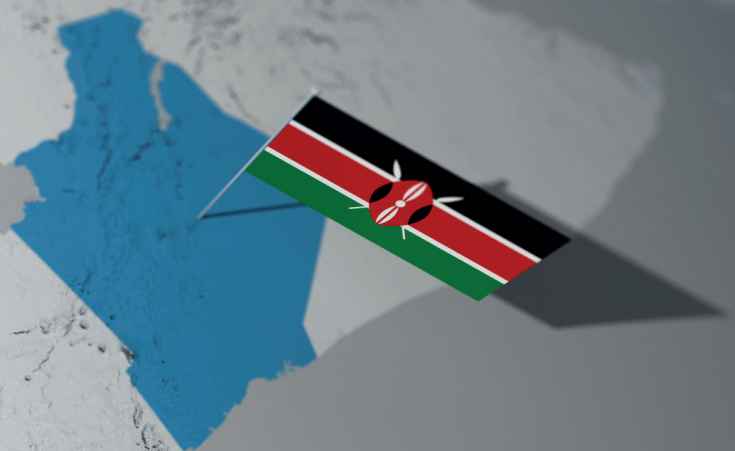




**Government Defence
Integrity Index**



2020



Country Brief:

KENYA



KENYA

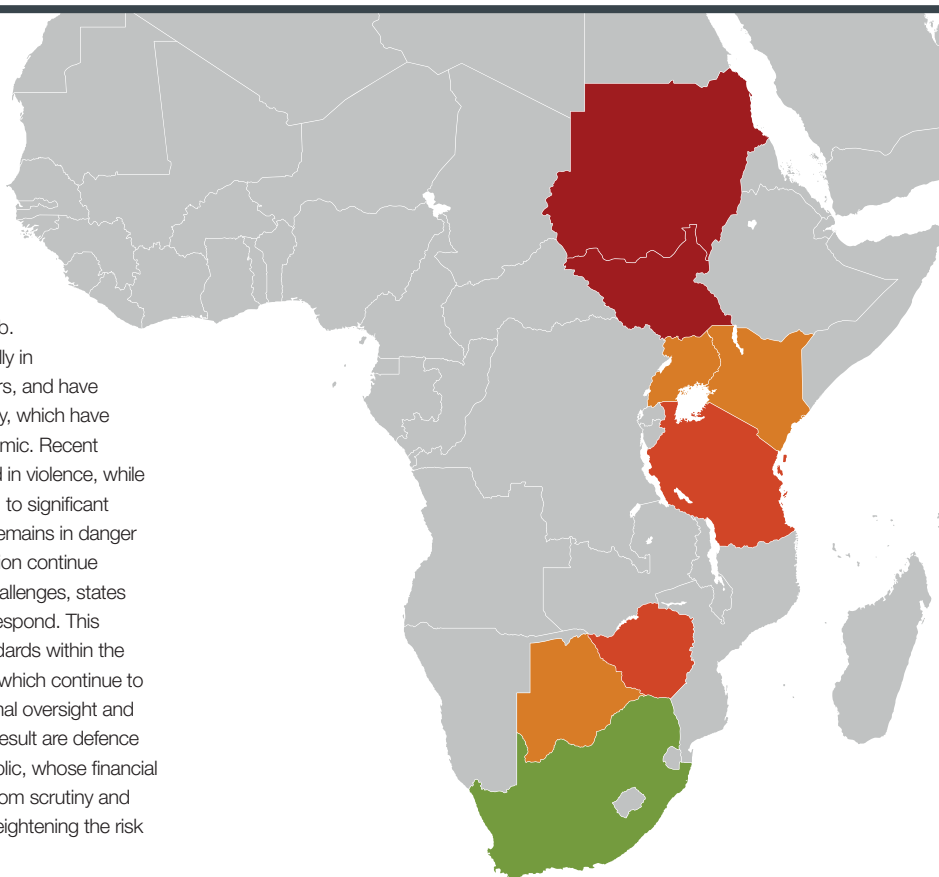
Surrounded by regional instability and contending with highly-charged domestic politics and mounting social unrest, Kenya faces a multitude of challenges. Neighbouring Ethiopia's multiple internal crises and conflicts with Eritrea, along with ongoing tensions with Sudan and Egypt over the Grand Renaissance Dam, threaten to escalate into full blown war.¹ Endemic conflict in South Sudan, a terrorist insurgency in Mozambique which is making inroads into Tanzania, flawed electoral processes in Uganda, and perennially unstable Somalia complete a troubling regional picture.²

Member of Open Government Partnership	Yes
UN Convention Against Corruption	Ratified in 2003
Arms Trade Treaty	Has not signed

In parallel, Kenya is preparing itself for presidential elections in 2022 which have historically been a catalyst for political violence as was the case in 2017.³ The economic and social challenges, exacerbated by the COVID-19 pandemic, have increased frustrations, which, combined with Kenya's tradition of destabilising ethnic politics, could prove a tinderbox for political violence.⁴ Within this context, longer-term issues of governance, rampant government corruption, and the increasingly urgent matter of climate change, which is increasing food shortages and diminishing arable land, present significant challenges for the country.⁵ The responses to this myriad of external challenges will likely draw heavily on Kenya's defence and security forces, which have received sustained investment in terms of personnel and materiel in recent years. However, corresponding efforts to strengthen defence governance mechanisms have been sluggish. While the development and publication of a Defence White Paper, implementation of new procurement regulations, and the rollout of the new constitution are positive steps, governance deficiencies remain that considerably increase the risk of corruption. External oversight of defence is stunted by excessive secrecy and limited expertise of parliamentary committees and audit bodies. Military financial management and procurement continue to be characterised by opacity and non-transparent budgeting and tendering practices, factors which are exacerbated by the weakness of access to information processes. Personnel ethics frameworks are weak and corruption remains rife, while the military's anti-corruption mechanisms for operations are virtually non-existent.

East & Southern Africa

Two of the most stable regions on the continent, the Eastern and Southern African regions have nevertheless had to contend with a series of significant challenges in recent years. Instability in the Horn of Africa continues to present protracted security challenges in the region, including the growth of Islamist movements, such as Al-Shabaab. Civil unrest and protests have increased dramatically in South Africa, Zimbabwe and Kenya amongst others, and have been fuelled by anger at police brutality and poverty, which have increased significantly during the COVID-19 pandemic. Recent elections in Tanzania and Uganda have been mired in violence, while the upcoming Kenyan elections in 2022 could lead to significant unrest. Elsewhere, Sudan's democratic transition remains in danger of stalling and armed conflict and endemic corruption continue unabated in South Sudan. In response to these challenges, states have increasingly sought to deploy the military to respond. This has increased attention on weak governance standards within the defence sectors across East and Southern Africa, which continue to contend with very limited transparency, poor external oversight and limited anti-corruption controls for personnel. The result are defence forces that are frequently unaccountable to the public, whose financial management and acquisitions are largely hidden from scrutiny and where corruption vulnerabilities are pronounced, heightening the risk of abuses of power.



¹ John Mukum Mbaku, 'The Controversy Over the Grand Ethiopian Renaissance Dam', *Brookings Institute*, 5 August 2020.

² Michelle Gavin, 'Kenya Will Play a Role in Addressing Multiple Security Challenges', *Council on Foreign Relations*, 26 March 2021.

³ Carey Baraka, 'Kenya's 2022 Elections Have Already Begun', *Foreign Policy*, 2 September 2020.

⁴ Julia Renner, 'Kenya's Government Under Pressure: Lockdown Increases Hunger and Unrest', *Bertelsmann Transformation Index*, 19 August 2020.

⁵ Jaxx Artz, '1.4 Million People in Kenya are Facing Starvation', *Global Citizen*, 17 March 2021.



KENYA

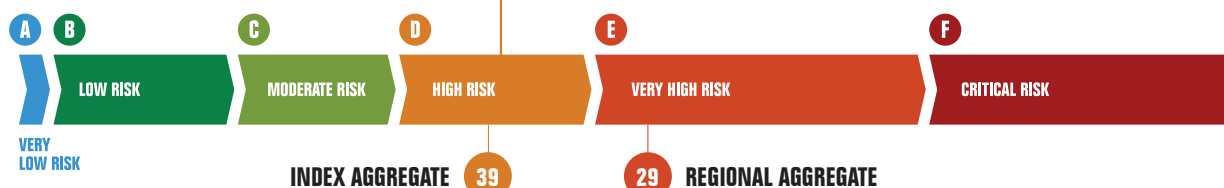
Overall scores

The size of the colour band corresponds to number of countries that fall into that category.

KENYA SCORE
HIGH RISK

D

35



A > 83-100 VERY LOW

B > 67-82 LOW

C > 50-66 MODERATE

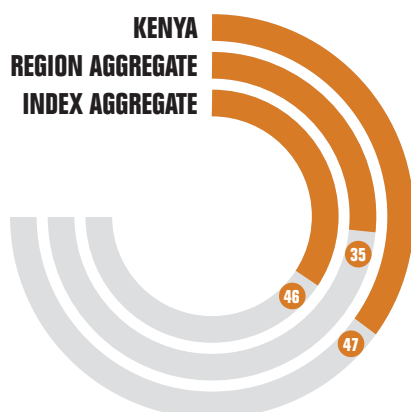
D > 33-49 HIGH

E > 17-32 VERY HIGH

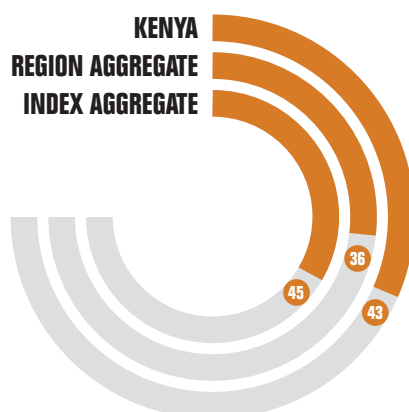
F > 0-16 CRITICAL

Risk Comparison

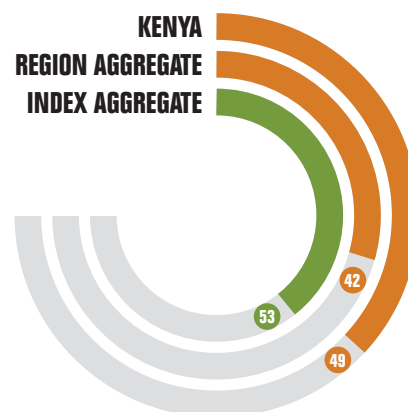
POLITICAL



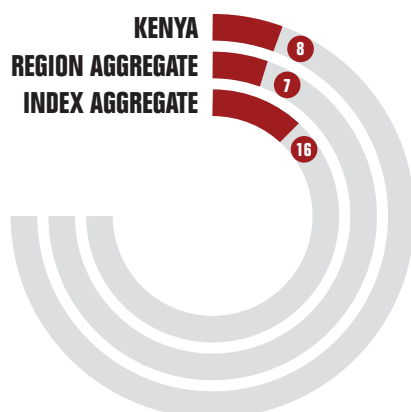
FINANCIAL



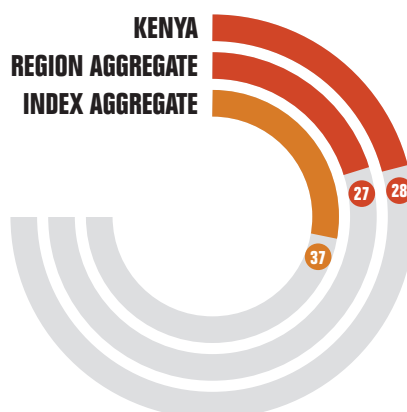
PERSONNEL



OPERATIONAL



PROCUREMENT





KENYA

Parliamentary Oversight

Legislative oversight of budget (Open Budget Survey, 2019)	50/100
Military expenditure as share of government spending (SIPRI, 2020)	4.4%
Committee members with defence expertise (%)	10% (2 of 19)
# of meetings/year	Data is not publicly available.
Last review of defence policy/strategy	2017 (Defence White Paper)

Under Kenya's previous constitution, separation of powers was weak and the legislative and executive branches of government were tightly intertwined. The 2010 constitution however does stress this separation, removing the ability of parliamentarians to hold cabinet positions and strengthening parliament's formal powers over the executive.⁶ However, other factors continue to undermine parliamentary independence, including the continuing importance of ethno-regional considerations, which ensures that the government maintains control and can easily co-opt parliamentarians.⁷ Parliament exercises oversight of defence through the National Assembly's Defence and Foreign Affairs Committee (DFAC) and Public Accounts Committee (PAC), and the Senate's National Security Committee. All three have formal rights of oversight, while DFAC has the ability to investigate and report on all matters related to the mandate, activities, operations and administration of defence institutions,⁸ along with the power to summon officials and invite experts during hearings.⁹ However, despite strong formal powers, the effectiveness of oversight is questionable. For instance, while the PAC publishes annual financial reports based on Ministry of Defence (MoD) audits, they rely almost entirely on explanations from the MoD's own accounting officers on major irregularities raised by the Auditor-General.¹⁰ There is no evidence that the committee seeks independent opinion or conducts its own investigations. In the absence of any formal enforcement mechanisms, the furthest it has gone is to recommend investigation by the Ethics Commission.¹¹ DFAC has similar limitations and government officials frequently ignore its summons. In addition to parliament, internal and external audit mechanism exercise financial oversight. However, the internal audit division's activities of the Ministry of Defence (MoD) are shrouded in secrecy, with its terms of reference, the majority of its staff, and process guides not made public. While it does submit periodical reports to the Office of the Auditor-General (OAG), the latter has often found gaps in the information it receives for non-sensitive projects.¹² For its part, the OAG encounters difficulties in carrying out its work, as the provisions of Section 40 allow defence institutions to withhold any information they deem sensitive from the OAG's scrutiny.¹³ Nevertheless, OAG audits are regular, systematic and focus on financial as well as on performance aspects in spite of resistance from defence institutions.¹⁴

⁶ Bertelsmann Stiftung, BTI Country Report 2020: Kenya, Gutersloh, Bertelsmann Stiftung, 2020, p. 11.

⁷ Bertelsmann Stiftung, Kenya, p. 13.

⁸ National Assembly, Parliament: The National Assembly Standing Orders, 4th edition, 9 January 2013, Section 216, subsection 5(a), pp. 187-189.

⁹ National Assembly, Report on the Inquiry into land Acquisition by the Kenya Defence Forces for Establishment of FOB in Narok County, 2 April 2019.

¹⁰ The Public Accounts Committee, Report on the Examination of the Auditor-General on the Financial Statements for the National Government for the Financial Year 2015/2016, Volume 1, Nairobi: National Assembly, 4 June 2019.

¹¹ The Public Accounts Committee, Report on the Examination of the Auditor-General on the Financial Statements for the National Government for the Financial Year 2016/2017, Volume 1, November 2019, p. 201

¹² The Public Accounts Committee, Report on the Examination of the Auditor-General, p.201.

¹³ Government of Kenya, Public Audit Act, No. 34 of 2015, Section 40, 7 January 2016.

¹⁴ Moses Nyamori, 'Defence Ministry Blocked Auditors from Scrutinising Questionable Contracts', The Standard, 19 September 2020.

Financial Transparency

Defence-related access to information response rates	(1) % granted full or partial access: Data is not publicly available. (2) # subject to backlog: Data is not publicly available.
Defence-related complaints to ombudsman/commissioner #	Data is not publicly available.
Does the commissioner have authority over the MoD?	Yes
Audit reports on defence (2018-2020) #	Annual reports
Open Budget Index (IBP, 2019)	50/100
World Press Freedom Index (RSF, 2021)	102nd out of 180.

While some progress has been made with regards to financial transparency at the government level, much of the national government's expenditure remains undisclosed, particularly in relation to defence.¹⁵ The published defence budget for instance, though generally comprehensive and containing data on current estimates and projections for upcoming years, contains vague and aggregated budget categories that serve to obscure major lines of expenditure.¹⁶ Equally, sensitive areas of expenditure are not published, including those relating to national intelligence services. The budget's lack of detail has drawn criticism from the Parliamentary Budgets and Appropriations Committee, as the limited breakdown is a significant barrier to oversight.¹⁷ Budget reliability is further undermined by the prevalence of off-budget expenditure which, due to poor legal and institutional frameworks, is often published close to the date of parliamentary debates, limiting the time for scrutiny and information dissemination. The MoD has frequently capitalised on this to push through irregular and significant off-budget transactions that have proven prone to corruption.¹⁸ Supplementary budget estimates, where off-budget expenditure is published, are highly aggregated and contain very limited information on expenditure lines, ensuring that the public and oversight bodies do not have access to relevant information on this spending.¹⁹ Furthermore, there is little transparency surrounding the income and operations of military-owned businesses. The secrecy surrounding these holdings and absence of a law that provides for independent oversight of such businesses, means that their income and expenditure are not covered in OAG audit reports, and it is unclear how such funds are utilised by defence institutions. Finally, financial transparency is curtailed by the weakness of access to information regimes. While the Access to Information Act enshrines citizens' rights to access defence information,²⁰ national security provisions ensure that defence institutions have broad powers to reject requests, often without justification. As a result, the public has to rely on information published by the OAG and parliamentary committees, which themselves rely almost exclusively on government-supplied data.

¹⁵ Freedom House, 'Freedom in the World – Kenya', 2020, C3.

¹⁶ National Treasury, 2019/2020 Estimates of the Government of Kenya for the year ending 30 June 2019, Volume I, Votes, R1011-R1162, pp.226-231, June 2019.

¹⁷ Edwin Mutai, 'MPs Query Sh 1.9bn Military Expenditure', Business Daily, 29 June 2020.

¹⁸ Nan Tian, Pieter Wezeman and Youngju Tun, 'Military Expenditure Transparency in Sub-Saharan Africa', SIPRI Policy Paper, No. 48, 2018.

¹⁹ The National Treasury, '2019/20 Supplementary Estimates II of the National Government of Kenya For the Year Ending 30th June 2020', April 2020.

²⁰ Government of Kenya, Access to Information Act, No. 31 of 2016, 21 September 2016.



KENYA

Personnel Ethics Framework

Whistleblowing legislation	Whistleblower Protection Bill (2018)
# defence-sector whistleblower cases	Data is not publicly available.
# Code of conduct violations	Military: Data is not publicly available.
	Civilian: Data is not publicly available.
Financial disclosure system	# submitted: Data is not publicly available.
	# of violations: Data is not publicly available.

Allegations of systematic abuses by Kenyan Defence Force (KDF) personnel against ethnic Somali populations²¹ and reports of military involvement in sugar and charcoal smuggling in partnership with Somali extremist group Al-Shabaab,²² highlight substantial deficiencies in Kenya's anti-corruption standards for personnel. Despite having formally strong codes of conduct for civilian and military personnel,²³ their enforcement appears to be lacking. Cases of corruption involving defence personnel range from solicitation and receiving of bribes during recruitment, operations and in the process of procuring goods and services. While some cases have been prosecuted, there is no information publicly available regarding sanctions and prosecutions for some of the most egregious, including related to KDF actions in Somalia.²⁴ Appointment and promotion processes are particularly prone to corruption. Senior officers have been accused of soliciting bribes during a national recruitment drive and there have been repeated allegations of massive bribery during such processes.²⁵ The situation is not helped by the lack of clarity surrounding formal recruitment and promotion processes for personnel at all levels. Shortlisting criteria and the full selection procedures are often not divulged publicly making it difficult to assess the reasons for appointments, and opening the door for external influences to play an outsized role. A major obstacle to the strengthening of ethics frameworks and a culture of anticorruption is the weakness of whistleblowing legislation. There is no specific whistleblowing policy or legislation applicable to the defence sector. While a 2018 Whistleblower Protection Bill nominally covers defence institutions, it is yet to be operationalised and there remains a continuing lack of clarity around the level of protection for personnel coming forward with sensitive information.²⁶ Within the KDF, the practice is also weakly encouraged and whistleblowers are routinely harassed and vilified, and reporting wrongdoing often comes at great personal cost.²⁷

Operations

Total armed forces personnel (World Bank, 2018)	29,100
Troops deployed on operations #	3364 in Somalia (AMISOM), 1600 in DRC (MONUSCO), 76 in Sudan (UNAMID), 17 in South Sudan (UNMISS), 14 in CAR (MINUSCA), 10 in Mali (MINUSMA), 3 in Lebanon (UNIFIL).

Kenya has a long history of peacekeeping, both with the United Nations and African Union and has regularly deployed troops as part of peace operations and in missions along its northern border with Somalia.²⁸ In spite of this, Kenya is yet to develop a strong anti-corruption framework to guide its military operations, exposing them to high levels of corruption risk. Kenya does not have a clear military doctrine addressing corruption as a strategic issue for operations, even though both the Defence White Paper and Kenya's Grand Strategy both allude to corruption as a security threat in general terms.²⁹ This omission at the strategic level has a ripple effect in terms of planning and training. Corruption issues are not systematically covered as part of pre-deployment training for commanders or soldiers, with incidents of KDF soldiers engaging in corrupt activities during deployments in Somalia pointing to serious deficiencies in this regard.³⁰ There is also no evidence of a monitoring and evaluation framework for corruption or of trained personnel being deployed in order to monitor corruption risk in the field, despite KDF operations taking place in areas with weak state presence and characterised by significant corruption risk.

²¹ Max Bearak, 'In Kenya's Battle Against Al-Shabaab, Locals Say the Military is Fighting Terror with Terror', *Washington Post*, 3 November 2019.

²² Simon Allison, 'Think Again: Who Profits from Kenya's War in Somalia?', *ISS Africa*, 7 December 2015.

²³ Government of Kenya, *Public Officer Ethics Act*, No. 3 of 2003.

²⁴ Kevin J Kelley, 'Charcoal Still Smuggled from KDF-controlled Somalia Zones', *Business Daily*, 15 November 2018.

²⁵ Shirleen Kuria, 'KDF Bosses on the Spot over Bribery Claims', *Kenyans*, 3 March 2021.

²⁶ Purity Mumbua and Peter Ochol, 'Whistle Blowers Should be Protected, KHRC says', *Kenya News Agency*, 25 June 2019.

²⁷ Samuel Kimeu, 'Whistleblowers: Kenya Needs them for the War Against Corruption to Succeed', *Adili*, 150, 2015, pp. 1-2.

²⁸ Ministry of Defence, 'Kenya's Peacekeeping Missions'.

²⁹ Journal of Contemporary Security in Africa, 'Grand Strategy of the Republic of Kenya', Course 21 – 2018/19, Vol. 5(1), 2020, pp. 88-114.

³⁰ United Nations Human Rights Working Group, 'National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Kenya', 11 November 2019, pp. 8-9.



KENYA

Defence Procurement

Military expenditure (US\$ mil) (SIPRI, 2020)	1,097
Open competition in defence procurement (%)	Data is not publicly available.
Main defence exports – to (SIPRI, 2016-20)	N/A
Main defence imports – from (SIPRI, 2016-20)	Italy, United States, China, Jordan, UAE

As the most significant defence spender in East Africa, Kenya's defence procurement programmes are substantial. Roughly a fifth of Kenya's total defence expenditure is dedicated to arms acquisitions,³¹ with arms imports increasing significantly in 2019-20 as part of a drive to modernise military equipment.³² However, gaps in Kenya's defence procurement processes considerably increase the risk of these funds being diverted through corrupt practices. At the planning level, the publication of the 2017 Defence White Paper marked a significant step forward in terms of transparency of defence policy and procurement priorities. However, the paper is a largely political document that does not provide sufficient detail on procurement requirements to be considered a guiding document for procurement planning.³³ As a result, there is an overall lack of clarity surrounding how

individual purchases respond to specific strategic priorities. While the MoD does outline the main steps in acquisition planning for large purchases, the process lacks detail and transparency in practice.³⁴ For instance, while the MoD is compelled to publish an annual procurement plan, the highly secretive nature of the military means that many purchases are conducted in secrecy, making it difficult to assess whether they are planned or opportunistic in nature.³⁵ A key issue lies with the implementation of the Public Procurement and Disposal Act. This piece of legislation provides the legal framework for the procurement activities of all public bodies and was updated in 2020 in order to strengthen its implementation.³⁶ While the amendment requires more transparency in procurement processes, high-value procurement programmes continue to be shrouded in secrecy and limited to restricted tendering processes. Restricted tenders are not subject to substantial scrutiny and the MoD has blocked audits of them by the PAC after allegations that they resulted in tender awards being skewed to politically-connected bidders.³⁷ This case underlines significant issues with procurement oversight mechanisms, which are overwhelmingly reactive rather than preventative. The lack of information available to parliamentary committees means they frequently receive information on suspicious contracts when the OAG publishes its report.³⁸ The fact that these audits themselves are often based on restricted information, points to critical gaps in oversight.

³¹ Allan Olingo, 'Kenya Military Expenditure Rises to Sh121.82 Billion', *All Africa*, 28 April 2020.

³² SIPRI, 'Military Expenditure Database', 2019-2020.

³³ Ministry of Defence, *Defence White Paper*, May 2017.

³⁴ Ministry of Defence, 'Defence Procurement: Procurement of Major Defence Equipment'.

³⁵ Victor Oluoch, 'Shady Secret Deals Raise Questions of Accountability in Military Spending', *Daily Nation*, 22 March 2020.

³⁶ Government of Kenya, *The public Procurement and Asset Disposal Regulations Act, 2020* Arrangement of Regulation, Legal Notice No. 69, *Kenya Gazette*, Supplement No. 53, 22 April 2020.

³⁷ Nyamori, 'Defence Ministry Blocked'.

³⁸ Oluoch, 'Shady Secret Deals'.

Version 1.0, October 2021

GDI data collection for **Kenya** was conducted January 2020 to May 2021. The narrative discussion in this GDI brief was produced at a later time with the most recent information available for the country, which may not be reflected in the GDI country assessments or scores.



KENYA 2020 GDI Scorecard

		Grade	Score
Political Risk		D	47
Q1	Legislative Scrutiny	C	58
Q2	Defence Committee	B	67
Q3	Defence Policy Debate	E	19
Q4	CSO Engagement	E	25
Q5	Conventions: UNCAC / OECD	B	75
Q6	Public Debate	C	63
Q7	Anticorruption Policy	E	25
Q8	Compliance and Ethics Units	C	58
Q9	Public Trust in Institutions	NS	
Q10	Risk Assessments	E	25
Q11	Acquisition Planning	D	33
Q12	Budget Transparency & Detail	A	88
Q13	Budget Scrutiny	B	75
Q14	Budget Availability	C	50
Q15	Defence Income	B	75
Q16	Internal Audit	E	31
Q17	External Audit	C	50
Q18	Natural Resources	A	83
Q19	Organised Crime Links	F	13
Q20	Organised Crime Policing	C	50
Q21	Intelligence Services Oversight	C	50
Q22	Intelligence Services Recruitment	C	58
Q23	Export Controls (ATT)	F	0
Q76	Lobbying	F	0

		Grade	Score
Financial Risk		D	42
Q24	Asset Disposal Controls	D	33
Q25	Asset Disposal Scrutiny	C	50
Q26	Secret Spending	F	0
Q27	Legislative Access to Information	F	0
Q28	Secret Program Auditing	B	75
Q29	Off-budget Spending	E	17
Q30	Access to Information	D	38
Q31	Beneficial Ownership	C	50
Q32	Military-Owned Business Scrutiny	C	50
Q33	Unauthorised Private Enterprise	A	88
Q77	Defence Spending	C	63

		Grade	Score
Personnel Risk		D	49
Q34	Public Commitment to Integrity	E	25
Q35	Disciplinary Measures for Personnel	B	75
Q36	Whistleblowing	D	42
Q37	High-risk Positions	D	42
Q38	Numbers of Personnel	F	0
Q39	Pay Rates and Allowances	D	38
Q40	Payment System	C	50
Q41	Objective Appointments	E	25
Q42	Objective Promotions	C	50
Q43	Bribery to Avoid Conscription	NA	
Q44	Bribery for Preferred Postings	A	83
Q45	Chains of Command and Payment	A	100
Q46	Military Code of Conduct	B	75

OVERALL COUNTRY SCORE

HIGH RISK

D

35



		Grade	Score
Personnel Risk		D	49
Q47	Civilian Code of Conduct	B	75
Q48	Anticorruption Training	E	25
Q49	Corruption Prosecutions	D	33
Q50	Facilitation Payments	C	50

		Grade	Score
Operational Risk		F	8
Q51	Military Doctrine	E	25
Q52	Operational Training	F	0
Q53	Forward Planning	F	0
Q54	Corruption Monitoring in Operations	F	0
Q55	Controls in Contracting	F	13
Q56	Private Military Contractors	NS	

		Grade	Score
Procurement Risk		E	28
Q57	Procurement Legislation	F	13
Q58	Procurement Cycle	C	50
Q59	Procurement Oversight Mechanisms	D	33
Q60	Potential Purchases Disclosed	F	0
Q61	Actual Purchases Disclosed	F	13
Q62	Business Compliance Standards	D	38
Q63	Procurement Requirements	E	25
Q64	Competition in Procurement	D	38
Q65	Tender Board Controls	D	38
Q66	Anti-Collusion Controls	D	38
Q67	Contract Award / Delivery	E	25
Q68	Complaint Mechanisms	B	75
Q69	Supplier Sanctions	C	63
Q70	Offset Contracts	NEI	
Q71	Offset Contract Monitoring	F	0
Q72	Offset Competition	NEI	
Q73	Agents and Intermediaries	F	0
Q74	Financing Packages	F	0
Q75	Political Pressure in Acquisitions	NS	

KEY

NEI	Not enough information to score indicator
NS	Indicator is not scored for any country
NA	Not applicable



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