

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(CONSTITUTION & HUMAN RIGHTS DIVISION)**  
**PETITION NO. 531 OF 2015**

## **PRESS AND PUBLIC SUMMARY**

*(The following summary is provided to assist the public to follow and the media to properly report this case.)*

### **A. Introduction**

1. **Odious debt** is a legal doctrine that refers to loans incurred by government officials outside the law (i.e., without the consent of the people, which is codified in the laws of the land) and/or for their own benefit. The doctrine states that **a country should not be obligated to repay debt incurred by a regime that did not use the funds to benefit the population, but instead used the funds for illegitimate purposes, including corruption, repression, or personal enrichment.**
2. In Kenya, the acquisition and utilisation of public debt is prescriptively governed by the **Constitution** and the **Public Finance Management Act, 2012** (the PFMA). Hence, it is easy to show debts that were **incurred contrary to the law**, that **lenders knew or should have known** the loans were illegitimate, and/or that the loans were **not used for public benefit**.

### **B. The Petition**

3. The petition concerns Kenya's huge **odious debt** amounting to **Kshs13,114,602,305,902** (Kenya shillings thirteen trillion, one hundred and fourteen billion, six hundred and two million, three hundred and five thousand, and nine hundred and two).
4. The odious debt includes the Eurobond loans worth **Kshs919,450,000,000** (or **USD7,100,000,000** at the exchange rate of 1USD = Kshs 129.5), which were

borrowed in the financial years **2014/2015, 2017/2018, 2018/2019, and 2020/2021.**

5. It also includes a further Eurobond loan of **Kshs208,324,847,510** (equivalent then to **USD1,458,740,000**), which was borrowed in February 2024, and ostensibly utilised offshore to repay the initial one.
6. This loan was fraudulent because:
  - a. According to **Article 214(1)** of the Constitution, the repayment of debt is a direct charge on the Consolidated Fund; and,
  - b. Since borrowings must be tied to development projects, and debt repayment is a recurrent expenditure, the State cannot take a loan to repay a debt.
7. It is the petitioners' case that the debts were incurred unconstitutionally and unlawfully as they were not authorised in the national budgets approved by Parliament and signed into law by the President (i.e., Appropriation Acts); they were not tied to any development projects; and they were not utilised for any known public purpose for the people's benefit.

### **C. The purpose of government borrowing in law**

8. Under the law, the government is allowed to borrow for only two purposes: financing development expenditure, and for short-term management of cash flow.
9. 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). Further and, in particular:
  - (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) & (d)** of the PFMA provides that:

- (c) “Over the medium term, the national government’s borrowings **shall be used only** for financing development expenditure and **not for recurrent expenditure.**”
- (d) “**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.”

(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 for “Short-term borrowing”. This means “borrowing by a government by way of **Treasury Bills, bank-overdrafts** or other instruments to cover temporary cash shortfalls and is **repayable within twelve months.**”

(f) Section 50(3) of 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”.

#### **D. Kenya’s Official Total Outstanding Public Debt**

10. According to the *Central Bank of Kenya's Weekly Bulletin* dated 27<sup>th</sup> December 2024, the total outstanding public debt was **Kshs10,790,080,000,000**, comprising **Kshs5.6 trillion** domestic and **Kshs5.188 trillion** external debts.
11. Kenya's public debt, which was borrowed lawfully in the last ten (10) financial years (**2014/2015 to 2024/2025**) aggregated to **Kshs5,255,796,104,913**. Of which, **Kshs2,370,255,820,000** was carried forward from the **2013/2014** financial year. The other is **Kshs2,791,543,336,707** only, which the National Assembly, through the Appropriation Acts for the respective years, cumulatively authorised to be borrowed in the financial years **2014/2015 to 2024/2025**.
12. From **Table 1** below, repayment of 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 30<sup>th</sup> November 2024). If the repayments are applied to the amount borrowed aggregating to **Kshs5,255,796,104,913**, it means that, without factoring in interest and other costs of the loans, Kenyan taxpayers have paid **Kshs3,662,225,554,869** more than the loans borrowed.

**TABLE 1**

<b>Financial Year</b>	<b>Exchequer Issues - Repayment of Public Debts - Direct Charge in Consolidated Fund</b>
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
<b>Total</b>	<b>8,918,021,659,782</b>

*\*Up to 30<sup>th</sup> November 2024*

13. If we 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**).
14. 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**.)
15. 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.
16. 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,  $Kshs10,790,080,000,000 + (Kshs8,918,021,659,782 - Kshs2,370,255,820,000)$ ).
17. From **Table 2** below, 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.

**TABLE 2**

Gross Expenditure Estimates and Sources of Finance

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
<b>Total</b>	<b>7,505,400,275,266.00</b>	<b>4,713,856,938,559</b>	<b>2,791,543,336,707</b>

18. Given that **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**”, then **Kshs22,051,702,778,341** (being, Kshs 17,337,845,839,782 (in loans) + Kshs 4,713,856,938,559 (in tax revenue)) has purportedly been invested in development projects. That translates to investments in development projects worth approximately **Kshs2.2 trillion** in every financial year.
19. On the contrary, a review of the Appropriation Acts for the period **2014/2015 - 2024/2025**) reveals development expenditure estimates (projects) of **Kshs0.75 trillion** only in a financial year. Hence, approximately **Kshs1.45 trillion**, out of **Kshs2.2** trillion purportedly spent on development expenditure in every financial year between **2014/2015 to 2024/2025**, is fictitious.
20. The **Kshs22 trillion** could have been used to develop **35 projects of the size of the Standard Gauge Railway (SGR)**, which reportedly cost **Kshs500 billion** (although even that is said to have been inflated).
21. Further, from the annual reports of the Controller of Budget, the average absorption of the development expenditure per financial year over the said period was approximately **Kshs0.506 trillion**. Therefore, based on those reports, which give the actual expenditure, **Kshs1.694 trillion** per financial year, aggregating to **Kshs. 16.94 trillion**, in the ten financial years **2014/2025 to 2024/2025**, cannot be accounted for.

## **E. Analysis of the Public Debt Comparing the National Treasury's Official Documents to the Appropriation Acts**

22. **Table 3** below gives an analysis of Kenya's **actual borrowings** as stated in the National Treasury's monthly *Statement of Actual Revenue and Net Exchequer Issues* (published in the *Kenya Gazette*), against borrowings authorised by the National Assembly in the annual Appropriation Acts for the period spanning the financial years **2014/2015 to 2024/2025** (up to November 2024).

**TABLE 3**

Financial Year	Actual totals of both authorised and unauthorised Domestic Debt and External Loans borrowed over the years. <b>A</b>	Borrowings Authorised by Appropriation Acts <b>B</b>	Actual Amount Borrowed Unlawfully <b>A-B</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
<b>Total</b>	<b>9,741,706,469,035</b>	<b>2,791,543,336,707</b>	<b>6,950,163,132,328</b>

\*Up to 30<sup>th</sup> November 2024

## **F. An Illustration of odious debt generated in the FY 2014/2015**

23. From **Table 3** above, **Kshs270,780,355,048**, which was borrowed in the **FY 2014/2015**, is an odious debt. It disappeared into thin air. President Uhuru Kenyatta borrowed **Kshs407,165,356,983** against the **Kshs136,385,001,935**, **which was budgeted to be borrowed by all the ministries/state departments and was authorised by Parliament through the Appropriation Act, 2014.**

24. The authorised loans 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 - where it is titled, **Table III – Details of External Funding (Listed by donors)**):

**TABLE 4**

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

Loan Number	LENDERS	Loan		Total Loan Amount
		AIA	Revenue	
007000	<b>Government of Belgium</b>			
	MOE&NR	800,000,000	-	
	MOE&P	2,736,145,000	-	
	SD for W&RA	300,000,000	-	3,836,145,000
011000	<b>Government of Italy</b>			
	SD for W&RA	180,000,000		180,000,000
012010	<b>Government of Spain</b> MOE&P	4,356,263,100	-	4,356,263,100
014000	<b>Government of Germany (KFW GERMANY)</b>			
	SD for Infrastructure	678,440,000	70,000,000	1,418,440,000
	SDOW&RA	670,000,000	-	
016000	<b>Government of France (AFD - FRANCE)</b>			
	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	<b>Kuwait Fund for Arab Development</b>			
	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	<b>Saudi Fund for Arab Development</b>			
		50,000,000	-	



	<b>(SAUDI ARABIA)</b> MOH			200,000,000
	MOE&P	100,000,000	-	
	SD for Infrastructure	50,000,000		
020000	<b>Abu Dhabi Fund</b> MOE&P	100,000,000	-	150,000,000
	SD for Infrastructure	50,000,000	-	
0210000	<b>Government of Japan</b> MOE&P	1,681,000,000	180,000,000	13,386,000,000
	SD for Infrastructure	6,525,000,000	-	
	SD for Transport	5,000,000,000	-	
023000	<b>Government of India</b> MOE&P	6,209,000,000	-	6,209,000,000
024000	<b>Government of South Korea</b> MOLSS&S	100,000,000	-	100,000,000
025000	<b>Government of China</b> MOIC&T	2,500,000,000	-	20,558,860,000
	MOE&P	12,035,920,000	-	
	SD for Planning	422,940,000	-	
	SD for Infrastructure	5,600,000,000	-	
501000	<b>International Development Association (World Bank/IMF)</b> National Treasury	250,000,000	250,000,000	48,039,143,133
	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	<b>European Investment Bank (EIB)</b>	860,000,000	485,000,000	1,345,000,000

	MOE&P			
510000	<b>African Development Fund (ADB/ADF)</b> MOE&P	4,697,500,000	100,000,000	21,485,504,080
	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	
5120000	<b>Arab Bank for Economic Development in Africa (BADEA)</b> MOH	60,000,000	-	880,000,000
	MOE&P	100,000,000	-	
	SD for Infrastructure	170,000,000	-	
	SD for W&RA	50,000,000	-	
	SD for Agriculture	500,000,000	-	
513000	<b>Organisation of Petroleum Exporting Countries (Opec)</b> MOH	50,000,000	-	830,000,000
	MOE&P	110,000,000	-	
	SD for Infrastructure	170,000,000	-	
	SD for Agriculture	500,000,000	-	
526000	<b>International Fund for Agricultural Development (Ifad)</b> SD for Agriculture	665,104,800	1,312,801,822	1,977,906,622
<b>Aggregate Loans</b>		<b>100,199,217,213</b>	<b>36,185,784,722</b>	<b>136,385,001,935.00</b>

- (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 Lands, Housing and Urban Development;
- (xv) MOIC&T – Ministry of Information, Communication and Technology; and,
- (xvi) MOLSS&S – Ministry of Labour, Social Security and Services.

25. The petitioners are also aggrieved that a sizeable amount of the borrowed money is in Appropriation-in-Aid (A-in-A) loans, which are detrimental to the economy because they are designed to benefit the lenders, who retain the money and make direct payments to foreign suppliers of goods and services. And that is done outside Kenyan law and with no input from our oversight institutions.

26. **Table 4** above demonstrates that A-in-A loans aggregated to **Kshs100,199,217,213**. That means that only **Kshs36,185,784,722**, out of **Kshs136,385,001,935.00**, equivalent to **26.5%**, was paid into the Consolidated Fund. The rest was used by the lender to directly procure contractors.

#### **G. Glaring Irregularities in the Statement of Actual Revenue and Net exchequer Issues as of 31<sup>st</sup> January 2025 in respect of 2024/2025 Financial Year**

##### **27. Actual borrowings are far much greater than development expenditure**

(i) From **Table 5** below, it is clear that contrary to **Article 220(1)** of the Constitution, as read together with **Sections 15(2)(c) & 50(3) of the PFMA**, the Cabinet Secretary borrowed a whopping **Kshs638,713,399,853** (in both domestic and external loans) against the development expenditure of only **Kshs139,331,098,887** approved by the National Assembly. Therefore, loans accumulating to the difference of **Kshs499,382,300,966** were required and were not invested in any development projects.

(ii) Consequently, in the seven months from **1<sup>st</sup> July 2024 up to 31<sup>st</sup> January 2025** the Cabinet Secretary grew the odious debt by **Kshs 499,382,300,966**.

**Table 5**

<b>Borrowings for seven months 01/07/2024 to 31/01/2025</b>	<b>Development</b>	<b>Odious</b>
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Domestic Loans	External Loans	Total	expenditure	Borrowings
526,919,225,761	111,794,174,092	638,713,399,853	139,331,098,887	499,382,300,966

## 28. Deficit from Public Debt Repayment vs. Revenue Raised

- (i) From 1<sup>st</sup> July 2024 up to 31<sup>st</sup> January 2025, public debt repayment aggregated to **Kshs772,842,324,057** whereas the actual revenue raised aggregated to **Kshs1,357,286,327,278** comprising of the opening balance on 01/07/2024, tax revenue, non-tax revenue, and other domestic financing.
- (ii) Upon payment of public debt of **Kshs772,842,324,057** from the **Kshs1,357,286,327,278** tax revenue total, the balance is **Kshs584,444,003,221**, meaning repayment of **public debt consumed 57% of the total revenue raised**.
- (iii) Further, the **Kshs584,444,003,221** balance could not finance the **Kshs1,994,809,663,634** total estimates of expenditure (including of county governments), resulting in a deficit of **Kshs1,410,365,660,413**.
- (iv) This is a classic case of literally living beyond our means, where the national government comes up with unrealistic estimates of expenditure without a corresponding revenue base to finance them. But instead of tightening our belts, it is a matter of public record that the government has been splashing money on unnecessary things, such as the recent costly renovations undertaken to change the face of State House, and the reported bribing of Kenyan masses to attend political rallies across the country.

**Table 6**

Total Revenue raised from 01/07/24 to 28/02/25 vs. Public Debt Repayment			
Total Revenue	Repayment of public debt	Balance	% of repayment of debts vs. Tax raised

1,357,286,327,278	772,842,324,057	584,444,003,221	57%
<b>Total Expenditure from 01/07/2024 to 31/01/2025 vs. Revenue Balance</b>			
Total Expenditure	Balance of Revenue	Balance	
1,994,809,663,634	584,444,003,221	(1,410,365,660,413)	

## 29. State Officers' Salaries, Allowances, and Miscellaneous

- (i) In the **2024/2025** financial year, the budget for the “**State Officers' Salaries, Allowances, and Miscellaneous**”, which are paid directly from the Consolidated Fund without appropriation by Parliament, aggregated to **Kshs4,209,674,431** per year, which averages to **Kshs346,389,536** per month.
- (ii) **Table 7** shows that up to 31<sup>st</sup> December 2024, the cumulative payment for the said salaries, allowances, and miscellaneous aggregated to **Kshs1,723,787,530**. However, by 31<sup>st</sup> January 2025, the cumulative payments surged sharply to **Kshs21,718,109,025**. This means that, in **January 2025**, if the average monthly payment of **Kshs346,389,536** is deducted, then an extra **Kshs19,647,931,959** was irregularly paid out of the Consolidate Fund on the pretext that it was going to fund the said salaries, allowances, and miscellaneous.
- (iii) Since there was no corresponding spike in the employment of these cadre of State officers, it goes without saying that the extra **Kshs19,647,931,959** was siphoned out of the Consolidated Fund unbudgeted expenditure. And given what was happening at the time, it is reasonable to suspect that the money was used to finance Kenya's stillborn bid to clinch the chairmanship of African Union, whose elections were held in Addis Ababa in **February 2025**.

**Table 7**

<b>State Officers' Salaries, Allowances, and Miscellaneous</b>	
<b>Payment up to 31<sup>st</sup> December 2024</b>	<b>1,723,787,530</b>

<b>Payment up to 31<sup>st</sup> January 2025</b>	<b>21,718,109,025</b>
Amount paid in the month of January	19,994,321,495
Payment per month	346,389,536
<b>Amount siphoned out of the consolidated fund unlawfully in the month of January 2025</b>	<b>19,647,931,959</b>

#### H. An Illustration that Eurobond loans were odious debts

30. **Table 8** 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 8**

**Extracted from Development Expenditure Budget and Statement of Public Debt**

Financial Year	Gross Development Expenditure (KES)	Financed by		Eurobond borrowed outside the Budget not earmarked for any Project (KES)
		Tax Revenue (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

*This using the rate of exchange applicable at the time the Eurobond was purportedly received.*

#### I. Odious Debts from 2014/2015 to 2024/2025

31. As demonstrated in **Table 3** above, the National Assembly authorised borrowings aggregating to only **Kshs2,791,543,336,707** for the financial years from **2014/2015 to 2024/2025**. However, Presidents Uhuru Kenyatta and William Samoei Ruto borrowed **Kshs9,741,706,469,035**. Consequently, they borrowed an extra **Kshs6,950,163,132,328** in violation of the law. They did it without the authority of the Kenyan people, and the money was not used for any known public purpose, let alone development projects.

## **J. Case Against former President Kenyatta over Odious Debts**

32. In the eight financial years from **2014/2015 to 2021/2022**, President Kenyatta borrowed a total of **Kshs6.607 trillion**, of which only **Kshs2.001 trillion** was authorised by Kenyans through their representatives in the National Assembly.

33. Consequently, he is accused of fraudulently borrowing **Kshs4.606 trillion**, and the money was not used for any known public purpose, let alone development projects.

## **K. Case Against President Ruto over Odious Debts**

34. In less than 2½ financial years from **2022/2023 to 2024/2025** (November 2024), President Ruto has borrowed **Kshs3.135 trillion**, of which only **Kshs884.378 million** was authorised by Parliament.

35. Consequently, he is accused of fraudulently borrowing **Kshs2.250 trillion**, which was not authorised by Kenyans and the money was not used for any known public projects.

## **L. Case Against Key Oversight Institutions**

a. **The Controller of Budget** has been sued for failing to oversee the implementation of the Budget contrary to Articles 206(3) & (4) and 228(4) & (5) of the Constitution, including by authorising withdrawals from the Consolidated Fund to repay odious loans the Executive borrowed without the approval of Parliament and the authority of the President vide an Appropriation Act.

b. **The Auditor-General** has been sued for failing 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.

c. **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.

#### **M. Case Against the Fraudulent Internal Debt Redemption Rollovers**

36. A debt redemption rollover is the 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.

37. **Table 9** below demonstrates that unlawfully borrowed domestic loans are rolled over in successive financial years, adding to the odious debt burden. President Kenyatta initiated the roll-overs in the financial year 2018 immediately after his infamous "handshake" with former Prime Minister Raila Amolo Odinga. Thereafter, they were embraced by President Ruto, and have since increased, starting from the initial **Kshs220,352,450,865** in the financial year **2018/2019** to **Kshs512,576,822,119** in the financial year **2024/2025**.

38. The petitioners aver that the impugned rollovers are a fraudulent scheme because:



- (a) Contrary to both the Constitution and the PFMA, the initial loans being rolled over were never authorised by via Appropriation Acts;
- (b) To make matters worse, as demonstrated in **Table 9** below, a forward budget of internal debt rollovers was prepared for the successive three financial years for 2025/2026 to 2027/2028). This is an outright fraud scheme as it amounts to creating unlawful domestic loans and anticipating that the government will fail to repay them. This adds to the Kenyan taxpayers' burden under the consolidated fund services of repaying both odious debts and the public debt;
- (c) From **Table 9**, for example, it was baselessly anticipated that the government would be unable to repay **Kshs659,476,880,597**, **Kshs60,318,593,570**, and **Kshs844,444,454,000**, and a total of **Kshs2,264,239,928,167** in the financial years **2025/2026**, **2026/2027**, and **2027/2028**, respectively.
- (d) Since Treasury Bonds are medium-term and long-term borrowings, the **Kshs1,451,122,452,117** could only have been borrowed for development expenditure according to **Section 50(3) of the PFMA**, and should only have been lawfully borrowed if they were included in the Budget approved by Parliament (Appropriation Acts) for the respective years.
- (e) Government overdrafts are short-term loans borrowed in accordance with **Section 15(3) of PFMA** and have to be repaid within a year. Therefore, the pre-1997 overdraft of **Kshs1,110,000,000.00** annually, totalling **Kshs7,770,000,000 for the financial years from 2018/2019 to 2024/2025**, is fraudulent and, therefore, an odious debt that is over 27 years old.
- (f) Like overdrafts, Treasury Bills are short-term loans, which are borrowed in accordance with **Section 15(3) of PFMA** and must be repaid within one year. However, the bills in question were allegedly issued in 2018/2019 at a

cost of **Kshs10 billion**, and in 2019/2020, they increased to **Kshs100 billion**. In 2020/2021, they increased to **Kshs200 billion**. Since then, the rollover for the Treasury Bills has remained at **Kshs200 billion**.

**Table 10**

**Internal Debt Redemption Extracted from the Recurrent Expenditure Budget Books and the Statements of Actual Revenues and Net Exchequer Issues**

	<u>Treasury Bonds</u>	<u>Pre-1997 Government 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>
<b>2018/2019</b>	209,242,150,865	1,110,000,000	10,000,000,000		300,000	220,352,450,865
<b>2019/2020</b>	112,580,235,723	1,110,000,000	100,000,000,000		300,000	213,690,535,723
<b>2020/2021</b>	160,844,731,754	1,110,000,000	200,000,000,000		300,000	361,955,031,754
<b>2021/2022</b>	142,833,941,474	1,110,000,000	200,000,000,000		300,000	343,944,241,474
<b>2022/2023</b>	260,297,600,681	1,110,000,000	200,000,000,000		300,000	461,407,900,681
<b>2023/2024</b>	173,428,247,929	1,110,000,000	200,000,000,000	10,000,000,000	300,000	389,669,830,429
<b>2024/2025</b>	391,895,543,691	1,110,000,000	200,000,000,000	10,000,000,000	300,000	512,576,822,119
<b>Sub-total 1</b>	<b>1,451,122,452,117</b>	<b>7,770,000,000</b>	<b>1,110,000,000,000</b>	<b>20,000,000,000</b>	<b>2,100,000</b>	<b>2,503,596,813,045</b>
<b>2025/2026</b>	448,366,580,597	1,110,000,000	200,000,000,000	10,000,000,000	300,000	659,476,880,597
<b>2026/2027</b>	549,208,293,570	1,110,000,000	200,000,000,000	10,000,000,000	300,000	760,318,593,570
<b>2027/2028</b>	633,334,154,000	1,110,000,000	200,000,000,000	10,000,000,000	300,000	844,444,454,000
<b>Sub-Total 2</b>	<b>1,630,909,028,167</b>	<b>3,330,000,000</b>	<b>600,000,000,000</b>	<b>30,000,000,000</b>	<b>900,000</b>	<b>2,264,239,928,167</b>
<b>Grand Total</b>	<b>3,082,031,480,284</b>	<b>11,100,000,000</b>	<b>1,710,000,000,000</b>	<b>50,000,000,000</b>	<b>3,000,000</b>	<b>4,767,836,741,212</b>

**N. The Case Against the International Monetary Fund (IMF)'s Odious Debt**

39. The IMF has been sued for violating Kenyan laws on borrowing by irregularly advancing President Ruto's regime an '**On-lent loan**', whose redemptions were rolled over in **2023/2024** and **2024/2025** at **Kshs10 billion** for each financial year, as demonstrated in **Table 5** above. The **Kshs10 billion** was forward-budgeted (redemption rollover) for each of the **2025/2026, 2026/2027 & 2027/2028** financial years, aggregating to **Kshs50 billion**. The '**On-lent loan**' was hidden under the disbursements from the **General Resource Account (GRA)** of the **Special Drawing Rights (SDRs) 538,310,000** of the Fund.

**O. The Burden of Odious Debt on Kenyan Taxpayers**

40. Public debt repayment is made with taxes raised by Kenyans. For the last three financial years, **2021/2022, 2022/2023, and 2023/2024**, the average amount raised from taxes annually is **Kshs. 2.2 trillion**. In the **2024/2025** financial year,

**Kshs1,943,593,865,746** was budgeted for the repayment of the public debt, which included the **Kshs933,716,494,944** principal, and **Kshs1,009,877,379,802** interest. Applied against the average taxes collected in those financial years, **it means 86% of the tax revenue raised was used to pay the public debt.**

41. Given that **71%** (being a percentage of **Kshs6,950,163,132,328 / Kshs9,741,706,469,035**) of the public debt is odious debt, it means **82%** of every tax rate goes towards repayment of this. Some **82%** of the **30%** corporate tax, for example, goes to the repayment of the odious debt.

**P. Unconstitutional provisions of the PFMA**

42. The petitioners are also challenging the unconstitutional amendments the National Assembly, excluding the Senate, made to the Public Finance Management Act. Those amendments made it possible for Presidents Kenyatta and Ruto to circumvent the Constitution and incur the odious debts.

43. Among the impugned amendments are provisions that:

- a. Allow proceeds of loans to be used offshore without being paid into the Consolidated Fund, contrary to Article 106 of the Constitution;
- b. Allow the issuance of sovereign bonds by the Executive without reference to Parliament;
- c. Introduce and set the debt-ceiling at 55% of the GDP; and,
- d. Were enacted by the National Assembly without involving the Senate contrary to Article 110 of the Constitution.

**Q. Key Prayers in the Petition**

44. Among many others, the petitioners have asked the High Court for the following reliefs:

- a. **A declaration** that any loans that were borrowed outside the National Government's approved budgets in the applicable Appropriation Acts, and/or in violation of any written law, and/or that were not tied to development projects are odious and not sovereign debts;
- b. **A declaration** that lenders who advance loans to officials of the Government of Kenya in contravention of Kenyan law knew or should have known that the loans were illegitimate cannot pursue the citizens for the repayment of their odious loans;
- c. **A declaration** that Kenyans should not repay the odious debts;
- d. **A Declaration** that the IMF can be sued in Kenyan courts for lending money to the government in violation of Kenyan law;
- e. **An order quashing** the provisions of the PFMA, which were challenged in the petition for being unconstitutional;
- f. **An order permanently prohibiting** 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;
- g. **An order permanently prohibiting** the Government of Kenya and its agents, howsoever acting, from repaying or continuing to repay odious debts;
- h. **An order compelling** former President Kenyatta and the officials who failed to stop the heist (President Ruto, 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, former Treasury Cabinet Secretary Ukur Yatani, former Treasury Cabinet Secretary Njuguna Ndung'u, Controller of Budget Margaret Nyakang'o, Auditor-General Nancy Gathungu, and former EACC Secretary/CEO Halakhe D. Waqo) to refund the National Treasury the principal **Kshs.4,605,840,278,922** odious debts plus costs and interest incurred on them; and,

- i. **An order compelling** President Ruto and the officials who failed to stop the heist (former Treasury Cabinet Secretary Njuguna Ndung'u, the Controller of Budget Margaret Nyakang'o, and Auditor-General Nancy Gathungu) to refund the National Treasury the principal **Kshs2,250,325,905,200** odious debts plus costs and interest incurred.

#### **R. Parties in the Petition**

Okiya Omtatah Okiiti .....	1 <sup>st</sup> Petitioner
Nyakina Wyclife Gisebe .....	2 <sup>nd</sup> Petitioner
Eliud Karanja Matindi .....	3 <sup>rd</sup> Petitioner
Bernard Muchiri Muchere .....	4 <sup>th</sup> Petitioner
Dr Magare-Gikenyi Benjamin .....	5 <sup>th</sup> Petitioner
versus	
HE (former) President Uhuru Muigai Kenyatta .....	1 <sup>st</sup> Respondent
HE President William Samoei Ruto .....	2 <sup>nd</sup> Respondent
The Cabinet Secretary for the National Treasury.....	3 <sup>rd</sup> Respondent
The Principal Secretary for the National Treasury.....	4 <sup>th</sup> Respondent
The Director General Public Debt Management Office.....	5 <sup>th</sup> Respondent
The Hon Attorney-General .....	6 <sup>th</sup> Respondent
The Controller of Budget .....	7 <sup>th</sup> Respondent
The Auditor-General .....	8 <sup>th</sup> Respondent
The National Assembly .....	9 <sup>th</sup> Respondent
Former Controller of Budget Agnes Odhiambo .....	10 <sup>th</sup> Respondent
Former Auditor-General Edward Ouko .....	11 <sup>th</sup> Respondent
Former Attorney-General Prof Githu Muigai .....	12 <sup>th</sup> Respondent
Former Treasury Cabinet Secretary Henry Rotich .....	13 <sup>th</sup> Respondent
Former Treasury Principal Secretary Kamau Thugge .....	14 <sup>th</sup> Respondent
Former Treasury Cabinet Secretary Ukur Yatani .....	15 <sup>th</sup> Respondent

Former Treasury Cabinet Secretary Njuguna Ndung'u .....	16 <sup>th</sup> Respondent
The Controller of Budget Margaret Nyakang'o .....	17 <sup>th</sup> Respondent
The Auditor-General Nancy Gathungu .....	18 <sup>th</sup> Respondent
The Governor, the Central Bank of Kenya .....	19 <sup>th</sup> Respondent
The Ethics and Anti-Corruption Commission .....	20 <sup>th</sup> Respondent
Former EACC CEO Halakhe D. Waqo .....	21 <sup>st</sup> Respondent
International Monetary Fund (IMF) .....	22 <sup>nd</sup> Respondent
and	
The Senate of Kenya .....	Interested Party



Signed \_\_\_\_\_  
**Okiya Omtatah Okiiti**

**Date 06<sup>th</sup> April, 2025**