments in these sectors. Consequently, investments in critical sectors remain insufficient to cater to the demand created by the growing population and to match global commitments such as the Abuja declaration on health sector spending, and the Global Partnership for Education's (GPE) commitment to education.
5. The size of the Consolidated Fund Service as a share of the total budget increased from 21% in FY2016/17 to 36% in FY2021/22. This increase is attributable to high debt service costs. Between June 2012 and June 2021, payment of interests increased by 1336.4% from KES. 7.4 billion to KES.106.3 billion.
6. The impact of the COVID-19 pandemic negatively affected the government's ability to mobilise revenues to finance its expenditures. In responding to the socio-economic effects, the government leveraged supplementary budgets and acquisition of external debt to increase allocations to critical sectors such as Agriculture, Health, Education, Water and Sanitation, and Social Protection. The increased allocations aimed at bolstering people's livelihoods, the provision of employment opportunities, safety net programmes, clean water, affordable health and a conducive learning environment for school-age children.
7. Kenya has made significant progress towards aligning with the 2030 Agenda by developing the SDGs roadmap covering seven broad areas that would guide the transition process from MDGs to SDGs. The goals and objectives envisioned under the 2030 Agenda have been localised and mainstreamed in Kenya's Vision 2030. KNBS has also defined indicators and reports on progress towards the realisation of SDGs.
8. Medium-Term Plan and County Integrated Development Plans inform government's expenditure priorities. The National Treasury also issues guidelines that direct ministries, departments and agencies to prioritise funding for projects, and align them with the MTPs and objectives under the 2030 Agenda.

5.1 Gender and Public Finance Management in Kenya

9. Kenya has made efforts to mainstream gender issues in all government plans and programmes. Chapter 12 of the Constitution of Kenya 2010 provides that the principle of equity shall guide all aspects of public finance management. Further, the NGEC and State Department for Gender ensure that gender is mainstreamed in all government programming.
10. Parliament is mandated to guide key stages within the budget-making process, and provide an entry-point for infusing gender perspective in the budget. Further, opportunities for public participation also grant opportunities for promoting gender budgeting. However, whilst these guidelines and initiatives promoting gender-responsive budgeting exist, implementation remains a challenge.

5.2 Public Debt Transparency in Kenya

11. There is a publicly available database for public debt in Kenya. The government reports on public debt in line with existing legal provisions and IMF guidelines. This includes a review of the previous year's financing of the budget deficit, composition of domestic debt and external debt, on-lent loans and contingent liabilities, debt strategy and debt sustainability, the medium-term outlook, and commitment fees and penalties paid on undisbursed loans.

12. Available information on public debt is not easily accessible and is scattered in multiple sources like annual debt reports, medium-term debt management strategies, and monthly debt statistical bulletins. The data is also often not disaggregated sufficiently.
13. The government does not report on public debt frequently, thereby, making it impossible to get up-to-date information on recent loans acquired. Further, there is limited transparency in loan contracts, treaties, and agreements signed between government and creditors, inhibiting effective oversight.
14. Citizen debt audits have emerged to address the gaps and challenges associated with a government-led debt audit. The audits serve to analyse the legitimacy of the public debt that the citizens are supposed to repay, including what the debt was used for.
15. There exist various citizen-led initiatives spearheaded by various CSOs to promote the discourse on public debt. The Citizen Public Debt Audits are meant to promote accountability and transparency in borrowing and the use of borrowed funds to enhance service delivery.

5.3 Debt Sustainability in Kenya and the Multilateral Agenda on Debt and Development

16. According to DSA reports by IMF and World Bank, Kenya's debt carrying capacity is assessed as medium with an estimated Composite Indicator (CI) of 3.01 in 2021. However, whilst public debt remains sustainable, the risk of debt distress has increased from low in 2016 to high from 2020 onwards.
17. International Financial Institutions and multilateral agencies have been instrumental in informing debt management and fiscal policies in Kenya. Their participation in informing the country's fiscal management strategies includes offering debt sustainability analyses, classifying debt risks and outlining debt restructuring and reduction strategies.
18. The Debt Service Suspension Initiative (DSSI) was established by the G20 Group of rich nations, emerging powers and other creditors to help low-income countries navigate the pandemic in the wake of constrained fiscal space occasioned by the COVID-19 pandemic. Eligible countries included those in United National List Developed Countries (UN LDC) and active International Development Association (IDA) members. Based on the prescribed criteria, Kenya was eligible to participate in the initiative.
19. Whilst DSSI was designed to offer debt relief to eligible countries, its effectiveness was limited due to overall concerns that, (i) participation impacts negatively on the credit worthiness of participating countries, (ii) there is limited participation of private creditors, and (iii) there is uneven implementation of the relief terms by some bilateral creditors.
20. After initial scepticism, Kenya opted to participate in the DSSI with a target of deferring up to $686 million. According to the CBK, the country deferred up to US$ 600 million under the DSSI. China alone granted Kenya a US$ 245 million repayment holiday.
21. Kenya hoped to save an additional US$ 361 million with the extension of DSSI to the end of December 2021. However, despite formal requests to its creditors to suspend debt repayment of up to US$ 379 million, only US$ 89 million was approved forcing the country to meet most of its debt service obligations in 2021.
22. The utilisation of the country's dollar reserves in debt repayment impacted negatively on the shilling. The Kenyan shilling has continued to weaken against the dollar, which further increases the country's debt stock and burden.
23. Regarding UN's initiative on FFDI, Kenya has been more proactive in pursuing debt relief opportunities by leveraging incentives such as the DSSI and restructuring its debt portfolio by renegotiating the terms.
24. Kenya's debt management strategy between 2020 and 2022 aligns with key policy recommendations suggested within the UN's initiative on FFDI and other multilateral debt workout mechanisms.

SECTION SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

There has been notable progress towards aligning with the 2030 Agenda as seen in the mainstreaming of agenda goals in Kenya's development plans. The SDGs have been localised and are being implemented through the MTPs. Additionally, Kenya has adopted national reviews that track progress on the implementation of the 2030 Agenda. Regarding debt management, Kenya has elaborate frameworks in place that guide public finance management. Nonetheless, the country continues to grapple with imprudent debt management seen in the high public debt stock that is increasingly piling pressure on the economy through high debt servicing costs. Debt servicing, which competes for limited government revenues, has led to the violate human rights by limiting government's provision of essential public services, and contributed to delay in realization of the 2030 Agenda.

The COVID-19 Pandemic contributed to a further increase in Kenya's debt stock although international initiatives helped cushion the negative impacts of the pandemic. Whilst the government has a debt management strategy that aligns with policy recommendations from key international institutions, there is need for proper implementation of the adopted frameworks. There is also need for more inclusion in the public debt management processes in Kenya to allow more participation of non-state actors especially civil society and to strengthen the role of parliament.

6.2 Recommendations

Considering the emerging issues, hereunder are some recommendations that could be pursued by the government of Kenya, International Financial Institutions and Creditors to promote prudent debt management in Kenya:

1. **Explore alternative options for financing development** – The government should increase domestic revenue mobilisation by sealing loopholes in the tax system to eliminate tax evasion and other IFFs.
2. **Ensure proper implementation of the existing frameworks for public finance management to improve accountability** – Government institutions such as the National Treasury and other MDAs should step up their role in providing timely information to all stakeholders on public debt. There should be periodical audits by the parliamentary financial audit and money-related committees on the level of adherence to debt reporting.
3. **Capacity building on debt and debt data reporting** – There is need for technical support to government agencies to strengthen national-level expertise in managing public debt and conducting independent debt sustainability assessments. Development partners and CSOs in Kenya can also play a complementary role in promoting more debt data transparency in Kenya.
4. **Rally creditors to explore debt swaps to ease Kenya's debt burden** – Kenyan authorities should pursue international political support towards negotiations with major creditors such as China and other private creditors for the adoption of debt swaps.
5. **Support to civil society in rallying for prudent debt management** – Multilateral agencies and IFIs should continually provide technical and financial resources to CSOs in Kenya to enhance their expertise in conducting debt audits and to hold the government accountable in its management of public debt.
6. **Adoption of external audits** – Multilateral agencies and IFIs should consider conducting more independent audits on Kenya's public debt, including the set debt management strategies, to have the government improve on the implementation of set strategies.

Tax Justice Network - Africa (TJNA)
Jaflo Block 3, 106 Brookside Drive, Westlands
P. O. Box 25112 – 00100 GPO Nairobi, KENYA
T: (+254) 20 247 3373, (+254) 728 279 368
E: infoafrica@taxjusticeafrica.net
www.taxjusticeafrica.net