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Privatization, Parliamentary Oversight, and the Politics of Infrastructure Financing: Lessons from Kenya's Safaricom Share Disposal Controversy

Mrs. Wesonga Halima[1]

[1] African Policy and Fiscal Governance Research Group, Kenya

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ABSTRACT

Kenya's decision to divest a 15 per cent government stake in Safaricom PLC to Vodacom Group for KSh. 244.5 billion, whilst simultaneously tabling the National Infrastructure Fund (NIF) Bill 2026, presents one of the most consequential public asset management questions in the country's post-independence history. This paper critically examines the Safaricom share disposal controversy through three intersecting lenses: fiscal sustainability, institutional governance, and capital market integrity. Drawing on principal-agent theory, new institutional economics, and the literature on frontier market fragility, the paper argues that the transaction, as concluded, prioritizes short-term fiscal relief over long-term revenue sustainability, proceeds through a process insufficiently accountable to Parliament, and introduces systemic risks to Kenya's fragile capital market ecosystem. The National Infrastructure Fund Bill 2026, whilst architecturally ambitious, contains critical institutional gaps particularly the concentration of performance evaluation, investment policy approval, and government support measures in a single executive office which risks replicating rather than reforming Kenya's historically opaque infrastructure procurement culture. Drawing on comparative evidence from Nigeria's NITEL privatization, Ghana's telecommunications divestiture, and Tanzania's TTCL experience, the paper situates Kenya within a broader continental pattern of executive-driven, politically timed asset disposals that frequently underperform on both fiscal and developmental objectives. The paper concludes with targeted policy recommendations for Parliament, the National Treasury, and the Capital Markets Authority.

INTRODUCTION

In December 2025, the Government of Kenya finalized a sale agreement with Vodacom Group, South Africa, for a 15% stake in Safaricom PLC, the most profitable telecommunications company in East Africa, at a price of KSh. 34 per share, raising gross proceeds of KSh. 244.5 billion (US$ 1.6 billion) (Miriri & Obulutsa, 2025; Musau, 2025). The sale, which Treasury Cabinet Secretary John Mbadi called one of the most

[1]Corresponding Author: Political Economists Researcher., African Policy and Fiscal Governance Research Group, Kenya; Email: wesongahalima8@gmail.com

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significant State divestitures in recent years, was also framed as the seed capital for the National Infrastructure Fund (NIF), a new agency aimed at mobilizing up to KSh. 5 trillion in infrastructure investment by co-financing with private capital (Kiplagat, 2026; Makhanu, 2025). Kiharu Member of Parliament Ndindi Nyoro, within days of the announcement, launched a sustained and detailed parliamentary debate, challenging the valuation methodology, the lack of competitive bidding, the secretive identity of government negotiators, and the constitutional legitimacy of the bypassing of parliamentary approval of the disposal of a strategic national asset (Lagat, 2025; Omulo, 2026).

This controversy does not exist in isolation. It appears at a time of acute fiscal stress, following the collapse of the Finance Bill 2024 due to nationwide protests, leaving the government with a revenue shortfall estimated at KSh. 344 billion (US$ 2.7 billion) (Lawal, 2024; Miriri & Kumwenda-Mtambo, 2024). The debt-to-GDP ratio in Kenya was estimated to have reached about 64% at its peak, and by June 2024, debt service was estimated at 69.6% of domestic revenues, more than twice the IMF-recommended limit of 30% (Africa Check, 2024; Cytonn, 2024). It is in this context that asset recycling emerged as an administratively convenient alternative to the politically expensive path of new taxation.

The empirical puzzle this paper addresses is deceptively simple: why would a fiscally stressed government sell its most valuable, consistently dividend-paying equity asset at a time when the Nairobi Securities Exchange's (NSE) depressed valuations likely understate Safaricom's intrinsic worth? The answer, this paper argues, reveals systemic weaknesses in Kenya's constitutional public finance architecture, weaknesses that the National Infrastructure Fund Bill, as currently drafted, does not adequately resolve.

Three research questions guide this paper. First, does Safaricom's share disposal represent a sound fiscal strategy or short-term opportunism at the expense of long-term public revenue? Second, does the NIF Bill 2026 provide sufficient institutional safeguards to ensure accountable deployment of divestiture proceeds? Third, what does this episode reveal about the structural tensions between executive fiscal authority and parliamentary oversight within Kenya's constitutional framework? This paper argues that the Safaricom divestiture, as currently concluded, prioritizes short-term fiscal relief over long-term revenue sustainability, proceeds through a process insufficiently accountable to Parliament, and introduces systemic risks to Kenya's fragile capital market, whilst the NIF Bill, despite its institutional ambitions, lacks the oversight architecture necessary to prevent the very governance failures it purports to address.

THEORETICAL FRAMEWORK

This paper draws on four interrelated theoretical backgrounds to interrogate the Safaricom divestiture and the NIF Bill.

Principal-Agent Theory in Public Asset Management

Principal-agent theory, originating in Jensen and Meckling's (1976) foundational work and later applied extensively to public enterprises (van Thiel, 2016), posits that the state acts as principal, employing the executive as agent to manage public assets on behalf of citizens. The key issue lies in information asymmetry, where the executive has better access to information on asset valuations, transaction details, and negotiation processes that cannot be easily checked by the principal – the Parliament and the people (Leruth & Paul, 2006). Under weak oversight mechanisms, this asymmetry creates an agent-opportunism situation, in which executives might prioritize politically driven or fiscally expedient asset disposals over maximizing long-term public value.

When applied to the Safaricom case, the principal-agent theory sheds light on a significant governance failure: the government using KCB Capital as a transaction advisor, the non-disclosure of the identities of negotiators, and the unwillingness to subject the deal to parliamentary

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review are all typical red flags of information asymmetry exploitation (Makong, 2025; D. Omondi, 2026). The inability of government agents to maintain fundamental accountability mechanisms, such as transparency, responsiveness, and adherence to monitoring frameworks, as shown by Danso (2019) in the Ghanaian context, systematically undermines the results of privatization.

New Institutional Economics and Property Rights Theory

The new institutional economics framework introduced by Douglass North (1990) confirms that institutions, rules of the game, define the quality of economic outcomes by influencing incentive structures (Kayizzi-Mugerwa, 2002; Richter, 2005). In the privatization context, the credibility and rule-boundedness of the disposal process are as important as the price. Non-institutionalized, ad hoc, politically timed disposals erode institutional credibility, discourage future investors, and damage public trust in state-managed transactions (Kayizzi-Mugerwa, 2002). The Privatization Act (2025), signed by President Ruto, in theory provides a procedural framework for asset disposals, but critics such as Nyoro have cast doubt on whether its provisions were adhered to in the Safaricom deal, especially regarding competitive tendering requirements (Gichigi, 2026; Kizito, 2026).

Constitutional Public Finance Theory

The Constitution of Kenya 2010 provides a complex public finance architecture, grounded in the principles of openness, accountability, and public participation, as set out in Article 201 and the provisions on the Consolidated Fund in Article 206. The Constitution requires parliamentary oversight of public finance decisions. However, the Money Bill category in Article 114 centralizes fiscal decision-making in the executive-aligned majority of the National Assembly, restricting the Senate and undermining bicameral oversight. The classification of the NIF Bill as a Money Bill has precisely this effect: it constrains the Senate's ability to introduce substantive amendments, concentrating the political battle in a chamber where the Treasury's parliamentary allies hold significant influence.

Frontier Market Fragility Theory

Frontier capital markets are identified by shallow liquidity pools, high concentration risk, and extreme sensitivity to large-block equity flows (Cytonn, 2024). The NSE serves as an example of such vulnerabilities, with Safaricom accounting for 60% of total NSE investor wealth, and the Capital Markets Authority (CMA) repeatedly pointing to single-stock concentration as a systemic risk (Mwaniki, 2021). A government-controlled block sale of 6 billion shares in such markets has price-discovery consequences that extend beyond the transaction itself, affecting pension fund portfolios, retail investor confidence, and foreign institutional sentiment. The asset recycling literature on frontier markets (Estrin & Pelletier, 2018) has consistently cautioned that the poorly sequenced, politically linked placement of equities in thin markets can suppress asset prices, cause portfolio rebalancing, and create capital outflows, the very same risks that critics of the Safaricom disposal have been warning against.

CONTEXTUAL BACKGROUND

Fiscal Landscape in Kenya: The Pressure Behind the Sale

The fiscal landscape of Kenya in 2024-2025 was marked by acute tensions on several fronts. The debt service-to-revenue ratio peaked in July 2023 at 101.4%, falling slightly to 69.6% in June 2024, but remained 39.6 percentage points above the IMF-recommended ratio of 30% (Cytonn, 2024; IMF, 2024). Public debt exceeded US$80 billion, surpassing the 2023 national budget (Transparency International, 2025). The IMF conducted external debt sustainability tests that found Kenya's debt to be sustainable, albeit with a high risk of debt distress (IMF, 2024). Kenya was also running three IMF financing programs simultaneously.

The June 2024 political economy rupture fundamentally changed the course of Kenya's

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revenue mobilization. The cancellation of the Finance Bill 2024 due to Gen-Z protests, which escalated to fatalities when demonstrators infiltrated Parliament, left an income void of about KSh. 344 billion (Lawal, 2024; Miriri & Kumwenda-Mtambo, 2024). This reliance on expenditure compression and government domestic borrowing was no longer adequate, prompting the exploration of non-tax revenue options. This was the very context identified by Ndindi Nyoro when he characterized Treasury as branding itself as desperate before the negotiation process began, undermining Kenya's bargaining power in what would have otherwise been an arm's-length, competitive transaction (Kizito, 2026; Makong, 2025).

Safaricom as a Strategic State Asset

Safaricom PLC occupies a unique position in Kenya's economic architecture, distinguishing it from typical privatization candidates. It is the NSE's most valuable stock as of February 2026, accounting for an estimated 40% of the NSE's total market capitalization (AFX, 2026). Its M-Pesa mobile money service has become systemic to Kenya's financial infrastructure, handling more than 60% of digital transactions in the country. The first half of fiscal 2025 saw revenue grow 13.1% to KSh. 179.9 billion, with M-Pesa revenue increasing by 16.6% and mobile data revenue expanding by 20.2% (M. Kamau, 2025).

Importantly, Safaricom's dividend income has been a significant source of recurrent non-tax revenue to the Treasury. In March 2025, Safaricom paid KSh. 16.9 billion in dividends to the National Treasury (Minney, 2025). The sale of 15% of the government stake permanently lowers this dividend income in future years, and the fact that the government monetizes future dividends as an advance (essentially a KSh. 40.2 billion pre-payment at a discount of KSh. 15.5 billion) further diminishes the continuing stream of revenue (Musau, 2025). The exchange is therefore not just a single capital payment, but the irrevocable forfeiture of a stream of income that compounds.

The NIF Bill 2026: Architecture and Ambitions

On January 23, 2026, Majority Leader Kimani Ichung'wah tabled the National Infrastructure Fund (NIF) Bill 2026 in the National Assembly, after Cabinet approved it on December 16, 2025 (Achieng, 2026). The Bill defines the NIF as a corporate body with perpetual succession, suing, contracting, and investing in the infrastructure priorities across Kenya, including highways, railways, ports, electricity, water, and agribusiness infrastructure (The National Infrastructure Fund Bill, 2025, § 4). The governance framework of the Fund consists of a nine-member Board of Directors, including an independent director as the chairperson, the Cabinet Secretary of National Treasury or their representative, four independent directors, two directors with development banking experience, and the Chief Executive Officer in an ex-officio capacity (s.6). A five-year Investment Policy (s.21) should be in place with priority sectors, proposed projects, asset allocation, exposure limits, and projected returns.

The three pillars of the NIF, as stated by the government through CS Mbadi, include: asset recycling (reconverting mature equity holdings into new productive infrastructure), mobilization of private capital (leveraging up to KSh. 10 in private investment against every KSh. 1 of public seed capital), and debt reduction (shifting infrastructure financing off of sovereign borrowing) (Makhanu, 2025; D. Omondi, 2026). These are credible development finance goals; the question is whether the Bill's institutional design is sufficient to achieve them without repeating Kenya's historical failures in infrastructure governance.

The Parliamentary Opposition: Nyoro's Critique in Context

The objections of Ndindi Nyoro, delivered in parliamentary committee hearings, in public forums, and in media interactions throughout November 2025-January 2026, are organized around four substantive issues. First, a valuation issue: Nyoro claimed that the price of KSh. 34 per

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share reflects a 24% discount on Safaricom's 2021 valuation of KSh. 45 per share, and that the Price-to-Earnings ratio of 16 is half that of other players like MTN (40) and Bharti Airtel (33), implying gross underpricing compared to industry competitors (Ntongai, 2025). Second, a process issue: Nyoro challenged the lack of a competitive global bid, claiming that a REA Vipingo-like competitive process would have produced a much higher premium, as evidenced by the case of the REA Vipingo shares trading at KSh. 27.5 receiving a final offer of KSh. 85, a 209% premium (Ntongai, 2025, 2026). Third, the issue of revenue sustainability: Nyoro described the dividend advance as a veiled loan that mortgages future dividends (Lagat, 2025; Ntongai, 2026). Fourth, a governance issue: Nyoro claimed that non-government actors negotiated the talks about Kenya and that accountability questions the Treasury has not fully answered (Lagat, 2025; Ntongai, 2025, 2026).

CRITICAL ANALYSIS

Valuation Problem: Are Kenyans Getting Fair Value?

The valuation process at the center of the Safaricom controversy reveals a fundamental conflict between market-driven pricing and intrinsic value appraisal. The Treasury employed a six-month volume-weighted average price (VWAP) expiring December 2025, with a 23.6 per cent premium to determine KSh. 34 per share (Mutai, 2026; I. Omondi, 2025). CS Mbadi correctly observed that the government is selling shares, not the company as a whole, and that the VWAP methodology is standard practice in block placements. However, Nyoro's counter-argument, that using a depressed, bearish NSE as the reference point for a transaction of this magnitude constitutes an incomplete valuation exercise, has substantive merit (Kiplagat, 2026; Mwenda, 2025; Ondeng, 2025).

There are three issues of analytical interest. To begin with, the immobilization of 16 billion Safaricom shares in June 2025, six months prior to the transaction's pricing date, could have suppressed the VWAP as the reference benchmark (Ntongai, 2026). When the immobilization artificially reduced the share price over the measurement window, the pricing methodology is inherently flawed. Second, the lump-sum payment of KSh. 40.2 billion to the government in the form of an advance dividend, at a discount of KSh. 15.5 billion is a poor present-value trade-off that the Treasury has justified on temporal grounds, citing the value of receiving money now (Musau, 2025). Nevertheless, at Safaricom's historical dividend growth rates, the discounted present value of missed future dividends can greatly outweigh the short-term liquidity advantage. Third, the lack of an independent, published valuation report by a conflict-free financial advisor with no financial interest in the transaction's success is a critical transparency gap.

According to international best practice in the disposal of sovereign assets, as outlined in OECD guidelines on the governance of state-owned enterprises (OECD, 2015), there must be: an independent, publicly disclosed valuation by a qualified advisor; a competitive process with two or more potential acquirers submitting binding bids; and notification by Parliament (rather than authorization) before the transaction is closed. The Safaricom transaction seems to fall short on at least the first two criteria.

The Process Problem: Competitive Bidding and Transparency

The lack of a documented, competitive bidding process in the Safaricom transaction is the most substantive governance failure. The choice of Vodacom as the only purchaser, with no publicly announced competitive bidding process, creates circumstances in which the ultimate price cannot be described as clearing the market (Mutai, 2026; Ntongai, 2026). The REA Vipingo analogy, as proposed by Nyoro, is informative: competition among buyers drives price discovery that is systematically repressed in single-buyer negotiations (R. Kamau, 2025; Ntongai, 2025). This is not just a hypothetical issue; empirical observations of privatization deals in Sub-Saharan

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Africa have repeatedly shown that competitive processes yield much higher receipts per share than bilateral bargains (Estrin & Pelletier, 2018; Parker & Kirkpatrick, 2005).

The accusation of non-governmental individuals negotiating on behalf of Kenya is especially severe. Assuming this were true, it would not only cast doubt on accountability, as such individuals have no fiduciary obligation to Kenyan taxpayers, but also on conflicts of interest. The readiness of Nyoro to prove these claims before a parliamentary committee is the type of legislative control role that the Constitution contemplates, but its success hinges on whether the committee is empowered to disclose information fully and whether the executive is ready to provide documentation of transactions.

The Privatization Act (2025) and the public participation provisions of the Constitution under Article 118 establish a legal framework that arguably required wider stakeholder consultation prior to the finalization of the transaction. The intervention of the Law Society of Kenya and Katiba Institute in the High Court challenge to the establishment of the NIF, casting doubt on the adherence to Article 201, indicates that the legal adequacy of the process is truly controversial (Kizito, 2026).

Revenue Sustainability Problem: One-Time Gain vs Perpetual Dividend

The fiscal illusion inherent in the Safaricom transaction is, perhaps, its most analytically significant aspect. The Treasury framing that KSh. The concept of converting 244.5 billion in proceeds into a higher-value asset through NIF infrastructure investment is conceptually sound but operationally doubtful. It demands that the NIF deployed proceeds be invested in infrastructure yielding returns comparable to or greater than the Safaricom compounding dividend stream; that the institutional quality of NIF governance is such that the proceeds are not diverted or dissipated; and that the targets for mobilizing private capital are, in fact, met. All these are uncertainties (Benamara, 2026; M. Kamau, 2025). The history of dividends paid by Safaricom shows increasing dividend returns that cannot be reliably replicated by infrastructure projects, which tend to have longer payback periods, construction risk, and reliance on user-fee revenue in the short to medium term. The IMF distinguishes between asset recycling (the sale of mature assets and their redistribution into assets that yield similar or higher returns) and asset liquidation (the sale of productive assets to alleviate immediate fiscal strains), which are directly applicable here (IMF, 2024). The time pressure with which the transaction was closed, and the public recognition of the fiscal urgency by CS Mbadi, indicate that the transaction is more of the latter than the Treasury would like to accept.

The NIF Bill: Reform Architecture or Governance Risk?

There are real institutional innovations in the NIF Bill 2026. The competitive recruitment of directors and the CEO, the independence requirements of the audit committee, the mandatory investment policy with specified parameters, the five-year validity cycle, and the ban on balance-sheet borrowing (s.12[2][a]) all reflect a more advanced governance structure than Kenya has generally applied to special-purpose funds. These characteristics echo Kenya's experience with the Kenya Roads Board, the National Housing Corporation, and other funds, where ring-fencing requirements failed to protect political control or against fiscal raids.

However, there are four important weaknesses to consider. First, the Cabinet Secretary's power concentration is impressive. The CS, under the Bill, must approve the investment policy (s.21[1]) and enter performance contracts (s.19[2]) and review the performance of the Fund (s.20[1]) and prescribe government support measures (s.25[1]) and prescribe remuneration guidelines (s.13) and make regulations (s.37). This is a very high level of discretionary power in one executive office, which is precisely the institutional design defect that the principal-agency theory points to as a source of opportunistic behavior.

Second, the Bill lacks a specifically dedicated parliamentary oversight mechanism. The

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reporting requirements are to the Cabinet Secretary (s.26[1]), rather than directly to Parliament. The CS may issue semi-annual reports to the Cabinet and annual reports to the National Assembly (s. 26[2]). This permissive, not compulsory, formulation provides Parliament with no guaranteed, timely access to Fund performance information.

Third, the relationship between Safaricom divestiture proceeds and NIF capitalization is not a legal requirement but rather a discretionary administrative matter. The Bill recognizes proceeds from privatization and the disposal of government assets as a source of funds (s. 29[a]), but does not impose a legal requirement that divestiture proceeds be capitalized as NIF. This introduces a possible disconnect between the government's stated intention and the Fund's actual capitalization path.

Fourth, the legal actions brought by the Consumers Federation of Kenya and other petitioners, who claim that the public Fund can only be established by an Act of Parliament, rather than a Cabinet decision and subsequent incorporation of the company, creates a constitutional issue that the high court defense of the Treasury admits has not yet been resolved (Kiplagat, 2026; Omulo, 2026). Should the High Court eventually conclude that the corporate form of the NIF is constitutionally non-compliant, the whole asset recycling framework collapses.

Capital Market Systemic Risk

The NSE's structural weaknesses magnify the systemic risk associated with the Safaricom transaction. At its optimal, Safaricom controlled more than 63% of the aggregate NSE market capitalization (Mwaniki, 2021). By early 2026, this number had risen to around 40%, which remains the largest single constituent of the exchange by far(AFX, 2026; Cytonn, 2025). This concentration has been repeatedly identified by the CMA as a major market risk, with Safaricom's movements effectively determining whether the NSE gains or loses value on any given day.

The six billion extra Safaricom shares introduced into market circulation by the transfer of the 15 per cent government stake to Vodacom change the free-float dynamics of the stock in ways yet to be fully reflected in secondary market price discovery. Pension funds, such as the National Social Security Fund and large private occupational plans, own considerable Safaricom stakes; a long-term fall in the share price after the placement would directly undermine household savings. Foreign institutional investors, who have been net sellers on the NSE for five consecutive years (Cytonn, 2024), might view a poorly executed government block sale as a signal of policy uncertainty, catalyzing portfolio outflows. No publicly available evidence exists that the transaction was sequenced to consider the NSE liquidity profile or institutional investor capacity.

COMPARATIVE PERSPECTIVES: SUB-SAHARAN AFRICAN PARALLELS

Ghana: Telecommunications Divestiture and Accountability Failures

The case of state-owned enterprise privatization in Ghana presents one of the most informative analogies to the Kenya Safaricom controversy. The privatization program in Ghana generated about 14% of GDP between 1987 and 1999, the most ambitious divestiture program in Sub-Saharan Africa at the time. Although proceeds were high, net direct privatization proceeds were comparatively low due to the high cost of divestiture, liabilities, and, most importantly, the program's use as a political patronage tool to reward supporters and insiders of the ruling regime (Appiah-Kubi, 2001).

The privatization of Ghana Telecom, which was later acquired by Vodafone in 2008, is especially instructive. It was a negotiated sale rather than a full-fledged global tender. It attracted criticism from opposition parliamentarians and civil society organizations, who contended that the government had undersold a strategic national asset (Bank of Ghana, 2005). Later inquiries found that valuation procedures were not confirmed separately at the time of the

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transaction, and that the level of control granted to the foreign acquirer exceeded the reported ownership stake due to management privileges built into the transaction design.

The Ghana experience shows several patterns that seem to be repeated in the Safaricom case in Kenya: executive-led design of transactions with limited parliamentary engagement, opaque valuation, and the political framing of fiscal expediency as developmental policy. The failure of Ghana to implement proper accountability structures in SOE divestiture, as documented by Danso (2019), has inevitably undermined administrative policy outcomes, which are directly relevant to Kenya's current course. The lack of transparency, information availability, and responsiveness to societal issues in the Ghana Telecom case caused irreparable harm to societal trust in privatization as a means of reform. This lesson rings particularly loud in post-Finance Bill 2024 Kenya, where societal distrust of executive fiscal judgment is already high.

Nigeria: NITEL and the Politics of Privatisation

The case of the privatization of Nigerian Telecommunications Limited (NITEL) is perhaps the most instructive example of African telecommunications divestiture. Instead of being an economic reform instrument, privatization in Nigeria was largely described as a political settlement instrument, evident in discriminatory candidate selection, weak regulatory policies, and opaque privatization mechanisms (Okoh, 2025; Olutayo & Omobowale, 2011). Multiple failures characterized the privatization of NITEL during its over ten years of operation, due to valuation disputes, legal challenges, and concerns about the company's debt (Okoh, 2025; Salawu et al., 2016).

The initial sale to Investors International London Limited failed as the purchaser defaulted on payment. Later efforts with Transcorp and other consortia also failed. As reported by Danso (2019) and Olutayo and Omobowale (2011), the underlying issue was that the privatization process was not driven by market logic but by political corruption and institutional failures. The NITEL case featured government officials as agents of pro- buyers instead of guardians of the common good - the very issue Nyoro highlighted about the Safaricom deal (Muraya, 2026).

The Nigerian experience bears a direct caution to Kenya about the governance architecture of the NIF. The Bureau of Public Enterprises, the formal institutional guardian of privatization integrity in Nigeria, was unable to protect transactions from political interference because executive discretion in the privatization process was concentrated without institutional checks. By endowing the Cabinet Secretary with performance appraisal, investment policy authorization, and governmental support provisions, the NIF Bill of Kenya threatens to establish a similar concentration of discretionary authority, as Nigeria's experience indicates is perilous without a strong, independent parliamentary checkpoint.

Furthermore, the privatization of telecommunications in Nigeria provided a contrasting experience on what effective sector liberalization can accomplish: when the telecommunications sector was opened to competition, with the entry of the MTN, Airtel, and other companies into Nigeria through competitive licensing, as opposed to opaque bilateral agreements, the sector grew rapidly, subscribers increased, and investment flowed into it in a way that the NITEL privatization did not (Salawu et al., 2016). Competitive entry versus bilateral deal-making is exactly the distinction central to Nyoro's critique of the Safaricom process.

Tanzania: TTCL and the Costs of Failed Privatisation

The experience of the Tanzania Telecommunications Company Limited (TTCL) offers a slightly different, but equally valuable lesson: the price of an ill-conceived privatization that does not yield the benefits anticipated, and eventually forces the government to buy back its own privatized assets at great expense (Mugarula, 2007; Mwandenga, 2000). The partial privatization of TTCL in February 2001, in

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which a Dutch-German consortium purchased 35 per cent of the shares, was not accompanied by proper regulatory provisions, competitive entry conditions, and technology transfer requirements (Mugarula, 2007; World Bank, 2012). In 2005, the consortium ultimately withdrew from joint management, and TTCL faced serious financial and operational challenges in 2006 that jeopardized its long-term survival.

In February 2016, Bharti Airtel repurchased its 35 per cent stake in TTCL from the Tanzanian government at a cost of TSh. 14 billion, following a three-year dispute - essentially undoing the privatization at the expense of the state. In June 2016, TTCL was re-nationalized entirely by the government (Mramba, 2011; World Bank, 2012). A World Bank review of the privatization program in Tanzania found that the policies that had informed the TTCL transaction had been outpaced by the technology revolution in the industry, and that the transaction produced results that were neither as good as they might have been, nor as bad as they could have been - a diplomatic description of a governance failure that eventually led to the complete renationalization (World Bank, 2012).

Two factors make the TTCL case especially applicable to Kenya. First, it demonstrates that poorly designed privatization deals create contingent liabilities - the Tanzanian government's purchase of TTCL shares was not foreseen in the initial transaction design and was an unbudgeted fiscal burden. Unless the conditions precedent to the sale of the Safaricom stake to Vodacom are strictly met, including data sovereignty, Kenyan citizenship, and regulatory cooperation, Kenya is likely to experience similar governance challenges in the coming years. Second, the TTCL experience underlines the need to ensure that privatization transactions incorporate effective post-sale regulatory oversight provisions, which the NIF Bill fails to address fully in the case of Safaricom.

Synthesis: The African Privatisation Governance Deficit

In the three country cases reviewed, Ghana, Nigeria, and Tanzania, a pattern of pathology is apparent: executive-led, less scrutinized, politically timed asset sales that perform systematically worse, both in fiscal and developmental terms. The typical institutional failures include: information asymmetry between the executive and legislature/public; poor design of competitive processes; lack of independent, publicly disclosed valuations; and poor post-privatization regulatory supervision. The Safaricom case in Kenya shows all four characteristics. The key feature of successful privatizations in the African context, as discerned in the comparative literature (Berthélemy et al., 2004; Estrin & Pelletier, 2018), is the existence of credible, rule-bound institutions that limit executive discretion and give parliaments and citizens verifiable information about the value they are receiving and the terms they are being offered to buyers. In South Africa, the partial privatization of Telkom in 1997, which raised US$ 1.26 billion in an internationally marketed process with explicit governance terms, is a regional model of what a successful strategic divestiture can accomplish (Batidzirai, 1999; Berthélemy et al., 2004). The Safaricom transaction in Kenya, however, was reached quickly, with little transparency and no competitive process, in an environment of public fiscal distress, which the comparative literature has repeatedly found to be predictive of suboptimal outcomes.

POLICY RECOMMENDATIONS

For the Safaricom Divestiture Process

Although the Safaricom share transfer to Vodacom has been finalized, Parliament and regulators can take a number of governance actions to reduce current risks. Parliament must insist that the Treasury present a detailed post-transaction report that discloses: the identity and remuneration of all transaction advisers; the entire valuation methodology and supporting data used by KCB Capital; a comparison of the price at

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which the transaction was concluded with alternative valuation techniques such as discounted cash flow and comparable transactions analysis; and an accounting of the conditions precedent that were imposed on Vodacom and the enforcement mechanisms available by the government. A parliamentary resolution should be required, rather than a mere notification, to dispose of future state equities in excess of a specified limit, such as two per cent of total NSE market capitalization, before the close of the transaction. In the case of the current government stake in Safaricom (20 per cent), the paper suggests a formal state ownership policy that would declare Safaricom a strategic asset that would be subject to increased parliamentary scrutiny before any further disposal. The Auditor-General should review the dividend advance arrangement to determine whether it is a de facto borrowing instrument that ought to have been reported as public debt under the PFM Act.

For the NIF Bill 2026

The NIF Bill needs specific amendments to overcome its institutional governance shortcomings. Parliament should amend the Bill to provide a Joint Parliamentary Oversight Committee with real-time access to NIF investment decisions, disbursements, and performance reviews. The role of the Cabinet Secretary as approver of investment policy and performance evaluator should be separated, with performance evaluation delegated to an external body, reporting to Parliament. The 'may' formulation in s.26(2) on the parliamentary reporting ought to be changed to shall, and quarterly reporting to Parliament should be compulsory, not optional. The constitutional issue regarding the corporate structure of the NIF must be addressed before the ultimate enactment of the Bill, either by the court or by the legislature, thereby resolving the petitioners' concerns under Article 201. The conflict of interest and related-party transaction provisions of s. 28 ought to be reinforced to clearly prohibit investment decisions that favor Board members, their associates, or politically affiliated parties.

For Kenya's Broader Public Asset Management Framework

At a systemic level, Kenya needs a detailed State Ownership Policy - similar to the South African shareholder management model or the Temasek Holdings framework in Singapore - that defines which assets are strategic and non-disposable, which are subject to partial or complete disposal, and on what terms such disposals can be made. The Privatization Commission and its independence must be strengthened to make it a genuine institutional counterweight to Treasury-led asset disposals. The alignment of all asset disposal processes with the requirements of Article 201 on openness, accountability, and public participation should be justiciable; i.e., affected citizens should be able to challenge disposals that do not comply with these constitutional provisions, as existing court challenges already show can be done.

CONCLUSION

The Safaricom share disposal controversy is not just a dispute over share prices. It is, in essence, a constitutional moment, a test of whether the Kenyan post-2010 public finance architecture can limit executive fiscal discretion in the disposition of strategic national assets and whether Parliament has the institutional capacity and political will to exercise meaningful oversight over transactions of generational consequence.

This paper has contended that the divestiture process, as it was concluded, fails both the valuation integrity test and the procedural transparency test, and that the long-term loss of the government of Safaricom's dividend income is a structural erosion of the non-tax revenue base that is not sufficiently compensated by the infrastructure returns of the NIF. Although architecturally more advanced than prior special-purpose fund instruments in Kenya's history, the NIF Bill has institutional gaps, especially the concentration of executive discretion in the Cabinet Secretary and the lack of mandatory direct parliamentary reporting, which threaten to recreate the opacity it is intended to eliminate.

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The Ghanaian, Nigerian, and Tanzanian experiences add to a consistent conclusion: executive-led, politically timed privatizations conducted outside competitive, transparent processes underperform reliably on both fiscal and developmental grounds. The Safaricom case in Kenya has the hallmarks of this continental trend, and the lack of competitive bidding, independent public valuation, and parliamentary pre-approval before the transaction is completed is a governance failure that must be addressed by future legislation.

The National Infrastructure Fund in Kenya has real potential to transform the country's infrastructure financing landscape. However, this potential can only be achieved under the condition that the legal basis of the Fund is reinforced by the amendments suggested in this paper, its governance framework is truly shielded against political influence, and the asset disposals that make it real are executed in a way that is transparent, competitive, and subject to parliamentary oversight, which Kenya citizens, emboldened by the 2024 protests and more attentive to how the public resources are managed, will no longer accept passively.

The broader significance of this incident extends beyond Kenya. As African governments facing mounting debt pressures increasingly turn to asset recycling as a politically expedient alternative to new taxation, the institutional quality of divestiture processes will determine whether this strategy delivers genuine developmental value or becomes another chapter in the continent's long history of public wealth transferred to private hands under the cover of reform rhetoric.

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