Tales of State Capture: Goldenberg, Anglo Leasing, and Eurobond

By Wachira Maina

Corruption and politics, never the twain shall part

Politics and corruption have always been intimates in Kenya since independence. Little wonder that the first commission of inquiry appointed after independence, the 1965 Chanan Singh Maize Commission of Inquiry, was triggered by a corruption scandal involving Paul Ngei, the then Minister for Marketing and Cooperatives.

Mr Ngei had permitted his wife Emma Ngei, through her company Uhuru Millers of Kangundo (commonly referred to at the time as Emma Stores) to directly buy maize from farmers, bypassing the Maize Marketing Board, which he chaired. This was despite the fact that the law did not allow Kenyans to buy maize straight from farmers (which was cheaper than buying from the government). Worse still, Ms Ngei was permitted to buy 2,000 bags of maize, but she refused to pay for them; she wrote “return to sender” on payment demands. In addition, she refused to remit the difference between the farmers’ price and the government price to the Board, which was also against the law.

Widespread speculation in maize by well-connected individuals, coupled with the government’s failure to import more maize in time, eventually led to a national shortage. The Chanan Singh commission of inquiry was appointed by President Jomo Kenyatta to investigate the cause of the maize shortage. Because of his relationship with Uhuru Millers, Mr Ngei was briefly suspended from the cabinet but was later reinstated.

Maize, then, before and since has had a long career in both politics and corruption. That first scandal set the tone for future graft: the politically connected rigging the system to benefit themselves, their relatives and their cronies and when unmasked, resorting to inconclusive methods of investigation, such as commissions of inquiry, task forces or inept prosecutions. The difference between that early corruption and the corruption described here as state capture is that most of it involved abuse of discretion and conformed closely to Robert Klitgaard's definition: Corruption = Monopoly + Discretion – Accountability

The first corruption scandal encompassing major characteristics of state capture was the Turkwel Gorge hydroelectric power project between 1986 and 1991. Many aspects of the process of contracting for this project entailed rigging and repurposing legal processes for the benefit of President Daniel arap Moi and his cronies. According to an internal European Commission Memorandum of March 1986 written by Achim Kratz, the then Commission's delegate to Kenya, the contract price for the project was more than double the amount Kenya's government would have paid under a competitive international tender. The memo stated that the government knew that the price of the French contractor Spie Batignolles was extortionate, but hired them nevertheless, "because of high personal advantages". Those "personal advantages" were millions of dollars paid to President Daniel Arap Moi and to the then Minister of Energy, Nicholas Biwott. Moreover, companies associated with people close to Moi and Moi's family were sub-contracted to execute many elements of the Spie Batignolles contract.

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The effect of the combination of personal interest and inattention to geological and hydrological factors was that when the project was finally commissioned by President Moi in October 1993, the reservoir was under 25 per cent full and the project had already consumed three times the estimated cost. The knock-on effect was probably even greater: the Turkwel corruption provoked donors to cut funding to the energy sector, which would eventually generate the crippling power outages of the mid-1990s to the early 2000s.

Some of the lessons learnt from the Turkwel Gorge saga on repurposing state institutions and lawful processes to extract regime and personal gain would be applied with a vengeance to the first unambiguous case of state capture: the Goldenberg scandal.

Goldenberg: Designing the methods of state capture

In 1991 and 1992 Kenya underwent a foreign exchange crunch. The proximate cause for this was mounting pro-democracy pressure by the opposition and civil society groups, to which the government responded with violent crackdowns. Political repression and donor concern about corruption, combined with poor export performance of the leading foreign exchange earners of coffee, tea and tourism, led to a significant drop in hard currency reserves.

The government responded to this with an export promotion scheme in which exporters who deposited their hard currency earnings would not only receive the Kenya shilling equivalent of their deposits, but also an additional 20 percent "export incentive". Goldenberg International, a company jointly owned by Kamlesh Pattni and the then director of the special branch (Kenya's secret service), James Kanyotu, concocted a scheme to export gold and diamonds to three companies in Dubai and Switzerland on an understanding that they would be paid 35 per cent "export compensation". The problem with this arrangement was that gold and diamonds were not covered in the Export Compensation Act and the "incentive" paid to the company was 15 per cent above the lawful limit.

The real scandal, though, was that Kenya had no diamonds and its gold mining was insignificant. In the beginning, Goldenberg International exports turned out to be entirely made up of gold smuggled from the Democratic Republic of the Congo (formerly Zaire). Later, the company stopped smuggling gold altogether and merely completed export declaration forms, produced fake hard currency deposit slips and got paid, not only the coupon amount on the fake deposit slips, but also the 35 per cent export compensation.

The total cost of the scandal is unknown, but some estimates indicate that up to 10 per cent of Kenya's GDP was lost. The 2006 Bosire Commission of Inquiry into the scandal concluded that up to Sh158.3 billion of Goldenberg money was transacted with 487 companies and individuals. This is probably a gross underestimate, as in fact Goldenberg was a series of inter-connected financial scandals rather than the phantom exports of gold and diamonds that most investigations have focused on since 1992. (The scandal was first revealed in the Controller and Auditor General's reports for 1991 and 1992.) According to various affidavits sworn by the main suspect in Goldenberg and associated scandals, the beneficiaries of these dealings included the President, the Vice President and his business associates.

Notwithstanding revelations in the Controller's and Auditor General's reports, together with whistleblower accounts covered in the media, the government initially stonewalled. This prompted the Law Society of Kenya (LSK) to seek the permission of the High Court to file a private prosecution to remedy the inaction of the Attorney General (AG).

The AG, Amos Wako, suddenly bestirred himself, asking to join the LSK case as a friend of the court. He promptly opposed the LSK's application, arguing that he had been delayed by investigation reports, and requested the LSK to hand him such evidence as they had so that he may act. Backed by an affidavit by Japhet Masya, the Clerk to the National Assembly, the AG also argued that the High Court had no jurisdiction on Goldenberg given that the issue was before a committee of Parliament.

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Mr Wako's pleas were both inexplicable and disingenuous: Parliament has no criminal jurisdiction and any policy issue on Goldenberg pending before one of its committees can have no effect on an indictment for corruption. The AG sounded more like a defence attorney than the head of public prosecutions and guardian of public interest that he was.

Dr Willy Mutunga, then the chair of the LSK, feared that Mr Wako's ruse was proof that the government was "determined to complete the Goldenberg cover-up". Mr Wako, he predicted, would continue to act like "counsel for all the accused persons" and would engineer "protracted delays", "mention after mention, adjournment followed by adjournment", ending in a "dramatic withdrawal of the cases".

So it proved. The magistrate, Uniter Kidullah, appointed the Director of Public Prosecutions (DPP) after her decision in this case, rendered a rude and intemperate judgment, combining otiose proceduralism with personalised insults against the LSK: Mr Mutunga's pleadings were inadmissible because he, rather than the secretary, had signed them; the LSK had no legal standing to file a private prosecution since it could not show how its interests had been harmed by the Goldenberg scandal and, so far as she could see, the LSK had acted outside its statutory mandate. Finally, she concluded that the only knowledge LSK seemed to have was that of "stealing from . . . clients".

There the Goldenberg scandal would have died but for the government's continuing hard currency crisis. The International Monetary Fund (IMF) and the World Bank warned Kenya that no new programme would be agreed with the country until the government took credible action on corruption in general and on Goldenberg in particular. It was this threat that spurred Attorney General Amos Wako to indict Pattni and his co-accused in 1997, five years after the scandal first broke.

But the charge was not meant to result in effective prosecution. Against the advice of his DPP, Bernard Chunga, the AG framed more than 90 counts in one charge in the face of clear precedent that so many counts would invalidate the charges. Knowing this, in July 1997, Kamlesh Pattni challenged the charges as illegal and was granted an order of prohibition by the High Court, stopping the trial. Donors, aghast at this turn of events, refused to lift the conditions they had imposed on aid to Kenya until Goldenberg was properly prosecuted.

A chastened AG filed new charges in August 1997, calculated to be good optics for an IMF mission that was expected in Nairobi in early 1998. In the meantime, Mr Pattni had concocted a new fraud to defeat any fresh charges that the AG might bring against him. Using forged papers, fake sale agreements backdated to 1992 with the connivance of the Registrar of Companies (in the Attorney General's Chambers) Mr Pattni purported to be the owner of World Duty Free (WDF), the Isle of Man company to which he claimed to have sold the gold and diamonds. He then obtained court orders allowing him to take over management of WDF shops in Kenya.

The point of this devious scheme was that in a future prosecution Pattni could argue that as the owner of WDF he couldn't be forced to testify against himself. Armed with this new civil suit, he challenged the fresh indictments, claiming these charges should be stopped as they were prejudicial to the WDF civil case. The court agreed with this risible claim, even though legal principle works the other way: where a criminal case raises the same issues as a civil case, the criminal case is heard first. There are two reasons for this: one, the public interest should be vindicated before the private interest and, two, given that the standard of proof in criminal cases – beyond reasonable doubt – is much higher than the standard in civil cases – on the balance of probabilities – it is more efficient to hear the criminal case first, since facts proved need not be proved again in the related civil case. This botched 1998 prosecution was the last action that the Moi government took to resolve the Goldenberg scandal.

In 2003, Mwai Kibaki succeeded Daniel arap Moi. He quickly set up a commission of inquiry into the Goldenberg scandal, ironically at just about the same time that his own cronies were busy siphoning monies out of Kenya under the Anglo Leasing scandal. The commission was chaired by Justice Samuel Bosire, who would later be declared as unfit to be a judge during the vetting of magistrates and judges mandated by the 2010 Constitution.

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The Bosire Inquiry established what everyone always knew but could not prove, because the AG, Amos Wako, had developed feet of clay. Goldenberg, the commission concluded, involved the highest levels of President Moi's government and Moi had personally authorised two Goldenberg-related payments. After the inquiry, the government imposed travel bans on people named by the commission as connected to Goldenberg. Bosire also recommended that retired President Moi's role in Goldenberg be investigated. Nothing came of either the travel ban or the Moi investigation. In August 2006, the credibility of the report was seriously dented when Professor George Saitoti (formerly Vice President to Moi), who the commission had found culpable enough to warrant an indictment, got a court order expunging his name from that list of shame.

In the end, no one was ever convicted for any of the Goldenberg crimes. In 2006, six months after the release of the Goldenberg Report, David Munyakei – the man who first blew the whistle on the scandal only to be hounded into destitution for his efforts – died, a lonely and forgotten victim of the forces of state capture.

The Anglo Leasing Scandal

The Goldenberg script would be reprised in the second state capture case, the biggest scandal of the Kibaki era – the 2003 Anglo Leasing scandal. Anglo Leasing was a series of security-related scandals involving 18 state security contracts, collectively worth about $770 million (Sh55 billion), in which the government entered finance lease and suppliers' credit agreements to pay for forensic facilities**,** security equipment and support services for Kenya Prisons, the Police Airwing, the police force, the Directorate of Criminal Investigations, the Administration Police, the National Security Intelligence Service (NSIS), and the National Counter-Terrorism Centre. Thirteen of the eighteen contracts were made under President Daniel arap Moi, the other five after 2002 under President Mwai Kibaki. The true identities and whereabouts of the companies remained unclear. Though the immediate investigation that blew open the scandal involved the Anglo Leasing and Finance Company, in truth the scandal involved many more companies owned by the same set of individuals: Deepak Kamani; Anura Perera; Amin Juma; Merlyn Kettering and Ludmilla Katuschenko.

Within these 18 generally irregular contracts, individual contracts were even more blatantly so: the contract for tamper-proof passports granted to Anglo Leasing and Finance Company was described by the Public Accounts Committee (PAC) – ironically chaired by Uhuru Kenyatta – as "an organised, systematic and fraudulent scheme designed to fleece the government through the so-called special purpose finance vehicles for purported security contracts". How exactly Anglo Leasing became involved in these security contracts is unclear from the records, but the pattern itself is clear.

In 2000, the Department of Immigration did a "computer needs assessment" that concluded that to eliminate fraud, forgery, inefficiencies and revenue loss it would need to procure a passport -issuing system. This was to be done by restricted tender. The Ministerial Tender Committee invited five international firms to submit bids: two British firms, De La Rue Identity Systems and AIT International PLC; South Africa's Face Technologies; Setec OY of Finland and Johannes Enschede of the Netherlands. Three firms responded. The decision was that AIT International PLC met both the commercial and technical specifications for the award.

However, the ministry's budget for the 2000/2001 financial year did not cover the Sh622,039,944 contractual sum that AIT International PLC gave as the cost of the system. The procurement was deferred to 2002/2003. Six international firms were now invited to bid, the initial five and GET Group of the USA. Once again, three responded: De La Rue Identity Systems; South Africa's Face

Technologies and GET Group. The previously successful group, AIT International PLC, did not submit a bid.

A technical committee of the Government Information Technology Services concluded that none of the bids were responsive and subsequently recommended that they not only be disqualified but also that, “the system be redesigned and expanded to cover other aspects of the work of the Immigration Department, such as border controls and immigration monitoring”. It was now agreed that the expanded system would have five components: 1) high security new generation passports; 2) a secure passport issuing system; 3) high security new generation visas; 4) a high security visa-issuing system; and 5) computerisation of machine-readable immigration records. One consequence of expanding the system was a spiking of costs, which would require the Treasury to seek donor funds.

That is how matters stood when on 1 August 2003, a firm named Anglo Leasing and Finance Ltd of Alpha House, 100 Upper Parliament Street, Liverpool L19 AA, UK, sent an unsolicited technical proposal to the permanent secretary (PS) in the Vice President’s Office to supply and install an “Immigration Security and Document Control System, (ISDCS)”. The installation would be done by a sub-contractor of Anglo Leasing, François-Charles Oberthur Fiduciaire SA of Paris, France. To ease the funding problem, Anglo Leasing would offer a facility of €31,890,000 (Sh2.67 billion) to be repaid at an interest of 5% (later 4%) over a 62-month period.

On review, the PAC thought this highly irregular: a financing firm had prepared a detailed proposal for a project very similar to the one recommended by the Government Information Technology Services without a request from the government and, most curiously, in a manner that strongly suggested that the firm “had fore-knowledge of the recommendation to enhance and expand the system”.

Nonetheless, a month later, on 5 September 2003, the Vice President’s Office asked the Treasury to contract Anglo Leasing. That permission came through on 25 November 2003. Also on 5 September, the Vice President’s Office sought legal clearance from the AG’s Chambers, and in a letter dated 18 September 2003, the AG advised the ministry to do due diligence. For example, how many projects of this magnitude had Anglo Leasing successfully undertaken? What was the firm’s credit rating? The PAC did not see any evidence that tests had been undertaken or that the ministry had assessed the “authenticity, capacity, experience and track record of François-Charles Oberthur Fiduciaire”.

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Even with all these things still outstanding, the government signed the Suppliers Services and Financing Credit Agreement for the ISDCS on 4 December 2003, and two months later, on 4 February 2004, a sum of Sh91,678,169.25 (described variously as “arrangement”, “commitment” and “administration” fees) was paid out to Anglo Leasing.

According to John Githongo’s dossier to the President, all the Anglo Leasing-type shell companies were probably established by one Pritpal Singh Thethy, an accountant and engineer who was associated with Anura Perera. These companies routinely won large contracts to supply goods and services at inflated prices to the security services and were notorious for paying generous kickbacks.

The unravelling of Anglo Leasing began when Maoka Maore, the MP for Ntonyiri, tabled documents in Parliament in April 2004, showing that Anglo Leasing and Finance Company Limited had been paid a Sh91 million commitment fee, amounting to 3 per cent of a Sh2.7 billion contract to produce the tamper-proof passports. The Department of Governance and Ethics, headed by John Githongo, tried to get to the bottom of the affair.

In that same month, whilst on a visit to the United Kingdom he asked Kroll Associates to do some due diligence on Anglo Leasing and discovered that no such company existed. Githongo had begun to suspect that very senior officials in the Kibaki administration were involved. Early suspects included Vice President Moody Awori, Minister for Justice and Constitutional Affairs Kiraitu Murungi, Minister for Finance David Mwiraria, Minister for Internal Security Chris Murungaru, Home Affairs Permanent Secretary Sylvester Mwaliko, Finance Permanent Secretary Joseph Magari, Internal Security Permanent Secretary David Mwangi, Alfred Getonga, Deepak Kamani and Jimmy Wanjigi.

From an early stage in a series of private meetings, the Vice President, as well as the ministers for justice and finance, assiduously tried to stop the investigation, partly based on the theory that "the Vice President had already given a parliamentary statement". The scale of Anglo Leasing and the depth of its penetration into the inner sanctum of power would become much clearer over the next few months. It turned out that even as investigations kicked off, additional payments and commitment fees were being processed.

When these stories hit the media, the then Secretary to the Cabinet, Francis Muthaura, said that Anglo Leasing had contacted him and promised to repay the monies they had already received. Shortly thereafter, on 14 May 2004, Anglo Leasing and Finance Ltd wired back €956,700 from Schroder & Co Bank AG in Zurich.

Investigations would reveal even more dirt. By early June, inquiries had established that Anglo Leasing had been paid $5 million for a forensic laboratories contract for which they had done no work. The brains behind the revival of this Moi-era contract were Deepak Kamani, Jimmy Wanjigi, Chris Murungaru, Dave Mwangi, Alfred Getonga, and C. Oyula, the Financial Secretary. It was clear that there were many more Anglo Leasing type contracts, and eventually 16 of them would become public.

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The case of two of these Anglo Leasing-type companies – Sound Day Corporation and Apex Finance Corporation – closely followed the conspiratorial modus operandi of the contracts for the tamper-proof passports. The two companies, which were managed by Brian Mills, a US national, had signed four contracts, cumulatively worth more than $145 million. According to newspaper accounts, the three Kamanis – Chamanlal Kamani, Deepak Kamani and Rashmi Kamani – became directors of Sound Day in April 1990. Sound Day, like other Anglo Leasing companies, was to provide credit, as well as supply the equipment to be financed through that credit. However, the contract terms were that the equipment would not be supplied until the government paid the first instalment. Sound Day provided no credit, but charged 3 per cent interest on this "financing" whilst, in fact, the financing was the money that had been advanced by the Kenyan government in the first place. This Byzantine arrangement was later described in court as a "classic case of reverse financing".

As Anglo Leasing unravelled, the attempts to stop investigations became both frantic and menacing. The Minister for Finance, David Mwiraria, indicated that he would not lay before Parliament a damning special audit report compiled by the Controller and Auditor-General until the Treasury had made some “major changes”. The Minister for Justice, Kiraitu Murungi, weighed in with the caution that Mr Githongo should be careful not to “knock out key political people” like Alfie (Alfred Gitonga) and Murungaru given that both were “key players at the very heart of government”. He would later add that, “if Chris [Murungaru] is dropped and Alfie [Gitonga] is dropped we are in trouble, the enemy will have won”. According to him, people were concerned that John Githongo “did not appreciate the political costs of his work”.

A different politician was later to emphasise these warnings, saying that if Githongo’s investigations threatened the “stability of the regime” then the President would stop backing him. Both Mwiraria and Kiraitu said that they hoped that the investigations would stop as soon as Anglo Leasing repaid the money. Over time, the cover-up efforts would turn bizarre: Francis Muthaura even questioned the legal authority of the Kenya Anti-Corruption Commission (KACC) to conduct the investigation and implied that the Anti-Corruption and Economic Crimes Act was not reasonable legislation, ostensibly because of the broad powers it gave to the KACC.

What the pressure on Githongo and the repayment of the money on the publicly known contracts revealed was a clever ploy to head off investigators from the other numerous yet to be known contracts by issuing a *mea culpa* on what was then publicly known.

One issue surrounding the scandal is what President Kibaki knew and when he knew it. For instance, on the forensic labs contract, the Secretary to the Cabinet had indicated to Githongo that he had briefed the President on this contract, but when Githongo met the President on 29 May 2004 Kibaki said that no one had briefed him and asked to be furnished with a copy of the contract. Two days later, Muthaura would insist that the President had been fully briefed and that it had been agreed that all payments were to be stopped and that the authorities must establish who Anglo Leasing were.

Later still, Mwiraria would claim that the President had requested that they “go easy” on Anglo Leasing given that the money had now been returned. Mwiraria and Kiraitu would argue that if the public were to know that there were other corrupt deals of this magnitude, “our government would fall”. Had the President in fact said this or were Mwiraria and Kiraitu using the authority of the Presidency to smother inquiries? Had the President lied when he told Githongo that he had not been briefed?

From the determined opposition to his inquiries, the lukewarm support he received from the President and the threatening messages that he received throughout this early phase of the investigation, Githongo feared for his life and went into self-imposed exile in the United Kingdom in 2005. His conclusion was that the Anglo Leasing scandal went all the way to the top and that its baseline was a scheme to finance the 2007 election.

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In November 2005, President Mwai Kibaki finally acted. He dropped Chris Murungaru from the

Cabinet. On 1 February, he dropped David Mwiraria and a fortnight later he had "accepted" Kiraitu Murungi's resignation. Although 80 MPs demanded that the President fire his Vice President, Moody Awori, the President demurred. As with Goldenberg, the government imposed the usual travel bans on the principals and announced that it would also freeze their assets. Whether this happened or not is unclear; there is no official indication that it did.

In 2007, the UK's Serious Fraud Office tried to get to the bottom of a $30 million transfer made by Apex Finance, one of the Anglo Leasing companies, between April 2002 and February 2004 through the Channel Island tax havens of Jersey and Guernsey. But by 2009 this effort had petered out, partly due to obstruction by Kenya. That same year, authorities in Switzerland launched investigations into Swiss companies named in the scam and froze their bank accounts. It, too, came to naught. By the time President Kibaki had served out his two terms in 2013, no action had been taken on Anglo Leasing.

The next time Anglo Leasing would be in the news was in early 2014, ahead of the country's debut launch of a $2 billion sovereign bond, half of which would disappear into thin air in the biggest scandal of the Uhuru Kenyatta presidency. The facts were as follows. Kenya had lost a lawsuit in Geneva filed by two Anglo Leasing companies linked to Anura Perera – First Mercantile Securities Corporation and Universal Satspace. (Perera was one of the suspects named in the 2006 special audit of Anglo Leasing.) It then turned out that the country had to pay Sh1.4 billion to improve its credibility with international markets by clearing its (ostensible) debts in preparation for the launch of its debut in the foreign sovereign bond market, the Eurobond.

This was odd for two reasons. First, there was also a contrary judgment from the High Court in Kenya. Justice Mathew Anyara Emukule had ruled in 2012 that the two companies were non-existent entities that could not sue. Second, the government had claimed that the contract was vitiated by bribery and there was a PricewaterhouseCoopers (PWC) audit showing that the goods were over-priced and some had never been delivered, even though payments had been made. The Geneva court rejected these PWC findings.

As a matter of Kenyan law, the government had paid this large sum to non-existent parties. According to Treasury Cabinet Secretary Henry Rotich, it was necessary to pay out this amount lest the country suffer huge interest penalties. The Deputy Solicitor General, Muthoni Kimani, buttressed the Treasury's argument with the claim that the Anura Perera litigation in Switzerland had adversely affected the issuing of the sovereign bond. Hot on the heels of this payment, National Treasury Permanent Secretary Kamau Thugge told the Public Accounts Committee that Mr Perera was now demanding an additional Sh3.05 billion for services given to the National Security Intelligence Service, now known as the NIS. (According to Thugge, Perera's new demand related to another project, Flagstaff National Counter Terrorism Centre,that the government had contracted in 2004 at a cost of $41,800,000.)

A payment of $16.4 million to Deepak Kamani in 2014, also purportedly to facilitate the launch of the Eurobond, seems to have triggered the government's interest in prosecuting the Anglo Leasing principals. In March 2015, 11 years after the scandal broke, 13 people connected to Anglo Leasing, including businessman Deepak Kamani and former minister Chris Obure, now a senator, were indicted.

The prosecution might be explained by President Kenyatta's fury at the $16.4 million (Sh1.6 billion) Kamani payment and the extra Sh3.05 billion being demanded by Perera. In addition, some pressure seems to have come from Switzerland. Jacques Pitteloud, the Swiss ambassador to Kenya, told the *Financial Times* that Switzerland was tired of suffering reputational loss as a safe haven for stolen money. But the real political reason could well be that prosecuting Anglo Leasing deflected attention from scandals involving the friends and relatives of Mr Kenyatta. None of the targets of the Anglo Leasing indictments were connected to the Kenyattas.

As with Goldenberg, none of the arrests and indictments have so far led to convictions. This script of never holding to account those involved in state capture scandals would be replayed by Uhuru Kenyatta, as President, when he was himself caught up in the Eurobond scandal.

The Eurobond Scandal

Less than a year after the election of President Uhuru Kenyatta in March 2013, Kenya went to the international money markets to issue Kenya's first sovereign bond worth $2.75 billion. This was done in two tranches. The first issue raised $2 billion (Sh176 billion at the time) and the second $815 million (Sh74 billion) for a total of $2.8 billion (Sh250 billion). The government said that the money would be used to reduce official borrowing from the domestic market, which would spur private investment by lowering interest rates.

According to an analysis by economist David Ndii, the government executed two transactions from the offshore account into which the $2 billion had been credited. It paid off a pending loan of $604 million (Sh53 billion) and then transferred $394 million (Sh35 billion) to the exchequer, leaving $1.002 billion (Sh88 billion) in that account. The government has never accounted for this money.

When inconsistencies were pointed out, the government responded with both lies and insults. The lies were that up to Sh120 billion had been used partly to pay pending bills to road contractors and for budget support. But as Ndii points out, the recurrent budget for the 2014/2015 financial year was funded by domestic revenues: the government raised Sh1.106 trillion in revenues, of which Sh229 billion was transferred to the counties. That left Sh877 billion for national government functions. The national government's recurrent budget for that year was Sh897 billion, a mere Sh20 billion more than the revenue, reflecting no inflow of the Sh120 billion as claimed. According to this logic, the national government required only Sh20 billion more than what it had earned through revenue, so there was no way it could have used the Sh88 billion from the bond.

In its first public statement on the matter, the Treasury promised to give information on the projects that the Eurobond money had funded. It subsequently gave ministries three weeks to furnish the relevant information. Five weeks later, in an interview with *Business Daily*, the Cabinet Secretary for Finance lamented that "the ministries cannot differentiate whether the money they have received from the Exchequer came from VAT, income taxes, customs duties, excise taxes, domestic borrowing or the Eurobond". This is true but irrelevant to the issue. Treasury should have been able to provide the answer. As Ndii points out, the government has a monitoring and evaluation responsibility. "For the Treasury to disburse a huge external loan, the biggest ever, without expenditure tracking seems downright irresponsible," he commented.

In the following months, the government would "torture" the figures to show that the missing Eurobond money had indeed financed development projects. This was done by "wildly" (Ndii's word) inflating the cost of nine projects in the energy sector that showed overruns of nearly Sh67 billion. Rural electrification of primary schools was said to have cost Sh34 billion rather than the Sh9.9 billion that had been budgeted. An unbudgeted item for the financial year, military modernisation, gobbled up another Sh62.8 billion. The point of cooking the figures, Ndii surmised, was to create a plausible storyline to explain the missing Eurobond money. "How high up does this fraud go?" he asked.

The government couldn't – or rather wouldn't – answer this question directly but its conduct in the coming years had the guilty air of an adulterer caught *in flagrante delicto*. As David Ndii explained, the government's real problem was that it could not account for the Eurobond money that it had not spent and still manage to balance its accounts. In the 2014/15 financial year, it partially pulled off this miracle by reducing domestic borrowing for the year from Sh251 billion to Sh110 billion. The Sh140 billion reduction covered the exact amount of Eurobond money that it claimed to have carried forward from 2013/14. Unfortunately, this voodoo accounting was undone by the Central Bank accounts on domestic borrowing and was flatly contradicted by the interest that the government reported having paid on domestic borrowing for the year.

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In 2016 the Auditor General, Edward Ouko, tried to get to the bottom of the affair by conducting a forensic audit of Eurobond transfers from the Federal Reserve Bank of New York. As part of his preparations, he told Parliament that he had already made appointments with top US and UK financial institutions involved in the transactions. Mr Ouko promised to send forensic auditors to scrutinise transaction data at JP Morgan, the Federal Reserve Bank, City Transaction Services New York, JP Securities, Barclays Bank, ICB Standard Bank, Qatar National Bank and other banks that had handled the $2 billion Eurobond transactions.

Mr Kenyatta promptly blocked the investigation, arguing, implausibly, that by saying that "the Eurobond money was stolen and stashed in the Federal Reserve Bank of New York", Mr Ouko was implying that the Kenyan government and the United States had colluded. "Who is stupid here?" the President scornfully asked.

In the next few years, the government became cockier and more belligerent. With the Auditor General not allowed to follow the international money trail, he was reduced to informing Parliament at the end of each audit year that "investigations into the receipts, accounting and use of funds related to the Sovereign/Eurobond are still ongoing and the accuracy of the net proceeds of Kshs 215,469,626,035.75 is yet to be ascertained".

As Ndii's analysis pointed out, unravelling this mystery should not have been as complicated as the Auditor General's laconic conclusion might suggest and the Treasury's effort to explain the mystery only compounded it, even with the IMF weighing in to support the official explanation. But as the Mozambique Eurobond story shows, the IMF has been criminally negligent in these matters.

In this case, the IMF's attempt to aid the government was unavailing. The Fund showed that Eurobond money was received and spent in the 2013/14 financial year. But given that the Eurobond money was received in the last week of that financial year, it would not have been possible for it to be spent in that year. There was no drawdown until the first week of July, which was the start of the 2014/15 financial year. The difference between the Fund's fiddling and the Treasury's fiddling was that the IMF reported a domestic borrowing figure of Sh251 billion for 2014/15 domestic borrowing, whilst the Treasury showed one of Sh110 billion. As Ndii noted, "The IMF cooks the books one way, and the Treasury, the other".

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But the Treasury's lies were also compounded by the mandarins' poor memory. By 2015/2016, they seemed to have forgotten the 2014/2015 numbers. Now the Treasury reported Sh251 billion as the correct domestic borrowing figure. With Sh251 billion confirmed as the correct amount, the only way to account for the Eurobond Sh140 billion was to show the projects in which it was invested. That no such projects have been named implies that at least $1 billion of the Eurobond money has disappeared into thin air. The conclusion that it has most likely been stolen by some very senior untouchables is compelling.

With investigations never having been started, the Auditor General, beaten down by the President, and the marked lack of enthusiasm from the United States (particularly the New York Federal Reserve), it is unlikely that we will know who stole nearly $1billion of taxpayers' money.

This is Part 3 of an abridged version of State Capture: Inside Kenya's Inability to Fight Corruption, a report published by the Africa Centre for Open Governance (AfriCOG) in May 2019.

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