

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
(CONSTITUTION & HUMAN RIGHTS DIVISION)
PETITION NO. E216 OF 2025

IN THE MATTER OF: THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA

IN THE MATTER OF: THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.

IN THE MATTER OF: THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF THE DEBTS AMOUNTING TO KSHS. 6,950,163,132,328 INCURRED BY THE RESPONDENTS IN THE TEN-YEAR PERIOD SPANNING THE FINANCIAL YEARS 2014/2015 TO 2023/2024, INCLUDING THE EUROBONDS, WHICH THE RESPONDENTS UNCONSTITUTIONALLY AND UNLAWFULLY BORROWED YET THEY WERE NOT IN THE NATIONAL BUDGETS (APPROPRIATION ACTS) APPROVED BY PARLIAMENT AND SIGNED INTO LAW BY THE PRESIDENT, AND THEY WERE NOT TIED TO ANY DEVELOPMENT PROJECTS.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE DEBT CEILING SET BY PARLIAMENT BASED ON THE GROSS DOMESTIC PRODUCT (GDP) AND NOT ON THE REVENUES RAISED BY THE GOVERNMENT.

IN THE MATTER OF: THE VALIDITY AND ENFORCEABILITY OF SOVEREIGN LOANS AND GUARANTEES WHICH LACK A PROPER AUTHORIZATION AND ARE TAINTED WITH CORRUPTION.

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF BURDENING CURRENT AND FUTURE GENERATIONS WITH THE REPAYMENT OF THE STOLEN BORROWED PUBLIC MONEY.

IN THE MATTER OF: THE PRINCIPLES OF UNJUST ENRICHMENT AND THE PERSONAL LIABILITY OF PUBLIC OFFICERS RESPONSIBLE FOR THE MISSING/STOLEN EUROBOND PROCEEDS AND THE NEED TO RECLAIM THE STOLEN MONEY.

IN THE MATTER OF: SUING THE PRESIDENT OF KENYA UNDER ARTICLE 143(4) OF THE CONSTITUTION.

IN THE MATTER OF: THE DOCTRINES OF ODIIOUS DEBT, ILLEGALITY, OSTENSIBLE AUTHORITY, PUBLIC POLICY, RESTITUTIONARY REMEDIES, AND LEGITIMATE EXPECTATION.

BETWEEN

OKIYA OMTATAH OKOITI 1ST PETITIONER

NYAKINA WYCLIFE GISEBE	2 ND PETITIONER
ELIUD KARANJA MATINDI	3 RD PETITIONER
BERNARD MUCHIRI MUCHERE	4 TH PETITIONER
DR. MAGARE-GIKENYI BENJAMIN	5 TH PETITIONER
KELVIN SAITOTI NAIKUNI	6 TH PETITIONER
OLIVE NAISINKEI AMBROSE	7 TH PETITIONER
DR. DANCAN OTIENO ONYANGO	8 TH PETITIONER
NAOMI NYAKERARIO MISATI	9 TH PETITIONER

VERSUS

H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA	1 ST RESPONDENT
THE NATIONAL EXECUTIVE	2 ND RESPONDENT
THE CABINET SECRETARY FOR THE NATIONAL TREASURY.....	3 RD RESPONDENT
THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY.....	4 TH RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 TH RESPONDENT
THE HON. ATTORNEY GENERAL	6 TH RESPONDENT
THE CONTROLLER OF BUDGET	7 TH RESPONDENT
THE AUDITOR GENERAL	8 TH RESPONDENT
THE NATIONAL ASSEMBLY	9 TH RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO	10 TH RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO	11 TH RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI	12 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH	13 TH RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE	14 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI	15 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU	16 TH RESPONDENT
THE CONTROLLER OF BUDGET MARGARET NYAKANG'O	17 TH RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU	18 TH RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA	19 TH RESPONDENT
THE ETHICS AND ANTI-CORRUPTION	20 TH RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO	21 ST RESPONDENT
INTERNATIONAL MONETARY FUND (IMF)	22 ND RESPONDENT

AND

THE SENATE OF KENYA	1 ST INTERESTED PARTY
LAW SOCIETY OF KENYA	2 ND INTERESTED PARTY
KATIBA INSTITUTE	3 RD INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION	4 TH INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS	5 TH INTERESTED PARTY
TRANSPARENCY INTERNATIONAL	6 TH INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)	7 TH INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA)	8 TH INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN)	9 TH INTERESTED PARTY

NATIONAL TAXPAYERS ASSOCIATION (NTA) 10TH INTERESTED PARTY
COMMITTEE FOR THE ABOLITION OF
ILLEGITIMATE DEBTS (CADTM) 11TH INTERESTED PARTY

PETITION

TO: The High Court of Kenya

THE HUMBLE PETITION OF OKIYA OMTATAH OKOITI, NYAKINA WYCLIFE GISEBE, ELIUD KARANJA MATINDI, BERNARD MUCHIRI MUCHERE, DR. MAGARE-GIKENYI BENJAMIN, KELVIN SAITOTI NAIKUNI, OLIVE NAISINKEI AMBROSE, DR. DANCAN OTIENO ONYANGO, AND NAOMI NYAKERARIO MISATI, BEING ADULT CITIZENS OF KENYA RESIDENT IN NAIROBI CITY COUNTY, WHOSE ADDRESS OF SERVICE FOR PURPOSES OF THIS PETITION IS CARE OF 5TH FLOOR, WING B, TAJ TOWER, UPPER HILL ROAD, UPPER HILL, P. O. BOX 60286-00200, NAIROBI, IS AS FOLLOWS:

A. THE PETITIONERS

1. The 1st, 2nd, 4th, 5th, 6th, 7th, 8th and 9th petitioners, who are residents of Nairobi City County, and the 3rd Petitioner, who is currently resident in POOLE in the local authority area of Bournemouth, Christchurch and Poole in the United Kingdom of Great Britain and Northern Ireland, are law-abiding citizens of Kenya, public-spirited individuals, and human rights defenders. Their address of service for purposes of this Petition is care of 5TH FLOOR, WING B, TAJ TOWER, UPPER HILL ROAD, UPPER HILL P. O. BOX 60286-00200, **NAIROBI**. Their respective e-mail addresses for electronic service in these proceedings are:
 - (a) OKIYA OMTATAH OKOITI – okiyaomtatah@gmail.com
 - (b) NYAKINA WYCLIFE GISEBE – wyclife2002@yahoo.com
 - (c) ELIUD KARANJA MATINDI – Bavance13@gmail.com
 - (d) BERNARD MUCHIRI MUCHERE – muchereb@gmail.com
 - (e) DR. MAGARE-GIKENYI – magaregikenyi@yahoo.com
 - (f) KELVIN SAITOTI NAIKUNI – kelvinsaitotinaikuni@gmail.com

- (g) OLIVE NAISINKEI AMBROSE – ambroseolive3@gmail.com
- (h) DR. DANCAN OTIENO ONYANGO – dancanthomas@gmail.com
- (i) NAOMI NYAKERARIO MISATI – misatinaomi67@gmail.com

B. THE RESPONDENTS AND INTERESTED PARTIES

2. The 1st Respondent – **H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA** – is the 4th President of the Republic Kenya under Article 131 of the Constitution of Kenya, 2010. He is sued herein as the former Chief Executive Officer of the Republic (i.e., the Head of State and Government), who exercised the executive authority of the Republic and, among others, was supposed to but failed to respect, uphold and safeguard the Constitution; safeguard the sovereignty of the Republic; and ensure the protection of human rights and fundamental freedoms and the rule of law. The 4th President of Kenya has been sued herein for being in charge of a regime which misused its powers by borrowing and misusing huge sums of public money outside the law, thereby burdening Kenyan taxpayers with odious debts, including the Eurobond loans. His regime unlawfully raised the public debt stock from approximately Ksh. 2.370 trillion (which was accumulated over fifty (50) years since Independence) by 30th June of 2014 to Ksh. 8.579 trillion (accumulation of Kshs. 6.208 trillion in eight **(8)** years) by 30th June 2022, contrary to express provisions of the Constitution of Kenya, 2010, and the Public Finance Management Act, Cap. 412A. The 4th President's address of service for purposes of this Petition is care of the **OFFICE OF THE 4TH PRESIDENT OF THE REPUBLIC OF KENYA, DENIS PRITT ROAD, P. O. BOX 67498-00200, NAIROBI**. Phone: +254 111 050 620. Email: uhuru@uki.africa.
3. The 2nd Respondent – **THE NATIONAL EXECUTIVE** – has been sued for: (a) corruptly borrowing further Eurobond loans of **USD 1,458,740,000** (equivalent to **Ksh. 208,324,847,510**) purportedly to buy back the Eurobond notes due in June 2024, yet the (odious) public debt was already catered for by the Constitution as a direct charge on the Consolidated Fund; (b) corruptly borrowing **Kshs. 2,250,325,905,200.00** over and above the **Kshs. 884,378,626,081.00** loans that were authorized in the Appropriation Acts of 2022, 2023 and 2024 (borrowings up to 31/11/2024) (or the

budget for Financial Years 2022/2023, 2023/2024 & 2024/2025); and corruptly borrowing an ‘On-lent loan’ of Kshs. 50,000,000,000 from IMF. Pursuant to **Articles 2(6), 143(4)** of the Constitution of Kenya, 2010, as read together with **Article 30** of the **United Nations Convention Against Corruption (UNCAC)**, which Kenya ratified on December 9, 2003, a Kenyan President can be sued herein. The National Executive’s address of service for purposes of this Petition is care of the **Office of the President, Harambee House, Harambee Avenue, NAIROBI**. Email: feedback@president.go.ke

4. The 3rd, ~~and~~ 4th, and 5th Respondents – **THE CABINET SECRETARY FOR THE NATIONAL TREASURY, THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY, AND THE DIRECTOR GENERAL, PUBLIC DEBT MANAGEMENT OFFICE** – are public offices and officers in charge of the National Treasury which is responsible for fiscal policy, including formulating financial and economic policies and overseeing effective coordination of Government financial operations. The three are NOT authorized by law to raise and receive loans on behalf of the national government entities without the authority of an Appropriation Act (i.e., outside the national budget approved by Parliament and signed into law by the President pursuant to Article 109(1) of the Constitution). They have been sued in this petition for borrowing loans, including the Eurobonds, which were not authorized in the national budget. They have also been sued for handling the proceeds of the Eurobonds in the Financial Years 2014/2015, 2017/2018, 2018/2019, 2020/2021, and 2023/2024 contrary to the Constitution of Kenya 2010, the Public Finance Management Act 2012, the Fair Administrative Action Act 2015, the Leadership and Integrity Act 2012, and the Public Officer Ethics Act 2003, thus enabling the concealment of the theft of the Eurobond proceeds in foreign financial institutions and a further borrowing of the Eurobond in 2024 to repay the earlier one. The same applies to the other loans which they borrowed outside the law. Their address of service for purposes of this petition is the care of **THE NATIONAL TREASURY, TREASURY BUILDING, HARAMBEE AVENUE, P. O. BOX 30007 – 00100, NAIROBI**. Phone: +254 20 2252299. Email: cs@treasury.go.ke, ps@treasury.go.ke

5. The 6th Respondent – **THE HON. ATTORNEY GENERAL** – has been sued in this Petition as the legal adviser and representative of the Government of Kenya, who shall promote, protect, and uphold the rule of law and defend the public interest, within the meaning of Article 156 of the Constitution and, in particular, approves every loan raised by the government entities. The Attorney General is the proper and competent defendant in any case challenging the unconstitutionality of any actions or omissions of the national government. The AG has been sued for failing to advise the President on the futility of not subjecting the **Public Finance Management (Amendment) Act 2014** to the scrutiny and approval of the Senate; of creating extra exemptions allowing loan proceeds not to be paid into the Consolidate Fund, contrary to Article 206(1) of the Constitution, and for not advising the national government on odious loans. Its address of service for the purposes of this Petition is the care of **THE HON. ATTORNEY GENERAL'S CHAMBERS, 7TH FLOOR, SHERIA HOUSE, HARAMBEE AVENUE, P. O. BOX 40112, NAIROBI**. Email: communications@ag.go.ke, slo@ag.go.ke, cmwami12@gmail.com, bittaemmanuel@gmail.com
6. The 7th Respondent – **THE CONTROLLER OF BUDGET** – has been sued for failing in its responsibility to oversee the implementation of the budget contrary to Articles 206(3) & (4) and 228(4) & (5) of the Constitution, including by authorizing withdrawals from the Consolidated Fund to repay odious loans which the Executive borrowed without the approval of Parliament and the authority of the President vide an Appropriation Act. Its address of service for this petition is care of **THE OFFICE OF THE CONTROLLER OF BUDGET, 12TH FLOOR, BIMA HOUSE, HARAMBEE AVENUE, P. O. BOX 35616-00100, NAIROBI**. Phone: 0709 910 000. Email: cob@cob.go.ke, info@cob.go.ke
7. The 8th Respondent – **THE AUDITOR GENERAL** – has been sued for failing in its responsibility under Article 229(4)(g) & (6) to audit and confirm whether the Eurobond loans and subsequent proceeds were borrowed and applied lawfully and effectively. The same applies to the other odious debts in issue herein. Its address of service for this petition is care of the **OFFICE OF THE AUDITOR GENERAL, 3RD FLOOR, ANNIVERSARY**

TOWERS, UNIVERSITY WAY, P. O. BOX 30084-00100, NAIROBI. PHONE: +254 20 3214000. EMAIL: info@oagkenya.go.ke

8. The 9th Respondent – **THE NATIONAL ASSEMBLY** – has been sued for acting contrary to Articles 2(4), 3(1), 96(2) and 110 of the Constitution by unilaterally amending the Public Finance Management Act (PFMA) vide the Public Finance Management (Amendment) Act 2014, without involving the Senate, and for contravening **Article 206(1)** of the Constitution by introducing extra exemptions from the requirement that all money raised by the national government shall be paid into the Consolidated Fund. The National Assembly is also sued for dereliction of duty by its failure to debate and consider and take appropriate action on the Auditor General’s inadequate and misleading reports on public debt pursuant to **Article 229(8)** of the Constitution, including on the use of the Eurobond proceeds and other odious debts. Its address of Service is care of **5TH FLOOR, PROTECTION HOUSE, PARLIAMENT ROAD, NAIROBI**. Email: sherrifsam@gmail.com, nationalassembly.litigation@gmail.com.
9. The 10th to 15th Respondents – **FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO, FORMER AUDITOR GENERAL EDWARD OUKO, FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI, FORMER TREASURY CABINET SECRETARY HENRY ROTICH, FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE, AND FORMER TREASURY CABINET SECRETARY UKUR YATANI KANACHO** – are former (and serving) State officers and public officials who failed in their responsibilities to protect public money and ended up aiding and abetting the unlawful and irregular procurement of odious loans, including Eurobonds, and/or the theft of the loan proceeds. They will be served by substituted service through the Press.
10. The 16th to 18th Respondents – **FORMER TREASURY CS and FORMER CBK GOVERNOR NJUGUNA NDUNGU, THE CONTROLLER OF BUDGET MARGARET NYAKANG’O, and THE AUDITOR GENERAL NANCY GATHUNGU** – have been sued for colluding and allowing the recent borrowing of **USD 1,458,740,000** (equivalent to **Kshs. 208,324,847,510**) to ostensibly repay the Eurobond loan outside the law, to the extent

that Parliament and the President never approved the borrowing through an Appropriation Act; the funds were not tied to any development project; and public debts are a direct charge to the Consolidated Fund. **Prof. Ndungu** is also sued as the then substantive Governor of the Central Bank who colluded with the scammers to facilitate the theft of the first Eurobond proceeds worth USD2.75 billion by unconstitutionally opening two offshore accounts for the Central Bank of Kenya in JP Morgan Chase and Citibank, New York. They will be served as follows:

(a) **MS. MARGARET NYANG'ATE NYAKANG'O**

THE CONTROLLER OF BUDGET,
HEADQUARTERS,
12TH FLOOR, BIMA HOUSE,
HARAMBEE AVENUE,
NAIROBI.

Tel: +254202211068, +254709910000, +254716274922

Email: cob@cob.go.ke.

(b) **MS. NANCY GATHUNGU**

THE AUDITOR GENERAL
OFFICE OF THE AUDITOR GENERAL,
3RD FLOOR, ANNIVERSARY TOWERS,
UNIVERSITY WAY,
P. O. BOX 30084-00100,
NAIROBI.

PHONE: +254 20 3214000.

EMAIL: info@oagkenya.go.ke

(c) **PROF. NJUGUNA NDUNGU**

Phone: 072 8900 059

11. The 19th Respondent – **THE GOVERNOR OF THE CENTRAL BANK OF KENYA** – has been sued for willfully and deliberately, in collusion with the Cabinet Secretary for the National Treasury, acting contrary to the Constitution, the PFMA, and CBK Act, by opening a Central Bank of Kenya account in JP Morgan Chase and Citibank, New York. The two holding accounts were fraudulently used to intercept the USD 2.75 Eurobond loan proceeds and to intentionally bypass the controls set in the Constitution to safeguard public money, making it possible to distribute the Eurobond proceeds offshore to scammers. Further, the Central Bank cannot account for **Kshs6,164,439,173,574**, which is the difference between the Central Bank's records of outstanding debt and those of the National Treasury. The difference points to the fact that the Central Bank is incurring debt, which is not recorded by the National Treasury. The CBK Governor's address of service for purposes of this petition, will be care of **THE CENTRAL BANK OF KENYA, CENTRAL BANK OF KENYA BUILDING, P. O. BOX 60000 – 00200, NAIROBI**. Phone: +254202860000. Email: comms@centralbank.go.ke
12. The 20th Respondent – **THE ETHICS AND ANTI-CORRUPTION COMMISSION** – has been sued for failing to investigate the Eurobond loans fraud amounting to **USD 2,000,000,000, USD 1,000,000,000, USD 3,100,000,000, and USED 1,000,000,000**. The loans were unlawfully and fraudulently borrowed, respectively, in the financial years 2014/2015, 2017/2018, 2018/2019 and 2020/2021. The Eurobond is **NOT** among the cases reported to be under investigation by the Commission in its reports titled, *'Report of Activities and Financial Statements for the Financial'*, for the financial years 2018/2019, 2019/2020/ 2021/2022, 2023/2024. Its address of service for this petition is care of **THE ETHICS AND ANTI-CORRUPTION COMMISSION, INTEGRITY CENTRE JAKAYA KIKWETE/VALLEY ROAD P.O. BOX 61130 - 00200, NAIROBI** Tel: (020) 4997000 Mobile: 0709 781000; 0730 997000 Email: eacc@integrity.go.ke
13. The 21st Respondent – **FORMER EACC CEO/SECRETARY HALAKHE D. WAQO** – is a former Secretary/Chief Executive Officer (CEO) of the Ethics and Anti-Corruption Commission. He has been sued for willfully and deliberately aiding and abetting the Eurobond loan fraud by issuing the fraudulent and misleading Press Release dated

December 4th 2015, claiming that the EACC was investigating the matter when it was not doing so. His address of service for purposes of this petition is via **Phone No. 0733778208**.

14. The 22nd Respondent – **THE INTERNATIONAL MONETARY FUND (IMF)** – is an entity which oversees the stability of the world's monetary system by advancing credit facilities to member States by providing, among others, **Extended Fund Facility (EFF)** and **Extended Credit Facility (ECF)**. It has been sued herein for violating Kenyan laws on borrowing by advancing ‘**On-lent loan**’ whereby redemptions were rolledover in 2023/2024 and 2024/2025 of **Kshs. 10,000,000,000** for each financial year, and forward budgeted (redemption rollover) for 2025/2026, 2026/2027 & 2027/2028 of Kshs. 10,000,000,000 for each financial year, aggregating to **Kshs. 50,000,000,000**. The ‘**On-lent loan**’ was hidden under the disbursements from the **General Resource Account (GRA) of Special Drawing Rights (SDRs) 538,310,000** of the Fund. Its address of service for purposes of this petition is care of **12TH FLOOR, DELTA CENTRE BUILDING, MENENGAI ROAD, UPPER HILL, NAIROBI**. Phone: +254-20-2934064. Email: COdwogi@imf.org

15. The 1st to 11th Interested Parties – **THE SENATE OF KENYA, LAW SOCIETY OF KENYA, KATIBA INSTITUTE, KENYA HUMAN RIGHTS COMMISSION, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, TRANSPARENCY INTERNATIONAL, THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA), INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA), NATIONAL TAXPAYERS ASSOCIATION (NTA), THE KENYA DEBT ABOLITION NETWORK (KDAN) and COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM)** – have been joined herein as entities that have an identifiable stake or legal interest or duty in these proceedings pursuant to *Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.

(a) **THE SENATE:** Senate.litigation@gmail.com, wangechithanji@gmail.com

(b) **LAW SOCIETY OF KENYA:** lsk@lsk.or.ke

- (c) KATIBA INSTITUTE: info@katibainstitute.org
- (d) KENYA HUMAN RIGHTS COMMISSION: admin@khrc.or.ke
- (e) KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, haki@knchr.org
- (f) TRANSPARENCY INTERNATIONAL, transparency@tikenya.org
- (g) THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA): info@tisa.or.ke
- (h) INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA): info@icj-kenya.org
- (i) THE KENYA DEBT ABOLITION NETWORK (KDAN):
kenyadebtabolitionnetwork@gmail.com
- (j) National Taxpayers Association (NTA): admin@nta.or.ke
- (k) COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM):
info@cadtm.org

3. SUMMARY OF THE PETITIONERS' CASE

16. The facts supporting the petition are divided into the following three parts:

- (i) Overview.
- (ii) The USD 7,100,000,000 Odious Eurobond Debt borrowed in the financial years 2014/2015, 2017/2018, 2018/2019, and 2020/2021.
- (iii) Other concealed odious borrowings from the financial years 2014/2015 to 2024/2025 (i.e., up to 30th November 2024) amounting to **Kshs. 6,950,163,132,328** (as demonstrated in **Table 10** elsewhere below).

17. The Petitioners are aggrieved that a huge component of Kenya's public debt, including the Eurobond loans, is odious because the Constitution, the Public Finance Management Act 2012, the Central Bank of Kenya Act, the Fair Administrative Action Act 2015, the Leadership and Integrity Act 2012, and the Public Officer Ethics Act 2003, were willfully violated by the respondents in the approval, borrowing, and/or handling of the money borrowed in the name of the Republic of Kenya. The loans were borrowed by the Executive without the mandatory prerequisite approval of Parliament and authorization by the President vide Appropriation Acts (i.e., without being included in the national budgets approved by Parliament and assented into law by the President).
18. The proceeds of more than two thirds of the impugned loans, including of the Eurobonds, were fraudulently banked in unconstitutionally and unlawfully established offshore bank accounts and were utilized contrary to express provisions of **Articles 206, 221(6) and 228(4, 5, & 6)** of the Constitution, which required the appropriation of the funds by Parliament and supervision of their use by the Controller of Budget. These were deliberate actions to make these loans and their proceeds evade the public oversight and accountability mechanisms of institutions established in the Constitution.
19. -According to the petitioners, odious debts, including the Eurobonds, amounting to Kshs. **6,950,163,132,328** were unlawfully and unconstitutionally incurred by the Respondents in the period spanning the financial years 2014/2015 to 2024/2025(i.e., up to 30th November 2024).
20. The petitioners reiterate that these debts were both unconstitutional and unlawful and, therefore, odious, because the respondents borrowed the loans, yet they were not in the Appropriation Acts (the national budgets) of the respective financial years approved by Parliament and signed into law by the President, and they were not tied to any public development projects.
21. The petitioners are aggrieved that the respondents has accumulated astronomical odious debts resulting into the huge debt repayment costs (including amounts used to

unconstitutionally repay the first Eurobond loan that fell due on 13th June 2024). This falling due of the Eurobond loan was fraudulently utilized by the Executive to yet again, go back to the bond market in February 2024, and unlawfully and unconstitutionally borrow a further Eurobond loan of **USD 1,458,740,000** (equivalent then to **Ksh.208,324,847,510**) ostensibly to foot a cost (repay the loan) that was a direct charge on the Consolidated fund pursuant to **Article 214(1)** of the Constitution.

22. The petitioners are also aggrieved that the government deliberately borrowed huge sums of money, both on the domestic and on international markets, in violation of both the Constitution, the Public Finance Management Act (PFMA), and the Regulations thereunder.

23. There is no evidence that proceeds of these impugned loans were used for the common good. In particular, they were not used for any development projects as required by law. **Section 15(2)(c) of PFMA** provides that, “*over the medium term, the national government’s borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure*”, where **Section 2(1) of PFMA** states that “*‘development expenditure’ means the expenditure for the creation or renewal of assets.*”

24. The petitioners are inviting this Honourable Court to intervene and declare the impugned loans, including the Eurobonds, to be fraud schemes that were used to steal colossal amounts of money from public coffers. Consequently, pursuant to **Article 226(5)** of the Constitution; the petitioners pray to this Honourable Court to hold personally liable for the loss of any money raised through the impugned loans, including the Eurobonds, and order them to make good the loss.

25. The Petitioners contention is that the respondents are bound by the Constitution and laws of Kenya and have no capacity to act beyond or outside the law. They must uphold the provisions and the spirit of the Constitution and statutes. **Article 226(5)** of the Constitution categorically states:

(5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.

4. THE PETITIONERS' LOCUS STANDI AND THE JURISDICTION OF THE HONOURABLE COURT

26. Under Article 3(1) of the Constitution of Kenya, the petitioners have an obligation to respect uphold and defend the constitution.

27. Under Article 22(2) of the Constitution of Kenya the petitioners may institute court proceedings in the public interest in defence of the rights and fundamental freedoms in the Bill of Rights.

28. Under Article 258(2) of the Constitution of Kenya the petitioners may institute court proceedings in the public interest in defence of the Constitution.

29. Under Article 165 (3)(d)(1)&(ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any questions respecting the interpretation of the Constitution, including the determination of the question involving declaration of constitutionality of an Act of Parliament and whether any law is inconsistent with or in contravention of the Constitution in respect to those matters, and whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution. Further and in particular:

29.1. The President of Kenya can be sued for corruption pursuant to **Articles 2(6) and 143(4)** of the Constitution of Kenya, 2010, as read together with **Article 30** of the **United Nations Convention Against Corruption (UNCAC)**, which Kenya was the first country to ratify on December 9, 2003.

29.2. The International Monetary Fund (IMF) can be sued in cases where its activities have caused harm to local communities, as herein. In *Jam et al. V. International Finance Corp.* (Decided February 27, 2019), the US Supreme Court ruled 7-1 in favor of a group of Indian farmers who sued the IMF and the World Bank. The farmers alleged that a power plant built with financing from the International Finance Corporation (IFC), the private sector arm of the World Bank, harmed their livelihoods.

5. FACTS RELIED UPON

(i) Overview

30. **Article 220(1)** of the Constitution requires the budgets of the national and county governments to contain— (a) **estimates of revenue and expenditure**, differentiating between **recurrent and development expenditure**; (b) **proposals for financing any anticipated deficit for the period to which they apply**; and (c) **proposals regarding borrowing and other forms of public liability that will increase public debt during the following year**.

31. The National government borrows for only two purposes as provided under section 15(2)(c) & 15(3) of the PFMA 2012 i.e., in the **medium-term to finance development expenditure** and in the **short-term for management of cash flow**, whereby:

(i) Under **Section 2(1)** of the PFM Act 2012, development expenditure “means the expenditure for **the creation or renewal of assets**”.

(ii) Under **Section 2(1)** of the PFM Act 2012, “**short-term borrowing**” means “borrowing by a government by way of **Treasury Bills, bank-overdraft or other instruments** to cover **temporary cash shortfalls** and is **repayable within twelve months**”.

32. **Odious debt** is a legal doctrine that refers to debt that is incurred by a government without the consent of the people and for its own benefit. Being a republic or a government of law, in Kenya, the consent of the people is codified in the law (mainly in the Constitution and the PFMA for financial matters).
33. By law, in most countries, individuals do not have to repay money that others fraudulently borrow in their name. Similarly, a corporation is not liable for contracts that the chief executive officer enters without the authority to bind the firm.
34. The reason these 'odious' debts cannot be considered to encumber the territory of the State, is that such debts do not fulfill one of the conditions that determines the legality of the debts of the State, that is: the debts of the State must be incurred and the funds from them employed for the needs and in the interest of the people, as contained in the national budget (the annual Appropriation Act).
35. The doctrine of odious debt originated in 1898 after the Spanish-American War. During peace negotiations, the United States argued that neither it nor Cuba should be held responsible for debt the colonial rulers had incurred without the consent of the Cuban people and not used for their benefit. Although Spain never accepted the validity of this argument, the United States implicitly prevailed, and Spain took responsibility for the Cuban debt under the Paris peace treaty. Soon after, legal scholars elaborated a similar doctrine. Since then, numerous regimes have evinced odiousness. A recent example is the declaration by the Constitutional Court of Mozambique that three international loans were null and void because they did NOT comply with both the Mozambican budget laws and the Constitution.¹
36. Kenya is carrying debt incurred by rulers who borrowed without the people's consent in the national budget (annual Appropriation Act) and used the funds for personal gain. A

¹ <https://www.afronomicslaw.org/print/pdf/node/1206> accessed on 27.11.22

new approach is warranted to prevent dictators from running up debts, looting their countries, and passing on their debts to the citizens.

37. The petitioners reiterate that **Article 226(5)** of the Constitution underpins the above by providing:

(5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.

(ii) The USD 7,100,000,000 Odious Eurobond Debt

38. Contrary to the Constitution and the Public Finance Management Act (PFMA), to the extent that the loans were not in the national budget approved by Parliament and assented to by the President, were not tied to any capital projects, and were without a repayment plan, Kenya unconstitutionally and unlawfully entered the International Sovereign Bond (popularly known as the Eurobond) market in June 2014, fraudulently issuing its first Eurobond.

39. Upon opening this new frontier of siphoning taxpayer money out of public coffers, more Eurobond loans were issued aggregating to USD 7,100,000,000, which, as of the financial year ending 30th June 2021, was equivalent to Ksh. 923,000,000,000 (at the October 2024 exchange rate of Ksh. 130 per USD). According to the **Summary Statement of Public Debt for 2022/2023 FY in Foreign Currency**, which is published by the National Treasury's Public Debt Management Office, the figures are as follows:

TABLE 1

Extracted from Statement of Public Debt for 2022/2023 by Public Debt Management Office

Creditor ²	Purpose	Agreement Date	Amount (USD)	Repayment terms
Citigroup Global Markets Deutschland AG	International Sovereign Bond 2014011	14/05/2014	2,000,000,000	10yr Bond. Repayable on 24.06.2024.

² This column was generated

Citigroup Global Markets Deutschland AG	International Sovereign Bond due 2028 - 2018003	28/02/2019	1,000,000, 000	Repayable 28th February 2028
Citigroup Global Markets Deutschland AG	International Sovereign Bond due 2048 - 2018004	20/02/2018	1,000,000, 000	Repayable 28th February 2048
Citigroup Global Markets Europe AG	International Sovereign Bond 2019 Due 2027 - 2019007	22/05/2019	900,000, 000	Repayable in three equal instalments commencing 22.05.2025 and ending 2027
Citigroup Global Markets Europe AG	International Sovereign Bond 2019 Due 2032 - 2019008	22/05/2019	1,200,000,000	Repayable in three equal instalments commencing 22.05.2030 and ending 22.05.2032.
Citigroup Global Markets Europe AG	International Sovereign Bond	14/06/2021	1,000,000,000	Repayable 23/01/2034
Total US\$			7,100,000,000 (Ksh.923,000,000,000)	

40. Under the law, the government is allowed to borrow loans for only two purposes: financing development expenditure, and management of cash flow. Borrowings are validly controlled under **Article 220(1)** of the Constitution and **sections 15(2)(c), 15(3) & 50(3)** of the Public Finance Management Act (PFMA), which are enumerated here below:

(a) **Article 220(1)** of the Constitution provides that:

(1) Budgets of the national and county governments shall contain—

(a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure.

(b) proposals for financing any anticipated deficit for the period to which they apply; and

(c) proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.

(b) **Section 15(2)(c)** of the PFMA provides: *“over the medium term, the national government’s borrowings shall be used only for financing development expenditure and not for recurrent expenditure.”*

(c) Under **Section 2(1)** of the PFMA, *development expenditure* “means the expenditure for the creation or renewal of assets”.

(d) **Section 15(3)** of PFMA provides: *for the purposes of subsection (2)(c); short-term borrowing shall be restricted to the management of cash flows...*

(e) **Section 2(1)** of the PFMA provides: *“short-term borrowing” means “borrowing by a government by way of **Treasury Bills, bank-overdraft** or other instruments to cover temporary cash shortfalls and is **repayable within twelve months.**”*

(f) **Section 50(3)** of PFMA provides; *“the national government may borrow **money only for the budget as approved by Parliament** and the allocations for loans approved by Parliament”.*

41. In the development expenditure budget for the financial years 2014/2015, 2017/2018, 2018/2019 and 2020/2021, external loans and grants were captured in the budget and the loans allocations approved by Parliament. However, the Eurobonds were not included in the budget. Therefore, Parliament never approved the Eurobond loans aggregating to Kshs. USD 7,100,000,000 equivalent to Ksh. 923,000,000,000 (@Ksh. 130 per 1 USD).

42. Analysis of the development expenditure in respect of the financial years quoted in **paragraph 14L** above has established that the expenditure was fully financed by the budgeted tax revenues and external loans and grants. Hence, there were no development projects to be financed by proceeds from Eurobond. The table below provides evidence that the Eurobonds were not borrowed to finance any budgeted development expenditure as required under **Section 15(2)(c)** of the PFMA.

TABLE 2

Extracted from Development Expenditure Budget and Statement of Public Debt

Financial Year	Gross Development Expenditure (KES)	Financed by		Eurobond borrowed outside budget not earmarked for any Project (KES)
		Tax Revenues (KES)	External Loans (KES)	
2014/2015	494,892,120,733	358,507,118,798	136,385,001,935	175,900,000,000

2017/2018	642,897,327,706	438,630,011,332	204,267,316,374.	207,400,000,000
2018/2019	677,225,634,213	430,408,353,462	246,817,280,751	214,179,000,000
2020/2021	633,308,563,243	382,969,235,979	250,339,327,264	113,000,000,000

Using the rate of exchange applicable at the time the Eurobond was purportedly received.

43. With reference to **Table 2** above, analysis of the 2014/2015 Development Expenditure Budget (i.e., the Appropriation Act, 2014) shows that pursuant to **Article 220(1)(a)** of the Constitution, the national government, Parliament, and the Judiciary prepared 2014/2015 budget that contained gross development expenditure estimates aggregated to **Kshs. 494,892,120,733**. The expenditure estimates were financed by **Kshs. 307,090,234,705** tax revenues, **Kshs. 136,385,001,935** external loans, and **Kshs. 51,416,884,093** external grants (totalling to **Kshs. 187,801,886,028** in loans and grants). In accordance with **Article 220(1)(a)&(b)** of the Constitution it means that the budget deficit aggregated to **Kshs. 187,801,886,028**, which was fully covered by the external loans and grants as stated in **Table 2** above. The aggregate **Kshs. 710,479,000,000** Eurobond proceeds stated in **Table 2** above, were not linked to any budgeted development projects in the budgets for the financial years 2014/2015, 2017/2018, 2018/2019. Hence, the petitioners can confidently state that they are odious debts.

44. As required under **Section 50(3) of the PFMA**, **Table 3** below shows all the borrowings and allocation of loans approved by Parliament in the 2014/2015 Development Expenditure Budget (i.e., the Appropriation Act, 2014). The borrowings are for individual government entities.

45. According to the **2014/2015 Budget Book**, borrowings authorised by the Appropriation Act, 2014, for individual national government entities are as follows:

Table 3

Table-I: Summary of Development Expenditure and Source of Finance, 2014/2015

Ministry/State Department	A-in-A Loan	Revenue Loan	Total
The National Treasury	453,825,000	465,525,610	919,350,610.00
Min. of Health	210,000,000	1,494,000,000	1,704,000,000.00
Min. of Lang, Housing & urban Dev.	548,266,100	4,390,944,125	4,939,210,225.00

Min. of Information, Communication & Tech.	3,300,000,000	2,368,634,460	5,668,634,460.00
Min. Labour social Security & Services	100,000,000	1,182,168,550	1,282,168,550.00
Min. Energy & Petroleum	43,612,168,133	4,356,802,000	47,968,970,133.00
Judiciary	-	2,831,895,000	2,831,895,000.00
State Department (SD) for Planning	1,175,364,000	778,000,000	1,953,364,000.00
State Department for Devolution	50,000,000	1,912,952,000	1,962,952,000.00
State Department for Education	10,000,000	-	10,000,000.00
State Department for Science & Tech.	2,458,200,000	-	2,458,200,000.00
State Department for Infrastructure	29,451,940,000	3,517,552,000	32,969,492,000.00
State Department for Transport	9,094,000,000	1,964,500,000	11,058,500,000.00
SD for Environment & Natural Resources	881,400,000	1,240,360,000	2,121,760,000.00
SD for Water & Regional Authorities	5,985,479,800	7,217,069,037	13,202,548,837.00
SD for Agriculture	2,654,774,180	1,970,447,488	4,625,221,668.00
SD for Livestock	193,800,000	444,934,452	638,734,452.00
SD for Fisheries	20,000,000	50,000,000	70,000,000.00
Aggregate	100,199,217,213.00	36,185,784,722.00	136,385,001,935.00

46. **A-in-A loans** are an abbreviation of **Appropriations-in- Aid loans**. This is a buyer credit loan advanced to an importer of goods and services. Contrary to **Article 206(1)** of the Constitution, the loan is not paid into the Consolidated Fund but it is retained by the lender to make direct payment to the foreign exporter of goods and services into Kenya.

47. **Revenue Loans** are paid into the Consolidated Fund; thus, they follow the provisions of **Article 206(1)** of the Constitution.

48. The petitioners are aggrieved that, whereas A-in-A loans are detrimental to the Kenyan economy, **Table 3** above demonstrates that an aggregate of **Kshs. 100,199,217,213** A-in-A loans were retained by the lenders to make direct payments to foreign suppliers of goods

and services. Only Kshs. 36,185,784,722, out of Kshs. 187,801,886,028, equivalent to 19.27%, was paid into the Consolidated Fund.

49. The external loans authorized by the Appropriation Act, 2014, per lender to individual Ministry/State Department, are listed in **Table 4** below, which was extracted from the 2014/2015 Budget Book (Development Expenditure For 2014/2015 Financial Year):

TABLE 4

Table III – Details of External Funding (Listed by Donors)

Loan Number	LENDERS	Loan		Total Loan Amount
		AIA	Revenue	
007000	Government of Belgium (BELGIUM)			
	MOE&NR	800,000,000	-	
	MOE&P	2,736,145,000	-	
	SD for W&RA	300,000,000	-	3,836,145,000
011000	Government of Italy SD for W&RA	180,000,000		180,000,000
012010	Government of Spain (SPAIN) MOE&P	4,356,263,100	-	4,356,263,100
014000	Government of Germany (KFW GERMANY)			
	SD for Infrastructure	678,440,000	70,000,000	
	SDOW&RA	670,000,000	-	1,418,440,000
016000	Government of France (AFD - FRANCE)			
	National Treasury		100,000,000	
	MOLH&UD	17,000,000	1,000,000,000	
	MOE&P	4,265,740,000	1,000,000,000	
	SD for Infrastructure	200,000,000	1,500,000,000	
	SD for E&NR	840,000,000	-	
	SD for W&RA	2,000,000,000	-	10,922,740,000
018000	Kuwait Fund for Arab Development (KUWAIT)		-	
	MoH	50,000,000		
	SD for education	10,000,000	-	
	SD for Infrastructure	50,000,000	-	
	SD for Agriculture	400,000,000	-	510,000,000
019000	Saudi Fund for Arab Development (SAUDI ARABIA)	50,000,000	-	

	MOH			200,000,000
	MOE&P	100,000,000	-	
	SD for Infrastructure	50,000,000		
020000	Abhu Dhabi Fund		-	150,000,000
	MOE&P	100,000,000		
	SD for Infrastructure	50,000,000	-	
0210000	Government of Japan			13,386,000,000
	MOE&P	1,681,000,000	180,000,000	
	SD for Infrastructure	6,525,000,000	-	
	SD for Transport	5,000,000,000	-	
023000	Government of India (INDIA)			6,209,000,000
	MOE&P	6,209,000,000	-	
024000	Government of South Korea (SOUTH KOREA)			100,000,000
	MOLSS&S	100,000,000	-	
025000	Government of China (CHINA)			20,558,860,000
	MOIC&T	2,500,000,000	-	
	MOE&P	12,035,920,000	-	
	SD for Planning	422,940,000	-	
	SD for Infrastructure	5,600,000,000	-	
501000	International Development Association (World Bank/IMF)	250,000,000	250,000,000	48,039,143,133
	National Treasury			
	MOLH&UD	531,266,100	3,390,944,125	
	MOIC&T	-	2,368,634,460	
	MOLSS&S	-	1,182,153,550	
	MOE&P	6,360,600,033	2,591,802,000	
	Judiciary	-	2,831,895,000	
	SD for Planning	-	504,000,000	
	SD for Devolution	50,000,000	1,912,952,000	
	SD for Infrastructure	6,508,500,000	1,947,552,000	
	SD for Transport	3,594,000,000	1,964,500,000	
	SD for E&NR	-	1,200,000,000	
	SD for W&RA	-	6,764,727,277	
	SD for Agriculture	755,192,000	1,366,409,588	
	SD for Livestock	85,000,000	65,000,000	
	SD for Fisheries	20,000,000	50,000,000	
506000	European Investment Bank (EIB)	860,000,000	485,000,000	1,345,000,000
	MOE&P			
510000	African Development Fund (ADB/ADF)			

	MOE&P	4,697,500,000	100,000,000	
	SD for Planning	727,4243,000	267,000,000	
	SD for S&T	2,458,200,000	-	
	SD for Infrastructure	9,450,000,000	-	
	SD for Transport	500,000,000	-	
	SD for E&NR	41,400,000	40,360,000	
	SD for W&RA	2,458,000,000	42,000,000	
	SD for Agriculture	499,582,180	204,037,900	21,485,504,080
5120000	Arab Bank for Economic Development in Africa (BADEA) MOH	60,000,000	-	
	MOE&P	100,000,000	-	
	SD for Infrastructure	170,000,000	-	
	SD for W&RA	50,000,000	-	
	SD for Agriculture	500,000,000	-	880,000,000
513000	Organization of Petroleum Exporting Countries (OPEC) MOH	50,000,000	-	
	MOE&P	110,000,000	-	
	SD for Infrastructure	170,000,000	-	
	SD for Agriculture	500,000,000	-	830,000,000
526000	International Fund for Agricultural Development (IFAD) SD for Agriculture	665,104,800	1,312,801,822	1,977,906,622
Aggregate Loans				136,385,001,935.00

- (i) MOE&NR – Ministry of Environment and Natural Resources.
(ii) MOE&P – Ministry of Energy and Petroleum.
(iii) SD for W&RA State Department for Water and Regional Authority.
(iv) SD for Infrastructure - State Department for Infrastructure.
(v) MOH – Ministry of Health.
(vi) SD for Agriculture - State Department for Agriculture.
(vii) SD for E&NR - State Department for Environment and Natural Resources.
(viii) SD for Planning - State Department for Planning.
(ix) SD for S&T – State Department for Science and Technology.
(x) SD for Transport – State Department for Transport.
(xi) SD for Devolution – State Department for Devolution.
(xii) SD for Education – State Department for Education.
(xiii) SD for Fisheries – State Department for Fisheries.
(xiv) MOLH&UD – Ministry of Land, Housing and Urban Development.
(xv) MOIC&T – Ministry of Information, Communication and Technology.
(xvi) MOLSS&S – Ministry of Labour, Social Security and Services.

50. The petitioners posit that, the two tables above demonstrate that the 2014/2015 budget was fully financed by taxes and loans and grants approved by Parliament. **Hence, there was absolutely no need for the entangling Kenyans into the Eurobond loan trap.**

51. The petitioners have sampled loans borrowed to finance specific budgeted projects authorised by the Appropriation Act, 2014, for the Ministry of Energy and Petroleum and for the State Department of Infrastructure as follows:

Vote 115 - Ministry of Energy and Petroleum

52. The Ministry of Energy and Petroleum's development expenditure authorised by Appropriation Act, 2014 (the Budget) aggregated to **Kshs. 74,284,105,623** financed by **Kshs. 21,7389,833,490** tax and other revenues, and **Kshs. 52,294,272,133** in external loans, comprising of **Kshs. 43,612,168,133.00** Appropriation-in-Aid loan and **Kshs. 8,582,104,000** External Revenue Loan. These loans were earmarked for specific budgeted projects as demonstrated in **Table 5** below:

TABLE 5

III. Development Expenditure Estimates 2014/2015 and Source of Funding

Entity/ Project Title	A-in-A Loan	Revenue Loan	Total
Energy Sector Recovery Project	-	131,500,000	131,500,000
KPLC			
1. Construction and Civil Works	6,200,232,253	497,242,925	6,697,475,178
2. Rehabilitation of civil works	1,038,165,855	624,261,000	1,662,426,855
KENGEN			
Construction & Civil works	4,766,673,925	407,798,075	5,273,872,000
KETRACO			
Construction & Civil works	16,270,000,000	2,445,000,000	18,715,000,000
National Grid System		3,974,302,000	3,974,302,000
KENGEN			
Construction and Civil Works	8,155,920,000	-	8,155,920,000
Geothermal Development Co.			
Construction and Civil Works	5,399,500,000	-	5,399,500,000
Headquarters			
Construction and Civil Works	334,276,100		334,276,100

Rural Electrification Authority			
Construction and Civil Works	1,448,000,000	-	1,448,000,000
Headquarters			
Construction and Civil Works	-	251,000,000	251,000,000
Petroleum Exploration & Distribution	-	251,000,000	251,000,000
Aggregate	43,612,768,133	8,582,104,000	52,294,272,133

The Table clearly demonstrates that loans are borrowed by respective government entities for specific projects.

Vote 143 - State Department for Infrastructure

The State Department for Infrastructure's development expenditure authorised by Appropriation Act, 2014 (the Budget) aggregated to **Kshs. 99,028,822,647** to be financed by **Kshs. 55,914,330,647** tax revenue and other revenues and **Kshs. 34,844,492,000** external loans, comprising of **Kshs. 29,451,940,000** Appropriation-in-Aid loan and **Kshs. 5,392,552,000** External Revenue Loan. These loans were earmarked for specific budgeted projects as demonstrated below:

TABLE 6

II. Development Expenditure Estimates 2014/2015 and Source of Funding

Entity/ Project Title	A-in-A Loan	Revenue Loan	Total
Kenya National Highways Authority			
Major Roads	27,738,500,000	1,542,552,000	29,281,052,000
Kenya Rural Roads Authority			
Rural Roads	878,440,000	1,570,000,000	2,448,440,000
Kenya Rural Roads Authority			
Urban Roads	835,000,000	305,000,000	1,140,000,000
Other Roads		1,875,000,000	1,875,000,000
Headquarters			
Training Expenses	-	100,000,000	100,000,000
Aggregate	29,451,940,000.00	5,392,552,000.00	34,844,492,000.00

53. The petitioners reiterate that, from the analyses of the samples above, which is applicable to all government entities in the Budget, all projects were financed by pre-negotiated loans. Hence, there were no projects which were to be financed by the Eurobond loans.

54. Pursuant to **Article 214(1)** of the Constitution, repayment of public debt is a recurrent expenditure charged on the Consolidated Fund or, if an Act of Parliament so provides, on other public funds. The repayment is estimated under the class of expenditure known as Consolidated Funds Services (CFS), which also accommodates, among others, the pension payments and salaries for State officers.

55. The USD2,000,000,000 Eurobond loans borrowed in FY 2014/2015 (the International Sovereign Bond (Eurobond) No. 2014011 of USD 2,000,000,000 (Ksh. 260,000,000,000 at 130 per USD) became due for repayment in June 2024 having been entered into on 14th May 2014³. But because recurrent expenditure is purely paid from tax revenue and as clearly stated under Section 15(2)(c) of PFMA, medium-term borrowings cannot be used to finance recurrent expenditure. Notwithstanding this, the Cabinet Secretary/National Treasury, acting contrary to both the Constitution and the PFM Act, borrowed further Eurobond loans of USD 1,458,740,000 (equivalent of Ksh. 208,324,847,510) purportedly to buy back the notes due in June 2024.

56. The petitioners reiterate that borrowing the USD 1,458,740,000 (equivalent to Ksh. 208,324,847,510) was unconstitutional, unlawful, null and void *ab initio* for contravening Article 220(1) of the Constitution, as read together with sections 15(2)(c) and 50(3) of the PFMA. Further, it was unconstitutional and unlawful for the Controller of Budget to authorize the withdrawal of the said amounts of money from the Consolidated Fund, given that it was not in the budget (or not appropriated by Parliament).

57. One of the overall responsibilities of the Cabinet Secretary for the National Treasury (CS/NT) under **Section 46(2) of the PFMA** is to, “*Within twenty-one days after the end*

³ See the Statement of Actual Revenue and Net Exchequer Issues gazetted on 29th February 2024 in Gazette Notice No. 3185 of 8th March 2024, published by the Cabinet Secretary, the National Treasury and Economic Planning.

of each month, the Cabinet Secretary shall publish in the Gazette a statement of actual revenues collected by category and net exchequer issues by the National Treasury”.

58. Whereas, contrary to **Article 220(1)(a)** of the Constitution, all Appropriation Acts (i.e., the annual budgets approved by Parliament) don't contain revenue estimates, the CS/NT violated both the Constitution and the PFM Act, by gazetting monthly *Statements of Actual Revenue and Net Exchequer Issues*, which **contain fictitious estimates of revenue entries**. The impugned entries were not approved by Parliament as required by **Article 221** of the Constitution. They include ~~the following~~ items which are not in the development expenditure approved by Parliament i.e., all domestic borrowings, and certain external loans (such as the Eurobonds) and grants.

59. Consequentially, the decision of the Cabinet Secretary/National Treasury to borrow unconstitutionally and unlawfully, including the Eurobond, has resulted into Kenya's huge debt stock of Kshs11.5 trillion whose repayment averages around 1.7 trillion annually. And that is against actual annual tax revenue collection averaging Kshs. 2.1 trillion. This has created a situation where the tax revenue is inadequate to repay the debts and meet the government's operating and capital expenditure. And to make matters worse, the Cabinet Secretary violates the law even further by borrowing to repay debts, such as when it recently borrowed more Eurobond loans to repay earlier ones.

60. The initial issuance was for USD 2,000,000,000 (two billion), which was oversubscribed. The Eurobond was divided into two tranches: a USD 500 million five-year bond, and a USD 1.5 billion ten-year bond.

61. In 2018, Kenya issued another Eurobond worth USD 2 billion purportedly to help manage its debt and fund infrastructure projects. In 2019, Kenya raised USD 2.1 billion through a third Eurobond issue to purportedly help fund the budget deficit and refinance maturing debt.

62. All these Eurobond loans have been acquired contrary to the law, without approval through Appropriation Acts.

63. On November 23, 2015, in statement on corruption delivered at State House, Nairobi, and aired live on national TV, H. E. President Uhuru Muigai Kenyatta, the Fourth President of Kenya, made the following remarks:

“... I believe that corruption is a standing threat to our national security...

The damage to our economy puts millions of lives at peril and undermines our very aspirations as a nation.

I am therefore declaring with immediate effect corruption as a national security threat...”

64. From the highest office in the republic, corruption was declared to pose an existential threat to the aforementioned Republic.

65. This Petition was filed in support of H. E. President Uhuru Muigai Kenyatta's repeated pronouncements against corruption in his government.

66. On October 28, 2015, following adverse media reports that a substantial chunk of the proceeds from the Eurobond had been misappropriated, the 1st and 2nd petitioners jointly wrote a letter addressed to various Government officials including the 3rd and 5th Respondents, and copied to among others, the then President and Deputy President of Kenya, the 1st and 2nd Respondents. The letter was titled, *Urgent request for comprehensive information concerning the Eurobond – cautionary note under Article 47 of the Constitution of Kenya 2010* and was copied to the 1st and 2nd Respondents.

67. In the letter, the petitioners sought the following information:

- (i) *A comprehensive brief on the Eurobond process, including the exact amount of money that was raised;*

- (ii) *Bank statements for all bank transactions providing evidence that the Central Bank of Kenya actually received the Eurobond funds;*
- (iii) *Bank statements for all bank transactions providing evidence that the Central Bank actually transferred the Eurobond funds to the various ministries, departments, and agencies of the Government of Kenya;*
- (iv) *Development (not recurrent) budgets of each ministry, department, or agency of the Government of Kenya which received the money;*
- (v) *A breakdown of specific projects which benefitted from the Eurobond money;*
- (vi) *Bank statements showing, where applicable, that the Central Bank used the Eurobond to pay loans;*
- (vii) *Evidence that the Eurobond money was budgeted for by Parliament;*
- (viii) *Evidence that the Eurobond money was spent with the approval of the Controller of Budget of the Republic of Kenya.*

68. The responsible government officials did NOT respond to the 1st and 2nd Petitioners' letter. Effectively, the officials responsible have refused to provide any evidence demonstrating how the public benefited from the US\$2.75 billion purportedly borrowed by the government from the international market in 2014, through the sovereign bond (the Eurobond).

69. At all material times the respondents never obliged to the 1st and 2nd Petitioners' request for information vide the said letter of October 28, 2015. Given that the right to information is an anticorruption tool, the Petitioners are left to reach the inescapable conclusion that their request for information was not granted because of deliberate secrecy by the respondents, who were and are out to conceal their possible criminal conduct as regards the Eurobond money.

70. The Eurobond was raised in the fiscal year 2014/15 ~~and~~ but was not budgeted for.

71. The 2014/15 budget which the Eurobond loan was purported to finance aggregated to **Kshs. 1,183,525,546,416** comprising of **Kshs. 688,633,425,683** recurrent expenditure estimates and **Kshs. 494,892,120,733** development expenditure estimates.

72. Further, according to section 15(2)(c) of the Public Finance Management Act 2012, in the medium-term the national government's borrowings **shall be used to finance development expenditure and not recurrent expenditure**. The development expenditure aggregated to **Kshs. 494,892,120,733** to be financed by **Kshs. 307,090,234,705** tax revenue and **Kshs. 187,801,886,028.00** external loans and grants. The external loans and grants authorized by the Appropriation Act, 2014, amounted to some **Ksh. 187,801,886,028**. The Act clearly indicated the specific amounts borrowed from each lender and the specific project the loan was to finance. The Eurobond was not mentioned anywhere. Therefore, since all the projects were fully financed, it means there was no development expenditure to be financed by the Eurobond loans as required under section 15(2)(c) of the Public Finance Management Act 2012.

The first batch of Eurobond borrowed in 2014 of USD 2.75 billion

73. The above paragraph provides strong evidence that the Eurobond loans were conceptualized as a fraud scheme to defraud the Kenyan public, whereby approximately USD7.1 billion was stolen.

74. From various government sources, the petitioners have established that a sum total of some US\$ 2.75 billion was raised from the first Eurobond as follows:

74.1. In June 2014, the government fraudulently borrowed US\$ 2 billion through the Eurobond for nonexistent infrastructure development (because all development projects were already fully financed, partly through taxes, and the deficit by external loans and grants aggregating to **Kshs. 187,801,886,028**) and purportedly to repay a syndicated loan the government owed three international lenders.

74.2. By December 2014, the government had borrowed a further US\$ 750 million from the international market through the Eurobond by way of "Tap Sales" purportedly to finance fictitious infrastructure projects.

75. The Eurobond funds were deposited into an unconstitutionally and unlawfully opened offshore bank account instead of being deposited in the Consolidated Fund (the National Exchequer Account held in Central Bank of Kenya) as expressly required by **Article 206(1)** of the Constitution read together with **Sections 17 and 50(7)(a)** of the Public Finance Management Act 2012. This provides evidence that Eurobonds were odious loans which were not borrowed for budgeted development expenditure.

76. Depositing the Eurobond money into an unconstitutionally and unlawfully opened offshore account exposed public money to fraud risk through overriding control measures exercised by oversight institutions, including Parliament and the Controller of Budget, from any transactions involving the funds.

77. By illegally putting the Eurobond funds into the offshore account and not in the Consolidated Fund, the government concealed and exposed the money to misuse, and the petitioners reasonably posit that the respondents put the money in the offshore account intentionally to advance improper or corrupt motives/practices without consideration for the public interest.

78. Indeed, the Auditor General's report on the national government accounts in the financial year that ended in June 2014 titled ***"Report of the Auditor General on the Financial Statements for National Government for the Year 2013/2014"***, avers that:

"Available information indicates that net proceeds from the Sovereign Bond of USD 1,999,052,872.97 out of the total amount of USD 2,000,000,000.00 were received on 24 June 2014 and deposited into an offshore account, contrary to Article 206 of the Constitution of Kenya and Section 17(2) of Public Finance and Management Act, 2012 which requires that all money raised or received by or on behalf of the National Government be paid into the Consolidated Fund. There is the risk of proceeds being appropriated without the authority of the Controller of Budget and also being applied for other purposes other than those that the Sovereign Bond was floated.

Out of the balance in the offshore account of USD1,999,052,872.97 as at 2 July 2014 an amount of USD 395,439,262.50 (Kshs.34,648,388,180.25) was on 3 July 2014

transferred to the Exchequer Account to fund infrastructure projects but accounted for in 2013/2014 financial year. On the same date of 3 July 2014 another amount of USD 604,560,737.50 (Kshs.53,201,344,900.00) was withdrawn from the offshore account to fund the repayment of the syndicate loan but recorded in 2014/2015 financial year books. Authority of the Controller of Budget to incur the expenditure was however not obtained.

I have however, not qualified my audit opinion on the basis of this matter due to the fact that the balance of actual net proceeds from Sovereign Bond is correctly reflected in the Off-Shore Account and in the Central Bank of Kenya Special Account”.

79. The petitioners are aggrieved that the Auditor General:

- (a) Since, in terms of Article 229(4)(1)(a) & (g) of the Constitution the Auditor General has no capacity/jurisdiction to audit the unconstitutionally and unlawfully opened offshore accounts, the office is incapable of gathering audit evidence therefrom. Further, since the source documents for the offshore accounts were inaccessible to the Auditor General, it relied on hearsay information to issue the audit report. Hence, it could not confirm the lawfulness and effectiveness of the Eurobond proceeds. Consequently, it misled the Kenyan public by averring that *“Available information indicates that net proceeds from the Sovereign Bond of USD 1,999,052,872.97 out of the total amount of USD 2,000,000,000.00 were received on 24 June 2014 and deposited into an offshore account.*
- (b) In the circumstances, the Auditor General violated **Article 229(6)** of the Constitution by failure to report whether or not the USD 2 billion Eurobond was borrowed and applied lawfully and effectively. **Article 229(6)** of the Constitution, provides: *“An audit report shall confirm whether or not public money has been applied lawfully and in an effective way”.*
- (c) The Auditor General concealed the USD 2 billion Eurobond fraud by its failure to give a qualified opinion on non-transfer of the Eurobond proceeds, even after

confirming violation of **Article 206** of the Constitution of Kenya and **Section 17(2)** of PFMA.

80. The petitioners point out that, vide its report on the national government accounts for the financial year that ended in June 2015, titled, *“Report of the Auditor General on the Financial Statements for National Government for the Year 2014/2015”*, the Auditor General avers that:

“In the Report for 2013/2014, it was indicated that proceeds from the Sovereign Bond of USD 1,999,052,872.97 out of the total amount of USD 2,000,000,000.00 were received on 24 June 2014 and deposited into an offshore account, contrary to Article 206 of the Constitution of Kenya and Section 17(2) of Public Finance Management Act, 2012 which requires that all money raised or received by or on behalf of the National Government be paid into the Consolidated Fund.

“It was further reported that, out of the balance in the offshore account of USD,999,052,872.97 as at 2 July 2014, an amount of USD 395,439,262.50 (Kshs.34,648,388,180.25) was on 3 July 2014 transferred to the Exchequer Account to fund infrastructure projects but accounted for in 2013/2014 financial year. On the same date of 3 July 2014 another amount of USD 604,560,737.50 (Kshs.53,201,344,900.00) was withdrawn from the offshore account to fund the repayment of a syndicate loan”.

“The annex to the National Exchequer Account statement of receipts and issues for the financial year ended 30 June 2015 show that the remaining balance in the offshore account of USD 999,018,457.60 (Kshs.88,463,084,420.45) was on 8 September 2014 transferred to a Sovereign Bond Deposits Account at the Central Bank of Kenya. The annex further indicates that an additional amount from external borrowing of USD 815,436,932.00 (Kshs.73,805,196,715.30), being net proceeds from the tap sale, was also transferred on 17 December 2014 to the Sovereign Bond Deposits Account at the Central Bank of Kenya.

“Further, the financial statements reflect under Note 5.5 net proceeds from commercial financing (Sovereign/Euro Bond) totalling Kshs.215,469,626,035.75 in the year 2014/2015. However, investigations into the receipts, accounting and use of funds related to the Sovereign/Euro Bond are still on-going and the accuracy of the net proceeds of Kshs.215,469,626,035.75 is yet to be ascertained”.

81. The petitioners are aggrieved that:

(a) Like in the 2013/2014 financial year audit report, the Auditor General issued a misleading and a hearsay audit report containing information outside its jurisdiction for the financial year 2014/2015.

(b) The Auditor General violated **Article 229(6)** of the Constitution by failure to report whether the **USD 999,018,457.60 (Kshs.88,463,084,420.45)** and **USD 815,436,932.00 (Kshs.73,805,196,715.30)** Eurobond loan purportedly transferred to the Sovereign Bond Deposits Account at the Central Bank of Kenya was borrowed and applied lawfully and effectively.

(c) The Auditor General wilfully and deliberately concealed the **Kshs. 215,469,626,035.75** Eurobond fraud by failure to undertake its constitutional mandate under **Article 229(4) & (6)** of the Constitution by averring that, *“However, investigations into the receipts, accounting and use of funds related to the Sovereign/Euro Bond are still on-going and the accuracy of the net proceeds of Kshs.215,469,626,035.75 is yet to be ascertained”* In particular, Article 229(4) & (6) of the Constitution provides:

229(4) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—

(a) the accounts of the national and county governments.

(g) the public debt.

229(6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.

82. The petitioners posit that, in its report for the financial year 2015/2016, the Auditor General avers:

“The statement of receipts into and issues from the National Exchequer Account for the year ended 30 June 2016 reflects an Exchequer balance of Kshs.203,491,418.97 brought forward from 2014/2015 financial year. However, and as indicated in the Auditor’s Report for 2014/2015, the receipt of net proceeds from commercial financing (Sovereign/Euro Bond) of Kshs.215,469,626,035.75 accounted for in 2014/2015 financial year could not be ascertained as investigation into the receipts, issues, accounting and utilization of the funds related to the Sovereign/Euro Bond was still on-going as at 30 June 2016. Under the circumstances, the accuracy of the Exchequer balance of Kshs.203,491,418.97 brought forward from 2014/2015 may be affected by the outcome of the on-going special audit on Euro Bond”.

83. The petitioners state that:

- (a) It is contrary to **Article 229(4)** of the Constitution to carry forward an audit for the financial year 2013/2014 to financial years 2014/2015 and 2015/2016 as the Appropriation Act expires at the end of each financial year on 30th June. The authority to incur expenditure in the expired Appropriation Act is not transferrable to the succeeding financial year, as a new Appropriation Act commences at the start of the following financial year on 1st July.
- (b) Further to the above, pursuant to **section 81 of the PFMA**, all accounts are finalised and financial statements prepared and submitted to the Auditor General Not later than three months after the end of each financial year i.e. 30th September.
- (c) According to Article 229(4) & (6) of the Constitution, the Auditor General is mandated to audit the accounts and issue a report confirming whether public money was applied lawfully and effectively by 31st December each year.

- (d) Further to the above, Article 229(4) & (6) of the Constitution, as read together with section 81 of the PFMA, sets the audit criteria and threshold within which the Auditor General should operate, that requires only one main audit to be issued by 31st December every year. The Constitution does not provide for the Auditor General to carry out investigations or special audits.
- (e) Special audit reports are provided under section 49 of the Public Audit Act No. 34 of 2015 which should be issued in the course of annual audits of accounts of state organs, if, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that the office feels should be brought to the attention of Parliament or the relevant county assembly. Hence, a special audit cannot be undertaken after issuance of the main audit report. In particular, **section 49 of Public Audit Act** states:

Special reports in the course of annual audit of the accounts of State organs

- (1) If, in the course of an examination and audit, a matter comes to the attention of the Auditor-General that he or she feels should be brought to the attention of the Parliament or the relevant county assembly, the Auditor-General shall submit a special report to Parliament or the relevant county assembly in accordance with the protocols developed in the Regulations.*
- (2) Within seven days of receipt, Parliament or the relevant county assembly, shall publicize that report on their official website and any other public notice and shall publish a notice in the gazette to inform the public of the availability of the report.*
- (3) Within fourteen days following the expiry of the seven days referred to under subsection (2), the office of the Auditor-General shall publicize that report on its official website and any other public notice.*

(4) Within sixty days following the expiry of the seven days referred to under subsection (2), Parliament or relevant county assembly shall discuss and review the report.

(f) It is clear from the foregoing that, the unconstitutional and unlawful carrying forward of the audit of the Sovereign/Euro Bond of **KShs.215,469,626,035.75** was deliberate and intended to conceal the Eurobond fraud.

84. The petitioners point out that the Auditor General's purported investigation of the Eurobond proceeds referred to in the reports for 2014/2015 and 2015/2016 financial years was not reported in the financial year 2016/2017. However, the purported investigations resurfaced in the financial year 2017/2018 wherein the Auditor General avers that:

The On-going Special Audit on Euro Bond

*I wish to draw your attention to the statement of assets and liabilities for the National Exchequer Account as at 30 June 2017 which reflected an Exchequer balance of **KShs.30,928,022,009** as at the end of the financial year. However, as indicated in the auditor's report for 2014/2015, the receipt of net proceeds from commercial financing (Sovereign/Euro Bond) of **KShs.215,469,626,036**, which was accounted for in 2014/2015 financial year, could not be ascertained as investigations into the receipts, issues, accounting and utilization of the funds related to the Sovereign/Euro Bond had not been concluded as at 30 June 2018. Under the circumstances, the accuracy of the Exchequer balance of **KShs.59,808,758,121** brought forward from 2015/2016 cannot be ascertained.*

85. The petitioners' grievances under paragraph 27E apply to paragraph 27F. However, in the subsequent financial years after 2017/2018 financial year, the purported investigations into **KShs.215,469,626,036** Eurobond proceeds disappeared callously from the Auditor General's report. This means the purported incomplete investigations reported in the three financial years, 2014/2015, 2015/2016 and 2017/2018 were intended to find an

opportune time to exit the investigation, effectively misleading the Kenyan public and conceal the Eurobond fraud.

86. Following concerns in the media that part of the Eurobond money was stolen, on October 28, 2015, in a statement to the media titled ***Statement by the Cabinet Secretary on the Proceeds of the Sovereign Bond***, the 3rd Respondent gave the following misleading details about the Eurobond money:

- 86.1. Total Proceeds Sovereign and Tap Sales Kshs 250.12 billion;
- 86.2. Payments for syndicated loan Kshs 53.20 billion;
- 86.3. Amount dispersed for projects Kshs 196.92 billion;
- 86.4. Total Kshs 250.12 billion.

87. The petitioners posit that the 3rd Respondent gave the above misleading details to conceal fraud as follows:

- (i) The Kshs 196.92 billion was not dispersed to any project since all the projects were fully funded as per the 2014/2015 development budgetary allocations of tax revenues, external loans, and grants, captured in the Budget Book under: *Table-1: the summary of development expenditure and source of finance 2014/2015; Table II – Summary of External funding: 2014/2015 Budget (Listed by Donor); and Table III Details of External Funding (Listed by Donor)*.
- (ii) Payments for syndicated loan Kshs 53.20 billion was a direct charge to the Consolidated Fund under the consolidated funds services (**Article 214(1) of the Constitution**). Hence, the syndicated loan was paid from the National Exchequer Account held in Central Bank of Kenya and not from Eurobond offshore account.

88. In the **Annual Public Debt Report 2013-2014**, published by the Treasury in December 2014, on page 48 at paragraph 9.4, on the use of the Eurobond proceeds, it is stated:

“The proceeds were used for repayment of the USD 600 million syndicated loan and budgetary support including financing of infrastructure development.”

89. Whereas, as indicated in the two scenarios above, the 3rd Respondent's brief to the media and the Annual Public Debt Report 2013-2014 claim that **all the Eurobond money was spent** as stated above, other official documents tell a totally different story, pointing to a major scam.

90. The **Auditor General's Report for 2013/2014**, on the Eurobond funds, points out that:

90.1. Total amount raised was US\$ 2,000,000,000.00.

90.2. The net proceeds were US\$ 1,999,052,872.97, implying fees and costs deducted of US\$ 947, 127.03.

90.3. On 3 July 2014 US\$ 395,439,262.50 was transferred to the Exchequer to fund infrastructure, notwithstanding that all the infrastructure developments were fully funded by both tax revenue and external loans and grants in the development expenditure. (This amount is accounted for in the **wrong fiscal period** namely in FY2013/14 instead of the year when it was received and due to be accounted for as an exchequer receipt.)

90.4. On 3 July, 2014, US\$604,560,737.50 was purportedly withdrawn from the offshore account said to fund the repayment of the syndicated commercial loan, a transaction not provided for either in the Constitution or the Public Finance Management Act 2012. The withdrawal of this money contravenes **Article 206(2),(3)&(4)** read with **Article 228(4)&(5)** of the Constitution whereby the money was withdrawn without the authority of the law and the Controller of Budget.

91. Curiously, if you add what was purportedly spent on repaying the syndicated loan and the amount that was transferred to the exchequer to fund infrastructure, you arrive at a neat and intriguing figure of EXACTLY US\$ 1,000,000,000.00.

92. The above two reported uses of the proceeds of the Eurobond receipts leave a balance of US\$ 999,052,872.97 (equivalent to some Kshs 87,767,528,223.47) which is not

explained or dealt with in the Audited Accounts and Financial Statements for the Fiscal Year 2013/14.

93. The Auditor General concludes: *“The Statement of Receipts into and Issues from the Exchequer Account for 2013/2014 therefore reflects only actual receipts from commercial loan of Kshs.34,648,388,180.25 out of the net proceeds from the Sovereign Bond as a result of failure to pay the full amount of the net proceeds from the Sovereign Bond of USD 1,999,052,872.97 (Kshs.173,917,599,948.39) into the Consolidated Fund during the year.”*

94. The Auditor General’s scenario above shows that some Kshs 139,269,211,768.14 of the Eurobond money was missing or had been stolen. But, by failing to confirm whether the money was applied lawfully and in an effective way, the Auditor General’s statement above does not meet the threshold set in Article 229(6) of the Constitution, which states:

(6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.

95. Further, the failure to properly reflect the Eurobond money violates Article 220(1) as read together with section 45(1), 81(1)&(2) & 82(1)&(2) of the PFMA and Regulation 33(a),(b)&(e), 97(1) & 99(2) of PFMA (Legal Notice No. 34 of 2015), where appropriation accounts for the financial year are based on annual approved budget estimates and, in particular:

- (i) The budget contains estimates of revenue and expenditure.
- (ii) The borrowings will finance the deficit between the revenue and expenditure.
- (iii) All appropriation lapse if unspent at the end of the financial year.
- (iv) The Appropriation accounts capture the actual amounts spent that particular year.
- (v) The Appropriation accounts will show the statement of the entity’s debt outstanding at the end of the financial year.

96. Failure to include Eurobond of Kshs 139,269,211,768.14 in the appropriation accounts created a loophole for the misappropriation of the same.

97. On pages 12 – 13, at section 3.4.1 of the *National Government Budget Implementation Review Report First Quarter FY 2014/15*, published by the Controller of Budget, it is stated: “the government secured a Sovereign Bond of USD 2 billion or approximately Kshs.178 billion. The bond was meant to; (i) fund development projects, and (ii) repay the syndicated loan. However, part of the proceeds amounting to Kshs.50 billion was used to meet shortfall in domestic borrowing.” In Table 3.8 the following breakdown on how the Sovereign Bond proceeds were utilised is given:

- 97.1. Repayment of Syndicated Loan – Kshs 53.8 billion;
- 97.2. Transfers to Exchequer for Infrastructure Projects – Kshs 35.2 billion;
- 97.3. Amount transferred to Exchequer to meet shortfall in domestic borrowing Kshs 50.0 billion;
- 97.4. Balance in Special Account at CBK as of 9/30/2014 – Kshs 38.5 billion;
- 97.5. Total Kshs 177.5 billion.

98. This scenario shows that some Kshs 38.5 billion of the Eurobond money was missing or had been stolen.

99. The Report by the Controller of Budget (*Budget Implementation Review Report FY 2014/15* – at page Seven Table 3.1, col. 2) on actual receipts to the exchequer for the Period 2014/2015 indicates an amount of **Kshs 73.81 billion** (Equivalent to **USD \$840, 184,681.41**) was received in this period.

100. When the figure stated in the Report of the Controller of Budget of Kshs 73.81 billion (equivalent to US\$ 840,184,681.41) is deducted from the amount missing in the Auditor General’s audited accounts for financial Year 2013/14 of Kshs 87,767,528,223.47 the difference is Kshs 14,039,733,080.25 (equivalent to US\$159,815,318.59).

101. From this scenario, Kshs. 14,039,733,080.25 is missing and/or was stolen.

102. Under **Article 228(4),(5) & (6)** of the Constitution, the Controller of Budget is mandated to oversee the implementation of the budget by authorizing the withdrawal of public funds, whereby under **Article 220(1)(a)** of the Constitution, the Budget is the estimates of

revenue and expenditure. Revenue comprises the Tax revenue and other locally generated revenues and the loans. In particular Article 228(4), (5) & (6) states that:

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.

(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

103. The petitioners posit that the 3rd Respondent gave the above misleading details to conceal fraud as follows:

103.1. The Petitioners posit that, pursuant to **Article 228(6)** of the Constitution the Controller of Budget submitted a National Government Budget Implementation Review Report First Quarter FY 2014/15 purporting that the government secured Sovereign Bond of USD 2 billion (Kshs.178 billion), whereas, the said Sovereign bond was not authorized by the 2014 Appropriation Act (budget) and it was not paid into the Consolidated Fund as required under **Article 206(1)** of the Constitution. Hence, the Controller of Budget deliberately gave a misleading report and, consequently, violated **Article 228(4) & (5)** of the Constitution,

103.2. Further, the proceeds of the Eurobond were not paid into the Consolidated Fund, or any other fund established by an Act of Parliament, from where the Controller of Budget exercises constitutional authority to supervise the withdrawal of public funds. It was transacted in an offshore account which is outside the jurisdiction of the Controller of Budget.

104. The *Quarterly Economic and Budgetary Review, Fourth Quarter, Financial Year 2014/2015, Period ending 30th June 2015 (QEBR)*, published by the National Treasury, states at Page 17, Table 9, Row 5, line item 5: the budget outturn shows that the

Eurobond loan was **targeted** at **Kshs 141 billion**, however no Eurobond proceeds were received in the fiscal year 2014/15.

105. The Press Release by the Cabinet Secretary for the National Treasury (CS/NT) on the use of USD 2.75 Eurobond was totally fraudulent.

106. The petitioners posit that, contrary to **Article 220(1)** of the Constitution, as read together with **Section 15(2)(c) & 50(3) of PFMA**, the then CS/NT, Henry K. Rotich, published various fraudulent and misleading documents on the Treasury's website at www.treasury.go.ke. The documents on the purpose, disbursement and utilization of USD 2.75 billion Eurobond, which were deliberately and willfully intended to conceal the Eurobond fraud included Press Releases. The Press releases were:

- a) A Press Release dated Wednesday, October 28, 2015, and titled "*The US\$ 2 billion Sovereign Bond (June 2014) and the Tap Sale of US\$750 million (December 2014);*"
- b) A Press Release (and annexure thereto) dated Thursday, December 03, 2015, and titled "*Sovereign Bond (Eurobond): Questions and Answers;*"
- c) A Press Release dated 11th December 2015, and titled "*Response to allegations that Ksh 140 billion of the Eurobond money is missing;*"
- d) A Press Release Dated 14th January, 2016, and titled "*Re: Response to the Hon. Raila Odinga's statement on Kenya's Eurobond dated 14th January, 2016;*"
- e) Various documents posted under the file, "*Sovereign Bond Bank Statement and Swift Transfers into the Consolidated Fund by Joint Lead Managers.pdf;*"
- f) Various documents posted under the file, "*Sovereign Bond Proceeds Accounts.pdf;*"
- g) Various documents posted under the file, "*Statements for sovereign Bond Proceeds Account No. 1000212764.pdf;*"

107. The Press Release by the Cabinet Secretary for the National Treasury (CS/NT) on the use of USD 2.75 Eurobond was totally fraudulent. The petitioners have perused and understood

the documents, and at best they amount to smoke and mirrors – a rigmarole designed to pull the wool over inquisitive eyes.

108. The Petitioners are aggrieved that the CS/NT unconstitutionally and unlawfully borrowed USD 2.75 billion Eurobond purporting it was for general budget support including funding of infrastructure and the repayment of the syndicated loan amounting to US\$ 600 million and further, to achieve macro-economic stability: lower interest rates, a build-up of international reserves, stability of the Kenya shilling, and reduction of inflation pressures.

109. The CS/NT deliberately and willfully mislead the Kenyan public to conceal the USD 2.75 billion Eurobond fraud, in particular:

- (i) The Petitioners posit that borrowing for general budget support is not provided in the Constitution and the PFMA. In accordance with **Article 220(1)** of the Constitution read together with **Section 15(2)(c) & 50(3) of PFMA**, public borrowings are only required:
 - (a) To finance the deficit in the budgeted development expenditure approved by Parliament, which is borrowed for individual projects not for the general budget.
 - (b) Short-term borrowing is restricted to management of cash flows which include bank overdraft, Treasury Bills and other financial instruments but not sovereign bonds like the Eurobond and is repayable within the financial year. This type of borrowing is not included in the budget.
- (ii) The petitioners posit that the CS/NT is misleading the Kenyan public that it borrowed USD 2.75 billion Eurobond to achieve macro-economic stability: lower interest rates, a build-up of international reserves, stability of the Kenya shilling and reduction of inflation pressures as public borrowings cannot be used for such purposes.
- (iii) Further, issues to do with interest rates, inflation, etc., are matters of monetary policy, which is the responsibility and preserve of the Central Bank of Kenya (CBK).

Under the Central Bank of Kenya Act, 2015 (Cap 491), the Bank does not require public borrowings (in this case, the USD 2.75 Eurobond) to implement its monetary policy.

- (iv) The petitioners are aggrieved that, contrary to **Article 206(1)** of the Constitution, read together with **section 17(1)&(2)** of the PFMA and **section 44&45** of the CBK Act (Cap 491), the CS/NT averred in his press release that the proceeds of the sovereign bond issued in June 2014 of USD 2 billion were paid into a Central Bank of Kenya account held with JP Morgan Chase, on 27th June 2014, and that the Tap Sales of USD 750 Million was paid into a **CBK account** held in Citibank, New York, on 17th December 2014. Further and in particular:

A. **Article 206(1)** of the Constitution states that:

There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that—

(a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established Parliament and payable into another public fund established for a specific purpose;

or

(b) may, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the state organ

B. **Section 17(1)&(2)** of the PFMA states that:

(1) The National Treasury shall administer the Consolidated Fund in accordance with Article 206 of the Constitution.

(2) The National Treasury shall maintain the Consolidated Fund in an account to be known as the National Exchequer Account, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution—

- (a) facilitate payment into that account all money raised or received by or on behalf of the national government; and*
- (b) pay from that National Exchequer Account without undue delay all amounts that are payable for public services.*

C. Sections 44 & 45 of CBK Act states that:

Section 44

- (1) The Bank shall act as fiscal agent of and banker to the Government*
- (2) The Bank may also perform the functions of fiscal agent and banker for any other public entity in accordance with, and within the scope determined by, any special arrangements made between the Bank and the public entity concerned.*

Section 45

The Bank in its capacity as fiscal agent and banker to any public entity may, subject to the instructions of that public entity:-

- (a) be the official depository of the public entity concerned and accept deposits and effect payments for the account of that public entity: Provided that the Bank may, after consultation with the Minister, select any specified bank to act in its name and for its account as the official depository of that public entity in places where the Bank has no office or branch;*
- (b) maintain and operate special official accounts in accordance with arrangements made between the Bank and the public entity concerned;*
- (c) as an agent of the Government, administer the public debt including the issuance of, payment of a return on, and redemption of, bonds and other securities of the Government;*
- (d) pay, remit, collect or accept for deposit or custody funds in Kenya or abroad.*

- (e) Purchase, sell, transfer or accept for custody cheques, bills of exchange and securities;*
- (f) Collect the proceeds, whether principal or interest or return, resulting from the sale for, or accruing to the interest or return of, a public entity of securities or other property;*
- (g) Purchase, sell, transfer or accept for custody gold or foreign exchange.*

- (v) The petitioners are aggrieved that, to circumvent the Consolidated Fund's National Exchequer Account, willfully and deliberately, the CS/NT and the Governor of the Central Bank of Kenya, acting contrary to the above quoted provisions of the Constitution, the PFMA, and CBK Act, unconstitutionally and unlawfully opened a Central Bank of Kenya Account in JP Morgan Chase and Citibank, New York which they used as a holding account to intercept the USD 2.75 Eurobond proceeds and intentionally bypassed the controls set in the Constitution to safeguard public money, making it possible to distribute the Eurobond proceeds offshore to the scammers.
- (vi) Further, the petitioners posit that, it is within the knowledge of the CS/NT and the Central Bank of Kenya Governor, that the Central Bank of Kenya account held in JP Morgan Chase and Citibank, New York is not a fund within the meaning of Article 206(1) of the Constitution. Hence, by opening a Central bank Account held in JP Morgan Chase and Citibank which is not a government bank account, the CS/NT and the Central Bank of Kenya governor violated **Article 206(1)** read together with **Section 17(1) & (2)** of the PFMA and sections **44 & 45** of the CBK Act.
- (vii) The petitioners are aggrieved that, contrary to **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**, the CS/NT highly misled the Kenyan public and violated **Article 206** of the Constitution, as read with **Section 17(1)&(2)** of the PFMA, by averring in its Press Statement that it opened the GOK/CBK Sovereign Bond Bank

Account pursuant to **Section 28** of the PFMA, and **Section 45 (d)** of the CBK Act. The said sections do not provide for the opening of GOK/CBK Sovereign Bond Bank Account. Further:

- (a) **Section 28 of the PFMA** provides for opening, operating and closing of bank accounts and sub accounts for all national government entities not opening GOK/CBK Sovereign Bond Bank Account.
- (b) **Section 45(d) of the CBK Act** is about payment, remittance, collection or acceptance for deposit or custody of funds in Kenya or abroad, from a public entity's account held by CBK under instruction; it's not for opening GOK/CBK Sovereign Bond Bank Account

The press statement stated:

*The **GOK/CBK Sovereign Bond Bank Account** held with JP Morgan Chase Bank, New York was opened and managed by the National Treasury in conjunction with the Central Bank of Kenya pursuant to **Section 28 of the Public Finance Management Act, 2012** and **Section 45 (d) of the Central Bank of Kenya**. The GOK/CBK Sovereign Bond Account held with JP Morgan Chase Bank, New York was operated by the National Treasury in conjunction with the Central Bank of Kenya (CBK) as the Government fiscal agent. In this respect, the National Treasury designated two signatories to the account with respect to the GOK/CBK Sovereign Bond Account and the Sovereign Bond Tap Sales. The National Treasury signatories were:*

- 1) Accountant General*
- 2) Deputy Accountant General*

- (viii) The petitioners are aggrieved that contrary to the development expenditures in the budget approved by Parliament vide the Appropriation Acts for the financial years 2013/2014 and 2014/2015, wherein no Eurobond funds were included as a source of financing, the CS/NT in his Press Statement misled the Kenyan public by claiming that the Eurobond proceeds were used for financing the development

expenditure only, and not recurrent expenditure in line with **Section 15**, and that the proceeds were approved by Parliament and applied in the respective Appropriations Acts for financial years 2013/14 and 2014/15. The CS/NT stated the following in its Press Statement:

The proceeds were used in line with Section 15 of the Public Finance Management Act, 2012 which provides that national government borrowing shall be used only for the purpose of financing development expenditure and not recurrent expenditure. In this respect and as indicated earlier, the proceeds of the Sovereign bond and the Tap Sales were used to fund part of the development budget for the financial years 2013/14 and 2014/15 as shown in Table II above on exchequer releases to selected Ministries/Departments/Agencies (MDAs).

All expenditures by Ministries/Departments/ Agencies are approved by Parliament through an Appropriation Act. The development budget for the mentioned MDA's in Table II above, where Sovereign Bond proceeds were applied were approved by Parliament in the respective Appropriations Acts for financial years 2013/14 and 2014/15. It is important to note that the development budget for the financial year 2013/14 and 2014/15 was appropriated by Parliament at the program level as provided for under Section 12 of the Second Schedule of the Public Finance Management Act, 2012 and therefore information on the specific development projects implemented by the fourteen MDA's that were funded from the proceeds of the Sovereign Bond is available in the specific MDA's. This information is being collated for posting in National Treasury Website www.treasury.go.ke as well as publication and publishing.

- (ix) The petitioners analysed the 2013/2014 and 2014/15 development expenditure budget and established that,

- (a) The 2013/2014 development expenditure budget aggregated to **Ksh. 413,255,548,346** fully financed by **Ksh. 310,539,909,672** tax revenues and **Ksh. 102,715,638,674** external loans and grants advanced by specific multilateral and bilateral lenders on individual/specific development projects.
- (b) The funding was authorised by Parliament through the Appropriation Act of June 2013 which did not authorize any funding from the Eurobond contrary to the assertion by the CS/NT in its Press Statement.
- (c) The Petitioners posit that in budget making process, under **Section 37(9)** of the PFMA, the CS/NT is responsible for, among others, and upon approval of the budget estimates by the National Assembly, preparing and submitting an Appropriation Bill of the approved estimates to the National Assembly. The CS/NT prepared the Appropriation Bill, 2013 containing the development expenditures partly funded by **Ksh. 102,715,638,674** external loans and grants advanced by specific multilateral and bilateral lenders, but there was no Eurobond funding authorized therein.
- (d) The Petitioners are aggrieved that CS/NT double-funded the 2013/2014 development expenditures, having submitted an Appropriation Bill of June 2013 containing fully funded development expenditures by **Ksh. 310,539,909,672** tax revenues and **Ksh. 102,715,638,674** external loans and grants advanced by specific multilateral and bilateral lenders on specific projects and in its Press Statement purports to have released **Kshs. 25,010,035,230** Eurobond to finance the same development expenditures in the 4 ministries.
- (e) The petitioners strongly believe that the CS/NT's Press Statement was intended to conceal the USD 2.75 billion Eurobond fraud scheme, because all the 2013/2014 expenditure estimates (development projects) were fully funded and that constitutionally and legally the closure of 2013/2014 financial year

was on 30th June 2014. Hence, there is no way funds received after the closure of the financial year could have been used retrospectively!

- (f) Likewise, the 2014/2015 development expenditure budget aggregated to **Ksh. 494,892,120,733**, and it was fully financed by **Ksh. 307,090,234,705** in tax revenues, and **Ksh. 187,801,886,028** in external loans and grants advanced by specific multilateral and bilateral lenders on individual/specific development projects.
- (g) The funding was authorised by Parliament through the Appropriation Act of June 2014 which did not authorize any funding from Eurobond proceeds contrary to the assertion by the CS/NT in its Press Statement.
- (h) The Petitioners posit that, under **section 37(9)** of the PFMA, upon approval of the budget estimates by the National Assembly in budget making process, the CS/NT is responsible for, among others, preparing and submitting an Appropriation Bill of the approved estimates to the National Assembly. The CS/NT prepared the Appropriation Bill of June 2014, which contained the development expenditures partly funded by **Kshs. 187,801,886,028** in external loans and grants advanced by specific multilateral and bilateral lenders, but there was no Eurobond funding authorized therein.
- (i) The petitioners are aggrieved that the CS/NT fraudulently double-funded the 2014/2015 development expenditures, having submitted an Appropriation Bill of June 2014 containing fully funded development expenditures by **Ksh. 307,090,234,705** tax revenues and **Kshs. 187,801,886,028** external loans and grants advanced by specific multilateral and bilateral lenders on specific projects and in its Press Statement purports to have released **Kshs. 171,906,634,086** Eurobond to finance the same development expenditures in 14 Ministries and State Departments.

- (j) The petitioners posit that the CS/NT's Press Statement was intended to conceal the USD 2.75 billion Eurobond fraud scheme, because all the 2014/2015 expenditure estimates (development projects) were fully funded. This Honourable Court should take judicial notice of the fact that the CS/NT, admittedly, in its Press Statement, does not know which projects were financed by the Eurobond funds it purports to have released to the respective ministries.
- (x) The petitioners analysed the purported Eurobond funding of ministries/ departments/agencies in the financial years 2013/2014 and 2014/2015 as reported by CS/NT in its Press Release under *Table II: Exchequer releases to Ministries/ Departments/ Agencies (MDAs)* against the 2013/2014 and 2014/2015 budgeted borrowings, which shows that the MDAs purported to have been funded through Eurobond were fully funded by taxes and loans approved/authorised by Parliament through the respective Appropriation Acts. **This provides irrefutable evidence that the Eurobond loans were not borrowed to finance public projects but were odious debts.**
- (xi) In its Press Release, the CS/NT purports under *Table II: Exchequer releases to Ministries/ Departments/ Agencies (MDAs)* that, in 2013/2014 financial year the Eurobond loans funded development expenditure totaling **Kshs. 25,010,035,230** in four Ministries which include: Ministry of Transport and Infrastructure; Environment Water and Natural Resources; Energy and Petroleum; and Agriculture, livestock and Fisheries.
- (xii) However, Parliament through the Appropriation Act 2013 approved funds to finance in full, all projects whose value aggregated to **Kshs. 249,719,113,211** from tax revenues amounting to **Kshs. 175,254,049,611**, and external loans and grants of **Kshs. 74,465,063,600** granted by specific multi-lateral and bi-lateral lenders, contained in the individual budgets for ministries mentioned in the preceding paragraph above.

- (xiii) The petitioners are aggrieved that, if indeed the CS/NT released the Eurobond funds as it purports, then the projects in the four ministries were over-funded by **Ksh. 25,010,035,230**, since the funding aggregated to **Ksh. 274,729,148,441** (being **175,254,049,611 + 74,465,063,600 + 25,010,035,230**) against the aggregate development expenditure of **Kshs. 249,719,113,211**.
- (xiv) In its Press Release, the CS/NT purports under *Table II: Exchequer releases to Ministries/ Departments/ Agencies (MDAs)* that in Financial Year 2014/2015 Eurobond loans totalling **Kshs. 171,906,634,086** was purported to have funded development expenditures of fourteen ministries and State departments, including the ministries of Land, Housing and Urban Development; Information, Communication and Technology; Sports, Culture and Arts; Energy and Petroleum; Industrialization and Enterprise Development; and the State departments for Planning; Education, Science and Technology; Infrastructure, Water and Regional Authority; Agriculture, Livestock, Fisheries; and Commerce and Tourism.
- (xv) However, through the Appropriation Act 2014, Parliament approved funds to finance in full all budgeted projects aggregating to **Kshs. 343,981,714,257** from tax revenues amounting to **Kshs. 229,419,353,142**, and external loans and grants of **Kshs. 134,994,270,512** from specific multi-lateral and bi-lateral lenders, contained in the individual ministries and departments mentioned in the preceding paragraph above.
- (xvi) The petitioners are aggrieved that, if indeed the CS/NT released the Eurobond funds as it purports, then the projects in the fourteen ministries and State departments were over-funded by **Ksh. 171,906,634,086**, since the funding aggregated to **Ksh. 536,320,257,740** (being **229,419,353,142 + 134,994,270,512 + 171,906,634,086**) against the aggregate development expenditure of **Ksh. 343,981,714,257**.
- (xvii) To demonstrate that specific lenders provide loan funding to individual ministries and departments, the petitioners have listed the lenders and the amounts lent to

the sampled Ministry of Energy and Petroleum and the State Department of Infrastructure in the 2014/2015 financial year here below:

TABLE 7

Ministry of Energy and Petroleum		
1.	Belgium	2,736,145,000
2.	Spain	4,356,263,100
3.	France	5,265,740,000
4.	Adbu Dhabi	100,000,000
5.	Japan	1,861,000,000
6.	India	6,209,000,000
7.	China	12,035,920,000
8.	International Development Association (World Bank/ IMF)	8,952,402,033
9.	European Investment Bank (EIB)	1,345,000,000
10.	African Development Fund (ADB/ADF)	4,797,500,000
11.	Arab Bank for Economic Development in Africa (BADEA)	100,000,000
12.	Organization of Petroleum Exporting Countries (OPEC)	110,000,000
Total (Kshs)		47,868,970,133
State Department for Infrastructure		
1.	Germany	748,440,000
2.	France	1,700,000,000
3.	Kuwait	50,000,000
4.	Saudi Arabia	50,000,000
5.	Abdu Dhabi	50,000,000
6.	Japan	6,525,000,000
7.	China	5,600,000,000
8.	International Development Association (IDA World Bank/ IMF)	6,508,500,000
9.	African Development Bank	9,450,000,000
10.	Arab Bank for Economic Development in Africa (BADEA)	170,000,000
11.	Organization of Petroleum Exporting Countries (OPEC)	170,000,000
Total (Kshs)		29,021,940,000

(xviii) The Petitioners are aggrieved that, the CS/NT in its press statement, contrary to Article 2(1),(2),(3)&(4) of the Constitution, questioned the supremacy of the Constitution to justify the alleged unconstitutional and unlawful settlement of the Kshs. 53.2 billion syndicated loans. In the press statement the CS/NT avers:

The payment of the Syndicated Loan from the Account held with the JP Morgan Chase Bank in New York was in line with the provisions of the Constitution and the Public Finance Management Act, 2012. In this regard, Article 206 of the Constitution and Section 17 (2) of the Public Finance Management Act, 2012 should not be read in isolation but with other relevant provisions, especially Section 50 (7) (d) of the Public Finance Management Act 2012 and Section 45 (d) of the Central Bank of Kenya Act. It is important to note that the Public Finance Management Act, 2012 was amended in 2014 to facilitate netting off pre-negotiated expenses and other obligations relating to the issuance of the Sovereign Bond. It is within this legal framework that the National Treasury paid an amount of Kshs.53.2 billion to settle the Syndicate Loan.

(xix) The averments by the CS/NT, in its Press Statement, that **Article 206** of the Constitution and **Section 17 (2)** of the PFMA should not be read in isolation but with other relevant provisions, especially **Section 50 (7) (d)** of the PFMA and **Section 45 (d)** of the CBK Act, amounts to subjecting the Constitution to unconstitutional legislation, and in this particular case to the unconstitutional amendment of **section 50(7)** of PFMA. The amendment, which was inconsistent with **Article 206(1)** of the Constitution to the extent that it legalized two more exemptions (**c & d below**) above what is provide by the Constitution, excluded payment of the government-to-government loan and financing expenses into the Consolidated Fund. The exemptions included:

Section 50(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

(a) paid into the Consolidated Fund;

(b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;

(c) of PFMA disbursed directly to the suppliers where the loan is a government-to-government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or

(d) of PFMA in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(xx) The petitioners posit that **Article 206(1)** of the Constitution provides only the following two (2) exemptions:

(1) There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that—

(a) Is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose.

(b) May, under an Act of Parliament, be retained by the State organ that received it for the purpose of defraying the expenses of the State organ.

(xxi) The Petitioners are aggrieved that notwithstanding the unconstitutionality of the amendment of **Section 50(7)** of the PFMA, the amended section **50(7)(d)** of the

PFMA provides for payment from the loan of pre-negotiated expenses which include, among others, fees, commissions, and management fees. Hence, **section 50(7)(d)** of the PFMA cannot be used as an authority for settling the Ksh. 53. 2 billion syndicated loans from proceeds of the issued Eurobond loan held in a JP Morgan Chase Bank in New York in a purported CBK account because they are not pre-negotiated expenses.

(xxii) Likewise, **section 45(d)** of CBK Act cannot be an authority to settle the Ksh. 53. 2 billion syndicated loans from the issued Eurobond loan held in a JP Morgan Chase Bank in New York, because the payment, remittance, or acceptance or custody of funds in Kenya or abroad, provided in the Act are transacted from a government entity account held in Central Bank of Kenya.

(xxiii) The Petitioners posit that **Article 214(1)** of the Constitution provide that, public debts, like the syndicated loans, are a charge on the Consolidated Fund, this begs the question, why the **Ksh. 53. 2 billion** syndicated loan was purported to have been settled from the unconstitutionally and unlawfully opened Central Bank of Kenya Account held in a JP Morgan Chase Bank in New York, whereas, it is not a public fund. In particular **Article 214(1)** of the Constitution provides:

Article 214(1) of the Constitution provide that,

“The public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds”.

The failures of the Auditor General

110. The petitioners are aggrieved that the Auditor General failed in its responsibility under **Article 229(4)(g) & (6)** of the Constitution to audit and confirm whether the Eurobond loans and subsequent proceeds were borrowed and applied lawfully and effectively. Further and in particular:

- (i) The Petitioners posit that, in its Press Statement, the CS/NT averred that:

“The Auditor General has confirmed that all the Net Proceeds from the Sovereign Bond and the Tap Sales were received into the Consolidated Fund. The Office of the Auditor General confirmed the same position to Public Accounts Committee of the National Assembly when he appeared before the Committee. Further, all the proceeds from the Sovereign Bond were accounted for and this position was confirmed by the Auditor General who in his report for 2013/14 Fiscal Year noted that he did not: -

“Qualify my audit opinion on the basis of this matter due to the fact that the balance of actual net proceeds from the Sovereign Bond is correctly reflected in the Off-Shore Account and in the Central Bank of Kenya Special Account”.

- (ii) The Petitioners are aggrieved that, the Auditor General unconstitutionally gave a clean bill of health on the USD 2 billion proceeds from Sovereign Bond even after confirming that depositing the proceeds into an offshore account was contrary to Article 206 of the Constitution of Kenya and Section 17(2) of Public Finance and Management Act, 2012, which require that all money raised or received by or on behalf of the National Government be paid into the Consolidated Fund. Which in effect it confirmed that, borrowing USD 2 billion Eurobond was unconstitutional and unlawful.

- (iii) The Petitioners posit that the Auditor General failed to carry out its Constitutional responsibilities under **Article 229(4)(d)&(6)** of the Constitution, to the extent of gathering adequate audit evidence to establish whether the Eurobond loan was paid into the Consolidated Fund and applied to specific projects in the respective MDAs. In particular, Article 229(4)(d)&(6) states:

(4) “Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—

(g) “the public debt”.

(6) “An audit report shall confirm whether or not public money has been applied lawfully and in an effective way”.

The failures of the Controller of Budget.

111. The Controller of Budget has been sued for failing in its responsibility to oversee the implementation of the budget as required under **Article 220(1)** of the Constitution. Further and in particular:

(i) The petitioners point out that, in its Press Statement, the CS/NT avers that:

It is important to note that the net proceeds from the Sovereign Bond and Tap Sales were received first in the Sovereign Bond Account at the Central Bank of Kenya and then transferred to the National Exchequer Account as and when resources were required to finance development projects. The Transfers into the Consolidated Fund (National Exchequer Account) were as follows:

TABLE 8

Financial year	Date Transfer to Consolidated Fund (Exchequer A/C)	Amount Ksh.
2013/2014	30.06.2014	34,648,388,180
2014/15	15.09.2014	25,000,000,000
"	19.09.2014	25,000,000,000
"	30.10.2014	15,000,000,000
"	21.01.2015	25,000,000,000
"	17.03.2015	25,000,000,000
"	02.06.2015	30,000,000,000
"	30.06.2015	17,268,281,136
Total		196,916,669,316

Indeed, the transfers from the CBK account into the National Exchequer Account of Kshs. 196,916,669,316.00 (See attached annexure marked OCOB "3") were confirmed by the Controller of Budget to be the same and OCOB provided the same information to the Public Accounts Committee of the National Assembly on 02.11.2015.

(ii) The Petitioners are aggrieved that, contrary to **Article 228(4)&(5)** of the Constitution, the Controller of Budget oversaw the transfer of **Kshs. 196,916,669,316.00** purported Eurobond proceeds which were not in the budget as required under **Article 220(1)** of the Constitution. Further, the Eurobond loans were not authorized by Parliament through the Appropriation Acts of 2013 and

2014. Thus, the Controller of Budget, in contravention of **Article 228(5)** of the Constitution, approved the withdrawal of the Eurobond loan proceeds that were not authorized by law.

- (iii) The Petitioners posit that the purported transfer of **Kshs. 34,648,388,180.25** Eurobond proceeds to the Consolidated Fund (Exchequer Account) is not reflected in the COB's Annual Budget Implementation Review Report FY 2013/14 issued in August, 2014, and neither has COB indicated in its report, which projects were financed by the **Kshs. 34,648,388,180.25** Eurobond proceeds, taking into account the fact that, the 2013/2014 development expenditure of **Ksh. 413.255,548,346** was fully financed by **Ksh. 310,539,909,672** in tax revenues and **Ksh. 102,715,638,674** in external loans and grants advanced by specific multilateral and bilateral lenders on individual specific development projects.
- (iv) Likewise, the Petitioners posit that the purported transfer of **Kshs 162,268,281,135.75** Eurobond proceeds to the Consolidated Fund (Exchequer Account) is false because only **Ksh. 73,810,000,000** is reflected as Eurobond proceeds in the COB's Annual National Government Budget Implementation Review Report FY 2014/15 issued in August 2015. The COB report, does not indicate which projects were financed by the **Kshs. 162,268,281,136** Eurobond proceeds, yet the 2014/2015 development expenditure of **Ksh. 494.892,120,733** was fully financed by **Ksh. 307,090,234,705** in tax revenues and **Ksh. 187,801,886,028** in external loans and grants advanced by specific multilateral and bilateral lenders on individual specific development projects.
- (v) Based on the foregoing, the petitioners confidently posit that, contrary to **sections 29 and 30** of the **Leadership and Integrity Act, No. 19 of 2012**, as read with **section 19** of the **Public Officer Ethics Act (Cap 185B)**, the Controller of Budget willfully and deliberately misled the Kenyan public and the National Assembly (through the Public Accounts Committee of the House) by publishing and presenting to the Committee, fraudulent reconciliations of sovereign loan proceeds and expenditure as at June 30, 2015 aggregating to **Ksh. 250,240,738,050.44**,

claiming falsely that they contained proceeds of the Eurobond. (*Annexure Marked OCOB “3” in the CS/NT Press Statement*). It did so with full knowledge that the Eurobond proceeds were not used to finance any development projects, since the development expenditure budgets for 2013/2014 and 2014/2015 financial years were fully funded by tax revenues and external loans and grants advanced by specific multilateral and bilateral lenders.

112. The petitioners reiterate that, pursuant to **Articles 206(4)** of the Constitution, as read together with **Articles 228(4) & (5)** thereof, the Controller of Budget oversees the implementation of the budget (estimates of revenue and expenditure) by authorizing the withdrawal of money from the consolidated fund, county revenue funds, or the equalization fund and ensures that the money being withdrawn is authorized by Law.

Further failures of the National Assembly.

113. Other than being sued for enacting the unconstitutional **Section 50(7)(c) & (d) of the Public Finance Management Act, 2012**, to the extent that it contradicts **Article 206(1)** of the Constitution, the National Assembly has been sued for failing in its responsibility to debate and consider the reports of the Auditor General and take appropriate action on the expenditure of proceeds of sovereign loans for the financial years 2013/2014 and 2014/2015. Further and in particular, the Petitioners confidently posit that, contrary to **Article 220(1) & 221(6)** of the Constitution, as read together with the Appropriation Acts 2013 and 2014, the National Assembly consciously avoided to declare as unconstitutional and unlawful the reconciliation of the sovereign loan proceeds and expenditure as of June 30, 2015, aggregating to Ksh. 250,240,738,050.44 presented by Controller of Budget, notwithstanding that, the House had full knowledge that it did not authorize the Eurobond vide the Appropriation Acts of 2013 and 2014.
114. Because the Treasury has presented its case in a way there are a lot of things that are not adding up, the Petitioners demand that the respondents be put to strict proof on the *bona*

fides of their alleged transactions showing that the entire Eurobond money was acquired lawfully and was spent to benefit Kenyans.

115. The Petitioners had a legitimate expectation that the debut Eurobond would significantly raise the level of foreign reserves with the exchange rate coming under pressure to appreciate in subsequent months. If the Eurobond hard currency worth 250 billion of shillings had entered the Kenyan economy ought to have had a strengthening impact on the shilling and pulled down interest rates.
116. The urgency around the payments of Kshs1.4 billion (US\$16 million) to Anglo Leasing, which were made after authorisation by the 1st Respondent, were justified to the public by H. E. the former President Uhuru Kenyatta and his team on grounds that they could see a road crash in the local markets if those markets were called upon to make good the shortfall in the event of a skipped Eurobond.
117. According to the National Treasury's 2014 Annual Public Debt Report, Kenya issued the sovereign bond with ten objectives:
- 117.1. To access external financing;
 - 117.2. To attract more resources to Kenya's financial systems;
 - 117.3. To reduce domestic interest rates;
 - 117.4. To boost investments;
 - 117.5. To boost employment;
 - 117.6. To boost economic growth;
 - 117.7. To consolidate macro-economic stability;
 - 117.8. To stabilise the Kenya Shilling;
 - 117.9. To stabilise import prices;
 - 117.10. To reduce the total cost of living
118. The petitioners posit that, as the law requires, the respondents have an obligation to demonstrate to them (the petitioners) and to other Kenyans that no part of the Eurobond money was misused/stolen as has been widely reported in the media.

119. The petitioners want full disclosure of amounts received from the Eurobond and how it was spent. They are demanding specific details on the infrastructure projects that the respondents allege were financed using the Eurobond funds. Further, the petitioners want clear evidence that the Eurobond money received under the law, and went into financing the 2014/2015 budget, and that it was used according to the law.
120. The petitioners charge that the respondents failed in their obligations to protect the public interest in the utilisation of the proceeds of the Eurobond and should be punished by this Honourable Court for the same. Specifically, they should be surcharged to recover any missing/stolen money.
121. As a starting point, this Honourable Court should order them to give clear and credible answers backed by documentary evidence.
122. **The petitioners posit that the proceeds of the Eurobond loans have NOT been accounted for and the narratives presented by the CS Treasury, the Controller of Budget, and the Auditor General are fictitious.**
123. The respondents need to clearly explain the phenomena of special accounts and to demonstrate that these are not Slush Funds maintained by the governing elite to siphon off public monies through circumventing the laid down Constitutional provisions of Article 206.
124. The petitioners state that the specific offshore account where the Eurobond money was deposited are NOT synonymous with the public funds anticipated to be created by an Act of Parliament as stipulated under the Constitution at Article 206(1)(a).
125. Article 206(1)(a) does not refer to bank accounts but public funds created by an Act of Parliament for a specific purpose. In this sense the fact that the money was sitting in an offshore bank account does not mean it was deposited properly in a statutory public fund created by Parliament as required by the Constitution.

126. Contrary to the Constitution, the Public Finance Management Amendment Act 2014 introduced amendments to the Public Finance Management Act 2012 which weakened control measures at the disposal of the constitutional oversight institutions, including Parliament and the Controller of Budget to safeguard the Eurobond proceeds.
127. The amendment enabled the Eurobond proceeds to be transacted outside the strict controls established under Article 206 of the Constitution preventing the withdrawal of money from the Consolidated Fund without the authority of both an Appropriation Act and Controller of Budget.
128. The Petitioners accuse the Attorney General of failing in its duties of protecting the public interest by not advising the 1st – 5th 4th respondents to borrow and handle the proceeds of the Eurobond strictly according to the law, and specifically not to put them outside the jurisdiction of constitutional oversight institutions by depositing them in an offshore account. In addition, the petitioners accuse the CS National Treasury, the custodian of the national exchequer account, of failing in its duties by depositing the Eurobond proceeds into offshore accounts contrary to Article 206(1) of the Constitution.

(iii) OTHER CONCEALED ODIOUS BORROWINGS

129. The petitioners are aggrieved that there are odious borrowings concealed under two budgets and two estimates of revenue, which were contrary to Articles 220(1) and 221(1),(3),(4),(5)&(6) of the Constitution.
130. The petitioners aver that over the years the Cabinet Secretary/ National Treasury has been operating two separate budgets: the one prepared by Government ministries, departments, and agencies, which it consolidated and submitted to the National Assembly by the CS/NT. These contain only the estimates of expenditure, which are discussed by National Assembly, approved, and enacted into appropriation Act, upon assent by the President. Under this, there are approved estimates of external loans and grants earmarked for each Programme/project to be granted by specific lenders.

131. The petitioner avers that the second budget is a creation of the Cabinet Secretary/National Treasury. It contains the estimates of revenue and expenditure that are captured in the monthly *Statement of Actual Revenue and Net Exchequer Issues*. It is in this budget that the CS/NT gazettes unauthorized domestic borrowing, and external loans and grants.

132. To demonstrate the above, the petitioners analyse two original budgets and the estimates of revenue for the 2023/2024 financial year:

(a) The petitioners aver that, contrary to the provisions **Article 220(1)(a)** of the Constitution, which provides that the budget shall contain estimates of revenue and expenditure (recurrent and development), the 2023/2024 original budget assented by the President contained only estimates of expenditure aggregating to **Ksh. 4,208,823,415,294**. The estimates comprised of recurrent expenditure including the consolidated funds services aggregating to **Ksh.3,401,179,907,279** and development expenditure aggregating to **Ksh. 807,815,621,084** (inclusive of external loans and grants of **Ksh.313,806,128,015.00**).

(b) The petitioner avers that, under Gazette Notice No. 1108 dated 18th August 2023, and contrary to **Articles 220(1) and 221** of the Constitution, the CS/NT gazetted the *Statement of Actual Revenue and Net Exchequer Issues* for the month ending 31st July 2023, which contained:

(i) The estimates of revenue aggregating to **Ksh.4,132,740,896,842.00** comprising of

- I. Tax Revenue aggregating to **Ksh. 2,495,825,165,005**
- II. Non-Tax Revenue aggregating to **Ksh. 75,333,897,602**
- III. Domestic Borrowing aggregating to **Ksh. 688,213,698,151**
- IV. External Loans and Grants **Ksh. 870,178,136,084**
- V. Other Domestic Financing **Ksh. 3,190,000,000**

(ii) The estimates of expenditure aggregating to **Ksh.4,132,740,896,842** comprising of:

- I. Recurrent expenditure including the consolidated funds services aggregating to **Ksh.3,266,500,659,691.**
- II. The development expenditure aggregating to **Ksh. 480,815,621,084.**
- III. The county government equitable share aggregating to **Kshs.385,424,616,067.00**

133. The petitioners aver that, contrary to **Article 220(1)(a) & (b) and 221** of the Constitution, the 2023/2024 estimates of revenue, aggregating to **Ksh. 4,245,967,204,352**, contained in the National Treasury's document titled "*The 2023/2024 Estimates of Revenue Grants and Loans of the Government of Kenya for the year ending 30th June 2024*", were never tabled in the National Assembly as a Bill to be enacted into law pursuant to **Article 109(1)** of the Constitution. Even though the document was submitted to the National Assembly as required under **Article 221(1)** of the Constitution, the National assembly deliberately failed to table the estimates, discuss them in the National Assembly Committee, present the estimates for public participation, and enact them into an Appropriation Act as required under **Article 221(3), (4), (5) & (6)** of the Constitution, read together with **section 37(9)** of the PFMA. Further and in particular, the estimates comprised of:

- I. Tax revenues aggregating to **Ksh. 2,922,347,040,951.00**
- II. Domestic Borrowings aggregating to **Ksh. 674,384,797,228.00**
- III. External loans and grants aggregating to **Ksh. 649,235,366,173.00**

134. The petitioner further avers that, the estimates of revenue aggregating to **Ksh. 4,245,967,204,352.00** contained in a National Treasury document titled "*The 2023/2024 Estimates of Revenue Grants and Loans of the Government of Kenya for the year ending 30th June 2024*" include odious estimates of domestic borrowings of **Ksh.674,384,797,228.00** and external loans and grants aggregating to **Ksh.649,235,366,173.00**, (not included in the June 2023 appropriation Act) totaling **Ksh.1,323,620,163,401.00**

135. The petitioners retaliate that contrary to **Article 220(1)(b)** of the Constitution, as read together with **sections 15(2)(c) & 50(3)** of the PFMA, the NA did not approve and enact

into law the estimates of borrowings aggregating to **Ksh. 1,323,620,163,401.00** contained in a National Treasury document titled, “the 2023/2024 Estimates of Revenue Grants and Loans of the Government of Kenya for the year ending 30th June 2024.”

136. Still, contrary to stated provisions of the Constitution and PFMA, the CS/NT, vide Gazette Notice No. 1108 of 18th August 2023, gazetted *The Statement of Actual Revenue and Net Exchequer Issues* for the month ending 31st July 2023, which contained domestic borrowings aggregating to **Ksh.688,213,698,151** and external loans and grants aggregating to **Ksh.870,178,136,084.00**, totaling to **Ksh.1,558,391,834,235**.
137. The petitioner avers that contrary to Article 220(1)(b) of the Constitution, as read together with sections 15(2)(c) & 50(3) of the PFMA, there are two sets of contradictory estimates of borrowings which include **Ksh. 1,323,620,163,401** contained in a National Treasury’s document titled, “*The 2023/2024 Estimates of Revenue Grants and Loans of the Government of Kenya for the year ending 30th June 2024*” and **Ksh.1,558,391,834,235** contained in the Statement of Actual Revenue and Net Exchequer Issues for the month ending 31st July 2023 under Gazette Notice No. 1108 of 18th August 2023.
138. The petitioner avers that the National Assembly Approved, and the president assented to the 2023/2024 development expenditure estimates aggregating to **Ksh.807,643,508,015** fully financed by **Ksh.493,837,380,000** tax revenues and external loans and grants aggregating to **Ksh.313,806,128,015** contained in the 2023/2024 estimates of development expenditure of the government of Kenya for the year ending 30th June 2024 volume I, II & III.
139. The petitioner further avers that the external loans and grants of **Ksh. 313,806,128,015** where approved to be granted by specific lenders and earmarked to finance specific development projects during the financial year 2023/2024 as required under **Article 220(1)(a) & (b)** of the Constitution as read together with **section 15(2)(c) & 50(3)** of the **PFMA**. Therefore, the petitioners reiterate that the borrowings aggregating to **Ksh. 1,244,585,706,220 (1,558,391,834,235 - 313,806,128,015)** and **1009,814.035,386**

(1,323,620,163,401 – 313,806,128,015) contained in the Statement of Actual Revenue and Net Exchequer Issues for the month ending 31st July 2023 under gazette notice No. 1108 dated 18th August 2023 and National Treasury document titled the 2023/2024 Estimates of Revenue Grants and Loans of the Government of Kenya for the year ending 30th June 2024 respectively were not estimated to finance any budgeted development expenditure (project) thus the petitioners aver that the **Ksh. 1,244,585,706,220** were **estimated odious borrowings**.

140. The petitioners aver that, although the development projects were not revised, the borrowings were unconstitutionally reviewed twice during the 2023/2024 financial year as contained in *The Statement of Actual Revenue and Net Exchequer Issues for the month ending 30th June 2024* under Gazette Notice No. 9005 of 17th July 2024, as shown in the Table below:

TABLE 9

Type of Borrowings	Original Estimates	Revised Estimates I	Revised Estimates II	Actual Receipts
Domestic Borrowing	688,213,698,151	851,898,014,668	1,052,088,687,183	795,026,175,981
External Loans & Grants	870,178,136,084	849,764,479,190	747,571,954,622	705,704,926,155
TOTAL (KSHS)	1,558,391,834,235	1,701,662,493,858	1,799,660,641,805	1,500,731,102,136

141. The petitioners aver that contrary to **Article 220(1)(b)** as read together with **Article 223** and **section 15(2)(c) & 50(3)** of the PFMA, the CS/NT revised the purported estimates of domestic borrowings and external loans and grants from purported original estimates of **Ksh.1,558,391,834,235**, to **Ksh. 1,701,662,493,858** (shown in the table above as Revised Estimates I) and finally **Ksh.1,799,660,641,805** (Revised Estimates II), contained in the Statement of Actual Revenue and Net Exchequer Issues for the month ending 31st July 2023 under gazette notice No. 1108 dated 18th August 2023 and the Statement of Actual Revenue and Net Exchequer Issues for the month ending 30th June 2024 under gazette notice No. 9005 dated 17th July 2024.

142. The petitioner avers that contrary to **Article 220(1)(b)** read together with sections **15(2)(c) & 50(3) of the PFMA**, the CS/NT's actual borrowings for the 2023/2024 financial year aggregated to **Ksh. 1,500,731,102,136** in both domestic borrowings and external loans

and grants contained in the Statement of Actual Revenue and Net Exchequer Issues for the month ending 30th June 2024 under Gazette Notice No. 9005 dated 17th July 2024.

143. The Petitioners are aggrieved that the Appropriation Act, 2023, only authorized **Ksh.313,806,128,015** to finance development expenditure which gross expenditure aggregated **Ksh.807,643,508,015** (the balance of Ksh. 493,837,380,000 was to be financed by tax revenues). The petitioners conclusively state that, the **Ksh.1,186,924,974,121 (1,500,731,102,136 - 313,806,128,015)** was borrowed unlawfully and did not finance any project, therefore, it was an odious debt.
144. Table 10 below, on **Amount borrowed unlawfully (Outside the Budget)**, traces odious public debts over a period of ten (10) financial years from 2014/2015 to 2024/2025 (i.e., up to 30th November 2024). The petitioners are aggrieved that the Executive, with the National Assembly standing by without raising a finger, incurred odious debts aggregating to **Kshs. 6,950,163,132,328** which have resulted in the current punitive taxes required to service the odious debt, and more illegal borrowings to keep the government afloat.
145. The Petitioners are further aggrieved that, in the recurrent expenditure estimates for the instant financial year 2024/2025, to service odious debts, the taxpayers will pay hefty taxes aggregating to **Kshs. 1,853,164,844,174** comprising of **Kshs. 1,009,877,370,802** in interests on the odious debts, and the redemption of the principal at **Kshs. 843,287,473,372**. And from the *Statement of Actual Revenue and Net Exchequer Issues* (G.N. 10288 of 16th August, 2024), the estimated total borrowing is **Kshs. 1,571,801,715,860**. This means the debt stock will increase by **Kshs. 728,514,242,488** (being, **1,571,801,715,860 – 843,287,473,372**).
146. The petitioners point out that, in the Appropriation Act, 2024, the only borrowings approved by Parliament are external loans and grants totalling **Kshs. 277,815,125,902**, in the development expenditure estimates for the instant financial year 2024/2025. The difference between what is authorised by Parliament (**Kshs. 277, 815,125,902**) and the arbitrary estimates by the CS/NT (**Kshs. 1,571,801,715,860**) is **Kshs.1, 293,986,559,958**. The development expenditure estimates for that financial year aggregated to

Kshs.724,378,630,302, to be financed by tax revenue (**Kshs.446,563,504,400**) and external loans and grants (**Kshs. 277, 815,125,902**). The import of this is that the CS/NT estimated to borrow **Kshs. 1,293,986,559,958** contrary to **Article 220(1)(b)** of the Constitution as read together with **Section 15(2)(c) and 50(3)** of the PFMA.

TABLE 10

Amount Borrowed Unlawfully (Outside the Budget)

Financial Year	Actual totals of both authorised and unauthorised Domestic Debt and External Loans borrowed over the years as stated in the Statements of Actual Revenue and Net Exchequer Issues A	Borrowings Authorised by Appropriation Act\$ B	Actual Amount Borrowed Unlawfully A-B
2014/2015	407,165,356,983	136,385,001,935	270,780,355,048
2015/2016	683,479,898,205	280,869,593,236	402,610,304,969
2016/2017	645,856,974,239	348,256,140,350	297,600,833,889
2017/2018	751,731,497,696	204,267,316,374	547,464,181,322
2018/2019	975,837,147,991	246,817,280,751	729,019,867,240
2019/2020	858,552,450,338	260,695,828,282	597,856,622,056
2020/2021	1,167,727,891,453	250,339,327,264	917,388,564,189
2021/2022	1,116,650,720,849	273,531,170,640	843,119,550,209
2022/2023	1,184,613,281,653	292,757,342,164	891,855,939,489
2023/2024	1,500,731,102,136	313,806,128,015	1,186,924,974,121
*2024/2025	449,360,147,492	277,815,155,902	171,544,991,590
Total	9,741,706,469,035	2,791,543,336,707	6,950,163,132,328

**Receipts up to 30th November 2024*

147. The petitioners aver that the odious debts incurred over the years have resulted in a debt stock of **Ksh.10,561,100,000,000** comprising of **Kshs. 5,410,300,000** domestic and **Kshs. 5,150,800,000,000** external loans and grants contained in the 2022/2023 Central Bank of Kenya's audited annual report and financial statements. Consequently, Kenyan taxpayers have been burdened with heavy taxation to service the ineligible debt, wherein **Ksh. 1,596,641,830,604** tax revenues contained in the *Statement of Actual Revenue and Net Exchequer Issues* for the month ending 30th June 2024 under Gazette Notice No. 9005 dated 17th July 2024 was expended on repayment of principal and interest in the financial year 2023/2024.

148. The petitioners are aggrieved that, out of **Kshs. 2,161,080,036,283** actual tax revenue disclosed in Gazette Notice No. 9005 dated 17th July 2024 (the Statement of Actual Revenue and Net Exchequer Issues, in the FY 2023/2024), **Kshs. 1,596,641,830,604** (73%) was used to service the debts of which **Ksh. 1,244,585,706,220** (58%) was odious.
149. Further, the Petitioners aver that the 2023/2024 Central Bank of Kenya's audited annual report and financial statements contain payment of **Ksh.840,000,000,000** in interest, which comprises **Ksh.622,500,000,000** interest on domestic debt, and **Ksh.218,200,000,000** interests on external debt. Since **Ksh.1,596,641,830,604** was the total amount used in servicing debt, then the amount used for redemption of the principal aggregated to only **Ksh.756,641,830,604**.
150. The petitioners are aggrieved that in the 2023/2024 financial year the CS/NT unconstitutionally and unlawfully borrowed **Kshs. 1,500,731,102,136** while it repaid principal debt of **Kshs. 756,641,830,604**. That increased the public debt burden to the taxpayers by **Kshs. 744,089,271,532** (being, **Kshs. 1,500,731,102,136** (actual borrowings) – **Kshs. 756,641,830,604** (redemption of the principal)).
151. The petitioners are aggrieved that due to CS/NT financial mismanagement, Kenyan taxpayers spent 2.7 times more money paying interest on the loans than they did on development. Further and in particular:
- (i) The **Ksh.840,000,000,000** interest is 39% of **Kshs. 2,161,080,036,283** (the actual tax revenue collected).
 - (ii) Only **Kshs. 315,062,171,762** was the actual money spent on development projects (development expenditure) which is 15% of **Kshs. 2,161,080,036,283** (the actual tax revenue collected).
 - (iii) The **Kshs. 315,062,171,762** is 38% of **Ksh.840,000,000,000** (the amount paid in interest for the debt).

(iii) Fraudulent Internal Debt Redemption Roll-over

152. A debt redemption rollover is the process of renewing a loan instead of paying it off when it is due. The borrower carries over the remaining principal and sometimes interest to a new loan. Rollover loans are used when a borrower is unable to repay the loan. The 2023/2024 national budget contained domestic borrowings rollover of **Kshs. 374,538,547,929**, yet no domestic borrowing has ever been authorised in an Appropriation Act,

153. Whereas the 2023/2024 national budget was balanced, with its development expenditure deficit of **Kshs.313,806,128,015** already taken care of by borrowings approved by Parliament, the petitioners are aggrieved that, contrary to **Article 220(1)(a)&(b)** of the Constitution as read together with **section 15(2)(c), 15(3) and 50(3) of the PFMA**, the *Statement of Actual Revenue and Net Exchequer Issues* (Gazette Notice No. 9005 dated 17th July 2024) contained estimates of domestic borrowings aggregating to **Ksh. 1,052,088,687,184**, which comprised of new domestic borrowings aggregating to **Ksh. 662,418,856,755**, and redemptions rollover aggregating to **Ksh. 389,669,830429**. To make matters worse, the original domestic borrowings were revised twice, first to **Kshs. 851,898,014,668** and then to **Kshs. 1,052,088,687,184** as presented in **Table 11** below:

TABLE 11

Type of Borrowings	Original Estimates	Revised Estimates I	Revised Estimates II
New domestic borrowings	313,675,150,222	471,359,466,740	662,418,856,755
Redemptions Roll-overs	374,538,547,929	380,539,547,929	389,669,830429
	688,213,698,151	851,898,014,668	1,052,088,687,184

154. **Table 12** below presents the composition of internal debt redemption rollover for the financial year 2023/2024. The Petitioners are aggrieved that these ineligible internal debt redemption rollovers have aggravated heavily to the burden of taxpayers already sinking under the weight of odious debts.

Table 12

Type of Borrowings	Original estimates	Revised I	Revised II
Treasury Bonds	173,428,247,929	173,428,247,929	178,559,530,426

Pre-1997 Gov't overdraft debt	1,110,000,000	1,110,000,000	1,110,000,000
Redemption Treasury Bills - Shortfall	200,000,000,000	200,000,000,000	200,000,000,000
IMF-ON Lent Loan	-	6,000,000,000	10,000,000,000
Tax Reserve Certificate	300,000	300,000	300,000
Aggregate Redemption Roll-Over	374,538,547,929	380,539,547,929	389,669,830,429

155. To demonstrate the ineligibility of the internal debt redemption rollovers in the table above, the Petitioners analyse the individual components below:

(a) Treasury Bonds

- (i) Treasury bonds are securities issued by the government as a means of borrowing money from financial institutions, enterprises, individuals... they range from medium-term to long-term investment, issued for 5years, 10 years, 20 years, etc. They are supposed to be used to finance development expenditure (development projects). According to Section 2 of the PFMA, “development expenditure” means the expenditure for the creation or renewal of assets.
- (ii) The Petitioners are aggrieved that contrary to the provisions of **Article 220(1)(a)&(b)** of the Constitution as read together with **section 15(2)(c)** and **50(3)** of the PFMA, the CS/NT rolled-over **Ksh. 178,559,530,426** in Treasury Bonds (yet original rollover before revision was **Kshs. 173,428,247,929.00**). Given that a rollover is an unpaid debt carried forward, it is not possible that the same can be revised by any amount, yet in this case it was increased through a supplementary budget by **Kshs. 5,131,282,497**.
- (iii) To make matters worse, the **Ksh. 178,559,530,426** Treasury Bonds in issue were not included in the National Government’s budget, which was authorized by Parliament through the Appropriation Act. Worse still, the bonds are not linked to any budgeted development expenditure (development projects). Thus, the entire **Ksh. 178,559,530,426** rollovers for the 2023/2024 financial year are odious debts.

(b) CBK Overdraft

- (i) Pursuant to **Section 2(1) of the PFMA**, “short term borrowing” means borrowing by a government by way of Treasury Bills, bank-overdraft or other instrument to cover temporary cash shortfalls and is repayable within twelve months. **Section 15(3) of the PFMA** states on its part that, *“For the purposes of subsection (2)(c), short term borrowing shall be restricted to management of cash flows and in case of a bank overdraft facility it shall not exceed five per cent of the most recent audited national government revenue...”* On its part, **Regulation 44 of PFMR 2015** (L.N. 34 of 2015) provides that an annual cash flow plan submitted to the National Treasury shall be the basis for the short-term borrowing for that financial year.
- (ii) The Petitioners are aggrieved that contrary to the provisions of the law stated above, the CS/NT rolled-over a purported Pre-1997 Gov’t overdraft debt of **Kshs. 1,110,000,000.00** as contained in the 2023/2024 national government budget, and in the Statement of Actual Revenue and Net Exchequer Issues under Gazette Notice No. 9005 dated 17th July 2024.
- (iii) Given that bank overdrafts are automatically offset by any money that is credited to an account, like an *Mpesa Fuliza* operates, and the government continually raises revenue, including from taxes, there is absolutely no way that this so called “Pre 1997 overdraft” could stay on the books for more than 27 years as claimed. Thus, the **Kshs. 1,110,000,000.00** is odious debt.

(c) Treasury Bills

- (i) Treasury Bills are securities for short-term borrowings restricted to the management of cashflows, to cover temporary cash shortages as required under sections 2(1) and 15(3) of the PFMA as read together with **Regulation 44 of PFMR 2015** (L.N. 34 of 2015).

(ii) The Petitioners are aggrieved that, contrary to the law, as stated in the 2023/2024 budget of the national government and the Statement of Actual Revenue and Net Exchequer Issues (under Gazette Notice No. 9005 dated 17th July 2024), the CS/NT rolled-over **Ksh. 200,000,000,000.00** in treasury bills.

(iii) Being short-term borrowings meant to cover temporary cash shortages, and repayable within one year, treasury bills cannot be rolled over. Hence, the purported **Ksh. 200,000,000,000.00** rollover in treasury bills is odious debt.

(d) IMF On-Lent Loan

(i) An ‘on-lent loan’ is a loan from a financier that the Government of Kenya borrows then lends to a third-party public entity. There is no provision in law, including in the Constitution and in the PFMA, for on-lent loans. The IMF On-lent loans, like the rollovers above, are a clear fraud scheme where debts are created as a means of enabling easier withdrawal of public money from the consolidated fund, because they are direct charges to the Consolidated Fund to be settled without appropriation by Parliament.

(ii) The petitioners are aggrieved that, acting outside the law, the CS/NT rolled-over the **IMF On-Lent Loan** of **Kshs. 10,000,000,000** (it was not in the original budget but it is captured under Supplementary Estimates 1 as **Ksh. 6,000,000,000** and later increased under Supplementary II by **Ksh. 4,000,000,000**). This too is an odious debt.

(e) Tax Reserve Certificate

(i) is a form of security, which taxpayers are required to provide for the payment of tax held over upon objections or appeals against assessment

- (ii) The government is not a taxpayer to be issued with a tax certificate, the Petitioners are aggrieved that the CS/NT rolled-over ineligible tax certificates of Kshs. 300,000. This too is an odious debt.

156. **Table 13** below traces the fraud scheme on the internal debt redemption rollovers and projections. The Petitioners are aggrieved that, up to and including the financial year 2024/2025, the internal debt redemption rollover fraud scheme, which started in the financial year 2018/2019, increased the odious debt burden by **Kshs. 2,503,596,813,045.00**. Further, there are inconceivable internal debt redemption rollover projections for the financial years 2025/2026, 2026/2027, and 2027/2028 aggregating to **Kshs.2,264,239,928,167**. By the end of the 2027/2028 financial year, the internal debt redemption roll-over fraud scheme will have increased the odious debt burden by **Kshs. 4,767,836,741,212**.

Table 13

Internal Debt Redemption extract from Recurrent Expenditure budget books and Statements of Actual Revenues and Net Exchequer Issues

	<u>Treasury Bonds</u>	<u>Pre-1997 Gov't Overdraft Debt</u>	<u>Redemption of Treasury Bills</u>	<u>IMF-On Lent Loan</u>	<u>Tax Reserve Certificate</u>	<u>Aggregate Redemption Roll-Over</u>
<u>2018/2019</u>	<u>209,242,150,865</u>	<u>1,110,000,000</u>	<u>10,000,000,000</u>		<u>300,000</u>	<u>220,352,450,865</u>
<u>2019/2020</u>	<u>112,580,235,723</u>	<u>1,110,000,000</u>	<u>100,000,000,000</u>		<u>300,000</u>	<u>213,690,535,723</u>
<u>2020/2021</u>	<u>160,844,731,754</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>		<u>300,000</u>	<u>361,955,031,754</u>
<u>2021/2022</u>	<u>142,833,941,474</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>		<u>300,000</u>	<u>343,944,241,474</u>
<u>2022/2023</u>	<u>260,297,600,681</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>		<u>300,000</u>	<u>461,407,900,681</u>
<u>2023/2024</u>	<u>173,428,247,929</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>	<u>10,000,000,000</u>	<u>300,000</u>	<u>389,669,830,429</u>
<u>2024/2025</u>	<u>391,895,543,691</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>	<u>10,000,000,000</u>	<u>300,000</u>	<u>512,576,822,119</u>
<u>Sub-total 1</u>	<u>1,451,122,452,117</u>	<u>7,770,000,000</u>	<u>1,110,000,000,000</u>	<u>20,000,000,000</u>	<u>2,100,000</u>	<u>2,503,596,813,045</u>
<u>2025/2026</u>	<u>448,366,580,597</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>	<u>10,000,000,000</u>	<u>300,000</u>	<u>659,476,880,597</u>
<u>2026/2027</u>	<u>549,208,293,570</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>	<u>10,000,000,000</u>	<u>300,000</u>	<u>760,318,593,570</u>
<u>2027/2028</u>	<u>633,334,154,000</u>	<u>1,110,000,000</u>	<u>200,000,000,000</u>	<u>10,000,000,000</u>	<u>300,000</u>	<u>844,444,454,000</u>
<u>Sub-Total 2</u>	<u>1,630,909,028,167</u>	<u>3,330,000,000</u>	<u>600,000,000,000</u>	<u>30,000,000,000</u>	<u>900,000</u>	<u>2,264,239,928,167</u>
<u>Grand Total</u>	<u>3,082,031,480,284</u>	<u>11,100,000,000</u>	<u>1,710,000,000,000</u>	<u>50,000,000,000</u>	<u>3,000,000</u>	<u>4,767,836,741,212</u>

(iii) The Unconstitutionality of Sections 49(1) and 50(6), (8) and (10)(b) of the PFMA

157. Section 49(1) of the PFMA provides:

49. Authority for borrowing by the national government

- (1) *Subject to provisions of this Act, the Cabinet Secretary may, on behalf of the national government, raise a loan only if the loan and the terms and conditions for the loan are set out in writing and in accordance with—*
 - (a) *the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement; and*
 - (b) *the debt management strategy of the national government over the medium term.*

158. The petitioners challenge the constitutional validity of **Section 49 of the PFMA**, to the extent that it contradicts **Articles 220 and 221** of the Constitution, as read together with **Sections 15(2)(c) and 50(3) of the PFMA**. The impugned section allows the Cabinet Secretary to base borrowings on a Budget Policy Statement, which is not an Act of Parliament, instead of on an Appropriation Act, which is the budget of the national government as legislated into law pursuant to Article 109(1), which states: “***Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.***”

159. The petitioners are aggrieved that, contrary to Article 206(1) and 214(1) of the Constitution which expressly provides “*that the public debt is a charge on the Consolidated Fund, but an Act of Parliament may provide for charging all or part of the public debt to other public funds,*” Section 50(6), (8) and (10)(b) of the PFMA allows the Cabinet Secretary, by regulations approved by Parliament, respectively, to all or part of the public debt is a charge on another public fund established by the national government or any of its entities; to establish such sinking fund or funds for the redemption of loans raised under the Act by the national government; and to charge any expenses incurred in connection with borrowing by the national government or the issue of national government securities on such other public fund established by the national government or any of its entities.

160. The **Article 214(1)** of the Constitution does not provide for or anticipate a situation where regulations made by the Executive and approved by Parliament, and not an Act of

Parliament, can authorise the keeping of any government revenue outside the Consolidated Fund, and in another fund?

(iii) The Unconstitutionality of Section 6 of the Finance Management (Amendment) Act, 2023

161. 67GG. Section 6 of the Act provides:

6. Section 50 of the principal Act is amended—

(a) by deleting subsection (2), and substituting therefor the following new subsection—

“(2) The national government may borrow money in accordance with this Act or any other legislation, subj etc. to the threshold specified in subsection (2A) of this section;”

(b) by inserting the following new subsections immediately after subsection (2)—

“(2A) The borrowing by the national government referred to in subsection (2) shall not exceed fifty-five percent of the gross domestic product in present value terms.

(2B) Notwithstanding subsection (2A), the national government may, in exceptional circumstances, exceed the threshold set under that subsection by not more than five percent.

(2C) The Cabinet Secretary shall, not later than five years from the date of the coming into force of subsections (2A) and (2B), take measures to ensure that borrowing by the national government complies with the threshold prescribed in subsection (2A).

(2D) The Cabinet Secretary shall submit to Parliament a report on the breach of the debt threshold, indicating the exceptional circumstances, if any, provided for in subsection (2B).

(c) by deleting subsection (6) and substituting therefore the following new subsection—

“(6) A public debt and resultant financial obligations incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by Regulations approved by Parliament, that all or part of the public debt and resultant financial obligation is a charge on another public fund established by the national government or any of its entities”.

162. The petitioners are also aggrieved that **Section 6(a) and (b) of the Finance Management (Amendment) Act, 2023**, which amended **Section 50(2)** of the Public Finance Management Act 2012, is unconstitutional, null and void to the extent that it pegs the limit for borrowing by the national government on *“fifty-five percent of the gross domestic product in present value terms”* for the following reasons:

- (a) The Gross Domestic Product (GDP), being the total value of the goods and services produced by a country’s economy during a specified period of time (i.e., **GDP = Consumption + Investment + Government Spending + Net Exports**) cannot be a basis for setting the government borrowing threshold since borrowing is part of government spending (in the GDP formula) under the development expenditures to finance the tax revenue deficit against expenditure, as provided under **Article 220(1)(a) & (b)** of the Constitution, as read together with **section 15(2)(c) and 50(3) of the PFMA**. Therefore, it is unreasonable and, therefore, unconstitutional and unlawful to limit the borrowing level based on GDP (i.e., the entire country’s consumption + investment + government spending + net exports).
- (b) Since, pursuant to **sections 15(2)(c) and 50(3) of the PFMA**, government entities borrow to finance that part of their individual development project which is not financed by tax revenue, a government entity cannot borrow more than what is required to finance the development project.
- (c) In June, 2023, the National Assembly approved the debt ceiling of **Kshs. 10 trillion** based on 55% of GDP. At the same time, through the Appropriation Act, 2023, the National Assembly authorized borrowings limited to **Kshs. 277,815,155,902** to finance development projects for the 2023/2024 financial year. Given that,

pursuant to **Article 220(1)** of the Constitution, as read together with **Article 221**, Parliament limits what each government entity can borrow in any given year, via the relevant Appropriation Act for the year, it follows that, for all practical intents and purposes, the National Assembly authorized the following two debt ceilings: the **Ksh. 277,815,155,902** in the budget as required by the Constitution, and the unconstitutional **Kshs. 10 trillion** arbitrary debt limit level. And that gave the Cabinet Secretary an open cheque to incur odious debts contrary to the express wording of **Article 220(1)(c)** of the Constitution, which is clear that debt ceilings must be set within a budget. It states categorically that:

“Budgets of the national and county governments shall contain—... proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.”

(d) The setting of the unconstitutional debt ceiling exposed the Kenyan public to odious debts by allowing the Cabinet Secretary for the National Treasury to borrow excessively without being checked by the controls in **Article 220(1)** and **221** of the Constitution. Consequently, as reported in the Central Bank of Kenya’s Weekly Bulletin of 27th December 2024, Kenya’s public debt stood at **Kshs. 10,790,080,000,000** as of September 2024 yet, on the other hand, **Kshs. 8,918,021,659,782**, from tax revenue (as demonstrated in **Table 21**) has been used to settle the public debt over the last ten (10) financial years. And that is notwithstanding the fact that, over the same period, the National Assembly, through the Appropriation Acts it enacted, only authorised public debts amounting to **Kshs. 2,791,543,336,707**.

(e) The fiscal responsibility principle under **section 15(2)(d) of the PFMA** provides that *“public debt and obligations shall be maintained at a sustainable level as approved by Parliament for the national government and the county assembly for county government”*. Sustainable level means, the tax revenue is adequate to meet current and future debt obligations without seeking external funding.

(f) The petitioners posit that the failure by the Cabinet Secretary for the National Treasury to enforce the fiscal responsibility principles in **Section 15(2)(d) of the PFMA** has imposed a heavy unconstitutional financial burden on Kenyan taxpayers of **Kshs. 16,822,561,374,869** (being, **(Kshs. 10,790,080,000,000 + Kshs. 8,918,021,659,782) – Kshs. 2,791,543,336,707**).

- In view of the above, Sections **50(2, 2A, 2B, 2C & 2D)** of the **PFMA** are unconstitutional, null and void for creating an arbitrary borrowing ceiling pegged at 55 per cent of the GDP.
- The petitioners are aggrieved that the impugned sections were deliberately introduced to cover up the **Kshs. 6,950,163,132,328** odious debts.
- For completeness, clarity, and the avoidance of doubt, the **Kshs. 6,950,163,132,328** is the actual odious debt borrowed outside Appropriation Acts, and the **Kshs. 2,791,543,336,707** is the debt authorized in Appropriation Acts. The **Kshs. 8,918,021,659,782** is the actual repayment that has been made, and it includes interests and other charges for both the genuine and odious debts.
- Since the repaid public debt (including interest) as recorded in the statement of actual revenue and net exchequer issues aggregated to **Kshs8,918,021,659,782** in the financial years 2014/2015 to 2025/2025 (up to 30th November 2024), then the amount borrowed aggregates to **Kshs5,255,796,104,913**, but, without factoring in interest and other costs of the loans, Kenyan taxpayers have paid **Kshs3,662,225,554,869** more than the loans lawfully borrowed.
- If the petitioners factor in a high interest rate of **Kshs. 1,337,703,248,967** (being 15% of **Kshs8,918,021,659,782**), it follows that taxpayers have

repaid all the public debts with a surplus of **Kshs2,324,522,305,902 (Kshs3,662,225,554,869 - Kshs1,337,703,248,967).**

- Based on the foregoing computations, the petitioners confidently state that Kenya's odious debt is **Kshs13,114,602,305,902** (being the entire **Kshs10,790,080,000,000** from the Central Bank plus the overpayment of **Kshs2,324,522,305,902.**)
- But of the **Kshs13,114,602,305,902** odious debt, only **Kshs6,950,163,132,328** (which includes a fraudulent internal debt redemption roll-over of **Kshs 2,503,596,813,045** (shown in **Table 6**)) is traceable from the National Treasury's financial records. The **Kshs6,164,439,173,574** difference between the Central Bank's records and those of the National Treasury points to the fact that the former could be incurring debt, which is not recorded by the latter.
- Further, the petitioners conclusively state that the amount borrowed over the last ten financial years (**2014/2015 to 2024/2025**), aggregated to **Kshs17,337,845,839,782** (being, **Kshs10,790,080,000,000 + (Kshs8,918,021,659,782 - Kshs2,370,255,820,000)**).
- Sadly, over the 10-year period, the gross development expenditure was **Kshs7,505,400,275,266**, financed by **Kshs4,713,856,938,559** in tax revenue, and **Kshs 2,791,543,336,707** in external loans.

163. The sustainability of debts cannot be pegged on GDP; it can only and must be pegged on Government revenue. According to the International Monetary Fund (IMF), A country's public debt is considered sustainable **if the government is able to meet all its current and future payment obligations without exceptional financial assistance or going into default.**⁴

⁴ <https://www.imf.org/en/Publications/fandd/issues/2020/09/what-is-debt-sustainability-basics>

164. The petitioners also state that **Section 6(c) of the Finance Management (Amendment) Act, 2023**, is unconstitutional and void to the extent that it attempts to redefine “public debt” contrary to the definition of the same under **Article 214(2)** of the Constitution. Article 214(2) is clear the *“the public debt’ means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the national government.”* Hence, the inclusion of the expression “and resultant financial obligations” after the word public debt, is tantamount to redefining public debt as not including resultant financial obligations. And that contravenes the Constitution.

165. Further, as amended by **Section 6(c) of the Finance Management (Amendment) Act, 2023**, **Section 50(6) of the Public Finance Management Act, 2012**, is unconstitutional to the extent that:

(i) Contrary to **Article 214(1) of the Constitution**, which provides that *“an Act of Parliament may provide for charging all or part of the public debt to other public funds,”* the section purports to take that power away from Parliament and to vest it in the Cabinet Secretary for the National Treasury, by stating: *“A public debt and resultant financial obligations incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by Regulations approved by Parliament, that all or part of the public debt and resultant financial obligation is a charge on another public fund established by the national government or any of its entities.”*

- The petitioners reiterate that only primary legislation and not Regulations can determine that a public debt is not charged on the consolidated fund.

(ii) Whereas pursuant to **Article 206(1)(a) of the Constitution**, public funds in Kenya are established by the Constitution of Kenya and Acts of Parliament only, the section is unconstitutional to the extent that it implies that there are other public funds *“established by the national government or any of its entities,”* on which public debt may be charged.

- The petitioners reiterate that a public fund cannot be established through policy; it must be established by an Act of Parliament.

(iii) The unconstitutional changes to the Public Finance Management Act, 2012 (PFMA)

166. The Petitioners contend that, to facilitate the heist, the PFMA was unconstitutionally amended vide the **Public Finance Management (Amendment) Act 2014**, to create an unconstitutional loophole that allowed the Cabinet Secretary responsible for Finance to side-step or bypass the express and mandatory provisions of **Article 206** of the Constitution.
167. Under **Article 201**, the principles of public finance include openness and accountability, including public participation in financial matters; public money shall be used in a prudent and responsible way; financial management shall be responsible, and fiscal reporting shall be clear.
168. Article **206(1)** establishes the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government.
169. Article **206(1)(a)** allows, **contingent upon the permission of Parliament**, for money raised or received by or on behalf of the national government to be paid into another public fund established for a specific purpose.
170. The Petitioners contend that, under **Article 206(2)**, money may be withdrawn from the Consolidated Fund only— (a) in accordance with an appropriation by an Act of Parliament; (b) in accordance with Article 222 or 223; or (c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.
171. The Petitioner’s argue that, under **Article 206(3)**, money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the withdrawal of the money has been authorised by an Act of Parliament.

172. Under **Article 206(4)** Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

173. The Petitioners contend that the regime had to enact the rogue law, the **Public Finance Management (Amendment) Act, 2014**, to circumvent the express provisions and the spirit of **Article 206** of the Constitution of Kenya, 2010.

174. **Section 5** of the Public Finance Management (Amendment) Act, 2014 provides that:

Section 50 of the principal Act is amended by deleting, subsection (7) and substituting therefor the following new subsection-

"(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are: -

- (a) paid into the Consolidated Fund.
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament.
- (c) disbursed directly to the suppliers where the loan is a government-to-government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya or;
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively 'with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security."

175. The impugned **Section 50(7)(b),(c) & (d)** of the **Public Finance Management Act, 2012**, is unconstitutional to the extent that, contrary to **Article 206(1)** of the Constitution which requires loan proceeds to be paid into the Consolidated Fund or any other public fund

established by an Act of Parliament, the clauses allow the Cabinet Secretary/National Treasury to ensure that proceeds of any loan raised under the Act are also:

- (i) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament
- (ii) disbursed directly to the foreign suppliers where the loan is a government-to-government loan; and
- (iii) applied, in part, to pay pre-negotiated expenses, fees, commissions, and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies, and other expenses of a similar nature arising from the external loan or external government security.

176. Pursuant to **Article 206(1)(a)** of the Constitution, only an Act of Parliament can authorise the keeping of any government revenue outside the Consolidated Fund, and in another ‘fund’, **AND NOT JUST AN ACCOUNT**. There was no Act of Parliament which authorised the creation of the account called “Gok/CBK Sovereign Bond.”

177. Contrary to Article 206(1) of the Constitution, and without reference to the Controller of Budget, contrary to Article 206(3), the Cabinet Secretary/ National Treasury paid expenses incurred in connection with foreign loan arrangements at source directly from the offshore dollar account set up to receive the foreign loan proceeds.

178. Similarly, the Petitioners argue that **Section 53** and **53A** of the PFMA are unconstitutional to the extent that they allow the national government to borrow outside the national budget or the annual appropriation Act, thus conflicting **Article 220(1) of the Constitution**. The sections vest the Cabinet Secretary for Finance with powers to issue, respectively, national and international government securities outside the budget. Since they are part of government borrowing (loans), government securities must be approved through the Appropriation Act annually. Any government borrowings must go through the legislative process. And **Article 109(1)** provides categorically that, ***“Parliament shall***

exercise its legislative power through Bills passed by Parliament and assented to by the President.”

179. Sections 53 and 53A of the Public Finance Management Act provides as follows:

53. Issuance of securities by national government

- (1) The national government may issue national government securities, whether for money that it has borrowed or for any other purpose, only in circumstances expressly authorised by this Act.*
- (2) The Cabinet Secretary may issue national government securities on behalf of the national government for money borrowed by the national government in accordance with criteria prescribed by regulations approved by Parliament for the purpose of this subsection.*
- (3) Any national government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set out by the National Assembly under section 50(2).*
- (4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by issuing national government securities.*
- (5) National government securities may be issued in one or more series and in accordance with prescribed regulations.*
- (6) An agreement to obtain a loan by the national government or a national government entity may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by Parliament.*
- (7) The Cabinet Secretary shall ensure that every national government security issued under this section is given in the name of the Republic of Kenya.*

- (8) *A national government security may be executed on behalf of the national government only by—*
- (a) *the Cabinet Secretary.*
 - (b) *a delegate appointed by the Cabinet Secretary; or*
 - (c) *a borrowing agent appointed for the purposes of this Act.*
- (9) *For the purposes of subsection (8), it shall be sufficient if the signature of a person who is required to execute a national government security under this section is reproduced on the security.*
- (10) *The Cabinet Secretary may authorise in writing the issue of a duplicate national government security to replace a national government security that is lost, damaged, or destroyed, but only if the Cabinet Secretary is satisfied that the loss, damage or destruction has occurred.*
- (11) *Subject to any other legislation, secondary trading of national government securities shall be carried out only in such manner as may be prescribed by regulations made for that purpose and for purposes of this subsection “secondary trading” means any activity leading to a change in the ownership of a national government security before its redemption date.*
- (12) *Nothing provided in this section shall prevent, government securities to be issued and exist in electronic form as a debt entry.*
- (13) *If the proceeds of a national government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder’s personal representatives, are unknown, the Cabinet Secretary shall arrange for the National Treasury to credit the amount of money due to the holder to an interest free account for the holder’s benefit.*

- (14) *If, after six years from the redemption date of a national government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder's personal representatives, the Cabinet Secretary shall return the uncollected amount to the National Exchequer Account to form part of the Consolidated Fund in accordance with regulations.*
- (15) *The right of any person who has a legitimate claim to the proceeds of a security is not affected by the payment of the proceeds into the Consolidated Fund.*
- (16) *The Cabinet Secretary shall publish and publicise annually all payments made in terms of subsection (13).*

53A. *Issuance of external securities by national government*

- (1) *Notwithstanding the provisions of section 53 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.*
- (2) *The Cabinet Secretary may raise an external loan or issue external government securities, authorized by this Act, on behalf of the national government for money borrowed by the national government in such manner as the Cabinet Secretary may determine.*
- (3) *Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under section 50(2) of this Act.*
- (4) *The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by raising external loans or issuing external government securities.*

- (5) *The Cabinet Secretary shall ensure that every external loan or external government security issued under this section is given in the name of the Republic of Kenya.*
- (6) *An external loan or external government security may be executed on behalf of the national government only by—*
- (a) *the Cabinet Secretary.*
 - (b) *a delegate appointed by the Cabinet Secretary, in writing; or*
 - (c) *a borrowing agent appointed in accordance with section 50(9) of this Act.*
- (7) *For the purposes of subsection (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security.*
- (8) *External government securities shall be registered and may be recorded and traded in accordance with the terms and conditions of the external government security.*
- (9) *Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six (6) years from the redemption date in the case of principal and five years from the due date in the case of interest or any other amount.*
- (10) *In the case of external government securities, a duplicate external government security may be issued in accordance with the terms and conditions applicable to the external government security to replace an external government security that is lost, damaged or destroyed.*

180. As above, the amendments to the PFMA purported to extinguish the role of constitutional oversight institutions, including Parliament and the Controller of Budget, over Kenyan sovereign bonds issued in international markets. Hence, the unconstitutional amendments to the PFMA allowed the national government to fraudulently borrow outside the budget approved by Parliament, which includes allocations of loans approved by Parliament, thus violating **Article 220(1)(a)** of the Constitution and **section 15(2)(c) and 50(3)** of the PFMA.
181. The impugned amendments to the PFMA were also null and void to the extent that, the Senate was not involved in considering and approving them, yet the Public Finance Management Act affects counties and their governments, and because **sections 53 and 53A of the PFMA** empowered the Cabinet Secretary to borrow using securities which are not intended to finance deficits between revenues and expenditure in a budget, thus, being inconsistent with **Article 220(1)(a) & (b)** of the Constitution.
- These amendments are the main factors contributing to **Kshs. 6,950,163,132,328** odious debts.
182. Under President Uhuru regime, for the eight (8) years' period spanning the financial years 2014/2015 to 2021/2022, Kenya's public debt stock fraudulently grew by an astronomical amount of **Kshs. 6.208 trillion** to **Ksh. 8.579 trillion** from **Ksh.2.370 trillion** (which previous regimes accumulated over a period of fifty (50) years).
183. The public debt stock published in the Central Bank portal as at June 2014 is **Ksh. 2,370,255,820,000** accumulated in a duration of fifty (50) years and the debt stock captured in the audited Central Bank's financial statements for the year ending 30th June 2022 aggregated to **Kshs. 8,579,000,000,000**. That means, **Ksh. 6,208,744,180,000** was accumulated in a duration of eight (8) financial years from 2014/2015 to 2021/2022 (hereinafter known as eight (8) financial years).
184. Comparatively, the Uhuru regime was accumulating debt stock at an average **Ksh. 776,093,022,500** per financial year, whereas the other three regimes were accumulating

public debt stock at an average of **Kshs. 47,405,116,400**. This is sixteen (16) times more in Uhuru's regime than the other three regimes.

185. The aggregate development expenditure estimates (the total value of projects) for the eight (8) financial years authorized by respective Appropriation Acts totalled **Kshs. 5,362,366,308,605** averaging **Kshs. 670,295,828,858** per financial year. The development expenditures were financed by **Kshs. 3,361,204,649,773** tax revenues and **Ksh. 2,001,161,658,832** external loans. The authorized loans averaged **Ksh. 250,145,207,354** per financial year.
186. The actual borrowings in accordance with the *Statement of Actual Revenues and Exchequer Issues* aggregated to **Kshs. 6,607,001,937,754** (an average of **Ksh. 825,875,242,219** per financial year) whereas the borrowings approved by Parliament and assented into the Appropriation Acts by the President aggregated to **Ksh. 2,001,161,658,832**. Hence, President Uhuru borrowed **Ksh. 4,605,840,278,922** above **Ksh. 2,001,161,658,832** that he assented into law. This amounts to unlawful borrowing of **Ksh. 575,730,034,865** per financial year (which was not linked to any development project).
187. Assuming that the authorised tax revenue of **Kshs. 3,361,204,649,773** were not expended to finance the development projects (which is not the case), and that the projects were financed through borrowings only, then the borrowings of **Ksh. 6,607,001,937,754** could have financed the development projects authorized by the Appropriation Acts (budget) in the eight (8) financial years of **Kshs. 5,362,366,308,605** leaving a balance of **Kshs. 1,244,635,629,149**.
188. The aggregate actual debt repayment according to the *Statement of Actual Revenues and Net Exchequer Issues*, which is gazetted every month by the Cabinet Secretary for the National Treasury amounted to **Ksh. 5,230,133,073,958** in the eight financial years. Applied to the loans authorized by the Appropriation Acts amounting to **Ksh. 2,001,161,658,832**, it means that **Kshs. 3,228,971,415,126** (**5,230,133,073,958 - 2,001,161,658,832**) was fraudulently paid above the authorized loan.

189. Regarding the above enumerated accumulation of public debt stock, the authorized development expenditure, the authorized borrowings, and the unauthorized borrowings and repayments of public debt, the fraud scheme becomes apparent whereby odious debts are created which are later fraudulently used to justify the withdrawal of public money from the Consolidated Fund. Upon the creation of the odious debt of **Ksh. 4,605,840,278,922** the Uhuru regime siphoned out **Kshs. 3,228,971,415,126** public monies from the Consolidated Fund.

190. The following explains how the fraud scheme was perpetrated:

- (i) **The approved development expenditure budget for FY 2014 /2015 to 2021/2022:**
Public budget is anchored under **Article 220** of the Constitution and the Budget process under **Article 221** whereby **Article 220(1)** states that the budget of the National and County Government shall contain:
 - (a) Estimates of **revenue** and **expenditure**, differentiating between **recurrent** and **development** expenditure.
 - (b) proposals for financing **any anticipated deficit** for the period to which they apply.
 - (d) proposals regarding borrowing and other forms of public liability that will increase public debt during the following year
- (ii) **Article 221(1),(3),(4),(5)&(6) of the Constitution** provides the process of enacting the revenues and expenditures into an Appropriation Act. Analysis of **Article 220(1)((a)&(b)** of the Constitution shows that the spirit of **sub-Article 220(1)(a)** is that the budgeted ordinary revenues (taxes, duties and other revenues) will finance the budgeted expenditures but in case of any deficit, **Article 220(1)(b)** requires that the budget shall contain proposals for financing the deficit known as deficit financing. Mostly the government finances the deficit through borrowings. Therefore, borrowings are based on the difference between budgeted revenues and expenditure.
- (iii) **Section 15(2)(c)** of the PFMA provides that over the medium term, the national government's **borrowings shall be used only for the purpose of financing development**

expenditure and not for recurrent expenditure, where Section 2(1) of PFMA states that “‘*development expenditure*’ means the expenditure for the creation or renewal of assets.”

- (iv) **Section 50(3) PFMA** provides that the national government may **borrow money only for the budget as approved by Parliament** and the allocations for loans approved by Parliament.
- (v) Pursuant to **Article 220(1)(a)&(b)** of the Constitution as read together with **section 15(2)(c) and 50(3) of PFMA**, recurrent expenditure is fully financed by ordinary revenues and any deficit will only be in the development expenditure. Hence, borrowings (allocations of loans) approved by Parliament shall be used to finance the deficit in the development expenditure.
- (vi) For the financial Years from 2014/2015 to 2021/2022, Parliament approved the following development expenditure estimates and borrowings (loans):

TABLE 14

Development expenditure Estimates and sources of finance for the financial years 2014/2015 to 2021/2022

Financial Year	Approved Gross Development Estimates	Amount financed by ordinary Revenue	Amount financed by Borrowings (external Loans)
2014/2015	494,892,120,733.00	358,507,118,798.00	136,385,001,935.00
2015/2016	721,288,541,960.00	440,418,948,724.00	280,869,593,236.00
2016/2017	820,161,449,551.00	471,905,309,201.00	348,256,140,350.00
2017/2018	642,897,327,706.00	438,630,011,332.00	204,267,316,374.00
2018/2019	677,225,634,213.00	430,408,353,462.00	246,817,280,751.00
2019/2020	704,213,809,308.00	443,517,981,026.00	260,695,828,282.00
2020/2021	633,308,563,243.00	382,969,235,979.00	250,339,327,264.00
2021/2022	668,378,861,891.00	394,847,691,251.00	273,531,170,640.00
Total	5,362,366,308,605.00	3,361,204,649,773.00	2,001,161,658,832.00

- (vii) The above Table shows that the development budget approved by Parliament for the eight (8) financial years aggregated to **Kshs. 5,362,366,308,605**. The expenditures were financed by **Kshs. 3,361,204,649,773** ordinary revenues plus other revenues and

Kshs. 2,001,161,658,832 borrowings (loans) approved by Parliament. This means all the development expenditures (development projects) were fully financed by ordinary revenues and loans approved by Parliament and enacted into the Appropriation Act.

- (viii) Under the *Statement of Actual Revenue and Net Exchequer Issues* for the Financial Years 2014/2015 to 2021/2022, the Cabinet Secretary for the National Treasury gazetted the following borrowings:

TABLE 15

Actual Borrowings as Per the Statement of Actual Revenue And Net Exchequer Issues

Financial Year	Actual Domestic Debts Receipts as per the Statement of Actual Revenue and Net Exchequer Issues	Actual External Debt receipts as per the Statement of Actual Revenue and Exchequer Issues	Total Domestic and External Loans
2014/2015	292,680,000,000.00	114,485,356,983.00	407,165,356,983.00
2015/2016	506,244,742,690.00	177,235,155,515.00	683,479,898,205.00
2016/2017	414,990,100,000.00	230,866,874,239.00	645,856,974,239.00
2017/2018	420,973,660,000.00	330,757,837,696.00	751,731,497,696.00
2018/2019	486,767,000,000.00	489,070,147,991.00	975,837,147,991.00
2019/2020	558,870,163,000.00	299,682,287,338.00	858,552,450,338.00
2020/2021	790,577,923,686.00	377,149,967,767.00	1,167,727,891,453.00
2021/2022	877,038,741,180.00	239,611,979,669.00	1,116,650,720,849.00
Total	4,348,142,330,556.00	2,258,859,607,198.00	6,607,001,937,754.00

- (ix) **Table 15** above, shows actual receipts of domestic and external loans aggregated to **Kshs. 6,607,001,937,754** gazetted by the CS/NT in the Statement of Actual Receipt and Net Exchequer Issues that were not approved by Parliament or enacted into the Appropriation Act.
- (x) The entire domestic loans are aggregating to **Kshs. 4,348,142,330,556** was not approved and authorized by Parliament through the relevant Appropriation Act. Contrary to **Section 15(2)(c) of PFMA** as read together with **Section 2(1) thereof**, the loans were not borrowed for any development project.

- (xi) Out of **Ksh 2,258,859,607,198** external loans, **Ksh. 2,001,161,658,832** was approved by Parliament and enacted into Appropriation Act and were borrowed for specific development projects. However, **Ksh. 257,697,948,366** were not approved by Parliament or enacted into Appropriation Act nor were they borrowed for any development projects.
- (xii) The Petitioners posit that the borrowings aggregating to Ksh. 4,605,840,278,922 were not approved by Parliament or authorized by any Appropriation Act, nor were they borrowed to finance any development expenditure (development project). Hence, they are odious debts.
- (xiii) The Petitioners posit that if **Ksh. 5,230,133,073,958** purportedly used for repayment of public debts in respect of the financial years 2014/2015 to 2021/2022 had been applied to settle the public debt of **Ksh. 2,001,161,658,832**, which was approved by Parliament through the applicable Appropriation Acts, the entire debts would have been settled, leaving a balance of **Kshs. 3,228,971,415,126**.
- (xiv) The Petitioners are aggrieved that Kenyan taxpayers' money aggregating to Ksh. **3,228,971,415,126** was fraudulently spent on odious debts between 2014/2015 to 2021/2022 financial years as shown in the **Table 16** below:

TABLE 16

Financial Year	Actual Payment of public debt (External and Domestic)	Component of Public Debt Approved by Parliament through Appropriation Acts	Overborrowings (Odious Debts)
2014/2015	416,234,431,172	136,385,001,935	279,849,429,237
2015/2016	421,849,938,287	280,869,593,236	140,980,345,051
2016/2017	435,716,953,825	348,256,140,350	87,460,813,475
2017/2018	517,161,876,533	204,267,316,374	312,894,560,159
2018/2019	826,202,867,839	246,817,280,751	579,385,587,088
2019/2020	707,891,959,242	260,695,828,282	447,196,130,960
2020/2021	862,833,158,921	250,339,327,264	612,493,831,657
2021/2022	1,042,241,888,139	273,531,170,640	768,710,717,499
Total	5,230,133,073,958	2,001,161,658,832	3,228,971,415,126

191. The petitioners posit that because the public debt was repaid at **Kshs. 5,230,133,073,958**, yet Parliament, through the applicable Appropriation Acts, only approved loans worth **Kshs. 2,001,161,658,832**, it follows that there was an overpayment of **Kshs. 3,228,971,415,126**.
192. The Petitioners posit further that the overpaid **Kshs. 3,228,971,415,126** was the Kenyan taxpayers' money misappropriated by the Uhuru regime to fraudulently redeem fictitious debt, and for which the 4th President is personally liable under Article 226(5) of the Constitution to refund to the Kenyan taxpayers.
193. In the two and a half (2½) years since September 2022, **The National Executive** has borrowed **Kshs. 3,134,704,531,281** yet only **Kshs. 884,378,626,081** was approved by Parliament through the Appropriation Acts of 2022, 2023, and 2024. It is instructive that, since it is the President who assented to the three Appropriation Acts, **The National Executive** knew that Parliament had only approved **Kshs. 884,378,626,081**, but it went ahead to unconstitutionally and unlawfully exceed the limit by borrowing an extra **Ksh.2,250,325,905,200** (being the difference between **Kshs. 3,134,704,531,281** and **Kshs. 884,378,626,081**).

TABLE 17

The actual amounts of money borrowed in the FYs 2022/2023, 2023/2024, and 2024/2025 (up to 30th November 2024).

Financial year	Domestic Debts Actual Receipts as per the Statement of Actual Revenue and Net Exchequer Issues A	External Debt actual receipts as per the Statement of Actual Revenue and Net Exchequer Issues B	Total Domestic Borrowings Plus External Loans A+B
2022/2023	696,302,157,519	488,311,124,134	1,184,613,281,653
2023/2024	795,026,175,981	705,704,926,155	1,500,731,102,136
*2024/2025	359,102,536,807	90,257,610,685	449,360,147,492
Total	1,850,430,870,307	1,284,273,660,974	3,134,704,531,281

**Borrowings up to 31st November 2024*

194. The petitioners posit that development expenditure estimates (i.e., the total value of projects) for the three (3) financial years, authorized by respective Appropriation Acts of 2022, 2023, and 2024, aggregate to Kshs. 2,143,033,966,661, which averages to Kshs. 714,344,655,554 per financial year. The development expenditure was financed by Kshs. 1,258,655,340,580 from tax revenues and Kshs. 884,378,626,081 from external loans. Sources of finance approved under the respective Appropriation Acts for development budgets for the financial years 2022/2023, 2023/2024 and 2024/2025 are as per **Table 17B:**

TABLE 17B

Financial Year	Gross Estimates	Amount financed by taxes	Amount financed by Debt
2022/2023	711,405,784,936	418,648,442,772.00	292,757,342,164
2023/2024	807,643,508,015	493,837,380,000	313,806,128,015
2024/2025	623,984,673,710	346,169,517,808	277,815,155,902
Total	2,143,033,966,661	1,258,655,340,580	884,378,626,081

195. The petitioners aggrieved that:

- (a) Even though the approved development expenditures (development projects) authorized by Appropriation Acts of 2022, 2023, and 2024 aggregated to **Kshs. 2,143,033,966,661**, the President borrowed **Kshs. 3,134,704,531,281** and used **Kshs. 1,258,655,340,580** tax revenue aggregating to **Kshs. 4,393,359,871,861** to finance the development projects, thus fraudulently spending **Kshs. 2,250,325,905,200** on hot air, which did not finance any projects.
- (b) Consequently, the President incurred odious debts aggregating to **Kshs. 2,250,325,905,200** (being the difference between the aggregate borrowings of **Kshs. 3,134,704,531,281** and the authorized debts by appropriation Acts of **Kshs. 884,378,626,081**) for which he is personally liable.

196. The petitioners downloaded from the IMF portal⁵ a document titled, *Kenya: Transactions with the Fund from May 01, 1984 to January 31, 2024*, which provides:

- (a) In the General Resource Account, the Main account through which the International Monetary Fund (IMF) conducts financial operations with its member countries, Special Drawing Rights (SDRs) 538,310,000 equivalent Ksh. 92,544,532,608 (SDRs = USD 1.32 = Ksh. 171.92)
- (b) Poverty Reduction and Growth Trust (PRGT), SDRs 296,210,000 equivalent to Kshs. 50,924,423,200 for addressing balance of payment needs
- (c) Resilience and Sustainability Trust (RST) SDRs 135,699,900 equivalent to Kshs. 23,329,526,808 for addressing a longer-term balance of payments stability
- (d) Among the packages released by the IMF there was no 'On-lent loan' redemption rollover of Kshs. 20,000,000,000 for the financial years 2018/2019 to 2024/2025 and the projected Kshs. 30,000,000,000 for 2025/2026 to 2027/2028 financial years. Simply put, this is an ineligible transaction disguised as 'On-lent loan' redemption rollover.

197. The petitioners posit that, as they demonstrate below, the Auditor General, the Controller of Budget, and the National Assembly were complicit in the concealment of the Kshs. 6,950,163,132,328 odious debts as follows:

(i) **The Auditor General**

- (a) The Auditor General is appointed under **Article 229(1)** of the Constitution to audit public entities. **Article 229(4)(a) & (g), (5), (6), (7) & (8)** of the Constitution provide:

⁵ <https://www.imf.org/external/np/fin/tad/extrans1.aspx?memberKey1=540&endDate=2024-01-31> accessed on 08.01.2025

- (4) *Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—:*
 - (a) *the accounts of the national and county governments.*
 - (g) *the public debt.*
- (6) *An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.*
- (7) *Audit reports shall be submitted to Parliament or the relevant county assembly.*
- (8) *Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take or the county assembly shall debate and consider the report and take appropriate action.*

198. The petitioners posit that, as it is stated elsewhere in this petition, public debt is incurred in accordance with **Article 220(1)(a)&(b)** of the Constitution as read with **section 15(2)(c) and 50(3) of the PFMA** for purpose of financing budget deficit in the budgeted development expenditure estimates.

199. The petitioners posit further that, in every financial year, all legitimate borrowings are authorized by Parliament in the annual development expenditure estimates through the financial year's Appropriation Act. The funds from the loans are then accounted for by the respective MDAs, that prepare financial statements which are submitted to the Auditor General for auditing as provided under **section 81(1)&(2)(a)& (4) of the PFMA**, on **annual reporting by accounting officers**, which states:

- (1) *At the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect of the entity.*
- (2) *The accounting officer shall include in the financial statement—*
 - (a) *appropriation accounts, showing—*
 - (i) *the services for which the appropriated money was spent.*

(ii) the actual amount spent on each service.

(iii) the status of each vote compared with the appropriation for the vote.

(4) Not later than three months after the end of each financial year, the accounting officer for the entity shall—

(a) submit the entity's financial statements to the Auditor-General and a copy of the statement to the Controller of Budget, the National Treasury and the Commission on Revenue Allocation; and

(b) publish and publicise the financial statements.

200. The Petitioners posit that the Appropriation accounts which form the financial statement are derived from the Appropriation Act (annual budget). The Appropriation Act authorizes borrowings to finance the development expenditure deficit, which in this case, through the Appropriation Acts of 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023 & 2024 authorised borrowings aggregating to **Kshs. 2,791,543,336,707** to finance individual/specific projects as shown under **Table 18**.

201. In the **Table 18** below, the petitioners present an extract from the Budget Book giving a summary of the development budgets and sources of finance for the financial years 2014/2015 to 2023/2024, inclusive, which were approved by Parliament in the respective Appropriation Acts.

TABLE 18

Financial Year	Gross Estimates	Amount financed by taxes	Amount financed by Debt
2014/2015	494,892,120,733.00	358,507,118,798	136,385,001,935
2015/2016	721,288,541,960.00	440,418,948,724	280,869,593,236
2016/2017	820,161,449,551.00	471,905,309,201	348,256,140,350
2017/2018	642,897,327,706.00	438,630,011,332	204,267,316,374
2018/2019	677,225,634,213.00	430,408,353,462	246,817,280,751
2019/2020	704,213,809,308.00	443,517,981,026	260,695,828,282
2020/2021	633,308,563,243.00	382,969,235,979	250,339,327,264
2021/2022	668,378,861,891.00	394,847,691,251	273,531,170,640
2022/2023	711,405,784,936.00	418,648,442,772	292,757,342,164
2023/2024	807,643,508,015.00	536,009,044,326	271,634,463,689
2024/2025	623,984,673,710.00	397,994,801,688	225,989,872,022

Total	7,505,400,275,266.00	4,713,856,938,559	2,791,543,336,707
--------------	-----------------------------	--------------------------	--------------------------

202. The Petitioners posit that, contrary to Appropriation Acts of 2014 to 2024, vide which Parliament only approved borrowings aggregating to **Kshs. 2,791,543,336,707**, the Cabinet Secretary/ National Treasury gazetted actual borrowings aggregating to **Ksh. 9,741,706,469,035** (*see Table 19 below*) through Gazette Notice Nos. 5385 of 24/07/2015, 5681 of 22/07/2016, 7357 of 28/07/2017, 7464 of 20/07/2018, 6890 of 26/07/2019, 4939 of 17/07/2020, 7385 of 19/07/2021, 8735 of 22/07/2022, 9734 of 21/07/2023, 9005 of 19/07/2024 and 16876 of 20/12/2024. Thus, borrowings aggregating to **Kshs. 6,950,163,132,328** (being **Ksh. 9,741,706,469,035** - **Kshs. 2,791,543,336,707**) were unconstitutional, null, and void *ab initio*, because they were not authorized by Parliament through the Appropriation Acts.

203. In the **Table 18B** below, the petitioners present an extract from the “*Report of the Auditor General on the Financial Statement of the National Government*,” for the financial years 2014/2015 to 2022/2023, which shows an increase in public debt. The petitioners are aggrieved that the Auditor General failed to carry out an audit pursuant to **Article 229(4)(a) & (g) and (6)** of the Constitution which would State whether:

- The tax revenue amounting to **Kshs. 4,713,856,938,559** and borrowings of **Kshs. 2,791,543,336,707**, which was authorised by the respective Appropriation Acts, were applied effectively.
- The borrowings aggregating to **Kshs. 6,950,163,132,328**, which were not authorised by the respective Appropriation Acts, were borrowed lawfully and applied effectively.

TABLE 18B

Financial Year	Outstanding Debt as per AG	Increase in debt	Authorised borrowings	Amount above the authorised borrowings
2014/2015	2,674,806,364,195	423,960,454,908	136,385,001,935	287,575,452,973
2015/2016	3,385,910,449,825	711,104,085,630	280,869,593,236	430,234,492,394
2016/2017	4,168,943,902,577	783,033,452,751	348,256,140,350	434,777,312,401
2017/2018	4,801,416,851,482	607,314,698,905	204,267,316,374	403,047,382,531
2018/2019	5,451,153,803,416	649,736,951,934	246,817,280,751	402,919,671,183

2019/2020	6,368,793,827,633	917,640,023,917	260,695,828,282	656,944,195,635
2020/2021	7,545,923,130,128	1,177,129,302,495	250,339,327,264	926,789,975,231
2021/2022	8,478,949,965,757	933,026,835,629	273,531,170,640	659,495,664,989
2022/2023	10,264,939,001,661	1,785,989,035,904	292,757,342,164	1,493,231,693,740
		7,988,934,842,073	2,293,919,000,996	5,695,015,841,077

204. The petitioners are aggrieved that:

- (a) The Auditor General deliberately and willingly avoided auditing the loans borrowed for every financial year but instead reported increases in the outstanding debts (as per Table 18B) which aggregated to **Kshs. 5,695,015,841,077**, exceeding the borrowings of **Kshs. 2,293,919,000,996**, which were authorized in the respective Appropriation Acts for the 2014/2015 to 2022/2023 financial years. The Auditor General totally failed to interrogate their authenticity.
- (b) Whereas it was within the knowledge of the Auditor-General that the 2016 and 2018 Appropriation Acts only authorised borrowings aggregating to **Kshs. 348,256,140,350** and **Kshs. 246,817,280,751** (*Table 18B*), respectively, in its “*Report of the Auditor General on the Financial Statement of the National Government*,” the Auditor General avers that **Kshs. 2,298,593,627,627** and **Kshs. 1,663,671,181,564**, respectively, was borrowed during the respective financial year, as shown below in the two extracts from the reports (i.e., ‘*12. Public Debt -Outstanding Balance*’ and ‘*Growth in Public Debt*’). However, the Auditor General consciously avoided auditing the fraudulent borrowings, and concealed the **Kshs. 3,367,191,388,090** (being **(2,298,593,627,627 + 1,663,671,181,564) – (348,256,140,350 + 246,817,280,751)**) odious borrowings. This failure to carry out an effective audit that meets the constitutional threshold in **Article 229(4) (a) & (g) and (6)** of the Constitution is replicated in all the financial years under review.

“12. Public Debt -Outstanding Balance”

“The summary statement of public debt reflects an outstanding loan balance of Kshs.5,451,153,803,416; (2018-Kshs.4,801,416,851,482) representing an increase of Kshs.649,736,951,934 or (13.5%) of the public debt. The statement

also reflects loan repayments of Kshs.1,648,856,675,693 during the year but does not expressly indicate the amount procured during the year. However, review of the opening and closing balances and adjusted for the repayments during the year results in borrowings of Kshs.2,298,593,627,627 which have not been supported”.

“Growth in Public Debt”

“The statement of Public Debt as at 30 June 2017 reflects an outstanding public debt balance of Kshs.4,168,943,902,577 representing an increase of Kshs.783,033,452,751.00 (23.2%) over the outstanding debt balance of Kshs.3,385,910,449,826.00 as at 30 June 2016. The increase is mainly as a result of new loans of Kshs.210,664,431,564 disbursed to the government by various development partners and borrowing of Kshs.1,453,006,750,000 from the domestic market through treasury bills and bonds. The total cost of borrowing during the year is Kshs.215,179,745,379 in respect of both internal and external loans. The outstanding loan balances of Kshs.4,168,943,902,577 are net of redemption on loans of Kshs.220,174,538,145 made during the year”.

(c) This Honourable Court should take judicial notice of the fact that the Auditor General reported (without auditing) on the amount borrowed in the 2016/2017 and 2018/2019 financial years. For the other financial years under review (2014/2015, 2015/2016, 2017/2018, 2019/2020, 2020/2021, 2021/2022 and 2022/2023), the Auditor General deceptively engaged in recording statistical growth of the debt stock and completely avoided to carry out an audit in compliance with **Article 229(a)&(g) and (6)** of the Constitution.

(d) By merely providing the statistical growth of debt rather than giving an audit confirming which development projects were financed by the debts amounting to Kshs. **7,988,934,842,073**, incurred in the 2014/2015 to 2022/2023, the Auditor

General failed to meet the constitutional threshold for auditing public entities provided under **Article 229(4), and (6)** of the Constitution.

- (e) As an example, **Table 18C** below samples the Ministry of Energy and Petroleum, and the State Department of Infrastructure. In the financial year 2014/2015, the authorised pre-negotiated loans from different lenders for the two entities aggregated to **Kshs. 47,968,970,133** and **Kshs. 32,979,492,000**, respectively. Therefore, in accordance with the Constitution, the Auditor General ought to have confirmed whether loans of **Kshs. 47,968,970,133** and **Kshs. 32,979,492,000** from the various lenders, were applied effectively to the projects listed under **Tables 5 and 6** herein at paragraph 14V.

Loans authorised/ allocated by the Appropriation Act, 2014, to finance individual development projects (listed in Table 5 & 6), undertaken in the Ministry of Energy and Petroleum, and State Department of Infrastructure for the financial year 2014/2015

Table 18C

Lender	Ministry of Energy and Petroleum	State Department of Infrastructure
Government of Belgium	2,736,145,000	-
Government of Spain	4,356,263,100	-
Government of Germany (KFW GERMANY)	-	758,440,000
Government of France (AFD - FRANCE)	5,265,740,000	1,700,000,000
Kuwait Fund for Arab Development (KUWAIT)	-	50,000,000
Saudi Fund for Arab Development (SAUDI ARABIA)	100,000,000	50,000,000
Abhu Dhabi Fund	100,000,000	50,000,000
Government of Japan	1,861,000,000	6,525,000,000
Government of India (INDIA)	6,209,000,000	-
Government of China (CHINA)	12,035,920,000	5,600,000,000
International Development Association (World Bank/IMF)	8,952,402,033	8,456,052,000
European Investment Bank (EIB)	1,345,000,000	-
African Development Fund (ADB/ADF)	4,797,500,000	9,450,000,000
Arab Bank for Economic Development in Africa (BADEA)	100,000,000	170,000,000
Organization of Petroleum Exporting Countries (OPEC)	110,000,000	170,000,000
Total	47,968,970,133	32,979,492,000

- (f) Further, the petitioners posit that, contrary to **sections 2(1) and 15(3)** of the PFMA, in its report for 2014/2015 and 2015/2016 financial years, the Auditor General states that;

F/Y 2014/2015:

37. Un-reconciled Balances

“The statement of outstanding debt reflects a balance of Kshs.26,615,000,000.00 relating to Pre-1997 Government Overdraft debt. The opening balance for the item was Kshs.28,273,000,000 as at 1 July 2014, and a repayment of Kshs.1,110,000,000 was made during the year as per the loan agreement between Government of Kenya and the Central Bank of Kenya. The closing balance, therefore, ought to have been Kshs.27,163,000,000.00 and not Kshs.26,615,000,000.00. The resultant difference of Kshs.548,000,000.00 has not been explained”.

F/Y 2015/2016:

33. Un-reconciled Balances

“As reported in the previous year, the statement of outstanding debt as at 30 June 2015 reflected a balance of Kshs.26,615,000,000 relating to Pre-1997 Government Overdraft debt. The opening balance for this item was Kshs.28,273,000,000 as at 1 July 2014, and a repayment of Kshs.1,110,000,000 was made during 2014/2015 as per the loan agreement between Government of Kenya and the Central Bank of Kenya. The closing balance as at 30 June 2015, therefore, ought to have been Kshs.27,163,000,000 and not Kshs.26,615,000,000. The resultant difference of Kshs.548,000,000 has not been explained to date”.

- (g) The petitioners are aggrieved that the Auditor General consciously avoided to issue an audit report in compliance with **Article 229(4)(a) & (g) and (6)** of the Constitution, confirming whether or not the ‘Pre-1997 Government Overdraft’ of

Kshs.28,273,000,000 was a short-term borrowing to cover temporary cash as provided under **section 2(1) & 15(3)** of the PFMA.

(h) The petitioners reiterate that, being a professional accountant, the Auditor General fully knows that an overdraft cannot be a long-term liability; it is offset by inflow of revenue in the bank account. Therefore, since government revenue is credited on daily basis into the National Exchequer Account held by the Central Bank of Kenya, it is conceptually unconceivable that such an overdraft can remain outstanding for more than 27 years (up to date).

205. The petitioners point out that, according to the Statement of Actual Revenue and Net Exchequer Issues, the actual amount borrowed, both domestically and externally, from the financial years 2014/2015 to 2024/2025 (i.e., upto November 2024) is as presented in the **Table 19** below:

TABLE 19

Financial Year	Domestic Debts Actual Receipts as per the Statement of Actual Revenue and Net Exchequer Issues	External Debt actual receipts as per the Statement of Actual Revenue and Net Exchequer Issues	Total Domestic Borrowings Plus External Loans
2014/2015	292,680,000,000.00	114,485,356,983.00	407,165,356,983.00
2015/2016	506,244,742,690.00	177,235,155,515.00	683,479,898,205.00
2016/2017	414,990,100,000.00	230,866,874,239.00	645,856,974,239.00
2017/2018	420,973,660,000.00	330,757,837,696.00	751,731,497,696.00
2018/2019	486,767,000,000.00	489,070,147,991.00	975,837,147,991.00
2019/2020	558,870,163,000.00	299,682,287,338.00	858,552,450,338.00
2020/2021	790,577,923,686.00	377,149,967,767.00	1,167,727,891,453.00
2021/2022	877,038,741,180.00	239,611,979,669.00	1,116,650,720,849.00
2022/2023	696,302,157,519.00	488,311,124,134.00	1,184,613,281,653.00
2023/2024	795,026,175,981.00	705,704,926,155.00	1,500,731,102,136.00
*2024/2025	359,102,536,807.00	90,257,610,685.05	449,360,147,492.05
Total	6,198,573,200,863.00	3,543,133,268,172.05	9,741,706,469,035.05

** i.e., upto November 2024*

206. The Petitioners are aggrieved that, contrary to Article 229(4)(a)&(g),(6) and 10(1)&(2(c)) of the Constitution read with **section 81(1),(2)&(4) of the PFMA** and **sections 9, 10, & 11(a) of the Leadership and Integrity Act**, the Auditor General failed to audit the accounts of the respective MDAs to confirm whether the authorized borrowings aggregating to **Kshs. 2,791,543,336,707** were applied effectively and whether borrowings aggregated to **Kshs. 6,950,163,132,328** were lawful and were applied effectively. Thus, the audit reports on public debt were unconstitutional, null and void *ab initio*.

(ii) **The Controller of Budget (COB)**

The Petitioners posit that, the Controller of Budget is appointed under **Article 228(1)** of the Constitution to carry out responsibilities provided under **Article 228(4),(5)&(6) of the Constitution**, states that:

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorizing withdrawals from public funds under Articles 204, 206 and 207.

(5) The Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

(6) Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

Further, **Article 206(4)** also provides:

(4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.

207. The Petitioners posit that regarding **Article 228(4) of the Constitution**, the Controller of Budget exercises a management and not an auditing function. The Constitution requires

the COB to oversee implementation of the budget of the national governments by authorizing withdrawals from public funds under **Article 206** whereby, in this case:

- (a) The word ‘**Oversee**’ means, COB supervises the Budget to ensure it is implemented in accordance to the Appropriation Act by authorizing withdrawal of money from the Consolidated fund under **Articles 206(4) and 228(4),(5)&(6)** of the Constitution.
- (b) **Consolidated fund** means the fund built up by the estimates of revenue which is part of the annual budget as provided under Article 220(1)(a) of the Constitution.
- (c) **Budget** means the estimates of revenue and expenditures, differentiating between recurrent and development expenditure as defined under **Article 220(1)(a)** of the Constitution.

208. The petitioners posit that, in accordance with **Article 228(4) of the Constitution**, the COB was mandated to oversee the implementation of the approved development expenditure budget estimates for the financial years; 2014/2015 to 2024/2025 aggregating to **Kshs. 7,505,400,275,266** (see **Table 18** above) which was financed by **Kshs. 4,619,859,990,353** tax revenues and **Kshs. 2,791,543,336,707** borrowings, together with the other composites of the budget i.e., estimates of revenue and recurrent expenditure for the same financial years.

209. The Petitioners are aggrieved that, contrary to **Article 228(4) & (5)** of the Constitution, the COB, in *The Controller of Budget Report* for the financial years 2014/2015 to 2023/2024 (see **Table 20** below), fraudulently reported actual borrowings aggregating to **Ksh. 9,105,600,701,596**. That was reported notwithstanding the fact that, it is only **Kshs. 2,565,553,464,685** borrowings which were authorized by Parliament through the Appropriation Acts of 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, & 2023. Therefore, as demonstrated in **Table 20** below, the COB fraudulently concealed the unlawful borrowings of **Ksh. 6,540,047,236,911**.

TABLE 20

Actual Borrowings - Controller of Budget Report F/Y 2014/2015 -2021/2022			
Financial Year	Actual Borrowings in the COB's Report	Authorised Borrowings Approved by Parliament	Payment above authorised borrowings
2014/2015	401,180,000,000	136,385,001,935	264,794,998,065
2015/2016	685,800,000,000	280,869,593,236	404,930,406,764
2016/2017	639,500,000,000	348,256,140,350	291,243,859,650
2017/2018	754,300,000,000	204,267,316,374	550,032,683,626
2018/2019	978,710,000,000	246,817,280,751	731,892,719,249
2019/2020	824,767,903,416	260,695,828,282	564,072,075,134
2020/2021	1,134,988,778,803	250,339,327,264	884,649,451,539
2021/2022	1,076,398,002,689	273,531,170,640	802,866,832,049
2022/2023	1,151,396,578,878	292,757,342,164	858,639,236,714
2023/2024	1,458,559,437,810	271,634,463,689	1,186,924,974,121
Total	9,105,600,701,596	2,565,553,464,685	6,540,047,236,911

(iii) The National Assembly

210. The petitioners posit that, the establishment, authority and mandate of the National Assembly are, among others, anchored, under **Article 93(1)&(2), 94(1) & (4), and 221(1), (3) & (6)** of the Constitution, which state:

93(1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.

93(2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.

94(1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.

94(4) Parliament shall protect this Constitution and promote the democratic governance of the Republic.

221(1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.

221(3) The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively.

221(6) When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.

211. The petitioners posit that estimates of revenue comprises of ordinary tax revenues, other revenues locally generated, and loan revenues borrowed to cover the development expenditure budget estimates deficit.
212. the petitioners posit that, the National Assembly enacted Appropriation Acts of 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023 & 2024 authorising development expenditure budget estimates (projects) aggregating to **Ksh. 7,505,400,275,266** (*see Table 18 above*) to be financed by **Kshs. 4,619,859,990,353.00** tax revenues and **Kshs. 2,791,543,336,707** borrowings.
213. Further, as earlier indicated in Table 19, the Cabinet Secretary/National Treasury gazetted actual borrowings aggregating to **Ksh. 9,741,706,469,035** through **Gazette Notice No. 5385 of 24/07/2015, 5681 of 22/07/2016, 7357 of 28/07/2017, 7464 of 20/07/2018, 6890 of 26/07/2019, 4939 of 17/07/2020, 7385 of 19/07/2021 8735 of 22/07/2022, 9734 of 21/07/2023, 9005 of 19/07/2024 and 16876 of 20/12/2024.**, thus, creating **Kshs. 6,950,163,132,328** borrowings above the **Kshs. 2,791,543,336,707** which was authorised by the National Assembly through various Appropriation Acts. Consequently, that formed odious debts of the same amount (i.e., **Kshs. 6,950,163,132,328**).

214. The petitioners are aggrieved that,

Whereas **Kshs. 2,370,255,820,000** public debt was carried forward from the 2013/2014 financial year, and the National Assembly only authorized **Kshs. 2,791,543,336,707** borrowings for the financial years 2014/2015 to 2024/2025, which means, lawfully, public debt aggregated to **Kshs. 5,255,796,104,913**, the House failed to undertake due diligence and recklessly authorized **Ksh. 8,918,021,659,782** for the repayment of public debt (as a direct charge to the Consolidated Fund under consolidated fund services) in the recurrent expenditure budget estimates for the financial years 2014/2015 to 2024/2025 (i.e., up to November 2024).

TABLE 21

Financial Year	Exchequer Issues - Repayment of Public Debts - Direct Charge in Consolidated Fund
2014/2015	399,310,622,509
2015/2016	397,035,494,249
2016/2017	466,514,040,169
2017/2018	649,396,727,245
2018/2019	870,615,957,746
2019/2020	768,847,893,016
2020/2021	904,703,671,211
2021/2022	1,169,165,030,917
2022/2023	1,161,579,454,767
2023/2024	1,596,641,830,604
*2024/2025	534,210,937,349
Total	8,918,021,659,782

**Up to 30th November 2024*

- (a) Instead of the **Kshs. 8,918,021,659,782** drawn from the Consolidated Fund clearing Kenya's public debt of **Kshs. 5,255,796,104,913**, and leave a surplus of **Kshs 2,324,522,305,902**, after taking into consideration a 15% interest of **Ksh. 1,337,703,248,967** (15% of **Kshs. 8,918,021,659,782**) Kenya still had an outstanding public debt of **Kshs. 10,790,080,000,000** as of September 2024, which was reported in the Central Bank of Kenya's Weekly Bulletin of 27th December 2024. Based on the foregoing, the Petitioners can confidently state that the entire **Kshs. 10,790,080,000,000** is odious debt.

215. The petitioners are aggrieved further that:

- (a) The National Assembly recklessly failed to notice, and irregularly authorized odious internal debt redemption roll-overs aggregating to **Kshs. 2,503,596,813,045** for the financial years 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023, 2023/2024, & 2024/2025, and projections aggregating to **Kshs. 2,264,239,928,162** for the financial years 2025/2026, 2026/2027 & 2027/2028 refer to **Table 13** on internal debt redemption.
- (b) The internal debt redemption roll-overs were conceptualized as a fraud scheme to defraud the Kenyan public, whereby, redemptions were rolledover aggregating to **Kshs. 2,503,596,813,045**, and projected to be rolled over aggregating to **Kshs. 2,264,239,928,162** totalling to **Kshs. 4,767,836,741,207** which will increase the odious debts for the equivalent amount. The odious internal debt redemption roll-over is comprised as analysed below:
 - (i) Treasury Bonds rolled-overs aggregate to **Kshs. 1,451,122,452,117** for the financial years 2018/2019 to 2024/2025 and the projected roll-over is **Kshs. 1,630,909,028,167** for 2025/2026 to 2027/2028 financial years. Although the Treasury Bonds are a medium-term and long-term borrowings meant to finance the development expenditure (development projects) they are not included in any development budget estimates. Hence, they are not authorized by any Appropriation Act. Further, it is conceptually wrong and unlawful to anticipate that government entities will be unable to redeem Treasury Bonds in the coming financial years, eliciting a forward budget of **Kshs. 1,630,909,028,167** redemption rollovers.
 - (ii) Pre-1997 Government Overdraft rolledover aggregates to **Kshs. 7,770,000,000** for the financial years 2018/2019 to 2024/2025 and the projected is **Kshs. 3,300,000,000** for 2025/2026 to 2027/2028 financial years. Overdrafts are a short-term borrowings restricted to the management of cash flows, in case of temporary cash shortages. They are repayable

within twelve months and shall not exceed five per cent of the most recently audited national government revenue. Being an automatic check-off settlement in the National Exchequer Account, it is inconceivable that an overdraft can be outstanding over twenty-seven (years) and the government is unable to pay Ksh 1,110,000,000. This is fraud, simple and clear. Short-term borrowings are provided under section 2(1) and 15(3) of PFMA as stated below:

Section 2(1) of PFMA “*short term borrowing*” means borrowing by a government by way of **Treasury Bills, bank-overdraft** or other instrument to cover temporary cash shortfalls and is repayable within twelve months”

Section 2(1) of PFMA “*short term borrowing shall be restricted to management of cash flows and in case of a bank overdraft facility it shall not exceed five per cent of the most recent audited national government revenue*”.

- (iii) Treasury Bills rolled over aggregate to Kshs. 1,110,000,000,000 for the financial years 2018/2019 to 2024/2025 and the projected is Ksh. 600,000,000,000 for 2025/2026 to 2027/2028 financial years. Overdrafts are short-term borrowings restricted to management of cash flows, in case of temporary cash shortage, repayable within twelve months. It is contrary to section 2(1) and 15(3) of the PFMA to rollover and even anticipate inability of the government to settle the Treasury Bills, eliciting a forward budget
- (iv) The On-lent IMF Loan rolledover aggregates to Kshs. 20,000,000,000 for the financial years 2018/2019 to 2024/2025 and the projected rollover is Ksh. 30,000,000,000 for 2025/2026 to 2027/2028 financial years. IMF does not provide On-lent Loans. The IMF and the World Bank provide

loans to government entities for specific development projects through the International Development Association.

- (v) Tax Reserves rolled-over aggregate to Kshs. 2,100,000 for the financial years 2018/2019 to 2024/2025 and the projected rollover is Ksh. 900,000 for 2025/2026 to 2027/2028 financial years. The government is not a taxpayer to execute a tax reserve certificate.

(iii) The Ethics and Anti-Corruption Commission

216. The petitioners are aggrieved that, though it has been a matter of public notoriety for a very long time, to date, the Commission has not carried out any investigations into any of the four batches of Eurobond loans amounting to **USD 2,000,000,000, USD 1,000,000,000, USD 3,100,000,000, and USED 1,000,000,000**, which were unlawfully and fraudulently borrowed, respectively, in the financial years 2014/2015, 2017/2018, 2018/2019 and 2020/2021.
217. The petitioners are aggrieved that, to make matters worse, the fraudulent Eurobond loans are **NOT** even mentioned among the cases reported to be under investigation by the Commission in its report titled, ***'Report of Activities and Financial Statements for the Financial'***, for the financial years 2018/2019, 2019/2020/ 2021/2022, and 2022/2023.
218. Further, the petitioners are aggrieved that, by releasing the fraudulent Press Release dated December 4th 2015, Halakhe D. Waqo, the then CEO of the EACC, concealed and aided and abetted the Eurobond loan fraud by deliberately calming and misleading the public, vide its Press Release dated December 4th 2015, that Commission was investigating the matter yet it was not doing so. That was contrary to **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**.
219. The petitioners posit that the EACC violated Article 249(1) and 252(1)(a) of the Constitution when it failed to investigate the Eurobond fraud.

220. The petitioners urge the Honourable Court to order each party to bear the costs of their prosecution of the instant Petition because it was filed to cure their violations of the Constitution and other laws.

221. This Honourable Court has the jurisdiction to declare that the respondents failed in the performance of their duties and that those individuals who were responsible should be punished for any failures in the performance by them of public duty owed in law and in respect of which the petitioners and the public have legally enforceable rights.

6. LEGAL FOUNDATION OF THE PETITION

222. The Constitution of Kenya 2010 is the fountainhead from which all our laws derive their authority and force.

223. The Petition is filed pursuant to the Preamble, and articles 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 43, 40, 46(1), 47, 50, 73, 75, 201, 206, 214, 220, 221, 222, 223, 228(4 & 5), 232, 249(1), 252(1)(a), 258, and 259 of the Constitution of Kenya. It is also filed pursuant to sections 15, 17, 49, and 50 of the Public Finance Management Act 2012; sections 5 and 6 of the Fair Administrative Action Act 2015; sections 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, and 30, as read with 52(1) of the Leadership and Integrity Act 2012; and sections 9(1)(a), 10, 11, 15, 19, and 20, the Public Officer Ethics Act.

224. In the Preamble, the people of Kenya have aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and **the rule of law.**

225. Under Article 1, the People are sovereign.

226. Under Article 2, the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. The Supremacy of the Constitution basically means the supremacy of the rule of law.

227. Article 2(6) of the Constitution makes treaties ratified by Kenya to have the force of law domestically. Kenya has ratified the United Nations Convention Against Corruption.

228. Under Article 3(1), every person has an obligation to respect, uphold and defend the Constitution, and any attempt to establish a government, otherwise than in compliance with the Constitution, is unlawful. Further and specifically:

- a. Kenya is a constitutional state: all state authorities are ultimately subject to judicial control vide the sovereign people's authority vested in the Judiciary as the final arbiter of disputes, and as the institution with exclusive authority and power to make binding interpretations of the Constitution and the law.
- b. The primacy of the basic rights in the Bill of Rights, the definition of the principles of a democratic and open State, and the foundation of an independent Judiciary which watches over and ensure adherence to the Constitution are the basic cornerstones of Kenyan democracy.
- c. Among other things, the basic rights guarantee the accountability of all, freedom to act within the law, equality before the law, including access to justice.
- d. The Petitioners have a reasonable and legitimate expectation by dint of articles 2(3) and 2(4) that public officials can only act legitimately if they act in compliance with the Constitution and don't contravene it in any way.

229. Article 4(2) states that the Republic of Kenya shall be a ... State founded on the national values and principles of governance referred to in Article 10.

230. Article 10 of the Constitution sets out national values and principles of governance that bind all state officers, state organs, and public officers. All persons are required to apply the national values and principles of governance, including *inter alia* **the rule of law**, **participation of the people**, social justice, equity, non-discrimination, protection of the marginalised, **good governance, integrity, transparency, accountability** and sustainable

development. The 1st and 2nd Respondents in the issues herein are bound to apply the aforesaid values and principles.

231. Article 10 declares the rule of law as one of the values and principles of governance.

232. Article 12(1)(a) declares that every citizen is entitled to the rights, privileges and benefits of citizenship, subject only to the limits provided or permitted by the Constitution.

233. Under Chapter Four of the Constitution, various fundamental rights have been declared to belong to all persons in Kenya (Article 19, 20), including inter alia the following:

- a. Article 19(1) makes the Bill of Rights an integral part of Kenya's democratic state and the framework for social, economic and cultural policies.
- b. Article 19(3)(a) provides that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the state.
- c. **Article 20(1) provides that the Bill of Rights applies to all law and binds all State organs and all persons. This is an important feature of the Kenyan Constitution as it clearly indicates that these rights may be enforced both horizontally (i.e. against private bodies and individuals) and vertically (i.e., against the State).**
- d. Article 20(2) provides that every individual shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- e. Article 20(4)(a) provides that in interpreting the Bill of Rights, a court, tribunal or other authority shall promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom.

- f. Article 21(1) states that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.
- g. Article 22 vests the locus standi for the enforcement of the Bill of Rights in inter alia the Petitioners herein.
- h. Under Article 23, the High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. The appropriate relief a court may grant include an order for an injunction, an order for compensation, and a declaration of invalidity of any law.
- i. Article 24, a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity.
- j. Article 25, the right to a fair trial cannot be limited.
- k. Article 27(1), every person is equal before the law and has the right to equal protection and equal benefit of the law.
- l. Article 27(2), equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- m. Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected.
- n. Article 33(1)(a) states that every person has the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas.

- o. Article 35, every citizen has the right to access information.
- p. Article 43 declares economic and social rights, which require the State to have adequate funds to implement as provided 20(5) of the Constitution.
- q. Article 46(1) states that (a) consumers have the right— to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; (c) to the protection of their health, safety, and economic interests; and (d) to compensation for loss or injury arising from defects in goods or services.
- r. **Article 47 declares the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.**
- s. Article 50(1), the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
- t. That the only emergency situations that can oust constitutional provisions are those contemplated in Article 58, as read with Article 132(4)(d).

234. Under Articles 73 and 75, State officers are required to act in accordance with various principles of leadership and integrity, including *inter alia* compliance with the Constitution, promoting public confidence in the integrity of the office, avoiding conflict of interest between public duty and personal interests, and to promoting, **protecting and upholding the rule of law and defending the public interest.**

235. Under Article 156(4)(a), the 4th Respondent is the principal legal adviser to the Government. In Article 156(6), the 4th Respondent shall promote, protect and uphold the rule of law and defend the public interest.

236. This Honourable Court is the primary custodian of the Constitution and has inherent power to uphold and defend the Constitution. Further and in particular:

- a. Under Article 160(1), in the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.
- b. Under Article 159(1) judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
- c. Under Article 159(2), in exercising judicial authority, the courts and tribunals shall be guided by the following principles—(a) **justice shall be done to all, irrespective of status**; (b) justice shall not be delayed; (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3); (d) justice shall be administered without undue regard to procedural technicalities; and (e) the purpose and principles of this Constitution shall be protected and promoted.
- d. Article 165 gives the Court jurisdiction as the custodian of the Constitution and Article 259 states how that jurisdiction is to be exercised.

237. Under Article 201, the principles of public finance include openness and accountability, including public participation in financial matters; public money shall be used in a prudent and responsible way; financial management shall be responsible, and fiscal reporting shall be clear.

238. Article 206(1) establishes the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government.

239. Article 206(1)(a) allows, with the permission of Parliament, for money raised or received by or on behalf of the national government to be paid into another public fund established for a specific purpose.
240. Under Article 206(2) Money may be withdrawn from the Consolidated Fund only— (a) in accordance with an appropriation by an Act of Parliament; (b) in accordance with Article 222 or 223; or (c) as a charge against the Fund as authorised by this Constitution or an Act of Parliament.
241. Under Article 206(3) Money shall not be withdrawn from any national public fund other than the Consolidated Fund, unless the withdrawal of the money has been authorised by an Act of Parliament.
242. Under Article 206(4) Money shall not be withdrawn from the Consolidated Fund unless the Controller of Budget has approved the withdrawal.
243. Article 214(1), states that the public debt is a charge on the Consolidated Fund.
244. Article 220 states the form, content and timing of budgets.
245. Article 221 states budget estimates and annual Appropriation Bill.
246. Article 222 provides for expenditure before the annual budget is passed.
247. Article 223 provides for supplementary appropriation.
248. Article 228(4) states that the Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorizing withdrawals from public funds under Articles 204, 206 and 207.
249. Article 228(5) provides that the Controller of Budget shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.
250. Article 229(4-8) provides that:

- (4) *Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—*
- (a) the accounts of the national and county governments.*
 - (b) the accounts of all funds and authorities of the national and county governments.*
 - (c) the accounts of all courts.*
 - (d) the accounts of every commission and independent office established by this Constitution.*
 - (e) the accounts of the National Assembly, the Senate and the county assemblies.*
 - (f) the accounts of political parties funded from public funds.*
 - (g) the public debt; and*
 - (h) the accounts of any other entity that legislation requires the Auditor-General to audit.*
- (5) *The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.*
- (6) *An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.*
- (7) *Audit reports shall be submitted to Parliament or the relevant county assembly.*
- (8) *Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.*

251. Article 232 states that the values and principles of public service include— involvement of the people in the process of policy making; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit as the basis of appointments and promotions; affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service.

252. **Article 249(1) & (2)** provides:

- (1) The objects of the commissions and the independent offices are to—
- (a) protect the sovereignty of the people;

- (b) secure the observance by all State organs of democratic values and principles;
and
- (c) promote constitutionalism.

(2) The commissions and the holders of independent offices—

- (a) are subject only to this Constitution and the law; and
- (b) are independent and not subject to direction or control by any person or authority.

253. Under **Article 252(1)** Each commission, and each holder of an independent office—

- (a) may conduct investigations on its own initiative or on a complaint made by a member of the public.

254. Under Article 258, on the enforcement of the Constitution, any person, acting in their own interest, or on behalf of another person, or as a member of, or in the interest of, a group or class of persons, or acting in the public interest, has the right to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention.

255. Under Article 259(1) the Constitution shall be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law; and contributes to good governance.

256. As regards the instant Petition, the above provisions of the constitution are supported by statute as follows:

257. The Public Finance Management Act 2012:

- 257.1. Section 15(2)(c) provides that, in managing the national government's public finances, the National Treasury shall enforce the following fiscal responsibility principles— over the medium term, the national government's borrowings shall

be used only for the purpose of financing development expenditure and not for recurrent expenditure

- 257.2. Section 15(3) provides: (3) For the purposes of subsection (2)(c), short term borrowing shall be restricted to management of cash flows and in case of a bank overdraft facility it shall not exceed five per cent of the most recent audited national government revenue.
- 257.3. Section 17(1) provides that the National Treasury shall administer the Consolidated Fund in accordance with Article 206 of the Constitution.
- 257.4. Section 17(2)(a) provides that the National Treasury shall maintain the Consolidated Fund in an account to be known as the National Exchequer Account, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution facilitate payment into that account all money raised or received by or on behalf of the national government.
- 257.5. Section 17(4) provides that where a withdrawal from the Consolidated Fund is authorised under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval.
- 257.6. Section 17(5) provides how the Central Bank of Kenya may pay amounts from the National Exchequer Account.
- 257.7. Section 49 states that the Cabinet Secretary may raise a loan only if the loan and the terms and conditions for the loan are set out in writing.
- 257.8. Section 50(3) provides that the national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

258. The Fair Administrative Action Act 2015:

- 258.1. Section 4 requires that administrative action be taken expeditiously, efficiently, lawfully, etc.
- 258.2. Section 5 sets out the procedure for administrative action affecting the public.
- 258.3. Section 6(1) provides that every person materially or adversely affected by any administrative action has a right to be supplied with such information as may be necessary to facilitate his or her application for an appeal or review.
- 258.4. Section 7(1)(a) provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court.
- 258.5. **Section 11(2)(a)** declares that, in proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order as to costs and other monetary compensation.

259. The Leadership and Integrity Act 2012:

- 259.1. Section 3 states that the primary purpose of the Act is to ensure that State officers respect the values, principles and requirements of the Constitution.
- 259.2. Section 4 provides that every person has the responsibility of implementing the Act.
- 259.3. Section 9 declares that a State officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of office.
- 259.4. Section 12 provides that a State officer shall not use the office to unlawfully enrich himself or herself or any other person.

- 259.5. Section 15 states that a State officer shall not use the office to wrongfully or unlawfully influence the acquisition of property.
- 259.6. Section 21(4) provides that a State officer shall be personally liable for any loss of public property in their custody
- 259.7. Section 24 provides that a State officer shall not engage in corrupt or unethical practices.
- 259.8. Section 29 provides that a State officer shall not knowingly give false or misleading information to any person.
- 259.9. Section 30 provides that a State officer shall not falsify any records or misrepresent information to the public. \Section 52 makes Chapter Six of the Constitution and the Act applicable to public officers generally.

260. The Public Officer Ethics Act:

- 260.1. Section 9(1)(a) states that a public officer shall carry out his duties in a way that maintains public confidence in the integrity of his office.
- 260.2. Section 10 states that public officers shall carry out his duties in accordance with the law.
- 260.3. Section 11 states that a public officer shall not use his office to improperly enrich himself or others.
- 260.4. Section 15(1) states that a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated.

260.5. Section 15(2) states that a person who contravenes subsection (1) shall be personally liable for losses resulting from the contravention.

260.6. Section 19 provides that a public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

PARTICULARS OF THE VIOLATIONS OF THE CONSTITUTION AND STATUTES

105. Violations of the right to access information

105.1. Article 35 of the Constitution was violated to the extent that the respondents refused to honour the access to information request made by the Petitioners.

105.2. Articles 35(3), 46(1)(a), and 232(1)(e) & (f) were violated to the extent that the respondents withheld information from the public.

105.3. Articles 46(1)(a) as read with 46(3) was violated to the extent that the 3rd and 4th Respondents published information in a manner deliberately designed to mislead the public.

106. Violations of the right to fair administrative action

106.1. The arbitrary decisions of the Respondents to bank Eurobond proceeds in an offshore account in violation of the Constitution and the Public Finance Management Act, without the seeking and getting the approval of Parliament, undermines Article 47 which gives every person the right to administrative action that *is expeditious, efficient, lawful, reasonable and procedurally fair*.

106.2. Article 47 is also undermined to the extent that the Respondents have not discharged their constitutional mandates as regards their obligation to accurately and clearly inform the public about the Eurobond proceeds.

106.3. Article 47 is also violated to the extent that the 3rd and 4th Respondents prepared and/or endorsed and published false accounts.

107. The right to property

107.1. Articles 40(2) and (3) were violated by the Respondents to the extent that they stole the Eurobond money and exposed taxpayers to repay a debt which was not used to benefit them.

108. General violations of the Constitution

108.1. Article 19(1), 20(1) & (2), and 21 were in turn violated by the violations of provisions of the Bill of Rights.

108.2. Article 10 and 4(2) of the Constitution were violated to the extent that the Respondents failed to exhaust the provisions of the law, especially seeking Parliamentary approval, before banking the Eurobond proceeds in an offshore account.

108.3. Article 10 was also violated to the extent that the Respondents did not uphold the rule of law, good governance, integrity, transparency and accountability, etc., when handling the Eurobond money.

108.4. To the extent that the Eurobond proceeds were not factored into the Consolidated Fund, Articles 206 and 214 (on the Public Debt) were violated.

108.5. Articles 24, 43 and 201 were violated to the extent that the Government has not developed appropriate mechanisms anchored in law to protect public resources during when money is borrowed from international markets.

- 108.6. Articles 206, 222 or 223 are violated where public funds are used without following the procedures therein.
- 108.7. To the extent that Eurobond funds have been and are being spent without an Appropriation Act authorizing the withdrawals of funds from the Consolidated Fund, Articles 222, 223 and 228 of the Constitution were violated. No authority (appropriation) has been granted by Parliament to pay the Eurobond money out of the Consolidated Fund or out of any other public fund for any purposes.
- 108.8. To the extent that the use of the Eurobond money ought to have been but was not taken to Parliament for its consideration for approval or rejection, Articles 220 and 221 of the Constitution were violated.
- 108.9. To the extent Eurobond loans and proceeds violated Articles 206, 214, 220, 221(1)(c), and 227 of the Constitution, repayment of Eurobond debt from public money is nullity ab initio.
- 108.10. To the extent that the Controller of Budget is not overseeing the use of the Eurobond money, Article 228 (4 & 5) were and continue to be violated.
- 108.11. To the extent that the people ought to have but did not participate in the Eurobond process, because the respondents issued a hidden prospectus, Articles 4(2), 10(2)(a), 201(a), 232(1)(d), and 221(5) of the Constitution were violated.
- 108.12. To the extent that the Respondents have not been transparent, accountable for their administrative acts in regards to the Eurobond, and provided timely, accurate information to the public, Article 232(1), on the values and principles of public service, has been violated.
- 108.13. The failure to transfer the proceeds of the sovereign bonds into the Consolidated Fund was in contemptuous violation of Articles 10 and 206 of the Constitution,

Section 17, 49, and 50 of the Public Finance Management Act 2012, and other laws.

109. Violations of Articles 206 and 228 of the Constitution by the Public Finance Management Amendment Act 2014

- 109.1. Sections 50(7)(b), (c) & (d), 53 and 53A of the Public Finance Management Finance Act 2014 violate the above provisions of the Constitution to the extent that they authorize borrowing outside the budget as the Constitution establishes. By so doing they also eliminate oversight mechanisms established in the Constitution. And that weakens the controls established for safeguarding public money under Articles 206 and 228 of the Constitution.
- 109.2. The impugned Section 50(7), (b), (c) & (d) of the Public Finance Management Act, 2012, which unconstitutionally exempt foreign loan proceeds from being paid into the Consolidated fund or other funds established under the law and, by so doing, eliminate the oversight of Parliament and the supervision of the Controller of Budget, are unconstitutional, null and void.
- 109.3. Pursuant to Article 206(1)(a) of the Constitution, only an Act of Parliament can authorise the keeping of any government revenue outside the Consolidated Fund, and in another 'fund' not just an account. There was no Act of Parliament which authorised the creation of the account called "GoK/CBK Sovereign Bond."
- 109.4. Contrary to Article 206(1) of the Constitution, and without reference to the Controller of Budget contrary to Articles 206(3) and 228(4) & (5), the Cabinet Secretary/ National Treasury paid expenses incurred in connection with foreign loan arrangements at source directly from the offshore dollar account set up to receive the foreign loan proceeds.

109.5. Similarly, Section 53 and 53A of the PFMA are unconstitutional to the extent that they allow the national government to borrow outside the national budget or the annual appropriation Act. The sections vest the Cabinet Secretary for Finance with powers to issue, respectively, national and international government securities outside the budget. Since they are part of government borrowing (loans), government securities must be approved through the Appropriation Act annually. Any government borrowings must go through the legislative process. And Article 109(1) provides categorically that, *“Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.”*

109.5. Other violations of the law are as stated in the section addressing the factual background of the petition.

7. CASES RELATED TO ISSUES IN THE PETITION

109A. There is no case pending in any court involving the parties herein and over the same subject matter of the alleged theft of the proceeds of the Eurobond in issue.

8. RELIEFS SOUGHT BY THE PETITIONERS

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

110. **The Honourable Court be pleased to determine the following QUESTIONS:**

Doctrine of odious debt

- (1) Whether any loans which were borrowed outside the National Government's approved budgets in the applicable Appropriation Acts, or in violation of any written law, and/or not tied to development projects, are odious debts, and not sovereign debts?

- (2) Whether all government borrowings (loans), including government securities, must go through the legislative process under Article 109(1) of the Constitution and be approved by Parliament and be authorized by the President through the annual Appropriation Act?
- (3) Whether lenders who advance loans purportedly to the Government of Kenya in contravention of Kenyan law can pursue citizens of Kenya for the repayment of their odious loans?
- (4) Whether taxpayers are obligated to repay odious debts?
- (5) Whether in the period covering the financial years 2014/2015 to 2024/2025 the respondents:
 - a. Incurred debts aggregating to **Kshs. 2,791,543,336,707** authorized in Appropriation Acts?
 - b. Unconstitutionally and unlawfully incurred actual odious debt amounting to **Kshs. 6,950,163,132,328** borrowed outside Appropriation Acts?
 - c. Made actual debt repayment of **Kshs. 8,918,021,659,782**, which includes interests and other charges for both the genuine and odious debts?

Invalidity of Eurobond Loans

- (6) Whether the Eurobond loans amounting to the **USD7.1 billion (i.e., Kshs.923 billion** at the rate of 1USD = 130Kshs) are odious debts which were borrowed contrary to **Article 220(1)** of the Constitution as read together with sections 15(2)(c), 15(3) & 50(3) of the Public Finance Management Act?
- (7) Whether pursuant to **Article 214** of the Constitution, as read together with **Sections 15(2)(c) and 50(3) of the Public Finance Management Act**, it is unconstitutional to borrow funds to repay or to buy back an earlier loan?

- (8) Whether the **USD 1,458,740,000** (equivalent to **Ksh.208,324,847,510**) Eurobond loans, borrowed in February 2024, purportedly to buy back the notes due for repayment in June 2024 from the original **USD 2 billion** Eurobond loans borrowed in FY 2014/2015, are odious debt?
- (9) Whether Eurobond loan funds were a source of finance in the development expenditure budgets for the financial years 2013/2014, 2014/2015, 2017/2018, 2018/2019, and 2020/2021?
- (10) Whether it was conceptually and practically possible that the **US\$ 395,439,262.50** Eurobond loan proceeds, allegedly transferred on 3 July 2014 to the Exchequer, after the closure of the FY2013/14, could have been used to retrospectively fund infrastructure in the course of the said 2013/14 financial year?

Unconstitutionality of Offshore Accounts

- (11) Whether, in the meaning of **Article 206(1)** of the Constitution, the Central Bank of Kenya's offshore bank accounts held at JP Morgan Chase and Citibank, New York, and into which the respondents deposited the Eurobond loan money, are public funds?
- (12) Whether the Central Bank of Kenya violated **Article 206(1)** of the Constitution as read together with **Section 17(1) & (2) and 28 of the PFMA and sections 44 & 45 of CBK Act**, by opening accounts at JP Morgan Chase and Citibank, New York, to hold Eurobond proceeds?
- (13) Whether the Respondents violated **Article 206** of the Constitution by depositing the Eurobond loan money in offshore bank accounts and not in the Consolidated Fund or in a fund established by an Act of Parliament?
- (14) Whether, pursuant to **Article 214** of the Constitution, expenses incurred in connection with foreign loan arrangements at source are paid from the Consolidated Fund (i.e.,

the National Exchequer Account held in Central Bank of Kenya) and not directly from the offshore dollar account set up to receive the foreign loan proceeds?

- (15) Whether, pursuant to **Article 214** of the Constitution, the **US\$604,560,737.50 (Kshs 53.20 billion)** syndicated loans were repaid from the Consolidated Fund (i.e., the National Exchequer Account held in Central Bank of Kenya) and not from Eurobond offshore account?
- (16) Whether **section 45(d)** of CBK Act can be an authority to settle the **US\$604,560,737.50 (Kshs 53.20 billion)** syndicated loans from the Eurobond loan proceeds held at JP Morgan Chase Bank in New York?
- (17) Whether pursuant to **Article 206(1)(a)** of the Constitution, only an Act of Parliament, and not regulations made by the Executive and approved by Parliament, can authorise the keeping of any government revenue outside the Consolidated Fund, and in another ‘fund’ not just an account?

Unconstitutionality of “Appropriations-in-Aid” and ‘On-lent loans’

- (18) Whether Appropriations-in-Aid (A-in-A) loans contravene **Article 206(1)** of the Constitution?
- (19) Whether the International Monetary Fund (IMF) can be sued in Kenyan Courts where it lends money to the government in violation of Kenyan law?
- (20) Whether the International Monetary Fund (IMF) can be sued in Kenyan Courts where it lends money to the government in violation of Kenyan law?
- (21) Whether ‘**On-lent loans**’ are unconstitutional and by advancing ‘**On-lent loans**’ to Kenya, the International Monetary Fund (IMF) violated Kenyan law on borrowing?
- (22) Whether the redemptions of the IMF **Kshs. 10 billion** ‘On-lent loan’ to Kenya were fraudulently rolled over in 2023/2024 and 2024/2025 and forward budgeted

(redemption rollover) for 2025/2026, 2026/2027 & 2027/2028 of for each financial year, amounting to **Kshs. 50 billion?**

- (23) Whether the internal debt redemption rollover amounting to **Kshs. 4,767,836,741,212** comprising of **Kshs. 2,503,596,813,045.00** incurred from 2018/2019 to 2024/2025 (Subtotal 1 in Table 8 in the petition) and the projected redemption to be incurred in the financial years 2025/2026, 2026/2027, and 2027/2028 of **Kshs.2,264,239,928,167** (Subtotal 2 in Table 8 in the petition)are odious debt?

The Failures of the then Cabinet Secretary for the National Treasury

- (24) Whether Henry K. Rotich, the then Cabinet Secretary for the National Treasury) violated **Articles 10, 35, 153(4)(a), 232(1)(e) & (f) of the Constitution**, as read together with **sections 29 and 30 of the Leadership and Integrity Act** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**, when he willfully and deliberately aided and abetted fraud by issuing various fraudulent and misleading Press Releases and other documents on various dates, on the acquisition and use of **USD 2.75 Eurobond?**
- (25) Whether contrary to **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**, the Cabinet Secretary for the National Treasury highly misled the public and violated **Article 206** of the Constitution, as read with **Section 17(1)&(2) of the PFMA**, by averring in its Press Statement that it opened the GOK/CBK Sovereign Bond Bank Account pursuant to **Section 28** of the PFMA, and **Section 45 (d)** of the CBK Act?

The Controller of Budget's failures

- (26) Whether, pursuant to **Articles 228(4) & (5)** of the Constitution, and with regards to the odious debts, the Controller of Budget failed in its responsibility to oversee the implementation of the budget as provided under **Article 206 and 220(1)** of the Constitution?

- (27) Whether the Controller of Budget willfully and deliberately aided and abetted fraud by misleading the public that Eurobond proceeds were deposited in the Consolidated Fund, withdrawn, and utilised in the public interest?
- (28) Whether the Controller of Budget willfully and deliberately aided and abetted fraud by misleading the Kenyan public and the National Assembly by publishing and presenting, fraudulent reconciliations of **Kshs. 250,240,738,050.44** sovereign loan proceeds and expenditure as at June 30, 2015, claiming falsely that they contained proceeds of the Eurobond?
- (29) Whether the Controller of Budget willfully and deliberately aided and abetted fraud by issuing a misleading report and, consequently, violated **Article 228(4) & (5)** of the Constitution, as read together with **sections 29 and 30 of the Leadership and Integrity Act**, when it submitted a National Government Budget Implementation Review Report First Quarter FY 2014/15 purporting that the government secured Sovereign Bond of **USD 2 billion (Kshs.178 billion)**, whereas, the said Sovereign bond was not authorized by the 2014 Appropriation Act (budget) and it was not paid into the Consolidated Fund as required under **Article 206(1)** of the Constitution?
- (30) Whether the Controller of Budget had jurisdiction over the offshore accounts (held in JP Morgan Chase and Citibank, New York) into which the Eurobond proceeds were deposited?

The Auditor General's failures

- (31) Whether, pursuant to **Articles 229(4)(a) & (g) & (6)** of the Constitution, and with regards to the odious debts, the Auditor General failed in its responsibility to audit the public debt and confirm whether or not the borrowed money was applied lawfully and in an effective way?
- (32) Whether after confirming in its 2013/2014 report that **Article 206** of the Constitution and **Section 17(2) of the Public Finance Management Act** had been violated, the Auditor General willfully and deliberately aided and abetted fraud by concealing the

Eurobond fraud when it failed to qualify its report due to the non-transfer of Eurobond proceeds to the Consolidated Fund?

- (33) Whether the Auditor General willfully and deliberately aided and abetted fraud when it failed in its responsibility under **Article 229(4)(g) & (6)** of the Constitution to audit and confirm whether the Eurobond loans and subsequent proceeds were borrowed and applied lawfully and effectively?
- (34) Whether in its reports on the national government accounts in issue herein, the Auditor General violated **Article 229(6)** of the Constitution by failing to confirm whether or not the **USD 7.1 billion** Eurobond loan proceeds were acquired and applied lawfully, and in an effective way?

The National Assembly's failures

- (35) Whether the National Assembly failed in its duty to protect the Kenyan taxpayer from the burden of odious debts?
- (36) Whether contrary to Article 229(8) the National Assembly failed to debate and consider the reports of the Auditor General for the financial years spanning the period 2013/2014 to 2023/2024 and take appropriate action (on the expenditure of proceeds of sovereign loans)?
- (37) Whether the National Assembly violated the Constitution by creating an unconstitutional loophole in the law that allowed the Cabinet Secretary responsible for Finance to loot public coffers by side-stepping or bypassing the express and mandatory provisions of Article 206 of the Constitution.
- (38) Whether by creating the debt limit pegged on GDP, the National Assembly violated Article 220(1)(c) of the Constitution and that abets and facilitates the acquisition of odious debts?

(39) Whether pegging national borrowing limits to percentages of GDP is unconstitutional, null and void?

The EACC's failures

(40) Whether vide the fraudulent Press Release dated December 4th 2015, **Halakhe D. Waqo**, the former CEO of the EACC, aided and abetted the Eurobond loan fraud by deliberately misleading the public to conceal the heist?

(41) Whether by publishing the falsehoods in the Press Release dated December 4th 2015, **Halakhe D. Waqo**, the former CEO of the EACC, violated **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**?

(42) Whether the EACC violated Articles 249(1) & (2) and 252(1)(a) of the Constitution when it failed to investigate the Eurobond fraud?

Personal Liability of Public Officials for odious debt

(43) Whether H. E. Uhuru Muigai Kenyatta, the 4th President of Kenya, and the 2nd, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th and 21st respondents are personally liable and should be surcharged under **Article 226(5)** of the Constitution for the **Kshs.4,605,840,278,922** odious debts corruptly acquired under their watch in the FY 2014/2015 to 2021/2022?

(44) Whether the Office President of Kenya, and the 16th, 17th, and 18th respondents who served in the government in the period under review, are personally liable and should be surcharged under **Article 226(5)** of the Constitution for **Kshs. 2,250,325,905,200** odious debts corruptly acquired under their watch in the FY 2022/2023 to 2024/2025?

Constitutionality of impugned legislation

- (45) Whether Section 6 of the Finance Management (Amendment) Act, 2023 is unconstitutional, null and void?
- (46) Whether sections 49(1), 50(2), 50(2A), 50(2B), 50(2C), & 50(2D), 50(6), 50(7)(b, c & d), 50(8) & 50(10)(b), 53, and 53A of the Public Finance Management Act, 2012, are unconstitutional and, therefore, invalid, null and void?
- (47) Whether the Public Finance Management (Amendment) Act 2014 is unconstitutional and, therefore, invalid, null and void in its entirety for the failure to submit the Public Finance Management (Amendment) Bill, 2014, to the Senate for consideration, debate and approval?

Violations of the right to access information

- (48) Whether the 3rd, 4th and 5th respondents' refusal to supply the information sought by the 1st and 2nd Petitioners in their letter dated October 28, 2015, violated **Article 35** as read together with **articles 46(1)(a) & 3, and 232(1)(e) & (f)** of the Constitution of Kenya, 2010, and **Sections, 3, 4, 5, 6 and 9 of the Access to Information Act?**
- (49) Whether the 3rd, 4th and 5th Respondents should be compelled to supply the information requested by the 1st and 2nd Petitioners in their letter dated October 28, 2015?
- (50) Whether, pursuant to **Articles 2(6), 143(4)** of the Constitution of Kenya, 2010, as read together with **Article 30** of the **United Nations Convention Against Corruption (UNCAC)**, which Kenya ratified on December 9, 2003, the President of Kenya can be sued for acts of corruption?

Litigation Costs

- (51) Whether the respondents should pay the costs of this Petition.

111. **The Honourable Court be pleased to make the following DECLARATIONS**

Doctrine of odious debt

- (1) **A Declaration** be and is hereby issued that any loans which were borrowed outside the National Government's approved budgets in the applicable Appropriation Acts, or in violation of any written law and/or not tied to development projects, are odious debts, and not sovereign debts.
- (2) **A Declaration** be and is hereby issued that all government borrowings (loans), including government securities, must go through the legislative process under Article 109(1) of the Constitution and be approved by Parliament and be authorized by the President through the annual Appropriation Act.
- (3) **A Declaration** be and is hereby issued that lenders who advance loans purportedly to the Government of Kenya in contravention of Kenyan law cannot pursue citizens of Kenya for the repayment of the odious loans.
- (4) **A Declaration** be and is hereby issued that taxpayers are NOT obligated to repay odious debts.
- (5) **A Declaration** be and is hereby issued that in the period covering the financial years 2014/2015 to 2024/2025 the respondents:
 - a. Constitutionally and lawfully Incurred debts aggregating to **Kshs. 2,791,543,336,707**, which were authorized in applicable Appropriation Acts.
 - b. Unconstitutionally and unlawfully incurred actual odious debt amounting to **Kshs. 6,950,163,132,328** borrowed outside applicable Appropriation Acts.
 - c. Made actual **debt** repayment of **Kshs. 8,918,021,659,782**, which includes interests and other charges for both the genuine and odious debts.

Invalidity of Eurobond Loans

- (6) **A Declaration** be and is hereby issued that the Eurobond loans amounting to the **USD7.1 billion (i.e., Kshs.923 billion** at the rate of 1USD = 130Kshs) are odious debts which were borrowed contrary to **Articles 220(1) and 221** of the Constitution as read together with **sections 15(2)(c), 15(3) & 50(3)** of the Public Finance Management Act.
- (7) **A Declaration** be and is hereby issued that pursuant to **Article 214** of the Constitution, as read together with **Sections 15(2)(c) and 50(3) of the Public Finance Management Act**, it is unconstitutional to borrow funds to repay or to buy back an earlier loan.
- (8) **A Declaration** be and is hereby issued that the **USD 1,458,740,000** (equivalent to **Ksh.208,324,847,510**) Eurobond loans, borrowed in February 2024, purportedly to buy back the notes due for repayment in June 2024 from the original **USD 2 billion** Eurobond loans borrowed in FY 2014/2015, are odious debt.
- (9) **A Declaration** be and is hereby issued that Eurobond loan funds were not a source of finance in the development expenditure budgets for the financial years 2013/2014, 2014/2015, 2017/2018, 2018/2019, and 2020/2021.
- (10) **A Declaration** be and is hereby issued that it was conceptually and practically impossible that the **US\$395,439,262.50** Eurobond loan proceeds, allegedly transferred on 3 July 2014 to the Exchequer, after the closure of the FY2013/14, were used to retrospectively to fund infrastructure in the course of the said 2013/14 financial year.

Unconstitutionality of Offshore Accounts

- (11) **A Declaration** be and is hereby issued that, in the meaning of **Article 206(1)** of the Constitution, the Central Bank of Kenya's offshore bank accounts held at JP Morgan Chase and Citibank, New York, and into which the respondents deposited the Eurobond loan money, are not public funds.

- (12) **A Declaration** be and is hereby issued that the Central Bank of Kenya violated **Article 206(1)** of the Constitution as read together with **Section 17(1) & (2) and 28 of the PFMA and sections 44 & 45 of CBK Act**, by opening accounts at JP Morgan Chase and Citibank, New York, to hold Eurobond proceeds.
- (13) **A Declaration** be and is hereby issued that the Respondents violated **Article 206** of the Constitution by depositing the Eurobond loan money in offshore bank accounts and not in the Consolidated Fund, or in a fund established by an Act of Parliament.
- (14) **A Declaration** be and is hereby issued that, pursuant to **Article 214** of the Constitution, expenses incurred in connection with foreign loan arrangements at source were paid from the Consolidated Fund (i.e., the National Exchequer Account held in Central Bank of Kenya) and not directly from the unconstitutional offshore dollar account(s) set up to receive the foreign loan proceeds.
- (15) **A Declaration** be and is hereby issued that, pursuant to **Article 214** of the Constitution, the **US\$604,560,737.50 (Kshs 53.20 billion)** syndicated loans were repaid from the Consolidated Fund (i.e., the National Exchequer Account held in Central Bank of Kenya) and not from the unconstitutional Eurobond offshore account.
- (16) **A Declaration** be and is hereby issued that **section 45(d)** of CBK Act cannot be an authority to settle the **US\$604,560,737.50 (Kshs 53.20 billion)** syndicated loans from the unconstitutional Eurobond loan proceeds held at JP Morgan Chase Bank in New York.
- (17) **A Declaration** be and is hereby issued that pursuant to **Article 206(1)(a)** of the Constitution, only an Act of Parliament, and not regulations made by the Executive and approved by Parliament, can authorise the keeping of any government revenue outside the Consolidated Fund, and in another fund established by an Act of Parliament, not just an account.

- (18) **A Declaration** be and is hereby issued that the Central Bank of Kenya is responsible for the **Kshs6,164,439,173,574** difference between the Central Bank's records and those of the National Treasury and that the amount is not a public debt.

Unconstitutionality of “Appropriations-in-Aid” and ‘On-lent loans’

- (19) **A Declaration** be and is hereby issued that Appropriations-in-Aid (A-in-A) loans contravene **Article 206(1)** of the Constitution to the extent that the loans are not paid into the consolidated fund.
- (20) **A Declaration** be and is hereby issued that the International Monetary Fund (IMF) can be sued in Kenyan Courts where it lends money to the government in violation of Kenyan law.
- (21) **A Declaration** be and is hereby issued that **‘On-lent loans’** are unconstitutional and by advancing **‘On-lent loans’** to Kenya, the International Monetary Fund (IMF) violated Kenyan law on borrowing.
- (22) **A Declaration** be and is hereby issued that the redemptions of the IMF **Kshs. 10 billion** ‘On-lent loan’ to Kenya were fraudulently rolled over in 2023/2024 and 2024/2025 and forward budgeted (redemption rollover) for 2025/2026, 2026/2027 & 2027/2028 for each financial year, amounting to **Kshs. 50 billion**.
- (23) **A Declaration** be and is hereby issued that the internal debt redemption rollover amounting to **Kshs. 4,767,836,741,212** comprising of **Kshs. 2,503,596,813,045.00** incurred from 2018/2019 to 2024/2025 (Subtotal 1 in Table 8 in the petition) and the projected redemption to be incurred in the financial years 2025/2026, 2026/2027, and 2027/2028 of **Kshs.2,264,239,928,167** (Subtotal 2 in Table 8 in the petition) are odious debt.

Failures of the Cabinet Secretary for the National Treasury

- (24) **A Declaration** be and is hereby issued that Henry K. Rotich, the then Cabinet Secretary for the National Treasury) violated **Articles 10, 35, 153(4)(a), 232(1)(e) & (f) of the Constitution**, as read together with **sections 29 and 30 of the Leadership and Integrity Act** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**, when he willfully and deliberately aided and abetted fraud by issuing various fraudulent and misleading Press Releases and other documents on various dates, on the acquisition and use of **USD 2.75 Eurobond**.
- (25) **A Declaration** be and is hereby issued that contrary to **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**, the Cabinet Secretary for the National Treasury highly misled the public and violated **Article 206** of the Constitution, as read with **Section 17(1)&(2) of the PFMA**, by averring in its Press Statement that it opened the GOK/CBK Sovereign Bond Bank Account pursuant to **Section 28** of the PFMA, and **Section 45 (d)** of the CBK Act.

Failures of the Controller of Budget

- (26) **A Declaration** be and is hereby issued that, pursuant to **Articles 228(4) & (5)** of the Constitution, and with regards to the odious debts, the Controller of Budget failed in its responsibility to oversee the implementation of the budget as provided under **Article 206 and 220(1)** of the Constitution.
- (27) **A Declaration** be and is hereby issued that the Controller of Budget willfully and deliberately aided and abetted fraud by misleading the public that Eurobond proceeds were deposited in the Consolidated Fund, withdrawn, and utilised in the public interest.
- (28) **A Declaration** be and is hereby issued that the Controller of Budget willfully and deliberately aided and abetted fraud by misleading the Kenyan public and the National Assembly by publishing and presenting fraudulent reconciliations of **Kshs. 250,240,738,050.44** sovereign loan proceeds and expenditure as at June 30, 2015, claiming falsely that they contained proceeds of the Eurobond.

(29) **A Declaration** be and is hereby issued that the Controller of Budget willfully and deliberately aided and abetted fraud by issuing a misleading report and, consequently, violated **Article 228(4) & (5)** of the Constitution, as read together with **sections 29 and 30 of the Leadership and Integrity Act**, when it submitted a National Government Budget Implementation Review Report First Quarter FY 2014/15 purporting that the government secured Sovereign Bond of **USD 2 billion (Kshs.178 billion)**, whereas, the said Sovereign bond was not authorized by the 2014 Appropriation Act (budget) and it was not paid into the Consolidated Fund as required under **Article 206(1)** of the Constitution.

(30) **A Declaration** be and is hereby issued that the Controller of Budget had no jurisdiction over the unconstitutional offshore accounts (held in JP Morgan Chase and Citibank, New York) into which the Eurobond proceeds were deposited.

Failures of the Auditor General

(31) **A Declaration** be and is hereby issued that, pursuant to **Articles 229(4)(a) & (g) & (6)** of the Constitution, and with regards to the odious debts, the Auditor General failed in its responsibility to audit the public debt and confirm whether or not loans were borrowed and applied lawfully, and in an effective way.

(32) **A Declaration** be and is hereby issued that after confirming in its 2013/2014 report that **Article 206** of the Constitution and **Section 17(2) of the Public Finance Management Act** had been violated, the Auditor General willfully and deliberately aided and abetted fraud by concealing the Eurobond swindle when it failed to qualify its report due to the non-transfer of Eurobond proceeds to the Consolidated Fund.

(33) **A Declaration** be and is hereby issued that the Auditor General willfully and deliberately aided and abetted fraud when it failed in its responsibility under **Article 229(4)(g) & (6)** of the Constitution to audit and confirm whether the Eurobond loans and subsequent proceeds were borrowed and applied lawfully and effectively.

(34) **A Declaration** be and is hereby issued that in its reports on the national government accounts in issue herein, the Auditor General violated **Article 229(6)** of the Constitution by failing to confirm whether or not the **USD 7.1 billion** Eurobond loan proceeds were acquired and applied lawfully, and in an effective way.

Failures of the National Assembly

(35) **A Declaration** be and is hereby issued that the National Assembly failed in its duty to protect the Kenyan taxpayer from the burden of odious debts.

(36) **A Declaration** be and is hereby issued that contrary to **Article 229(8)** of Constitution, the National Assembly failed to debate and consider the reports of the Auditor General for the financial years spanning the period 2013/2014 to 2023/2024 and take appropriate action on the expenditure of proceeds of sovereign loans and other odious debts.

(37) **A Declaration** be and is hereby issued that the National Assembly violated the Constitution by amending the Public Finance Management Act, 2012 to create an unconstitutional loophole in the law that allowed the Cabinet Secretary responsible for Finance to loot public coffers by side-stepping or bypassing the express and mandatory provisions of **Article 206** of the Constitution.

(38) **A Declaration** be and is hereby issued that by creating the debt limit pegged on GDP, the National Assembly violated **Article 220(1)(c)** of the Constitution and that abets and facilitates the acquisition of odious debts.

(39) **A Declaration** be and is hereby issued that pegging national borrowing limits to percentages of GDP is unconstitutional, null and void.

Failures of the Ethics and Anti-Corruption Commission (EACC)

(40) **A Declaration** be and is hereby issued that vide the fraudulent Press Release dated December 4th 2015, **Halakhe D. Waqo**, the former CEO of the EACC, aided and

abetted the Eurobond loan fraud by deliberately misleading the public to conceal the heist.

(41) **A Declaration** be and is hereby issued that by publishing the falsehoods in the Press Release dated December 4th 2015, **Halakhe D. Waqo**, the former CEO of the EACC, violated **sections 29 and 30 of the Leadership and Integrity Act (No. 19 of 2012)** and **Section 19 of the Public Officer Ethics Act (Cap 185B)**.

(42) **A Declaration** be and is hereby issued that the EACC violated **Articles 249(1) & (2) and 252(1)(a)** of the Constitution when it failed to investigate the Eurobond fraud.

Personal Liability of Public Officials for Odious Debt

(43) **A Declaration** be and is hereby issued that H. E. Uhuru Muigai Kenyatta, the 4th President of Kenya, and the 2nd, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th and 21st respondents are personally liable and should be surcharged under **Article 226(5)** of the Constitution for the **Kshs.4,605,840,278,922** odious debts corruptly acquired under their watch in the FY 2014/2015 to 2021/2022.

(44) **A Declaration** be and is hereby issued that **The National Executive**, and the 16th, 17th, and 18th respondents who served in government in the period under review, are personally liable and should be surcharged under **Article 226(5)** of the Constitution for **Kshs. 2,250,325,905,200** odious debts corruptly acquired under their watch in the FY 2022/2023 to 2024/2025.

Constitutionality of Legislation

(45) **A Declaration** be and is hereby issued that **Section 6** of the Finance Management (Amendment) Act, 2023 is unconstitutional, null and void.

(46) **A Declaration** be and is hereby issued that **sections 49(1), 50(2), 50(2A), 50(2B), 50(2C), & 50(2D), 50(6), 50(7)(b, c & d), 50(8) & 50(10)(b), 53, and 53A** of the

Public Finance Management Act, 2012, are unconstitutional and, therefore, invalid, null and void.

- (47) **A Declaration** be and is hereby issued that the **Public Finance Management (Amendment) Act 2014** is unconstitutional and, therefore, invalid, null and void in its entirety for the failure to submit the Public Finance Management (Amendment) Bill, 2014, to the Senate for consideration, debate and approval.

Violations of the right to access information

- (48) **A Declaration** be and is hereby issued that the 3rd, 4th and 5th respondents' refusal to supply the information sought by the 1st and 2nd Petitioners in their letter dated October 28, 2015, violated **Article 35** as read together with **articles 46(1)(a) & 3**, and **232(1)(e) & (f)** of the Constitution of Kenya, 2010, and **Sections, 3, 4, 5, 6 and 9** of the Access to Information Act.

- (49) **A Declaration** be and is hereby issued that the 3rd, 4th and 5th Respondents should be compelled to supply the information requested by the 1st and 2nd Petitioners in their letter dated October 28, 2015.

- (50) **A Declaration** be and is hereby issued that, pursuant to **Articles 2(6), 143(4)** of the Constitution of Kenya, 2010, as read together with **Article 30** of the **United Nations Convention Against Corruption (UNCAC)**, which Kenya ratified on December 9, 2003, the President of Kenya can be sued for acts of corruption.

Litigation Costs

(51) **A Declaration** be and is hereby issued that the respondents should pay the costs of this Petition.

112. **ORDERS:**

a) The Honourable Court be pleased to issue and issues an Order **QUASHING:**

(i) Section 6 of the Finance Management (Amendment) Act, 2023;

(ii) Sections 49(1), 50(2), 50(2A), 50(2B), 50(2C), & 50(2D), 50(6), 50(7)(b, c & d), 50(8) & 50(10)(b), 53, and 53A of the Public Finance Management Act, 2012;

(iii) The Public Finance Management (Amendment) Act 2014;

(iv) The debt ceiling.

(v) The account called “GoK/CBK Sovereign Bond.”

(vi) The Press Release of the Secretary/Chief Executive Officer of the EACC dated December 4th 2015 on the alleged misappropriation of Eurobond funds.

(vii) The Press Release dated Wednesday, October 28, 2015, and titled “*The US\$ 2 billion Sovereign Bond (June 2014) and the Tap Sale of US\$750 million (December 2014);*”;

(viii) The Press Release (and annexure thereto) dated Thursday, December 03, 2015, and titled “*Sovereign Bond (Eurobond): Questions and Answers;*”;

(ix) The Press Release dated 11th December 2015, and titled “*Response to allegations that Ksh 140 billion of the Eurobond money is missing;*

(x) The Press Release Dated 14th January, 2016, and titled “*Re: Response to the Hon. Raila Odinga’s statement on Kenya’s Eurobond dated 14th January, 2016;*

(xi) The various documents posted under the file, “*Sovereign Bond Bank Statement and Swift Transfers into the Consolidated Fund by Joint Lead Managers.pdf;*”;

(xii) The various documents posted under the file, “*Sovereign Bond Proceeds Accounts.pdf;*”;

(xiii) The Various documents posted under the file, “*Statements for sovereign Bond Proceeds Account No. 1000212764.pdf;*”;

b) The Honourable Court be pleased to issue Orders **PERMANENTLY PROHIBITING:**

(i) The Government of Kenya and its agents, howsoever acting, from borrowing any money without the approval of Parliament and the authority of the President through the Appropriation Acts.

(ii) The Government of Kenya and its agents, howsoever acting, from repaying or continuing to repay the following odious debts:

i. The Eurobond loans of **USD 1,458,740,000** (equivalent of Ksh. 208,324,847,510) borrowed in February, 2024;

ii. The **USD7,100,000,000** (Kshs.923,000,000,000 at 1USD = 130Kshs) International Sovereign Bonds (Eurobonds) in Table 1;

iii. The loans in Table 10, totaling to Kshs. **6,950,163,132,328**.

iv. The **Kshs. 2,503,596,813,045** internal debt redemption rollovers captured as Subtotal 1 in Table 8; and


v. The **Kshs. 2,264,239,928,167** anticipated internal debt redemption rollovers captured as Subtotal 2 in Table 8.

(iii) The Government of Kenya from establishing a debt ceiling.

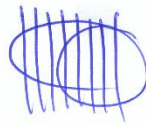
c) The Honourable Court do issue and hereby issues a **mandatory order COMPELLING:**

- (i) H. E. Uhuru Muigai Kenyatta, the 4th President of Kenya, and the 2nd, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th and 21st respondents to refund the National Treasury the principal **Kshs.4,605,840,278,922** odious debts plus costs and interest incurred on the odious debts.
 - (ii) **The National Executive**, and the 16th, 17th, and 18th respondents to refund the National Treasury the principal **Kshs. 2,250,325,905,200** odious debts plus costs and interest incurred on the odious debts.
 - (iii) The Central Bank of Kenya to repay the **Kshs6,164,439,173,574** difference between the Central Bank's records and those of the National Treasury.
 - (iv) The National Assembly to always involve the Senate in the consideration, debate, and approval of any Bills seeking to amend the PFMA;
 - (v) The respondents to pay the costs of this Petition.
- d) The Honourable Court be pleased to issue any other or further appropriate remedy that the Honourable Court shall deem fit to grant in the interests of justice in the circumstances of this Petition.

DATED at NAIROBI this 24th day of April, 2025.



**OKIYA OMTATAH OKOITI
THE 1ST PETITIONER**



**NYAKINA WYCLIFE GISEBE
THE 2ND PETITIONER**



**ELIUD KARANJA MATINDI
THE 3RD PETITIONER**

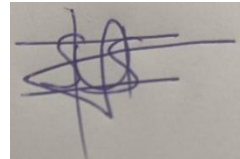


**BERNARD MUCHIRI MUCHERE
THE 4TH PETITIONER**

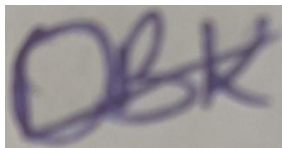


DR. MAGARE-GIKENYI J. BENJAMIN
CONSULTANT TRAUMA AND GENERAL SURGEON

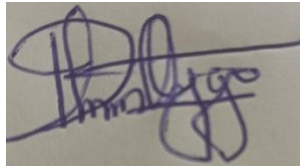
**DR. MAGARE-GIKENYI
THE 5TH PETITIONER**



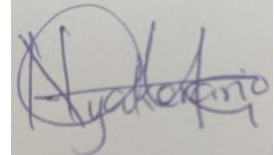
**KELVIN SAITOTI NAIKUNI
THE 6TH PETITIONER**



**OLIVE NAISINKEI AMBROSE
THE 7TH PETITIONER**



**DR. DANCAN O. ONYANGO
THE 8TH PETITIONER**



**NAOMI NYAKERARIO MISATI
THE 9TH PETITIONER**

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI, NYAKINA WYCLIFE GISEBE, ELIUD KARANJA MATINDI, BERNARD MUCHIRI MUCHERE, DR. MAGARE-GIKENYI BENJAMIN, KELVIN SAITOTI NAIKUNI, OLIVE NAISINKEI AMBROSE, AND NAOMI NYAKERARIO MISATI,
5TH FLOOR, TAJ TOWER, WING B,
UPPER HILL ROAD,
UPPER HILL,
P. O. BOX 60286-00200,
NAIROBI.

- (a) okiyaomtatah@gmail.com
- (b) wyclife2002@yahoo.com
- (c) Bavance13@gmail.com
- (d) muchereb@gmail.com
- (e) magaregikenyi@yahoo.com
- (f) kelvinsaitotinaikuni@gmail.com
- (g) ambroseolive3@gmail.com
- (h) dancanthomas@gmail.com
- (i) misatinaomi67@gmail.com

TO BE SERVED UPON:

1. H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA

OFFICE OF THE 4TH PRESIDENT OF THE REPUBLIC OF KENYA,
DENIS PRITT ROAD,
P. O. BOX 67498-00200,
NAIROBI.

Phone: +254 111 050 620.

Email: uhuru@uki.africa

2. THE NATIONAL EXECUTIVE
C/O OFFICE OF THE PRESIDENT,
HARAMBEE HOUSE,
HARAMBEE AVENUE, NAIROBI.
EMAIL: feedback@president.go.ke
3. THE CABINET SECRETARY FOR THE NATIONAL TREASURY,
THE NATIONAL TREASURY,
TREASURY BUILDING,
HARAMBEE AVENUE,
P. O. BOX 30007 – 00100,
NAIROBI.
Phone: +254 20 2252299.
Email: cs@treasury.go.ke, ps@treasury.go.ke
4. THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY,
THE NATIONAL TREASURY,
TREASURY BUILDING,
HARAMBEE AVENUE,
P. O. BOX 30007 – 00100,
NAIROBI.
Phone: +254 20 2252299.
Email: cs@treasury.go.ke, ps@treasury.go.ke
5. THE DIRECTOR GENERAL, PUBLIC DEBT MANAGEMENT OFFICE
THE NATIONAL TREASURY,
TREASURY BUILDING,
HARAMBEE AVENUE,
P. O. BOX 30007 – 00100,
NAIROBI.
Phone: +254 20 2252299.
Email: cs@treasury.go.ke, ps@treasury.go.ke
6. THE HON. ATTORNEY GENERAL
THE HON. ATTORNEY GENERAL'S CHAMBERS,
7TH FLOOR, SHERIA HOUSE,
HARAMBEE AVENUE,
P. O. BOX 40112,
NAIROBI.

Email: communications@ag.go.ke, slo@ag.go.ke, cmwami12@gmail.com, bittaemmanuel@gmail.com

7. THE CONTROLLER OF BUDGET
THE OFFICE OF THE CONTROLLER OF BUDGET,
12TH FLOOR, BIMA HOUSE,
HARAMBEE AVENUE,
P. O. BOX 35616-00100,
NAIROBI.
Phone: 0709 910 000.
Email: cob@cob.go.ke, info@cob.go.ke
8. THE AUDITOR GENERAL
OFFICE OF THE AUDITOR GENERAL,
3RD FLOOR, ANNIVERSARY TOWERS,
UNIVERSITY WAY,
P. O. BOX 30084-00100, NAIROBI.
PHONE: +254 20 3214000.
EMAIL: info@oagkenya.go.ke
9. THE NATIONAL ASSEMBLY
5TH FLOOR, PROTECTION HOUSE,
PARLIAMENT ROAD,
NAIROBI.
Email: sherrifsam@gmail.com, nationalassembly.litigation@gmail.com
10. FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO,
11. FORMER AUDITOR GENERAL EDWARD OUKO,
12. FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI,
13. FORMER TREASURY CABINET SECRETARY HENRY ROTICH,
14. FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE,
15. FORMER TREASURY CABINET SECRETARY UKUR YATANI KANACHO
16. FORMER TREASURY CS and FORMER CBK GOVERNOR PROF. NJUGUNA NDUNGU,
Phone: 072 8900 059
17. Ms. MARGARET NYANG'ATE NYAKANG'O,
THE CONTROLLER OF BUDGET,
HEADQUARTERS,
12TH FLOOR, BIMA HOUSE,
HARAMBEE AVENUE,

NAIROBI.

Tel: +254202211068, +254709910000, +254716274922

Email: cob@cob.go.ke,

18. Ms. NANCY GATHUNGU

THE AUDITOR GENERAL
OFFICE OF THE AUDITOR GENERAL,
3RD FLOOR, ANNIVERSARY TOWERS,
UNIVERSITY WAY,
P. O. BOX 30084-00100,
NAIROBI.

PHONE: +254 20 3214000.

EMAIL: info@oagkenya.go.ke

19. THE GOVERNOR OF THE CENTRAL BANK OF KENYA

THE CENTRAL BANK OF KENYA,
CENTRAL BANK OF KENYA BUILDING,
P. O. BOX 60000 – 00200, NAIROBI.

Phone: +254202860000.

Email: comms@centralbank.go.ke

20. THE ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE JAKAYA KIKWETE/VALLEY ROAD
P. O. BOX 61130 - 00200,
NAIROBI.

Tel: (020) 4997000 Mobile: 0709 781000; 0730 997000

Email: eacc@integrity.go.ke

21. HALAKHE D. WAQO

Phone No. 0733778208

22. THE INTERNATIONAL MONETARY FUND (IMF)

12TH FLOOR, DELTA CENTRE BUILDING,
MENENGA ROAD, UPPER HILL, NAIROBI.

Phone: +254-20-2934064.

Email: COdwogi@imf.org

23. THE SENATE OF KENYA

THE SENATE, 5TH FLOOR,
PROTECTION HOUSE, PARLIAMENT ROAD,
P. O. BOX 418426 – 00100,
NAIROBI.

EMAIL: Senate.litigation@gmail.com, wangechithanji@gmail.com

24. THE SENATE OF KENYA: Senate.litigation@gmail.com, wangechithanji@gmail.com

25. LAW SOCIETY OF KENYA: lsk@lsk.or.ke
26. KATIBA INSTITUTE: info@katibainstitute.org
27. KENYA HUMAN RIGHTS COMMISSION: admin@khrc.or.ke
28. KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, haki@knchr.org
29. TRANSPARENCY INTERNATIONAL, transparency@tikenya.org
30. THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA): info@tisa.or.ke
31. INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA): info@icj-kenya.org
32. THE KENYA DEBT ABOLITION NETWORK (KDAN):
kenyadebtabolitionnetwork@gmail.com
33. NATIONAL TAXPAYERS ASSOCIATION (NTA): admin@nta.or.ke
34. COMMITTEE FOR THE ABOLITION OF ILLEGITIMATE DEBTS (CADTM):
info@cadtm.org

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
(CONSTITUTION & HUMAN RIGHTS DIVISION)
PETITION NO. E216 OF 2025

IN THE MATTER OF: THE PREAMBLE AND ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24, 27, 28, 33(1)(a), 35, 40, 43, 46(1), 47, 50(1), 73, 75, 201, 206, 211(1), 214, 220, 221, 222, 223, 226(5), 228(4 & 5), 229(4)(g) & 6), 232, 258, AND 259(1) OF THE CONSTITUTION OF KENYA

IN THE MATTER OF: THE VIOLATION OF ARTICLES 1, 2, 4(2), 3(1), 10, 35, 24, 27, 40, 46(1)(A), 47, 73, 75, 143(4), 201, 206, 211(1), 214, 220(1), 221, 222, 223, 228(4 & 5), 229(4, 6, 7, & 8), 232, 249(1) & (2), 252(1a), AND 259 OF THE CONSTITUTION OF KENYA AS READ WITH SECTIONS 15(2)(c), AND 50(3) OF THE PUBLIC FINANCE MANAGEMENT ACT IN THE BORROWING AND USE OF THE PROCEEDS OF THE EUROBOND IN THE FINANCIAL YEARS 2014/2015 AND 2023/2024.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT 2014, WHICH, CONTRARY TO ARTICLE 206(1) OF THE CONSTITUTION, INTRODUCED EXTRA EXEMPTIONS FOR NOT PAYING LOAN REVENUES RAISED BY THE NATIONAL GOVERNMENT INTO THE CONSOLIDATED FUND, AND WHICH THE NATIONAL ASSEMBLY ENACTED UNILATERALLY WITHOUT INVOLVING THE SENATE.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF SECTIONS 49(1), 50(6), (7)(b, c, & d), (8) & (10)(b), 50(2, 2A, 2B, 2C & 2D), 53, AND 53A OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012; AND OF SECTION 6 OF THE FINANCE MANAGEMENT (AMENDMENT) ACT, 2023; WHICH AMENDED SECTION 50(2) OF THE PUBLIC FINANCE MANAGEMENT ACT 2012.

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; THE FAIR ADMINISTRATIVE ACTION ACT 2015; THE LEADERSHIP AND INTEGRITY ACT 2012; AND THE PUBLIC OFFICER ETHICS ACT 2003.

IN THE MATTER OF: THE ALLEGED GROSS AND CONTEMPTUOUS VIOLATION OF SECTIONS 17, 49, AND 50 OF THE PUBLIC FINANCE MANAGEMENT ACT 2012; SECTIONS 5 AND 6 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015; SECTIONS 3, 4, 6, 7, 9, 10, 11, 12, 15, 21(4) 22, 24, 29, AND 30 AS READ WITH 52(1) OF THE LEADERSHIP AND INTEGRITY ACT 2012; AND SECTIONS 9(1)(A), 10, 11, 15, AND 19 OF THE PUBLIC OFFICER ETHICS ACT.

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF THE DEBTS AMOUNTING TO KSHS. 6,950,163,132,328 INCURRED BY THE RESPONDENTS IN THE TEN-YEAR PERIOD SPANNING THE FINANCIAL YEARS 2014/2015 TO 2023/2024, INCLUDING THE EUROBONDS, WHICH THE RESPONDENTS UNCONSTITUTIONALLY AND UNLAWFULLY BORROWED YET THEY WERE NOT IN THE NATIONAL BUDGETS (APPROPRIATION ACTS) APPROVED BY PARLIAMENT AND SIGNED INTO LAW BY THE PRESIDENT, AND THEY WERE NOT TIED TO ANY DEVELOPMENT PROJECTS.

IN THE MATTER OF: THE CONSTITUTIONAL VALIDITY OF THE DEBT CEILING SET BY PARLIAMENT BASED ON THE GROSS DOMESTIC PRODUCT (GDP) AND NOT ON THE REVENUES RAISED BY THE GOVERNMENT.

IN THE MATTER OF: THE VALIDITY AND ENFORCEABILITY OF SOVEREIGN LOANS AND GUARANTEES WHICH LACK A PROPER AUTHORIZATION AND ARE TAINTED WITH CORRUPTION.

IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF BURDENING CURRENT AND FUTURE GENERATIONS WITH THE REPAYMENT OF THE STOLEN BORROWED PUBLIC MONEY.

IN THE MATTER OF: THE PRINCIPLES OF UNJUST ENRICHMENT AND THE PERSONAL LIABILITY OF PUBLIC OFFICERS RESPONSIBLE FOR THE MISSING/STOLEN EUROBOND PROCEEDS AND THE NEED TO RECLAIM THE STOLEN MONEY.

IN THE MATTER OF: SUING THE PRESIDENT OF KENYA UNDER ARTICLE 143(4) OF THE CONSTITUTION.

IN THE MATTER OF: THE DOCTRINES OF ODIIOUS DEBT, ILLEGALITY, OSTENSIBLE AUTHORITY, PUBLIC POLICY, RESTITUTIONARY REMEDIES, AND LEGITIMATE EXPECTATION.

BETWEEN

OKIYA OMTATAH OKOITI 1ST PETITIONER

NYAKINA WYCLIFE GISEBE	2 ND PETITIONER
ELIUD KARANJA MATINDI	3 RD PETITIONER
BERNARD MUCHIRI MUCHERE	4 TH PETITIONER
DR. MAGARE-GIKENYI BENJAMIN	5 TH PETITIONER
KELVIN SAITOTI NAIKUNI	6 TH PETITIONER
OLIVE NAISINKEI AMBROSE	7 TH PETITIONER
DR. DANCAN OTIENO ONYANGO	8 TH PETITIONER
NAOMI NYAKERARIO MISATI	9 TH PETITIONER

VERSUS

H. E. (FORMER) PRESIDENT UHURU MUIGAI KENYATTA	1 ST RESPONDENT
THE NATIONAL EXECUTIVE	2 ND RESPONDENT
THE CABINET SECRETARY FOR THE NATIONAL TREASURY.....	3 RD RESPONDENT
THE PRINCIPAL SECRETARY FOR THE NATIONAL TREASURY.....	4 TH RESPONDENT
THE DIRECTOR GENERAL PUBLIC DEBT MANAGEMENT OFFICE.....	5 TH RESPONDENT
THE HON. ATTORNEY GENERAL	6 TH RESPONDENT
THE CONTROLLER OF BUDGET	7 TH RESPONDENT
THE AUDITOR GENERAL	8 TH RESPONDENT
THE NATIONAL ASSEMBLY	9 TH RESPONDENT
FORMER CONTROLLER OF BUDGET AGNES ODHIAMBO	10 TH RESPONDENT
FORMER AUDITOR GENERAL EDWARD OUKO	11 TH RESPONDENT
FORMER ATTORNEY GENERAL PROF. GITHU MUIGAI	12 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY HENRY ROTICH	13 TH RESPONDENT
FORMER TREASURY PRINCIPAL SECRETARY KAMAU THUGGE	14 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY UKUR YATANI	15 TH RESPONDENT
FORMER TREASURY CABINET SECRETARY NJUGUNA NDUNGU	16 TH RESPONDENT
THE CONTROLLER OF BUDGET MARGARET NYAKANG'O	17 TH RESPONDENT
THE AUDITOR GENERAL NANCY GATHUNGU	18 TH RESPONDENT
THE GOVERNOR, THE CENTRAL BANK OF KENYA	19 TH RESPONDENT
THE ETHICS AND ANTI-CORRUPTION	20 TH RESPONDENT
FORMER EACC CEO/SECRETARY HALAKHE D. WAQO	21 ST RESPONDENT
INTERNATIONAL MONETARY FUND (IMF)	22 ND RESPONDENT

AND

THE SENATE OF KENYA	1 ST INTERESTED PARTY
LAW SOCIETY OF KENYA	2 ND INTERESTED PARTY
KATIBA INSTITUTE	3 RD INTERESTED PARTY
KENYA HUMAN RIGHTS COMMISSION	4 TH INTERESTED PARTY
KENYA NATIONAL COMMISSION ON HUMAN RIGHTS	5 TH INTERESTED PARTY
TRANSPARENCY INTERNATIONAL	6 TH INTERESTED PARTY
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)	7 TH INTERESTED PARTY
INTERNATIONAL COMMISSION OF JURISTS (ICJ-KENYA)	8 TH INTERESTED PARTY
THE KENYA DEBT ABOLITION NETWORK (KDAN)	9 TH INTERESTED PARTY

SUPPORTING AFFIDAVIT

I, **OKIYA OMTATAH OKOITI**, a resident of Nairobi County in the Republic of Kenya and of P.O Box 60286 – 00200, Nairobi within the Republic aforesaid make oath and state as follows.

1. **THAT** I am competent to swear this affidavit as the 1st Petitioner herein.
2. **THAT** I swear this affidavit in good faith in support of the amended petition filed herewith.
3. **THAT** I have perused the amended petition and confirm that the facts stated therein are true and correct.
4. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the petition, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true based on my own knowledge, information and belief.
5. **THAT** I aver that the instant petition concerns the implementation of the Constitution of Kenya.
6. **THAT** in support of my averments above, I annex hereto the bundle marked as “**Exhibit OOO-1,**” which contains the following documents:
 - (1) The Appropriation Act, 2014, on pages 1 - 20;
 - (2) The Appropriation Act, 2015, on pages 21 - 41;
 - (3) The Appropriation Act, 2016, on pages 42 - 68;
 - (4) The Appropriation Act, 2017, on pages 69 - 100;
 - (5) The Appropriation Act, 2018, on pages 100 - 131;
 - (6) The Appropriation Act, 2019, on pages 132 - 159;

- (7) The Appropriation Act, 2020, on pages 160 - 194;
- (8) The Appropriation Act, 2021, on pages 195 - 221;
- (9) The Appropriation Act, 2022, on pages 222 - 252;
- (10) The Appropriation Act, 2023, on pages 253 - 283;
- (11) The Appropriation Act, 2024, on pages 284 - 331;
- (12) Extracts from the Auditor General's Report on National Government Funds, 2022-2023, on pages 332 – 345.
- (13) Extracts from the Bluebook 2021-2022, on pages 346 – 354;
- (14) Extracts from the Kenya 2013 Oversight External Audit Report Kenao COMESA, EAC IGAD, English, on pages 355 – 367;
- (15) Extracts from the National Government Audit Report, 2014-2015, on pages 368 - 376;
- (16) Extracts from the National Government Audit Report-2015-2016, on pages 377 - 382;
- (17) Extracts from the National Government Audit, Report-2016-2017, on pages 383 - 386;
- (18) Extracts from the National Government Audit Report, 2017-2018, on pages 387 - 392;
- (19) Extracts from the National Government Audit Report, 2019-2020, on pages 393 - 397;
- (20) Extracts from the National Government Audit Report, 2020-2021, on pages 398 - 404;
- (21) Report of the Auditor General for the National Government, 2018-2019, on pages 405 - 409;

- (22) Extracts from FY 2014/2015 Estimates of Development Expenditure of the GoK, on pages 410 - 457;
- (23) Extracts from FY 2021/2022 Estimates of Development Expenditure of the GoK, on pages 458 - 478;
- (24) Extracts from FY 2024/2025 Estimates of Development Expenditure of the GoK, on pages 479 - 506;
- (25) Extracts from FY 2013/2014 Estimates of Development Expenditure of the GoK (VOTE D109 Ministry of Transport and Infrastructure - Development Expenditure Summary 2013/2014 and Projected Expenditure Estimates for 2014/2015 - 2015/2016; and VOTE D115 Ministry of Energy & Petroleum - Development Expenditure Summary 2013/2014 and Projected Expenditure Estimates for 2014/2015 - 2015/2016), on pages 507 - 523;
- (26) Extracts from FY 2015/2016 Estimates of Development Expenditure of the GoK), on pages 524 - 540;
- (27) 2016/2017 Estimates of Development Expenditure of the GoK), on pages 541 - 560;
- (28) Extracts from FY 2017/2018 Estimates of Development Expenditure of the GoK), on pages 561 - 578;
- (29) Extracts from FY 2018/2019 Estimates of Development Expenditure of the GoK), on pages 579 - 597;
- (30) Extracts from FY 2018/2019 Estimates of Recurrent Expenditure of the GoK), on pages 598 - 605;
- (31) Extracts from FY 2019/2020 Estimates of Development Expenditure of the GoK), on pages 606 - 625;
- (32) Extracts from FY 2020/2021 Estimates of Development Expenditure of the GoK), on pages 626 - 646;
- (33) Extracts from FY 2020/2021 Estimates of Recurrent Expenditure of the GoK), on pages 647 - 656;
- (34) Extracts from FY 2022/2023 Estimates of Development Expenditure of the GoK), on pages 657 - 677;

- (35) Extracts from FY 2022/2023 Estimates of Recurrent Expenditure of the GoK), on pages 678 - 656;
- (36) Extracts from FY 2023/2024 Estimates of Development Expenditure of the GoK), on pages 657 - 706;
- (37) Extracts from FY 2023/2024 Estimates of Recurrent Expenditure of the GoK), on pages 707 - 715;
- (38) Extracts from FY 2024/2025 Estimates of Recurrent Expenditure of the GoK), on pages 716 - 723;
- (39) Extracts from FY 2021/2022 Estimates of Recurrent Expenditure of the GoK), on pages 724 - 729;
- (40) Extracts from FY 2023-2024-Supplementary Estimates I of Recurrent Expenditure of the GoK), on pages 730 - 734;
- (41) Extracts from the FY 2023-2024-Supplementary Estimates II of Recurrent Expenditure of the GoK), on pages 735 - 739;
- (42) Extracts from the 2023/2024 Supplementary Estimates II (Recurrent Expenditure), on pages 740 - 743;
- (43) Extracts from the FY 2021/2022 Estimates of Recurrent Expenditure, on pages 744 – 753;
- (44) CBK Weekly Bulletin December 27, 2024), on pages 754 - 759;
- (45) Central Bank of Kenya - Annual Report-FS - 22-23, on pages 760 - 764;
- (46) Extracts from the CoB - Budget Implementation Review Report,2014-2015, on pages 765 - 771;
- (47) Extracts from the CoB - Budget Implementation Review Report, 2015-2016, on pages 772 - 779;
- (48) Extracts from the CoB - Budget Implementation Review Report, 2016-2017, on pages 780 - 786;

- (49) Extracts from the CoB - Budget Implementation Review Report, 2017-2018, on pages **787 - 793**;
- (50) Extracts from the CoB - Budget Implementation Review Report, 2021-2022, on pages **794 - 799**;
- (51) Extracts from the CoB - Budget Implementation Review Report, 2020-2021, on pages **800 - 806**;
- (52) Extracts from the CoB - Budget Implementation Review Report, 2018-2019, on pages **807 - 813**;
- (53) Extracts from the CoB - Budget Implementation Review Report, 2019-2020, on pages **814 - 819**;
- (54) Extracts from the CoB - Budget Implementation Review Report, 2022-2023, on pages **820 - 826**;
- (55) Extracts from the CoB - Budget Implementation Review Report, 2023-2024, on pages **827 - 833**;
- (56) Extracts from the Estimates of *Revenue, Grants and Loans – Overall Summary 1* for FY2023-24, on pages **834 - 883**;
- (57) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June, 2021*, Gazette Notice No. 7385 of 19th January, **2021**, on pages **884 - 887**;
- (58) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2016*, Gazette Notice No. 5681 of 18th July, 2016, on pages **888 - 891**;
- (59) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2014*, Gazette Notice No. 5132 of 18th July, 2014, Gazette Notice No. 5132 of 18th July, 2014, on pages **892 - 894**;
- (60) *Statement of Actual Revenues and Net Exchequer Issues as at 30th November 2024*, Gazette Notice No. 16876 of 16th November, 2024, on pages **895 - 899**;
- (61) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2017*, Gazette Notice No. 7357 of 18th July, 2017, on pages **900 - 902**;

- (62) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2015*, Gazette Notice No. 5385 of 22nd July, 2015, on pages 903 - 905;
- (63) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2020*, Gazette Notice No. 4939 of 14th July, 2020, on pages 906 - 909;
- (64) *Statement of Actual Revenues and Net Exchequer Issues as at 28th June 2019*, Gazette Notice No. 6890 of 17th July, 2019, on pages 911 - 914;
- (65) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2022*, Gazette Notice No. 8735 of 18th July, 2020, on pages 915 - 918;
- (66) *Statement of Actual Revenues and Net Exchequer Issues as at 29th June 2018*, Gazette Notice No. 7464 of 19th July, 2018, on pages 919 - 922;
- (67) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2024*, *Gazette Notice No. 9005 of 10th July, 2024*, on pages 923 - 926;
- (68) *Statement of Actual Revenues and Net Exchequer Issues as at 31st July 2024*, Gazette Notice No. 10288 of 12th August, 2024, on pages 927 - 931;
- (69) *Statement of Actual Revenues and Net Exchequer Issues as at 30th June 2023*, Gazette Notice No. 9734 of 13th July, 2023, on pages 932 - 935;
- (70) *Statement of Actual Revenues and Net Exchequer Issues as at 31st July 2023*, Gazette Notice No. 11018 of 14th August, 2023, on pages 936 - 939;
- (71) The EACC Press Release dated December 4th 2015, on pages 940 - 941;
- (72) Extracts from the EACC's Report of Activities and Financial Statements for the Financial Year 2018/2019, on pages 942 – 958;
- (73) Extracts from the EACC's Report of Activities and Financial Statements for the Financial Year 2019/2020, on pages 959 – 978;
- (74) Extracts from the EACC's Report of Activities and Financial Statements for the Financial Year 2021/2022, on pages 979 – 998;
- (75) Extracts from the EACC's Report of Activities and Financial Statements for the Financial Year 2022/2023, on pages 999 – 1016;

- (76) A Press Release dated Wednesday, October 28, 2015, and titled “*The US\$ 2 billion Sovereign Bond (June 2014) and the Tap Sale of US\$750 million (December 2014)*”; **on pages 1017 – 1018;**
- (77) A Press Release (and annexure thereto) dated Thursday, December 03, 2015, and titled “*Sovereign Bond (Eurobond): Questions and Answers*”; **on pages 1019 – 1036;**
- (78) A Press Release dated 11th December 2015, and titled “*Response to allegations that Ksh 140 billion of the Eurobond money is missing*, **on pages 1037 – 1040;**
- (79) A Press Release Dated 14th January, 2016, and titled “*Re: Response to the Hon. Raila Odinga’s statement on Kenya’s Eurobond dated 14th January, 2016*, **on pages 1041 – 1043;**
- (80) Various documents posted under the file, “*Sovereign Bond Bank Statement and Swift Transfers into the Consolidated Fund by Joint Lead Managers.pdf*”; **on pages 1044 - 1058;**
- (81) Various documents posted under the file, “*Sovereign Bond Proceeds Accounts.pdf*”; **on pages 1059 – 1079;**
- (82) Various documents posted under the file, “*Statements for sovereign Bond Proceeds Account No. 1000212764.pdf*”; **on pages 1080 – 1082;**
- (83) Kenya transactions with IMF - 1984 – 2024, **on pages 1083 – 1086;**
- (84) Budha Ismail Jam, Et Al., Petitioners *ν.* International Finance Corporation, **on pages 1087 – 1122;**
- (85) Ethics & Global Politics: Agency law and odious debts, **on pages 1123 – 1144;**
- (86) People of Developing Countries Can Sue the World Bank and the IMF In US Courts, **on pages 1145 – 1151;**
- (87) How Public Interest Litigation Led to Invalidation of Illegal Mozambican Debt, **on pages 1152 – 1161;**
- (88) Mauro Megliani, Mozambican Illegal Debts: Testing the Odious Debt Doctrine, 53 Vanderbilt Law Review 1637 (2021), **on pages 1162 – 1212;**

(89) Mozambique court declares void two loans in 'hidden debt' scandal _ Reuters, on pages 1213 – 1214;

(90) Mozambique's "hidden debts": Turning crisis into an opportunity for reform, on pages 1215 – 1218;

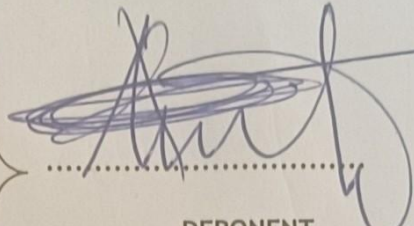
(91) United Nations Convention Against Corruption, and Statements of Actual Revenues and Net Exchequer Issues as at: 31st December, 2024; 31st January, 2025; and 28th February, 2025 on pages 1219 – 1283; and

(92) Statements of Actual Revenues and Net Exchequer Issues as at: 31st December, 2024; 31st January, 2025; 28th February, 2025; and 31st March, 2025 on pages 1284 – 1305.

7. **THAT** what is deponed to herein is true and to my own knowledge save as to facts deponed to on information and belief the sources and grounds whereof have been respectively specified.

SWORN by the said OKIYA OMTATAH OKOITI
at Nairobi this 24th day of April, 2025
BEFORE ME

P.K. KAMAU
Advocates & Commissioners For Oaths
Lower Hill Duplex Apartments
P. O. Box 756 - 00100, Nairobi



DEPONENT

COMMISSIONER OF OATHS / MAGISTRATE

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI,
5TH FLOOR, WING B, TAJ TOWER,
UPPER HILL ROAD, UPPER HILL,
P. O. BOX 60286-00200,
NAIROBI.
Phone: 0722 684 777
Email: okiyaomtatah@gmail.com