

# WRONG DIRECTION

Corruption in Kenya 2022-2024





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## Foreword

AfriCOG's latest report documents and assesses corruption in the first two years of the government of President William Ruto. It also covers the waning days of the Uhuru Kenyatta Jubilee administration. It is the latest in a series of reports which have examined the growth and nature of corruption in Kenya over the decades.

Our earlier report on "State Capture: Inside Kenya's Inability to Fight Corruption", was a "State of the Nation" report explaining why President Uhuru Kenyatta's anti-corruption efforts would be unlikely to work. The 2019 study diagnosed the problem as state capture; or the re-purposing of state institutions for private profiteering. We concluded then that publicity-driven prosecutions would likely deepen rather than undermine corruption, as indictments and prosecutions got weaponised to partisan ends for the 2022 elections, a prediction which has been borne out by the events documented in this report.

This was followed by the report on "Highway Robbery: Budgeting for State Capture", which sought to answer the question, "Is Kenya's Public Financial Management system captive to corruption cartels?" An examination of expenditure in three infrastructure sectors, roads, water and power, found budget and spending irregularities consistent with budgeted corruption, or the idea that the budget is inflated with monies that are meant to be stolen. The report also examined the ravenous appetite for debt, which has continued and plunged the country into fiscal distress.

Our latest report traces the unfolding continuities and proliferation of corruption in Kenya under the Ruto government, echoing many of our earlier findings. Despite momentary positive developments and heartening displays of individual courage and integrity, corruption continues to deepen, scandals multiply, profligate wastage continues, institutional decline persists, and checks and balances are eroded. The politics of patronage continues apace, as the President seeks to consolidate his support base, rewarding his supporters and inviting his erstwhile opponents into government; a gambit that has become standard in Kenyan politics, which further drives corruption and impunity. At the same time, the government's room for manoeuvre is shrinking in a context of debt distress and the growing demographic pressures exemplified by the Gen Z uprising.

The focus in this report is on events at the national level. We intend to examine corruption at the county level in future reports. Through our reports we hope to document events, stimulate and inform public debate, and strengthen the capacity of our allies to exercise civic vigilance.

Every effort has been made to ensure the accuracy of this report. We apologise in advance for any errors which may have inadvertently arisen.

We welcome your feedback.

**Gladwell Otieno**

Executive Director

Africa Centre for Open Governance (AfriCOG)



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## Abbreviations and Acronyms

<b>AAHL</b>	Adani Airport Holdings Limited
<b>AFC</b>	Agricultural Finance Corporation
<b>AFREXIM</b>	African Export-Import Bank
<b>AfriCOG</b>	Africa Centre for Open Governance
<b>AG</b>	Attorney General
<b>AG</b>	Auditor General
<b>AML/CFT</b>	Anti-Money Laundering and Combating the Financing of Terrorism
<b>ARA</b>	Asset Recovery Agency
<b>ASAL</b>	Arid and Semi-Arid Land
<b>AU</b>	African Union
<b>BETA</b>	Bottom-Up Economic Transformation Agenda
<b>BOT</b>	Build-Operate-Transfer
<b>CAS</b>	Chief Administrative Secretary
<b>CEO</b>	Chief Executive Officer
<b>CFS</b>	Container Freight Station
<b>CMC</b>	Cooperativa Muratori & Cementisti/Masons and Cement Workers Cooperative
<b>COVID</b>	Coronavirus disease
<b>CS</b>	Cabinet Secretary
<b>DCI</b>	Department of Criminal Investigations
<b>DNFBP</b>	Designated Non-Financial Business and Professions
<b>DPP</b>	Director of Public Prosecutions
<b>DRC</b>	Democratic Republic of the Congo
<b>EACC</b>	Ethics and Anti-Corruption Commission
<b>EASAAMLG</b>	The Eastern and Southern Africa Anti-Money Laundering Group
<b>FATF</b>	Financial Action Task Force
<b>FRC</b>	Financial Reporting Centre
<b>FY</b>	Financial Year
<b>FZC</b>	Free Zone Company
<b>GDP</b>	Gross Domestic Product
<b>GOK</b>	Government of Kenya
<b>ICC</b>	International Criminal Court
<b>IDA</b>	International Development Association
<b>IEBC</b>	Independent Electoral and Boundaries Commission
<b>IFAD</b>	International Fund for Agricultural Development

<b>IFMIS</b>	Integrated Financial Management Information System
<b>IMF</b>	International Monetary Fund
<b>IPPG</b>	Inter-Parties Parliamentary Group
<b>JKIA</b>	Jomo Kenyatta International Airport
<b>CAA</b>	Kenya Airports Authority
<b>KEBS</b>	Kenya Bureau of Standards
<b>KEMSA</b>	Kenya Medical Supplies Authority
<b>KETRACO</b>	Kenya Electricity Transmission Company
<b>KNTC</b>	Kenya National Trading Corporation
<b>KPC</b>	Kenya Pipeline Company
<b>Ksh</b>	Kenyan Shilling
<b>LLC</b>	Limited Liability Company
<b>LR N</b>	Land Registration Number
<b>MD</b>	Managing Director
<b>MP</b>	Member of Parliament
<b>MSME</b>	Micro, Small and Medium-sized Enterprises
<b>NADCO</b>	National Dialogue Committee
<b>NATO</b>	North Atlantic Treaty Organization
<b>NCPB</b>	National Cereals and Produce Board
<b>NGO</b>	Non-governmental organisation
<b>NHIF</b>	National Health Insurance Fund
<b>NMS</b>	Nairobi Metropolitan Service
<b>NVPG</b>	National Values and Principles of Governance
<b>ODM</b>	Orange Democratic Movement
<b>PBO</b>	Public Benefit Organisations
<b>PPE</b>	Personal protective equipment
<b>PS</b>	Permanent Secretary
<b>PSC</b>	Public Service Commission
<b>SGR</b>	Standard Gauge Railway
<b>TVET</b>	Technical and Vocational Education and Training
<b>UAE</b>	United Arab Emirates
<b>UDA</b>	United Democratic Alliance
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>US</b>	United States of America
<b>USD</b>	United States Dollar

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## Overview

### President William Ruto is between a rock and a hard place

When he took charge on 13 September 2022, he inherited a precarious economic outlook that was described by his chief economic advisor, David Ndi, as near 'liquidation'. The only way out was in reducing corruption and increasing revenue. But Ruto's preoccupation instead became political survival, which he rooted in an administration built on reward and patronage. Now, two years after assuming office, Ruto is satisfying a relatively small circle of cronies at the cost of his 'hustler' movement - the poor, youthful base mobilized to elect him on the belief the new president would put money in their pockets and break the ethno-political 'dynasties' mould of Kenyan politics. The abandonment of his promise of 'bottom up' economic development has resulted in one of Kenya's most significant challenges to presidential authority.

Ruto's commitment to increasing domestic revenue by hiking tax collection proved popular with the International Monetary Fund (IMF), but not with the people. It triggered Kenya's first major nationwide economic protests, when in June 2024 the social media-based Gen Z movement took to the streets and occupied parliament, making the words 'taxation' and 'Finance Bill' as powerful as 'multiparty' and 'constitution' had been in the 1990s pro-democracy movement.<sup>1</sup>

President Ruto's populist campaign rhetoric raised hopes of a massive redistribution of political and economic power from the 'dynasties' to the 'hustlers', but he has instead delivered a record of profligacy and mismanagement of public funds. His commitment to increase domestic revenue collection sparked a national rebellion; but reneging on it will fail to meet the government payroll.

By the end of 2024, Ruto had been forced to cancel two flagship deals with the Adani Group, involving Kenya's national airport and electricity grid, after Indian billionaire, Gautam Adani, was indicted for fraud in New York. The fate of the deals, which had long been unpopular and highly contentious in Kenya, symbolised the approach of a president who seemed to be far more sensitive to his international constituency than to the one at home.

In this report, AfriCOG continues to spotlight corruption in Kenya with a review of developments in President William Ruto's first two years in office, and the run-up to his election in 2022. It shows how the new administration threatens to be just as afflicted by corruption as his four presidential predecessors, if not more so.

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1 <https://africog.org/wp-content/uploads/2024/09/AfriCOG-The-Gen-Z-Uprising-in-Kenya-and-Africas-Youthquake.pdf>

## How it works

Corruption in Kenya is endemic. Kenya has tried all prescribed anti-corruption reforms, but still corruption rises.<sup>2</sup> After decades of investments in anti-corruption institutions and promulgation of laws against corruption, impunity is rife. Grand corruption<sup>3</sup> is a well-documented phenomenon of Kenyan public administration. It is rooted in the patronage politics that has dominated Kenyan governance since the post-independence government of President Jomo Kenyatta – even though anti-corruption rhetoric has been a long-standing feature of Kenyan politics.

The scale and impunity of the perpetrators lead to the conclusion that corruption is effectively permitted and protected in spite of laws to the contrary. With an annual budget of about Ksh 3.5 billion, the Ethics and Anti-Corruption Commission (EACC) investigates corruption and promotes ethics and integrity from 12 regional offices; but there are doubts about its effectiveness and the quality of its investigations. A study of five years of reports by the Auditor General between 2015 and 2020 recorded that only 13% of government revenue was properly accounted for and that 20% of government expenditure is stolen each year.<sup>4</sup> Yet convictions for corruption are the exception not the rule.

After being convicted for corruption, one need not serve a sentence. In Kenya, bail pending appeal is frequently granted in corruption cases where the convict is

politically prominent, and justice is speedier than for the average person.

John Waluke, MP, freed on bail three months after being convicted and sentenced to 67 years<sup>5</sup> for a multi-million dollar fraud against the National Cereals Board, had his second appeal heard in October 2024. His conviction and sentence was quashed by the Court of Appeal.<sup>6</sup> Among the reported grounds for his release, the Appeals Court dwelt heavily on the fact that keeping the MP behind bars would trigger a by-election for his parliamentary seat virtue of Article 103 of the Constitution<sup>7</sup> which provides that the office of an MP becomes vacant if the member misses eight consecutive sittings of the House.<sup>8</sup> Socially connected corruption convicts may also benefit from Presidential Pardons. In July 2023, Ruto used presidential clemency to release Dr. Davey Koech,<sup>9</sup> who had been convicted in 2021 and sentenced to six years in jail for corruption in his management of the Kenya Medical Research Institute. Signals like these in Ruto's first two years of office make it hard to believe there will be any real change in tackling corruption during his presidency.

Impunity is demonstrably reducing public trust in official anti-corruption institutions. Over the past five years, the number of reports received and processed by the EACC declined by 43% from 9,308 reports in 2018, to 5,252 per annum in 2023.<sup>10</sup> A very small

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2 Lessons from State Capture in Kenya, Foundations, Features and Options for Reform, Wachira Maina, 2023

3 Involves higher ranking government officials and elected officials who exploit opportunities presented through government work, including bribes offered or paid in connection with larger scale government projects, such as infrastructure and construction projects

4 Cf. [https://ieakenya.or.ke/wp-content/uploads/2022/02/Analysis-Of-National-Government-Audit-Reports\\_2019\\_20.pdf](https://ieakenya.or.ke/wp-content/uploads/2022/02/Analysis-Of-National-Government-Audit-Reports_2019_20.pdf)

5 See <https://www.odpp.go.ke/wp-content/uploads/2022/10/Sirisia-MP-sentenced-to-67-years-in-prison-over-graft-case.pdf>

6 <https://www.the-star.co.ke/news/2024-10-11-court-overturns-67-year-jail-term-for-waluke-wakhungu>

7 See Article 103(1)(b) Constitution of Kenya <https://www.klrc.go.ke/index.php/constitution-of-kenya/123-chapter-eight-the-legislature/part-2-composition-and-membership-of-parliament/271-103-vacation-of-office-of-member-of-parliament>

8 See <https://nation.africa/kenya/news/sirisia-mp-john-waluke-released-on-sh10-million-bail-4024300>

9 See <https://twitter.com/NationAfrica/status/1683734544954937346>

10 EACC Annual Report 2022-2023 at page 3

proportion of such corruption reports result in investigation. By a process of bureaucratic elimination only 1,968 reports ended up being recommended for investigation; and of these only 512 cases were under investigation at the end of 2023.<sup>11</sup> During 2023, only 97 investigations on corruption and economic crimes were completed and forwarded to the Director of Public Prosecutions (DPP). Of this number 74 were recommended for prosecution.<sup>12</sup> A further 61 investigations into ethical violations were completed, but what action resulted is not stated in the EACC Annual Report.

It is evident that the legal and institutional anti-corruption regime, and the elaborate structure established by the new Constitution of Kenya promulgated in August 2010 to ensure integrity in leadership and accountability in public financial management are not reducing corruption in Kenya.

For the past decade, Kenya has stagnated in terms of international measures of corruption.<sup>13</sup> In 2023 it ranked 127th out of 180 evaluated countries on Transparency International's Corruption Perception Index. Kenya's index score was 31 points, a slight decrease from 2022, but substantially below the flawed democratic countries average of 48 points.

## Anti-Corruption Rhetoric

Anti-corruption rhetoric has been a long-standing feature of Kenyan politics dating back to the anti-magendo<sup>14</sup> campaigns of Daniel arap Moi who ruled Kenya between 1978 and 2002 – the first fourteen years of which were under a one-party state. Moi's

successor, Mwai Kibaki won 62% of the vote and the 2002 presidential election promising an end to the corruption "as a way of life." Kibaki presided over a briefly successful anti-corruption phase (2002-2005) during which a new architecture of anti-corruption institutions and codified laws was established, but his credentials as an anti-corruption champion ended by early 2005 when the details of a US\$700 million security procurement fraud became public. The attempt to cover-up this scandal coincided with the split in Kibaki's cabinet over power sharing and a forthcoming constitutional referendum – which Kibaki eventually lost to a giant opposition coalition made up of Moi's former opponents like Raila Odinga, and Moi acolytes such as Uhuru Kenyatta and William Ruto, both eventually elected President in 2013 and 2022 respectively. From 2007 corruption has been, at the rhetorical level, a central plank in the election manifestos of all parties. But just as in 2002 and 2015, under President Ruto it is likely that any anti-corruption drive will be short lived, focused on damage control and politically targeted.

## Statutory efforts against corruption

There have been statutory efforts to codify and punish corrupt activities since before independence, when the first legislation to "provide for the prevention of corruption" the Prevention of Corruption Act (Cap. 65) was enacted in 1956. This statute was ineffective in controlling corruption even though it was amended to enhance penalties eight times over the next 41 years. Thus in 1997, it was felt that establishing a dedicated anti-corruption institution was necessary to investigate and

11 EACC Annual Report 2022-2023 at page 4

12 EACC Annual Report 2022-2023 at page 9

13 See Kenya CPI Rankings 2012-2023 at <https://www.statista.com/statistics/1286269/corruption-perception-index-in-kenya/>

14 Swahili for black market

prosecute corruption offences; hence the establishment as a component of the Inter Parties Parliamentary Group (IPPG) deal prior to the 1997 election of the short-lived Kenya Anti-Corruption Authority.<sup>15</sup> Amendments to the law started up after the election of Mwai Kibaki as President in the 2002 election. A new anti-corruption institution – the Kenya Anti-Corruption Commission – was legislated in tandem with a new Anti-Corruption and Economic Crimes Act in 2003. This legislative framework remained in place until 2010, when it was re-enacted within the new Constitution promulgated that year with a renamed Ethics and Anti-Corruption Commission established under Article 79. The following year saw the enactment of the EACC Act No. 22 of 2011 which gave EACC the mandate to combat and prevent corruption, economic crime and unethical conduct in Kenya through law enforcement, prevention, and public education, promotion of standards and practices of integrity, ethics and anticorruption.

Such legislative measures and institution-building has been augmented episodically by attempts to address and enforce accountability for past corruption. The question of amnesty as a transitional justice tool arose periodically in Kenyan political discourse ahead of the 1997, 2002 and 2013 general elections. There is a recurring opinion in some quarters that it is necessary to draw a line and move forward, purportedly because actually dealing with past corruption is fraught with political risks, corruption fighting back, and may even threaten national stability if the powerful corruption beneficiaries feel too threatened.

## Reward and patronage

The system William Ruto presides over requires that the patron protect the client supporter – before and after elections – from official or legal perils. This depends on tolerating corruption and impunity. In 2023, Wachira Maina wrote “a regime that prioritises justice and service delivery weakens’ its hold on power. In order to ensure regime survival and longevity in such an environment, the regime must...tighten its hold on the key mechanisms of political power in the country, including giving guarantees to powerful perpetrators.”<sup>16</sup>

Presidential discretion goes some way to explain how wealth became so highly concentrated in Kenya and why the country has one of the most unequal societies in the world. In 2017, Oxfam published inequality data to the effect that, in Kenya, eight thousand people own more wealth than the bottom 99.9% - more than 44 million people. A substantial number of the privileged eight thousand derived their fortunes from connections to political office holders or senior employees of the civil service. At the very peak are two powerful and wealthy families that have produced most of past presidents of Kenya – the Kenyattas and the Arap Moises. William Ruto’s political partnerships and alliances with both were key to his political ascent.

As incoming president, Ruto understands the system he inherits. Observing the convention of a “duty to protect” is key to quiet incumbency and preventing defections of the support base to another patron also promising resources. When his narrow margin

15 In December 2000 the High Court judgment in the case of Stephen Mwai Gachiengo & Albert Muthee Kahuria v. Republic, Misc. Application No. 302 of 2000 declared the KACA unconstitutional as it purported to alienate the power of the Attorney General to prosecute. KACA was a nullity ab initio.

16 See Lessons from State Capture in Kenya, Foundations, Features and Options for Reform, Wachira Maina, Africog 2023

of victory in 2022 raised legitimacy questions about his mandate, Ruto resorted to the tried and tested methods of rewards and alliances.

Official results had given him 7.176 million votes—just 233,211 votes more than the 6.942 million his opponent, Raila Odinga, received. An unprecedented 7.79 million registered voters, moreover, had stayed away from the polls. Ruto’s Kenya Kwanza alliance had relied heavily on the Mount Kenya (Kikuyu, Embu and Meru) and Rift Valley (Kalenjin) voting blocs, and an expansion of political allies was - by hook or by crook - critical. With the help of defectors, he had secured Kenya Kwanza’s majority status by the first week of October 2022<sup>17</sup>.

But the 2022 election results, validated by the Supreme Court, continued to be challenged by the opposition on the streets. A mass action campaign demanded, among other things, access to the election data held by the Independent Electoral and Boundaries Commission, and for legal amendments to the procedure for replacing electoral commissioners who left office following the 2022 election.

Facing a protracted challenge, Ruto decided the first obligation of government was survival and political stability.<sup>18</sup>

This came at great cost. The desire to reward was constrained by:

- the foreign debt treadmill, with the need to boost tax collections to meet debt obligations and enacting new taxes<sup>19</sup>
- the unpopularity of tax measures, which for the first time targeted informal sector and rural agriculture entrepreneurs
- legacy wage agreements with trade unions in the health<sup>20</sup> and education<sup>21</sup> sectors
- national security demands requiring ever larger budgets.

President Ruto’s response was to fashion himself as a patron with the means to reward supporters using his office – just as consecutive Kenyan presidents had done before him.

Initially there was an assumption of a critical difference between Ruto’s ability to play the patron and former presidents. Ruto could not play the patron in quite the same way as his predecessors, who had literally redistributed the country amongst supporters using irregular land allocations.<sup>22</sup> This has been well documented - including how national forest cover was reduced from 3% to 1.7% between 1962 and 2003 when presidential clients were allowed to cut down over 75,000

17 See Kenya National Assembly Hansard 6th October 2022 at page 18 <http://www.parliament.go.ke/sites/default/files/2022-10/Hansard%20Report%20-%20Thursday%206th%20October%202022%20%28P%29.pdf>

18 See statements by Presidential Advisor David Ndii at <https://nation.africa/kenya/news/david-ndii-the-unlikely-ruto-ally-who-became-trusted-confidant-4206244>

19 To secure an Extended Arrangement Under the Extended Fund Facility and an Arrangement Under the Extended Credit Facility, in April 2021, the Government of Kenya pledged to the International Monetary Fund that it would reverse COVID-19 era tax cuts and exemptions and “undertake further tax policy measures of 0.8–0.9 percent of GDP per year in FY22/23 and FY23/24” accompanied by reduction in recurrent spending by 2.1 percentage points of GDP, and “triage” of the parastatal sector. See <https://www.imf.org/en/Publications/CR/Issues/2021/04/06/Kenya-Requests-for-an-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-an-50339>

20 Doctors staged a 56 day strike to force implementation of a 2017 Collective Bargaining Agreement between March and May 2024. See <https://www.voanews.com/a/kenyan-government-doctors-sign-agreement-to-end-strike-/7602991.html>

21 Junior secondary school teachers commenced a strike seeking permanent employment for 46,000 intern teachers. See <https://www.kenyanews.go.ke/tsc-defends-employment-merit-amid-jss-teachers-strike/>

22 See Final Report of the Ndungu Land Commission - [http://kenyalaw.org/kl/fileadmin/CommissionReports/A\\_Report\\_of\\_the\\_Land\\_Commission\\_of\\_Inquiry\\_into\\_the\\_Illegal\\_or\\_Irregular\\_Allocation\\_of\\_Land\\_2004.pdf](http://kenyalaw.org/kl/fileadmin/CommissionReports/A_Report_of_the_Land_Commission_of_Inquiry_into_the_Illegal_or_Irregular_Allocation_of_Land_2004.pdf)

hectares of forest for timber, charcoal or to create farming plots. In 2004, a critical but largely unimplemented *Commission of Inquiry into the Illegal/Irregular Allocation of Public Land*<sup>23</sup> marked a significant break in this form of extraction and patronage. There is now significantly less national government real estate left to allocate, and what remains is subject to a far greater degree of public scrutiny.

Under these circumstances, the main pool of resources available is public budgets, over which the patron exercises discretionary decisional power. Increasingly, counties are the new locus of directed land allocation, for example in the Affordable Housing Programme, in which developers are ostensibly being allocated county land for construction. Unfortunately, this arrangement is being abused. In one notorious case the title deed to the land was given to the developer who charged it at a bank for a Ksh 1.7 billion loan.<sup>24</sup> The President repeatedly touts the employment benefits of the Affordable Housing Programme. In December 2023, he claimed it had created 120,000 job opportunities - but the biggest beneficiaries will be steel and cement manufacturing enterprises. The largest player in these two industries is an overt Kenya Kwanza supporter,<sup>25</sup> who secured industry dominance as a result of changes to the tax laws in June 2023.<sup>26</sup>

The transactional basis of the new administration was confirmed straight out

of the starting blocks by now defenestrated Deputy President Rigathi Gachagua, who declared the government would show preference to its “shareholders” - meaning supporters - in employment and development opportunities.<sup>27</sup> In March 2023, President Ruto attempted to reward over fifty supporters – mostly electoral losers – by appointing them Chief Administrative Secretaries (CAS). The move was in defiance of a court ruling declaring the positions unconstitutional. The High Court again declared the Office of Chief Administrative Secretary unconstitutional in July 2023 – which hasn’t stopped Ruto seeking to fill fifty CAS positions, following commencement of the new National Government Administration Laws (Amendment) Act, 2024<sup>28</sup>.

Presidential patronage is not limited to the public sector; the Kenya Executive also has coercive power over the private sector. As the new administration took shape, several large business enterprises were put under pressure to signal their support. Kenya’s largest telecom company, largest commercial bank and other leading commercial entities quietly retired chief executives and board members, replacing them with people close to the president<sup>29</sup> – echoing similar corporate transitions when Moi became president in 1978, and Kibaki in 2002.

Ruto has also strong-armed businessmen associated with his predecessor, Uhuru Kenyatta. The two have gone from political nemeses in Kenya’s 2008 conflict, to a

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23 Known as the Ndungu Report, 2004

24 See “Developer defends use of Jevanjee Gardens’ land as collateral for Sh1.9b loan” at <https://www.standardmedia.co.ke/business/real-estate/article/2001505987/developer-defends-use-of-jevanjee-gardens-land-as-collateral-for-sh19b-loan>

25 See <https://www.the-star.co.ke/news/realtime/2024-04-08-guru-ni-rafiki-yangu-sana-ruto-praises-devki-owner-as-he-opens-sh45bn-factory/>

26 See <https://www.businessdailyafrica.com/bd/corporate/companies/devki-steel-tycoon-wins-second-round-of-cement-wars--4271662>

27 This statement became one of the grounds for Gachagua’s impeachment as Deputy President of Kenya in October 2024. See Notice of Impeachment <http://parliament.go.ke/sites/default/files/2024-10/NOTICE%20OF%20SPECIAL%20MOTION%20ON%20IMPEACHMENT%20OF%20DEPUTY%20PRESIDENT%20BY%20HON%20MWENGI%20MUTUSE.pdf>

28 See [https://ntvkenya.co.ke/news/ruto-revives-cas-positions-adding-sh450-million-annually-to-wage-bill/#google\\_vignette](https://ntvkenya.co.ke/news/ruto-revives-cas-positions-adding-sh450-million-annually-to-wage-bill/#google_vignette)

29 See Board changes at Safaricom January 2023 [https://www.safaricom.co.ke/images/Investorrelation/Safaricom\\_PLC\\_Board\\_Changes\\_January\\_2023.pdf](https://www.safaricom.co.ke/images/Investorrelation/Safaricom_PLC_Board_Changes_January_2023.pdf)



presidential partnership forged in 2013 to avoid international charges of crimes against humanity, to arch-rivals in 2022, as they fought each other in a desperate election battle to retain personal power. Uhuru, who had served the maximum two terms, fronted his erstwhile adversary Raila Odinga against Ruto.

John Ngumi, a businessman close to Uhuru Kenyatta, received a massive Ksh 111 million unpaid taxes demand – without court proceedings – following a well-publicised parliamentary committee hearing. Former chair of Kenya’s telecom giant Safaricom, Ngumi had earned a US\$ 3.07 million fee<sup>30</sup> under Kenyatta on the eve of the 2022 election by brokering a Ksh 6.09 billion government buy-back of Helios Investment Partners’ 60% share of Telkom Kenya. Ruto’s in-coming government immediately cancelled the deal; but then announced in October 2023 that a U.A.E. registered firm, Infrastructure Corporation of Africa LLC, would take Helios shares and become the new majority shareholder in Telkom Kenya.<sup>31</sup>

Pressure on the sugar industry involved more unnerving methods. In August 2023, Ruto made a chilling roadside declaration of war on sugar cartels, giving an ultimatum to individuals involved to face jail, deportation or a ‘trip to heaven’. It came on the heels of a gangland-style daylight abduction in Nairobi of sugar magnate Jaswant Rai<sup>32</sup>. Rai, who had close ties with the Kenyatta family<sup>33</sup>, soon after dropped legal proceedings which interfered with the presidential pledge to reopen a sugar factory in Western Kenya.<sup>34</sup>

Kenyan presidents enjoy constitutional immunity from criminal and civil proceedings during their tenure in office.<sup>35</sup> With Kenya’s high levels of corruption, ex-presidents are anxious about post-presidential prosecutions. Mindful of their own future, the successor traditionally shields the predecessor and their family from inquiry and prosecution.

Before Ruto became president, transitions in Kenya had been between close political and personal allies. The first four presidents had been closely intertwined since the 1960s.

Moi was Jomo Kenyatta’s vice president; Kibaki was vice president to Moi and finance minister for Jomo Kenyatta; Uhuru Kenyatta was son of Jomo Kenyatta, Moi’s anointed successor, and minister to Kibaki. William Ruto, who emerged in the 1990s, had little to no history with the presidential families that preceded him.

When Ruto ascended to power, he came with his own history of corruption charges.

In 2004 he was charged with defrauding the state corporation Kenya Pipeline Company (KPC) of huge amounts of money through dubious land deals. Acquitted eventually in 2011, investigations were re-opened in 2020 when his relationship with Kenyatta deteriorated. In 2010, when he was Agriculture Minister in the coalition government, Ruto was suspended over a corruption scandal involving subsidized maize. In 2013, he was ordered by a court to pay Ksh 5 million to a victim of the 2007-2008 post-election violence for grabbing his land in Uasin Gishu.

30 See <https://www.businessdailyafrica.com/bd/corporate/companies/banker-john-ngumi-pays-sh111m-tax-for-his-telkom-deal-fees--4219608>

31 See <https://www.reuters.com/markets/deals/uae-company-take-over-60-telkom-kenya-helios-kenyas-treasury-says-2023-10-04/>

32 See <https://www.standardmedia.co.ke/national/article/2001480317/billionaire-rai-set-free-as-bank-ceo-in-mumias-lease-saga-grilled>

33 <https://nation.africa/kenya/news/jaswant-rai-his-businesses-political-ties-and-the-shocking-case-of-state-capture-61550>

34 See Jaswant Rai drops Mumias litigation at <https://www.the-star.co.ke/news/2023-08-31-billionaire-rai-to-withdraw-all-cases-against-mumias-sugar/>

35 Article 143 Constitution of Kenya

Ruto's most publicised case is the Nairobi Weston Hotel land-grabbing saga, which involved several state corporations. Ruto publicly admitted in 2019 that the Weston Hotel land had been acquired illegally by its original owner, but denied knowing it at the time he acquired it.

Previous presidents have accepted the *quid pro quo* undertaking not to pursue, persecute, prosecute or harass their predecessor, but Ruto came under the media spotlight after goons raided Uhuru Kenyatta's family property and local security officials claimed they were instructed not to act<sup>36</sup>. There were several incidents in which law enforcers were unleashed on members of the Uhuru Kenyatta's nuclear family,<sup>37</sup> but Ruto did nothing to condemn these actions.

Also, unlike his predecessors, President Ruto is not accountable to a political party. He was elected as the leader of a political insurgency movement – the UDA – a loose affiliation of politicians and business interests who had fallen out of favour with President Uhuru Kenyatta following his March 2018 rapprochement with opposition chief Raila Odinga.

Observing the “duty to protect” patronage convention is absolutely key to quiet incumbency, and to prevent defections of the support base to another patron also promising resources. Ruto has thus appointed persons under active criminal investigation to cabinet and applied pressure to have criminal charges against his supporters dropped by the Director of Public Prosecutions.

Just as his presidency moved towards its half-way mark, Ruto jettisoned his Deputy President Rigathi Gachagua via parliamentary impeachment partly based on alleged corruption. Prior to this in July 2024, he dismissed 19 of his Cabinet Secretaries in response to Gen Z movement demands – he said – and to build a broad-based government, an action reminiscent of his predecessor's 2015 anti-corruption purge.

In March 2015, Uhuru Kenyatta sacked four cabinet secretaries (CS), six principal secretaries, an ambassador and fourteen senior public servants, including former Transport and Infrastructure CS Michael Kamau (now Chairman of the NHIF), Energy CS Davis Chirchir (now CS Roads and Transport), Labour CS Kazungu Kambi, Transport, Agriculture CS Felix Koskei (now Head of the Public Service), Kenya's Deputy Head of Mission to South Africa Jane Waikenda, Secretary to the Cabinet Francis Kimemia, Transport PS Nduva Muli, Mining PS Patrick Omutia, Water PS James Teko, Deputy President's Office Chief of Staff Marianne Kittany (now MP Aldai constituency on a UDA ticket), Investments Secretary Esther Koimet, AFC Chairman Patrick Osero, Geothermal Development Company MD Silas Simiyu, National Social Security Fund Managing Trustee Richard Langat, National Water Conservation and Pipeline Corporation acting CEO Evans Ngibuini, Kentrade CEO Alex Kabuga, Kenya Airports Authority MD Lucy Mbugua, Kenya Pipeline MD Charles Tonui and Tourism Fund/ Catering Levy Trustee Allan Chenane.

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36 <https://www.theeastafrican.co.ke/tea/news/east-africa/how-politicians-planned-kenyatta-farm-attack-4177040>

37 An attempt was made to forcibly search the home of ex-President Kenyatta's son for weapons. See <https://nation.africa/kenya/news/uhuru-s-son-jomo-drops-gun-case-after-deal-with-state--4509348>

Many of these personalities were eventually rehabilitated in public life by President Ruto. In any event, corruption increased after their sacking as the last term of Uhuru Kenyatta, during which he made a political accommodation with Raila Odinga, destroyed the opposition's interest in holding the government to account. In 2024 a similar scenario is emerging.

The new government is largely made up of novices in high office selected on loyalty and regional considerations rather than merit. President Ruto often complains of being ill-served by cabinet members, but – ever mindful of triggering a defection wave – has little room to discipline or fire the corrupt or incompetent. He appointed his political party's politburo to sinecure positions within the government, ensuring loyalty to him ahead of the next general election, but also leaving no room for objective criticism to emanate from within party organs.

At the end of the day, while Ruto's election manifesto – heavily influenced by Kenyan economist David Ndii – announced a special concern for the poor and excluded and a new bottom-up approach to public policy, delivery is difficult. Without a real political party to hold him and his legislators to their promises to empower the base of the economic pyramid, it is in the gift of one person. Ruto sets the direction in which MV Kenya Kwanza sails, but he cannot run the entire ship of state alone. This is the structural weakness of his purported transformative agenda.

In public relations terms, however, the Ruto administration has been successful internationally. The acclaim he receives in western circles has boosted Ruto's confidence, but this as yet has to be replicated regionally. Kenya has frayed relations with

East African community neighbours. Some of this might be explained by his aggressive position taking - largely without any local or regional consultation - on such issues as climate change, restructuring the global financial architecture, and the Israel-Gaza, and Ukraine-Russia conflicts. In May 2024, Kenya was designated a major non-NATO ally of the United States confirming the end of a decades old foreign policy, initially known as non-alignment.

Discussion of Ruto's international image cannot be complete without a comment on the final halt to investigations by the International Criminal Court into the 2007-8 post-election violence.<sup>38</sup> This had been a millstone around his neck and the ICC reprieve announced in November 2023 ended the greatest threat to his political career.

## Political maneuvers

The 2022 presidential election exemplified the paucity of ideological differences between the leading candidates. The party manifestos of the winner and runner-up both identified corruption as a national developmental challenge and pledged to fight it. But within the highest ranks of both parties were corruption suspects and even convicts. Although President Ruto campaigned pledging to form a State Capture Commission of Inquiry, he has since dropped this quietly. The hackneyed transitional justice debate about amnesties for economic crimes were not a feature of the presidential campaign, signalling a confidence in the new facts of mutually condoned impunity, weakening in civic demand for accountability and the general resignation to impunity.

Before it donated its party leadership to Ruto's broad based government in August

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38 See <https://www.ictj.org/latest-news/icc-prosecutors-halt-13-year-kenya-investigation-failed-produce-any-convictions>

2024, the ODM party<sup>39</sup> opportunistically exploited economic conditions, leading mass protests - ostensibly about the cost of living - between March and July 2023, but not using parliament to hold the government to account.

For almost two years it explained away its parliamentary inactivity with the accusation that Ruto had bought a substantial number of its members, thereby creating an unbeatable majority in the National Assembly and the Senate. But when it suited them, the ODM leadership was able to work within parliament across the aisle. For example, a National Dialogue panel established with parliamentary sanction to facilitate extra-parliamentary dialogue between the Government and Opposition on contentious political issues, including the reconstitution of an electoral commission, and entrenching a constitutional Leader of the Official Opposition, recommended in December 2023 – unsurprisingly – the reconstitution of an electoral commission and entrenching a constitutional Leader of the Official Opposition. The panel glossed over policy areas of differences such as the best measures to take to manage the economy and the rising cost of living.

Though Kenya has a relatively free media by regional standards, corruption exposés do not translate into popular outrage and action. There has been a steady diminution in the importance of print media as a platform for a new generation of citizens. Translating rigorous investigative journalism into outputs fit for the new social media era has been a continuing challenge for the past decade, during which time mainstream media houses

have drifted into financial doldrums with declining audiences on traditional platforms of newspapers, television and radio. Hostility from Government has led since 2007 to a series of policies designed to effectively starve media of government advertising.

In April and March 2024, the government withdrew all advertising from the three largest media companies, dealing what the media companies described as a “mortal blow” to their industry.<sup>40</sup> And when it isn’t starving the legacy media, the government is poaching its staff. Observers have remarked on the steady recruitment of Kenya’s best trained and most experienced journalists into the communication departments of ministries and government agencies. Such poaching obviously diminishes journalism as a check on government excesses. When Mwai Kibaki took office two decades ago he performed a similar manoeuvre by opening the government to recruiting leading lights of the governance civil society movement. The Ruto administration’s rough treatment of the legacy media is a cause for legitimate concern and opposition.

Having intimidated the media, and co-opted the political opposition, the focus turned to civil society. Over the last two years, the Ruto government has twice sought to isolate and atomize civil society. At the end of his first year the Ruto administration purported to direct NGOs and their donors to align their programming decisions with the manifesto of the ruling UDA party.<sup>41</sup> An Interior Ministry Notice dated 8 September 2023 entitled “Notice to NGOs on Realignment of Donor Aid”, stated that “the Government has noted with concern the prevailing misalignment

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39 The leading member of the Azimio opposition coalition which fronted Raila Odinga against Ruto in 2022

40 See <https://www.standardmedia.co.ke/business/business/article/2001491143/govt-withdraws-state-adverts-from-radio-tvs-in-another-mortal-blow-to-media-industry>

of international donor aid management systems” and that “the Government has formally written a notice to all NGOs, including AfriCOG and PBOs in the country to comply... and align their operations with Kenya’s development priorities as captured in the Bottom-Up Economic Transformation Agenda (BETA).” Whether this notice was an overzealous act or was a harbinger of action to further control civic space it came to pass in July 2024 that President Ruto falsely alleged that the Gen Z protests were financed by NGOs who were Ford Foundation grantees.<sup>42</sup>

All these contribute to a strong negative sentiment against his administration and its policies across class lines, a first in Kenyan politics. This negativity is spread and curated by a vibrant and boisterous social media scene; something none of Ruto’s predecessors have ever had to face. The net result is that at this point, the Ruto administration is unpopular and politicians are held in low esteem. Kenyans have such a jaded opinion of their politicians<sup>43</sup> – including the opposition – that they do not expect corruption to be impacted by changes of government after elections. By the end of 2023, 53% believed the country was headed in the wrong direction, while 30% were happy with the way things were.<sup>44</sup> By the two-year mark in September 2024, a poll by the same organization recorded that 73% thought that the country was headed in the wrong direction and only 11% of Kenyans believed the country was headed in the right direction.<sup>45</sup>

This national despondence contrasts with a national optimism two decades ago. The only common feature in assessing Kenya today and two decades ago is the voluble anti-corruption sentiment. Investigations and prosecutions that would have been pursued two decades ago would not be started today. Early in President Ruto’s administration, the Office of the Director of Public Prosecutions began withdrawing court cases against persons it had charged with various corruption offences and economic crimes. The press reported these withdrawals, highlighting the political and business prominence of the suspects. The DPP explained his decision as being based purely on the materiality of the evidence, and not on the social, economic or political connections of the accused. He claimed to have withdrawn over 25,000 cases.

But President Ruto’s critics point to the coincidence between the withdrawal of charges and subsequent appointments to high public office.<sup>46</sup> Defenders of these prosecution withdrawals maintain that many cases were instigated in the last years of President Kenyatta’s administration against supporters of then-Deputy President William Ruto. In essence, they allege a scheme to abuse the criminal justice system to coerce political and financial support. As the cases will never be tried in court it is impossible to say whether the original charges were merited or not.

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41 See the full text of the Interior Ministry Notice dated 8 September 2023 entitled “Notice to NGOs on Realignment of Donor Aid” at <https://twitter.com/InteriorKE/status/1700391093634781524>

42 <https://www.aljazeera.com/news/2024/7/18/why-is-kenyas-ruto-accusing-the-ford-foundation-of-stoking-tax-protests>

43 See for example the National Ethics and Corruption Survey Report published by the Ethics and Anti-Corruption in December 2022. Available online at <https://eacc.go.ke/default/wp-content/uploads/2022/12/National-Ethics-and-Corruption-Survey-2021-EACC-30-Dec-2022.pdf>.

44 See Infotrak December 2023 End of Year Opinion Poll <https://www.infotrakresearch.com/wp-content/uploads/2023/09/INFOTRAK-VOICE-OF-THE-PEOPLE-POLL-SEPTEMBER-2023-MEDIA1.pdf>

45 See Infotrak September 2024 Opinion Poll [https://www.infotrakresearch.com/wp-content/uploads/2024/10/Infotrak-VOP-Poll\\_October-2024.pdf](https://www.infotrakresearch.com/wp-content/uploads/2024/10/Infotrak-VOP-Poll_October-2024.pdf)

46 See Appendix for list of some of the cases withdrawn by the DPP. The appendices to this report can be found at <https://africog.org/all-africog-reports/>

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# Ruto's Two-year Record: Contentious Contracting

## International Airport - Adani lease

On November 21, 2024 Ruto was forced to drop one of his most unpopular flagship deals when it emerged that a New York court had indicted Indian billionaire, Gautam Adani, for a massive international fraud and bribery scheme. The Adani Group lease of Kenya's international airport in the capital, Nairobi, had provoked enormous public controversy.

"The defendants...lied about the bribery scheme as they sought to raise capital from U.S. and international investors," US Attorney Breon Peace said in a statement announcing the charges against Gautam Adani. "My office is committed to rooting out corruption in the international marketplace and protecting investors from those who seek to enrich themselves at the expense of the integrity of our financial markets."<sup>47</sup>

So the Kenyan public had been right; but it took a New York court case to stop President Ruto.

## Background to the Adani deal

When Ruto became president, the government proposed a public-private-partnership model to fund a stalled modernisation program at Jomo Kenyatta International Airport, JKIA. Efforts had failed for more than a decade to rebuild

the international arrivals terminal and add a second runway. Transport Cabinet Secretary, Kipchumba Murkomen, announced in June 2023 a formal expression of interest would be published by August seeking investors; but it didn't happen. Instead, Murkomen later said the government had initiated a different process. It followed a meeting on 5th December between President Ruto and Indian Prime Minister Narendra Modi at New Delhi's Hyderabad House. According to some reports, the meeting included Gautam Adani, one of the world's richest industrialists and founder of the Indian-based Adani Group<sup>48</sup>, which would later submit a private 'build-operate-and-transfer' proposal to the Kenyan government. According to the March 2024 proposal, Adani Group would lease Kenya's JKIA for 30 years while investing \$1.85 billion. This provoked public outrage that Ruto was 'selling the airport'.

The president confronted the controversy for the first time publicly in Mombasa, July 28: "Am I a madman? How do you sell a strategic national asset? You have to be insane."<sup>49</sup>

Anxiety around the airport had been building for years. Opened in 1978, it is run by the state-owned corporation Kenya Airports Authority. In August 2013, a Chinese firm was under contract to re-develop the airport when a fire caused by an electrical fault destroyed two of the three passenger-terminals.<sup>50</sup>

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47 <https://www.bbc.co.uk/news/articles/c78dkgm9e7ro>

48 [https://www.adaniwatch.org/furor\\_over\\_adani\\_s\\_pitch\\_to\\_revamp\\_nairobi\\_airport](https://www.adaniwatch.org/furor_over_adani_s_pitch_to_revamp_nairobi_airport)

49 <https://www.citizen.digital/news/the-adani-jkia-deal-a-deep-dive-into-kenyas-most-controversial-aviation-project-n349437>

50 <https://www.bbc.com/news/world-africa-24468327>

A Ksh55 billion redevelopment contract conceptualized by the Kibaki administration was revised under Uhuru Kenyatta's presidency, and eventually cancelled in 2016.<sup>51</sup> This decision cost taxpayers over KSh 5.4 billion to settle a lawsuit and write off advance fees.<sup>52</sup> The settlement wiped out the Kenya Airports Authority's profits, placing it in a loss-making position.<sup>53</sup> A privately initiated proposal by Kenya Airways was withdrawn in 2019 because of the national company's indebtedness.<sup>54</sup> A Spanish consulting firm, ALG Global, was brought in to advise how to handle the airport crisis. It recommended that any private developer should be selected through a competitive and open-tendering process, with 30-years as an adequate concession period.

Although no advertisement was published by the government with these specific details, the Adani Group met the requirements, including the 30-year lease period. At the end of the 30-year lease period, Adani Airport Holdings Limited (AAHL) would hold an 18% equity stake in the airport, and that the government would be required to pay a concession fee starting at \$40 million that would increase by 10% every five years. It also sought tax concessions for the Adani Group as well as an agreement that no other airports should be built within 150 km of Nairobi for 30 years. In May 2024, Kenya Airports Authority invited bids for transaction advisory services; without publicly disclosing it, KAA had evidently accepted the AAHL proposal and proceeded to the 'project development phase'.

## Airport whistleblower

Documents exposing the planned handover of all assets and operations of JKIA to the Adani Group were posted on the Twitter account of Kenyan whistleblower, Nelson Amenia, who is based in France, in July 2024<sup>55</sup>.

Suspect aspects of the secret deal revealed by Amenia included: negative reports on the true ownership and trading background of the Adani Group; the extreme duration of the 30-year concession, which is half the time Kenya has been an independent nation; job losses for current airport workers, with permission to import workers; and, the surrender of all revenues and assets of the JKIA without any public participation or policy document. It also revealed AAHL would not build a new runway or terminal for at least thirteen years<sup>56</sup>.

After the leak, the Gen Z movement resolved to march in July on the airport to stop the signing of the deal, which was believed to be imminent. #OccupyJKIA<sup>57</sup> was thwarted by a military cordon thrown around JKIA, but the attempt achieved significant disruption at the airport simply through its anticipation.<sup>58</sup> On 11th September, the Kenya Aviation Workers Union called a strike against the Adani deal. JKIA was shut down for the day, despite police attempts to force workers back to their stations, stranding thousands of international and domestic passengers. After receiving assurances that the Adani deal would not be finalized without their approval, the union called off the strike.<sup>59</sup>

51 <https://www.citizen.digital/news/the-adani-jkia-deal-a-deep-dive-into-kenyas-most-controversial-aviation-project-n349437>

52 paid to Anhui Construction Engineering Group Co Ltd and China Aero Technology Engineering International Corporation.

53 <https://www.businessdailyafrica.com/bd/corporate/companies/payment-for-botched-jkia-terminal-deal-sinks-kaa-into-loss-4734256>

54 <http://www.parliament.go.ke/sites/default/files/2019-02/Progress%20report%20on%20KQ%20takeover%20of%20JKIA.pdf>

55 [https://x.com/amenya\\_nelson/status/1811458518861644006](https://x.com/amenya_nelson/status/1811458518861644006)

56 See infographic on comparing ALG and Adani proposals Standard Media <https://x.com/MzalendoWatch/status/1838061727751024842>

57 [https://x.com/AlinurMohamed\\_/status/1814907920573997321](https://x.com/AlinurMohamed_/status/1814907920573997321)

58 <https://nation.africa/kenya/news/how-operation-occupy-jkia-failed-4700676>

59 <https://www.bbc.com/news/articles/c3rdg13z1j7o>

Nelson Ameyia, meanwhile, continues to be subjected to threats and court action in Kenya and France.<sup>60</sup>

## The case against the deal

Objection to the AAHL Adani deal went to court in September, led by the Law Society of Kenya and the Kenya Human Rights Commission<sup>61</sup>.

The inability of the government to explain the single sourcing of AAHL, when there were alternative proposals from Indian, German and American airport operators, had solidified public opinion that the AAHL deal was corrupt and Kenyan officials were compromised to accept it. Demanding a judicial review - which assesses whether a public body's decision or action was lawful - the civil society bodies argued that Kenya's main airport was a strategic and profitable national asset which ought not to be handed over to Adani for 30 years without due diligence on its single sourcing and financial and technical capacity<sup>62</sup>.

The civil society case laid out the most contentious and burdensome aspects of the deal. It would operate tax-free for ten years and import labourers with free work visas, depriving Kenyan workers of their livelihood. There was no obligation to build a new runway because AAHL contended the existing one was sufficient until 2054, and the proposal stopped KAA from building a competing airport or airfield within a 150-kilometre radius of JKIA for 30 years. After 30 years, the Adani Group would be entitled to an 18% concession fee starting at KSh6 billion, which increased by 10% every five years, forever. This

violated Article 201(c), which demands the burden and benefits of using resources and public borrowing must be shared equitably between present and future generations. In sum, the court was asked to find that leasing the strategic and profitable JKIA to a private entity violates the principles of good governance, accountability, transparency, and prudent and responsible use of public money.

According to the President of the Law Society of Kenya, the High Court "issued a stay prohibiting any person from implementing or acting on the privately initiated Adani proposal over JKIA pending the conclusion of the court case."<sup>63</sup>

For almost six months, the government doggedly carried on with the proposed Adani concession agreement. There were several appearances by Cabinet Secretaries before the National Assembly and the Senate Parliament to defend Adani's credentials, despite the growing number of critical reports about the Indian billionaire in other countries.

Then, on 20 November 2024 a United States Grand Jury Indictment filed in the Eastern District of New York Criminal Court was made public on the eve of President Ruto's State of the Nation Address on 21 November. The US justice department had obtained the approval of the Grand Jury to issue criminal charges and seek arrest warrants for the founder of the Adani conglomerate of companies and Gautam Adani, his nephew, Sagar Adani, the executive director of Adani's energy subsidiary, and six top executives of various Adani entities. The charges included violation of the US anti-bribery law - the Foreign

60 <https://www.theafricareport.com/363262/adani-deal-kenya-airport-whistleblower-fears-for-his-life/>

61 <https://khrc.or.ke/case/khrc-lsk-sue-to-block-adanis-30-year-jkia-lease/>

62 <https://hindenburesearch.com/adani/>

63 <https://x.com/FaithOdhiambo8/status/1833169331171004623>



Corrupt Practices Act - by making a quarter of a billion US dollars' worth of corrupt payments to Indian public officials to secure contracts and approvals, wire fraud, and securities fraud. The US Securities Exchange Commission also laid parallel criminal and forfeiture proceedings for duping investors.

Ruto was forced to abandon the red-hot Adani deal in his State of the Nation address.

“Based on new information provided by our investigative agencies and partner nations”, he ordered “...procuring agencies within the

Ministry of Transport and the Ministry of Energy and Petroleum immediately cancel the ongoing procurement process for the JKIA Expansion Public Private Partnership... and immediately commence the process of onboarding alternative partners.”

But it may not be the end of the contentious Adani-JKIA saga. There are expectations that the Adani Group could sue for agreed pre-contractual expenses, leaving the Kenyan taxpayer, once again, paying the cost of corruption.

### ***Why the Adani deal didn't add up for Kenyans***

The ALG and Adani proposals are compared in this infographic.<sup>64</sup>

<b>DIVERGENT POINTS IN FEASIBILITY REPORTS; KAA'S ALG AND ADANI</b>		
<b>CATEGORY</b>	<b>ALG</b>	<b>ADANI</b>
Investment amount	Sh. 211 billion	Sh. 238 billion
PPM Models	Full airport or terminal	Single PPP for terminals
Runway	Second Runway by 2035	Current runway sufficient until 2054
Bidding	Competitive bidding	Prefers PIP
Fees	Government-regulated	Self-regulated
Focus	Infrastructure	Terminal upgrades
Consultation	Involves investors, KQ	Limited input
Legislation	Needs law changes	Assumes law changes
Scope	Focus on JKIA	Seeks controls over other airports
Financial Risk	Transfers risks to private contractors	Compensation for disruptions
PPP Approach	Balanced risk-sharing	Investors protection
Financial Structure	Phased investment, upgrades	Priorities terminal commercialization

64 Source Standard Media Group, see <https://x.com/MzalendoWatch/status/1838061727751024842>

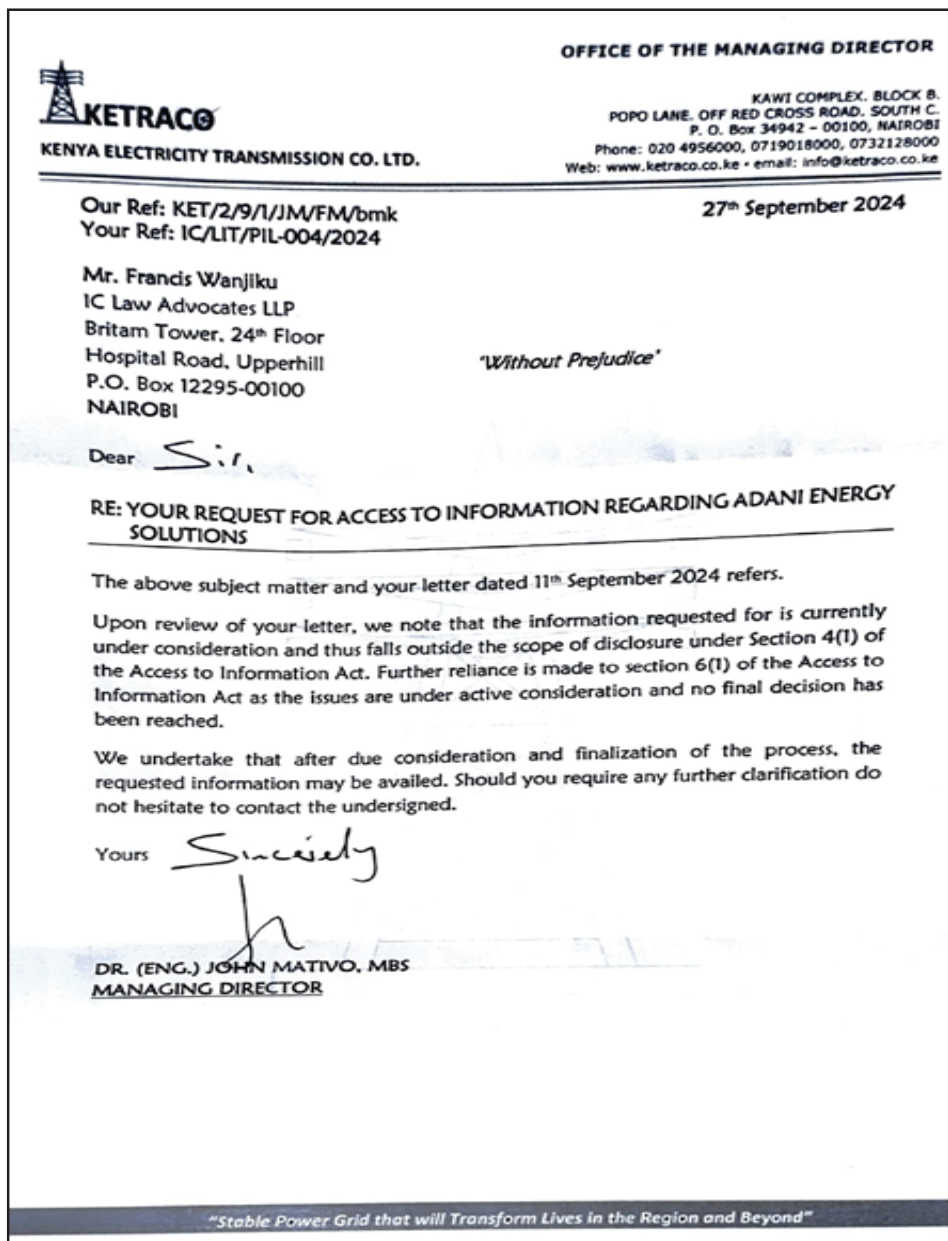
## Adani Group - National electric power grid projects

A second contentious, single-sourced Adani Group contract had been signed in October 2024, just one month before the momentous impact of the Adani corruption charges in New York, US.

The contract signed with Kenya Electricity Transmission Company, KETRACO, provided that the national electric power grid transmission network would hire Adani

Energy Solutions to develop transmission lines and sub-stations at specific locations:

- 400kV Gilgil-Thika-Malaa-Konza (208.7km)
- 220kV Rongai-Keringet-Chemosit (99.9km)
- 132kV Menengai-Ol Kalou-Rumuruti (89.9km)
- 400/220kV Substation at Lessos
- 132/33kV Substation at Thurdubuoro



The newly appointed Cabinet Secretary for Energy, Opiyo Wandayi, announced the KETRACO-Adani Energy Solution projects would be completed between 2026 and 2027; but there were again serious public misgivings over the contract. Like the JKIA deal, the Adani Group was single sourced, and apparently submitted a KSh127 billion proposal to KETRACO, which - without transparency - had been secretly processed and signed, skipping due diligence and avoiding competitive bids.

As late as the 21 November 2024 - when Adani was being indicted in New York for fraud - the cabinet secretary, Wandayi, was still strenuously arguing the case for 'Adani Energy'. Ruto dumped the KETRACO-Adani deal. He directed the Ministry of Energy to immediately "cancel the ... recently concluded KETRACO transmission line Public Private Partnership contract" and begin the process of finding alternative partners.

This has created an expectation that the government will follow the procurement law more strictly in identifying reputable contractors for the national electric power grid projects, using international competitive tendering, restrictive tendering, or private initiated proposals. There are similar fears, however, that costly legal challenges will also follow the cancellation of the signed KETRACO-Adani contract.

## Edible oil import scandal

President Ruto's first cabinet meeting revived a moribund trading parastatal, the Kenya National Trading Corporation, when

it approved the following as a cost-of-living reduction measure:

*'Cabinet approved a framework to position the Kenya National Trading Corporation (KNTC) as the anchor of State initiatives to create a price stabilizer for essential household food items. As such, KNTC, as a trading company, will supplement other State initiatives by creating Strategic Reserves for staple and essential food items, vital farm inputs including fertilizer and any other goods necessary for ensuring stability in the prices of core goods consumed by Kenyans. It was noted that KNTC will leverage on its infrastructure and capacity to help stabilize prices of all essential items in instances where price swings of essential items are abnormal and against the public interest. To realize this mandate, KNTC will continue to partner with the National Cereals and Produce Board (NCPB) and local and regional financial intermediaries specializing in trade and commodity financing.'*<sup>65</sup>

The rationale was price stabilization, but the decision to revive the trading parastatal morphed into a scandal<sup>66</sup>. The decision authorised 125,000 tons of tax-free cooking oil, which select firms were gifted. When KNTC issued contracts to private firms to urgently secure edible oil for Kenya, billions of tax-payers' money was wasted. The three companies contracted to import the goods were linked to close supporters of President Ruto.<sup>67</sup>

In October 2024, the Senate Committee on Trade was informed by the KNTC that it issued Letters of Credit to a few politically connected firms who imported 2,517,788 20 Litre cans of edible cooking oil. It remained

65 <https://www.president.go.ke/wp-content/uploads/Despatch-from-Cabinet-10.11.-2022-2.pdf>

66 <https://nation.africa/kenya/news/how-ruto-s-first-cabinet-meeting-birtherd-questionable-edible-oil-deal-4274150>

67 <https://nation.africa/kenya/news/revealed-tycoons-who-ve-bagged-rice-cooking-oil-deals-4279134>

sitting unsold in warehouses or at the port, uncleared by Customs. KNTC identified the importers as:

- Multi Commerce FZC, supplying the bulk at 1,971,794 20 litre jerry cans;
- Charma Holdings, supplied 532,574 20 litre jerry cans;
- Shehena Commodity, which contributed 13,420 20 litre jerry cans.

Of these, 1,510,025 jerry cans were cleared and warehoused, while 1,007,963 jerry cans remain at the Container Freight Station (CFS), awaiting clearance. The Auditor General reported that unscrupulous traders infiltrated the KNTC programme and were able to

import their consignments duty free<sup>68</sup>. In June 2023, according to Daily Nation estimates, the importers' haul amounted to US\$ 300 million.<sup>69</sup> A Senate Committee heard from the Acting CEO of the KNTC that its banker, Kenya Commercial Bank, ultimately paid Multi Commerce FZC US\$69,894,300, Charma Holdings US\$ 14,976,720, and Shehena Commodity US\$ 402,600 - for the edible cooking oil sitting unsold in warehouses or at the port uncleared by Customs.<sup>70</sup>

The failure to get the imported oil to market defeated the purpose of the programme and, according to the Daily Nation, cost taxpayers over Ksh 6.6 billion.

### **Condemned Sugar - Twenty Thousand Bag Consignment Vanishes<sup>71</sup>**

In May 2023, twenty-seven government officials attached to the Kenya Bureau of Standards, the Kenya Revenue authority, the Agriculture and Food Authority, the Port Health Department of Customs, the National Environmental Management Agency, the Anti-Counterfeit Agency, the Kenya Plant Health Inspection Service, the Kenya Ports Authority, the Ethics and Anti-Corruption Commission and the National Police Service were suspended from office over the disappearance of 20,000 bags of contaminated sugar suspected to have found its way into the market despite being condemned and seized by the Kenya Bureau of Standards (KEBS) in 2018.

The consignment of 20,000 bags of sugar, each weighing 50kgs, had been imported into the country in 2018 by Merako Investments Limited from Harare, Zimbabwe, but was condemned by KEBS for want of expiry date specification. Rather than be re-exported or destroyed the 1,000 metric tonnes of sugar was stored in private warehouses in Thika for over four years. A spot inspection in May 2023 by Kenya Revenue Authority officers discovered the sugar was gone.

In a statement Head of Public Service Felix Koskei said that prior to the "irregular and criminal release of condemned sugar [it] had been earmarked for conversion into industrial ethanol. It has since been established that the consignment was irregularly diverted and unprocedurally released.

Further, the conditions relating to open and competitive enlisting of the distiller were breached and the applicable taxes were not paid."

68 <https://www.the-star.co.ke/news/2024-08-23-kntc-probe-only-three-firms-supplied-oil-in-sh16-billion-deal>

69 See <https://nation.africa/kenya/news/revealed-tycoons-who-ve-bagged-rice-cooking-oil-deals-4279134>

70 See Senate website KNTC Board appears before the Senate Trade Committee regarding the importation of cooking oil - <http://217.21.116.45/parliament/node/2381>

71 See <https://citizen.digital/news/list-of-27-govt-officials-suspended-after-20000-bags-of-sugar-marked-for-destruction-disappear-n319921>

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## Performance of Key Institutions

### Executive Appointments

A winner-take-all electoral system enables a triumphant candidate or party to take control of executive appointments at the national and county level, and – depending on control over the National Assembly – they can do so in disregard of popular opinion. Both Kenyatta and Ruto’s presidencies were able to appoint large numbers of supporters to high public office.<sup>72</sup>

The ethnic composition of appointments is expected to comply with the constitutional National Values and Principles of Governance (NVPG) in public service. Representation in Ruto’s administration has attracted adverse public comment, but there is insufficient data to support the claim that Kalenjin and Kikuyu – the two most politically powerful ethnic communities – are being disproportionately rewarded with public positions. The metric year-on-year appointments need to be monitored for a full understanding of the ethnic makeup of an administration.

However, a recent assessment of the composition of the public service comprising the executive branch of the government of Kenya was published in December 2022.<sup>73</sup>

It showed that, as of December 2022, 46 ethnic communities were represented. 38 Kenyan communities had normal representation in the public service; two communities were classed as grossly over-represented (Kikuyu and Kalenjin) and one as over-represented (Kisii); one community was grossly under-represented (Kenyan Somali); and three communities under-represented (Turkana, Luhya and Mijikenda).

### Executive spending sprees

The Executive can use a partisan and compliant National Assembly to authorize massive increases of funding to the Presidency. In the last six months of Kenyatta’s presidency, for example, State House requested and received approval to spend over Ksh 1 billion on undisclosed “operating expenses.”<sup>74</sup> This represented the largest supplementary budget increase for the financial year taking into account all ministries and State departments. A parliamentary committee later established that expenditures at the President’s official residence, State House, soared to Ksh 4 million per day for Kenyatta’s final twelve months before the election.

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72 Article 10. National Values and Principles of Governance

(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them:- a) applies or interprets this Constitution; b) enacts, applies or interprets any law; or c) makes or implements public policy decisions.

(2) The national values and principles of governance include:- a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; b) human dignity, equity, social justice, inclusiveness, equality, c) human rights, non-discrimination and protection of the marginalised; d) good governance, integrity, transparency and accountability; and e) sustainable development

73 See the Public Service Commission Status of Compliance with Values and Principles in Articles 10 & 232 of the Constitution Annual Report 2021/2022 <https://www.publicservice.go.ke/index.php/media-center/2/214-status-of-compliance-with-values-and-principles-in-articles-10-232-of-the-constitution-annual-report-2021-2022>

74 See <https://www.businessdailyafrica.com/bd/economy/uhuru-gets-sh1bn-extra-for-undisclosed-budget-3709828>

Similarly, large expenditures were voted for the use of the president, deputy president and other top officials in the first months of Ruto's administration; but by October 2023 Ruto was seeking to curb unnecessary travel and hospitality expenses which had run out of control.<sup>75</sup>

## Waste and extravagance

Extravagant spending for the personal benefit of the top echelons of the Ruto administration has triggered public anger. Revelations of budget proposals to spend billions on the renovation of the president's<sup>76</sup> and deputy president's official residences<sup>77</sup> were deemed out of touch at a time when the National Treasury had proposed to reduce funds to a nationwide school feeding programme.<sup>78</sup> Within this general mood of discontent, revelations that the president had chartered a Boeing 737-700 at a cost of US\$ 2 million for a state visit to America, along with the size

and composition of his delegation outraged popular opinion in May 2024. The revelations on social media, tracking the personal extravagance of Ruto cabinet members, has radically changed the situation for ministers in rent seeking positions<sup>78</sup>. But Kenya's highly paid politicians - so well known for their insatiable appetite<sup>80</sup> for increased personal remuneration and benefits - are not likely to change, and outrage tends to be episodic and temporary.

All this excess spending comes at a time when the Government has pledged to the IMF that in case of a tax shortfall compromising achievement of the revenue targets, the government will slash budgets. History shows that extravagant administrations will likely first cut public spending in the health and education sectors. Shortfall also obligates "potentially additional tax measures"<sup>81</sup> if the IMF targets are not met – in other words, Kenyan citizens will be taxed even more.

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75 See <https://www.the-star.co.ke/news/2022-11-06-how-rutos-budget-cuts-order-will-affect-service-delivery/>

76 See <https://nation.africa/kenya/news/inside-sh1bn-annual-budget-for-state-house-renovations-4625646>

77 See <https://www.standardmedia.co.ke/politics/article/2001495244/gachagua-defends-budget-request-to-renovate-homes-office-and-buy-new-cars>

78 See <https://nation.africa/kenya/news/education/millions-to-miss-class-as-school-feeding-funds-dry-up-in-budget-4624408>

79 'rent seeking' is when a person aims to increase their wealth without making any contribution to society.

80 See <https://nation.africa/kenya/news/politics/mps-plot-to-demand-millions-more-luxuries-perks-4348812>

81 See <https://www.imf.org/en/Publications/CR/Issues/2021/04/06/Kenya-Requests-for-an-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-an-50339>

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# Parliament

## Parliamentary counter reform

After Ruto pinned down a simple majority in the National Assembly, guaranteeing victory on all parliamentary votes, the deeply unpopular Finance Act of 2023 passed in the National Assembly, despite opposition protest and public anger. It contained tax increases agreed between the government and the IMF<sup>82</sup> as part of a fiscal consolidation plan, broadening the tax base and creating developmental levies, which was generally received as a raid<sup>83</sup> on the wallets of ordinary Kenyans.

Meanwhile, initiatives to curb corruption have been met with resistance from MPs on both sides of the House. A Conflict of Interest Bill is stuck in the Parliament. There are attempts to claw back accountability provisions in parliament, aiming to eliminate or re-write the definition of corrupt activities and water down the consequences. These counter-reform moves seek to repeal corruption offences committed in the process of public

procurement, and allow corruption suspects to hold public office.<sup>84</sup>

In June 2023, opposition MP Peter Kaluma sought to amend the Anti-Corruption and Economic Crimes Act by deleting the provision providing for a 10-year disqualification of persons convicted of corruption or economic crimes<sup>85</sup> offences from being elected or appointed as public officers. The National Assembly's Justice and Legal Affairs Committee urged rejection<sup>86</sup> of the Bill in a Report to the House. If 'Kaluma's Law'<sup>87</sup> finds favour with the political establishment, it is likely the same will be sought to apply to impeached politicians, like Mike Sonko and Ferdinand Waititu, the former Governors of Nairobi and Kiambu Counties.

Similarly, George Kiringa Ruku, MP for Mbeere North, from the ruling party, sought to delete two provisions of the Anti-Corruption and Economic Crimes Act that make public

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82 Kenya and IMF agreed a 20 month programme supported by the IMF's Extended Fund And Extended Credit Facility (<https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/04/Extended-Credit-Facility>)(ECF). The arrangements were approved by the IMF Executive Board on April 2, 2021 and initially provided access to a total amount of SDR1.818 billion (about US\$2.43 billion, augmented in January 2024 by a further US\$941.2 million.. (<https://www.imf.org/en/News/Articles/2021/04/02/pr2198-kenya-imf-executive-board-approves-us-billion-ecf-andeff-arrangements>)

83 <https://roape.net/2023/05/24/raiding-wages-kenyas-proposed-housing-levy/>

84 See sections titled Disqualification of Persons Convicted of Corruption and Watering Down Accountability below.

85 The amendment bill can be downloaded from <http://www.parliament.go.ke/sites/default/files/2023-06/The%20Anti-Corruption%20and%20Economic%20Crimes%20%28Amendment%29%20Bill%20%2C2023.pdf>

86 <https://www.the-star.co.ke/news/2024-01-10-mps-reject-kalumas-proposal-to-allow-graft-convicts-to-hold-public-office>

87 The law MP Kaluma seeks to repeal reads as follows:

Disqualification if convicted of corruption or economic crime  
S. 64, ACECA.

(1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.

(2) This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.

(3) This section does not apply with respect to a conviction that occurred before this Act came into operation.

(4) At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette

officials accountable for safeguarding public funds.<sup>88</sup> Civil society fears the amendment would legalise corruption and free tender committees across Kenya from being held accountable for bid-rigging.<sup>89</sup> Bid-rigging lies at the heart of public procurement corruption, from the KEMSA COVID-19 PPE scandal<sup>90</sup> to the 2023 edible oil, rice and fertiliser import saga.<sup>91</sup> Ruku's amendment would also legalise engaging in public projects without having an allocated budget.

At the heart of Kenya's weak political system is the inability to enforce Chapter Six of the Constitution on Leadership and Integrity.<sup>92</sup> Public administration controls are also in danger of being watered down by parliamentary initiatives to reduce accountability for decisions and actions of civil servants. Some have gone to extraordinary lengths, reducing punishment and entirely redefining what corrupt activities are.

## Neglecting duty

Institutions established by the Constitution to enforce laws, fight corruption and monitor public finances are weak and susceptible to political influence.

Members of President Ruto's cabinet have been accused of ineptitude and graft, but parliament has not used its constitutional powers to hold errant cabinet secretaries

to account. There is instead indication that Ruto's hold over Parliament means it is serving less and less as a check on the Executive, and the absence of a strong or motivated opposition is likely to facilitate a surge in corruption.

In March 2024, an investigative report on national television revealed the corruption affecting the government's subsidized fertilizer distribution programme, with unscrupulous merchants supplying fake fertiliser to farmers through the National Cereals and Produce Board (NCPB).<sup>93</sup> A Senior Counsel of the Kenyan Bar alleged that the Agriculture Cabinet Secretary, Franklin Linturi, had engaged in a cover-up, and documented the attempt to coerce a fertilizer manufacturer to falsely take responsibility for fertiliser consignments that had been delivered to farmers through the NCPB.<sup>94</sup>

In May, following public pressure, an impeachment motion passed in the National Assembly against the Cabinet Secretary for Agriculture. Ten days later, however, the Cabinet Secretary was cleared by an 11 member Select Committee of the National Assembly, which had been organised to take evidence and report to the whole House.<sup>95</sup> The Committee had refused<sup>96</sup> to call two key witnesses against the Minister, leading to public accusations that it was compromised.

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88 <https://www.citizen.digital/news/eacc-raises-alarm-over-bill-proposing-to-amend-anti-corruption-law-n321503>

89 See CSO statement against the Ruku amendments at <https://www.khrc.or.ke/index.php/2015-03-04-10-37-01/press-releases/790-decriminalising-procurement-offences-undermines-anti-corruption-efforts-in-kenya>

90 See Report of the Parliamentary Investment Committee at <http://www.parliament.go.ke/sites/default/files/2021-09/PIC%20report%20on%20utilization%20of%20covid%2019%20fund.pdf>

91 See <https://nation.africa/kenya/news/revealed-tycoons-who-ve-bagged-rice-cooking-oil-deals-4279134>

92 <https://www.klrc.go.ke/index.php/constitution-of-kenya/119-chapter-six-leadership-and-integrity>

93 See Fertile Deception at <https://africauncensored.online/fertile-deception-1/>

94 See [https://twitter.com/C\\_NyaKundiH/status/1782392075217932664](https://twitter.com/C_NyaKundiH/status/1782392075217932664)

95 See Report of the Select Committee on the Proposed Dismissal of Hon. Mithika Linturi, CS Agriculture at <http://parliament.go.ke/sites/default/files/2024-05/Report%20of%20the%20Select%20Committee%20on%20the%20Proposed%20Dismissal%20of%20Hon.%20Mithika%20Linturi%2C%20CS%20Agriculture.pdf>

96 Report of the Select Committee on the Proposed Dismissal of Hon. Mithika Linturi, CS Agriculture at page 86



Indeed, a Minority Report issued by four Select Committee members concluded the “majority had abdicated their duty and failed to exercise a power donated to it by the Constitution.”<sup>97</sup>

This impeachment attempt demonstrates the control Ruto - known for his autocratic instinct - has over his parliamentary party and coalition. If it increases, it will destroy the binary nature of parliamentary politics, removing checks on the Executive. Kenyatta achieved a similar level of control through co-opting the opposition for his last term, when corruption and unbudgeted expenditure soared.

The National Assembly has never exercised its vetting power of Executive appointments to block a cabinet appointment. All Ruto’s nominees to cabinet were approved after the National Assembly perfunctorily dismissed substantive petitions by the public and civil society documenting reasons for ineligibility under Chapter Six of the Constitution.<sup>98</sup>

Seven proposed ministers were required by the National Assembly to respond to challenges by Transparency International Kenya, the Kenya Human Rights Commission, and members of the public. All were cleared by the National Assembly despite allegations of fraud, attempted rape, and murder. Complaints were also received against nine proposed cabinet secretaries by the Appointments Committee of the National Assembly. At the time of the vetting, the

deputy president himself had yet to benefit from the November 2022 withdrawal of a procurement fraud case against him.

Ten out of the 23 members of the original cabinet appointed by the Ruto were challenged on integrity grounds.

## Unauthorised expenditure

The National Assembly has failed to use “the power of the purse”<sup>99</sup> to limit extra budgetary spending; a phenomenon long identified as a corruption risk. The last months of Kenyatta’s administration were characterised by arbitrary unauthorised expenditures on a large scale, even though Article 223 of the Constitution authorizes the Treasury to undertake extra budgetary spending and seek parliamentary approval later.

In the 2022/23 financial year, the Controller of Budget authorised withdrawals of Kshs.82.27 billion<sup>100</sup>, a quarter of which became controversial when Controller of Budget Margaret Nyakang’o alleged before a committee of the National Assembly that she had been intimidated.<sup>101</sup>

Nyakang’o said she was given a 26 minute ultimatum by the Cabinet Secretary for Finance to authorise payments amounting to Ksh 22.4 billion four days before the general election, even though public finance management procedures had not been followed.<sup>102</sup>

97 Report of the Select Committee on the Proposed Dismissal of Hon. Mithika Linturi, CS Agriculture at page 77

98 See generally the report of the National Assembly Appointments Committee on the Vetting of Cabinet Secretaries, October 2022 at <http://www.parliament.go.ke/sites/default/files/2022-10/Report%20of%20the%20Committee%20on%20Appointments%20on%20the%20Vetting%20of%20Cabinet%20Secretaries%20to%20the%20Cabinet%20and%20the%20Attorney-General-1.pdf>

99 The National Assembly is said to have the power of the purse because according to the Constitution it drafts the National Budget, rather than the previous constitutional order in which the Executive would prepare the National Budget.

100 It should be noted that Ksh 116.437 billion was spent in FY 2022-2023 before parliamentary approval. See a partial list in the Box “Extra-Budgetary Spending”

101 See <https://www.citizen.digital/news/controller-of-budget-reveals-whatsapp-messages-being-forced-to-transfer-ksh15b-before-elections-n315665>

102 See “How Treasury transacted 22.4 billion days to election”, <https://www.pd.co.ke/business/how-treasury-transacted-sh22-4b-days-to-elections-169304/>

## Last-ditch payments abusing the extra-budgetary Supplementary Appropriation device of the Constitution,<sup>103</sup> include:

- **Ksh 6.09 billion** on an unauthorized deal to buy-back 60% of the issued shares in Telkom Kenya, a failing communications company sold to UK-based private equity firm Helios Investment Partners, claimed necessary for national security;
- **Ksh 9.45 billion** paid to road contractors on just three projects<sup>104</sup>;
- **Ksh 4 billion** for a one-month maize price subsidy;
- **Ksh 2.2 billion** for hospital funding given to the Ministry of Defence;
- **Ksh 500 million** cash injection into a collapsed sugar factory in Western Kenya; and
- **Ksh 125 million** for the Citizens Services department.<sup>105</sup>

Overall, the National Assembly retrospectively approved over **Ksh 55 billion** of unbudgeted expenditure incurred by the Kenyatta administration.

## Article 223 of the Constitution permits extra-budgetary withdrawals from the Consolidated Fund in circumstances where Parliament cannot sit to formally vote for the funds. It states:

223. (1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if—

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or

(b) money has been withdrawn from the Contingencies Fund.

(2) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

(3) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.

(5) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

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(5) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

<sup>104</sup> Half this amount or Ksh 4.9 billion was to be spent on widening the Nairobi Eastern Bypass which substantially runs along the perimeter of a ranch owned by then President Kenyatta.

<sup>105</sup> For a detailed listing of all unauthorized expenditure see <https://www.the-star.co.ke/news/2022-09-21-how-uhuru-spent-sh55-billion-in-his-last-days-in-office/>

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## Auditor-General

The Auditor General is a constitutional office established under Article 229 and The Public Audit Act whose mandate is to audit government and report on the use and management of public resources by public entities. Article 229(6) of the Constitution requires the Auditor-General to confirm whether public money has been applied lawfully and effectively. The Audit Report on National and County Government entities is tabled in Parliament or the relevant County Assembly and hearings are held with responsible officers before adoption of the report by the assembly. Article 229 (7) of the Constitution requires the AG to audit and submit reports to Parliament or the relevant County Assembly within six months of the end of the financial year in June each year.

The AG's office was purpose built to audit the National Budget concentrating on the National and County Governments, their respective ministries, departments and agencies and their main investments. Today, as a result of proliferation of government, the AG is not adequately funded considering the ballooning scope of work implied by a growing government budget and formation of new entities. In the year 2022, for example, Auditor General Nancy Gathungu was required for the first time to audit the books of an additional 9,000 public secondary schools, 372 Level 4

and Level 5 hospitals, 39 Teachers' Training Colleges, and 287 Technical and Vocational Education and Training (TVET) Institutions - and these number could increase.

There is lack of an effective mechanism for follow up on implementation of audit recommendations, so most audit queries recur every year due to lack of decisive action. Section 204(1)(g) of the Public Finance Management Act, 2012 - which provides that the Cabinet Secretary may apply sanctions to a national government entity that fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General - has never been invoked. In the AG's 2023 report Nancy Gathungu noted:

*"..failure to apply the requisite sanctions and consequences has resulted to some Accounting Officers not adequately accounting for the management and use of public resources with impunity. Lack of action and sanctions has also led to fiscal indiscipline including misallocations, wastage of resources, lack of value for money in implementation of projects and loss of public funds, thereby impacting negatively on development programmes. This in turn threatens economic growth and sustainability of quality service delivery to citizens".<sup>106</sup>*

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106 See Auditor General's Report on National Government 2022-2023 at page V available online at <https://www.oagkenya.go.ke/2022-2023-national-government-audit-reports/>

Gathungu has produced a number of important reports of misuse of public funds over the last two years revealing:

- **Ksh 2.5 billion** of unapproved spending at the Kenya Power and Lighting Company three months before the 2022 General Election<sup>107</sup>;
- **Ksh 20 billion** of irregularities in the spending at Nairobi County Government for the financial year ending June 30th 2023<sup>108</sup>;
- **Hundreds of millions** being misspent in sports stadia construction by County Governments<sup>109</sup>;
- **Ksh 15.5 billion** worth of revenue receipts in the government's eCitizen payment portal that cannot be confirmed<sup>110</sup>;
- **Ksh 33 billion** unaccounted for in six counties (Baringo, Kiambu, Nairobi, Nyamira, Narok and Tana River).<sup>111</sup>

## Delayed Audits

A major problem hampering accountability is delayed audits. An in-depth treatment of corruption at the county level is beyond the scope of this report, but one of the main challenges over misuse of public funds is the impact of Devolution since 2010. This has affected regional development positively in many ways but has also devolved corruption as county budgets grow. The following serve as examples of the impact of delays in audits, at national and county levels.

In December 2022, the Auditor General

challenged the Senate to speed up the County audit process.<sup>112</sup> Public coffers are meant to be audited annually, within six months<sup>113</sup> of the end of the financial year, June 30th being the set date. However, the time lag between the end of a political administration and the auditing of their deeds is long - the Moi administration audits were once a decade behind. In the case of Nairobi County, Kenya's capital city, the accounting is at least four years behind; the latest report before the Senate concerns dealings between 2016 and 2019.

During the consecutive gubernatorial administrations of Evans Kidero and Mike Sonko, Nairobi City County could not account for 18 billion Kenya Shillings of collected revenue - some \$12.6 million missing. Nairobi residents did not know for the next seven years until a media expose revealed the Auditor General's report indicated "billions of shillings collected in Kenya's capital may have ended in private hands."<sup>114</sup>

The public has a right to know in real-time to be able to vote against inept and dishonest politicians running the county governments. Neither Evans Kidero or Mike Sonko were held specifically accountable for the billions missing, continuing undeterred in politics and national life for years.

Evans Kidero lost the Nairobi Governor's seat to Mike Sonko in August 2017, but went on unfettered to unsuccessfully contest the Homa Bay Governor election. In 2023 he was appointed by President Ruto to serve as

107 See <https://www.businessdailyafrica.com/bd/corporate/companies/auditor-general-unearths-sh2-5bn-irregular-pay-at-kenya-power-3997864>

108 See <https://www.standardmedia.co.ke/nairobi/article/2001492959/auditor-general-flags-sh20-billion-expenditure-by-city-hall>

109 See <https://nation.africa/kenya/sports/other-sports/auditor-general-gathungu-raises-alarm-over-expenditure-in-county-stadiums-4591234>

110 See <https://www.citizen.digital/news/auditor-general-raises-concerns-over-ksh155b-ecitizen-revenue-statements-n342365>

111 See <https://nation.africa/kenya/counties/six-counties-sh33bn-unclear-spending-and-auditor-s-opinion--4587542>

112 See <https://www.pd.co.ke/news/auditor-general-blames-senate-for-late-reports-implementation-150840/>

113 See <https://www.klrc.go.ke/index.php/constitution-of-kenya/153-chapter-twelve-public-finance/part-7-financial-officers-and-institutions/398-229-auditor-general>

114 See <https://www.businessdailyafrica.com/bd/economy/evans-kidero-mike-sonko-regimes-hid-sh18bn-tax-revenues--4314596>

Trade Chief Administrative Secretary<sup>115</sup> within the Executive branch. It was only because of a court challenge to the constitutionality of the office that Kidero's public career was temporarily stopped.<sup>116</sup>

Mike Sonko went on to be Governor of Nairobi for three shambolic years.<sup>117</sup> In March 2020, he was pressured by President Kenyatta into handing over most important functions of the Nairobi County Government to the National Government. By December 2020, Sonko had been impeached by both the Nairobi County Assembly and Senate of the Republic of Kenya, and has been barred from holding public office again.<sup>118</sup>

That may not be the end of the tale. It is not beyond the realm of possibility that some politician might propose that debarred politicians be treated the same as persons who are subject to criminal convictions, by amending the Constitution to extend the Presidential Power of Mercy<sup>119</sup> to impeached politicians.

There is a precedent for such an extension. In 1975, President Jomo Kenyatta ordered the Constitution amended<sup>120</sup> to allow him to pardon a cabinet minister, Paul Ngei, who had been disqualified from running for Parliament after being convicted in court for an election offence. Without such a pardon Ngei's political career was over. But Kenyatta used his freshly minted powers to pardon election offences for the first time in Ngei's favour, allowing him to win a by-election in Kangundo constituency. He returned to both cabinet

and parliament. In return Ngei remained fiercely loyal to the Kenyatta family, leading the Change The Constitution Movement of 1976<sup>121</sup> which objected to the automatic line of succession in the event of the death of the president.

### **The Nairobi Metropolitan Services Organisation and its Pending Bills**

The last four days before the 2022 general election saw an attempt to pay Ksh 2.9 billion to contractors hired for various projects by the Nairobi Metropolitan Service (NMS) organization between 2020 and 2022. The organization was controversial because, by presidential fiat in February 2020, it took over key functions of the Nairobi County Government; namely, health services, transport services, county planning and development, and county public works, utilities and ancillary services.

Headed by a serving Air Force Major-General, the NMS reported only to the President and was funded outside the County of Nairobi's budget. Embedded in the Executive Office of the Presidency, the work programme and funding of the NMS were also extra-budgetary at National level and it lacked transparency in how its projects were identified and prioritized. Championed by President Kenyatta as an example of rapid development delivered with efficiency and thrift, the organization built scores of health and transport sector projects across the capital city in a very short period and its leadership received much praise for a short while.

It came to pass that the NMS's procurement was a black box and that it had accumulated massive pending bills including Ksh 40 billion owed to contractors by the time it handed back its functions to the Nairobi County Government in September 2022. At the end of the day, Parliament approved only 13% of the bills, the rest being subject to further audit and proof of work delivered.<sup>122</sup>

115 See <https://www.capitalfm.co.ke/news/2023/03/kidero-makes-comeback-after-appointment-as-trade-cas/>

116 See <https://www.the-star.co.ke/news/2023-07-03-50-cass-rendered-jobless-as-court-nullifies-appointment/>

117 See <https://truestoryaward.org/story/293>

118 See <https://www.the-star.co.ke/news/2020-12-18-why-sonko-waititu-are-permanently-barrred-from-public-office/>

119 <https://www.klrc.go.ke/index.php/constitution-of-kenya/130-chapter-nine-the-executive/part-2-the-president-and-deputy-president/301-133-power-of-mercy>

120 See <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Constitution/HistoryoftheConstitutionofKenya/Acts/1975/ActNo.14of1975.pdf>

121 See <https://publishing.cdlib.org/ucpressebooks/view?docId=ft9h4nb6fv&chunk.id=d0e2582&toc.depth=1&brand=ucpress>

122 Cf. for example <https://www.businessdailyafrica.com/bd/economy/defunct-nms-and-nys-top-list-of-pending-bills-holders-4532492>

## The Controller of Budget

In March 2023, the Controller of Budget,<sup>123</sup> Margaret Nyakang'o, told a Parliamentary Committee that she was coerced by the then Cabinet Secretary for Finance, in the name of the president, to sign off on Ksh 22.4 billion unapproved expenditure four days before the 2022 election. This serious allegation has not been investigated by the Ethics and Anti-Corruption Commission, and is not in the Controller of Budget's Annual Report. It is also omitted from the final report of the Budget and Appropriations Committee of the National Assembly. The only apparent consequence was the Director of Public Prosecution authorizing the Director of Criminal Investigations to arrest Margaret Nyakang'o in December 2023 to charge her with fraud offences. These arose from complaints made against her and other officials in 2016 by a savings society member.<sup>124</sup>

Uncontrolled extra budgetary spending is a serious national problem, which went ahead on a large scale just before the 2022 election. A significant proportion of the spending was concentrated around the Presidency, Treasury, Interior Ministry and populist subsidy schemes run through the food and energy sector ministries.

The table below extracted from the Controller of Budget's (CoB) Budget Implementation Review Report for FY 2022-2023 depicts the scale of unapproved spending. Legislation is needed to control the potential for abuse and stop arbitrary spending sprees.

In the run-up to the 2022 election, three road contractors were paid upfront a total of Ksh 9.45 billion for what is described as 'flagship infrastructure projects'. When the CoB asked why the payments were being made ahead of contract, she was subjected to intimidating messages from the Finance Cabinet Secretary.<sup>125</sup> She eventually signed off on the road contractors' money. Extra-budgetary spending was also used by President Kenyatta to assist his party's candidate ahead of the elections. He directed Ksh 35 billion be spent on short-term subsidies to artificially reduce consumer prices of petroleum, maize and fertilizer products.<sup>126</sup>

## Budgeted corruption and the public payroll

The latest Budget Implementation Review by the CoB raised another risk area. The CoB reported a massive Ksh62 billion variance<sup>127</sup> between the payroll records of ministries, departments and agencies, and the overall IFMIS<sup>128</sup> system run by the National Treasury. The scale of variance in 2022-2023 was alarming - Ksh 62 billion is equivalent to half the budget of the Ministry of Health. The reason for the variance is a practice that has developed across government of making payments "outside the prescribed payroll management system". Among these are payments for casual employees, salary advances to staff, and other staff allowances as shown in Appendix IV<sup>129</sup>.

In January 2024, the CoB alert was vindicated by the Public Service Commission in a report

123 The Office of the Controller of Budget is an independent office established under Article 228 of the Constitution of Kenya. Its primary mandate is to oversee the implementation of the budget for the National and County governments by authorising withdrawals from Public Funds under Articles 204, 206, and 207 of the Constitution and to report on the implementation of the budgets to each House of Parliament every four months.

124 <https://citizen.digital/news/dpp-approves-criminal-charges-against-controller-of-budget-margaret-nyakango-10-others-n332579>

125 <https://ntvkenya.co.ke/news/how-controller-of-budget-was-pressured-to-approve-kes-15b-spending-days-to-elections/>

126 <https://www.bbc.com/news/world-africa-62241225>

127 See Appendix IV for Summary of MDAs' Personnel Emoluments paid through the Integrated Personnel and Payroll Database (IPPD) and IFMIS

128 Integrated Financial Management Information System is an Oracle based Enterprise Resource Planning (ERP) being used at both the National and County levels of government. <https://www.treasury.go.ke/ifmis/>

129 Appendix IV of this report can be found online at <https://africog.org/all-africog-reports/>

which documented nearly 20,000 ghost workers<sup>130</sup> in government. The PSC reported an excess of 19,467 members of staff recorded in the staff registers against those reported in the approved filled vacancies. Fifteen organizations had excess members of staff against the approved staff levels. Five of the 15 organizations had excess staff members of over 50% - namely, the Kenya Medical Supplies Authority (KEMSA) (115%), National Water Harvesting and Storage Authority (72%), State Department for Devolution (61%), State Department for Higher Education and Research (69%), and State Department for Immigration and Citizen Services (59%). Six organizations had high disparities with an excess of over 100 members of Staff compared to the staff recorded in the staff register.

Two of the organizations - State House and New Kenya Cooperative Creameries - had a disparity of 483 and 492 respectively.<sup>131</sup>

The CoB also told the National Dialogue Panel<sup>132</sup> she discovered her own salary and those of other State Officers, whose salaries are paid directly out of the Consolidated Fund, had been inflated by a factor of three.

Nyakango called this an example of “budgeted corruption”.<sup>133</sup>

Another long-standing practice within the National Treasury is padding budgets to deceive parliament into voting for the creation of unofficial sinking funds for discretionary use. According to the CoB, hundreds of millions of shillings have been surreptitiously inserted into this year’s National Budget by padding the budgets for the salaries of State Officers.

This technique was last documented during the 2009 Supplementary Budget when an MP revealed the creation by the National Treasury of a Ksh11 billion fund by manipulating budget entries presented for parliamentary approval. A joint parliamentary committee investigation confirmed the budget alterations and ordered Finance Minister Uhuru Kenyatta to withdraw and resubmit a new supplementary Budget to the National Assembly. The Joint Committee accepted the Finance Minister’s explanation that the budget alteration was ‘a computer error’, but ordered a forensic audit of the IFMIS and the Budget over a five-year period. To date no such forensic audit has been carried out.<sup>134</sup>

### Un-budgeted Spending<sup>135</sup>

Ministry, Department or Agency	Purpose	Amount Approved (Ksh)	Amount Funded (Ksh)
Executive Office of the President	Office operations	810,000,000.00	810,000,000.00
Executive Office of the President	Operations-Office of the Deputy President	500,000,000.00	264,278,946.65
Executive Office of the President	Nairobi Metropolitan Services-pending bills FY 2021-22	2,961,436,261.85	411,909,902.70
Executive Office of the President	To cater for operating expenses	250,000,000.00	250,000,000.00
Ministry of Defence	Level Five Forces Research Hospital	2,200,000,000.00	2,200,000,000.00

130 For a description of this phenomenon see <https://www.businessdailyafrica.com/bd/news/treasury-s-red-flag-over-the-return-of-ghost-workers-2272010>

131 See Public Service Commission Status of Compliance with Values and Principles in Articles 10 and 232 of the Constitution Annual Report 2022/2023 at page 18 available online at <https://publicservice.go.ke/index.php/publications/reports?download=633:status-of-compliance-with-values-and-principles-in-articles-10-and-232-of-the-constitution-annual-report-2022-2023>

132 See p.7 for a description of this body

133 <https://nation.africa/kenya/business/budget-boss-wants-sh1-5bn-inflated-salaries-chopped-4462514>

134 See a summary of this incident at <https://nation.africa/kenya/news/blunders-or-sabotage-uhuru-s-new-headache-593582>

135 Source: Exchequer Issues Under Article 223 of the Constitution of Kenya reported by the Controller of Budget to Parliament for FY 2022-2023.

Ministry, Department or Agency	Purpose	Amount Approved (Ksh)	Amount Funded (Ksh)
The National Treasury	Telkom Kenya	6,091,140,702.00	6,091,140,702.00
State Department for Infrastructure - Roads	Infrastructure flagship projects.	9,450,000,000.00	9,450,000,000.00
Ministry of Petroleum and Mining	Petroleum pump price stabilization	26,138,652,419.00	9,000,000,000.00
Ministry of Petroleum and Mining	To cater for the compensation of oil importers	16,597,436,070.98	16,597,436,070.98
State Department for Crop Development & Agricultural Research	Maize Flour Subsidy	4,000,000,000.00	2,000,000,000.00
State Department for Crop Development & Agricultural Research	Maize Flour Subsidy	4,000,000,000.00	4,000,000,000.00
State Department for Crop Development & Agricultural Research	Fertilizer subsidy	2,000,000,000.00	500,000,000.00
State Department for Crop Development & Agricultural Research	Fertilizer Subsidy	3,793,923,200.00	3,793,923,200.00
State Department for Crop Development & Agricultural Research	Nzoia Sugar Company_ factory maintenance	500,000,000.00	500,000,000.00
State Department for Interior and Citizen Services	Multi-Agency Security Teams for security operations	125,000,000.00	125,000,000.00
State Department for Cooperatives	Financial Inclusion Fund- Seed Capital.	12,000,000,000.00	10,000,000,000.00
State Department for Cooperatives	Set up cost for Financial Inclusion Fund	200,000,000.00	200,000,000.00
State Department for Cooperatives	Financial Inclusion Fund	7,000,000,000.00	2,000,000,000.00
State Department for Crop Development & Agricultural Research	Donor funds IFAD-Facilitate Irish potato production	72,000,000.00	22,864,002.60
State Department for Development of the ASALs	For drought response intervention Jan- March	2,000,000,000.00	205,620,000.00
State Department for Development of the ASALs	For drought response intervention Jan- March	2,000,000,000.00	99,626,000.00
State Department for Early Learning & Basic Education	Capitation funds	3,812,377,184.00	3,812,377,184.00
State Department for Early Learning & Basic Education	Donor Funds IDA-Secondary Education Quality Improvement Project	4,121,665,433.00	4,121,665,433.00
State Department for Gender	Donor funds UN-Gender Equality project	17,847,618.65	17,847,618.65
The National Treasury	GOK contribution to the Eastern and Southern African Trade and Development Bank	756,283,021.20	756,283,021.20
The National Treasury	To boost Kenya's shareholding in the AFREXIM Bank	5,040,000,000.00	5,040,000,000.00
<b>Total</b>		<b>116,437,761,910.68</b>	<b>82,269,972,081.78</b>



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## The Judiciary

Despite positive reforms to the Judiciary and the landmark decisions of courageous individual judges, the institution faces multiple credibility and political challenges.

The judiciary is the chief horizontal accountability institution regarding the Executive. It is composed of the Supreme Court, Court of Appeal, the High Court, and the Subordinate Courts comprising the Magistrate Court and Kadhi Court.

The Supreme Court is the sole judicial forum for deciding petitions challenging the election of the President; and as every presidential election since the new 2010 Constitution was promulgated has ended up with a petition before the Supreme Court, it is inevitable there are strong opinions about the Supreme Court's competence and non-partisanship.

In January 2024 President Ruto accused the judiciary of corruption, saying it had conspired with vested interests to block some of his policy initiatives, including a new health insurance scheme and his affordable housing development initiative. Meanwhile, the opposition was deeply dissatisfied following the rejection of its Supreme Court petition against the election of Ruto. As the new administration got underway, the opposition accused Ruto of seeking to intimidate the courts ahead of decisive court hearings,

even though there have been significant rulings against the government<sup>136</sup>- including the decision in July 2023 declaring the appointment of 50 political supporters of the President unconstitutional.<sup>137</sup>

The low point in judicial-executive relations was after the 2017 presidential election petition judgment which nullified President Kenyatta's re-election and ordered a re-run - a rare and bold decision even by global standards. Kenyatta infamously threatened to "revisit" the judiciary after the decision, leading to then-Chief Justice David Maraga calling a press conference to complain the Executive branch had cut the judiciary budget to put pressure on the courts. He said he was being denied access to the president and deprived of crucial protocol, such as vehicles. The judiciary budget remained relatively low compared to those for parliament and certain ministries within the Executive branch; but when the 2022 election approached, both presidential candidates were keen to claim they had the best interests of the judiciary in mind.

Ruto promised to fund the Judiciary Fund<sup>138</sup> and appoint several Court of Appeal judges who Kenyatta had refused to swear in. Ruto's opponent, Raila Odinga, pledged to improve efficiency in the administration of justice<sup>139</sup> through accelerating digitalization and

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136 Emanating from the constitutional division of the High Court

137 For a summary of the reasoning of the Court see <https://icj-kenya.org/news/icj-kenya-statement-welcoming-the-high-court-judgment-on-the-unconstitutionality-of-the-50-chief-administrative-secretary-cas-positions/>

138 <https://africacheck.org/sites/default/files/media/documents/2022-08/Kenya%20Kwanza%20UDA%20Manifesto%202022.pdf>

139 <https://www.tuko.co.ke/business-economy/457287-azimio-manifesto-manufacturing-agriculture-dominate-raila-odingas-10-point-economic-blueprint/>

system integration across the Judiciary, National Police, and Prison System; institutionalise mutual accountability amongst the three arms of government; and enhance the mechanisms for consultations between the parliament, the executive and the judiciary.

On taking office, Ruto's first Kenya Kwanza budget increased the funding of the judiciary by Ksh 5 billion to Ksh 23 billion,<sup>140</sup> giving impetus to the allegation by the opposition that the judiciary was being captured by the executive branch. The current chief justice, Martha Koome, has reached out to the Executive more than her recent predecessors, particularly in seeking budget enhancement - including additional funding for recruitment of 25 judges of the High Court and 11 judges of the Court of Appeal - and met the president to end the public spat over his allegations of corruption in the judiciary<sup>141</sup>.

On the corruption front, there is widespread frustration with the judiciary. The Anglo Leasing decade-old prosecution resulted in the acquittal of all suspects on the basis of lack of evidence, and convictions for corruption are a rarity. Increased financial allocations to the judiciary budget are regarded by some as having a compromising effect on the courts, compounded by the Chief Justice's warmer relationship with the president. Recent cases indicate the judiciary is adopting a restrictive test in deciding whether or not to admit leaked whistle-blower evidence in public interest cases against the government.

There is evidence of an increased failing to

curb transnational crimes, such as fraud, forgery, and drug related offences, that form the greatest risk to the country.<sup>142</sup> Terrorism financing risks have been linked to large numbers of migrants from conflict zones in neighbouring countries, mobile money providers, and cross-border currency and contraband movement, with domestic and foreign terrorist group fundraising within Kenya and outside the country.

## Whistle-blowers

Recent trends in judicial treatment of evidence in public interest litigation suggest the Kenyan judiciary is now taking a more conservative view of public interest disclosures. Rather than weighing the public interest in exposing corrupt acts, the courts have been applying the 'fruit of the poisonous tree' doctrine that refuses to admit into criminal proceedings evidence from documents that are not legally obtained by the prosecution. Since 2020, the courts have consistently ruled against the admissibility of whistle-blowers or leaked evidence of corruption in dismissing cases brought by public interest litigants. This discourages citizens from bringing official wrongdoings to the attention of judicial authority – effectively closing the only forum for citizens to compel the Executive to submit to judicial review.

The trend was evident in 2017, when internal memos of the IEBC were found by the Supreme Court to have been illegally obtained and expunged from the court record in the Presidential Election Petition filed by Njonjo Mue.<sup>143</sup> A similar decision was

140 See <https://www.the-star.co.ke/news/2023-06-15-2023-budget-judiciary-gets-extra-sh5-billion-after-ruto-promise/>

141 <https://nation.africa/kenya/news/president-ruto-meets-cj-martha-koome-to-end-executive-judiciary-row-4499308>

142 Eastern and Southern Africa Anti-Money Laundering Group, ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php>

143 Njonjo Mue & another v Chairperson of Independent Electoral and Boundaries Commission & 3 others [2017] eKLR

made by the High Court in a lawsuit seeking to block Standard Gauge Railway contracts from being signed. In that case – Omtatah vs the AG<sup>144</sup> – the petitioner’s evidence of inflated costs and procurement violations was held to be illegally obtained, even though the documents were tabled before a parliamentary committee investigating the Kenya Railway Corporation’s undertaking of loans for the SGR project.<sup>145</sup> By September 2023, a Judge, citing the Omtatah precedent, dismissed a public interest litigation filed by the Law Society of Kenya<sup>146</sup> asserting the two pieces of evidence were illegally obtained – leaked copies of a letter by the PS Treasury which approved the duty-free importation of cooking fat, and a departmental circular from the Commissioner for Customs and Border Control implementing the duty-free clearance.<sup>147</sup> In both cases the courts legitimately pointed out that there were technically legal means to access official information under Article 35 and the Evidence Act, by applying for certified copies. The courts must have been aware that what was technically possible was in reality impossible. No corrupt public official would give a member of the public the evidence needed to take him to court.

In late September 2023, the Supreme Court confirmed the Njonjo Mue dictum on the admission of unlawful acquired evidence continues to hold, and citizens must procure the evidence in the correct procedure.<sup>148</sup> If

these precedents stand, litigants seeking judicial review of official action will be constrained to be in official receipt of documentary evidence or to have the same certified by its authors or the entity that it concerns.

In Kenya, illegally obtained evidence is however admissible as long as it is relevant to the fact in issue or its admission would not affect the fairness of a criminal trial. This was upheld in *Karuma S/O Kaniu vs R*.

Article 50(4) of the Kenyan Constitution states:

*“Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice”.*

In civil suits, until the recent shift, the courts’ position has always been that evidence which is relevant to a fact in issue is admissible no matter how it was obtained, following commonwealth precedents over a hundred years old.<sup>149</sup>

It is not clear why the Kenyan judiciary has changed its view. As recently as 2015, in a case involving a Judge and the Judiciary Vetting Board<sup>150</sup>, the Court admitted the Judge’s replying affidavit despite the claim

144 <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1062&context=scr>

145 See <https://www.businessdailyafrica.com/bd/data-hub/when-documents-gained-illegally-are-admissible-in-court-2295082>

146 *LSK VS AG* (E040 of 2023)

147 <https://www.the-star.co.ke/news/realtime/2023-09-06-win-for-state-as-court-allows-importation-of-duty-free-cooking-oil/>

148 *Torino Enterprises v Attorney General* SC Petition No. 5 (E006) of 2022

149 In *Lloyd vs Mostyn* 1842 10 M & W 478 Chief Justice Goddard held that the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. That if it is admissible, the Court is not concerned with how the evidence was obtained. Before this a UK Judge held in *Regina vs Leatham* that: “It matters not how you get it if you steal it even, it would be admissible in evidence”. This really is the commonwealth standard from which our judicial precedent has usefully drawn much guidance for decades. See a discussion at <https://www.foxwilliams.com/uploadedFiles/Illegally%20Obtained%20Evidence.pdf>

150 *Nicholas Randa Owano Ombija vs Judges Vetting Board* (2015) eKLR Nairobi court of Appeal Civil Appeal No. 281 of 2015

that its contents were illegally obtained. The Judge's lawyers had somehow obtained and placed in evidence the minutes of a vetting committee he was appearing before, and even knew the decision of the committee before its announcement. In 2018, the Employment Court similarly allowed minutes

of Board of Trustees Meetings and even Police Statements to be used as evidence in an employment dispute.<sup>151</sup>

It appears the constitutional courts are consistently excluding this type of evidence in corruption related petitions.

## Enforcing Judicial Ethics

The Chief Registrar of the Judiciary<sup>152</sup>, Anne A. Amadi, alongside her son Brian Ochieng, and two other Kenyans, an advocate at the High Court, and a Liberian citizen were sued by Bruton Gold Trading LLC, a gold trading firm registered in Dubai, which claims to have lost \$742,206 between September 22 and October 21, 2021, in a deal to buy 1.5 tons in gold bars. Bruton claims that it wired the money to a law firm that was acting as the stakeholder between the buyer and the seller in this gold transaction. It further claims that despite her office, Ms. Amadi maintained a partnership role, in violation of the Judicial Code of Conduct and Ethics.<sup>153</sup> Bruton further claims that Ms. Amadi's son, a partner at the law firm withdrew the money together with two other lawyers but the gold bars were never delivered.

The buyer sued the law firm, its partners and the seller, and in its pleadings produced bank information that they say shows that the bank account that money was wired to was opened by Ms. Amadi after she joined the Judiciary, a violation of the Judicial Code of Conduct and Ethics. Ms. Amadi claims the law firm to which the account belongs, and its affairs, were solely managed by her son. The case has now moved to the Court of Appeal, where Bruton succeeded in reinstating freezing orders over the law firm's bank account. Controversially, Bruton adds a new allegation that unnamed officers in the Judiciary intended to obtain a favourable outcome in the Registrar's favour.

In November 2023, Ms. Amadi took her terminal leave as her ten-year term of office was due to end in January 2024. Having left office any disciplinary action against her is moot<sup>154</sup>. To date, there has been no public action by the Chief Justice, or the Judicial Service Commission of the Judiciary Committees of Parliament to suggest that Ms. Amadi was ever asked to explain her potential conflict of interest and violations of the Judicial Code of Conduct and Ethics, which inter alia prohibits a Judicial Officer from engaging in the practice of law; forbids participation in other gainful employment; and does not allow lending the prestige of the judicial office to advance any private interests.

151 John Muriithi & 8 others v Registered Trustees of Sisters of Mercy (Kenya) t/a "The Mater Misericordiae Hospital" & another [2018] eKLR

152 The Chief Registrar is the principal accounting officer of the Judiciary.

153 <https://judiciary.go.ke/download/the-judicial-service-code-of-conduct-and-ethics-regulations-2020/>

154 <https://www.the-star.co.ke/news/realtime/2023-11-25-celebrating-a-decade-of-service-amadi-bids-farewell-as-terminal-leave-begins/>

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# Director of Public Prosecution

## Weaponised prosecutions

Over the past decade, the Director of Public Prosecutions (DPP) has acted with deference towards the presidency and persons close to the Executive. Criminal charges have been brought and withdrawn in circumstances that indicate a wind-vane approach to politically connected suspects. When President Ruto's inaugural speech referenced the "political weaponization of the criminal justice system"<sup>155</sup> there were expectations this would cease; but instead, a large scale withdrawal of criminal and corruption charges followed in the immediate wake of his inauguration.

The credibility of the Office of the DPP<sup>156</sup> came into question when, within weeks of the 2022 election, it withdrew criminal charges against several politicians aligned to Ruto, among them the deputy president, cabinet ministers and ruling party supporters. At the time, then-DPP Noordin Haji, said he had withdrawn over 25,000 criminal cases in 2021-2022, but no official report with details has been published. Additionally, the DPP claimed the former Director of Criminal Investigation had manufactured evidence to induce many prosecutions. This has also not been investigated, raising doubts about the allegation.

The withdrawal of the cases is instead widely viewed as surrender to political pressure - even though on paper, the DPP "shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority."<sup>157</sup>

## The DPP and the Arror and Kimwarer Dams Prosecution

The December 2023 acquittal<sup>158</sup> of Henry Rotich, a former Cabinet Secretary for Finance was preceded by over one year of stalled proceedings during which the prosecutor called witnesses but decided not to lead their evidence. Rotich was charged with abuse of office in the award of contracts to a bankrupt Italian company for construction of the Arror and Kimwarer dams in the Rift Valley. In September 2023, the case prosecutor complained that the court was biased against the State as it emerged that the new DPP Renson Ingonga wanted to recall the file in order to determine whether to proceed with the prosecution.<sup>159</sup> In September 2022, his predecessor DPP Noordin Haji had alleged massive interference with prosecution witnesses.<sup>160</sup> In March 2023 it was announced

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155 [https://www.theeastafrican.co.ke/tea/news/east-africa/read-president-ruto-s-full-speech-after-his-inauguration-3947552#google\\_vignette](https://www.theeastafrican.co.ke/tea/news/east-africa/read-president-ruto-s-full-speech-after-his-inauguration-3947552#google_vignette)

156 The Office of the Director of Public Prosecution is a constitutional office established under article 157 of the Constitution. The DPP is nominated and, with the approval of the National Assembly, appointed by the President for a single eight year term. The DPP has the power to direct the Inspector-General of the National Police Service to investigate and report back on any allegation of criminal conduct and the Inspector-General must comply with any such direction. Additionally the DPP may institute, takeover or discontinue any criminal cases before the courts.

157 Article 157(10) Constitution of Kenya

158 <https://nation.africa/kenya/news/court-cases-to-nowhere-shame-of-big-scandals-but-no-convictions-4466700>

159 See <https://www.the-star.co.ke/news/realtime/2023-09-12-prosecutor-fails-to-interrogate-five-witnesses-in-sh63bn-arror-dam-case/>

160 See <https://www.businessdailyafrica.com/bd/economy/state-witnesses-moving-away-from-arror-kimwarer-dams-case-3958660>

that President Ruto and the President of Italy Sergio Mattarella had agreed that the Kenya government would forego prosecution of the Italian contractor, CMC Di Ravenna<sup>161</sup>, who would in turn withdraw cases they filed in various courts abroad. The settlement was accompanied by a pledge to revive the 60 billion-shilling dams' project and the resolution of any outstanding matters out of the courts.<sup>162</sup> So egregious was the political deal making around the Arror and Kimwarer prosecutions that a consortium of accountability NGOs, including AfriCOG, filed personal lawsuits against two prosecutors from the DPP's office for bungling the case.<sup>163</sup>

## Charges against prominent politicians

The DPP's powers to discontinue criminal charges are not absolute but subject to the court's permission.<sup>164</sup> Applications to withdraw ought to fail if rooted in illegality, irrationality or impropriety. Withdrawals of prosecutions against prominent persons are not easily explained away. After barely one year in office, the new DPP, Renson Ingonga, clashed with the EACC after he insisted on applying to court for permission to drop charges against prominent corruption suspects without the concurrence of the EACC. In all instances he had previously approved the charges.

The most high-profile politicians whose cases were dropped by the DPP are:

- **Rigathi Gachagua:** ex-Deputy President. Gachagua and his associated companies had been charged in July 2021 with

six counts of economic crimes and laundering of proceeds of crime between January 2015 and June 2019. At that time, Gachagua was an MP in opposition to President Kenyatta. The Serious Crimes Unit of the DCI compiled a dossier against Gachagua concluding he had improperly obtained over Sh. 7.2 billion through supply contracts with five county governments. Consequently, Gachagua was arrested and charged in July 2021<sup>165</sup>. After Gachagua became deputy president, the DPP withdrew all charges in early November 2022, alleging incomplete investigations warranted withdrawal of the charges under section 87A of the criminal procedure code. The charges were the culmination of two years of investigations in which the Asset Recover Agency (ARA) had filed a suit to compel Gachagua to forfeit Sh202 million to the State for being proceeds of crime and money laundering. By February 2023, the ARA had also wired back the Ksh 202 million it had frozen in the corruption case.<sup>166</sup>

- **Wycliffe Oparanya,** cabinet secretary for Cooperatives and MSMEs Development, ex-Governor of Kakamega County and a former Minister of Planning & National Development was charged with corruption offences committed while he was Governor, involving conflict of interest and receipt of irregular benefits. The DPP wrote to the EACC withdrawing his consent to the charges as soon as Oparanya was nominated to the position of Cabinet Secretary by President Ruto

161 CMC Di Ravenna's manager during the Kenyan fiasco Paolo Porcelli now runs the construction business of another Italian firm Renova <https://www.renova.red/>

162 See <https://www.president.go.ke/wp-content/uploads/PRESS-STATEMENT-BY-H.E.-PRESIDENT-WILLIAM-RUTO-P.h.D.-C.G.H.-DURING-A-STATE-VISIT-BY-H.E.-SERGIO-MATTARELLA-OF-ITALY-1.pdf> It was reported that a week later the Kenya cabinet had approved this settlement. See <https://www.citizen.digital/news/cabinet-okays-negotiations-to-resolve-arror-and-kimwarer-dams-project-standoff-n316559>

163 [https://nation.africa/kenya/news/henry-rotich-acquittal-prosecutors-sued-for-bungling-sh63bn-arror-and-kimwarer-case-4480036#google\\_vignette](https://nation.africa/kenya/news/henry-rotich-acquittal-prosecutors-sued-for-bungling-sh63bn-arror-and-kimwarer-case-4480036#google_vignette)

164 Article 157(8) Constitution of Kenya; sections 5 & 28 of the Director of Public Prosecution Act, No.2 of 2013

165 <https://www.businessdailyafrica.com/bd/economy/mp-gachagua-charged-obtaining-sh7bn-by-fraud-3487642>

166 <https://www.businessdailyafrica.com/bd/economy/ara-wires-back-sh200-million-to-gachagua-4107700>

as part of a rapprochement with the official opposition. The appointment was intended to create a “broad-based” government in the wake of the Gen Z uprising. The DPP reviewed his decision to charge after the EACC refused to provide nominee Oparanya with an Anti-Corruption Clearance Certificate, which is required by law for appointment to State Offices. He reportedly acted after receiving a letter from Oparanya’s advocates, making the case that the monies Oparanya received from those who had secured payment for tenders when he was governor were not, in fact, kickbacks, but loans. He had been sued for one over failure to pay. Ignoring the law on irregular benefits, breach of public trust and apparent abuse of office, the DPP then wrote to the EACC asserting he would drop the case because “most of the charges proposed were premised on monies paid by the Director of Sabema International Ltd and Sesela Resources Ltd, one Joseph Obulunji Okutoyi (E5) to the firm of Marende & Nyaundi Company Advocates (Hon. Wycliffe Oparanya’s advocate) to enable Mr. Oparanya purchase a house in LR No.10034 located at Forest Edge Green Villas in Karen. It has since been established that the monies alleged to have been money laundered was a loan... The Director of Public Prosecutions finds that it will be an uphill task to secure a conviction in this matter and has reviewed the decision to charge all the suspects in the matter and directed that the file be closed for lack of sufficient evidence.”<sup>167</sup>

- **Najib Balala**, former cabinet secretary for Tourism was arrested by the EACC on 22nd December, 2023 and charged

over alleged procurement fraud and theft of public funds in the construction of the Coast Branch of the Kenya Utalii College in Kilifi County.<sup>168</sup> On 31st July 2024, Malindi Chief Anti-Corruption Magistrate Hon. James Mwaniki allowed the DPP to withdraw the Ksh 8.5 billion corruption case facing Balala and his Principal Secretary, Ms. Leah Adda Gwiyo. The EACC intended to oppose the DPP’s application to withdraw charges, but the Anti-Corruption Magistrate declined to admit an affidavit by an EACC Investigator. In his ruling, the magistrate termed the grounds cited by the DPP in seeking the withdrawal as shallow, and that he had not sufficiently demonstrated to the Court why it would be difficult for the case to continue.<sup>169</sup> The Court, nevertheless, discharged the accused persons and ruled that any future decision to charge them afresh on the same facts would be an abuse of the court process.

## Discretionary decisions

The statutory basis for accountability of the DPP lies in section 7 of the Office of the Director of Public Prosecutions Act. Section 7 (2) and (3) provide that: “At any time, the President, the National Assembly or the Senate may require the Director to submit a report on a particular issue. Every report required from the Director under this section shall be published and publicised.”

However, no member of the National Assembly or of the Senate has moved a motion for a resolution requiring the DPP to be accountable on this matter. Only a public interest lawsuit could now compel the DPP to be transparent about how he is exercising his discretion to withdraw charges.

167 <https://www.citizen.digital/news/eacc-dpp-clash-over-withdrawal-of-graft-case-against-oparanya-n346999>

168 <https://x.com/EACCKenya/status/1818714599727972768>

169 <https://eacc.go.ke/en/default/wp-content/uploads/2024/07/CHIEF-MAGISTRATES-COURT-IN-REPUBLIC-Vs-NAJIB-BALALA-16-OTHERS.pdf>

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## Police Service

Police corruption in Kenya remains a serious problem, regularly topping tables and opinion polls on institutional corruption. As the most visible representatives of the government, police are also the least trusted and most feared by the public. Police abuses range from brutal treatment of protesters and suspects, to robbery, impunity and extrajudicial killings. Many encounters with the police in Kenya, according to recent AfroBarometer surveys<sup>170</sup>, involve the payment of bribes. The police are widely seen as more corrupt than any other institution.

Corruption infects the Service from top to bottom. In October 2023, the Inspector General of Police publicly revealed a system of 'returns', in which portions of bribes extracted by beat officers are funnelled up the ranks to senior officers in a protection racket. During the same month, it was announced the Interior Ministry had complained that senior policemen were involved in facilitating a land grab by fake 'squatters' of thousands of acres of land from a State Corporation, which counts the national pension fund<sup>171</sup> as one of its largest investors.

The Directorate of Criminal Investigation is tasked to investigate grand corruption incidents<sup>172</sup>, but it is often done only in response to political and public demands. This has resulted in a woeful track record in terms of conviction rates of grand corruption

cases, and the institution has been accused by the official prosecutor of preparing shoddy investigation files.

AfriCOG has regularly highlighted and documented the impact of police corruption. It infects the entire machinery of the justice system and creates serious vulnerabilities, nationally and internationally. This is well illustrated by Kenya's growing problem of money laundering, regional criminality, and the implications of illicit money flows across its many borders.

### Money Laundering

Kenya's vulnerability to money laundering is linked to its regional position as a financial service center. In February 2024, the Financial Action Task Force (FATF) - an international organization that sets standards and policies to combat money laundering and terrorist financing - grey-listed Kenya and placed it under increased monitoring. Only a decade earlier, Kenya had been commended for 'significant progress' in improving its Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) weaknesses, and was to be no longer subject to the FATF monitoring process."<sup>173</sup> What changed?

Illicit flows of hard currency across Kenya's multiple borders have long been an issue for regional corruption monitors. In 2022 the East and Southern Africa Monitoring Group

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170 <https://theconversation.com/corrupt-brutal-and-unprofessional-africa-wide-survey-of-police-finds-diverging-patterns-224170>; and AfroBarometer Report 19 September 2022;

171 National Social Security Fund

172 See for example Uhuru Kenyatta's Statement to Parliament 2018

173 <https://www.fatf-gafi.org/en/countries/detail/Kenya.html>



highlighted massive inflows and outflows primarily of US dollars, warning Kenya it risked grey-listing.<sup>174</sup> Little was done to satisfy FATF that Kenyan authorities were serious about the problem of lax Anti-Money Laundering practices.

Even as new anti-money laundering laws such as those relating to beneficial ownership were being processed, official actions anticipated they would be breached. In August 2023, the Registrar of Companies refused to disclose to the Energy Committee of the National Assembly<sup>175</sup> the beneficial owners of nine independent power producer companies<sup>176</sup>. The committee was told by the Business Registration Service Director General, Kenneth Gathuma, he could not disclose the information because the firms were registered before 2015, when the new Companies Act came into effect. However, under the new Companies Act all companies in existence at the time it commenced are, and can be, compelled by the law to provide the identity, address and other contacts of all beneficial owners. Appearing before the same committee in October 2023, the Attorney General confirmed there was no reason the Registrar could not supply the information required by the committee.<sup>177</sup>

## Raising the cash reporting threshold

Another legislative proposal is intended to raise the cash transaction reporting threshold of USD 10,000 which is legislated in the Fourth Schedule<sup>178</sup> of the Proceeds of Crime<sup>179</sup> and Anti Money Laundering Act. Cash is the best means of passing or receiving a bribe; but there is a law which requires banks in Kenya to alert the authorities to details of cash transactions involving more than one million shillings at a time. Details include the identity of the recipient, the intended purpose of withdrawn money, and the source of the money.

The law also requires bankers, lawyers<sup>180</sup> and accountants to report to the Financial Reporting Centre (FRC)<sup>181</sup> any transactions above the USD 10,000 limit. Transactions that are targeted include: buying and selling of real estate; merchant banking; management of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; and creation, operation or management of buying and selling of business entities.

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174 See <https://www.businessdailyafrica.com/bd/economy/how-sh72bn-hard-cash-inflow-put-kenya-on-dirty-money-watch--4321252>

175 <https://www.businessdailyafrica.com/bd/corporate/companies/registar-declines-release-of-ippis-data--4332738>

176 For their names see <https://nation.africa/kenya/business/name-shareholders-of-9-independent-power-producers-mps-tell-registar--4298130>

177 <https://www.the-star.co.ke/news/realtime/2023-10-13-furnish-mps-with-names-of-power-directors-ag-muturi-directs-registar-of-companies/>

178 FOURTH SCHEDULE [Section 44(3).] REPORTING THRESHOLD – “A reporting institution shall file reports (of) all cash transactions exceeding US\$ 10,000 or its equivalent in any other currency carried out by it.”

179 In Kenya “proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed.

“Offence” in this Act, means an offence against a provision of any law in Kenya, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya

180 The Law Society of Kenya and the FRC have agreed to establish a self-regulatory mechanism to preserve lawyer-client-confidentiality, whilst reporting suspicious transactions. <https://www.businessdailyafrica.com/bd/economy/lawyers-sign-pact-with-state-to-report-clients-dirty-cash--4338000>

181 The Financial Reporting Centre (FRC) (Kenya’s Financial Intelligence Unit) is established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act, 2009. The FRC is an independent body whose principal objective is to assist in the identification of the proceeds of crime and combating money laundering. The FRC became operational on April 12, 2012.

This transparency measure, derived from USD10,000 FATF threshold came into force as a provision of the Proceeds of Crime and Anti Money Laundering Act in June 2010.

Since then, two successive administrations have promoted an increase of the cash reporting limit. On 10th October 2021, President Kenyatta directed<sup>182</sup> the Treasury to raise the threshold without saying what the new amount should be. At the end of July 2023, President Ruto's cabinet approved a new cash reporting threshold just over two million shillings.<sup>183</sup>

At a Parliamentary committee hearing, the Kenya Bankers' Union, which represents the interests of commercial banks, opposed the threshold increase. It cited fears their banks will be used for illicit commerce and terror financing.<sup>184</sup> The IMF says it is monitoring the proposed changes.<sup>185</sup>

## Mobile Money

Kenya is reported to be a global leader in mobile phone financial services.

According to the November 2020 Kenya country data, 72% of the population had a mobile money account and the value of transactions had increased to Ksh 4.3 trillion (USD 41.8 billion).

Mobile money has contributed tremendously in promoting access to finance and government efforts to promote financial inclusion, and subscribers are able to send or receive money from abroad. However, the international money transfer capabilities have also made mobile phone financial services vulnerable to money laundering.

Kenya has significantly improved financial inclusion through mobile money operators, but there is still widespread use of cash as in some cases people withdraw from the mobile wallets for cash transactions. In addition, there is a large informal economy providing avenues for ML/TF activities and facilitating untraceable cash movements. For example, a Ksh 1.9 billion National Youth Service scandal involved numerous suspicious cash withdrawals that were not reported by five banks, ostensibly for salaries of casual workers employed in public health clean-up exercises.<sup>186</sup>

## Criminal Assets Recovery Fund

The Asset Recovery Agency (ARA) is mandated to apply to court for preservation orders over property suspected to be the proceeds of crime.<sup>187</sup> By law, within ninety days after the date on which notice of the making of the preservation order is published in the Gazette, the Agency Director makes an application for an order forfeiting to the government all or any of the property that is subject to the preservation order.

182 Official Speech available at <http://libraryir.parliament.go.ke/bitstream/handle/123456789/1061/Speech%20by%20His%20Excellency%20President%20Uhuru%20Kenyatta%2c%20C.G.H.%2c%20on%20Mashujaa%20Day%2c%20October%2020%2c%202021%20%ef%bb%bf.pdf?sequence=1&isAllowed=y>

183 See <https://nation.africa/kenya/business/cabinet-approves-cash-transfers-reporting-limit-to-sh2m-4308042>

184 <https://www.businessdailyafrica.com/bd/economy/banks-oppose-plan-to-raise-large-cash-reporting-threshold--4341484>

185 <https://www.businessdailyafrica.com/bd/economy/push-to-relax-checks-on-large-cash-deals-gets-imf-attention--4315860>

186 See <https://www.the-star.co.ke/news/2020-03-05-five-banks-fined-sh395-million-in-nys-ii-scandal/>

187 The Assets Recovery Agency was established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act No.9 of 2009 as a body corporate with the mandate of combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime.

For several years the ARA has reported success in impounding bank cash balances and other property and in successfully obtaining forfeiture orders. Previously, forfeited and impounded assets were held in a Criminal Assets Recovery Fund<sup>188</sup> established in 2019, administered by a committee comprising the Attorney General; Principal Secretary of the National Treasury; Director General of the National Intelligence Service; Governor of the Central Bank; Director General of the Financial Reporting Centre; Chief Executive Officer, Ethics and Anti-Corruption Commission; Commissioner General of the Kenya Revenue Authority; Director of Public Prosecutions; Director of Criminal Investigations; and an employed administrator of the Fund, who is secretary and an ex-officio member of the Committee.

There are no public representatives or stakeholders outside the Executive who have a role in administering this large fund.

Described by a Judge of the Anti-Corruption Courts as potentially a new source of graft, Justice Nixon Sifuna ordered in August 2023 the Treasury and the Asset Recovery agency to establish regulations to provide for the depositing of forfeited funds in the Consolidated Fund.<sup>189</sup>

## Regional criminality

Kenya is the East African hub for illicit gold trade from neighbouring countries.

Smuggled gold, particularly from DRC Congo, is consolidated and shipped to China, India and the UAE. It is also a market and transit

point for regional and international drug traffickers, and a transit point for illegal wildlife trafficking from Tanzania (ivory), Mozambique (ivory and rhino horn), DRC (ivory, pangolin scales, gold, and diamonds), Zambia (ivory) and South Sudan (ivory).

The 2023 Global Initiative on Transnational Organized Crime Index rates Kenya<sup>190</sup> within the high criminality, low resilience segment of the study, with an average criminality score of 7.02 out of 10. It scores above average for all criminal markets assessed by the Index. It has a score of 8.0 in human trafficking, 7.5 in human smuggling; 7.0 in extortion and protection racketeering; 7.5 in arms trafficking; 7.0 for trade in counterfeit goods; 7.5 in heroin trade; 6.0 in cocaine trade; 6.5 in cannabis trade; 5.5 for the synthetic drug trade; 8.0 for cyber dependent crimes; and 7.5 for financial crimes.

As the largest economy in East Africa with a GDP of USD 119 billion, Kenya is a regional centre for travel, trade and financial services. Huge amounts of money move in and out of its financial system daily. Half its banks are subsidiaries of regional Pan African banks, five are subsidiaries of global banks which are players in the global capital markets. Some Kenyan banks have subsidiaries in Burundi, DRC, Rwanda, South Sudan, Tanzania and Uganda, and a few hold stakes in banks in Botswana, Malawi and Mauritius.

In addition to banks, Kenya is regional leader in mobile phone financial services. As of December 2023, it had a total of 73 million registered mobile money subscribers.<sup>191</sup> In the first 11 months of 2023, over 320,000 mobile

188 See <https://www.treasury.go.ke/wp-content/uploads/2020/11/Legal-Notice-Criminal-Assets-Recovery-Fund-2019.pdf>

189 Court raises red flag over asset recovery billions, Business Daily, 1st August 2023 <https://www.businessdailyafrica.com/bd/economy/court-raises-red-flag-over-asset-recovery-billions--4322488>

190 See <https://ocindex.net/country/kenya>

191 <https://www.statista.com/statistics/1188510/registered-mobile-money-accounts-in-kenya/>

money agents had annual transactions (cash-in/ cash-out) amounting to Ksh 7,165 trillion. Mobile money operators are also allowed to undertake cross-border payments.

Designated Non-Financial Business and Professions (DNFBP),<sup>192</sup> the real estate sector and lawyers play a significant role in the financial economy. The real estate sector is one of the largest contributors to GDP. In 2022, it contributed a cash equivalent of 8.6 per cent of GDP. The real estate sector is larger than the financial and insurance sector at 7.6 percent, and greater than the following sectors wholesale and retail (7.8%); manufacturing (7.8%); and construction (7.1%).

The EASAAMLG National Risk Assessment 2022 found that Kenya's real estate sector and lawyers are highly vulnerable to money laundering risks. Lawyers provide the following at-risk services: real estate transactions; provision of trust and company services; and management of funds, bank and securities accounts on behalf of clients.

## Global Money Transfer Platforms

New global payment and remittance platforms have over the last few years become a source of concern for the authorities, playing catch up as new technology facilitates aggregation of money transfer orders by customers on a larger scale than regulators have been used to.

The sheer numbers of individuals able to transact internationally on their mobile phones threatens to swamp regulators trained in monitoring conventional banks. Beyond diaspora remittances, the direction and reasons for international money transfers have changed with the ubiquity of smart mobile phones. Sports betting is a major driver of such transfers, and mega jackpots paid to punters in Kenya have been flagged as a potential means of laundering proceeds of crime.<sup>193</sup>

## SportPesa

Ten years ago, SportPesa, Kenya's leading online sports bookmaker, took in Ksh 1.27 billion in wagers. Five years later, punters were losing Ksh 149 billion annually, and the founders had earned USD65 million in dividends. All this money is paid through systems outside conventional banking. SportPesa is owned by Bulgarian and Kenyan nationals, but it also has a hub on the Isle of Man, UK. It operates on payment platforms developed and maintained in the United Kingdom by associated companies. To minimise its tax bill in Kenya, SportPesa reportedly engaged in transfer pricing with its Kenyan operation, making consultancy payments to its UK associates for IT services at an estimated 400% mark-up. At least one-fifth of SportPesa's turnover was transferred directly out of Kenya to associated companies overseas.<sup>194</sup>

<sup>192</sup> Designated Non-Financial Businesses and Professions. Examples include casinos (including internet casinos), real estate agents, dealers in precious stones and metals, lawyers, accountants and trust & company service providers. All except lawyers are subject to AML/CFT supervision and monitoring as prescribed under the Proceeds of Crime, Anti Money Laundering Act. They are licensed or registered by respective supervisory authorities. Where there is no direct supervisory authority for a particular sector, they fall under the supervision of the Financial Reporting Centre.

<sup>193</sup> See Kenya flags betting jackpots for money laundering <https://www.businessdailyafrica.com/bd/economy/kenya-flags-betting-jackpots-for-money-laundering-3894472>

<sup>194</sup> See a discussion of SportPesa and its tax obligations at <https://www.financeuncovered.org/stories/how-kenya-revenue-authority-may-have-made-huge-error-in-its-unpaid-tax-bill-to-sportpesa>

The settlement of gambling wagers on international sports betting platforms is now a multi-billion-dollar industry. While it is understandable that Kenyan gambling entities have Kenyan bank accounts, the activities of Flutterwave,<sup>195</sup> a Nigerian payment systems provider, raised alarm within the Asset Recovery Agency (ARA). This followed a report by the Financial Reporting Centre which questioned why domestic Nigerian transactions needed to pass through Kenya.

## Flutterwave

In August 2022, the Assets Recovery Agency froze US\$3 million held in Kenyan banks by Flutterwave for two Nigerian companies<sup>196</sup>. Suspecting money laundering and fraud, this was the second seizure against Flutterwave in two months, the first being a block on US\$52.5 million belonging to Flutterwave and six other companies. The seizures took place just before the presidential election and the ARA appears to have changed its policy immediately after the election when it sought to withdraw the cases it had brought against Flutterwave.

A request for the withdrawal was rejected by High Court judge Nixon Sifuna who demanded that the ARA supply the court with reasons for the withdrawal, including evidence of any negotiations or settlement terms. The judge took a dim view of the ARA seeking to withdraw the very evidence it had used to convince the court to take the major step of seizing US\$55 million of corporate funds. The evidence was based on an investigator's affidavit which stated a belief that the frozen billions were the proceeds of crime being laundered through Kenya, under the guise of merchant services.

Such stop-and-go actions by the ARA validate the assertion of East African anti-money laundering experts that:

*“while Kenya has powers in place, it does not have a demonstrable strategic policy to prioritise investigation and prosecution of money laundering. The Authorities prioritise predicate offences such as corruption over money laundering and often do not carry out parallel investigations alongside predicate offence investigations, resulting in few money laundering investigations and no successful prosecutions.”<sup>197</sup>*

195 Flutterwave was founded in 2016 by Iyinoluwa Aboyeji, Olugbenga “GB” Agboola (CEO), and Adeleke Adekoya, to facilitate cross-border payments in Africa. It has since grown to include a remittance service that allows users to send money to recipients to and from the continent — a Shopify-like e-commerce platform for small businesses called Flutterwave Store, and Tuition, an education payments platform. It raised \$350 million last year at a \$3 billion valuation, making it one of the most valuable startups in Africa. It has, however, had to deal with a string of controversies, including claims of harassment, funds misappropriation, and mismanagement.

196 Hupesi Solutions, and Adguru Technology Limited

197 See Appendix II – Kenya AML Mutual Evaluation Report 2022

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## Conclusion: No Change

The William Ruto era began with a contested election and is now in a consolidating stage. He is focused on political survival, using a system of reward and patronage - built by former presidents - that depends on corruption and impunity.

Having mobilised a young, hopeful base by promising 'bottom up' development and a redistribution of political and economic power from the 'dynasties' to the 'hustlers', he now faces growing economic peril and one of the most significant challenges to presidential authority in Kenya in decades.

Ruto is no stranger to the system he promised to change, and is now utilising. He ascended through political partnerships and alliances with former presidents, fashioning himself as a patron with the means to reward supporters. He also came to the presidency with his own history of corruption charges. The basic features of his government and the anti-corruption stance it will take are predictable. There will be political impunity for so long as Ruto needs to reward his 2022 political supporters and new-found allies in the opposition; and he is well into the second phase of co-opting those who didn't support him but are open to do business.

This report has shown how the main pool of resources available now to achieve reward

and patronage is primarily through public budgets, dubious contracts, appointments to office, and facilitating a profligate and wasteful system for the benefit of a few.

Kenyans are so jaded by their politicians they do not expect the endemic corruption to disappear - even when it's promised - but during elections they do hope for change.

During the first two years of Ruto's presidency, that hope has evaporated quickly. In the immediate wake of his inauguration, he weaponised prosecutions by bringing or withdrawing criminal charges, and secured alliances and loyalty through the power of the office of the President, which can appoint large numbers of supporters to high public office in disregard of public opinion. With a pliant parliament, Ruto seems set to pass any legislation he wants - including tax hikes and the tough measures necessary for him to try and meet the revenue targets set by his government's financiers. However, increasing economic hardship and continued corruption and impunity will only further fuel public discontent. As he approaches the end of his second year as president, the reality of 'no change' comes at a high cost: most Kenyans now believe the country under Ruto's leadership is heading in the wrong direction<sup>198</sup>.

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198 Poll [https://www.infotrakresearch.com/wp-content/uploads/2024/10/Infotrak-VOP-Poll\\_October-2024.pdf](https://www.infotrakresearch.com/wp-content/uploads/2024/10/Infotrak-VOP-Poll_October-2024.pdf)

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# Appendices

## Appendix I – Chronology of milestone events

- **9 August 2022**

General election voting day.

- **15 August 2022**

Declaration of William Ruto as winner of the 2022 Kenyan presidential election by the Independent Electoral and Boundaries Commission (IEBC).

- **3 September 2022**

Supreme Court publishes its decision upholding election of William Ruto as president

- **13 September 2022**

William Ruto is inaugurated as the fifth president of Kenya.

- **27 September 2022**

Establishment of the executive branch – the president nominates Secretaries subject to National Assembly vetting. All confirmed and sworn in on 27 October 2022.

- **27 September 2022**

Resignation of Director of Criminal Investigation George Kinoti, a key figure in prosecution of cases against supporters of the new president. He had been accused by the DPP of instigating criminal charges but failed to supply sufficient evidence. The Inspector General of Police Hilary Mutyambai, suffering ill health, retires six months ahead of the end of his four-year term.

- **October 2022**

DPP begins to withdraw cases against political supporters of the new president. Civil society groups call for the resignation of DPP Noordin Haji.

- **6 October 2022**

Speaker of the National Assembly rules that President Ruto’s coalition has the majority of MPs in the National Assembly, and Azimio Coalition as the minority party.

- **28 October 2022**

Swearing in of Cabinet Secretaries – several have recently had criminal charges against them dropped.

- **9 November 2022**

DPP withdraws charges against Deputy President Rigathi Gachagua.

- **16 March 2023**

President Ruto nominates 50 Chief Administrative Secretaries in defiance of a court ruling that the positions are unconstitutional. On 3 July 2023, the High Court sits as a three-Judge Bench to deliver its judgement over the creation of the Office of the Chief Administrative Secretary by the president, and declares the Office of Chief Administrative Secretary unconstitutional.

- **March 2023**

Media reports focus on a review of Kenya Gazette Notices revealing that the president had appointed 119 chairpersons and directors

in 58 parastatals, directly appointing an estimated 53 directors since the appointments started in November 2022<sup>199</sup> The opposition accuses the president of ethnicization of the public service.

- **June 2023**

Resignation of DPP Noordin Haji following his appointment as Director of National Intelligence Service.

- **3 July 2023**

High Court rules Chief Administrative Secretary position to be unconstitutional.

- **August 2023**

Appointment of Renson Ingonga as DPP for an 8-year term - expected to leave in 2031.

- **August 2023**

Registrar of Companies refuses to disclose to the Energy Committee of the National Assembly<sup>200</sup> the beneficial owners of nine independent power producer companies<sup>201</sup> being investigated for over-charging the national electricity supplier.

- **August 2023**

Justice Nixon Sifuna orders the Treasury and the Asset Recovery agency to establish regulations to provide for the depositing of forfeited funds in the Consolidated Fund.

- **8 September 2023**

Interior Ministry issues 'Notice to NGOs on Realignment of Donor Aid' that notes the government's concern over 'misalignment' of international donor aid management systems. It requires NGOs and PBOs in the country to comply and align their operations with the Bottom-Up Economic Transformation Agenda.

- **September 2023**

Judge dismisses public interest litigation filed by the Law Society of Kenya<sup>202</sup> on the grounds that pieces of evidence presented were illegally obtained - termed the judicial application of 'the fruit of the poisonous tree' doctrine.

- **September 2023**

Supreme Court confirms the Njonjo Mue dictum on the admission of unlawfully acquired evidence continues to hold, and citizens must procure the evidence in keeping with procedures.

- **September 2023**

Case prosecutor in the Arror and Kimwarer Dams Case claims the court is biased against the State, leading DPP Renson Ingonga to recall the file to determine whether to proceed with the prosecution.

- **October 2023**

U.A.E. registered firm Infrastructure Corporation of Africa LLC takes Helios shares and become the new majority shareholder in Telkom Kenya.

- **October 2023**

President Ruto seeks to curb unnecessary travel and hospitality expenses, contrasting with large expenditures approved at the beginning of his tenure.

- **October 2023**

The Inspector General of Police reveals the existence of a system of 'returns' in which portions of bribes extracted by beat officers are funneled up the ranks to senior officers.

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199 See <https://www.the-star.co.ke/news/realtime/2023-03-16-full-list-of-nominated-chief-administrative-secretaries/>

200 <https://www.businessdailyafrica.com/bd/corporate/companies/registrar-declines-release-of-ippis-data--4332738>

201 For their names see <https://nation.africa/kenya/business/name-shareholders-of-9-independent-power-producers-mps-tell-registrar--4298130>

202 LSK VS AG (E040 of 2023)



- **October 2023**

The Interior Ministry notes senior policemen were involved in facilitating the grabbing by a faux group of 'squatters' of thousands of acres of land from a state corporation.

- **November 2023**

ICC Prosecutor halts more than a decade of investigations by the International Criminal Court into Ruto's and Kenyatta's roles in the 2007-8 post-election violence.

- **November 2023**

Chief Registrar of the Judiciary takes her terminal leave of office, voiding the possibility of disciplinary action in the Bruton Gold Trading gold scandal.

- **December 2023**

President touts the expected employment benefits of the Affordable Housing Programme in the midst of national tumult regarding the Affordable Housing Bill.

- **December 2023**

DPP authorizes the arrest of the Controller of Budget on fraud offences arising from complaints made in 2016 against her and other officials of a savings society by a member. It comes after the CoB told a Parliamentary Committee of coercion by the Cabinet Secretary for Finance to sign off on Ksh 22.4 billion in unapproved spending four days before the 2022 election.

- **December 2023**

Henry Rotich, former Finance Minister, acquitted of charges of 'abuse of office' in the award of contracts to a bankrupt Italian company for construction of the Arror and Kimwarer dams after more than a year of stalled proceedings.

- **January 2024**

President Ruto accuses the judiciary of corruption, alleging it had conspired with vested interest to block some of his policy initiatives, including a new health insurance scheme and his affordable housing development initiative.

- **January 2024**

Public Service Commission vindicates the claim in the Controller of Budget implementation report of nearly 20,000 ghost workers in government.

- **February 2024**

Financial Action Task Force (FATF) grey-lists Kenya, placing it under the need for increased monitoring.

- **March 2024**

An investigative report reveals the government's subsidized fertilizer distribution programme is 'corrupted', with unscrupulous merchants supplying fake fertiliser to farmers through the National Cereals and Produce Board (NCPB).

- **April 2024**

Government withdraws all advertising from the three largest media companies, continuing a series of policies started in 2017 designed to starve media of government advertising.

- **May 2024**

President Ruto continues his attempt to fill 50 CAS positions following commencement of the National Government Administration Laws (Amendment) Act, 2024.

- **May 2024**

An impeachment motion passes in the National Assembly against the Cabinet Secretary for Agriculture after the subsidized fertilizer scandal is unearthed.

- **9 May 2024**

Finance Bill 2024 tabled in the National Assembly proposing legislation to create new taxes, hike taxes, remove tax waivers, and other unpopular provisions. Social media focuses on a proposed 16% tax on bread, 20% tax on international money transfers, digital content monetization tax, motor vehicle tax, affordable housing tax and 5% increase in the tax on local mobile money transfer services. These issues are especially felt by the young urban adult population.

- **13 May 2024**

First Reading of the Finance Bill 2024 takes place in the National Assembly and is committed to the Departmental Committee on Finance and National Planning for consideration and reporting. 65 tax amendments proposed by the government are expected to raise an additional Ksh 302.253 billion in revenue - effectively a 10% increase on tax from the previous year.

- **15 May 2024**

Public Participation Meetings (PPM) scheduled to be conducted by the Finance Committee of the National Assembly are attended by thousands with over 600 written memoranda protesting the new tax proposals. The administration and the president's political party make it clear they would ignore the objections to the new taxes made by industry, trade unions, employers' associations, faith-based groups, the civil society and the general public.

- **23-25 May 2024**

President Ruto's state visit to the USA yields a long list of commitments along with President Biden's official designation of Kenya as a major non-NATO ally. As a first sub-Saharan designation, this gives Ruto a psychological boost, denoting a high level of external trust in his administration.

- **23 May 2024**

KTN television network reports President Ruto's US trip will cost over USD 1.5 million for private jet hire alone. Public anger over ostentation is magnified by Ruto's own coterie, when the following weekend several key allies are video-taped making massive cash contributions at a rural church function.

- **29 May 2024**

Ruto tells a press conference that a "friend" in the UAE paid for his jet hire to the US. He ends the press conference saying "Relax...the debate must end."

- **First week of June 2024**

Unknown posters on social media platforms call for rejection of the Finance Bill 2024 and insist Ruto himself must go. In the first week of June 2024 the mystery online protest movement morphs into the nationwide Gen Z movement. Seizing on the global unpopularity of a taxation bill (The Finance Bill, 2024) GenZ declares it will surface in street protests against the taxes. Protests are organised on social media platforms, primarily X and TikTok, using hashtags like #RejectFinanceBill2024. The Gen Z movement ask Kenyan youth to "occupy Parliament" on June 18 to halt the debate of the Finance Bill.

- **18 June 2024**

Early morning 18 June, President Ruto holds a meeting of his parliamentary party at State House, then holds a press conference purporting to withdraw several of the contentious proposed taxes – including the 16% bread tax and an annual tax on motor vehicles. The Finance Committee Report is amended and tabled in the National Assembly the same day.

- **18 June 2024**

Ruto's overture fails to satisfy the protest movement, who change their hashtag to

#RejectDon'tAmendTheFinanceBill2024. Within an hour of the debate starting, police riot control units are overrun by thousands of peaceful youth protesters. Presenting as a leaderless, nationwide, mass movement without party or tribal basis, it baffles the media and political establishment. Gen Z protests reveal the limits of police crowd control tactics - adopting, for example, the mantra "phones not stones". An inflicted slowdown in internet bandwidth on the afternoon of June 18 is circumvented by Gen Z using terrestrial apps on the streets to communicate - likely due to more than 40,000 new downloads of a single walkie-talkie communication application, Zello, the week before. Innovations like this herald a new type of coordinated protest movement which the State is ill-prepared to confront. The movement also claimed a moral victory in that its protesters were peaceful and unarmed throughout the day. No deaths or looting of businesses are reported that day.

- **20 June 2024**

Hardliners in the administration turn to force, with violent suppression of a second protest on June 20. At least two demonstrators are shot by police. On the same day, MPs vote 204 to 115 to pass the Finance Bill, claiming to have taken account of the President's announced concessions. GenZ reject them as too little and too late, announcing they intended to march on Parliament and State House on June 25th to pressure the president not to sign the Bill into law at a scheduled State House event.

- **25 June 2024**

GenZ marshals its largest ever crowd on June 25. The State response is ultra-violent, including ordering snipers in and around Parliament Buildings to open fire on protesters approaching the fences. By late afternoon, MPs have to be evacuated en

masse when parliament is set ablaze. Fires are set by protesters who have been shot at after they breached the security cordon and entered the National Assembly and the Senate chambers. At least ten protesters are shot dead on Parliament's grounds. 12 others are killed by police in other parts of Kenya that day. The nearby offices of the Governor and the Chief Justice at the Supreme Court are also set on fire. In a late-night press conference Ruto doubles down, calling the protesters treasonous and criminal. This hardening of his position had been presaged by the late afternoon actions of the then-Defence Minister, Aden Duale, who controversially ordered the Kenya Defence Forces onto the streets.

- **27 June – 30 July 2024**

Gen Z protesters increase national activities, even as ever greater forces are thrown onto streets across Kenya. By the end of June protests take place in more than half the 47 Counties of Kenya. Suppression of the youth is brutal, with many extra-judicial abductions and killings recorded by human rights monitors. By the beginning of August, over 60 protesters have been killed by security forces and Nairobi's main public morgue has nearly 250 unidentified bodies. Scores of Gen Z youth have disappeared, and cannot be found despite families reporting them missing to the authorities. No official inquiry has taken place.

- **July 2024**

In July, Gen Z honour the dead and injured, visiting assault survivors in hospitals and hosting a national memorial concert on 7 July in Nairobi. Saba Saba Day (7/7) is commemorated as a mark of respect when pro-democracy protesters were massacred in 1990 by police and security forces - Gen Z is seen as a comparable national recruitment of the masses to a human rights agenda.

- **11 July 2024**

President Ruto dismisses his entire cabinet, apart from the deputy president and the chief prime cabinet secretary. He announces his intention to establish a “broad based” government and starts negotiations with Raila Odinga, the unofficial leader of the political opposition.

- **12 July 2024**

Inspector General of Police, Japheth Koome, resigns as details of widespread police killings and abductions of protesters emerge.

- **24 July 2024**

President Ruto cedes four key ministries to Raila Odinga - the Ministries of Finance (National Treasury), Energy and Petroleum, Mining, and the Ministry of Cooperatives.

- **8 August 2024**

In the preceding week, President Ruto’s new cabinet members are sworn in. The hardline approach towards Gen Z includes an infiltration of protests by armed goons who loot businesses and attack passers-by with impunity. Hooded men believed to be security agents abduct scores of individual Gen Z activists in the days preceding a demonstration on 8 August, creating fear and deterring mass mobilisation. Unlike in June 2024, residents in most parts of the country are reluctant to join the action - including Mombasa, Kisumu and several Western Kenya towns. Local media links the goons with politicians in the ruling party and its allies.

- **August – September 2024**

The protest movement’s leadership fragments. Some believe the withdrawal of the Finance Bill 2024 and reconstitution of the Cabinet are the achievement, urging a halt to further protest. There are also claims and counterclaims of intelligence service infiltrating the Gen Z leadership,

and politicians buying off or compromising specific leaders; while some of the better-known figureheads falter because of the pressure and stress of constant harassment and publicity.

- **4-6 September 2024**

President Ruto’s first major international trip after the Gen Z uprising to the 9th Forum on China-Africa Cooperation (FOCAC) yields little in the hoped for bonanza of support for touted projects. Kenya contracts two new credit agreements with the China Development Bank. One is a Kshs. 36.2 billion concessional loan to fund the completion of 16 China-financed road projects which had stalled because the money to pay contractors had run out due to project mismanagement, diversion of funds and embezzlement. In effect, Kenya is borrowing a second time for the same roads. Details of the conditions of another loan of Kshs. 36 billion for 15 rural roads are unpublished and hard to find outside technical and governmental circles.

- **11 September 2024**

A strike is held by employees of Jomo Kenyatta International Airport in Nairobi against plans to lease the airport to the Adani Group of India.

- **1 October 2024**

Mwengi Mutuse, a backbench member of parliament from the ruling Kenya Kwanza Alliance, tables a motion to impeach the Deputy President Rigathi Gachagua in the National Assembly. The motion lists 11 charges, including corruption in public contracting, favoring his own Kikuyu community, and undermining government policy positions. The charges reflect a relationship breakdown between President Ruto and his deputy. The measure passes in the National Assembly on 8 October and is sent to the Senate.

- **9 October 2024**

Kenya is elected to a seat on the United Nations Human Rights Council for a three-year term beginning in 2025.

- **11 October 2024**

Energy Cabinet Secretary Opiyo Wandayi announces a KSh95.7 billion agreement to operate and maintain transmission lines and substations for 30 years between the Kenya Electricity Transmission Company Limited (KETRACO) and Adani Energy Solutions Limited, aiming to address persistent power blackouts across Kenya.

- **17 October 2024**

Following a majority vote by the Senate, Rigathi Gachagua is removed as deputy president after being convicted of five of the 11 charges laid against him during his impeachment.

- **18 October 2024**

- President Ruto appoints interior minister Kithure Kindiki as the new deputy president. However, his appointment is suspended that same day after the High Court orders a temporary halt to Rigathi Gachagua's removal pending an appeal.
- A British national and six Turks are abducted in different locations in Nairobi. Kenya's Ministry of Foreign and Diaspora Affairs later says that four of those missing were Turkish refugees believed to be members of the Gülen movement who were repatriated at Ankara's request, thus admitting to refoulement, a breach of international law.

- **1 November 2024**

Kithure Kindiki is inaugurated as deputy president after a court upholds the impeachment of his predecessor Rigathi Gachagua.

- **17 November 2024**

The Kenya Conference of Catholic Bishops (KCCB) launch a scathing criticism against the government, saying politicians were out of touch with reality, corrupt and deceitful. In response, Majority leader in the National Assembly Kimani Ichung'wah challenges the bishops to table evidence against any elected leader they feel is corrupt, or at least, name them. He further accuses the clergy of peddling falsehoods regarding a bill that proposed the extension of terms for elected leaders from the current five to seven years

- **17 November 2024**

President Ruto attends a church service at Soweto Catholic Church in Nairobi accompanied by Governor Sakaja, during which they donate KSh600,000 and KSh200,000 to the church choir respectively. Ruto also gives KSh2 million for the construction of the parish priest's house in addition to the pledge of another Sh3 million. But Nairobi Archdiocese Bishop Philip Anyolo rejects the donated cash and a promised bus, citing a directive by the Kenya Conference of Catholic Bishops banning such donations

- **20 November 2024**

News emerges that US prosecutors have charged the Adani Group founder, Gautam Adani, and seven other Adani Group affiliates with fraud for allegedly orchestrating a \$250m bribery scheme in the US

- **21 November 2024**

President William Ruto officially drops two controversial single-sourced deals allowing Indian billionaire Gautam Adani and the Adani Group to lease JKIA airport and to develop transmission lines and sub-stations for KETRACO, after he is indicted for fraud and bribery by US prosecutors.

- **4 December 2024**

The Archbishop of the Anglican Church of Kenya (ACK), Jackson Ole Sapit, directs the Bungoma bishop who accepted a KSh5 million donation made by Bungoma Governor Kenneth Lusaka on behalf of President Ruto to return the money. While apologising for the incident, Sapit terms the move unfortunate, adding that the Anglican church would not accept donations whose sources were unknown. This is one of the impacts of the GenZ movement through protests like #OccupyChurches, disrupting fundraisers with politicians.

- **7 December 2024**

Supreme Court Judge Isaac Lenaola publicly criticises the delay in constituting the Independent Electoral and Boundaries Commission (IEBC), warning that Kenya risks a monumental crisis in the 2027 general election. He also alludes to vulnerabilities in the electronic court filing system exposed during the litigation on impeachment proceedings against Deputy President Gachagua stating, “I want you to carry this question forward to 2027 and imagine the risks we might face if such vulnerabilities persist.”

## Appendix II – Kenya AML Mutual Evaluation Report 2022

A September 2022 report<sup>203</sup> of the East and Southern Africa Money Laundering Group evaluated Kenya in relation to the Financial Action Task Force (FATF) 40 recommendations as being compliant with 1 Recommendation; largely compliant with 1; partially compliant with 15; and non-compliant with 32. Kenya was rated compliant or largely compliant with none of the 16 Core and Key Recommendations.

### **Money Laundering is Not Prioritised:**

While Kenya has powers in place, it does not have a demonstrable strategic policy to prioritise investigation and prosecution of money laundering. The Authorities prioritise predicate offences such as corruption over money laundering and often do not carry out parallel investigations alongside predicate offence investigations, resulting in few money laundering investigations and no successful prosecutions. A poor understanding of money laundering risks, lack of collecting statistics on different money laundering types and the prioritisation of the prosecution of predicate offences, especially corruption, over money laundering has limited Kenya’s ability to effectively investigate and prosecute money laundering cases in line with its risk profile.

### **Failure to Categorise Prevalent Methods of Money Laundering:**

It was not possible to determine the type of money laundering which is most prevalent as Kenya does not categorise money laundering into different types. It was also not possible to determine whether the sanctions being applied were proportionate and dissuasive due to the lack of money laundering prosecutions as none had happened on money laundering.

### **Failure to Successfully Prosecute Terrorism Financiers:**

Kenya has not investigated, or prosecuted, legal or natural persons for terrorist financing offences in line with its risk profile. The lack of convictions resulting from a large number of parallel terrorism financing investigations suggests that improvements are required in the ability to investigate and prosecute terrorism financiers. Terrorist financing is not integrated as a component of the wide-ranging efforts to tackle the severe and fatal terrorist risk suffered by Kenya.

203 Anti-money laundering and counter-terrorist financing measures Mutual Evaluation Report <https://www.esaamlg.org/reports/MER%20of%20Kenya-%20September%202022.pdf>

There are no strategic counter terrorism financing policies or strategies to counter the threat.

**The Non-Profit Sector is at risk:** The sector is largely unsupervised and unregulated. The NPO sector has not been adequately assessed for terrorism financing risk and the high-risk subset of organisations likely to be at risk of abuse has not been identified.

**Cross Border Cash Movements Going Undetected:** The number of detected cases pertaining to non-declaration of cross-border movement of currency and BNIs (only two in the five-year review period) is not consistent with the risk profile of the country, being an economic, financial and transport hub in the eastern Africa region.

**Verification of Beneficial Ownership and KYC in the case of Domestic Politically Exposed Persons:** Commercial banks and MFBs have a more developed understanding of money laundering risks, compared to non-banking financial institutions and certain professionals like lawyers and real estate agents. Commercial banks and MFBs are implementing mitigation measures commensurate with those risks. Basic customer due diligence is applied by many reporting institutions, but beneficial ownership requirements are adhered to only to some extent and a major impediment exists in verifying beneficial information and measures to determine whether a customer or beneficial owner is a politically exposed person are less effective especially for domestic politically exposed persons. Consequently, application of EDD measures on them is limited. Across the board, terrorism financing risk is only understood to a limited extent.

**Risk-based anti-money laundering / counter terrorism financing supervision is relatively underdeveloped:** Most supervisory activities occur for banks and microfinance banks. However, supervisions of other financial institutions or relevant professionals is not carried out on a risk sensitive basis. Inspections in other sectors are too infrequent and focus on the presence of basic controls rather than the soundness of anti-money laundering / counter terrorism financing programmes.

**Recovery of Proceeds of Crime:** Kenya Authorities have registered some success with regard to recovery of proceeds of crime, but this has been largely in cases related to corruption and theft or misuse of public resources which is not entirely consistent with the identified risk profile of the country, as the National Risk Assessment Report 2022 concluded that it was fraud and forgery and drug related offences that form the greatest risk to the country. Recovery of instrumentalities of crime has been mainly limited to cases of trafficking in drugs, humans and wildlife trophies. Overall, the recoveries made are a small percentage of the recorded assets subject to recovery, mainly because of the lengthy processes of recovery.

**Beneficial Ownership:** Information on creation, types and other relevant basic information on legal persons is publicly available in Kenya. However, the money laundering / terrorism financing risk associated with the different types of legal persons has not been assessed. Although there are indications that private limited liability companies are being used to launder proceeds of crimes, this was not based on any type of risk assessment to enable implementation of an RBA. Companies have been recently required to keep a beneficial

owner register and file a copy of it with the Registrar. However, not all companies have filed such copies.

**Mutual Legal Assistance:** Kenya has fairly comprehensive legislation for Mutual Legal Assistance (MLA) and extradition, and has provided both in the past. Kenya has sought and rendered other forms of international cooperation in criminal matters, but this was mainly for predicate offences and not money laundering/terrorism financing offences. Additionally, Kenya does not categorize the

kind of cooperation sought or rendered, making it impossible to assess risk levels of predicate offences, modus operandi and jurisdictions.

**Cryptocurrencies and other Virtual assets:** Kenya has not carried out a risk assessment to identify and understand money laundering/terrorism financing risks associated with or emerging from virtual assets (VAs) and virtual asset service providers (VASPs). VAs and VASPs are not prohibited and the country has not put in place relevant regulatory frameworks.

## Appendix III – High Profile Cases Withdrawn by the Director of Public Prosecutions

Some High Profile Cases Withdrawn by the Director of Public Prosecutions				
Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Michael Sistu Mwaura Kamau <sup>204</sup>	Former Cabinet Secretary for Transport and Infrastructure	Abuse of office and failure to follow procurement rules in awarding the tender for construction of the Kamukuywa-Kaptama-Kapsokwony-Sirisia road in Bungoma County in 2008 when he was Permanent Secretary, Ministry of Roads.	Application by the Director of Public Prosecutions (DPP) Noordin Haji under section 87 (a) of the criminal procedure code. <sup>205</sup>	2015/2017  2018/ May 2023
Aisha Jumwa	Public Service and Gender Cabinet Secretary	Conspiring to commit fraud through the payment of Sh19,00,59.60 to Multiserve Contractors from Malindi Constituency Development Fund.	Lack of evidence.	2018/12 October 2022

204 Michael Kamau was one of four cabinet secretaries, six principal secretaries, an ambassador and fourteen senior public servants who were removed from office in March 2015, when former President Kenyatta escalated a purge on corruption grounds. The others who left office at that time are Energy CS Davis Chirchir (now CS Energy), Labour CS Kazungu Kambi, Transport, Agriculture CS Felix Koskei (now Head of the Public Service), Kenya's Deputy Head of Mission to South Africa Jane Waikenda, Secretary to the Cabinet Francis Kimemia, Transport PS Nduva Muli, Mining PS Patrick Omutia, Water PS James Teko, Deputy President's Office Chief of Staff Marianne Kittany, Investments Secretary Esther Koimet, AFC Chairman Patrick Osero, Geothermal Development Company MD Silas Simiyu, National Social Security Fund Managing Trustee Richard Langat, National Water Conservation and Pipeline Corporation acting CEO Evans Ngibuini, Kentrade CEO Alex Kabuga, Kenya Airports Authority MD Lucy Mbugua, Kenya Pipeline MD Charles Tonui and Tourism Fund/Catering Levy Trustee Allan Chenane.

205 87. Withdrawal from prosecution in trials before subordinate courts: In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon withdrawal—

(a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.



Some High Profile Cases Withdrawn by the Director of Public Prosecutions				
Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Aisha Jumwa	Former Public Service and Gender Cabinet Secretary	Accused of the murder of ODM supporter Jola Ngumbao in 2019 at Reuben Katana's home during ODM strategy meeting.	No evidence to support the charges.	2019/December 2022
Ken Tarus	Former Kenya Power Managing Director	Conspiring to commit an economic crime by failing to comply with the procedures and guidelines relating to procurement which led to the fraudulent payment of Sh159 million to companies that were corruptly pre-qualified for labour and transport services vide tender No KPI/9AA-2/58/PJT/16-17. Dr. Tarus was separately charged with willful failure to comply with the law relating to management of public funds as the accounting officer of KP by approving a list of entities (companies) irregularly pre-qualified to render labour and transport services.	Lack of evidence.	July 2018/October 2022
Mithika Linturi	Former Cabinet Secretary for Agriculture	Attempted rape.	Woman accusing Linturi had sworn an affidavit on September 21 confirming that they had discussed and agreed to withdraw the case in terms of s. 204 <sup>206</sup> of the Criminal Procedure Code.	January 2021/October 3 2022

206 204. Withdrawal of complaint: If a complainant, at any time before a final order is passed in a case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw it and shall thereupon acquit the accused.

### Some High Profile Cases Withdrawn by the Director of Public Prosecutions

Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Rigathi Gachagua	Deputy President of the Republic of Kenya	Gachagua and his associated companies had been charged with procurement offences and laundering of proceeds of crime between January 2015 and June 2019. The Serious Crimes Unit of the DCI leaked a report alleging that Gachagua had improperly obtained over Sh. 7.2 billion through supply contracts with 5 County governments. <sup>207</sup>	Incomplete investigations warranting withdrawal of the charges under section 87A of the criminal procedure code.	July 2021/ 9 November 2022
Joe Sang	Kenya Pipeline Managing Director	Allegations of corruption and loss of funds during construction of Sh. 1.9 billion Kisumu Oil Jetty project.	No evidence to support criminal charges.	2018/ December 2022
Ben Chumo	Former Kenya Power Managing Director	Failure to comply with procurement laws among other claims in the purchase of transformers worth Sh400 million.	Police failed to conduct further investigations to strengthen areas identified as weak, and the court had in August 2022 refused to allow amendment of the charges. The DPP claimed the DCI failed to respond to four letters sent to him between October 2022 and May 2023.	July 2018/ 12 October 2022

<sup>207</sup> <https://www.citizen.digital/news/22-companies-5-counties-dci-firms-up-ksh-12b-embezzlement-case-against-mp-rigathi-gachagua-349274>

### Some High Profile Cases Withdrawn by the Director of Public Prosecutions

Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Mike Sonko	Former Governor of Nairobi	Corruption and money laundering charges arising from tenders awarded during his tenure. Mr. Sonko was accused of embezzling funds by awarding dubious contracts. The money was allegedly wired back to his personal accounts on different dates. The other charges included money laundering, conflict of interest, abuse of office, acquisition of public funds and conspiracy to commit an economic crime.	The magistrate said the charge sheet was defective and from the 19 witnesses who testified, the evidence was not sufficient to place Mr. Sonko in his defence.	December 2019/ December 2022
Anthony Mwaura	Current Kenya Revenue Authority board Chair	Assets and money owned by his companies were frozen following reports that they were acquired using funds stolen from public coffers or diverted for individual benefit. Between April-May 2017, two firms owned by Mr. Mwaura are said to have wired Sh8.6 million to Mr. Sonko's bank accounts.	Asset Recovery Agency (ARA) have frozen the accounts of Hardi Enterprises and Toddy Civil Engineering.	2019
Joseph Karanja	Keroche Breweries Director	Sh14 billion tax dispute with the Kenya Revenue Authority.	Medical reports tabled in court by his lawyer James Orengo said Karanja was seriously sick and was admitted to Karen Hospital. The hospital later referred Karanja to the UK where he is currently being treated.	August 2020/April 2023
Fred Matiang'i	Former Interior Cabinet Secretary	The allegations were that Matiang'i and his lawyer, Danstan Omari, had conspired to commit a felony and also published false information.	Lack of evidence.	February 9 2023/ March 2023

### Some High Profile Cases Withdrawn by the Director of Public Prosecutions

Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Ali Korane	Former Garissa Governor	Suspicion of committing economic crimes as well as misappropriation of funds. Korane was alleged to have embezzled Ksh.233,506,000 allocated to the Garissa County government by the World Bank as a conditional grant for the Kenya Urban Support Programme (KUSP).	No public finances were ever lost as projects for which the funds in question were earmarked were actually completed.	2021/August 2023
Didmus Barasa	Kimilili MP	Accused of allegedly shooting Brian Khaemba's aide dead on August 9, 2022.	Lack of evidence (High Court, Bungoma).	August 2022/July 2023
Mary Wambui Mungai	Communications Authority of Kenya board chair	Sh2.2 billion tax evasion case. Ms. Mungai and her daughter faced eight counts of unlawfully omitting income tax returns for their company between 2014-2019.	Kenya Revenue Authority (KRA), Ms Mungai and her daughter Purity Njoki had concluded negotiations that commenced last October, prompting the DPP to withdraw the case.	/January 2023
Mary Wambui Mungai	Communications Authority of Kenya board chair	Possession of firearms and ammunition illegally.	Dropped by prosecutors.	/December 2022
Humphrey Kariuki	Businessman	Sh41 billion tax evasion case.	Prosecution by KRA was considered unlawful since it was not handled by the ODPP.	2019/May 2022
Samuel Arama	Nakuru Town West MP	Mr. Arama had been convicted alongside three other officers from the land registry with various counts of crime relating to fraudulent acquisition of land in Nakuru town.	The accused lodged an appeal before the high court on July 5, seeking to challenge the judgement and the subsequent conviction. Justice Gichohi in her judgement overturned the decision by the lower court to convict Arama after finding irregularities in the trial case.	March 2022/June 2023

Some High Profile Cases Withdrawn by the Director of Public Prosecutions				
Individual	Position and organisation	Charges	Reason for withdrawal of case	Date of filing/date of withdrawal
Lillian Omollo	Former Youth and Gender PS	12 charges of abuse of office and conspiracy to commit an economic crime.	The application to withdraw the suit was based on Section 87(a) of the Criminal Procedure Code after witnesses who testified failed to directly or indirectly link the former PS. According to court documents, the irregular payments were made long before the PS took the oath of office.	/July 2023
Mathew Lempurkel	Former Laikipia North MP	Incitement charges. The former lawmaker had denied that on July 17, 2021, during a television show aired on Maa TV made inciting remarks against a community residing in Laikipia county.	Senior Principal Magistrate Bernard Ochoi found out that the state failed to prove the charges against the accused and acquitted him under section 210 of the Criminal Procedure Code (CPC).	September 2021/ August 2022
Sarah Wairimu	Widow to late Dutch businessman Tob Cohen	Accused of murdering her husband, together with her co-accused Peter Karanja.	Justice Daniel Ogembo has allowed an application by the Director of Public Prosecution Noordin Haji to <u>withdraw the murder case</u> and refer it to a public inquest.	2019/January 2023

## Appendix IV – Summary of MDAs' Personnel Emoluments paid outside IFMIS<sup>208</sup>

MINISTRY/STATE DEPARTMENT	IPPD (Kshs.)	IFMIS (Kshs.)	VARIANCE/MANUAL (Kshs.)	REMARKS
The Executive Office of the President	2,296,167,429	2,296,167,429	-	
Nairobi Metropolitan Service	3,298,612,692	3,589,631,405	(291,018,713)	Payroll for July to August 2022 was processed and payments were made at Executive Office of the President following exchequer release from CRF. October 2022 payroll was processed at Executive Office of the President however payments were done at Nairobi City County Government. No disbursements to Executive Office of the President. November 2022 payroll processed and payments are done at Nairobi City County Government. December 2022 to date, payroll data moved from National Government back to Nairobi City County Government.
Office of the Deputy President	692,856,823	483,286,530	209,570,293	
Office of the Prime Cabinet Secretary	24,512,994	40,445,277	(15,932,283)	The variance is a result of officers' payment by vouchers during the setting up of the IPPD Infrastructure.
State Department for Interior and Citizen Services	73,116,129,101	74,815,671,410	(1,699,542,309)	No remarks given
State Department for Internal Security and National Administration	3,765,648,803	3,990,931,128	(225,282,325)	No remarks given
State Department for Correctional Services	22,462,570,409	22,463,663,683	(1,093,274)	The variance is a result of PE-related expenditures charged outside the IPPD.
State Department for Immigration and Citizen Services	1,112,074,260	1,161,290,367	(49,216,107)	No remarks given
Ministry of Devolution	234,887,766	234,887,766	-	

208 Source: Controller of Budget, Budget Implementation Review Report for FY 2022-2023

MINISTRY/STATE DEPARTMENT	IPPD (Kshs.)	IFMIS (Kshs.)	VARIANCE/MANUAL (Kshs.)	REMARKS
State Department for Development for the ASALs	183,708,273	202,015,593	(18,307,320)	The variance results from the Kenya Development Response to Displacement impact project which has its own personal Emoluments component.
Ministry of Defence	1,557,485,297	1,557,485,297	-	
Ministry of Foreign Affairs	1,414,786,445	1,414,786,445	-	
State Department for Foreign Affairs	1,414,786,445	1,414,786,445	-	
State Department for Vocational and Technical Training	6,921,774,505	6,921,774,505	-	
State Department for University Education and Research	232,944,562	238,067,557	(5,122,996)	Variance is a result of payments made by Vouchers.
State Department for Early Learning & Basic Education	3,689,345,442	3,689,345,442	-	
State Department for Post Training and Skills Development	55,570,852.35	55,570,852.35	-	
State Department for Implementation of Curriculum Reforms	22,285,651	5,330,461	16,955,190	No remarks given.
The National Treasury	3,108,901,115	3,243,518,092	(134,616,978)	The variance is a result of payment of arrears and baggage allowance paid outside payroll.
State Department for Economic Planning	436,705,465	421,607,045	15,098,420	The variance is a result of salaries paid to contractual employees.
Ministry of Health	13,391,217,871	13,391,217,871	-	
State Department of Roads	1,159,589,346	1,159,589,346	-	
State Department of Transport	174,922,291	174,922,291	-	
State Department for Shipping and Maritime.	104,198,932	107,883,442	(3,684,510)	The variance is due to baggage payments made through vouchers.
State Department for Housing and Urban Development	801,657,623	823,772,069	(22,114,446)	The variance constitutes gratuity and other PE items paid through a voucher.
The Judiciary	12,364,964,593	10,212,994,289	2,151,970,304	The variance is a result of O&M items paid through the payroll.

MINISTRY/STATE DEPARTMENT	IPPD (Kshs.)	IFMIS (Kshs.)	VARIANCE/MANUAL (Kshs.)	REMARKS
Ethics and Anti-Corruption Commission	2,321,743,698	2,321,743,698	-	
National Intelligence Service	-		-	
Office of the Director of Public Prosecutions	2,335,678,056	2,335,678,056	-	
Office of the Registrar of Political Parties	257,022,136	257,160,676	(138,540)	No remarks given.
Witness Protection Agency	337,996,383	337,996,383		
Kenya National Commission on Human Rights	295,791,563	295,791,563	-	
National Land Commission	953,088,182	953,081,769	6,412	Rounding error of the Payroll System Navision which we use.
Independent Electoral and Boundaries Commission	8,550,730,556	8,550,730,556	-	
Parliamentary Joint Services	2,113,106,865	2,435,973,667	(322,866,802)	The variance is a result of the Contribution by the employer to the private pension schemes and post-retirement medical scheme.
Parliamentary Service Commission	2,149,383,348	2,912,243,477	(762,860,129)	The variance is due to payment for contractual employees, gratuity, and employer contribution to pension schemes.
National Assembly	6,401,145,241		6,401,145,241	
Judicial Service Commission	203,260,110	203,260,110	-	
The Commission on Revenue Allocation	181,135,813	181,135,813		
Public Service Commission	1,670,938,394	1,778,550,007	(107,611,613)	The variance was occasioned by the payment of salary advance and salary to staff through direct voucher, not through the IPPD System.
Salaries and Remuneration Commission	275,445,312	275,445,312	-	
Teachers Service Commission	278,279,759,398	279,840,239,684	(1,560,480,286)	The variance is a result of the Contribution by the employer to the National Security fund and staff pension schemes.



MINISTRY/STATE DEPARTMENT	IPPD (Kshs.)	IFMIS (Kshs.)	VARIANCE/MANUAL (Kshs.)	REMARKS
National Police Service Commission	451,469,456	451,469,456	-	
National Police Service	78,444,235,710	19,973,722,773	58,470,512,936	July 2022 to March 2023 payrolls are not in IFMIS since they were processed under the vote 1021. Variances for April to June 2023 are due to Payment of Casual Workers and Payments outside payroll due to officers who died while in service for days worked after the monthly payroll is closed.
Auditor General	4,079,661,387	4,079,661,387	-	
Office of the Controller of Budget	338,028,192	343,078,098	(5,049,906)	The variance is due to the payment of salaries off-IPPD to officers who joined the institution. Further, the amount includes payment to Casuals and Payment of Top-Up Allowances to Security Officers at OCOB outside the IPPD System.
The Commission on Administrative Justice	363,605,729	364,126,981	(521,252)	The variance is a result of salary advances to Keith and Salome.
Kenya Law Reform Commission	138,271,884	138,271,884	-	
National Gender and Equality	245,438,930	245,438,930	-	
Independent Policing Oversight Authority	519,828,852	519,828,852	-	
<b>Total</b>	<b>561,129,252,525</b>	<b>498,619,527,044</b>	<b>62,005,720,412</b>	





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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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