Africa Centre for Open Governance

Kenya's Debt Treadmill:
The China Portfolio 2000 - 2024

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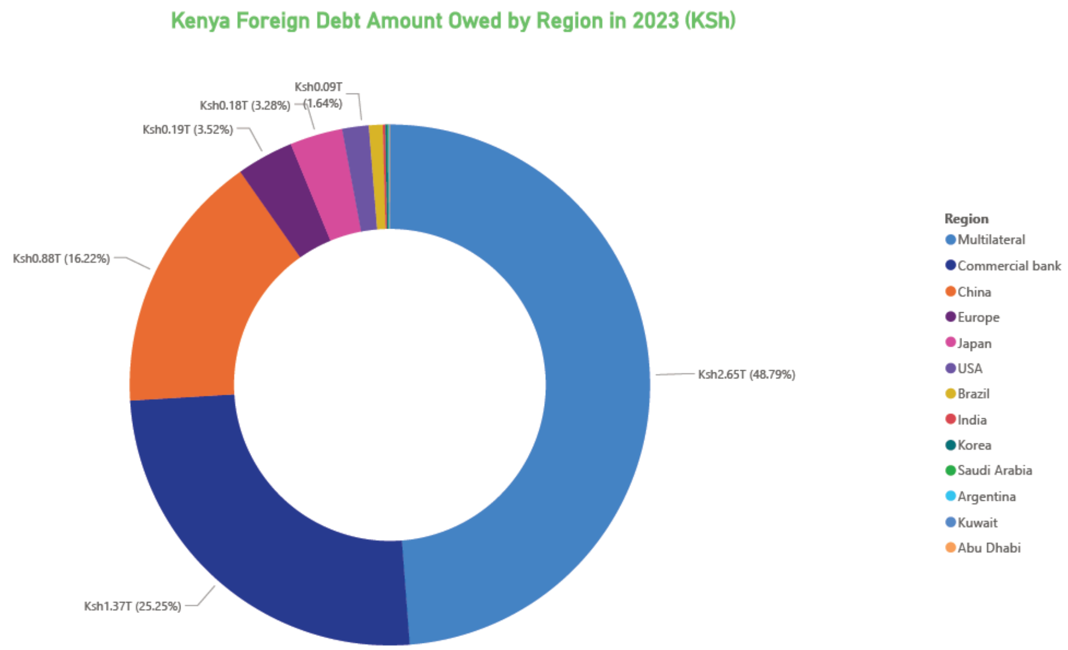
Contents

Acronyms and Abbreviations

AfriCOG	Africa Centre for Open Governance
AG	Aktiengesellschaft/German public limited company
BNP	Banque Nationale de Paris
CAD	China-Africa Development
CNY	Chinese Yuan
COVID-19	Coronavirus Disease 2019
CT	Computed Tomography Equipment
DSSI	Debt Service Suspension Initiative
EEC	European Economic Community
EIB	European Investment Bank
EMACS	Enterprise Messaging And Collaboration System
EXIM	Export-Import
FOCAC	Forum on China-Africa Cooperation
GCL	Government Concessional Loan
GDP	Gross Domestic Product
GOK	Government of Kenya
GTZ	German Technical Cooperation
IBRD	International Bank for Reconstruction & Development
ICD	Inland Container Depot
IMF	International Monetary Fund
ING	Internationale Nederlanden Groep/International Netherlands Group
KBC	Kenya Commercial Bank
KV	Kilovolt
LIBOR	London Interbank Offered Rate
MDAs	Ministries, Departments and Agencies
MRI	Magnetic Resonance Imaging Equipment
NOFBI	Kenya National Fibre Backbone Infrastructure
NYS	National Youth Service
OPEC	Organization of the Petroleum Exporting Countries
PFMA	Public Finance Management Act
RDL	Railway Development Levy
SGR	Standard Gauge Railway
SOE	State-Owned Enterprise
UK	United Kingdom
US	United States
USD	United States Dollar

Chart One – Kenya’s Creditors

China is Kenya’s largest bi-lateral creditor.



General Overview

In this report we consider the issue of Kenya’s unsustainable foreign debt. We begin with a general overview of Kenya’s external debt and the governance issues raised. We then examine Kenya’s debt to China. We chose to do this as China is Kenya’s largest bi-lateral creditor. In addition, the recently held Forum on China-Africa Cooperation (FOCAC) afforded an opportunity to recap the long-term credit arrangements between Kenya and China, in the context of the Belt and Road Initiative[1]. This report is intended to be part of a series of studies on Kenya’s debt. To that extent, AfriCOG will also be looking at agreements with other bi-lateral, multilateral and commercial lenders. Some of the issues addressed here may not be atypical of Kenya’s relationship with any creditor. Our main focus remains the conduct, attitudes and policies of the Kenyan government, its officials and our public institutions regarding borrowing abroad. They are the duty-bearers who hold primary responsibility to always act in the best interests of the people of Kenya, and to that extent they must be transparent with the people who will ultimately be the ones to repay the debts, including making the necessary sacrifices.

At present over 22% of all national revenue is immediately paid out to foreign lenders. In the **2023-2024** financial year interest payments on foreign debt consumed just under 10% of all government revenues, equivalent to 1.4% of GDP. A further 1.8 % of GDP is spent on

1 The Belt and Road Initiative is a global infrastructure development strategy adopted by the Chinese government in 2013 to invest in more than 150 countries and international organizations.

principle repayments for foreign loans, equal to 12.6% of revenue.[2]

In financial year 2023-2024 the Government took out 36 new foreign loans amounting to KSh 898 billion. 27 were from multilateral lenders, 6 from commercial banks and 3 from bi-lateral lenders. Last year Kenya paid over half a trillion shillings in external principal repayments; in 2024 over 330 billion falls due. Between 2025 and 2027, the National Treasury must repay over 1.5 trillion shillings to foreign creditors.

The general public is neither consulted nor is there any concerted effort to inform them on the logic and details of the debt being incurred. It is bad enough that the public isn't told about Executive borrowing, but even their representatives in the Kenyan Parliament are kept out of the loop.

The constitutional principle of 'no taxation without representation' implies the related idea of 'no borrowing without representation'. We contend that Parliament must use its authority to rein in the Kenyan Executive's debt contracting instinct. It must ensure that Kenya reduces the cost of foreign loans because interest payments and redemptions amount to exporting resources to creditors abroad. Carelessly contracted or misapplied debt implies higher taxes for future generations.

The need for external loans arises principally for financing development expenditures which cannot be financed from taxation, and other revenue of the Government. In some cases, external loans could be used to finance short-term adjustments, as in the case of loans from the IMF. The use of external financing should ideally help ensure that tax rates do not escalate and that control on taxation level is not achieved at the expense of Government programmes. In the absence of external borrowing and, given controlled taxation levels, the other alternative available to the Government would be a reduction in expenditure programmes to achieve a balanced budget. Internal borrowing could close the financing gap. Internal borrowing, which is typically finance raised by issuing Treasury Bills and Bonds, may also be used to control the level of money supply through open market operations - sale and purchase of Government securities - and hence control of inflation. Due to the ease with which money can be raised through this source, it needs to be controlled to ensure that only such levels of domestic debt are contracted as are truly required, correlated to specific development projects and not just for recurrent expenditure. We should borrow to invest, not to consume.

Before the Constitution of Kenya 2010, Parliament had an extremely limited role in control or approval of public debt. However, as the Review Commission that took the views of Kenyans on what constitutional arrangements they desired reported in 2005, it was clear that "the people were critical of government borrowing, in particular, of accumulation of a large internal and external debt, as now."[3]

2 Projected Debt Service, Annual Public Debt Management Report 2024, National Treasury at page 50. See http://www.parliament.go.ke/sites/default/files/2024-10/Annual%20Public%20Debt%20Management%20Report%202023%202024%20from%20the%20National%20Treasury%20and%20Economic%20Planning.pdf

3 See https://kenyalaw.org/kl/fileadmin/CommissionReports/The-Final-Report-of-the-Constitution-of-Kenya-Review-Commission-2005.pdf at page 299

Indeed, Kenyans wanted the Constitution "to require that all public debts be approved by Parliament before they are incurred and that, to this end, Parliament should provide appropriate guidelines for contracting debts (external and internal); the terms and conditions for borrowing must be tabled before Parliament for approval thirty (30) days before the contract is effected. Parliament should, by a majority vote, authorise the Government to enter into an agreement to lend money out of any public funds or commit the country to any debt, external or internal; and a ceiling on total Government borrowing should be set at3l%o of the GDP of the financial year immediately preceding the year in which the Budget proposals have been made."[4]

This proposal that foreign debt should obtain prior approval of Parliament was fought tooth and nail by the bureaucratic establishment and the public debt laws we have now are a pale shadow of what the people wanted. At the end of the day the borrowing approval of Parliament was limited to setting debt ceilings and to approving the Revenue Estimates which incorporate the Annual Borrowing Plans of Government. But even this power was diluted by the Executive. In May 2014, loopholes were surreptitiously inserted in the public finance management laws[5] to permit the National Treasury and the Presidency to contract foreign debt outside the Budget, to bank loan proceeds outside Kenya and outside the National Exchequer Account that contains the Consolidated Fund, to borrow on commercial terms for the sole purpose of retiring commercial debts, and to withdraw money from and to pay financiers and suppliers without the approval of the Controller of Budget all in violation of Article 206 of the Constitution which established The Consolidated Fund. As all this happened Parliament remained silent or played an enabling role by altering legislation to assist the Executive to borrow without fetters or limit.

This situation is unacceptable. Parliament is not meant to be powerless. Article 211 of the Constitution of Kenya gives Parliament power to authorize and regulate borrowing and impose reporting requirements. Under this article, parliament could, in 211(a) 'prescribe the terms on which the national government may borrow' and, under 211(2) 'impose reporting requirements.' It is instructive that this power is given to Parliament – that is both the National Assembly and the Senate- and that oversight and accountability and their enforcement is vested in both or either House.

Instead of exercising these powers, successive Parliaments since 2013 have kowtowed to the Executive and undermined the strict constitutional regime that limited and regulated national debt. Most notoriously in May 2014 Parliament facilitated the first Eurobond by making changes in the Public Finance Management Act which ended in scandal when over half the loan proceeds (US$ 1 billion) went completely missing after being banked abroad.[6] The PFMA amendments of May 2014 opened the door to unrestricted external borrowing starting with the Eurobond of 2014 which continues to this day. A lot of the loan proceeds were misspent

4 See https://kenyalaw.org/kl/fileadmin/CommissionReports/The-Final-Report-of-the-Constitution-of-Kenya-Review-Commission-2005.pdf at page 302

5 Public Finance Management (Amendment) Act, 2014 (Act No. 6 of 2014)

6 See Sarah Elderkin's analysis at http://www.standardmedia.co.ke/print/2000188957/eurobond-a-simple-guide-to-understanding-sh100-billion-theft

or stolen, and the nation's debt register is littered with commercial loans for white elephant or even ghost projects. The net result, nearly fifteen years after the new Constitution, is that Kenyans are extremely concerned about the probity of government borrowing; whether it is being undertaken responsibly to enable investment in economically viable and productive development projects; whether there is an economic justification for burdening future generations with higher taxes because of current capital expenditure, and whether foreign debt is being used as a substitute for taxes by a Government that is losing hundreds of billions of shillings to corruption within its ranks. All these questions were asked in 2005 and twenty-one years later we are in the same place – if not worse.

Recommendations:

Public Finance Management Act (PFMA)

1. It is a matter of national urgency that the May 2014 amendments to the PFMA Act are repealed or nullified by judicial declaration. Public education and advocacy around the dangers of allowing loan proceeds to be kept and spent outside the Consolidated Fund and away from the remit of the Controller of Budget should be conducted. Research and legal drafting should be undertaken with a view to bringing public interest litigation to obtain judicial orders nullifying the 2014 amendments to the PFMA.

Article 211 Constitution of Kenya

2. It is imperative that Parliament make the laws contemplated by article 211 of the Constitution to restore the principle and practice of a priori approval of foreign debt. Civil society round-tables should be established to engage parliamentarians on this lacuna in public finance law. Legislative drafts can be outputs of such round table and stakeholder interactions.

Box 1: Article 206 Constitution of Kenya

Consolidated Fund and other public funds.
206. (1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that—
(a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or
(b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ.

(2) Money may be withdrawn from the Consolidated Fund only—
(a) in accordance with an appropriation by an Act of Parliament;
(b) in accordance with Article 222 or 223; or
(c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.
(3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the withdrawal of the money has been authorised by an Act of Parliament.
(4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal

Box 2: Public Finance Management Act Amendments of May 2014

Old Public Finance Management Act of 2012 Provisions	New Public Finance Management (Amendment) Act, 2014 (Act No. 6 of 2014) Provisions
Section 50 of the PFMA Act of 2012 states the constitutional obligations and restrictions on national government guaranteeing and borrowing.	Section 50 of the PFMA was amended by the National Assembly in May 2014 to insert 2 sub-clauses nullifying the restrictions that prevented loan proceeds to be received and spent outside the Consolidated Fund .
Section 50(7) originally read as follows	Section 50(7) now reads as follows: -
The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are— (a) paid into the Consolidated Fund; (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;	The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are— (a) paid into the Consolidated Fund; (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament; (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

Scale of the Problem

The outcome of the decade long borrowing spree is a national problem in which, post the COVID 19 pandemic of 2020 to 2022, greater amounts of taxes are going into making foreign debt repayments than can be sustained in tandem with development objectives.

The scale of this problem is alarming. In the 2023-2024 financial year, **foreign debt repayments burnt more tax money than development expenditure and transfers to 47 Counties combined** and accounted for just under 20% of all spending. Taxpayers spent **two times more** on foreign debt repayments than was available for development expenditure for all the 47 County Governments.

The following table extracted from the latest report of the Office of the Controller of Budget[7] contrasts the relative amounts spent by the National Government on Foreign Debt, Recurrent and Development Spending by MDA[8]s, and transfers to County Governments.

Table 1: Share of National Spending Consumed by Debt

Budget Item	Revised Budget Estimates KSh Billion 2023-2024	Actual Amount Spent by National Treasury KSh Billion 2023-2024	Percentage of Total Spending 2023-2024
Recurrent (MDAs)	1,620.00	1,360.00	35.92
Consolidated Fund Services Domestic Debt	1,020.00	830.22	21.92
:Consolidated Fund Services Foreign Debt	763.35	757.08	19.99
County Governments	385.42	354.59	9.36
Development (MDAs)	457.22	315.06	8.32
Consolidated Fund Services Pensions	187.56	148.95	3.93
Consolidated Fund Services Salaries	21.52	20.77	0.55

Restoring the Parliamentary Approval Process

All this is important because contracted foreign debt is a first, and direct charge on the Consolidated Fund, and by-passes the annual appropriation process. Without the scrutiny that the appropriations processes offer, there is a very serious oversight and accountability gap. Parliament's power to impose fiscal discipline on the government rests solely on its ability to refuse to approve a loan before it is contracted. Section 50 of the Public Finance Management Act is explicit that "the national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament"[9], yet Parliament seems content to continue as if its sole power is its ability to require ex post facto annual and other reporting from the National Treasury. It is a matter of urgency that the aforementioned amendments[10] to the PFMA Act are repealed. It is

7 See National Government Budget Implementation Report FY 2023/24, Controller of Budget, August 2024 available online at https://cob.go.ke/reports/national-government-budget-implementation-review-reports/

8 Ministries, departments and agencies

9 Section 50(3) Public Finance Management Act

10 Section 50 (7)(c) and (d)

also urgent that the Parliament make the laws contemplated by Article 211 of the Constitution to restore the principle and practice of *a priori* approval of foreign debt.

It is appropriate to review the state of the art of Kenya's fiscal architecture and in particular whether the Executive is accountable in its use of borrowing powers granted under the Constitution. Kenyans should ask whether Parliament is dutifully exercising its power to require Executive accountability for foreign debt obligations. Additionally, now is the time to consider how to integrate the constitutional mandate of public participation in budget making and foreign borrowing. Kenyans must get value for the loans their government has been contracting, and ultimately all borrowing should be related to improvements in the enjoyment of the socio-economic rights guaranteed by Article 43 of the Constitution of Kenya.

Our constitutional architecture is intended to confine government borrowing to planned development projects within the context of transparent annual budgets and rolling economic development plans. This is to prevent the Executive from contracting debt in its sole prerogative. But, as with many constitutional guardrails, the two governments since the promulgation of the Constitution have driven through the barriers with impunity.

Borrowing from Peter to Pay Paul

When the Uhuru Kenyatta administration took over in 2013, the country did not have commercial foreign debt, except for a syndicated US$ 600 million Standard Chartered Bank-led commercial loan, which was floated by the Kibaki administration to test market responses to Kenya as a debtor. Ten years ago in 2014, Uhuru Kenyatta's administration issued its first US$ 2.75 billion Eurobond partly to repay the Standard Chartered Bank syndicated loan, but which eventually led to the misappropriation of over US$ 1 billion of the loan proceeds. The Auditor General reported in 2019 that he could not trace the Eurobond disbursements to any specific development project.[11] What appears to have occurred is irresponsible officials escalated the quantum of the Eurobond, initially planned to raise US$ 500 million as a benchmarking bond to pay off the Standard Chartered Bank syndicated loan. This US$ 500 million was to be repaid in five years at 5.875% interest. For obscure reasons, it was immediately decided to take a ten-year loan of US$ 1.5 billion at 6.875% because the market was receptive to African sovereign bonds. Finally a further US$ 750 million was taken in a "tap sale", literally just because it could be done, and without any parliamentary approval let alone engagement.[12] Contemporary news items reveal that investors were told by Treasury officials that the funds would be used for infrastructure such as modernization of Jomo Kenyatta International Airport, electric power transmission lines, road

11 See Special Audit Report of the Auditor-General on The Proceeds and Utilization of EuroBond, April 2019 at https://www.oagkenya.go.ke/wp-content/uploads/2024/07/Special-Audit-Report-of-the-Auditor-General-on-The-Proceeds-and-Utilization-of-EuroBond.pdf

12 See Eurobond-Facts-Figures-Question 2016, KPTJ-AfriCOG, at http://kptj.AfriCOG.org/wp-content/uploads/2016/01/Eurobond-Facts-Figures-Questions.pdf See also AfriCOG, 2019, State capture: Inside Kenya's Inability to Fight Corruption, pp. 24-26, "The Eurobond Scandal".

and rail networks and harbor development.[13] None of this happened with these funds.[14]

The 2014 Eurobond was the beginning of a treadmill of debt on which the Kenyan Government is trapped, scrambling to borrow from Peter to pay Paul. As recently as October 2024, the Government of Kenya, again without parliamentary approval, took a seven-year loan of US$ 1.5 billion at 8.25% interest from Abu Dhabi-based financiers ostensibly to pay off domestic creditors.[15] This commercial loan and its predecessor Eurobond loans raise the question of inter-generational equity. Kenya's Gen Z generation is rightly outraged to have to endure tax hikes in order to repay loans taken a decade ago and blatantly misspent. On the list of loans which are falling due are KSh 2.4 billion owed to an Israeli Bank for a failed million-acre agricultural project[16], KSh 99.5 billion owed to two Italian banks[17] for non-existent dam projects in Rift Valley, and KSh 9.6 billion worth of irrevocable promissory notes[18] issued for security equipment which never got to Kenya. But we never learn, and interest costs are rising.

The most recent Eurobond issued by the Ruto administration was in February 2024. It has a term of seven years and borrowed US$ 1.5 billion at 10.375% interest. Taking the October 2024 Abu Dhabi loan and the 2024 Eurobond together, Kenyan citizens will pay hundreds of millions of dollars annually over the next seven years, whereafter they will be confronted in the year 2031 with a lump repayment demand of US$ 3 billion, merely to pay other creditors who had earlier lent the Government money, including domestic creditors holding government bonds. All this without the imprimatur of Parliament.

The 9th Forum on China-Africa Cooperation (FOCAC)

FOCAC 2024 Commitments

In September 2024, on the sidelines of the 9th Forum on China-Africa Cooperation (FOCAC) Kenya contracted two new credit agreements with the China Development Bank. The first was a US$ 279 million (KSh 36.2 billion) concessional loan to fund the completion of 16 road projects which had stalled because the money to pay contractors had run out.[19] These 16 projects were also loans from China, but project mismanagement, diversion of funds and embezzlement had caused the Government to fail to pay Chinese construction firms triggering abandonment of the 16 project sites. Contractual claims against the government by these contractors increased every day of no work, as the Cabinet Secretary of the National Treasury explained to Parliament in October 2024 "quite a

13 See 'Kenya to issue maiden Eurobond by January' Global Capital Primary Market Monitor, October 2013 at https://www.globalcapital.com/globalmarkets/article/28myg1za-t9wedkza1845c/emerging-markets/kenya-to-issue-maiden-eurobond-by-january

14 See for example 'Elusive Eurobond', p.16, Highway Robbery, AfriCOG 2020 at https://AfriCOG.org/wp-content/uploads/2020/11/Highway-Robbery-Final.pdf

15 See IMF raises concerns over Kenya's $1.5 billion loan deal with UAE https://www.pulselive.co.ke/business/domestic/imf-raises-concerns-over-kenyas-dollar15-billion-loan-deal-with-uae-video/8sh96j5

16 Bank Leumi that was to finance the development of the Galana-Kulalu irrigation project by Green Arava, an Israeli agri-business firm

17 Unicredit Spa and Intesa San Paolo financiers of the Italian firm CMC Di Ravenna contracted to build two major dams at Arror and Kimwarer in the Rift Valley

18 LBA Systems, Apex Finance, Midland Finance Securities and Sound Day Corporation (four finance companies which indebted Kenya during the Anglo Leasing scandal)

19 See https://www.businessdailyafrica.com/bd/economy/kenya-taps-sh36bn-china-loan-for-roads-4784082

significant portion of this is due to the interest and penalties charged by these contractors." In effect, Kenya was borrowing a second time for the same 16 roads. But that was not all. The Chinese Development Bank agreed to lend Kenya a similar sum (US$ 281 million or KSh 36 billion) to build 15 rural roads.[20] Details of this borrowing and which projects are being financed are hard to find outside technical and governmental circles.[21] The press release pages of the National Treasury website have no information on these loans at all.

The third major development arising from FOCAC was the announcement that the National Treasury and China Africa Development Fund (CAD Fund) have signed a Memorandum of Understanding to enhance cooperation under the Public-Private Partnership in bilateral cooperation projects and expanding the Nairobi office of the CAD Fund to facilitate the eventual opening of a China Development Bank branch office in Kenya. The CAD Fund is a booster of Chinese commercial ambitions globally and has had an office in Nairobi since 2018.[22]

In return Kenya like other attendees at FOCAC made commitments to China[23] with geo-political ramifications including pledging to firmly support "all efforts by the Chinese government to achieve (cross strait) national reunification (with Taiwan)" and to oppose "politicization of (the) human rights agenda and politicization of the United Nations Human Rights Council and its relevant mechanisms."

FOCAC in the Media

Kenya's debt appetite has cheerleaders in the fourth estate. Just as President Ruto arrived in China for the 9th FOCAC Kenyan media published a stream of gushing stories about an imminent bonanza of infrastructure project commitments. They dutifully regurgitated (without comment) Government press releases which announced that President Ruto had sealed a deal with his host President Xi Jinping "giving the greenlight to technocrats from the two countries to negotiate the finer details of funding and construction of the proposed Rironi-Mau Summit- Malaba dual carriage road."

Interrogating public debt owed to China is not front-page news as far as the local media is concerned, and now there is reason to suspect the cause of this lethargy has something to do with the assiduous cultivation of the Kenyan media over the past decade by China. Today, a public relations machine embedded within Kenyan media insulates China from a lot of scrutiny.[24] Lavish advertising contracts, content sharing agreements with the two major news groups and direct employment of a least 500 Kenyan journalists give China the opportunity to exploit the poor financial health of local media, the result of digital disruption.[25]

20 See https://www.bloomberg.com/news/articles/2024-09-04/china-kenya-agree-on-281-million-loan-for-road-construction

21 The Ministry of Transport has a list of 15 beneficiary projects at https://www.transport.go.ke/chinese-african-development-bank-will-fund-15-ongoing-road-infrastructure-projects-country-cost

22 See https://kaaa.co.ke/cadfund-sets-up-regional-office-in-nairobi/

23 See Beijing Declaration on Jointly Building an All-Weather China-Africa Community with a Shared Future for the New Era at https://www.mfa.gov.cn/eng/xw/zyxw/202409/t20240905_11485993.html

24 "Beijing Leads Media Battle" Africa Confidential Vol 65, No. 19, 20th September 2024

25 See Joseph Odindo quoted in "Beijing Leads Media Battle" Africa Confidential Vol 65, No. 19, 20th September 2024

Full List of Chinese Loans from 2001-2023

Folio No.	Loan No.	Creditor	Purpose	Interest Rate %	Currency	Amount Outstanding as at 30.06.2018 (KSh)	Amount Outstanding as at 30.06.2023 (foreign currency)	Amount Outstanding as at 30.06.2023 (KSh)	Repayment Terms
R5-64	2001007	Government of China	Kipsigak-Serem-Shamakhokho Road 2 Loan No 9 - 2001007	Free	CNY	229,023,000	5,000,000.00	90,000,000.00	Loan of CNY 50,000,000.00.Repayable in 10 equal instalments commencing 1st September 2011 and ending 1st September 2020
R5-65	2002005	Government of China	Kipsigak-Serem-Shamakhokho Road 3 Loan No 10 - 2002005	Free	CNY	376,662,578	10,056,270.60	181,012,870.80	Loan of CNY 50,000,000 Repayable annually in 5 years the first one commencing on 1st January 2010 and ending on 31st December 2014 at rate of 1/5 of total loan amount*
R5-35	2006007	China (Exim Bank of China)	Chemositsit - Kisii-Meru Power Distribution Project No GCL 2006(02)(144) - 2006007	2	CNY	1,512,996,969	37,160,494.55	668,888,901.90	Loan of CNY 161,028,810.00 Repayable in 26 equal semi annual instalments commencing 23rd September 2012 and ending 23rd March 2025.
R5-36	2006008	China (Exim Bank of China)	Rural Telecommunication Project No GCL 2006(03)(145) - 2006008	2	CNY	1,698,923,912	41,727,018.66	751,086,335.88	Loan of CNY 196,000,000.00. Repayable in 26 equal semi annual instalments commencing from 23rd September 2012 and ending 23rd March 2025
R5-37	2007017	China (Exim Bank of China)	E-Government Project No GCL 2007(47)(218) - 2007017	2	CNY	3,311,996,339	108,460,602.47	1,952,290,844.46	Loan of CNY 317,000,000.00 Repayable in 26 equal semi annual instalments commencing 21 September 2015 and ending 21st March 2028.
R5-38	2007018	China (Exim Bank of China)	Procurement of Power Line Materials Project No GCL 214 - 2007018	2	CNY	457,706,464	14,988,880.94	269,799,856.92	Loan of CNY 38,980,000.00 Repayable in 26 equal semi annual instalments commencing 21st September 2015 and ending 21st March 2028
R5-39	2008005	China (Exim Bank of China)	Procurement of equipment for National Youth Service (NYS) - No GCL 214 - 2008005	2	CNY	4,666,623,267	160,098,879.46	2,881,779,830.28	Loan of CNY 390,000,000.00 Repayable in semi annual instalments commencing 21St March 2016 and ending 21st September 2028
R5-41	2009012	China (Exim Bank of China)	Kenya Power distribution system modernization - 2009012	2	CNY	8,597,525,046	318,300,052.57	5,729,400,946.26	Loan of CNY 637, 000,000.00 Repayable in semi annual instalments commencing 21st September 2016 and ending 21st March 2029.
R5-42	2009025	China (Exim Bank of China)	Nairobi - Thika Highway Improvement Project - 2009025	2	CNY	15,052,096,246	575,076,923.08	10,351,384,615.44	Loan of CNY 1,068,000,000.00 Repayable in semi annual instalments commencing 21st September 2017 and ending 21st March 2030.
R5-43	2010001	China (Exim Bank of China)	OLKARIA IV Geothermal production wells drilling - 2010001	2	CNY	8,683,617,096	331,764,275.16	5,971,756,952.88	Loan of CNY 670,000,000.00 Repayable in semi annual instalments commencing 31st August, 2010 and ending 21st September, 2029
177B	2010024	Government of China	Economic and Technical Cooperation - 2010024	2	CNY	206,120,700	13,500,000.00	243,000,000.00	Framework Agreement Loan of CNY 40,000,000.00. Repayable in semi annual instalments commencing 1st August, 2020 and ending 1st August, 2029.
R5-44	2011002	China (Exim Bank of China)	Rehabilitation & Upgrading of Equipment in Universities & Technical Institutes - 2011002	2	CNY	2,990,949,757	120,550,193.41	2,169,903,481.38	Loan of CNY 196,000.00 Repayable in semi annual instalments commencing 21st March, 2018 and ending 21st September, 2030.

Folio No.	Loan No.	Creditor	Purpose	Interest Rate %	Currency	Amount Outstanding as at 30.06.2018 (KSh)	Amount Outstanding as at 30.06.2023 (foreign currency)	Amount Outstanding as at 30.06.2023 (KSh)	Repayment Terms
R5-45	2011004	China (Exim Bank of China)	Enterprise Messaging And Collaboration System(EMACS) Project - 2011004	2	CNY	4,702,605,600	189,538,461.54	3,411,692,307.72	Loan of CNY 308,000,000.00 Repayable in semi annual instalments commencing 21st March, 2018 and ending 21st September, 2030.
R5-46	2011010	China (Exim Bank of China)	Kenyatta University Teaching, Research & Referral Hospital - 2011010	2	CNY	9,186,842,208	496,373,332.33	8,934,719,981.94	Loan of CNY 744,560,000.00 Repayable in semi annual instalments commencing 21st September, 2018 and ending 21st March, 2031.
R5-86	2011018	Government of China	Economic and Technical Cooperation - 2011018	Free	CNY	763,410,000	50,000,000.00	900,000,000.00	Loan of CNY 50,000,000.00. Repayable in 10 equal instalments commencing 1st April, 2021.
R5-49	2012027	China (Exim Bank of China)	Kenya National Fibre Backbone Infrastructure (NOFBI) and E-Government Expansion project - 2012027	2	CNY	5,863,701,629	319,436,462.64	5,749,856,327.52	Loan of CNY 460,000,000.00. Repayable in semi annual instalments commencing 21st March, 2019 and ending 21st September, 2028
R5-61	2013014	Government of China	Nairobi City Center E.H.V and 66KV Network Upgrade and Reinforcement Project-2013014	2	CNY	9,307,636,509	672,807,692.31	12,110,538,461.58	The loan is repayable from 21.03.2020 to 21.09.2032.
R5-81	2014007	Government of China	Kenya Nairobi 132KV & 66KV Network Upgrade and Reinforcement Project Phase 11 - 2014007	2	CNY	2,414,961,223	0 CNY		Loan of CNY 660,000,000.00. Repayable in semi annual instalments commencing 21st September, 2021 and ending 21st March, 2034.
R5-60	2015012	China (Exim Bank of China)	Development of Solar Power Project in Garissa - 2015012	2	CNY	10,009,675,307	866,358,433.35	15,594,451,800.30	The Loan is repayable from 31.12.2025 to 31.12.2044
Unavailable	2017041	China (Exim Bank of China)	Kenya National Wide Remote Sensing Airborne Geophysical Survey Project 2017041	Unavailable	CNY	438,000,000	0 CNY		Agreement date 31 August 2017, Maturity date 21 September 2021
Unavailable	2017042	China (Exim Bank of China)	Kenya Nairobi Underground Electric Power Distribution Network in Kilimani, Hurlingham, Ngong Road, State House and Lavington 2017042	Unavailable	CNY	1,200,000,000 CNY	0 CNY		Agreement date 15 May 2017, Maturity date 21 September 2023
Unavailable	2017043	China (Exim Bank of China)	Kenya Nairobi Underground Electric Power Distribution Network in Kileleshwa, Westlands, Parklands, Ngara and Riverside Area Project 2017043	Unavailable	CNY	685,000,000 CNY	0 CNY		Agreement date 15 May 2017, Maturity date 21 September 2023
Unavailable	2018011	China (Exim Bank of China)	Kenya Nairobi Western Bypass Project 2018011	Unavailable	CNY	1,190,253,600 CNY	1,036,210,048.37	18,651,780,870.66	Agreement date 1 January 2018, Maturity date 21 March 2038
Unavailable	2019006	China (Exim Bank of China)	Bosto Dam Water Supply Project 2019006	Unavailable	CNY	1,225,000,000 CNY	720,129,251.00	12,962,326,518.00	Agreement date 26 March 2019, Maturity date 21 September 2038
Unavailable	2021300	China (Exim Bank of China)	DSSI China for 2006007 and 2006008 2021300	Unavailable	CNY	14,602,224.81 CNY	10,951,668.60	197,130,034.80	Agreement date 21 March 2021, Maturity date 21 March 2026

Folio No.	Loan No.	Creditor	Purpose	Interest Rate %	Currency	Amount Outstanding as at 30.06.2018 (KSh)	Amount Outstanding as at 30.06.2023 (foreign currency)	Amount Outstanding as at 30.06.2023 (KSh)	Repayment Terms
Unavailable	2021301	China (Exim Bank of China)	DSSI China for Preferential Buyer Credit 2021301	Unavailable	CNY	47,623,709.40 CNY	38,098,967.52	685,781,415.36	Agreement date 21 January 2021, Maturity date 21 January 2027
Unavailable	2021302	China (Exim Bank of China)	DSSI China for Buyers Credit - CNY Portion 2021302	Unavailable	CNY	1,098,940.76 CNY	879,152.61	15,824,746.98	Agreement date 21 January 2021, Maturity date 21 January 2027
Unavailable	2021303	China (Exim Bank of China)	DSSI China for Government Concessional Loan 2021303	Unavailable	CNY	280,611,235,66 CNY	224,488,988.45	4,040,801,792.10	Agreement date 21 March 2021, Maturity date 21 March 2027
R5-40	2008006	China (Exim Bank of China)	Nairobi Eastern and Northern bypass - 2008006	2	USD	8,003,160,000	43,200,000.00	6,048,000,000.00	Loan of USD 108,000,000.Repayable in 30 semiannual equal instalments commencing 30th January 2015 and ending on 30th July 2023
R5-47	2011017	China (Exim Bank of China)	Kenya Nairobi Southern Bypass - 2011017	2	USD	18,552,780,000	127,107,692.31	17,795,076,923.40	Loan of USD 183,600,000. Repayable in semi annual equal instalments commencing 21st January 2018 and ending on 21st July 2030.
R5-85	2012005	China (Exim Bank of China)	Provision for Drilling Materials for Eighty (80) Geothermal Wells at Olkaria Geothermal Field Project- 2012005	2	USD	38,651,625,000	279,519,230.77	39,132,692,307.80	Loan of USD 382,500,000. Repayable in 26 equal instalments commencing 21st July, 2020.
R5-50	2013003	China (Exim Bank of China)	Kenya Procurement of Equipment for National Youth Service Project (Phase II)-2013003	2	USD	7,057,149,894	59,381,614.71	8,313,426,059.40	Loan of USD 69,838,197.73 Repayable in Semi Annual Instalments commencing 21st March, 2020 and ending on 21st September, 2032
R5-73	2014006	China (Exim Bank of China)	Kenya Mombasa Nairobi Standard Gauge Railway project - 2014006	Libor + 3.6	USD	149,188,776,427	1,415,384,615.38	198,153,846,153.20	Loan of USD 1,600,000,000. Repayable Semi Annually commencing 21st July, 2021 and ending on 21st January, 2034
R5-51	2014008	China (Exim Bank of China)	Kenya Mombasa Nairobi Standard Gauge Railway project - 2014008	Libor + 3.6	USD	170,506,095,346	1,302,329,618.76	182,326,146,626.40	Loan of USD 2,003,584,028.87. Repayable in Semi Annual Instalments commencing 21st July, 2019 and ending on 21st January, 2029
R5-52	2014016	China Development Bank	20 Magnetic Resonance Imaging Equipment (MRI) -	Libor + 3	USD	517,376,000	0 USD		Loan of USD 27,120,000. Repayable in Semi Annual Instalments commencing 4th June, 2016 and ending on 4th June, 2019.
R5-63	2015023	China (Exim Bank of China)	Kenya Nairobi-Naivasha Standard Gauge Railway Project - 2015023	Libor + 3	USD	50,605,813,405	1,244,729,726.37	174,262,161,691.80	Loan of USD 1,482,745,029.43 to be repaid in 30 instalments from January 21, 2021 to July 21, 2035
R5-74	2016038	China Development Bank	China Loan USD 600 Million - 2016038	Libor + 4.95	USD	60,630,000,000	0 USD		Loan of USD 600,000,000.00 Repayable in Semi Annual Instalments commencing 20th November, 2019 and ending on 20th May, 2023.
R5-82	2016048	Government of China	Kenya National Fibre Backbone Infrastructure II (NOFBI II) Expansion - 2016048	2	USD	3,375,419,855	637,252,073.78	75,195,744,706.04	The loan of USD 98,650,000.Term Loan 20 years and repayable semi annually
R5-84	2016052	Government of China	Upgrade of Kibwezi - Mutomo - Kitui Road - 2016052	2	USD	5,903,561,243	175,665,293.16	24,593,141,042.40	The loan is repayable semiannually as per the terms of the agreement.

Folio No.	Loan No.	Creditor	Purpose	Interest Rate %	Currency	Amount Outstanding as at 30.06.2018 (KSh)	Amount Outstanding as at 30.06.2023 (foreign currency)	Amount Outstanding as at 30.06.2023 (KSh)	Repayment Terms
R5-67	2017009	Government of China	China Buyer Credit Agreement - Construction of Nairobi Inland Container Depot (ICD) and Access Roads - 2017009	2	USD	11,892,767,660	131,269,683.87	18,377,755,741.80	The loan is payable in 24 equal semi annual instalments
R5-71	2017010	Government of China	Buyer Credit Loan Agreement for the Technical & Vocational Training Laboratories - 2017010	2	USD	5,572,287,973	127,528,706.16	17,854,018,862.40	The loan of USD 134,967,400 repayable in 20 equal instalments semi annually
R5-70	2017011	China (Exim Bank of China)	Kenya Karimenu II Dam Water Supply - 2017011	2	USD	1,191,968,743	200,530,599.96	28,074,283,994.40	Loan of CNY 200,530,600 payable in 20 equal instalments semi annually
Unavailable	2017033	China (Exim Bank of China)	Kenya Power Transmission Improvement 2017033	Unavailable	USD	3,198,27,810 USD	0 CNY		Agreement date 16 May 2017, Maturity date 21 January 2036
Unavailable	2017037	China (Exim Bank of China)	Kamburu- Embu - Kibirigwi - Thika - 220KV Transmission Line and Associated 220-132KV Substation Works and 132/66KV Substations 2017037	Unavailable	USD	90,286,383	0 USD		Agreement date 1 August 2017, Maturity date 21 July 2035
R5-69	2017057	China Development Bank	Supply of Computed Tomography(CT) Scanners to 37 GOK Hospitals - 2017057	Libor + 4.95	USD	6,800,665,000	0 USD		Loan of USD 67,300,000.00 repayable semi-annually as per the loan agreement
Unavailable	2018012	China (Exim Bank of China)	Bosto Dam Water Supply Project 2018012	Unavailable	USD	171,021,786.35 USD	0 USD		Agreement date 4 September 2018, Maturity date 21 July 2023
Unavailable	2021304	China (Exim Bank of China)	DSSI China for Buyers Credit - USD Portion 2021304	Unavailable	USD	166,490,968.40 USD	133,152,941.52	18,641,411,812.80	Agreement date 21 January 2021, Maturity date 21 January 2027

Authorised Loans?

The media also redistributed without analysis the President's official X social media account posts such as one where he reported to have "held talks with the leadership of the China Communications Construction Company led by Chairman Wang Tongzhou in Beijing, China. Discussed various projects such as the Rironi-Mau Summit-Malaba dual carriageway[26], Galana-Kulalu Irrigation Project[27], Bomas International Conference Centre and the expansion of the SGR into the region."

Kenya has a long and sorry history with such arrangements. For example, both the Rironi-Mau-Summit-Malaba highway and the Galana-Kulalu project, which Ruto was handing over to Chinese firms without competition, were commenced by presidential fiat and involved loans from France and Israel, the countries from which the project contractors came. In light of this history, one would expect the Kenyan press and parliamentarians to ask more questions about the FOCAC commitments. Most immediately, are these projects currently authorized by Parliament through the Appropriations Act and Finance Act? Constitutionally, Parliament must approve the Executive's tax and spend plans through these two Acts of Parliament. Government borrowing is deferred taxation, and taxation requires legislative approval. Additionally, the Kenyan Constitution requires public participation in budget making, and the days are long gone when it was legal for the Executive to contract foreign debt without prior discussion and approval of the Kenyan people through the procedures outlined in the Constitution and the Public Finance Management Act.

Supplier or Contractor Driven Loans

Beyond the lack of authority to borrow there is a second question about the structure of the financing of these projects.

The keen will note that all the projects President Ruto refers to are supplier driven projects; proposed by foreign contractor firms who propose to finance the projects by arranging external commercial debt arrangements for Kenya. We have had bad experiences with supplier credit or buyer-credit borrowing before, including the infamous KSh 56 billion Anglo Leasing scandal. Supplier driven loans are also at the heart of the first two phases of the KSh 530 billion SGR railway project; the feasibility study, environmental impact assessment, construction and operations were undertaken by the company that proposed the project. The SGR's major customer was to be the Kenya Ports Authority which committed to channel all haulage inland over the SGR. A take or pay agreement was entered into which made the Kenya Ports Authority liable to make good any shortfalls in projected revenue; i.e. for debt repayments. At initiation it was claimed that repayment of the SGR loans would largely come from the Railway Development Levy (RDL), a 1.5% tax on all imports into the country. Between 2014 and 2016, three loans with a declared value of USD 3.5 billion (then about KSh 530 billion) were taken from China's Exim Bank at commercial rates. The loans fell into arrears as the SGR project made losses year on year.

Further complicating matters, the National Treasury on-lent (or transferred) the SGR debt obligations to a total amount of KSh 737.5 billion to the Kenya Railways Corporation, a near

26 Previously awarded to a French firm by President Uhuru Kenyatta

27 Awarded by President Uhuru Kenyatta to an Israeli firm with a loan from Bank-Leumi of Israel

bankrupt state-owned enterprise, which just happens to since 1978 have a statutory collateral agreement with the Kenya Ports Authority.[28] This statutory comfort agreement explicitly requires the two corporations to pledge their assets and revenues to support one another. Thus, the Kenya Ports Authority's revenues and assets are pledged for the Kenya Railways Corporation's SGR related debt.

In 2022 there was a brief furore over claims that the Kilindini Harbour at the Port of Mombasa was at risk of being taken over by the Chinese lenders if the Government defaulted on the SGR loans. At the time an intense public relations campaign was mounted to discount these fears, but nothing was said of the explicit guarantee created by the Kenya Ports Authority and the Kenya Railways Corporation's mutual statutory obligation. In September 2024, the National Treasury reported that the Kenya Railways Corporation had defaulted on its SGR loan from the Treasury and had arrears of over KSh 167 billion.[29] The contingent liability of the Kenya Railways Corporation has thus moved to the Kenya Ports Authority, whose revenues will now be used to repay the debt. In effect, a profitable state enterprise will lose the ability to develop its own infrastructure because more and more of its revenues will be diverted to repay an ill-advised loan taken by a bankrupt state enterprise to undertake an uneconomical and loss-making project, to wit the SGR, which is incomplete, does not commence at the port in Mombasa or end at the Ugandan border. This series of bad decisions were not made by the corporations involved nor were they pre-vetted by Parliament. They were made by a small group in the National Treasury and the State House.

28 See **s.13(2)(n)(iv) Kenya Railways Corporation Act** – "(2) Subject to this Act, the powers conferred by subsection (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Corporation and in particular, without prejudice to the generality of the foregoing, shall include power—

(n) **to enter into any arrangement with the Kenya Ports Authority** which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which they may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to—

(iv) the **financing of any project by either or both parties;** and

(vi) **the joinder in the arrangement or agreement by any other person.**"

s.12(2)(q)(iv) Kenya Ports Authority Act –"(2) Subject to this Act, the powers conferred by subsection (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Authority and in particular, without prejudice to the generality of the foregoing, shall include power—

(q) **to enter into any arrangement with the Kenya Railways Corporation** which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which they may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to—

(iv) **the financing of any project by either or both parties**;

(vi) **the joinder in the arrangement or agreement by any other person.**

29 See Annual Public Debt Report 2024, National Treasury at page 57 http://www.parliament.go.ke/sites/default/files/2024-10/Annual%20Public%20Debt%20Management%20Report%202023%202024%20from%20the%20National%20Treasury%20and%20Economic%20Planning.pdf

A Brief History of Chinese Loans to Kenya

A lot of analysis has been done about China's single largest loan to Kenya – the Standard Gauge Railway project including by AfriCOG which details this loan in its publication entitled "Highway Robbery". This analysed the Uhuru Kenyatta administration's conviction that deficit spending was a form of economic stimulus. Ignoring corruption, the theory went that, apart from bequeathing the nation a coast to Lake Victoria high speed railway, the very construction of the SGR would boost the economy (GDP would go up by 1%- 1.5% per annum) providing jobs and supply contracts across Kenya. That's not how things turned out, of course. But the projects most enthusiastic boosters claimed that during the three full years the railway was under construction (2014-16), it would have boosted the growth rate by 20 percent. However, because the railway construction was a largely insular project with very limited linkage to the rest of the economy, this growth did not have a significant impact on the Kenyan people. Most materials were directly imported so local manufacturers did not benefit as contemplated. Indeed, given that most of the railway was delivered in kind from China, it is fair to say that the project stimulated the Chinese economy more than Kenya's.

This should not come as a surprise because, like all other national trade finance banks, the mission of the China EXIM Bank which financed the project is to promote Chinese exports.[30]

China's earliest loans to Kenya, issued in the mid-1980s, were used to build the Nyayo and Kasarani sports stadiums, finance road construction and build hospital facilities in Eldoret among other projects. While all of these were interest free, today Chinese lending to Kenya occurs at commercial rates (currently the most expensive Chinese loan is just under LIBOR +5).[31] For example, take the loan of USD 67.3 Million (KSh 6.7 billion) issued by China Development Bank in 2017 for the supply of CT scanning machines to government hospitals. The repayment terms are not recorded in the debt register, but the applicable interest rate was LIBOR+4.95%. An earlier loan from 2014, also from China Development Bank to finance 20 Magnetic Resonance Imaging machines drew an interest rate of LIBOR+3% on a principal amount of USD27.12 million (KSh 2.7 billion).

Chart Two – Outstanding China Loans 2023

30 See Highway Robbery, AfriCOG at p.10 ff https://AfriCOG.org//wp-content/uploads/2020/11/Highway-Robbery-Final.pdf

31 Until 30 June 2023, the London Interbank Offered Rate (LIBOR) was the average interest rate at which leading banks borrowed funds from other banks in the London market.

China's Ten Largest Loans to Kenya:

According to entries in the most recent publicly available official debt register (2023 edition), the ten largest Chinese loans (and amounts outstanding to China) are:

1. Mombasa – Nairobi Standard Gauge Railway (SGR Phase 1) (KSh 360 Billion): Two loans taken in **2014** are recorded for the construction of the 500 kilometer Mombasa Nairobi railway line, a flagship project of Uhuru Kenyatta's Jubilee administration:

a. The first taken from China Exim Bank is a loan of USD 2.003 Billion attracting interest at LIBOR+2.6%, with a five-year grace period. Repayments are in semi-annual instalments over ten years. Repayments started on 21st July, 2019 and will be made until 21st January, 2029.

b. The second loan of USD 1.6 Billion was borrowed from China Exim Bank at a rate of LIBOR+3.6% with a seven-year grace period. The first semi-annual instalment was due on 21st July, 2021 and payments are scheduled on this loan up to 21st January, 2034.

2. China Loan (USD600 Million): Although this 2016 loan has now been retired, its purpose is unknown. Apart from being listed as "China Loan USD 600 Million", the purpose of this loan given by the China Development Bank is not recorded in the official debt register but is likely to be part of the SGR package. However, we do know that China Development Bank charged an interest of LIBOR+4.95%. The term of this loan was unusually short. The first semi-annual repayment was made on the 20th November, 2019 and the loan was cleared by 20th May, 2023.

3. Nairobi – Naivasha Standard Gauge Railway (SGR Phase 2) (KSh 148 Billion): This loan of USD 1.4 Billion at an interest rate of LIBOR+3% relates to the 120-kilometre extension of the Mombasa-Nairobi standard gauge railway line terminating at a small market known as Duka Moja. The original plan was to connect with a third SGR extension of 250 kilometers to run from Naivasha to Kisumu, on Lake Victoria, but the Government failed to secure further funding from China. The Duka Moja loan was taken in **2015** from China Exim Bank. The first of 30 semi-annual instalments fell due on 21st January 2021, and the last is due on 21st July 2035.

4. Provision for Drilling Materials (KSh 38.6 Billion): The official debt register does not state what project the drilling materials relate to but it is clear that in **2012** Kenya borrowed USD 382.5 Million from China Exim Bank at 2% interest repayable in 26 semi-annual installments starting 21st July 2020.

5. Nairobi Southern Bypass Road Project (KSh 18.5 Billion): In 2011, Kenya borrowed USD 183.6 Million to finance construction of the Nairobi southern by-pass road, a flagship project of President Mwai Kibaki's administration. The money was lent by China Exim Bank at 2% interest repayable in semi-annual equal instalments which started on 21st January 2018 and will end on 21st July 2030.

6. Nairobi - Thika Highway Project (KSh 15 Billion): In **2009**, China Exim Bank lent 1.068 Billion CNY for works on this highway built during the tenure of President Mwai Kibaki. The interest rate charged was 2% and the loan started being repaid in semi-annual instalments on 21st September 2017. The last payment is due on 21st March 2030.

7. Construction of Nairobi Inland Container Depot (ICD) and Access Roads (KSh 11.8 Billon): This **2017** loan is related to the SGR project, and is recorded as a 'Buyer Credit Agreement' between the Government of China and Kenya. The records do not indicate the contractor on whose behalf the buyer took a loan but we can deduce from the entries that the loan is repayable over 24 equal semi-annual instalments. At the end of June 2023, Kenya owed KSh 18.3 Billion on this project.

8. Garissa Development of Solar Power Project (KSh 10 Billion): In **2015**, China Exim Bank lent funds for this project. Unfortunately, the official debt register does not record the amount borrowed. It does state that by the end of June 2023, Kenya owed China Exim Bank KSh 15.5 Billion. Repayments will begin on the 31st December 2025 and end on the 31st December 2044. Interest is charged at 2%.

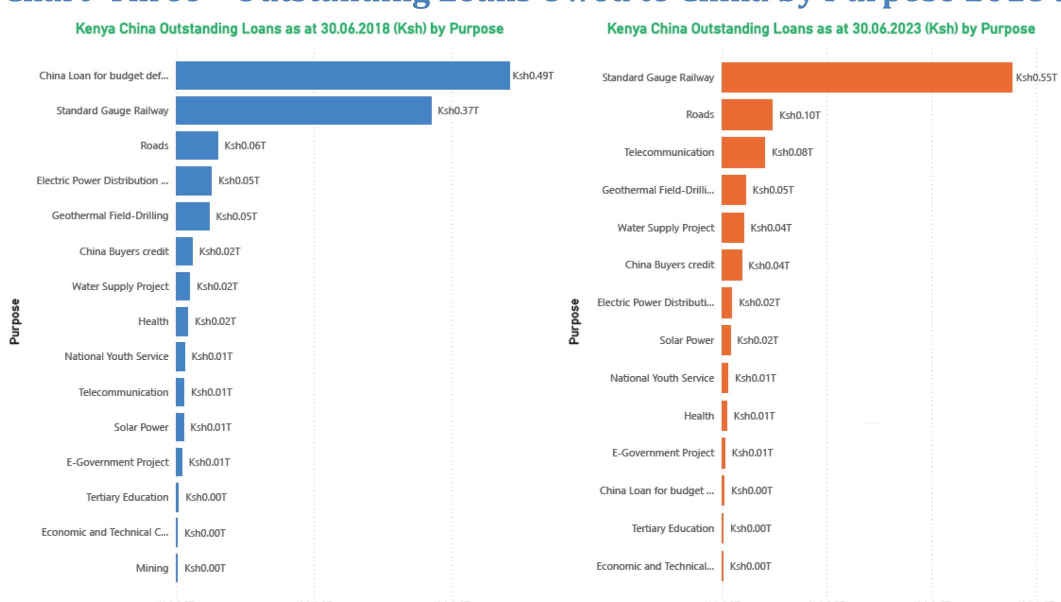
9. Nairobi City Center E.H.V and 66KV Network Upgrade and Reinforcement Project (KSh 9.3 Billion): In **2013**, Government of China lent funds for this high voltage electricity transmission line network upgrade. Although the official debt register does not record the amount lent, by June 2018 the amount outstanding was KSh 9.3 Billion. Interest is being charged at 2% and the loan repayments started in March 2021 – they are due to run to 21st September 2032.

10. Kenyatta University Teaching, Research & Referral Hospital (KSh 9.18 Billion): The official debt register records this as a **2011** loan from China Exim Bank of CNY 744.56 Million at 2% interest. The first semi-annual instalment was made on 21st September 2018 and the last is due on 21st March 2031.

Chinese Debt ballooned under the Uhuru-Ruto Administration's first and second terms:

The following can be stated with confidence about the magnitude of Kenyan borrowing from China. Before the Jubilee government took office in 2013, China's loan portfolio to Kenya was no more than 2.5% of total public debt, or 5% of the foreign creditors. Right from the start of his presidency, Uhuru Kenyatta, adopted an overt 'look-East' policy, personally visiting China several times for high-level loan negotiations and signing ceremonies. During Kenyatta's first term (which coincides with the first years of the Belt and Road Initiative) Chinese loans grew from 600 million US Dollars to over 4.78 billion US Dollars, all on commercial terms.

Chart Three – Outstanding Loans Owed to China by Purpose 2018 and 2023



According to official records, during Kenyatta's second term (2017 - 2022) over US Dollars 2 Billion has been added to the list of Chinese loans to Kenya. By 2019, in terms of monetary value, 22 cents of every Shilling Kenya had borrowed was owed to a Chinese entity. As of 2023, this figure was about 16 cents of every shilling owed. Although he pledged to engage with China with a view to renegotiating or rescheduling China's debt, President Ruto has failed to overcome Chinese reluctance to extend debt relief to Kenya and other of its debtors beyond the COVID-19 Debt Service Suspension Initiative (DSSI). Kenya's repayments to China have continued on schedule despite our dire economic straits. FOCAC 2024 records that China has adopted the Paris Club policy[32] for what it calls "case by case debt treatment of African countries."[33]

Opaque Loan Terms

The terms of the following loans are not clearly documented in the debt register, so it is impossible to hold the Government to account for the funds. How is it in the national interest to allow such a situation to continue?

1. **Nation Wide Remote Sensing Airborne Geophysical Survey Project (2017041):** A four-year loan whose terms are not public but which was stated to be 438 million CNY or KSh 5.16 billion was signed with Exim Bank of China on 31 August 2017. Open source research reveals that the purpose of the project was to undertake multispectral remote sensing, aeromagnetic, and radiometric survey in combination with satellite imagery studies as well as upgrading of geological services in Kenya with a view to determining the mineral potential of the country. See https://china.aiddata.org/projects/59392/

2. **Nairobi Underground Electric Power Distribution Network in Kileleshwa, Westlands, Parklands, Ngara and Riverside Area Project (2017043):** Signed on 15 May 2017 this five year loan agreement was for KSh 8.08 Billion.

3. **Nairobi Underground Electric Power Distribution Network in Kilimani, Hurlingham, Ngong Road, State House and Lavington (2017042):** This is a five year loan for KSh 141.6 Billion taken from Exim Bank of China on 15 May 2017.

32 See https://clubdeparis.org/en/communications/page/common-framework

33 See FOCAC 2024 Beijing Declaration para. 16 at https://www.mfa.gov.cn/eng/xw/zyxw/202409/t20240905_11485993.html

Table 2: Full List of Kenya's Creditors 2023[34]:

Creditor		Amount Owed in 2022 (KSh)	Amount Owed in 2023 (KSh)
IDA International Development Association	Multi-Lateral	1,217,155,695,017	1,573,647,897,847
Exim Bank China	Bi-Lateral	809,190,298,997	880,853,916,679
Citigroup Global Markets Deutschland AG	Commercial Banks	471,329,600,000	562,094,000,000
Citigroup Global Markets Europe AG	Commercial Banks	365,280,440,000	435,622,850,000
IMF International Monetary Fund	Multi-Lateral	206,426,510,348	335,592,947,005
African Development Fund	Multi-Lateral	259,442,440,311	313,963,289,351
Trade and Development Bank	Commercial Banks	191,671,640,868	216,605,138,607
African Development Bank	Multi-Lateral	125,943,439,839	203,936,224,185
IBRD International Bank for Reconstruction & Development	Multi-Lateral	67,088,137,624	152,167,817,714
Agence Francaise De Développement	Bi-Lateral	85,332,994,252	99,992,491,141
Japan	Bi-Lateral	85,885,568,974	99,116,848,153
Exim Bank USA	SOE Guarantee	83,711,842,264	88,223,867,803
Japan	SOE Guarantee	61,399,597,696	79,490,515,426
Unicredit Spa	Buyers Credit	52,978,261,895	52,831,544,188
Intesa San Paolo	Buyers Credit	37,861,366,865	46,702,747,010
Germany - GTZ	Bi-Lateral	34,618,941,329	44,749,380,332
Africa Export-Import Bank (Afrexim Bank)	Commercial Banks	0	41,813,456,623
IFAD International Fund For Agricultural Dev.	Multi-Lateral	24,946,190,146	31,811,596,508
Standard Bank of South Africa Ltd	Commercial Banks	0	28,279,629,500
EIB European Investment Bank	Multi-Lateral	19,471,772,142	27,893,211,616
Instituto De Credito: Kingdom Of Spain	Bi-Lateral	12,329,993,506	13,240,869,597
Belgium	Bi-Lateral	9,207,795,922	11,702,038,174
France, Government of	Bi-Lateral	6,412,535,438	8,844,378,038
Exim Bank India	Bi-Lateral	7,494,680,257	8,453,402,287
KBC BANK	Bi-Lateral	5,849,309,445	7,706,128,126
Arab Bank For Econ. Dev. In Africa	Multi-Lateral	5,681,675,819	7,333,802,925
LBA Systems	Security Contracts	5,922,720,496	6,280,105,321
ING Bank	Buyers Credit	5,874,270,263	6,248,572,737
Belfius Bank SA	Buyers Credit	5,025,115,679	5,596,060,196
Korea Economic Dev. Co-operation Fund	Bi-Lateral	3,641,477,162	5,228,523,267
OPEC Organisation of Petroleum Exporting Countries	Multi-Lateral	2,551,448,794	4,020,521,414

34 Kenya National Treasury, Debt Register ibid.

Deutsche Bank	Buyers Credit	2,708,175,008	3,340,587,589
Nordic Development Fund	Multi-Lateral	2,737,540,903	3,297,356,625
Saudi Development Fund	Bi-Lateral	2,600,238,629	2,996,299,309
Poland	Bi-Lateral	2,527,887,935	2,959,881,611
Germany	SOE Guarantee	3,170,593,005	2,514,574,228
Bank-Leumi LE-Israel B.M	Buyers Credit	2,765,344,098	2,473,401,827
Export - Import Bank - Korea	Export Credit	1,742,488,849	2,111,397,473
Banco Bilbao Vizcaya Argentaria, S.A	Financial Institution	849,390,666	1,843,255,792
China	Bi-Lateral	1,541,579,319	1,687,766,759
Italy	Bi-Lateral	963,743,875	1,595,584,220
UniCredit Austria	Buyers Credit	1,326,364,471	1,553,969,973
KUWAIT FUND FOR ARAB ECONOMIC DEV.	Bi-Lateral	1,345,496,274	1,469,088,389
Société Générale	Commercial Banks	533,734,141	1,451,304,269
Midland Finance & Securities Limited	Security Contracts	5,347,011,214	1,313,402,893
Sound Day Corporation	Security Contracts	1,101,320,527	1,313,402,893
Abu Dhabi Fund for Arab Econ Cooperation	Bi-Lateral	1,146,450,525	1,270,435,722
EEC European Economic Community	Multi-Lateral	1,282,298,871	1,269,591,507
USA	Bi-Lateral	1,259,073,035	1,198,681,343
DEUTSCHE BANK ESPANOLA	Bi-Lateral	1,134,254,535	932,750,342
BNP Paris	Buyers Credit	802,131,846	885,293,380
Erste Group of Banks	Commercial Banks	620,101,500	764,907,500
Finland	Bi-Lateral	884,106,168	727,041,668
Apex Finance Corporation	Security Contracts	552,633,956	659,055,215
Commerz Bank of Belgium	Buyers Credit	653,247,216	592,723,052
Denmark	Bi-Lateral	456,932,081	431,482,409
Austria	Bi-Lateral	328,289,029	377,954,294
Saudi Arabia	Bi-Lateral	182,538,075	203,731,706
China Development Bank	Commercial Banks	21,834,343,720	0
Khalifa Fund for Enterprise Development	Bi-Lateral	0	0
Mizuho Bank Europe N.V	Commercial Banks	0	0
Standard Bank Ltd UK	Commercial Banks	412,027,281	0
Total External Debt		**4,332,535,098,100**	**5,441,278,693,758**

Conclusion

In conclusion, while not exhaustive, this report suggests the following areas of urgent further action:

We have demonstrated that the 2014 PFMA amendments create a loophole for abuse that are detrimental to the transparency and accountability of foreign borrowing. Originally all loans had to be paid into the Consolidated Fund at the Central Bank or to another public fund or entity of the national government established by an Act of Parliament.

These amendments allowed the disbursal of loans directly to suppliers in so-called "government-to-government" loans. They also allowed the direct payment of commissions for so-called transaction advisers abroad, outside the purview of the Controller of Budget or the Auditor-General. The potential for abuse is evident.

We have urged Parliament, and particularly through its committee system, to fulfil its constitutional obligation to facilitate full prior discussion of all foreign debt in the context of national budget making.

Parliament must take full control of the budget making process as per the Constitution. It must require the Executive to provide information with adequate time for consideration of the merits of the Executive's proposals.

We hope that this report will be useful for those engaged in advocacy for the better use of public funds and the institutionalisation of the constitutional governance structures and practices that would prevent reckless and illegal borrowing, or the outright misappropriation of sovereign debt. It is intended to be the first in a series of examinations of the accountability and transparency of Kenya's relationships with external creditors, whether they be multilateral, bilateral or commercial.

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Who we are

The Africa Centre for Open Governance (AfriCOG) is an independent, non-profit organisation that provides cutting-edge research and monitoring on anti-corruption, governance and public ethics issues in both the public and private sectors so as to address the structural causes of the crisis of governance in Kenya and the region. The overall objectives of our programme activities are: to promote the implementation of the Constitution of Kenya 2010; to strengthen anti-corruption and good governance in Kenya with objective, high quality research and advocacy and to build citizens' capacity to be permanently vigilant, demand accountability and monitor progress on governance issues in the public and private sectors. We also work at regional and international levels to promote collective efforts towards anti-corruption, accountability, transparency and openness in governance. Our publications and advocacy add value to anti-corruption and governance reform processes by stimulating policy discussion and supporting evidence-based advocacy and the mobilisation of our partners.

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