



Kenya

Population ¹	50,221,473
Area (km ²) ¹	580,370
GDP per capita (USD) ¹	1,568.20
TPES (Mtoe) ²	25.99
Energy intensity (toe/10 ³ 2010 USD) ²	0.47
CO ₂ emissions - energy (MtCO ₂) ²	15.70

Sources:

1. The World Bank 2017

2. ©IEA 2018, www.iea.org/statistics

Kenya's overall risk level against the assessed areas is **low**.

Discrimination between foreign and domestic investors as well as *unpredictable policy and regulatory change* continue to be the lower risk areas. The level of risk for both reduced vis-à-vis last year, and they are now on the same plane. *Breach of State obligations* remains the highest risk area.

Kenya has a good performance on two of the EIRA indicators, and a moderate performance on the remaining indicators. It has once again received a score of 78 on *management of decision-making processes* and 63 on *rule of law*. On *regulatory environment and investment conditions*, the score has increased by 2 points and now stands at 60. The indicator *foresight of policy and regulatory change* has improved the most, from 53 to 58 points.

On a more detailed level, Kenya's overall sub-indicator performance is good. *Management and settlement of investor-State disputes* remains the highest-scoring sub-indicator with 85 points. On *transparency* (81), *institutional governance* (75) and *communication of vision and policies* (67), the score is the same as last year. Though the score on *restrictions on FDI* has gone down from 65 to 60, the country's performance on *regulatory effectiveness* has improved by 9 points (from 50 to 59) and on *robustness of policy goals and commitments* by 10 points (from 40 to 50). This year, the lowest-scoring sub-indicator is *respect for property rights* with a score of 42.

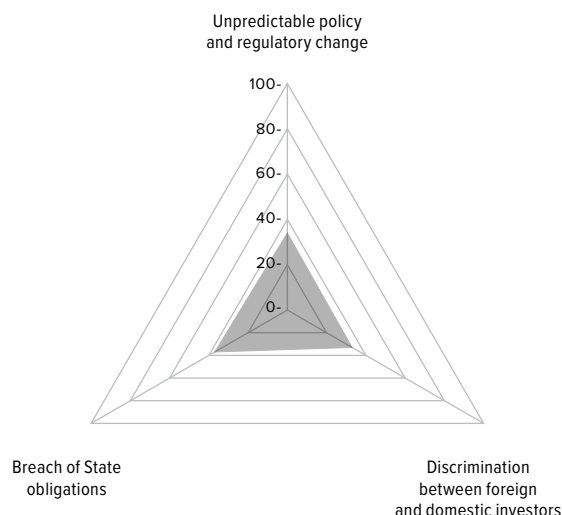
Kenya provides attractive conditions for investors and is working in the right direction. Attention should be given to strengthening the respect for property rights.

YEAR-ON-YEAR COMPARISON

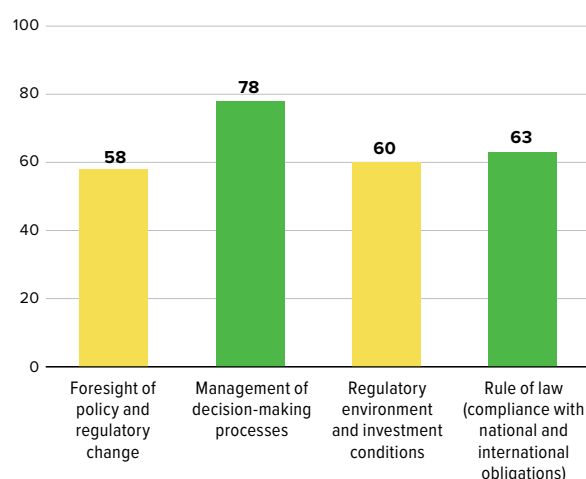
RISK AREAS	2018	2019
Unpredictable policy and regulatory change	35	33
Discrimination between foreign and domestic investors	34	33
Breach of State obligations	37	37

INDICATORS	2018	2019
Foresight of policy and regulatory change	53	58
Management of decision-making processes	78	78
Regulatory environment and investment conditions	58	60
Rule of law	63	63

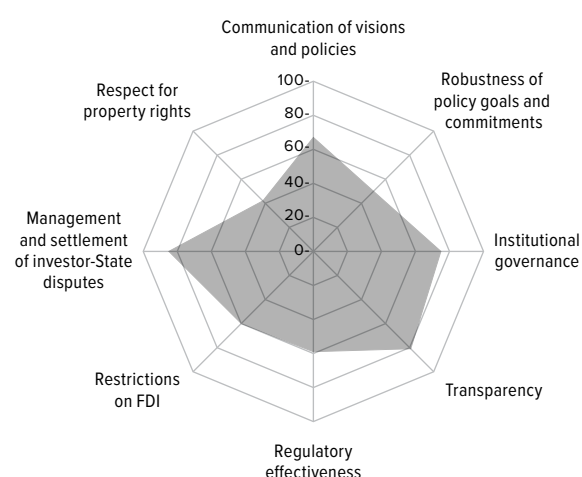
RISK LEVEL



INDICATOR PERFORMANCE



SUB-INDICATOR PERFORMANCE



Foresight of policy and regulatory change

QUICK FACTS

The Sessional Paper No. 4 on Energy, adopted in 2004, defines Kenya's energy approach.

Kenya's long-term development blueprint, Vision 2030, will be realised through successive five-year medium-term plans. This is envisaged in three stages. Currently, the Third Medium Term Plan (MTP III) 2018-2022 is under implementation.

In 2018, the Government launched the Updated Least Cost Power Development Plan 2017-2037.

Kenya ratified the Paris Agreement in 2016 and submitted its NDC.

STRENGTHS

Some key legal reforms envisaged in the MTP III were completed in 2019. Most significantly, the Energy Act 2019 was adopted to consolidate the laws related to energy. The Act places a legal obligation on the Cabinet Secretary responsible for energy to develop and publish the country's energy policy and its underlying plan in consultation with stakeholders. Additionally, a new Petroleum Act 2019 was adopted to streamline governance in the contracting, exploration, development and production of petroleum resources. In 2018, the Government launched the Kenya National Electrification Strategy, which is intended to be a roadmap for achieving universal access to electricity.

With the enactment of the Energy Act 2019 and the Petroleum Act 2019, the periodic review of the country's energy priorities is now a legal requirement. The Energy Act 2019 states that the national energy policy should be reviewed every five years. The Cabinet Secretary responsible for energy must prepare and publish a report on the implementation of the policy. For this purpose, each national energy service provider and County Government is required to develop and submit to the Cabinet Secretary plans for the provision of energy services and requirements. The Cabinet Secretary then must consolidate these into an integrated national energy plan and review it every three years. Similar provisions on monitoring and evaluation are incorporated in the Petroleum Act 2019.

AREAS FOR IMPROVEMENT

By establishing a clear legal framework for the energy sector, the Government has taken a step in the right direction. It is now an opportune moment to develop a long-term energy strategy comprising measurable targets and concrete implementation plans. The adoption of the draft National Energy and Petroleum Policy, pending since 2015, will bring more clarity about the energy goals to be pursued and the timelines for their achievement. Moreover, the Government should fast-track the process of enacting implementing regulations under the Energy Act 2019 to operationalise its key provisions.

Management of decision-making processes

QUICK FACTS

The Energy Act 2019 states that the Cabinet Secretary of Energy is responsible for developing and publishing a national energy policy. The Cabinet Secretary is the head of the Ministry of Energy.

The Fifth Schedule to the Energy Act 2019 stipulates the main functions of the national and county governments in relation to the energy sector.

The Access to Information Act 2016 gives effect to the constitutional right of access to information held by public authorities.

STRENGTHS

The Energy Act 2019 aims at increasing inter-ministerial cooperation in the sector. In particular, it establishes the Renewable Energy Resource Advisory Committee, which is mandated to advise the Cabinet Secretary of Energy on the allocation, licensing and management of renewable resources. The enactment of this legislation is expected to bring Kenya on par with the international industry standards and practices.

Measures were taken by the Government to guarantee public participation in the decision-making process of the country. The Energy Act 2019 contains provisions that require consultation with the relevant stakeholders in developing and reviewing the national energy policy and plan. The Act also states that any decision of the Energy and Petroleum Regulatory Authority (EPRA) should be in writing. All orders must be reasoned, served upon all parties to the proceedings and may be published in the Official Gazette. The Petroleum Act 2019 requires the Cabinet Secretary for petroleum to develop a framework for reporting, transparency and accountability in the upstream petroleum sector.

AREAS FOR IMPROVEMENT

Efforts should be made to increase access to information held by public authorities. Excessive control of crucial statistics and project information should be avoided to ensure that transparency and information flow is not hampered. While there are now laws in place facilitating consultation with stakeholders, it is essential that they are implemented on the ground. Engagement with interested parties during the initial stages of the policy-making process will help avoid objections that may arise, particularly from the private sector, during the policy adoption stage.

Regulatory environment and investment conditions

QUICK FACTS

The EPRA is established as the successor to the Energy Regulatory Commission (ERC). The EPRA is mandated to regulate generation, importation, exportation, transmission, distribution, supply and usage of electrical energy, except for the licensing of nuclear facilities.

The Energy Act 2019 establishes the Rural Electrification and Renewable Energy Corporation for overseeing the implementation of the country's Rural Electrification Programme.

The Constitution of Kenya 2010 protects the right to equality and freedom from discrimination.

STRENGTHS

The Energy Act 2019 has introduced significant changes to the regulatory regime of the energy sector. It creates a new national entity, the Nuclear Power and Energy Agency (NuPEA), for regulating nuclear power and proposing policies and legislation for the successful implementation of the country's nuclear programme. This is particularly relevant given the country's ambition to reduce its reliance on non-renewable resources. The Energy Act 2019 contains detailed provisions on the establishment, mandate, powers, functions and funding of the EPRA and the NuPEA. The law empowers the regulatory bodies to impose penalties in case of infringement.

The Energy Act 2019 states that the Cabinet Secretary of Energy shall create an environment conducive to energy infrastructure development. It also provides that while discharging its functions and exercising its powers under the Act, a licensing authority shall ensure that no particular person is given undue preference or subjected to any undue disadvantage. The Energy Act 2019 and the Petroleum Act 2019 clarify the rules and obligations of investors in terms of local content requirements. The Model Production Sharing Contract 2019 requires the upstream contractor and its sub-contractors to develop a Technology Transfer Programme. The Programme must be aimed at building and designing in Kenya specialised technical, management and professional skills relevant to upstream petroleum operations. It also lists the areas of upstream petroleum activities in which the contractor should transfer technology and business expertise.

AREAS FOR IMPROVEMENT

The Government has recently adopted new laws that give legislative backing to the country's local content requirement policy. In light of this, careful consideration should be given to the need and utility of the local content bill currently pending before the Parliament. Duplication and contradiction should be avoided, and the implications of enacting a new law on the subject re-evaluated. The focus should now be on setting out subsidiary rules to implement the sector laws that deal with local content requirements.

Rule of law

QUICK FACTS

Kenya ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1967.

Kenya acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1989.

Kenya has been a member country of the WTO since 1995.

STRENGTHS

There continues to be support for arbitration as the preferred means for resolving disputes. The Petroleum Act 2019 states that all disputes between parties to a petroleum agreement shall be resolved through alternative dispute resolution mechanisms in the first instance. The Energy Act 2019 grants any person aggrieved by a decision of the EPRA the right to appeal before the Energy and Petroleum Tribunal. There have been no retroactive changes made in the last five years detrimentally impacting foreign investors.

The Constitution guarantees protection against expropriation and prohibits the State from depriving an individual of its property, including intellectual property. Expropriation of foreign assets is only permitted on public interest grounds. An investor not satisfied with the expropriation decision may request domestic courts to review the amount of compensation and the legality of expropriation. There are no legal provisions that restrict the transfer of technology in the energy sector.

AREAS FOR IMPROVEMENT

Protection against the expropriation of tangible and intangible assets may be strengthened in the national legislation. The State could introduce explicit provisions to determine what constitutes "public or national purpose". Since there is no specific procedure in place about how and when compensation should be made, the domestic law must include a detailed process for this, with clear steps and guidelines.