



UNIVERSITY OF NAIROBI  
Institute for Development Studies



Wilton Park

# Kenya's Good Governance Moment

## Final conference report

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## Executive summary

Good governance is paramount for development in Kenya and as such there has been efforts to promote structures, institutions and frameworks to promote the same. Since the promulgation of the 2010 Constitution of Kenya, Kenya has, and continues to, put in place measures for building a strong, independent and prosperous country for the benefit of her citizens. For instance, through devolution, more resources are now going to the counties. In the recent past, the country has made significant progress in strengthening institutions, tackling corruption domestically, and taking an active role regionally through the EAC and the African Union. However, there are concerns that weak institutions may undermine the country's progress, especially in the context of the upcoming referendum and 2022 general election.

Lack of implementation of the electoral laws is a major barrier to free, fair, and peaceful elections. Laws have been enacted but they are rarely applied; and when applied, there is no impartiality in application. Inherent weaknesses in the institutions governing the conduct of elections forms an added blockage. Challenges in ensuring that elections are free, fair, and peaceful include allegations of electoral manipulation and fraud which often lead to violence; lack of financial independence of the IEBC; weak citizen agency and specifically failure of voters to sanction corrupt leaders; misinformation and voter bribery; and political violence and attendant violation of rights by security agencies.

These challenges - the results of poor commitment to the implementation of electoral laws, limited enforcement and poor adherence to the rule of law by parties and candidates - must be addressed before the forthcoming 2022 general elections, in order to build confidence in the electoral process and lay a foundation for a credible election.

The Judiciary has an important role to play in promoting accountability in the conduct of elections. The courts have the mandate to determine if an election meets the constitutional threshold and whether the elections are conducted in line with these principles. The Judiciary has also focused on monitoring the progress of election disputes at all court levels, engaging with various stakeholders involved with electoral processes to strengthen the electoral process. Despite these efforts, the Judiciary continues to face limited financial, human resource, and infrastructural challenges hindering the effective access and delivery of justice to citizens. The financial independence of the Judiciary and other independent bodies must be guaranteed, and collaboration with other relevant international and national actors in building the capacity of the judiciary proactively sought.

Challenges related to the implementation of constitutional provisions include the multiple levels of public participation processes that result in citizen fatigue and exclusion of some citizens. The absence of a framework that guarantees that citizens' voices and concerns are incorporated in decision-making following public participation potentially discourages sustainable public participation.

There is need therefore to strengthen the public participation units both at the national and county levels of government. Civic education should be enhanced to ensure improved participation of the citizens up to the lowest level possible. Further, for effective public participation to take place, the feedback mechanisms ought to be strengthened with clear guidelines put in place.

Media has an important role in promoting good governance in Kenya by ensuring timely and efficient communication to the citizens. However, commercial interests appear to override media operations. Profit making from advertising for public institutions has increasingly reduced the influence of the media in holding the government accountable. The media should therefore endeavour to deliver its purpose without influence, and with an honesty of purpose. Increased collaboration between different media houses towards common goals is important in this regard. Reconsidering recruitment procedures to ensure that media practitioners are well trained and understand history, social sciences, and contemporary issues of the fourth estate, and their role in nation-building.

Women participation in politics and leadership positions in Kenya remains low. This has continued to undermine values of good governance envisioned in the constitution. There is therefore a need to enhance implementation of key conventions, protocols, and international agreements protecting women and to remove barriers restricting women's leadership and political participation including options to run for political offices. There is also a need to incorporate gender awareness strategies during early education to inculcate gender parity at an early stage.

While the state is charged with the responsibility of promoting policies and legislations, the private sector particularly the business is the consumer of these policies. As such, business is a major source of revenue for the public sector and makes significant contribution to the economy. Good governance ensures that there is a conducive environment in terms of infrastructure for businesses to thrive. The sustainability of good governance structures and processes is key, alongside improvements in the interaction between the public and private sectors and improved engagement with business on governance issues, locally and nationally, to provide a clear framework to elaborate the extent to which the government should participate in the business.

Kenya's current regional and international leadership responsibilities make it an important actor in the regional and global arena. Notwithstanding, the country faces threats and risks that are not conventional, and that threatens the essence of governance, domestically and regionally including terrorism, violent extremism, transnational crimes, climate-induced crisis, and cybersecurity among others. Combating these threats requires the recognition of their transnational nature and that the context is constantly changing

All of Kenya's major neighbours are experiencing political challenges and the next two years will be challenging for the region. Whilst this represents an opportunity for Kenya as the most stable and the most democratic state in the region, it also poses a major challenge for Kenya because each of these countries will generate "negative externalities." This political instability further makes it harder to prosecute long-term agendas such as East African economic integration.

Kenya should focus on long-term alliance-building that is consistent, structured, and about Africa's international relations in a profound way, and as a consistent engagement over time, delivering on promises to build credibility and building support for Kenya's foreign policy. There is a need for Kenya to develop strategic international alliances and engage in longer-term collaborations to entrench her influence in the region. This can be achieved through strategic dialogue with the neighbouring countries, rather than from a position of a more powerful country

The most effective use of regional institutions such as IGAD, AU, EAC and others is to create a model of interdependence and mutual accountability, with a systematic way of evaluating the performance of regional institutions and bridging the gaps in the challenges they are facing. This would include engaging citizens of the different countries to participate in regional development to ensure citizen-led integration including enhancing accountability systems for regional projects.

Based on the two day international conference held in February 2021 deliberations, the following key recommendations are made.

1. There is urgent need to strengthen the elections management body, IEBC, and the judiciary which play a key role in promoting electoral accountability. This can be achieved through enhancing financial and political independence, and strengthening their capacity for service delivery.
2. There is a need to enhance engagement between electoral institutions and citizens in order to regain citizens' trust and improve public confidence in their delivery of service.
3. Structures for public participation and feedback mechanisms that essentially promote public engagement appear to be weak. In this case, there is need to strengthen structures that promote public participation at all levels of governance in Kenya.
4. The working relationship between the national government and county governments has been characterized by mistrust and suspicions. There is need to forge better and strong inter-governmental working relations promoting dialogue and improving communication between the two levels of government.
5. Gender gap and imbalance continues to impede good governance in Kenya in spite of the two-third gender rule enshrined in the Constitution. It is evident that representation of women in leadership and political participation remains relatively low. There is therefore need to promote gender mainstreaming at all levels of governance in Kenya.

6. Enhancing media freedom is critical for governance. However, commercial and vested interests among the media houses appear to undermine this role. There is need to strengthen freedom of media protocols in Kenya and also promote the relationship between the media and the government through dialogue.
7. While the state is largely bestowed with promoting policy frameworks for good governance, it is the private sector that consumes this service. Promoting the voice of the private sector in governance should be supported through their respective associations and platforms.
8. Regionally, Kenya should focus more on long term alliance and collaboration building with her neighbouring countries that is consistent, structured and about Africa international relations for peaceful co-existence.
9. Kenya should offer leadership in strengthening regional integration institutions as these institutions provide framework for promoting peace and security in the region.
10. Using her position at the UNSC, Kenya should play a more active role in promoting peace and stability in the region.

## Introduction

The Conference on Kenya's Good Governance Moment, At Home, Regionally and Globally was organized by Wilton Park and the Institute for Development Studies (IDS), University of Nairobi, with the support of the Foreign, Commonwealth, and Development Office (FCDO) in Kenya. This virtual meeting was held on two separate days; Monday 15 and Friday 19 March 2021, from 1030-1330 GMT/1330-1630 EAT.

During the deliberations, the Conference explored key issues around governance and identified recommendations for developing and extending ongoing work to promote positive change. Specifically, the meeting aimed at:

1. Identifying means and measures for building a strong and independent open society, drawing lessons from the implementation of the 2010 Constitution.
2. Identifying appropriate linkages between Kenya's state and non-state actors and determining how the international community can best support them.
3. Deliberating how Kenya's forthcoming 2022 elections can be more inclusive, fair, peaceful and credible.
4. Identifying how Kenya can use the opportunities of the current period, including its non-permanent seat on the United Nations Security Council (UNSC) and building back from COVID-19, to project and progress good governance at regional and global level.

The meeting brought together key actors actively involved in advancing the quest for good governance in Kenya. Participants were drawn from the government, civil society, media, and the international community. The government had representation from national and county levels, with the national government being represented by policymakers from the three arms of government (executive, judiciary, and legislature), constitutional commissions and independent bodies. Representatives from the county executive and assemblies were also present. Civil society representatives were drawn from international, regional, and national organisations and there was a fair representation of media as well as the private sector and business community representatives in attendance.

## The context

Kenya has achieved many democratic milestones, since the promulgation of the inclusive and progressive Constitution of Kenya (2010). Amongst some of the achievements was: the adoption of a devolved governance structure of 47 county governments, with one national government; establishment of constitutional commissions and institutions; and the formulation of action plans to counter violent extremism. These milestones have been realized through a collaborative approach involving community members, religious and community leaders, security officials, and government representatives.

Kenya's devolved system of government is a response to real challenges that Kenyans had grappled with since independence, in 1963. Devolution is aimed at addressing imbalances in development and promoting the accountable exercise of power, effective self-governance, equitable social and economic development, and public participation. However, implementation thus far reveals that a lot still needs to be done in order to achieve governance structures that are more inclusive, transparent, and accountable. These gaps indicate the need to strengthen national policies and institutions that support this ambition – inclusive and accountable governance structure.

In addition to devolution and support to country governments, there have been efforts to improve the conduct of elections, to ensure they are peaceful and credible. Competitive elections and attendant disputes over results have tended to arouse disputes and violent conflicts. The 2010 Constitution, indeed, was the result of an international mediation of the post-2007 election violence. The parties in conflict agreed to undertake constitutional and other reforms to address underlying causes of conflicts in the country. From then on, the ambitions for peaceful and credible elections remained central in governance reforms. These include: the administration of free and fair elections supported by the free media; engagement with civil society to ensure it plays an important role

in ongoing government oversight; and, countering ongoing attacks by violent extremist groups within Kenya's borders.

Regionally, Kenya is located in a politically complex neighbourhood. Fragility of the states in the Greater Horn of Africa; internal conflicts in the neighbouring countries; and economic difficulties in the region compound the challenges for Kenya. These regional dynamics underline the need for Kenya to remain a bulwark of democracy and stability.

Against a backdrop of strategic leadership roles, which includes Kenya's seat on the United Nation's Security Council (UNSC) and African Union's Peace and Security Council (AUPSC), Chairmanship of the East Africa Community (EAC), and the African, Caribbean and the Pacific States (APC), the country has the opportunity to highlight how it can role-model open societies and support global and regional institutions in enforcing the international rules-based order. How Kenya conducts itself at the domestic level, has a wider regional and global bearing; an all-too-important tool, at this moment when Kenya is well-positioned to optimise its influence around the globe.

In the light of this context, the meeting was organized around three themes:

**Elections:**

- How can Kenya deliver free, fair and peaceful elections that incorporate a supportive and free media, and civil society with a strong focus on reducing the drivers of election violence?
- How can we ensure that civil society plays an important watchdog and oversight role on government, by the creation of an enabling environment for increased civic engagement at both county and national levels.

**Constitutionalism:**

- How can the gains of the 2010 Constitution be strengthened to enhance transparency, accountability and inclusion?
- How can Kenya's state and non-state actors best work together to achieve these objectives?
- What is the role of the international community and how can they best support such aspirations?
- How can Kenya play a positive and effective regional role?

**Open societies/security:**

- How can Kenya best use its position in the AU-PSC and UNSC over the next 2 years?
- How can we co-create the environment and structures for county governments to operate, within greater transparency, accountability, and inclusion?

**Promoting electoral accountability**

Discussion on Day 1 of the virtual meeting focused on two interconnected issues: promoting electoral accountability; and civic engagement and public participation. Four break-out groups were also convened to delve deeper into issues relating to these themes. The four groups focused on:

- Free media, what should the role of the media be and how can free media exist? How can the media support a free, fair and credible election and act against electoral violence?
- Women's political participation, how can we promote political representation for women? How do we tackle violence towards women in office, at local level, and in the media?
- Independent institutions, how do we support strong and independent institutions? Which institutions and functions are essential to ensure a free, fair and credible election?
- Business, what is the role of business in promoting and supporting good governance?

Introducing the meeting, representatives from both the University of Nairobi (UoN), and the British High Commission in Kenya emphasised the significance of the meeting by acknowledging that dialogue has the potential to set the tone for Kenya's good governance. They underlined the importance of exploiting this dialogue to identify key opportunities and address challenges for Kenya's democracy and stability.

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## Promoting electoral accountability

Discussions explored how Kenya can champion electoral accountability and there was a focus on emphasising the rule of law and service delivery. The discussion identified key challenges facing the electoral process, and what should be done to protect and promote the integrity of elections. The discussion also examined the role of key institutions in delivering credible elections and safeguarding good governance.

**The lack of implementation of the electoral laws – enacted under the 2010 Constitution - was recognised as the main barrier to free, fair, and peaceful elections.** Participants observed that laws have been enacted but they are rarely applied, and when applied, there is no impartiality in application.

The discussion also underlined the **weakness of institutions governing the conduct of elections**, and there was implication that the institutions may be the blockage to free, fair and credible elections. It was noted that resolving the institutional and political challenges facing the election management body (the Independent Electoral and Boundaries Commission (IEBC)), the Judiciary as the arbiter in the management of election disputes, and other institutions, is an important prerequisite for free, fair and credible elections. The section below highlights the main observations with regard to electoral management and the role of the Judiciary.

## Strengthening electoral management

Kenya has an elaborate legal framework for the management of elections. This includes the CoK (2010), the Elections Act 2011, and several other laws<sup>1</sup>. Article 10 of the Constitution is the anchor article for these laws and binds all state agencies and persons in interpreting the Constitution. Article 10 identifies the national values and principles of good governance including integrity, transparency, and accountability. Article 81-90 covers the Electoral System and provides that the electoral system should be neutral, efficient, accountable, and accurate. Further, Article 86 states that the voting method should be secure and verifiable.

The electoral management body, the IEBC, also partners with other agencies to strengthen the conduct of election management. There have been partnerships between the IEBC and other actors in electoral dispute resolution mechanisms; and provision of security services during elections; among other areas. The IEBC collaborates with other state and non-state actors to provide voter education, enhance participation and engagement in the electoral process, and to expand civic space in general.

Notwithstanding these laws and the partnerships, there are challenges in ensuring that elections are free, fair, and peaceful. These challenges include allegations of **electoral manipulation and fraud** which often lead to violence; **lack of financial independence of the IEBC**; **weak citizen agency** and specifically failure of voters to sanction corrupt leaders; **misinformation and voter bribery**; and **political violence** and attendant violation of rights by security agencies. For instance, the by-elections held in March 2021 in Kabuchai Constituency in Bungoma County; and London Ward in Nakuru County, revealed flouting of electoral management rules and in turn led to violence.

These challenges are not the result of the lack of laws. **They are the result of poor commitment to the implementation of electoral laws.** Indeed, reports on election observation have continually identified limited enforcement of laws; and poor adherence to the rule of law by parties and candidates as a major weakness in the conduct of elections.<sup>2</sup> These challenges must be addressed before the forthcoming 2022 general elections, in order to build confidence in the electoral process and lay a foundation for a credible election.

## The Judiciary

Electoral disputes in Kenya and elsewhere in the world are not just legal; they are political contests between winners and losers in an election. The disputes are an extension of political contests. They also are contests

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<sup>1</sup> Other relevant laws include the Elections Offences Act, 2016; The Political Parties Act, 2011; The Independent Electoral and Boundaries Commission Act, 2011; the Elections Campaign Financing Act, 2013; and the Leadership and Integrity Act, 2012.

<sup>2</sup>APRM peer review mechanism report.

involving candidates and their supporters. How electoral disputes are resolved therefore tends to impact on the political space for the conduct of elections. The resolution of the electoral dispute can either enhance or weaken the public confidence in the Judiciary and the election management body. For instance, if the courts raise legitimacy questions around an election and as a result nullify the election results, this may in one way or the other weaken the credibility of the elected leader(s). The Judiciary therefore has an important role to play in promoting accountability in the conduct of elections.

The courts have the mandate to determine if an election meets the constitutional threshold and whether the elections are conducted in line with these principles. This is because the Constitution of Kenya, 2010, guarantees universal suffrage and provides conditions for elections that are free from violence, intimidation, and other malpractices. The legal framework underpinning elections also emphasises the need for elections to be transparent and administered in an impartial, neutral, efficient, accurate and accountable manner. Thus, judges and magistrates who handle election petitions, therefore, are inducted on how to resolve disputes in line with these principles.

Through the Judicial Committee on Elections, the Judiciary has trained judges on how to handle election petitions expeditiously. The training has also focused on internalising the amendment of the elections petition rules as well as new rules for the court of appeal and other courts. The Judiciary has also focused on monitoring the progress of election disputes at all court levels, engaging with various stakeholders involved with electoral processes such as the Law Society of Kenya, IEBC, Registrar of Political Parties, and the National Police Service, to strengthen the electoral process.

Despite these efforts, the **Judiciary continues to face limited financial, human resource, and infrastructural challenges hindering the effective access and delivery of justice to citizens**. The allegations of **political interference in the electoral process also affects the judicial processes**. Further **the different courts – High Court, the Court of Appeal, and Supreme Court – appear to differ in the interpretations of electoral laws**. The differences – some ideological – constrain progress in judicial reforms. On account of this, the meeting underlined the need for the judicial officers to be exposed to the political economy context of elections in order to gain a full understanding of the dynamics around election petitions. Indeed, it was observed that courts are viewed as an avenue to seek justice by some while others transform the courts into a ‘shopping basket’. Judges, therefore, need to **separate the legal from political disputes and advise on appropriate and alternative avenues of dispute resolution**.

In promoting the effectiveness of the Judiciary, the financial independence of the Judiciary and other independent bodies must be guaranteed. Similarly, **collaboration with other relevant international and national actors in building the capacity of the judiciary** and adopting best practices are also key in supporting the mandate of the judiciary including the resolution of electoral disputes.

On the whole, this discussion underlined that Kenya has an elaborate electoral and legal framework, which is critical for electoral accountability. Electoral accountability is necessary not only for peaceful elections, but also for peaceful coexistence in a politically active nation. Notable progress has been made in enhancing the electoral process. However, there are key challenges that would need to be addressed towards the full realisation of credible elections before the next general election in 2022. These include **safeguarding the independence and professionalism of the electoral management body (IEBC)**. This will involve making available sufficient human, financial and capital resources and addressing the gaps identified in the electoral management process.

## **Civic engagement and public participation**

This session sought to explore the different opportunities and challenges presented by Kenya’s civic engagement space and public participation processes. The speakers noted that the Constitution, provides for citizen participation at both the national and county levels of governance. However, it was noted that there are challenges related to the implementation of constitutional provisions. These include the multiple levels of public participation processes that result in citizen fatigue and exclusion of some citizens.

## The status of civic engagement and public participation

The Constitution of Kenya provides for public participation and civic engagement in governance. Despite these provisions, **current civic spaces and avenues of public participation are weak**. This may be exemplified by the recent passing of the national budget - a Ksh.1 trillion-deficit budget policy statement - without any public participation.

There are also parallel public participation processes at the national and county level of government. These processes are not synchronised and therefore lead to fatigue among citizens. This is because, while public participation is organised to provide for citizen voices and views from the lowest level (wards, villages, sub-locations, etc.) to the next levels, till these issues reach the county government and the national government ministries, the model presents potential barriers especially because **not many citizens are aware of when they are required to contribute and to what issue**. In other instances, they are required to travel long distances and this locks out particular categories of citizens and their ideas. Equally important are the instances of **particular actors who act as 'political brokers and gatekeepers' and stand to prevent those who are critical of certain leaders**. This prevents effective public participation.

Article 35 of the Constitution of Kenya recognises that public information is a public good that must be accessible and provided transparently to enhance accountability. This entails promoting the provision of adequate and accurate information as well as simplifying public information so that citizens have the capacity and ability to understand and process the information. However, there is inadequate responsiveness from the citizens, mainly due to the shortfall of current public officials and actors to uphold these virtues in sharing public information, which affects effective public participation in governance processes.

**The absence of a framework that guarantees that citizens' voices and concerns are incorporated in decision-making following public participation potentially discourages sustainable public participation.** This has been linked to the breakdown of effective public participation feedback mechanisms. That is, the public lacks information on the extent to which their contributions are incorporated in policy-making processes.

Discussions also observed that civic engagement and public participation is a fundamental right – and is a national value and a principle of governance as provided under Article 10 of the Constitution. Participants raised questions on the complex nature of participation and whether, in the end, any of the citizens voices matter. It is evident that the multi-layer of public participation processes has weakened the framework of effective citizen engagement. There is need therefore to **strengthen the public participation units** both at the national and county levels of government. **Civic education should be enhanced** to ensure improved participation of the citizens up to the lowest level possible. Further, for effective public participation to take place, the **feedback mechanisms ought to be strengthened with clear guidelines** put in place.

## The role of media in promoting free and fair elections

The meeting explored the role of media and how a free media can be nurtured. The meeting also discussed how the media can support a free, fair, and credible election and act against electoral violence. The following were identified as critical elements in the role of the media:

- There is a lot to be learned from the 1990s period of consolidating multiparty democracy. The media, together with progressive civil society groups and opposition political parties played an integral role in holding the government and the ruling party accountable.
- The gains from this relationship appear eroded, with all the actors (media, civil society, and opposition) working in different agenda sets. Furthermore, commercial interests appear to override media operations. Profit making from advertising for public institutions has increasingly reduced the influence of the media in holding the government accountable.
- The civil society is fragmented and the opposition parties are highly factionalised and divided along ethno-regional lines.

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- The media should endeavour to deliver its purpose without influence, and with an honesty of purpose. Increased collaboration between different media houses towards common goals is important in this regard.
  - Reconsidering recruitment procedures to ensure that media practitioners are well trained and understand history, social sciences, and contemporary issues of the fourth estate, and their role in nation-building.
  - Need for the media to be more dynamic, and more adapting and responding to change. For instance, introducing paywalls in electronic media may further alienate the youth who are a majority.

### **Women's political participation**

This session focused on factors that affect women's political participation in Kenya. The participants identified different challenges such as gender-based violence that women face while participating in politics and low access to economic resources as some of the impediments to women participation in politics and leadership positions in Kenya. In the end, the discussions underlined the need to enhance implementation of key conventions, protocols, and international agreements protecting women. Below are key discussion points emanating from the session.

- Several factors restrict women's leadership and political participation; this affects decision-making at all levels.
- Many structural and institutional barriers limit women's options to run for political offices.
- Slow implementation of legal provisions such as the realisation of the two-thirds gender rule limit the potential to address the gender gap in public affairs. There is also slow domestication of international conventions promoting gender parity.
- **There is a need to ensure proper implementation of laws and promote community-level dialogue in enhancing spaces of participation for women.**
- **Preventing or addressing the structural causes of violence as well as the risk factors that are associated with violence is core in the quest to eliminate violence against women and girls generally.**
- **There is a need to incorporate gender awareness strategies during early education to inculcate gender parity at an early stage.**
- **Strengthen different networks working with women at the local, regional, and global levels to scale up support to women's participation and election in leadership positions.**

### **Role of business in supporting and promoting good governance**

Participants explored the role of business in promoting and supporting good governance as well as the key obstacles preventing businesses from contributing to good governance. The discussion identified the following as important issues to pursue in this regard:

- Business is a major source of revenue for the public sector; business makes significant contribution to the economy.
- Business owners influence public policies and exploit relations with political elites steering the relationship towards serving their own as opposed to public interests.
- Good governance ensures that there is a conducive environment in terms of infrastructure for businesses to thrive. The sustainability of good governance structures and processes is key.
- Governance institutions are required to hold all businesses accountable. Such accountability involves ensuring legislative and policy frameworks are clear and elaborate enough to prevent businesses from manipulating the law to their benefit.
- The laws need to be predictable, such that business owners have confidence in the environment in which they operate.

- Improve the interaction between the public and private sector and improve engagement with business on governance issues, locally and nationally.
- The state should avoid being engaged in business activities as it crowds out the private sector businesses. Instead, the state should focus on promoting regulatory policies for improving business environment for the private sector to thrive.

## **Kenya's moment: regional and global influence**

Day two of the virtual meeting focused on the lessons that Kenya has learned in shaping peace, security, and good governance in the region. The discussions identified Kenya's achievements in the regional and at the global level in the last decade and how these achievements can enhance Kenya's influence at these levels. It was emphasised that Kenya should build on the active role it has played at regional and global bodies like EAC, AUPSC, APC, and UNSC.

### **Kenya: lessons in shaping peace, security, and good governance at regional level**

Given Kenya's current regional and international leadership responsibilities (EAC, ACP, UNSC, and AUPSC), the country remains an important actor in the regional and global arena. This is enhancing the country's role in the pursuit of peace, security, and good governance. The country's contribution to these goals is inspired by the understanding that stability and security are of concern not only at the domestic level but also beyond the domestic sphere.

The above notwithstanding, the country faces threats and risks that are not conventional, and that threatens the essence of governance, domestically and regionally. These threats include terrorism, violent extremism, transnational crimes, climate-induced crisis, and cybersecurity among others. Combating these threats requires the recognition of their transnational nature and that the context is constantly changing. Therefore, understanding the drivers and agents that influence the promotion of good governance is critical.

Kenya has made significant investments in regional peace and security. This is driven by the notion of shared prosperity; the promise of Kenya's future is inextricably linked to the prosperity of the region and the continent. This may be explained by the push for the African Continental Free Trade Area and other mechanisms that create a collective mechanism for realising shared prosperity. The domestic and regional consensus should be reinforced by international frameworks and values within the United Nations and other international mechanisms. This can be achieved through solidarity, shared values, and multilateral effectiveness towards peace and security as well as addressing other global crises such as countering violent extremism and terrorism, and climate change. Addressing these challenges, can be viewed as the essence of building bridges not just at the domestic level, but across all these concentric circles.

### **Kenya's regional context: opportunities and challenges**

Regionally, there is increased recognition of remarkable turbulence in East Africa. There is a potential reconfiguration of the axis of power in Eastern Africa. There are ongoing discussions and concerns internationally about a growing bond between Eritrea, Somalia, and Ethiopia in which Eritrean foreign policy ambitions are being revived. Linked to this is the growing concern about border clashes and violence between Sudan and Ethiopia, and the role of Egypt. Additionally, the conflict in Tigray in Ethiopia for instance creates risks on the economic growth and political stability of the Ethiopian government. The instability potentially generates refugees and asylum seekers for neighbouring countries.

There is concern about new dynamics elsewhere in the region. There are concerns about fragility in Somalia too where recent elections have not been held. As a result, there are new internal dynamics potentially deepening instability in the country. Equally, in Tanzania, the death of President Magufuli has caused considerable instability. At the same time, there is potential for future instability in Uganda. The ongoing repression as seen in

the recent elections in the country as well the threats posed to opposition figures, raises questions about democracy and human rights.

Almost all of Kenya's major neighbours are experiencing political challenges and the next two years will be challenging for the region. On the one hand, that represents an opportunity for Kenya as the most stable and the most democratic state in the region. On the other hand, it is also a major challenge for Kenya because each of these countries will generate "negative externalities." For example, civil conflict may lead to a fall in trade which will hurt Kenya's economy, or that refugees and asylum seekers will generate new problems around borders. This political instability further makes it harder to prosecute long-term agendas such as East African economic integration.

Kenya has been a leading figure, often seen as having some of the best-educated and most advanced intellectuals, academics, and policymakers in Africa. However, this has not always led to foreign policy successes. Therefore, the country should focus on long-term alliance-building that is consistent, structured, and about Africa's international relations in a profound way. This cannot be done on a short-term basis; it needs there to be consistent engagement over time, delivering on promises to build credibility and building support for Kenya's foreign policy.

Kenya has been perceived as a democratic and stable country in the region. However, this will be a great test on whether the country can hold free, fair, and credible elections in the upcoming general elections. Similarly, there are questions about Kenya's economic partnerships with her neighbours given recent incidents of the country being left out of key regional infrastructure projects. Hence, there is more work for the country to do in rebuilding strong relations and integrating Kenya's economy in the region.

Further, Kenya's role in the EAC is linked to her history of democracy in the region and the new values and changes happening after the 2010 Constitution. Within the key principle of equal citizenship for all, there is a need to foster domestic and regional consensus and address individual and people's rights together. It is also important for the EAC to lobby towards problems facing shared resources like the Lake Victoria Basin.

### **International relationships: the key themes that Kenya should champion during its 'Moment'**

This session focused on how Kenya can take advantage of her strategic role regionally and internationally to influence key international relations and economic prospects. Below are the main discussion points:

- The need for Kenya to develop strategic alliances and engage in longer-term collaborations to entrench her influence in the region. This can be achieved through strategic dialogue with the neighbouring countries, rather than from a position of a more powerful country.
- Leverage on the constitutional and governance reform processes to strengthen regional influence including the regional investments both for trade and politics.
- Escalate local initiatives to a global level including climate change actions e.g., plastic bans. Further, coordinate the efforts of different actors in handling global challenges.

### **The role of regional institutions (IGAD, AU, EAC, etc.) In promoting good governance**

This session focused on the key regional institutions and the role that they can play in developing and promoting good governance. Kenya's role in regional integration and how these institutions can work together to provide positive output for tackling regional and global issues were also discussed. Below are the main points from the discussion:

- Address key challenges facing the regional institutions including funding, discuss how member states that default can meet both their obligations and create a model of interdependence and mutual accountability.
- The need to have a systematic way of evaluating the performance of regional institutions and bridge the gaps in the challenges they are facing.

- Engaging citizens of the different countries to participate in regional development is critical in ensuring citizen-led integration including enhancing accountability systems for regional projects.
- Address the overlapping roles in the different regional bodies to enhance collaboration and effective use of resources.

### **Civil society and media – the role of civil society and the media in promoting and supporting good governance**

This session focused on the important role of a joint relationship between civil society and the media in promoting good governance, especially in an era where the civic engagement spaces have been shrinking.

- The need for solidarity and collaboration between the media and civil society and removal of the dichotomy between media and civil society. This can be through collaboration in promoting access to information, transparency, and accountability, and tackling challenges on certain decisions.
- Address the challenges that hinder collaboration between civil society and the media. Key among the challenges are the high costs and the commercial nature of mainstream media.
- Embrace public interest education and collaborate with media organisations and individuals to counter the challenges of disinformation and misinformation.

### **Concluding remarks and recommendations**

In brief remarks, during the conclusion of the Conference, The Institute for Development Studies reiterated the role that Kenya continues to play in regional stability and beyond the region noting that the challenges that the country face are not conventional. Indeed, there exist internal grievances that create tensions as evident in the perpetual disputed election. It was also noted that there is a potential crisis simmering in the region and that Kenya is currently faced with potentially extreme eventualities. The role of electoral and judicial institutions then is key in the stability and progress of any country. A strong civil society that promotes constitutionalism and adherence to the rule of law is also requisite.

The British High Commission lauded the incredible contributions made by speakers and other participants, noting that Kenya is very important to the United Kingdom, because mainly of her continued reference to good governance among her neighbours. It was noted that while Kenya is facing challenges domestically and regionally, the BHC will continue to affirm the United Kingdom's support for Kenya as part of answering the 'how' and 'why' questions on the issues that the country and the region are facing.

Wilton Park, the funding partner of the Conference, noted that the speakers and the participants had raised different discussions and recommendations, and thus there is need for a continued conversation and to continue collaboration and providing the spaces for such discussions.

Based on the discussion held over the two days conference, we draw the following recommendations.

1. There is urgent need to strengthen the elections management body, IEBC, and the judiciary which play a key role in promoting electoral accountability. This can be achieved through enhancing financial and political independence, and strengthening their capacity for service delivery.
2. There is a need to enhance engagement between electoral institutions and citizens in order to regain citizens' trust and improve public confidence in their delivery of service.
3. Structures for public participation and feedback mechanisms that essentially promote public engagement appear to be weak. In this case, there is need to strengthen structures that promote public participation at all levels of governance in Kenya.
4. The working relationship between the national government and county governments has been characterized by mistrust and suspicions. There is need to forge better and strong inter-governmental

working relations promoting dialogue and improving communication between the two levels of government.

5. Gender gap and imbalance continues to impede good governance in Kenya in spite of the two-third gender rule enshrined in the Constitution. It is evident that representation of women in leadership and political participation remains relatively low. There is therefore need to promote gender mainstreaming at all levels of governance in Kenya.
6. Enhancing media freedom is critical for governance. However, commercial and vested interests among the media houses appear to undermine this role. There is need to strengthen freedom of media protocols in Kenya; and also promote the relationship between the media and the government through dialogue.
7. While the state is largely bestowed with promoting policy frameworks for good governance, it is the private sector that consumes this service. Promoting the voice of the private sector in governance should be supported through their respective associations and platforms.
8. Regionally, Kenya should focus more on long term alliance and collaboration building with her neighbouring countries that is consistent, structured and about Africa international relations for peaceful co-existence.
9. Kenya should offer leadership in strengthening regional integration institutions as these institutions provide framework for promoting peace and security in the region.
10. Using her position at the UNSC, Kenya should play a more active role in promoting peace and stability in the region.

## Conference recommended actions

Table 1 Key Action Points

Theme	Discussion/Challenge Points	Recommendations
<b>Promoting electoral Accountability</b>	Kenya has the necessary legal framework for electoral accountability however, effective implementation of the laws remains a challenge including lead-in times.	The IEBC should identify the gaps in electoral accountability law to be addressed by parliament.
	The independence of the IEBC and the appointment of the commissioners remains a challenge. The IEBC is not fully constituted; Commissioners and some key staff have to be hired to build the capacity for a free and fair elections	(a) Parliament should initiate the process of reconstituting the IEBC.
		(b) Introduction of guidelines for appointment process of filling key posts including Commissioners, ensuring the process safeguards the independence of IEBC and promotes professionalism, integrity and meritocracy.
	Lack of financial independence of the electoral body makes it susceptible to political interference.	Parliament should establish the IEBC fund to enhance its financial independence.
	There are systemic problems related to key election processes (voter registration, tallying, results transmission, etc.) affecting IEBC. These will hinder the integrity of the 2022 elections.	(a) Development partners and other partners should support IEBC in development of a multi-agency strategy to address issues of accountability in elections management.
		(b) Stakeholders involved in elections should encourage coverage of public interest issues by the media; and encourage countering misinformation and disinformation.
	The judiciary continues to face financial challenges affecting the delivery of justice including on electoral matters.	The National Treasury should allocate funds to operationalise the judiciary fund. The fund will protect the independence of the judiciary and reduce political interference.
	The nature of electoral disputes keeps changing and the numbers keep rising in each electoral cycle.	Development partners and civil society should support the building of capacity of the judiciary to address electoral dispute using political economy analysis and the legal framework.
There are challenges of funding and duplication of roles in the constitutional commissions and independent bodies.	Parliament provide for adequate funding of the independence of Constitutional Commissions and independent bodies to promote their independence.	

	There is still room for improvement in collaboration and partnerships between constitutional commissions and independent bodies and other stakeholders such as civil societies.	Development partners and other partners should support collaborative efforts on issues of common mandate among constitutional commissions and independent bodies.
<b>Civic engagement and public participation</b>	There are questions on whether local-level citizen participation can influence high-level decisions such as government allocations.	Partners such as civil society should work on an elaborate mechanism on how citizens can influence high-level decision-making at the national and county governments.
	Citizens do not fully understand the guidelines for participation as well as the content of participation	CSOs and other stakeholders in devolution should simplify civic engagement information, processes, and guidelines, and make them citizen-centered and easy to use.
	The costing of the roles of national and county governments in the Fourth Schedule of the constitution has not been finalized	Parliament and the Commission on Revenue Allocation should facilitate review and costing of functions in the Fourth Schedule to ensure equity and efficiency in revenue sharing between the national and county governments.
	Women's participation remains minimal at all levels despite legal provisions providing for their inclusion.	CSOs and development partners should support grassroots efforts for women involved at all levels and work towards the elimination of all forms of violence.
	There are challenges affecting women at all levels including those who vie for elective positions.	
	There is a need for more organised and closer collaborations between civil society and the media.	CSOs and the media should establish collaborative models for public education on election and other related issues
	There are challenges of accessing available media platforms to highlight public interest issues.	
<b>Kenya's regional and global influence</b>	Kenya continues to be a pacesetter in the region both economically and politically; however, weaknesses in foreign policy have led to missed opportunities.	(a) The government should focus on building long-term alliances in pursuance of regional and global goals.
		(b) The government should deepen the historic mediation role and forge new relations in the region.
	EAC has great economic potential; the region provides significant trade partners for Kenya which can further be exploited through the strengthening of the EAC.	(a) Kenya to use its current chairmanship of the EAC through the Ministry of East African Community and Regional Development and East Africa Legislative Assembly to champion and address regional challenges such as common and shared resources.

		(b) Continuous building of the relationships across the region by the government and embrace partnership and dialogue from an equal partner approach.
	The need to improve Kenya's economic and political profile internationally through the different leadership roles regionally and globally.	(a) Kenya, through the Ministry of Trade and Foreign Affairs should take advantage of African, Caribbean and Pacific States chair to champion against unfair trade rules and the inequality in global trade.
		(b) The government should exploit opportunities that come with seating at African Union's Peace and Security Council and United Nations Security Council towards promoting regional peace and security.



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