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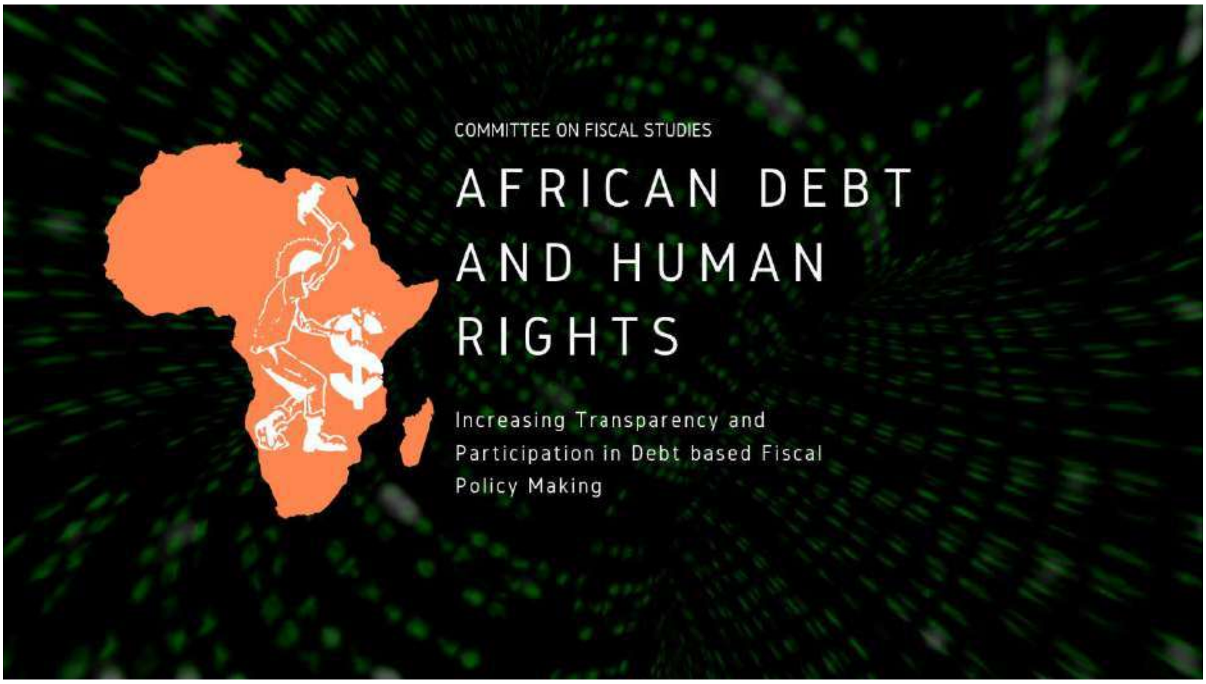
RESOLVING THE DEBT SUSTAINABILITY ISSUES FROM A LEGAL AND INSTITUTIONAL PERSPECTIVE: A KENYAN CASE STUDY



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Resolving the Debt Sustainability Issues from a Legal and Institutional Perspective: A Kenyan Case Study

Summary

The paper argues that the promulgation of the Constitution of Kenya 2010, the enactment of the enabling domestic laws,[1] and the medium-term debt management strategies prepared by the Kenyan Ministry of Finance has not helped much in terms of transforming the management of public debt in Kenya. The paper attributes this to a set of inter-related factors, mainly the failure by Parliament to enforce legislative measures. The paper further observes that failure by Parliament to objectively conduct oversight in the process of public debt management has led to the adoption of public debt policies which undermine human rights. In addition, it is indicated that the country loses significant revenue through illicit financial flows, which if the loopholes facilitating such are sealed, could steer the country towards a sustainable public debt.

Key words: debt sustainability, fiscal transparency, human rights, Kenya

1. INTRODUCTION

According to the International Monetary Fund (IMF), public debt sustainability refers to a country's ability to finance its policy objectives, and service the ensuing debt without unduly large adjustments, which could otherwise compromise its stability.[2] Similarly, Hakura defines it as the capacity of governments to meet all their current and future payment obligations, without causing undue financial stress on the country.[3] Unsustainable debt is not only detrimental to the sovereignty of a country, but also undermines the basic human rights of citizens. Informed by this and the development challenges facing low-income developing countries, the IMF in collaboration with the World Bank Group (WBG) developed a forward-looking tool in 2005, the Debt Sustainability Framework (DSF). The framework categorizes countries based on their assessed debt-carrying capacity and combines this with other key parameters to assign risk ratings of debt distress.[4] On 30th April, 2022, 7 countries were at low

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[1] Republic of Kenya, The Public Finance Management Act 2012 (Nairobi: National Council of Law Reporting); Republic of Kenya, The Public Finance Management Act (Regulations), 2015 (Nairobi: National Council of Law Reporting).

[2] International Monetary Fund, "*Debt Sustainability Analysis*," (Washington DC: the International Monetary Fund, 2017) https://www.imf.org/external/pubs/ft/dsa/

[3] Hakura, Dalia S. "Back to Basics: What is Debt Sustainability?" *Finance & Development* 57, no. 003 (2020). https://www.elibrary.imf.org/view/journals/022/0057/003/article-A017-en.

[4] The World Bank, "*Debt & Fiscal Risks Toolkit*," accessed May 13, 2022. https://www.worldbank.org/en/programs/debt toolkit/dsf#:~:text=The%20Debt%20Sustainability%20Framework%20(DSF,-Income%20Countries%20(LICs).

risk, 24 countries were at moderate risk, 30 countries were at high risk,[5] and 8 countries were in debt distress.[6] Among the 30 countries classified at high risk was Kenya.

This is not an entirely new phenomenon to the country. Since independence, Kenya has experienced bouts of growth and recessions, with the latter mainly attributed to governance issues including cases of mismanagement and corruption in public entities, balance of payment challenges, extreme weather conditions and political instability, especially during election period.[7] The first decade of independence was characterized with macroeconomic stability and rapid economic growth of about 8.2%.[8] Things quickly changed in the 1970s when the country experienced its maiden balance of payment challenges due to the expansionary fiscal policies experiment leading to depletion of reserves. Besides, the global recession of the year 1973 – 1974 due to the oil crisis, the 1974 drought and adoption of an expansionary fiscal stance post the coffee boom of 1977 – 1978 led to deteriorated terms of trade and ultimately, to a drop in real GDP to about 3.1%.[9]

As a result of the foregoing, Kenya's external borrowing increased and it became the first State to use the IMF Oil Facility in 1975.[10] These challenges, coupled with poor commitment by the government to institute strong legal and regulatory frameworks that would enhance efficiency and proper management of public entities and the high budget deficits, led to a series of debt and its associated problems in Kenya.[11] This culminated in implementation of Structural Adjustment Programmes,[12] which eventually worsened living standards among Kenyans; especially in the education and health sectors; in the 1990s.[13] In particular, Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth emphasized the need for budget rationalization programme which required the government to reduce investments in the provision of basic needs.[14]

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[5] African countries in high risk of debt distress category include Burundi, Cameroon, Central African Republic, Comoros, Djibouti, Ethiopia, The Gambia, Ghana, Guinea Bissau, Kenya, Malawi, Mauritania, Sierra Leone, South Sudan and Zambia.

[6] IMF, "*LIC DSA Comprehensive List*," April 30, 2022. https://www.imf.org/external/Pubs/ft/dsa/DSAlist.pdf.

[7] Zeleza, Tiyambe. "Economic policy and performance in Kenya since independence." *Transafrican Journal of History* (1991): 35-76. https://www.jstor.org/stable/24520302

[8] Kenya National Bureau of Statistics, "Inequality trends and diagnostics in Kenya," 2020. https://www.knbs.or.ke/wp-content/uploads/2021/07/Inequality-Trends-and-Diagnostics-in-Kenya-Report.pdf.

[9] Odhiambo, Simeo Okelo, G. Momanyi, L. Othuon, and Fredrick O. Aila. "The relationship between fiscal deficits and economic growth in Kenya: An empirical investigation." *Greener Journal of Social Sciences* 3, no. 6 (2013): 306-323. https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=The+Relationship+between+Fiscal+deficits+and+Economic+growth+in+Kenya&btnG=

[10] Ng'eno, N. K. "5 The External Debt Problem of Kenya." In *External debt and capital flight in sub-Saharan Africa*. International Monetary Fund, 1991. https://www.elibrary.imf.org/view/books/071/02256-9781557757913-en/ch005.xml.

[11] Kiringai, Jane. *Debt and PRSP conditionality: the Kenya case*. No. 2002/54. WIDER Discussion Paper, 2002.

[12] Government pronouncements in Sessional Paper No. 4 of 1980 and Sessional Paper No. 1 of 1986.

[13] Rono, J. K. (2002). The impact of the structural adjustment programmes on Kenyan society. *Journal of social development in Africa*, *17*(1), 81-98.

[14] Zeleza, Tiyambe. "Economic policy and performance in Kenya since independence." *Transafrican Journal of History* (1991): 35-76.

The period between 2010 – 2019, was considered a revolutionary moment for Kenya.[15] It is during this period that the Constitution of Kenya 2010 was promulgated. This heralded numerous benefits, among them being enhanced governance and institutional structures which were designed to embed transparency and accountability in public finance management. The Constitution also prescribed public finance principles which are necessary in the management of debt sustainability.[16] With it also came the enactment of enabling laws, such as the Public Finance Management Act of 2012 and attendant National Government Regulations of 2015. It was also during this era that Kenya rebased its economy from a low-income country to a lower-middle income country.[17] Historically, Kenya's debt problem has been attributed to harder terms of loans, higher proportion of private loans with high interest rates, instances of corruption and external shocks.[18] The rebasing of the economy in the year 2014 implied hardened borrowing terms requiring Kenya to access loans from the commercial window of her official multilateral lenders, rather than from the concessional window as was the case prior.[19] It also meant that due to increased investor confidence in the performance of the economy, Kenya could issue bonds in the international financial markets and acquire financing for development.

Consequently, the country diversified her sources of external borrowing to include syndicated loans, Eurobonds and loans from new bilateral creditors, whose terms were unfavourable, having shorter grace periods and maturity periods and higher interest rates.[20] This has resulted in increased refinancing risk leading to a higher proportion of the national budget and ordinary revenue being spent to service debt leaving meagre resources for public service delivery. Subsequently, the country breached various ceilings provided in the legal and policy frameworks, including the 3% fiscal deficit ceiling for East African Community countries and the 50% debt to GDP ratio in Net Present Value terms. Attempts to revise the debt ceiling to Kenyan Shilling 9 trillion (USD 78 billion) proved ineffective[21] and the results of the containment measures put in place to manage the COVID-19 pandemic which led Kenya to the inevitable tipping point.

All these developments are despite the existence of robust legal and policy frameworks, whose overriding strategies are focused on improving the management of public finance and

[15] O'Loughlin, Elizabeth A. "Kenya's Constitution in a global context." (2017): 839-848.

[16] Zutt, Johannes. "A New Constitution for Kenya," *Africa Can End Poverty* 2010. https://blogs.worldbank.org/africacan/a-new-constitution-for-kenya.

[17] Mistiaen Johan, Randa John and Sanghi, Apurva. "Kenya's re-based national accounts: myths, facts, and the consequences," *Data Blog* (World Bank Blogs, 2014) https://blogs.worldbank.org/opendata/kenya-s-re-based-national-accounts-myths-facts-and-consequences

[18] Ng'eno, N. K. "5 The External Debt Problem of Kenya." In *External debt and capital flight in sub-Saharan Africa*. International Monetary Fund, 1991. https://www.elibrary.imf.org/view/books/071/02256-9781557757913-en/ch005.xml.

[19] Republic of Kenya, The National Treasury, *Medium Term Debt Management Strategy* (Nairobi: Government Printer) 2015; Republic of Kenya, The National Treasury, *Medium Term Debt Management Strategy* (Nairobi: Government Printer) 2017.

[20] Republic of Kenya, National Treasury, "*Medium Term Debt Management Strategy* (Nairobi: Government Printer) 2021.

[21] Special Issue Kenya Gazette Supplement No. 83, Legal Notice No. 89 of May 26, 2022, proposed an amendment to section 26(1) of the PFM (National Government) Regulations to revise the debt ceiling to ten trillion shillings.

ensuring a sustainable public debt. This paper argues that this is due to the political nature of Kenya's fiscal policy processes which overshadow responsible fiscal approach.[22] In light of the foregoing, this paper reviews the public debt situation in Kenya from a legal and political perspective to provide policy solutions aimed at resolving debt sustainability issues facing the country. Empirical work has been relied on to establish existing gaps and innovative approaches towards reducing fiscal deficits and funding of infrastructure within the existing frameworks. An extensive review and analysis of Kenya's debt situation, the scope of the current laws and policies, existing gaps and inconsistencies in implementation are provided. The paper then proffers appropriate recommendations aimed at resolving the debt sustainability issues in Kenya. The next section of this paper begins by looking at the situational analysis of public debt in Kenya. The discussion then moves to consider the human rights implications of public debt and an examination of the legal, policy and institutional frameworks supporting Kenya's fiscal space. The paper then concludes with several recommendations.

2. SITUATIONAL ANALYSIS OF PUBLIC DEBT IN KENYA

In 2021, the IMF considered Kenya's public debt sustainable, albeit being classified at a high risk of distress. Further, due to dwindling growth prospects and reserves coverage, Kenya was down-graded to a medium policy performer.[23] This situation was exacerbated by Covid-19 and the associated containment measures. However, Kenya was still vulnerable prior to the outbreak of pandemic.[24] The current geopolitical war,[25] threatens to worsen the situation further due to the high inflation and interest rates. Against these concerns, the next sub-sections provide insights into Kenya's public debt and the risks associated with it.

2.1. Analytical Review of Public Debt in Kenya

Kenya's debt problem can be traced back to the early 1980s, attributable to both exogenous and endogenous factors.[26] Internationally, there was the oil crisis of the 1970s which triggered a global recession. Domestically, it led to balance of payment challenges which were occasioned by an increase in food imports. This was due to unfavourable weather conditions and the myopic expansionary fiscal policies adopted by the government post the coffee boom of the late 1970s.[27] The resultant fiscal pressure led the government to incur heavy borrowing

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[22] Mwega, Francis M., and Njuguna S. Ndung'u. "Explaining African economic growth performance: The case of Kenya." (2004).

[23] International Monetary Fund, Debt Sustainability Analysis "*Kenya Requests for an Extended Arrangement Under The Extended Fund Facility And An Arrangement Under The Extended Credit Facility—Debt Sustainability Analysis*," March 19, 2021. https://www.imf.org/ /media/Files/DSA/external/pubs/ft/dsa/pdf/2021/dsacr2172.ashx

[24] Kenya had breached three indicative thresholds used in the assessment of debt sustainability for economies at its level as of 2019.

[25] Russia invaded Ukraine in February 2022.

[26] Kabubo-Mariara, Jane, and Tabitha Wagithi Kiriti. "Structural adjustment, poverty and economic growth: An analysis for Kenya." (2002).

[27] Kiringai, Jane. *Debt and PRSP conditionality: the Kenya case*. No. 2002/54. WIDER Discussion Paper, 2002.

from commercial creditors and other donors on hardened terms (Okelo, et al. 2013).[28] For instance, Okelo, et al., in their paper on *"The Relationship between Fiscal deficits and Economic Growth in Kenya,"* indicated that the cost of servicing debt doubled between 1975 and 1982 from 14.0% to 28.0%. The attempted *coup de tat* of 1982 further worsened the situation eventually leading to high budget deficits of about 7.0%.[29] Measures that were adopted by the government to address the situation received criticism by various researchers.[30] For instance, the decision to turn to the Bretton-woods Institutions for assistance and support, led to implementation of major policy and institutional reforms, popularly known as the Structural Adjustment Programmes (SAPs).[31] Unfortunately, this impacted negatively on living standards due to reduction in expenditure in pro-poor sectors such as education and health sectors.[32] Moreover, the last decade of the 20th century was marred with political instability occasioned by the 1992 multiparty elections, foreign aid embargo due to the Golden berg scandal,[33] and unfavourable weather conditions, all of which aggravated the situation.[34]

Kenya's public and publicly guaranteed debt has been increasing steadily in the past two decades as shown below in Figure 1. On average, public debt grew by about 13.2%, with the highest growth of about 27.9% observed in the year 2016 while the lowest growth of about 0.02% was observed in the year 2005. Overall, the growth in public debt is observed to increase around periods of general elections.[35] The growth in public debt is also greatly influenced by shocks.[36] Public debt growth between 2001 and 2010 averaged about 8.8% whereas that between 2011 and 2020 averaged about 18.6%. The decade between 2000 and 2010 was characterized with a relatively higher increment in domestic debt as compared to external debt while the reverse was true for the decade between 2010 and 2020. The growth rate between the period 2000 and 2010 was approximately 220.0% for domestic debt and 43.0% for external debt, while in the period between 2010 to 2020, external debt grew by about 522.0% and

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[28] Odhiambo, Simeo Okelo, G. Momanyi, L. Othuon, and Fredrick O. Aila. "The relationship between fiscal deficits and economic growth in Kenya: An empirical investigation." *Greener Journal of Social Sciences* 3, no. 6 (2013): 306-323. https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=The+Relationship+between+Fiscal+deficits+and+Economic+growth+in+Kenya&btnG=

[29] Kabubo J. and Kiriti, T. "Structural Adjustment, Poverty and Economic growth: An analysis for Kenya," November 2002.

[30] Thomson, Michael, Alexander Kentikelenis, and Thomas Stubbs. "Structural adjustment programmes adversely affect vulnerable populations: a systematic-narrative review of their effect on child and maternal health." *Public health reviews* 38, no. 1 (2017): 1-18.

[31] Zeleza, Tiyambe. "Economic policy and performance in Kenya since independence." *Transafrican Journal of History* (1991): 35-76.

[32] Rono, J. K. (2002). The impact of the structural adjustment programmes on Kenyan society. *Journal of social development in Africa*, *17*(1), 81-98.

[33] Wachira Maina, "Tales of State Capture: Goldenberg, Anglo Leasing and Eurobond," *The Elephant* September 5, 2019. https://www.theelephant.info/features/2019/09/05/tales-of-state-capture-goldenberg-anglo-leasing-and-eurobond/

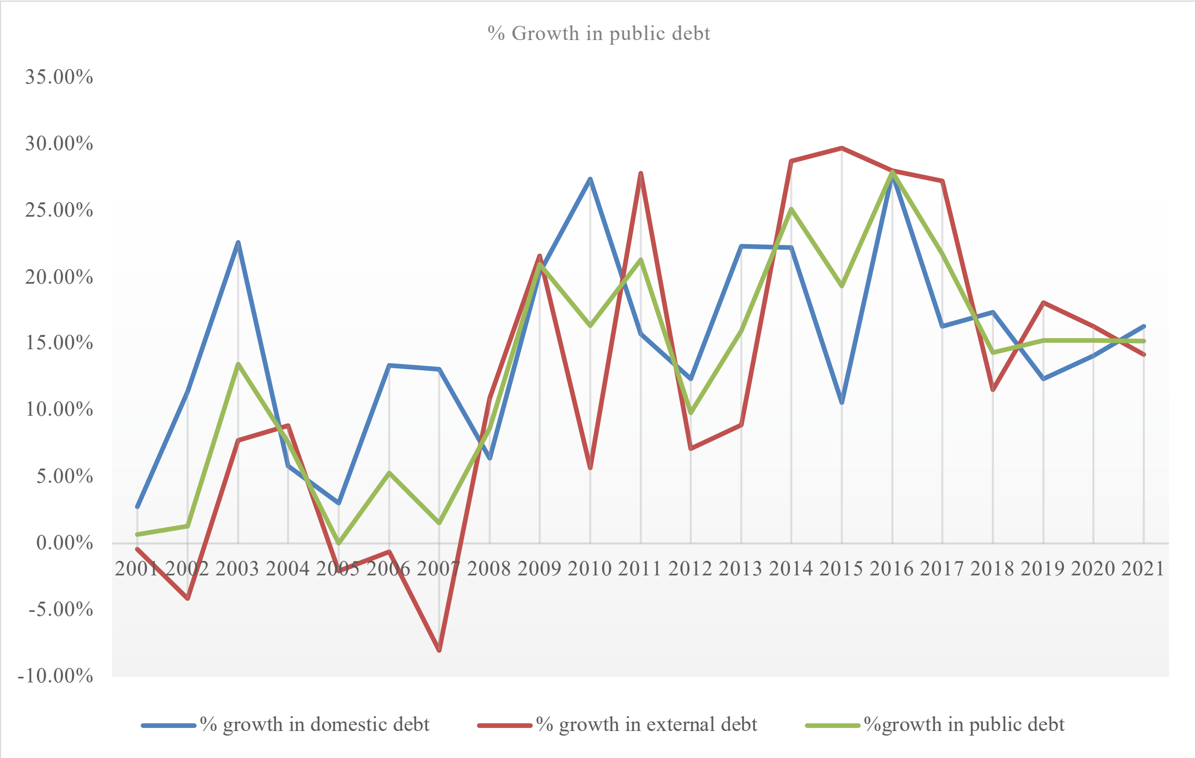
[34] Ngecu, Wilson M., and Eliud M. Mathu. "The El Nino triggered landslides and their socio-economic impacts on Kenya." *Episodes Journal of International Geoscience* 22, no. 4 (1999): 284-288.

[35] Notably, in the year 2003, it grew to 13.5% from 0.7% in 2001, grew to 8.7% in the year 2008 from 1.5% in 2007, grew to 16.0% in the year 2013, before ballooning to about 25.1% in the year 2014 and finally, to 27.9% in the year 2016.

[36] For instance, the drought of the year 2008/09 and the global financial crisis witnessed around the same period pushed the growth to 21.01% in the year 2009.

domestic debt by 381.0%.[37] Statistics indicate the stock of public debt in Kenya stood at Ksh 8.47 trillion (USD 73.7 billion)as of April 2022, with Ksh 4.24 trillion (USD 36.9 billion) owed to external creditors and Ksh 4.23 trillion (USD 36.8 billion)to domestic creditors.[38]

Figure 1: % Growth of public debt in Kenya between the years 2000 - 2021



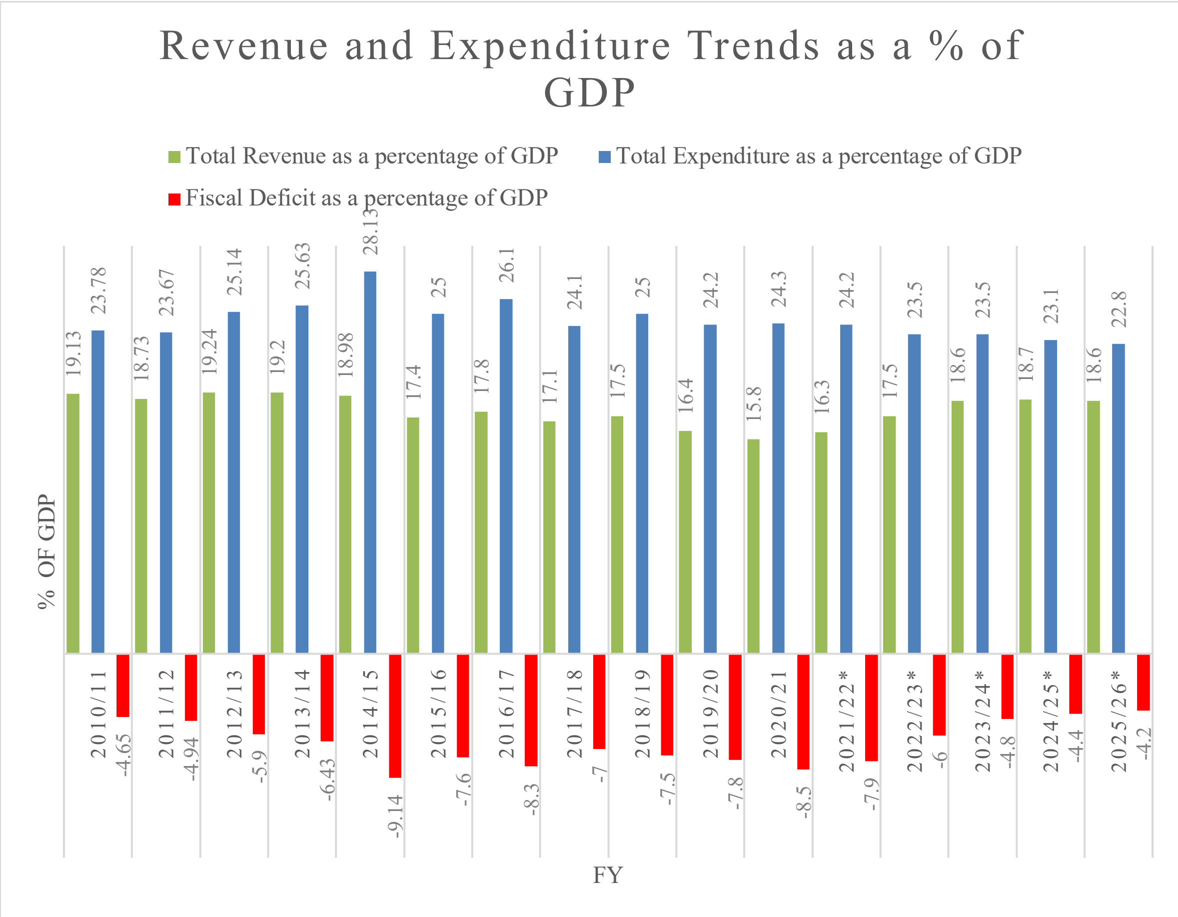
Source: Republic of Kenya Central Bank of Kenya, (2000 – 2022)

The increase in public debt in Kenya has been driven by various factors including high fiscal deficits due to the ballooning public expenditure to finance large infrastructural projects[39] and repay public debt,[40] dismal performance in revenues, in-year revisions of the budget and illicit financial flows and predicate offences such as corruption.[41] For instance, between FY 2010/11 and 2020/21, public expenditure as a percentage of GDP averaged at about 25.0% while total revenues expressed as a percentage of GDP averaged about 18.0% creating a fiscal gap of about 7.0% of GDP. The FY 2014/15 saw Kenya experience the highest fiscal deficit of 9.1% hugely driven by the high public expenditure of 28.1%.[42] This is contrary to the declared

[37] Republic of Kenya, Central Bank of Kenya, "Government Finance Statistics," (Nairobi, accessed on 21 May, 2022). https://www.centralbank.go.ke/public-debt.
[38] Republic of Kenya, National Treasury, "Monthly Debt Bulletin," (Nairobi: Government Printer, April 2022).
[39] Republic of Kenya, National Treasury, "Annual public debt management report, 2016/2017," (Nairobi: Government Printer, 2017).
[40] In the Budget Policy Statement of 2017, the National Treasury revised its recurrent expenditure for the FY 2016/17 due to increase in foreign interests from Ksh. 53,520 million (USD 465.4 million) to Ksh. 58,439 million (USD 508.2 million). This constituted one of the expenditure head that was revised upwards. https://www.treasury.go.ke/wp-content/uploads/2021/03/2017-Budget-Policy-Statement.pdf.
[41]Letete, Emmanuel, and Mare Sarr. *Illicit Financial Flows and Political Institutions in Kenya*. African Development Bank, 2017.
[42] The debt ceiling has undergone two revisions within a decade from 50% of GDP in net present value terms, to Ksh. 9 trillion (USD 78.3 billion) in November 2019 and further to Ksh. 10 trillion (USD 87 billion) in June 2022.

government commitment of pursing fiscal consolidation strategy to mitigate public debt unsustainability. In addition, foreign interests grew by 106.0%[43] in the FY 2014/15. According to Central Bank of Kenya, this coincided with the debut Eurobond issue by the Government of Kenya to settle a syndicated loan acquired in the year 2012.[44] The revenue performance of the country was worst at 15.8% of GDP in the FY 2020/21 due to the negative effects of COVID-19. The attendant expenditure pressures pushed the deficit to about 8.5% of GDP. This is shown in the figure 2 below.

Figure 2: Revenue and Expenditure trends as a % of GDP (FY 2010/11 - FY 2025/26)



Source: Various sources[45]

The high public debt has further been exacerbated by the in-year revisions of the budget through supplementary budgets, where ordinary revenues have been significantly negatively affected compared to expenditures. On average, between the FY 2016/17 and 2020/21, ordinary revenue was revised downwards by Ksh. 20,277.8 million (USD 1.8 billion) while expenditure

[43] Republic of Kenya, National Treasury Quarterly Economic and Budgetary Report, FY 2016/17.
[44]Republic of Kenya, Central Bank of Kenya, "Central Bank Annual Report," 2014. https://www.centralbank.go.ke/uploads/850146089_2014%20Annual%20Report.pdf
[45] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer); Republic of Kenya National Treasury, Budget Review and Outlook Paper FY 2021/22(Nairobi: Government Printer, 2021)

experienced an average downward revision of Ksh. 2,315.6 million (USD 201.4 million) within the same period (Table 1).

Table 1: Original estimates vis a vis revised estimates

	Ordinary Revenue (Ksh millions)			Expenditure (Ksh in millions)		
FY	Original Estimates	Revised Estimates	Deviation	Original Estimates	Revised Estimates	Deviation
2016/ 2017	1,305,794	1,374,547	68,753	2,275,556	2,066,969	-208,587
2017/ 2018	1,486,294	1,489,633	3,339	2,298,800	2,329,961	31,161
2018/ 2019	1,688,492	1,588,132	-100,360	2,557,246	2,555,132	-2,114
2019/ 2020	1,877,176	1,843,813	-33,363	2,796,027	2,874,171	78,144
2020/ 2021	1,633,767	1,594,009	-39,758	2,774,711	2,864,529	89,818
Average			-20277.8			-2315.6

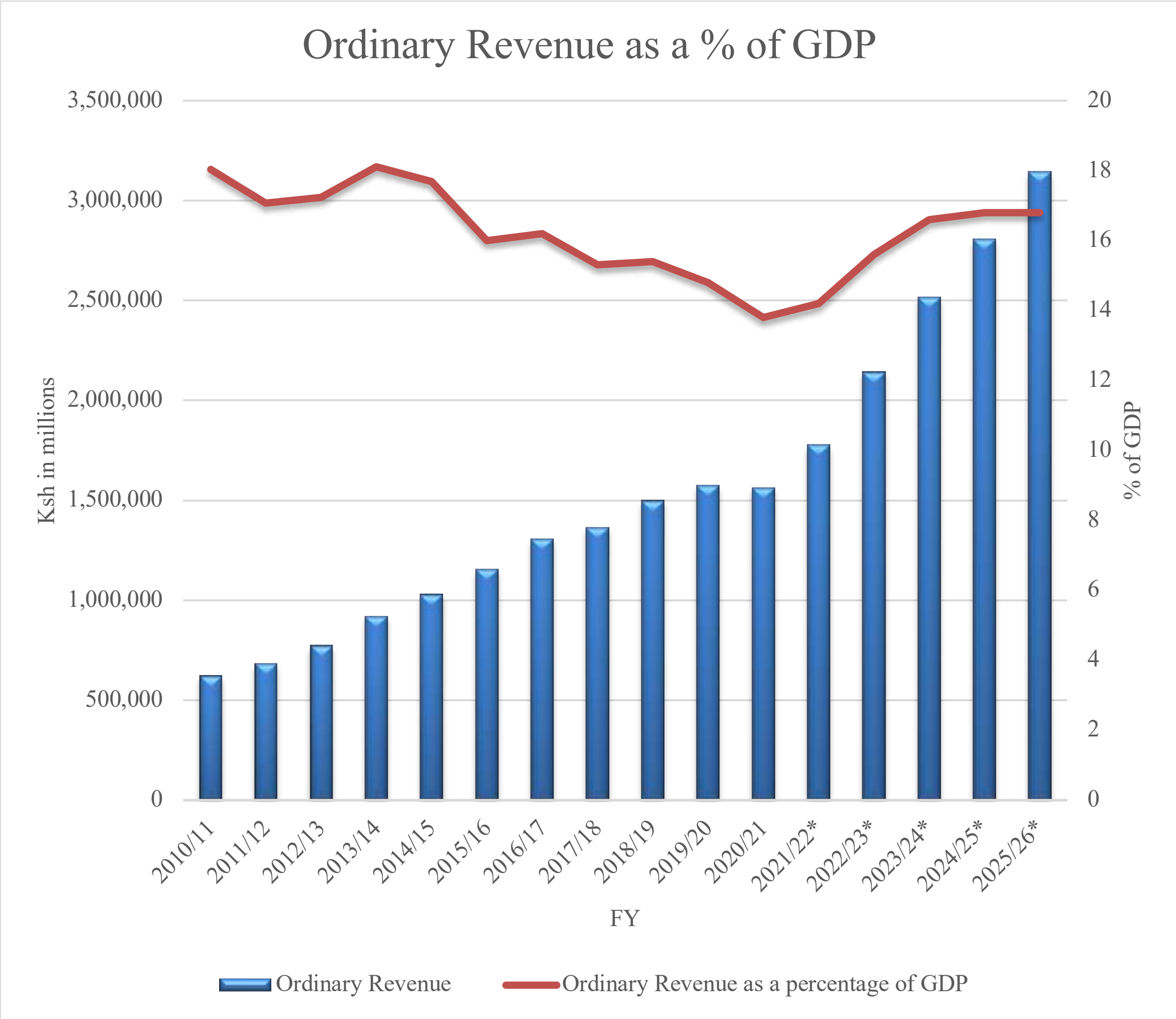
Source: Republic of Kenya National Treasury, Budget Policy Statement 2017 – 2022, Quarterly Economic and Budgetary Review 2016/17 – 2021/22 and Kenya Revenue Authority Press Release July 2021.

Although the Constitution of Kenya 2010[46] provides that public participation should be observed in public finance matters, section 44 of the Public Finance Management Act 2012 does not require supplementary budgets to undergo public participation. This therefore allows the government to deviate from the priorities identified by citizens during the budget formulation stage thus undermining service delivery.[47] In addition, ordinary revenue has been

[46] Article 201 of the Constitution of Kenya
[47] Letete and Sarr in their 2017 working paper on Illicit Financial Flows and Political Institutions in Kenya argue that weak political institutions allows political actors to have discretionary political powers to design and administer regulations and policies in a discretionary manner.

growing in nominal terms, but gauged against the growth of the economy, the trend suggests otherwise (see Figure 3). This coupled with Kenya Revenue Authority's inability to meet the revenue targets[48] continues to put fiscal pressures on government.

Figure 3: Ordinary Revenue as a % of GDP



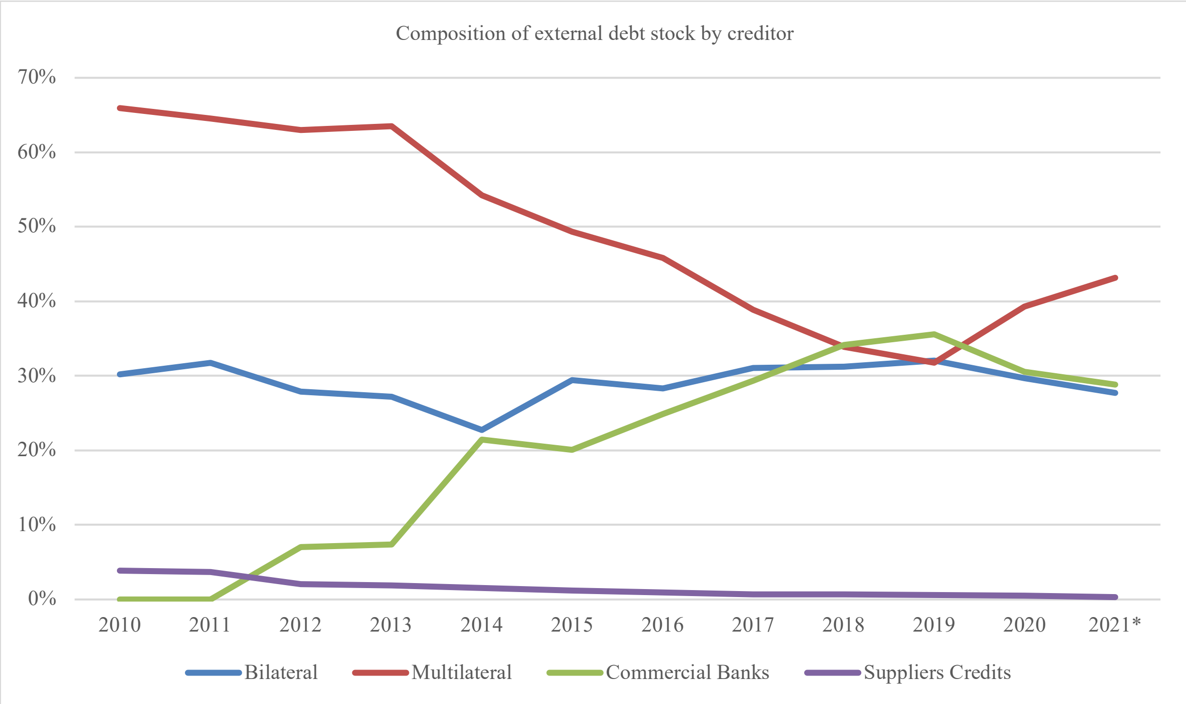
Source: Various sources[49]

In the decade between 2010 to 2020, composition of Kenya's external debt stock was characterised by significant increment from commercial banks[50] and less of loans from multilateral creditors.[51] This increase has been attributed to financing of infrastructure projects,

[48] Revenue collections have experienced a dismal performance for the past five years, with the exception of the FY 2021/22.
[49] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer); Republic of Kenya National Treasury, Budget Review and Outlook Paper FY 2021/22(Nairobi: Government Printer, 2021)
[50] Commercial banks refer to syndicated loans and international sovereign bonds.
[51] Between the year 2010 and 2014, the stock of external debt from commercial banks averaged about 7% while between 2015 to 2020, it was 29%. Comparatively, the stock of debt from multilateral lenders moved from 62% to 40% within the same period.

maturing debt obligations, covering fiscal deficits and reduced financial aid by donor countries.[52] In particular, the stock of external debt from commercial banks was observed to increase whenever the government issued a Eurobond. It tripled from 7.0% in 2013 to 21.0% in 2014 during the debut Eurobond issue in June and December 2014, increased from 29.0% in 2017 to 34.0% in 2018 during the second Eurobond issue and later to 36.0% in 2019 during the third Eurobond issue. The composition of external debt stock by creditor is illustrated in Figure 4.

Figure 4: Composition of external debt by creditor 2010 - 2021



Source: Republic of Kenya National Treasury, Annual public debt reports, (2012 – 2021)

On the bilateral front, China has emerged as the largest lender to Kenya, edging out official bilateral creditors such as Japan.[53] Latif observes that external debt from private companies poses legal risks to the borrowing country in cases of extreme fiscal challenges[54] with the most recent lawsuit being by the Hamilton Reserve Bank against Sri Lanka in June 2021.[55] This emphasises the need for Kenya to restrict borrowing from external commercial banks to hedge against legal risks that are a characteristic of such borrowing.

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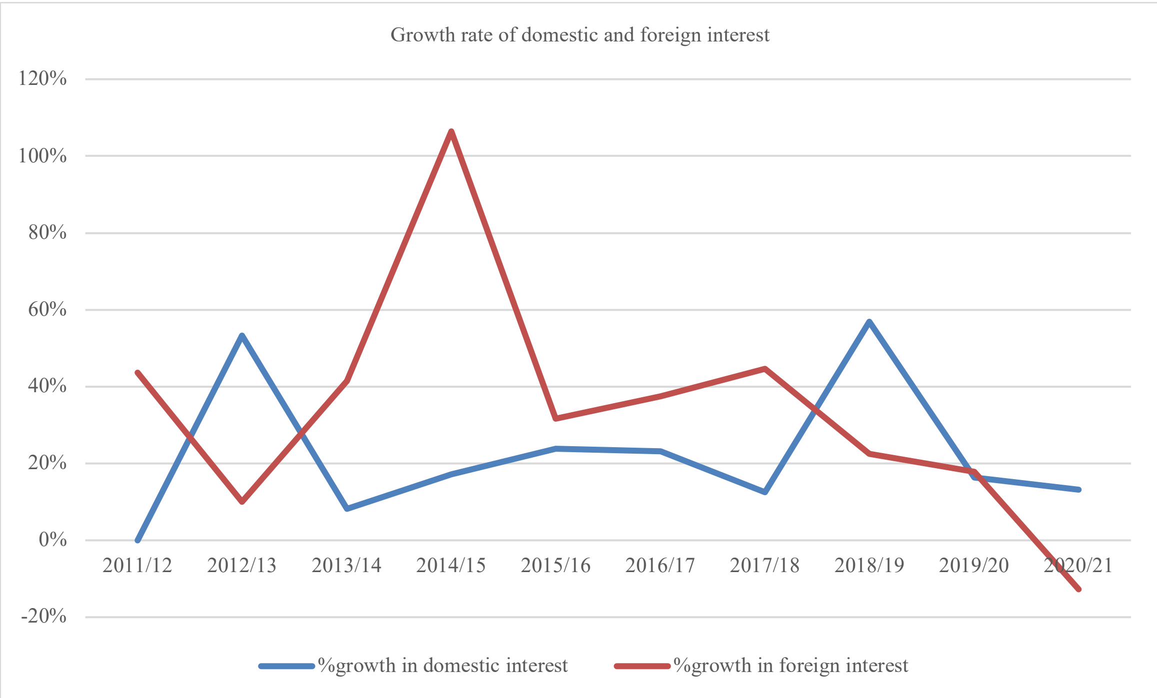
[52] Cytton, "Sub-Sahara Africa Eurobonds: H1' 2019 Performance," accessed on June 11, 2022. https://cytonn.com/uploads/downloads/h12019-ssa-eurobond-performance-note.pdf.
[53] Republic of Kenya National Treasury, "Annual Public Debt Report 2020/2021," (Nairobi: Government Printer, 2021).
[54] Latif, LA, "Is Africa's Fiscal Space Undermined by Debt related Illicit Financial Flows? A Case Study of Selected SADC Member States," Working Paper 01/03 ADHR (CFS, 2022): Available at: https://cfs.uonbi.ac.ke/system/files/2022-04/Lyla%20Latif_Is%20Africa's%20Fiscal%20Space%20Undermined%20by%20Debt%20related%20Illicit%20Financial%20Flows.%20Case%20Study%20of%20Selected%20SADC%20Member%20States...pdf.
[55] Dolmetsch, Chris. "Sri Lanka Sued by Bondholder in US After Historic Default." *Bloomberg. June 22, 2022.* https://www.bloomberg.com/news/articles/2022-06-21/sri-lanka-sued-by-bondholder-in-us-following-historic-default (Accessed June 29, 2022).

2.2.Cost and Risk Implications of External Debt in Kenya

Borrowing on commercial terms increases the cost of debt, implying that a higher proportion of the budget may be diverted towards interest repayment.[56] As illustrated in Figure 5, the sharp growth rate in foreign interests of 106.0% observed in the FY 2014/15 was due to the bullet payment of the syndicated loan acquired by Kenya in 2012. Noteworthy, this was repaid using proceeds from the debut Eurobond issued in June 2014,[57] indicating that Kenya has been borrowing for debt repayment which is against the provisions of Section 15 (2)(c) of the Public Finance Management Act, 2012, which stipulates that over the medium term, the national government's borrowing shall be used only for the purpose of financing development expenditure and not for recurrent expenditure.

Figure 5: Growth of interest payments on public debt



Source: Various sources[58]

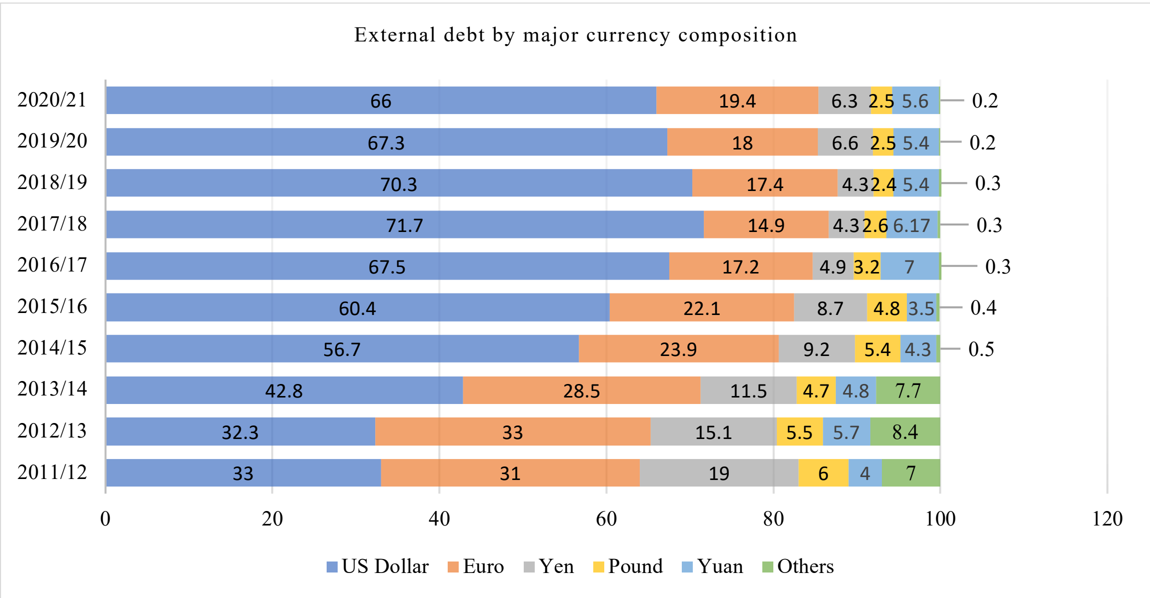
Kenya's external debt portfolio is mainly denominated in United States (US) Dollar, Euros and Yen. Other major currencies include the Sterling Pound and the Chinese Yuan. Movements in exchange rates have implications on both the servicing costs of external debt

[56] Statistics from the National Treasury indicate that between the FY 2010/11 to FY 2020/21, the average cost of external debt increased by 34% compared to that on domestic debt whose cost averaged 22%. See the Quarterly Economic and Budget Review Reports of FY 2016/17 and 2021/22.
[57] Republic of Kenya Central Bank of Kenya, "Central Bank of Kenya Annual Report," (Nairobi: Government Printer,2014) accessed on June 10, 2022. https://www.centralbank.go.ke/uploads/850146089_2014%20Annual%20Report.pdf
[58] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer)

and the size of the external debt stock. A review of the annual public debt reports indicates that the US Dollar has edged out the Euro, Yen, and Pound, with the Yuan observed to have gained significance in Kenya's external debt stock portfolio.[59] For instance, between the FY 2011/12 to 2020/21, the stock of external debt denominated in US Dollar doubled from 33.0% to 66.0% while the Euro, Yen and Pound decreased from 31.0% to 19.4%, 19.0% to 6.3% and 6.0% to 2.5% respectively. During the same period, debt denominated in the Chinese Yuan increased from 4.0% to 5.6%.[60]

The Kenyan Shilling has continued to depreciate against these major currencies thus exposing Kenya to exchange rate risk.[61] This was worse in the year 2020 when the COVID-19 pandemic ravaged the global and Kenyan economy, leading to increase in the nominal debt stock.[62] There is thus a need to diversify sources of fiscal funding and the mix of currencies to hedge against exchange rate risk on Kenya's external debt. The currency composition is illustrated in Figure 6.

Figure 6: Currency Composition of External Debt for FY 2011/12 – FY 2020/21



Source: Republic of Kenya National Treasury, Annual Public Debt Reports, (2012 – 2021)

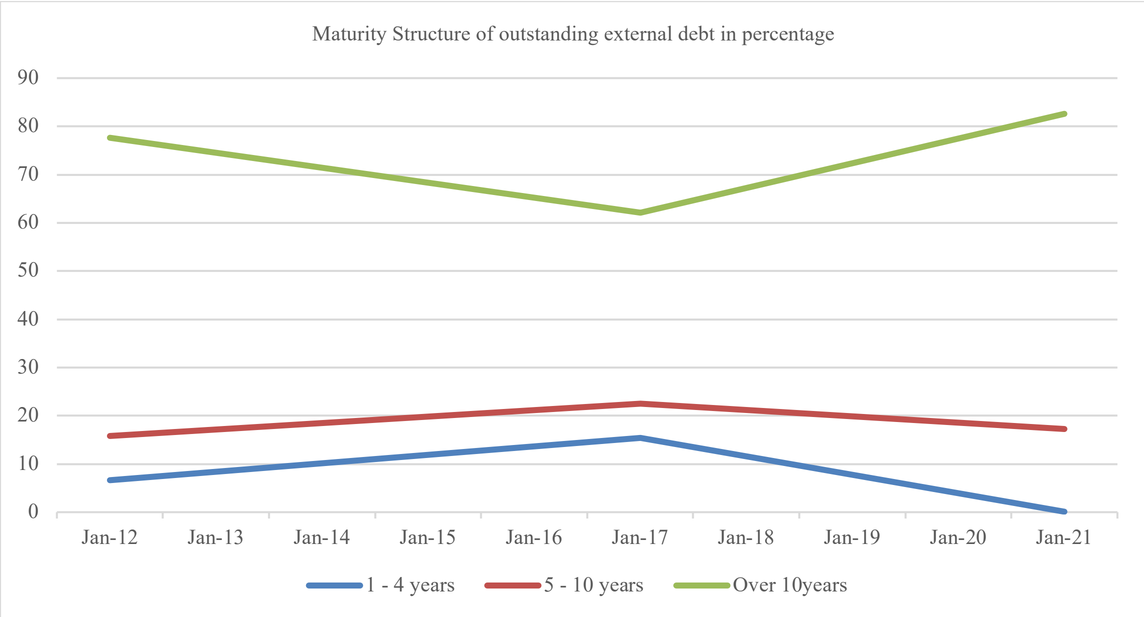
An analysis of the maturity structure of total outstanding external debt indicates that in June 2017, external debt maturing in less than 4 years, 5 – 10 years and over 10 years accounted for 15.4%, 22.5% and 62.1% of total external debt stock respectively having changed from

[59] Republic of Kenya National Treasury, "Annual Public Debt Report 2012 - 2021," (Nairobi: Government Printer).
[60] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer)
[61] Republic of Kenya National Treasury, "Annual Public Debt Report 2019/2020," (Nairobi: Government Printer, 2020).
[62] Republic of Kenya National Treasury, "Annual Public Debt Report 2020/2021," (Nairobi: Government Printer, 2021).

6.6%, 15.8% and 77.6% recorded in June 2012.[63] Such a situation exposes the country to refinancing risks, whereby the country is forced to borrow to repay the fast-maturing debt, a case in point in 2014 when Kenya had to issue a Eurobond to retire the 2012 syndicated loan. Similarly, the same happened in March 2018 when Kenya issued the second Eurobond, where part of the proceeds settled outstanding syndicated loan from the years 2015 and 2017.[64]

However, since 2020, the government has shifted towards concessional loans from official multilateral creditors. Subsequently, this has been reflected in the maturity structure as reviewed in June 2021 where the proportion of external debt maturing above 10 years increased to 82.6% while that of loans maturing in less than 4 years declined to 0.1%. This is illustrated in Figure 7.

Figure 7: Maturity structure of outstanding external debt in percentage



Source:[65] *Republic of Kenya National Treasury, Annual Public Debt Report 2020/2021 and 2018/19*

The high refinancing risk is attributed to the worsening terms of new external loans, where the average maturity years declined from 26.6 years in 2011 to 15.3 years in 2019 before rising again to 26.1 in 2020. [66] Equally, during this period (2011 - 2019), the grace period worsened from an average of 8.1 to 5.6 years while the average interest rates increased from 0.8% to 3.9%. Since June 2021, the average maturity, the grace period and average interest

[63] Republic of Kenya National Treasury, "Annual Public Debt Report 2020/21," (Nairobi: Government Printer 2021); Republic of Kenya National Treasury, "Annual Public Debt Report 2018/19," (Nairobi: Government Printer 2019).
[64] Genghis Capital, "Kenya Eurobond 2018 A to Z (Part II)," March 3, 2018. https://www.genghis-capital.com/newsfeed/kenya-eurobond-2018-a-to-z-part-ii/.
[65] *Republic of Kenya National Treasury, Annual Public Debt Report 2020/2021 (Nairobi: Government Printer,2021); Republic of Kenya National Treasury, Annual Public Debt Report 2018/2019 (Nairobi: Government Printer,2019)*
[66] On 2nd April 2020, the World Bank issued a US$ 50 million loan to Kenya. Similarly, the IMF and AFDB extended a loan of US$ 739 million and Euro 188 million on 6th and 22nd of May 2020 respectively.

rates for new external loans stands at 23.3 years, 7.4 years and 2.1% respectively.[67] This is illustrated in the Table 2.

Table 2: Average terms of new external loan commitments

	Average Terms of new external loan commitments as of June of the year:										
Description	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Average Maturity (Years)	26.6	26.3	33.7	18.1	21	20.3	17.6	20.8	15.3	26.1	23.3
Grace Period (Years)	8.1	6.2	8	6.2	6.4	6.2	4.5	10.3	5.6	7.4	7.4
Average Interest Rates (%)	0.8	0.8	1.2	2.6	2.5	2.6	2.6	3.9	3.9	0.5	2.1

Source: Republic of Kenya National Treasury Medium Term Debt Management Strategy, 2018 – 2022, Annual Public Debt Management Report 2016/17 and 2011/12

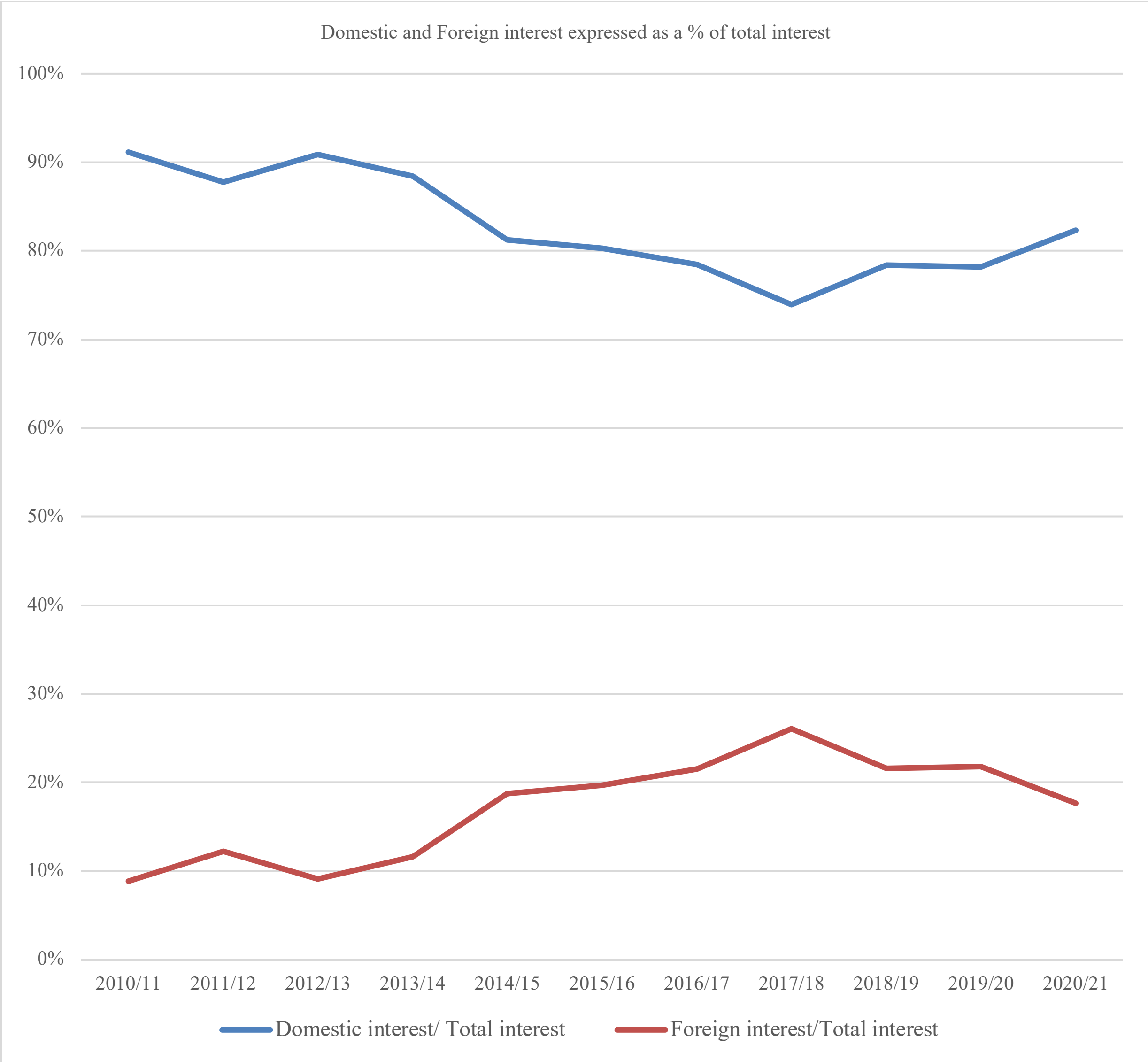
Domestic debt constitutes about half of the total public debt with the major investors being commercial banks.[68] A situation where commercial banks are the major players in a country's domestic debt market results in a crowding out effect. This has the net effect of increasing interest rates hence limiting the amount of credit available for other small and medium enterprises. Other investors are drawn from non-bank financial institutions and include the pension funds and insurance companies who held an average of about 45.0% of total domestic debt between FY 2011/12 and FY 2020/21. As was the case on external debt, the growth in domestic debt was mainly attributed to the need by the government to finance the deficit and refinance matured securities.[69]

2.3.Cost and Risk Implications of Domestic Debt in Kenya

Although the cost of domestic debt declined from 91.0% of the total interest paid on public debt to 78.0% between the FY 2010/11 and FY 2019/20, statistics show this cost was higher than the cost of external debt (see Figure 8). For instance, while the average cost associated with domestic debt was 83.0% between the FY 2010/11 and FY 2020/21, that of external debt averaged 17.0%.

[67] Republic of Kenya National Treasury *Medium Term Debt Management Strategy, (Nairobi: Government Printer, 2018 – 2022);* Republic of Kenya National Treasury *Annual Public Debt Management Report, (Nairobi: Government Printer, 2017);* Republic of Kenya National Treasury *Annual Public Debt Management Report, ,(Nairobi: Government Printer, 2012)*
[68] According to annual public debt reports, commercial banks held 55% of domestic debt between FY 2011/12 to FY 2020/21.
[69] Republic of Kenya National Treasury, "Annual Public Debt Management Report 2014/15," (Nairobi: Government Printer, 2016).

Figure 8: Interest payments on domestic and foreign debt as a percentage of total interest payments



Source: Quarterly Economic and Budget Review Reports FY 2016/17 and 2021/22[70]

The main debt instruments in the domestic market are the treasury bills and bonds as illustrated in figure 9. Between the FY 2011/12 and FY 2020/21, the domestic debt market was dominated by a higher proportion of treasury bonds, albeit the percentage had been decreasing. This signified declining investor confidence in the future performance of the economy thus leading to the breach of the recommended ration of treasury bonds to bills of 70:30.[71]

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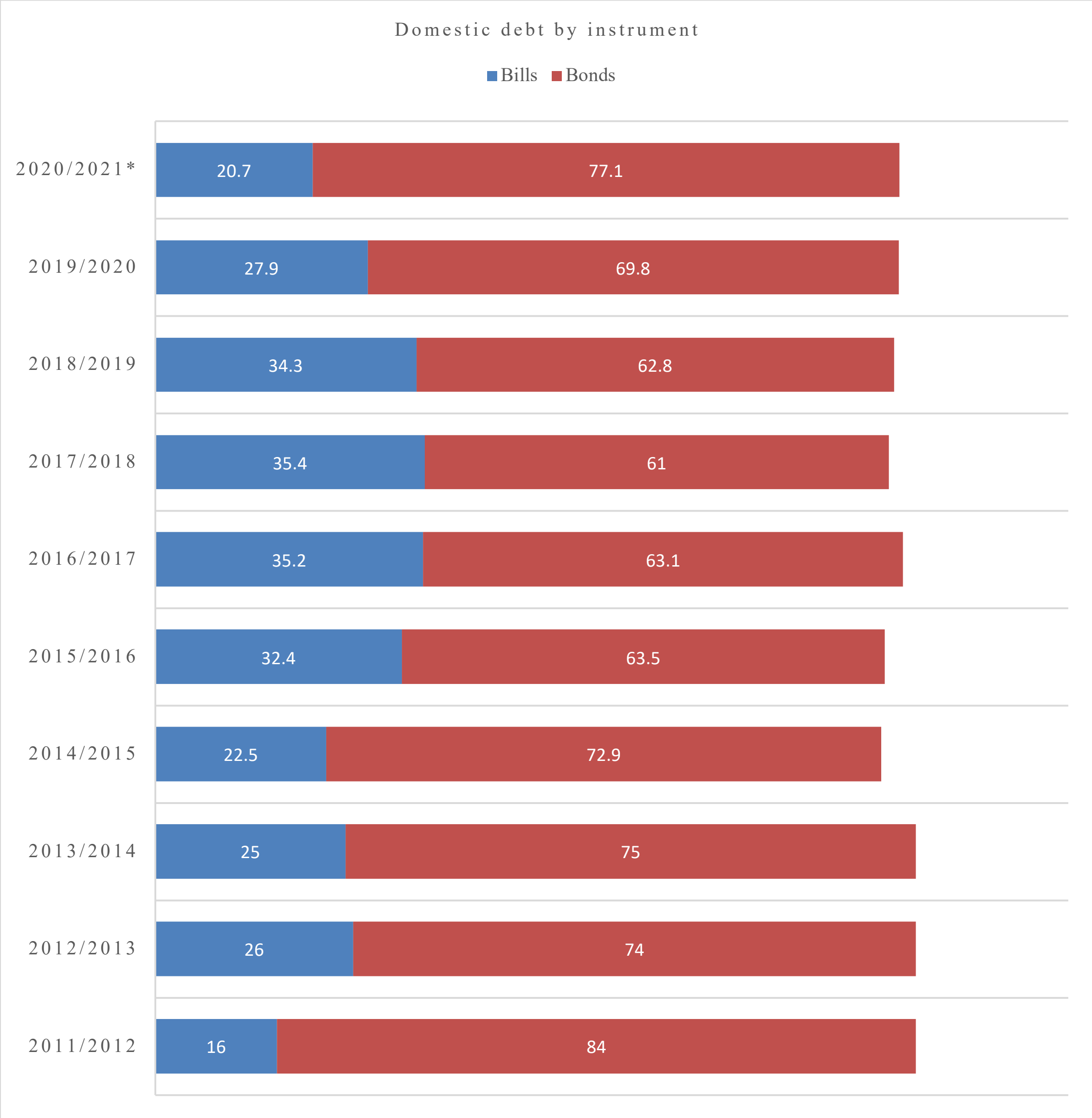
[70] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer, 2022); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer, 2017)

[71] Republic of Kenya National Treasury, "Medium term debt management strategies," (Nairobi: Government Printer, 2020); Republic of Kenya National Treasury, "Medium term debt management strategies," (Nairobi: Government Printer, 2015); Republic of Kenya National Treasury, "Medium term debt management strategies," (Nairobi: Government Printer, 2012).

Figure 9: Domestic debt by instrument



Source: Various sources[72]

A further review of the tenor of treasury bonds reveals that during the two elections held between FY 2011/12 and FY 2020/21, investors preferred shorter term bonds (1 – 5 years) to longer-term bonds (over 10 years).[73] Preference is also observed to be dictated by external shocks to the economy, with decreased confidence in the performance of the economy observed in FY 2020/21 (COVID-19 period). During the latter period, the stock of treasury bonds with a tenor of more than 10 years declined from 47.9% to 33.9% while those whose tenors were shorter term and medium term, experienced an increase from 12.3% to 21.5% and 4.4% to

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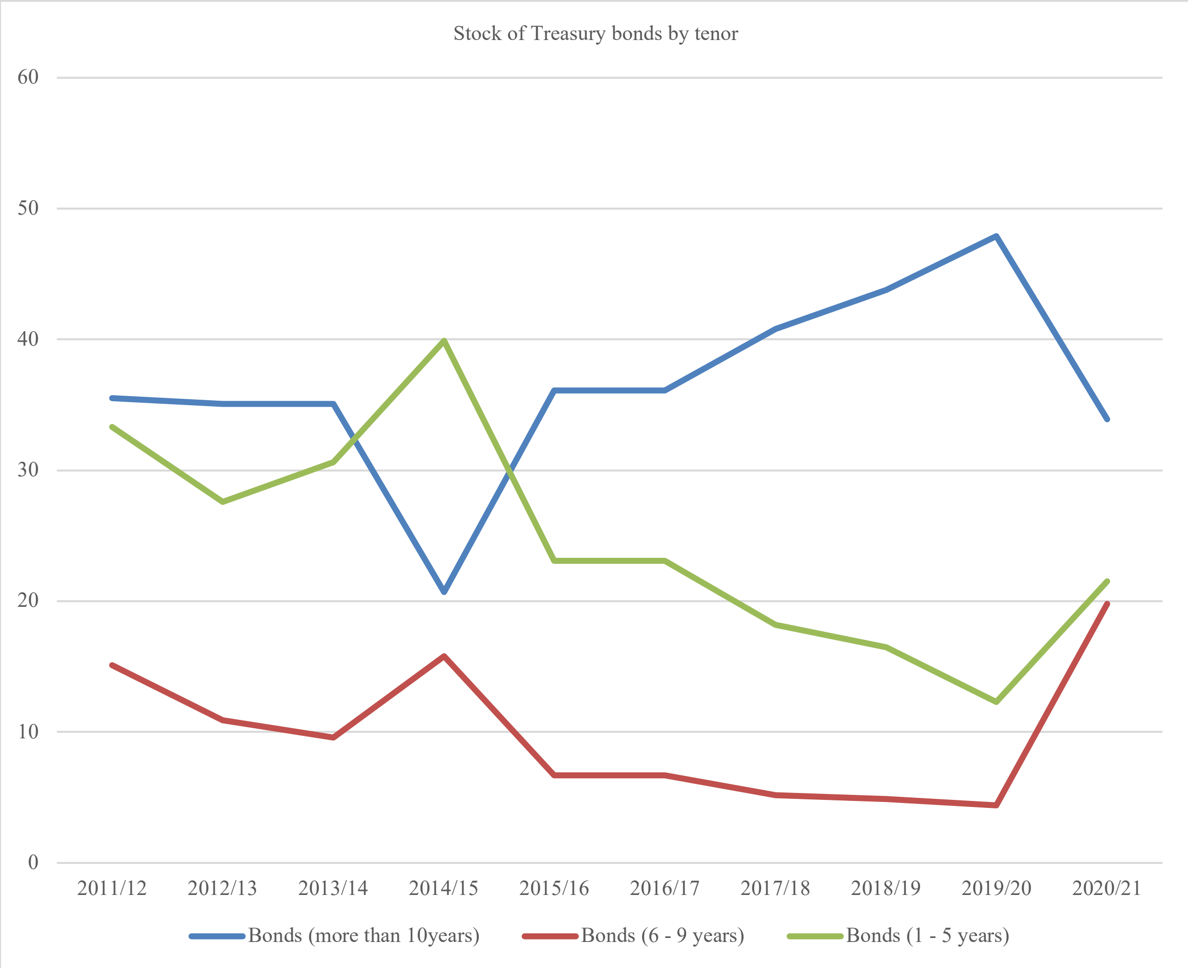
[72] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer, 2022); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer,2017)
[73] Republic of Kenya National Treasury, Annual Public Debt Report, (Nairobi: Government Printer, 2012 – 2021).

19.8% respectively (see Figure 10). Consequently, the two scenarios have been characterised by increased refinancing risk.

Figure 10: Stock of treasury bonds by tenor



Source: Republic of Kenya National Treasury Annual Public Debt Reports, 2012 - 2021

3. Human Rights and Public Debt in Kenya

Currently, Kenya is implementing an IMF economic program known as Extended Fund Facility (EFF) and Extended Credit Facility (ECF) which is aimed at reducing debt vulnerabilities. The similarity between the program and the 1980s Structural Adjustment Programs (SAPs) is striking. Just like in the 1980s,[74] the program aims to address structural impediments to growth through among others, implementing a multi-year fiscal consolidation effort.[75] The resultant effect is likely to deplete citizens' purchasing power.[76] This is because,

[74] The government acquired structural adjustment loans from the IMF whose terms required it to commit to implement a Program that required it to reduce investments in pro-poor sectors.

[75] Other reforms that the Program aims to achieve is addressing weaknesses in some state-owned enterprises (SOEs) and strengthening transparency and accountability through the anticorruption framework.

[76] Economic growth is a function of consumption, investment, government expenditure and net exports. The first two variables are inversely related to tax. This effort may hence proof counterproductive.

fiscal consolidation will entail increasing tax revenues and strictly controlling expenditure.[77] The effects of the measures are already being felt by citizens through the implementation of increasing fuel taxes as was required by the IMF.

3.1.Expenditure Perspective

Majority of the national government's budget has been directed towards public debt repayment at the expense of spending in key sectors, likely to contribute towards poverty reduction. Besides, there has been a significant allocation towards infrastructure compared to allocation towards the health sector.[78] This has continued to limit Kenya's ability to meet commitments made under the Abuja Declaration[79] (see figure 11). The absence of budget data for FY 2017/18 on the website of the National Treasury is an indictment on the government with respect to its commitment to budget transparency. In addition, Table 3 shows on average, planned expenditure on public debt repayment consumes about 88.0% of the total Consolidated Fund Services (CFS).[80] Further, pension management has also been met with several challenges, key among them being delays in payment to retirees. This necessitated the legislature to propose amendments to the Pensions Act to provide timelines within which the money shall be paid to the retirees.[81] It has been argued that pensions contribute to economic growth and poverty eradication.[82] Therefore, public debt repayment may be attributed to the delays experienced in pension payments.

[77] The IMF Country Report No. 21/275 can be accessed here https://www.imf.org/en/Publications/CR/Issues/2021/12/22/Kenya-2021-Article-IV-Consultation-Second-Reviews-Under-the-Extended-Arrangement-Under-the-511263.

[78] Republic of Kenya, The National Treasury, "Programme Based Budgets," (Nairobi: Government Printer, 2015-2021).

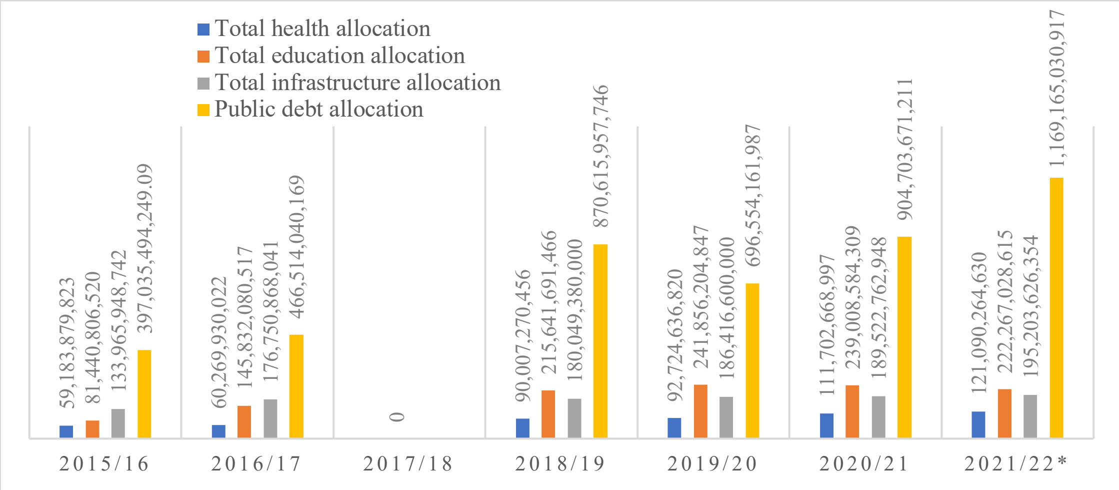
[79] Countries are required, pursuant to the Abuja Declaration to allocate at least 15.0% of the total budget towards the health sector.

[80] The Consolidated Fund is established by Article 206 of the Constitution against which public debt is charged. Other expenditures charged on the Fund include pensions, salaries and allowances, subscriptions to international organizations, among other miscellaneous services

[81] Republic of Kenya National Assembly, "Pensions (Amendment) Bill 2020." (Nairobi: Government Printer).

[82] Kidd, S., & Tran, A. (2017). Social pensions and their contribution to economic growth. *Report published by the Ministry of Gender, Labour and Social Development of the Republic of Uganda and the Expanding Social Protection Programme*.

Figure 11: Allocation towards health, education, infrastructure and public debt in Ksh



Source: Various sources[83]

Table 3: Public debt allocation as a % of Consolidated Fund services allocation

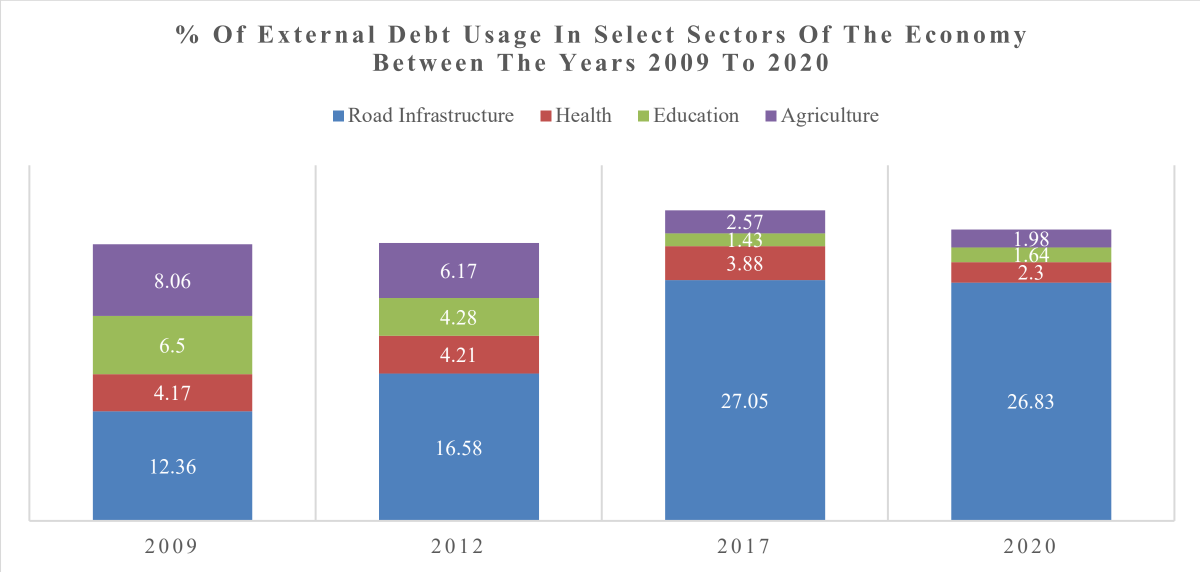
FY	Consolidated Fund Services allocation	Public debt allocation	Public debt allocation/ Consolidated Fund services allocation
2018/19	962,562,135,720	870,615,957,746	90%
2019/20	805,779,795,297	696,554,161,987	86%
2020/21	1,028,064,061,221	904,703,671,211	88%
2021/22	1,327,220,068,220	1,169,165,030,917	88%
2022/23	1,571,810,752,102	1,393,116,145,511	89%
2023/24*	1,896,107,263,153	1,671,480,204,807	88%
Average			88%

Source: Various sources[84]

Further, a review of the external debt registers[85] indicates the highest share of external debt is used in road infrastructure with minimal amounts used in education, health and agriculture sectors.[86] The share of loans towards road infrastructure doubled between the years 2009 and 2020, growing from 12.4% to 26.8%, while loans towards the health, education and agriculture sectors declined from 4.2% to 2.3%, 6.5% to 1.6% and 8.1% to 2.0% respectively (see Figure 12). Further, the IMF estimated that 35% of loans contracted between April 2021-June 2022 would be used in infrastructure with 6% channelled towards social spending.[87]

[83]Republic of Kenya, The National Treasury, "Programme Based Budgets," (Nairobi: Government Printer, 2015-2021).
[84] Republic of Kenya, The National Treasury, "Programme Based Budgets," (Nairobi: Government Printer, 2018-2022).
[85] The paper reviewed debt registers for the years 2009, 2012, 2017 and 2020
[86] Republic of Kenya National Treasury, "External Debt Registers," (Nairobi: Government Printer)
[87] International Monetary Fund, "*Kenya Requests for an Extended Arrangement Under The Extended Fund Facility And An Arrangement Under The Extended Credit Facility—Debt Sustainability Analysis*," March 19, 2021. https://www.imf.org/-/media/Files/DSA/external/pubs/ft/dsa/pdf/2021/dsacr2172.ashx

Figure 12: Uses of external debt in select sectors in percentage



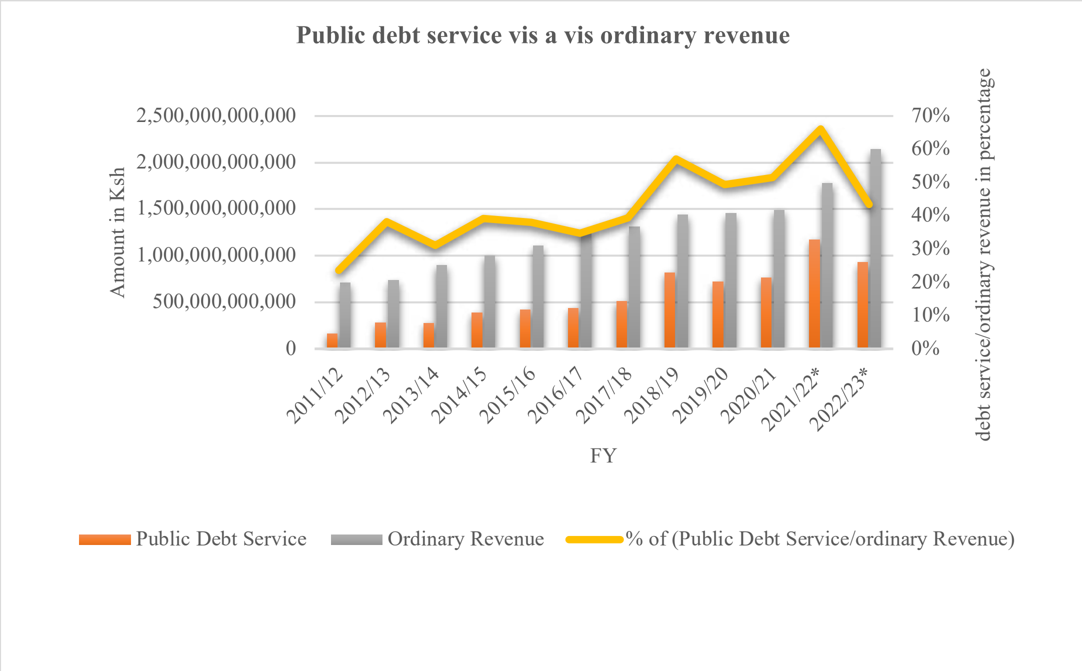
Source: Republic of Kenya National Treasury, External Debt Registers, 2009, 2012, 2017, 2020

The review of the external debt registers further indicate that bonds are not attached to a specific project unlike loans from multilateral lenders which are project specific. This has proven to undermine transparency, a constitutional public finance principle thus denying the country the benefits of improved accountability.

3.2.Revenue Perspective

Available evidence suggests the share of ordinary revenue consumed by public debt repayment has been increasing in the past ten years, reaching a high of 66% in the FY 2021/22 (see Figure 13). Ordinary revenue as a percentage of GDP has been declining while public debt as a percentage of GDP has been on the rise, with the latter potentially undermining quality provision of services to citizens.

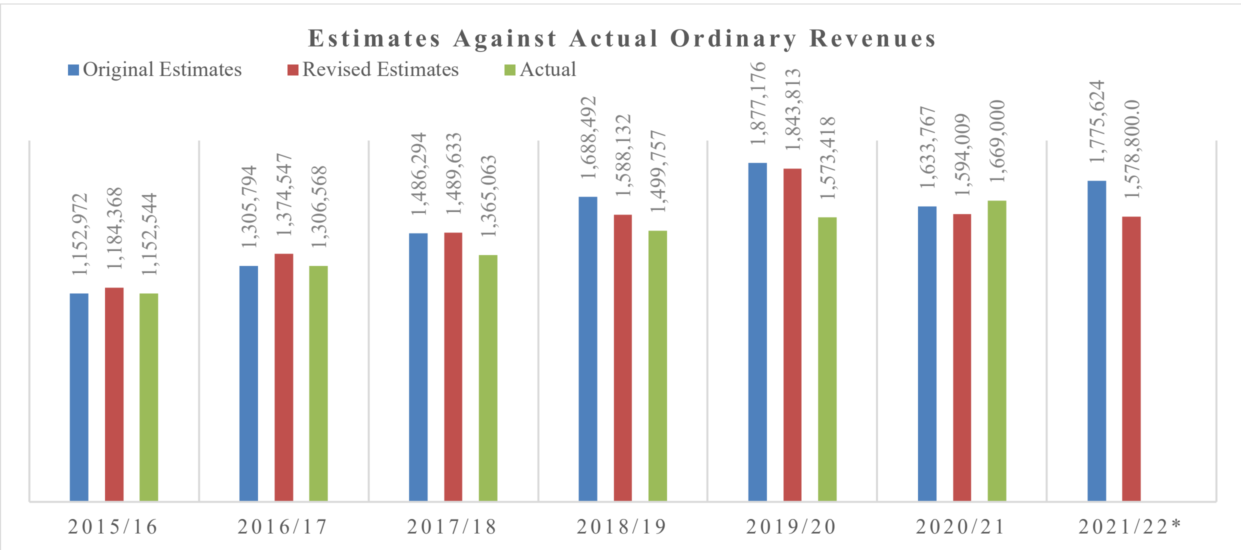
Figure 13: Public debt service as a % of ordinary revenue



Source: Various sources[88]

The persistent failure to achieve the revenue targets by Kenya Revenue Authority (see Figure 14) results in reprioritization of the budget and foregoing of service delivery equal to the unmet revenue targets or additional borrowing.

Figure 14: Ordinary revenues Actual vis a vis target in Ksh millions



Source: Various sources[89]

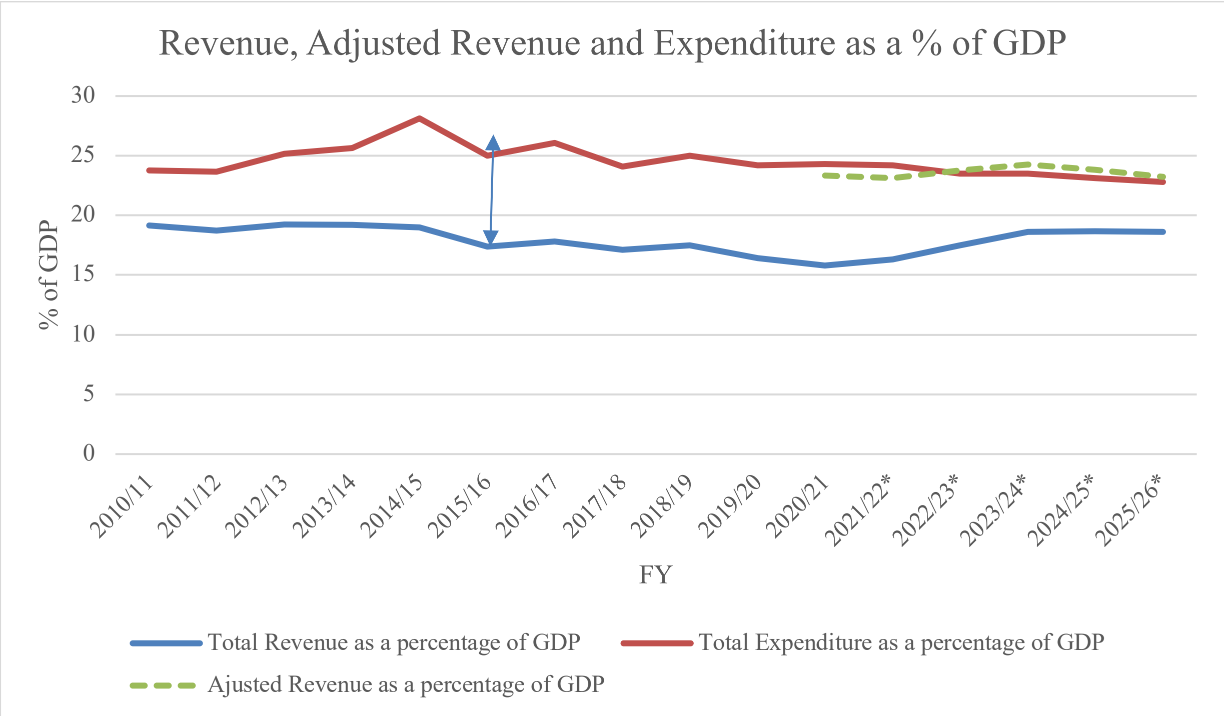
[88] Republic of Kenya Office of the Controller of Budget, National Government Implementation Review Reports." (Nairobi: Government Printer, 2012 – 2021); Republic of Kenya National Assembly, Division of Revenue Bill," (Nairobi: Government Printer, 2022)

[89] Republic of Kenya National Treasury, Budget Policy Statement, (Nairobi: Government Printer, 2014 – 2022); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, (Nairobi: Government Printer, 2016 – 2022); Republic of Kenya, Kenya Revenue Authority, Press Release (Nairobi: Government Printer, 2021);

3.3.Can Kenya Finance Deficits Using Revenues?

Figure 15 below shows total revenue and expenditure as a percentage of GDP including an adjusted revenue where revenues lost due to various types of illicit financial flows (IFFs) including trade mis-invoicing[90] and corruption are added to the projected revenues.[91] The graph shows that if Kenya seals the tax leakages, the country could operate at a primary surplus by the FY 2023/24, holding expenditure as a percentage of GDP constant.

Figure 15: Total revenue and expenditure as a percentage of GDP (2010/11 – 2025/26)



Source: Various sources[92]

[90] Constant Munda, "Rogue traders deny State Sh125 billion tax revenue," April 27, 2021. *Business Daily*, https://www.businessdailyafrica.com/bd/markets/market-news/rogue-traders-deny-state-sh125-billion-tax-revenue-3378004
[91] Brian Osweta, "Fact check: Does Kenya really lose Sh2 billion to graft daily?" *Nation*, February 7, 2021. https://nation.africa/kenya/newsplex/fact-check-does-kenya-really-lose-sh2-billion-to-graft-daily--3282360
[92] Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2021/22 (Nairobi: Government Printer); Republic of Kenya National Treasury, Quarterly Economic and Budgetary Review, FY 2016/17 (Nairobi: Government Printer); Republic of Kenya National Treasury, Budget Review and Outlook Paper FY 2021/22 (Nairobi: Government Printer)

4. THE LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK GOVERNING DEBT MANAGEMENT IN KENYA

4.1. Legal Framework

4.1.1. Constitution of Kenya, 2010

The Constitution of Kenya, 2010 provides for the over-arching principles of public finance which include transparency, accountability, public participation, good governance, prudence, responsibility and equitable sharing of burdens and benefits of the utilization of resources and public borrowing between current and future generations. Article 214 of the Constitution defines public debt as all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government; and provides that it is a charge on the Consolidated Fund.

The Consolidated Fund is established under Article 206 of the Constitution of Kenya 2010. It is maintained in an account known as the National Exchequer Account, kept at the Central Bank of Kenya. Section 80 of the Public Finance Management (National Government) Regulations of 2015 also provide that the National Treasury shall be the Administrator of the Fund. All money raised or received by or on behalf of the National Government is paid into the Fund, including monies received by way of grants and donations. Section 42(1)(a) of the Public Finance Management (National Government) Regulations provides that public debt service payments shall be a first charge on the Fund. Other charges on the Fund include remuneration and benefits to the President, Deputy President, Commissioner, or holder of an Independent Office.

The Constitution similarly provides for the role of various institutions with regards to public debt management. The Institutions include the Parliament, the Office of the Controller of Budget, the Office of the Auditor General and the Office of the Attorney General. These Institutions are discussed in detail under the Institutional Framework. Besides the Constitution, there are other enabling legislations and policies enacted to give effect to the Constitution with respect to public debt management in Kenya. The core among them is discussed next.

4.1.2. Public Finance Management Act, 2012

The Public Finance Management (PFM) Act, 2012 gives effect to the provisions in the Constitution by establishing key Institutions in debt management. These include the National Treasury under Section 11 and the Public Debt Management Office (PDMO) under Section 62. The Act provides for the functions and responsibilities of these Institutions with regards to public debt management which are discussed in detail under the Institutional Framework. Section 15 of the Public Finance Management Act outlines the fiscal responsibility principles to include among others that, the purpose of borrowing shall be for financing development expenditure and that public debt should be maintained at a sustainable level, as approved by

Parliament. Further, Section 35(2) of the Act requires the Cabinet Secretary to ensure that public participation is observed during the budget process.

However, preparation and enactment of supplementary budget as provided for under Section 44, does not undergo public participation. The expenditure adjustments occasioned by the supplementary budgets distort the policy direction of the budget. In instances where the overall expenditure increases as has been observed in most of supplementary budgets and coupled with the persistent failure by the Kenya Revenue Authority to meet revenue targets, primary deficit for that particular financial year increases and may imply additional borrowing. In addition to public participation, openness by the government is one of the principles of public finance and its over-riding benefit is accountability on the part of the leaders. The next legal framework explores this in relation to public debt.

4.1.3. Access to Information Act 2016

Article 35 (1)(a) and 35 (3) of the Constitution provides for the Citizen's right to access information held by the State and obligates the State to publish and publicize any important information affecting the nation. Section 4 of the Access to Information Act, 2016 further echoes the provisions of the Constitution with regard to access to information. However, contracts on debt-funded projects are not publicly available for instance the Standard Gauge Railway Contract.[93] This is despite the global recognition of the importance of fiscal transparency in holding the government accountable for their decisions.[94] In addition, there are studies showing that debt transparency directly contributes to lower borrowing costs, higher credit ratings and foreign direct investment inflows.[95]

4.2. Policy Framework

4.2.1. Public Finance Management (National Government) Regulations 2015

Section 183 of the Public Finance Management (National Government) Regulations 2015 provide for the guiding principles of the National government borrowing to include among other, promotion of inter-generational equity in the sharing of burdens and benefits of public borrowing. Section 26(1)(c) of the Regulations sets the debt ceiling at 50% of Gross Domestic Product (GDP) in net present value terms. Moreover, Section 42 of the Regulations stipulate that debt service payment shall be a first charge on the Consolidated Fund and requires the accounting Officer to ensure the repayments are done to the extent possible that the government does not default on debt obligation. The Regulations further provide that the policy framework in the management of public debt shall comprise of the Medium-Term Debt

[93] Constitutional Petition 032 of 2019 Khalifa & Anor. Vs National Treasury & Planning & 4 others (Constitutional Petition 032 of 2019 - Kenya Law)
[94] Raipa, A., & Backūnaitė, E. (2004). Fiscal transparency and accountability in public management methodology. *Public Policy and Administration* , *1* (8), 48-57.
[95] The World Bank, Why One African Country Opted for Full Disclosure on Debt, 2022. https://www.worldbank.org/en/news/feature/2022/07/10/why-one-african-country-opted-for-full-disclosure-on-debt

Management Strategy, which shall be prepared and executed by the Public Debt Management Office. In addition, Section 192 of the Regulations provide for the purposes of national borrowing while Section 193 states the objectives of public debt management. However, Parliament has revised the debt ceiling twice, to Ksh. 9 trillion (USD 78.3 billion) in the year 2019 and Ksh. 10 trillion (USD 87 billion) in the year 2022, indicating increased borrowing by the national government.

4.2.2. Medium Term Debt Management Strategy

Section 64(2)(a) of the Public Finance Management Act requires the Public Debt Management Office to prepare and submit to the Cabinet Secretary in charge of Finance the Medium-Term Debt Management Strategy. Section 185 of the Regulations state that this Strategy should inform borrowing by the national government by acting as the policy framework in the management of public debt. Further, section 186 of the Regulations state that the Medium-Term Debt Management Strategy shall be implemented through the annual borrowing programme for each fiscal year.

A review of the Medium-Term Debt Strategies (MTDS) indicates that the MTDS for the year 2013 was missing despite the legal provisions under section 33 of the Public Finance Management Act, 2012. In addition, the annual budget has in most cases deviated from the recommendations provided in the MTDS on national borrowing. For instance, the proportion of external financing in the budget plan has always been higher and domestic debt financing lower than the proportions included in the respective MTDS except in the budget for FY 2011/12 (Table 4). Indicating that Parliament has approved the budget outside the recommendations provided in the MTDS.[96]

Table 4: Net Financing plan under the Budget and MTDS (expressed in %)

Financing Source		2011/12	2012/13	2013/14	2014/15	2015/16
External	MTDS	30	35	40	45	45
	Budget	30	57	68	64	61
Domestic	MTDS	70	65	60	55	55
	Budget	70	43	32	36	39

Source: Republic of Kenya, National Treasury, Medium Term Debt Management Strategy, 2017

In the management of public debt, Kenya is bound by other regional and international policies as discussed next.

[96] Section 184 of the PFM Regulations 2015 provide that the medium-term debt management strategy shall guide the management of public debt in Kenya.

4.2.3. Protocol on the Establishment of the East African Community Monetary Union

Kenya, being a signatory to the East African Community Monetary Union, committed to attain and maintain fiscal deficit, including grants at 3% of Gross Domestic Product, public debt ceiling at 50% of Gross domestic Product in net present value terms, a reserve cover of 4.5 months of imports and a tax to GDP ratio of 25%. Regrettably, since the year 2013 when the Protocol was established, Kenya has not attained the required level of fiscal deficit and tax to Gross Domestic Product. In addition, Kenya revised the debt ceiling to Ksh 10 trillion (approximately USD 87 billion). The reserve cover has dropped from 5.07 months of import cover on 27th January 2022,[97] to a record low of 4.46 months of import cover on 29th July 2022.[98]

4.2.4. Joint International Monetary Fund and World Bank Group Debt Sustainability Analysis

The 2005 Debt Sustainability Framework developed by the IMF in collaboration with the World Bank Group, to facilitate public debt sustainability assessment categorizes countries based on their assessed debt-carrying capacity.[99] An evaluation of the baseline projections and stress test scenarios in relation to the thresholds is then done and risk ratings assigned. A country's debt-carrying capacity can fall under three main categories: strong, medium or weak based on various factors. The factors range from different policies, institutional strengths, buffers for shock absorption to macroeconomic performance drawn from a country's historical performance and outlook for real growth, the state of global environment among other factors.[100]

Until 2021, Kenya was categorized as a strong policy performer, attributed to the high quality of its policies, institutions, and growth prospects.[101] However, this was revised to a medium policy performer. In addition, in 2020, Kenya's risk of external debt distress was

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[97] Republic of Kenya Central Bank of Kenya, "*Weekly Bulletin, Recent Monetary and Financial Developments"*, (Nairobi: Government Printer, 2022). https://www.centralbank.go.ke/uploads/weekly_bulletin/1234077195_Weekly%20CBK%20Bulletin%20Februray%2025%202022.pdf

[98] Central Bank of Kenya, "*Weekly Bulletin, Recent Monetary and Financial Developments"*, (Nairobi: Government Printer, 2022). https://www.centralbank.go.ke/uploads/weekly_bulletin/485103108_Weekly%20CBK%20Bulletin%20July%2029,%202022.pdf

[99] Debt-carrying capacity refers to the ability of countries to handle debt, against which thresholds for selected debt burden indicators are approximated

[100] International Monetary Fund, "*Joint World Bank – IMF Debt Sustainability Framework for Low Income Countries*," (Washington DC: IMF 2021) https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/39/Debt-Sustainability-Framework-for-Low-Income-Countries

[101] Republic of Kenya National Treasury, "Medium Term Debt Management Strategy," (Nairobi: Government Printer, 2017).

revised from moderate to high.[102] In 2018, the risk of external debt distress was low and has since undergone two revisions to-date. Within the same period, Kenya lacked a strong political party opposition to keep the government in check. Although COVID-19 was blamed for the worsening debt sustainability, Kenya was still vulnerable prior to the pandemic due to breach of various thresholds governing debt-sustainability and public finance.[103] These show the existence of clear weaknesses in the policy-making process in Kenya, affecting the ability of Kenya to handle its debt. Classification of the country as a medium performer is attributed to among others, the country's breach of several thresholds measuring sustainability of Kenya's external debt, a trend that is projected to continue into the medium-term (see Table 5).

Table 5: External Debt Sustainability Analysis

Indicators	**IMF DSA thresholds (Medium performer and a LMIC)**	**2018**	**2019**	**2020**	**2021***	**2022***
PV of PPG External debt–to-GDP ratio	40	31.4	27.6	28.7	28.7	28.3
PV of PPG External debt–to-exports ratio	180	191.1	225.2	288.3	255.8	239.2
PPG External Debt Service-to-exports ratio	15	19.6	31.9	26.5	19.1	22.7
PPG External Debt service-to-revenue ratio	18	14.4	22	15.5	13	15.8

Source: *IMF Article IV Debt Sustainability Analysis on Kenya, 2021 & 2020*

4.3. Institutional Framework

4.3.1. Office of the Auditor General

Article 229 of the Constitution establishes the Office of the Auditor General as one of the Independent Offices. The Office is required to undertake an audit of public debt and report to Parliament whether borrowed money has been utilized lawfully and in an effective way within six months after the end of a financial year. Further, Article 254(3) requires independent constitutional offices such as the Office of the Auditor General, to publish and publicize their reports. However, concerns had been raised by organized interest groups including media and

[102] International Monetary Fund, "*Kenya Request for Disbursement Under The Rapid Credit Facility—Debt Sustainability Analysis*," April 2020. https://www.imf.org/en/Publications/CR/Issues/2020/05/11/Republic-of-Kenya-Request-for-Disbursement-under-the-Rapid-Credit-Facility-Press-Release-49405
[103] IMF, "Primary Surplus Behaviour and Risks to Fiscal Sustainability in Emerging Market Countries: A "Fan-Chart" Approach," March, 2006.

civil society organizations regarding delays experienced in making the reports public.[104] This had earlier been attributed to delay by the ministries, departments and agencies to submit their reports within the stipulated timeframe.[105] In response to this, the office has publicized most recent audited report for the financial year 2020/21, indicating good political will by the Office of the Auditor General to upholding fiscal transparency.

Noteworthy, there is no effective follow-up mechanism on implementation and enforcement of audit findings and recommendations. This is because the law limits the mandate of OAG to auditing and reporting to Parliament. As a result, most audit queries raised remain unaddressed in subsequent audit reports. For instance, 6 out of the 7 audit reports published by the OAG have expressed an adverse opinion on Kenya's public debt account majorly due to inaccuracies of the public debt figures and unsupported and unexplained variances.[106]

4.3.2. Office of the Controller of Budget

The Constitution mandates the Office of the Controller of Budget under Article 228 to oversee budget implementation and ensure approvals and withdrawals from public funds are done within the law. Section 228(6) provides that the Office shall every four months submit to Parliament a report on implementation of the budget. Further, Article 225 (7) gives powers to the Office to report to Parliament on where serious or persistent material breaches of measures established in the law have occurred. Despite the Office of the Controller of Budget expressing concerns over the growing public debt and reporting that its substantial growth hindered effective budget implementation,[107] there is no evidence of actions taken by the Parliament requiring the National Treasury to provide a comprehensive response to the issues raised on public debt in reports by the Office of the Auditor General and Office of the Controller of Budget.

4.3.3. Office of the Attorney-General

Article 156 of the Constitution establishes the Office of the Attorney-General and provide that the Attorney-General is the principal legal advisor to the Government. In addition, Article 156(6) requires the Attorney-General to promote, protect and uphold the rule of law and defend the public interest. The Office is central in public debt contractual since it is a legal process whereby the Government enters into agreements with creditors on behalf of citizens.

[104] Robert Wanjala, "Access to Information Laws not obeyed by Parliament and Auditor General," *Reporting on Good Governance in Kenya*, May 21, 2019. https://roggkenya.org/2019/05/21/access-to-information-laws-not-obeyed-by-kenyan-parliament-and-auuditor-general/.

[105] Ibrahim Oruko, "PIC asks Auditor-General to reject late reports from parastatals," *Nation*, last updated June 28, 2020. https://nation.africa/kenya/news/pic-asks-auditor-general-to-reject-late-reports-from-parastatals--400452.

[106] Republic of Kenya Office of the Auditor General, "National Government Audit Reports," 2014/ 15 – 2020/21 (Nairobi: Government Printer).

[107] Republic of Kenya Office of the Controller of Budget, "National Government Budget Implementation Review Report," (Nairobi: Government Printer, 2022).

Some of the creditors that the Government has entered into agreements with, have imposed harder terms on these loans such as higher interest rates and shorter grace periods.[108] The higher cost and refinancing risk associated with such loans have an implication on basic human rights.[109]

4.3.4. Public Debt Management Office

Section 62 of the Public Finance Management Act, 2012 establishes the Public Debt Management Office within the National Treasury and outlines the objectives and functions of the office. Under the Section, the office is mandated to ensure management of public debt through minimising the cost of public debt management and borrowing over the long-term taking account of risk, promoting the development of the market institutions for Government debt securities and ensuring the sharing of the benefits and costs of public debt between the current and future generations. Section 63 of the PFM Act further requires the Office to maintain a reliable debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government. Further to the requirements of Section 63 of the Act, Section 55 of the Public Finance Management Act, 2012 provide for the establishment of the office of the Registrar of the National Government Securities under the Public Debt Management Office. The Public Finance Management Act provide that the Office of the Registrar shall establish and maintain a register, to be known as the Register of the National Government Securities in which shall be recorded details of all securities issued by or on behalf of the national government. Section 64(d) of the PFM Act states that the Cabinet Secretary in charge of Finance shall be accountable for the work of the Public Debt Management Office.

Whereas Section 55(4) of the Public Finance Management Act, provides for publishing and publicizing of the Register of the National Government Securities, the exact timeline for publishing and publicizing is missing, thereby undermining fiscal transparency principles. This has undermined accountability efforts by interested parties such as researchers. For instance, in the development of this paper, it was observed that some external registers were missing, and the ones publicized on the website of the National Treasury were for the year 2009, 2012, 2015, 2017, 2018, 2019 and 2020.[110] In addition, organized interest groups have raised concerns about the independence of the Public Debt Management Office. It had been argued that in order to enhance objectivity in delivering on their mandate, the Public Debt Management Office should be independent from the National Treasury. For instance, while the Public Debt Management Office provides recommendations in the Medium-Term Debt Management Strategy on the best alternative to adopt when borrowing, between the FY 2012/13 and

[108] External commercial loans, which include syndicated loans and Eurobonds bear harder terms with regards to repayment compared to loans from multilateral creditors.
[109] Constitutional and Human Rights Petition 531 of 2015 Okiya Omtatah Okoiti & Anor. Vs Uhuru Muigai Kenyatta & 4 others. http://kenyalaw.org/caselaw/cases/view/118593
[110] Republic of Kenya National Treasury, "External Public Debt Register," (Nairobi: Government Printer) accessed on May 22, 2022. https://www.treasury.go.ke/external-public-debt-register/

2015/16, the Cabinet Secretary in charge of Finance submitted annual budgets to Parliament which had deviated from the Medium-Term Debt Management Strategy. There have been efforts to separate the Public Debt Management Office from the National Treasury through the Public Debt Management Authority Bill, 2020.[111] Public participation was conducted on the Bill in the year 2021 by the National Assembly.[112] However, the Bill is yet to be enacted.

4.3.5. The National Treasury

Pursuant to Article 225 of the Constitution, Section 11 of the Public Finance Management Act, 2012 establishes the National Treasury and charges it with the mandate of managing the level and composition of national public debt and administrating the Consolidated Fund. In addition, the Act requires the National Treasury to develop a framework for sustainable debt control as well as to promote transparency, effective management and accountability with regard to public finances, thereby acting as the enforcement institution of fiscal responsibility principles. Particularly, Section 15 of the Public Finance Management Act, 2012 requires the National Treasury to ensure that public debt is maintained at a sustainable level, as approved by Parliament. The National Treasury also, ensures prudency is observed in the management of fiscal risks, and keeping the level of national debt within the limits prescribed in the Medium-Term National Government Debt Management Strategy (MTDS).

However, these provisions have to a large extent been violated. For example, within a span of three years; from the year 2018 to 2021; the risk of external debt distress progressed from low to high essentially leading to a revision of the country's ability to handle debt from a strong policy performer to a medium policy performer. This negatively affected human rights in Kenya with a significant portion of the budget allocated to debt servicing. Studies indicate that a strong political opposition is essential to ensure laws enhancing human rights are enacted.[113] However, Kenya lacked a strong political opposition within the period 2018 to 2021, when the country's risk of debt distress worsened. In addition, fiscal transparency as a principle of public finance has not been observed, demonstrated by absence of some budget documents such as the Medium-Term Debt Management Strategy for the year 2013 and the Register of the National Government Securities for the years 2010, 2011, 2013, 2014, 2016 and 2021. Moreover, between the FY 2012/13 and 2015/16, the annual budget prepared by the National Treasury has in most cases deviated from the recommendations provided in the MTDS on national borrowing.

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[111] The Bill is accessible here http://parliament.go.ke/sites/default/files/2021-02/The%20Public%20Debt%20Management%20Bill%2C%202020.pdf

[112] The Parliamentary Report is accessible here: http://www.parliament.go.ke/sites/default/files/2022-02/Report%20on%20the%20Public%20Debt%20Management%20Authority%20Bill%20%28National%20Assembly%20Bill%20No.%2036%20of%202020%29.pdf

[113] Mújica, Alejandro, and Ignacio Sánchez-Cuenca. "Consensus and parliamentary opposition: The case of Spain." *Government and opposition* 41, no. 1 (2006): 86-108.https://www.miguelangelmartinez.net/IMG/pdf/2006_Mujica_Sanchez_Parliamentary_Opposition_GO.pdf

4.3.6. Parliament

Article 93 of the Constitution establishes Parliament and provides for their role as an oversight institution, representative of the people and enactment of laws and policies. Article 211 gives Parliament powers to prescribe the terms on which the national government may borrow as well as impose reporting requirements. Further, Article 225 empowers Parliament to enact legislation to ensure both expenditure control and transparency in all governments and establish mechanisms to ensure their implementation. Parliament is also mandated to set debt ceiling. Despite the constitutional powers bestowed upon Parliament, it has allowed the Executive to borrow on unfavourable terms thus exposing Kenya to high costs and refinancing risk.[114] In addition, Parliament has failed to hold the Executive accountable for lapses in fiscal transparency.

For instance, despite the Office of the Auditor General Report for FY 2017/18 reporting that the accuracy of outstanding loan balances could not be confirmed due to absence of details on the loans, there are no reports on the actions taken by Parliament to enforce this important principle of public finance.[115] This has limited the ability of interested parties to effectively monitor and hold the government accountable. In addition, within the period 2012 – 2015, Parliament while approving annual budgets, did not take into consideration the recommendations in the Medium-Term Debt Management with regards to proportion of external and domestic debt. Parliament has revised the debt ceiling twice, away from the ideal level for a country classified as a medium policy performer and the 50% of Gross Domestic Product in Net present value as required in the Protocol on the Establishment of the East African Community Monetary Union.

4.4. Is Sovereign Wealth Fund the way forward for Kenya's path towards resolving debt sustainability issues?

A Sovereign Wealth Fund (SWF) is a special purpose investment fund owned by a State.[116] Its establishment dates to the 1950s during the oil strikes in the Persian Gulf states,[117] the 1970s during the oil embargo,[118] and in the last decade of the 20th Century, when countries such as Botswana established their Sovereign Wealth Fund from minerals.[119] These funds are established from surpluses accruing to a country from the sale of natural resources or commodity exports. The objective for their establishment is to smooth government revenue, hence providing greater reliability to government spending and investment over a longer period

[114] Republic of Kenya National Treasury, "Medium term debt management strategies," (Nairobi: Government Printer, 2021).
[115] The IMF defines debt transparency to encompass availability of comprehensive, timely, detailed and consistent public sector debt data.
[116] Das, Udaibir, Yinqiu Lu, Christian Mulder, and Amadou Nicolas Racine Sy. "Setting up a sovereign wealth fund: Some policy and operational considerations." *Available at SSRN 1474587* (2009).
[117] Kuwait established theirs in 1953 to take advantage of the possible excess oil revenue.
[118] This led to establishment of the United Arab Emirates Sovereign Wealth Fund to take advantage of the high oil prices.
[119] Balin, Bryan J. "Sovereign wealth funds: A critical analysis." *Available at SSRN 1477725* (2009).

and ensure intergenerational equity.[120] Sovereign wealth funds have various components, most common of them being stabilization and development funds. The stabilization fund is utilized by countries in cases of global economic crises, which affects government revenue while development funds are utilized when governments want to spur economic growth and development.[121] In addition, setting up a stabilization fund mitigates wastage and excessive recurrent spending associated with high commodity prices,[122] as was the case in Kenya during the coffee boom of the late 1970s.[123]

The global supply shock due to the Covid-19 pandemic in 2020 and the geo-political conflict between Russia and Ukraine in 2022, led to dampened revenues, fuel and food shortage and increased inflation, a precipitate to the current public debt conundrum being witnessed in most Africa countries.[124] Evidence suggests many African governments,[125] established SWF using oil to overcome infrastructure deficits and achieve stability.[126] African countries rich in natural resources have also been occasioned with the natural resource curse, mainly attributed to weak institutions which advance corruption.[127]

In 2012, oil discoveries were made in Turkana, making Kenya among the countries with a potent of exporting natural resources. Proceeds from exploration of the oil can be used to set up stabilization and development funds. The Government has made efforts towards actualization of this by having in place a draft Sovereign Wealth Fund Bill of 2019, which establishes the Kenya Sovereign Wealth Fund. The main objective of the Fund is to provide institutional arrangements for effective administration and efficient management of minerals and petroleum revenues, and for connected purposes and incidentals thereto. The Fund has three distinct components, the Stabilization Component, the Infrastructure Development Component and the Urithi Component whose aims are to insulate expenditure under the budget estimates of the national government from fluctuations in resource revenues, provide finance for infrastructure development priorities (in sectors such as health and education among others) to foster strong and inclusive growth and development and build a savings base for future generations when minerals and petroleum resources are exhausted respectively.[128]

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[120] Brown Capital Management, "Sovereign Wealth Funds in Africa: Policies and Best Practices for Securing the Future," May, 2019.
[121] Dixon, Adam D. *The rise, politics, and governance of African sovereign wealth funds*. Wilson Center, 2016.
[122] Dixon, Adam D. *The rise, politics, and governance of African sovereign wealth funds*. Wilson Center, 2016.
[123] Cuddington, John. "Commodity export booms in developing countries." *The World Bank Research Observer* 4, no. 2 (1989): 143-165.
[124] Zeufack, Albert G., Cesar Calderon, Alaine Kabundi, Dhushyanth Raju, Megumi Kubota, Vijdan Korman, Kaleb Girma Abreha, Woubet Kassa, and Solomon Owusu. *Africa's Pulse, No. 25, April 2022*. World Bank Publications, 2022.
[125] Such as Algeria, Angola, Ghana, Libya, and Nigeria.
[126] Ackah, Ishmael. "No African country is Norway! A perspective on sovereign wealth funds and the energy transition." *Energy Research & Social Science* 75 (2021): 102048.
[127] Henry, Alexandre. "Transmission channels of the resource curse in Africa: A time perspective." *Economic Modelling* 82 (2019): 13-20.
[128] Republic of Kenya National Assembly, "Draft Kenya Sovereign Fund Bill, 2019. (Nairobi: Government Printer). https://www.treasury.go.ke/wp-content/uploads/2021/03/Draft-Kenya-Sovereign-Wealth-Fund-Bill-2019.pdf

However, to mitigate a possible natural resource curse,[129] as has been observed in several countries, there is need to strengthen institutional framework under which the Fund will operate.[130] Enactment of the Sovereign Wealth Fund Bill 2019 can potentially contribute to a sustainable debt pathway for Kenya if prudently administered as has been observed in Botswana due to the Pula Fund. [131]

5. CONCLUSION AND RECOMMENDATIONS

The discussions so far engaged in show that Kenya's debt problem has since independence been a game of political chess which ultimately negatively affects living standards. This paper reveals the existence of a correlation between politics, shocks (both external and internal), and debt sustainability. Debt sustainability is observed to worsen when poor policies are adopted, and/or when a shock hits the country, and this eventually leads to compromised levels of service delivery. The paper further indicates that although the legal and policy frameworks governing management of public debt are instituted, lapses are observed in implementation, especially by key institutions, namely Parliament and the National Treasury. The paper, thus, attributes the debt sustainability problems in Kenya to failure by the Parliament to effectively discharge its mandate.

Consequently, the onus is placed on citizens to ensure the election of credible representatives. The country loses significant revenue through illicit financial flows, namely tax evasion and corruption which if sealed, may lead to the country recording primary surpluses in the medium term. Contractual of external debt from commercial banks is noted to have exposed Kenya to high cost and risks and excessive domestic borrowing from commercial banks has edged out the participation of the private sector in the economy. This is attributed to failure by the government to adhere to policy recommendations provided in the Medium-Term Debt Management Strategies of the appropriate domestic and external debt mix and the need for a reduced reliance on loans from non-concessional creditors. In conclusion, this paper points towards the importance of implementing transparency by the National Treasury and enhancing the independence of the Public Debt Management Office to facilitate effective monitoring and accountability in public debt.

Considering the analyses made here, the following recommendations towards resolving debt sustainability issues in Kenya are made:

1. Parliament to amend Section 44 of the Public Finance Management Act, 2012 by including a sub-section providing for public participation before enactment of

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[129] Johannes, E. M., Zulu, L. C., & Kalipeni, E. (2015). Oil discovery in Turkana County, Kenya: a source of conflict or development?. *African Geographical Review*, *34*(2), 142-164.

[130] To mitigate corruption through adopting observing principles of public finance such as transparency, accountability and good governance.

[131] This may be achieved under the conditions that the right investment choices are made and there exists proper governance and management of the fund with no political interference.

supplementary budgets. Supplementary budgets tend to increase expenditure which increases primary deficits. Public participation will ensure implementation of policies that address citizens' needs as well as enhance accountability by the Government.

2. The National Treasury to observe provisions under Article 35 of the Constitution on right to access of information by availing the contracts of debt-funded projects such as the Standard Gauge Railway. This will promote fiscal transparency and accountability in the use of borrowed money.

3. Parliament to require the National Treasury to provide a comprehensive response to the issues raised on public debt in reports by the Office of the Auditor General and Office of the Controller of Budget on accuracy of the public debt figures and provide supporting evidence of the unexplained variances. This will promote accountability in public debt management.

4. The Office of the Attorney-General to act in public interest as required under Article 156 (6) of the Constitution when advising the National Treasury on national borrowing. This will ensure human rights are upheld through ensuring minimized cost and risk of borrowing.

5. Parliament to amend Section 55(4) of the Public Finance Management Act by inserting the word "*annually*" after the word publicized to read "*securities issued by or on behalf of the national government shall be published and publicised annually*." This will promote fiscal transparency since timeline is one of the tenets of transparency. This will promote accountability and enable interested parties to effectively conduct audit into the public debt situation of the country.

6. Parliament to enact the Public Debt Management Authority Bill, 2020 to enhance independence of the Public Debt Management Office. The Bill was introduced in Parliament to help establish transparency and assign accountability on the debt manager. This is because, some recommendations provided in the Medium-Term Debt Management Strategies on national borrowing have not been considered by the Cabinet Secretary in charge of Finance, a situation that has led the country to acquire external debt that is costly and riskier. This will insulate the office from possible undue influence by the Cabinet Secretary in charge of Finance

7. Parliament to enact the Sovereign Wealth Fund Bill of 2019 to facilitate funding of infrastructure projects in sectors such as health and education and macroeconomic stability. The Bill establishes the Kenya Sovereign Wealth Fund which provides institutional arrangements for effective administration and efficient management of minerals and petroleum revenues. The Stabilization Component will protect the economy from global shocks that lead to financial and debt crises while the Infrastructure Development Component will lead to development in the priority sectors of the economy such as health and education.

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