
**ODIOUS DEBT: A CASE STUDY, ORIGIN, AND CONTEXT OF
KENYA**

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ABSTRACT

Kenya's debt landscape has entered a stretched cycle of distress, dominated by internal borrowing from commercial creditors, external bilateral lending, and hefty Eurobond commitments.

This paper advances the affirmative claim that a substantial and definable portion of Kenya's public debt including the 2014 Eurobond, the Standard Gauge Railway loans, and the subsequent Eurobond series of 2018, 2019, 2021, and 2024 satisfies the tripartite doctrinal threshold of 'odious debt' established by Alexander Sack (1927) and extended by Ndikumana and Boyce (2011), guided by the conditions that the debt was contracted without genuine popular consent through constitutionally compliant channels; the proceeds did not benefit the Kenyan people in any traceable, project-tied manner; and the creditors knew, or should have known, of these defects.

Drawing on the eight foundational works specified (Adeniran et al., 2018; Bett, 2018; CABRI & Vorster, 2021; Cormier, 2021; Fole, 2003; Mageto, 2022; Otieno et al., 2022; Raffer, 2010) and integrating Ndikumana and Boyce (2011), Gathii and Mbori (2025), Toussaint (2022), and IMF (2024), and anchored in Kenya's High Court Petition E216 of 2025, the paper, based on public information on the audits based on the National Treasury and the Central Bank of Kenya audits, finds that approximately KES 6.95 trillion of the debt stock accumulated between FY2014/15 and FY2023/24 meets the odious threshold on the balance of constitutional, empirical, and architectural evidence.

The paper then turns squarely to Kenya, engaging with the empirical claims of Senator Okiya Omtatah and businessman-turned-political aspirant Jimi Wanjigi, two of the most prominent voices in Kenya's contemporary debt accountability debate, who allege that KES 6.95 trillion of Kenya's total KES 13.1 trillion public debt is unconstitutional and qualifies as odious. Drawing on scholarly sources including Adeniran et al. (2018), Raffer (2010), Mageto (2022), Bett (2018), and others, this paper argues that Kenya's debt governance framework is structurally deficient, that significant portions of the national debt bear the hallmarks of odiousness, and that meaningful reform requires legal, institutional, political, and democratic accountability measures.

KEYWORDS: Odious debt, Kenya, Eurobond, debt management, creditor co-responsibility, public finance, debt repudiation, Africa.

INTRODUCTION

Public debt, in classical political economy, is a social contract, a deferred tax levied upon future generations to finance present needs. This contract draws its legitimacy from the premise that the borrowed resources serve the governed class, are incurred with their consent through representative institutions, and are managed transparently. When any of these three conditions is violated, the contract fractures, and the debt assumes a character that international law has come to call 'odious.' It is this rupture between borrowing and democratic legitimacy that sits at the heart of Kenya's current debt crisis and, more broadly, Africa's sovereign debt challenge.

Africa's cumulative public debt stock reached USD 2.14 trillion in 2024, with at least 22 countries either in debt distress or at high risk of it. Out of these, seven African countries are now spending more on debt service than on educating their children (AFRODAD, 2025). Kenya sits at the epicenter of this story. As of June 2024, Kenya's public debt stood at over USD 81 billion (65.7% of GDP), with the country classified by the IMF and World Bank as being at high risk of external debt distress even while debt is judged 'sustainable' on a finely balanced assessment (IMF, 2024; AfDB, 2025).

What distinguishes Kenya from a routine sustainability case is the constitutional and doctrinal contestation of the debt itself. In 2025, petitioners filed High Court Petition E216 of 2025, alleging that approximately KES 6.95 trillion of debt incurred between FY2014/15 and FY2023/24 including the 2014, 2018, 2019, 2021 and 2024 Eurobonds was borrowed

unconstitutionally, was not tied to development projects, and bypassed the Appropriation Act approval, thereby meeting the threshold of odious debt (Republic of Kenya, 2025; Nzamba Kitonga Advocates, 2025).

This paper advances the affirmative claim that Kenya's contemporary debt portfolio in respect of the Eurobond series and the core bilateral commercial loans accumulated between 2014 and 2024 meets the odious-debt threshold on the balance of constitutional, empirical, and architectural evidence.

The implication is that the policy debate must shift from 'how do we repay?' to 'must we repay, and if so, who bears responsibility?'

AFRICA'S RISING DEBT BURDEN: IS IT A CASE OF DEVELOPMENT FINANCING OR A TRAP?

Africa's aggregate public debt has grown dramatically over the past two decades. Adeniran, Ekeruche, Bodunrin, and Ali (2018) document this trend with considerable alarm, noting that while external borrowing was initially justified by the infrastructure financing gap left by the end of Cold War-era concessional flows, the composition and cost of African debt have shifted dangerously toward commercial and semi-commercial instruments. The authors argue that this shift, from cheap, long-maturity bilateral lending to market-based instruments like Eurobonds, has compressed fiscal space without commensurate development returns. This paper strongly agrees with Adeniran et al.'s core thesis: the developmental dividend from Africa's borrowing surge is largely absent, suggesting systemic misalignment between debt acquisition and public welfare.

Otieno, Mose, and Matundura (2022) add a troubling dimension to this picture by documenting the relationship between external debt and capital flight in East Africa. Their findings are damning: as public debt rises, capital flight also intensifies, implying that borrowed resources are not circulating in domestic economies but leaking out through illicit financial flows and elite asset acquisition abroad. This supports the odious debt hypothesis that much of the borrowing enriches narrow elite networks while the repayment burden falls on ordinary citizens. The paper agrees with this analysis and finds it directly applicable to the Kenyan case.

Cormier (2021) provides a political economy lens, arguing that public debt management in developing countries is constrained not by technical incapacity but by political-economic interests. Ruling coalitions resist transparent debt governance because opacity enables the

extraction of rents from the borrowing process itself. This insight is critical: Kenya's debt governance failures, as we shall see, are not accidental administrative lapses—they reflect deliberate institutional design choices that protect elite interests at the expense of accountability. Raffer (2010) reinforces this by calling for a 'debt management for development' paradigm that treats sovereign borrowing as a developmental instrument subject to democratic oversight, not merely a financial transaction.

Fole (2003) traces the historical origins of Africa's debt crisis to the post-independence era of the 1960s and 1970s, when newly independent states borrowed heavily under Cold War patronage, often receiving loans tied to political alignments rather than developmental merit. The structural adjustment era of the 1980s and 1990s then compounded the problem by layering conditionality-driven borrowing onto already fragile economies. This historical arc matters for Kenya: the country's current predicament is not a sudden anomaly but the accumulation of decades of governance deficits in public borrowing. While Fole's analysis focuses on an earlier period, this paper finds its core argument, that African debt crises have structural and political roots, not merely fiscal mismanagement, entirely applicable to contemporary Kenya.

The CABRI Secretariat and Vorster (2021) provide a practitioner's perspective, identifying weak legal and institutional frameworks as central to Africa's debt governance crisis. Similarly, Mageto (2022), writing specifically on East Africa, argues that the region's debt sustainability problems cannot be resolved without fundamental legal and institutional reform, including stronger parliamentary oversight, independent debt audit mechanisms, and constitutional ceilings on borrowing. This paper finds these prescriptions persuasive and returns to them in the recommendations section.

THE DOCTRINE OF ODIOS DEBT: INTELLECTUAL ORIGINS AND GLOBAL PRECEDENTS

The concept of odious debt is older than its formal theoretical elaboration. Its antecedents include Mexico's repudiation of debts incurred by the Emperor Maximilian in the 1860s, where loans were contracted by a foreign-imposed regime without the consent of the Mexican people and used to sustain imperial rule, and the United States' successful negotiation following the Spanish-American War of 1898 to deny Cuba's liability for debts incurred by the Spanish colonial regime. In both cases, the principle was that a people should not be bound to repay loans that served their oppressors.

These precedents were synthesized and theorized by Alexander Nahum Sack, a Russian scholar, in 1927. Sack articulated a doctrine with two core conditions: first, the debt must have been contracted against the interests of the nation or its people; and second, the creditors must not be able to establish that they were unaware of the manner in which the funds would be used. Crucially, and this point is frequently misunderstood, Sack did not limit the doctrine to dictatorial regimes. He argued explicitly that even a regular, constitutional government can incur odious debt if it borrows outside the law and against the public interest. This extension is directly relevant to Kenya, which is a constitutional democracy yet has allegedly incurred debt in systematic violation of its own constitutional provisions.

The Latin American debt crisis of the 1980s gave the odious debt doctrine renewed relevance. When Argentina, Brazil, Mexico, and others found themselves unable to service debt accumulated under military dictatorships and authoritarian civilian governments, civil society movements invoked odiousness to challenge repayment obligations. Argentina's 2001 default, the largest sovereign default in history at the time, crystallized these debates. The Ecuadorian debt audit of 2006–2008 marked perhaps the most systematic application of the doctrine in practice: Ecuador's Debt Audit Commission reviewed the country's external debt portfolio and declared a significant portion illegitimate on grounds of odiousness and procedural irregularity, leading President Rafael Correa to selectively repudiate commercial debt. The subsequent restructuring—which Ecuador achieved from a position of moral authority rather than technical default—achieved a haircut of over 65 percent on the repudiated bonds.

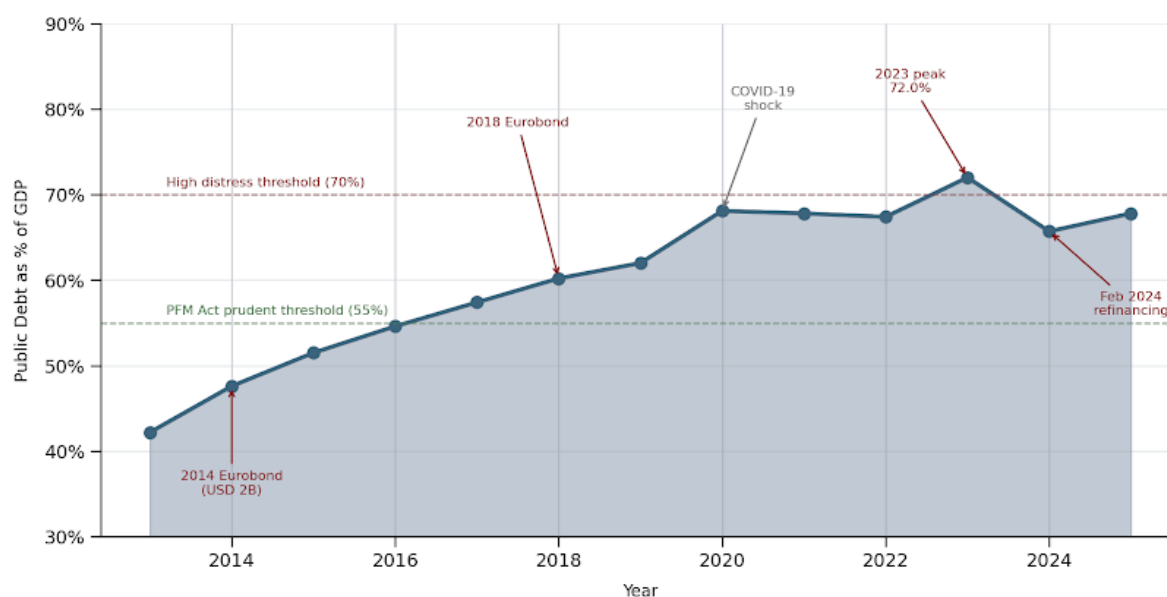
The 2003 restructuring of Iraq's sovereign debt after the fall of Saddam Hussein also invoked the odious debt framework, with the United States and its allies arguing that debts incurred by the Ba'athist regime to fund repression should not bind the Iraqi people. While the outcome was a negotiated restructuring rather than outright repudiation, it demonstrated the doctrine's political utility even in highly contested geopolitical contexts. The South African post-apartheid transition involved similar debates about whether the new democratic government should service debts that financed the apartheid state.

What these cases share is a common thread: the claim that the moral and legal legitimacy of sovereign debt cannot be divorced from the political conditions under which it was incurred, the purposes to which it was deployed, and the procedural legality of the contracting process. This is the precise claim now being advanced in Kenya.

KENYA'S DEBT CRISIS: THE ODIIOUS DEBT RECKONING

Kenya's public debt has escalated from approximately KES 1.8 trillion in 2013 to KES 13.1 trillion by 2025, an increase of over 700 percent in a single decade. According to National Treasury figures, this comprises approximately KES 7.07 trillion in domestic debt and KES 5.76 trillion in external obligations, with a debt-to-GDP ratio of approximately 69.5 percent.

Figure 1: Kenya Public Debt-to-GDP Trajectory, 2013-2025



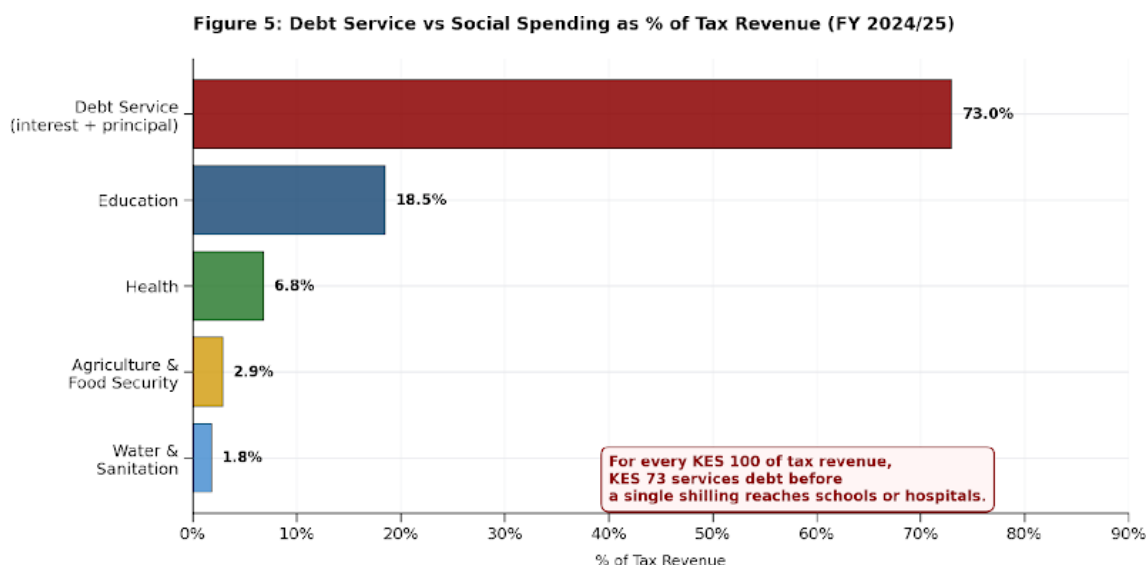
Sources: AfDB (2025) Africa Economic Brief Vol.16 Iss.2; IMF (2024) Kenya 7th/8th Review DSA; CBK; Trading Economics.

Figure 1. Kenya's debt-to-GDP ratio rose from 42.2% in 2013 to a peak of 72.0% in 2023 before easing to 65.7% in 2024 and rising again to 67.8% in 2025. Annotations mark major Eurobond issuances and the COVID-19 shock.

Source(s): AfDB (2025) Africa Economic Brief Vol. 16 Issue 2; IMF (2024) Kenya 7th/8th Reviews DSA; CBK Government Finance Statistics; Trading Economics citing CBK. Anchor years (2013, 2023, 2024, 2025) directly verified.

Note: Kenya crossed both the PFM Act prudent threshold (55%) in 2016 and the high-distress threshold (70%) in 2023. Every major upward inflection coincides with a discretionary commercial borrowing event under the contested PFMA architecture.

Debt service now consumes an estimated 73 percent of tax revenue in some fiscal years, leaving negligible fiscal space for healthcare, education, and infrastructure. It is against this backdrop that Senator Okiya Omtatah and businessman Jimi Wanjigi have mounted their most compelling and detailed public arguments about the odiousness of Kenya's debt.



Sources: Republic of Kenya High Court Petition E216/2025; Treasury 2024/25 APDMR; Budget Policy Statement 2024.

Figure 2. Debt service consumes approximately 73% of tax revenue in FY 2024/25, compared to 18.5% for education, 6.8% for health, 2.9% for agriculture, and 1.8% for water & sanitation.

Source(s): Republic of Kenya (2025) High Court Petition E216 of 2025; Treasury APDMR 2024/25; Budget Policy Statement 2024.

Why this matters: This figure is the empirical heart of the Tier-3 'benefit' prong. When 73% of every tax shilling is consumed by debt service before it reaches the citizenry, the constitutional question, for whose benefit was this debt incurred? answers itself.

Senator Omtatah's Constitutional Petition. On April 15, 2025, Senator Okiya Omtatah filed Constitutional Petition No. HCCHRPET E216 of 2025 at the Milimani High Court, naming twenty-two respondents, including former President Uhuru Kenyatta, sitting Treasury officials, the Central Bank of Kenya, and even the International Monetary Fund. The petition represents the most systematic legal challenge to Kenya's debt governance in the country's history and deploys actual figures that this paper finds analytically compelling.

Omtatah's central empirical claim is that between FY 2014/2015 and FY 2024/2025, the government borrowed a total of KES 9.11 trillion, of which only KES 2.57 trillion, or less than 30 percent, was authorized by Parliament through Appropriation Acts. This leaves a discrepancy of KES 6.54 trillion in borrowing that was never lawfully approved. Furthermore, of Kenya's total public debt of KES 13.1 trillion, the petition identifies KES 6.95 trillion (KES 6,950,163,132,328 to be precise) as qualifying as odious debt, borrowed outside the national budget process, not tied to development projects, and often routed through offshore accounts to circumvent the Consolidated Fund.

The Eurobond story is central to Omtatah's case. Kenya borrowed a total of USD 7.1 billion through Eurobonds between FY 2014/2015 and FY 2020/2021. Yet the petition alleges that the proceeds were banked offshore in accounts held at JP Morgan and Citibank, bypassing Kenya's Consolidated Fund entirely, a direct violation of Article 206 of the Constitution, which requires all public money to flow through the Consolidated Fund unless exempted by an Act of Parliament. The petition further alleges that the 2014 amendment to the Public Finance Management Act was itself unconstitutional for exempting loan revenues from this requirement, and did so by bypassing Senate involvement, an assertion that strikes this paper as legally credible and politically explosive.

Perhaps the most striking figure in Omtatah's petition concerns overpayment: the petitioners allege that Kenyan taxpayers have already overpaid public debt by KES 2,324,522,305,902, approximately KES 2.37 trillion, because repayments of KES 8.92 trillion exceeded the authorized KES 5.26 trillion (including interest) on legitimate debt. Additionally, the petition highlights a KES 6.16 trillion discrepancy between Central Bank and National Treasury debt records, suggesting either systemic accounting failures or deliberate misrepresentation of the country's debt position. Notably, the Central Bank of Kenya itself supported Omtatah's call for a multi-judge bench to examine these questions—a remarkable institutional admission that the debt figures do not add up.

This paper strongly agrees with the legal framework underlying Omtatah's petition. Bett (2018) argues that Kenya's Public Debt Management legal framework is fundamentally inadequate, lacking robust parliamentary oversight mechanisms, a dedicated debt management office with genuine independence, and constitutional borrowing ceilings with enforcement mechanisms. The petition's allegations are, in essence, the practical consequence of exactly the gaps Bett identified. Where this paper would go further than Omtatah is in noting that the problem is not solely about one administration: the structural incentives enabling odious debt accumulation have persisted across regimes, from Moi through Kibaki to Kenyatta and Ruto. The legal framework failed systematically, not episodically.

Jimi Wanjigi: The Political Economy of Odious Debt. Jimi Wanjigi, businessman and Safina Party leader, has mounted a sustained and increasingly precise public campaign since 2023 against what he terms Kenya's illegal debt. Speaking in January 2024, Wanjigi estimated that seventy percent of Kenya's debt consists of odious obligations, a figure that roughly aligns with Omtatah's petition arithmetic. At the time, Kenya's public debt stood at KES 10.2 trillion, including the USD 2 billion Eurobond due in June 2024.

Wanjigi traces what he calls the 'original sin' of Kenya's debt crisis to the 2014 amendment of the Public Finance Management Act. His argument, echoed by Omtatah's petition, is that this amendment concentrated borrowing authority in the hands of a small group of Treasury officials who could now secure loans without routing proceeds through the Consolidated Fund, thereby evading both the Controller of Budget's approval and the Auditor General's scrutiny. The first Eurobond of USD 2.75 billion was issued in June 2014, immediately after this legal change, and Wanjigi argues, supported by the petition's figures, that neither this bond nor subsequent ones can be traced to any specific development project.

Wanjigi's most provocative claim, made on multiple public platforms, is that Kenya has already overpaid its legitimate debt by at least KES 1.3 trillion and potentially by KES 2.37 trillion (consistent with the petition). He argues that the official debt figure of KES 13 trillion includes money that was never legitimately borrowed, money that never arrived in Kenya (he specifically cited that USD 1 billion of the 2014 Eurobond, approximately KES 129.1 billion at 2023 exchange rates, never entered Kenya yet remains recorded as debt), and repayments that have been made on phantom obligations. He explicitly called for Kenya to stop servicing odious debt and instead channel those resources into public services, arguing that 'every shilling spent on debt repayment robs Kenya's future.'

Wanjigi's most recent intervention, from June 2026, estimated that cancelling illegal debts could save taxpayers KES 2.8 trillion and eliminate Kenya's borrowing requirement entirely for the current fiscal year, a claim that, if even partially accurate, represents a staggering misallocation of public resources. He also pointed out that the government plans to raise KES 1 trillion from the domestic market to finance the 2026/27 budget, borrowing that he argues is necessitated by the crowding out of fiscal space caused by odious debt repayments.

This paper's assessment of the Wanjigi-Omtatah position is, on balance, sympathetic but nuanced. Their empirical figures, while not independently audited, are consistent with the constitutional and legal analysis of Bett (2018), the capital flight evidence of Otieno et al. (2022), and the political-economic critique of Cormier (2021). The KES 6.54 trillion in unappropriated borrowing is particularly significant because it establishes parliamentary breach as a matter of arithmetic, not merely allegation. The Standard Gauge Railway example, where Omtatah notes that construction funds were disbursed in China yet recorded as Kenyan debt without passing through the Consolidated Fund, was indeed challenged all the way to the Supreme Court, lending credibility to the broader pattern of extra-constitutional borrowing.

However, this paper would caution against the most radical implication of the Wanjigi position, that Kenya should simply stop all debt repayments and declare a unilateral moratorium. While morally compelling, such an approach carries severe credit downgrade risks that could curtail Kenya's access to international capital markets for years. A more calibrated approach, as recommended by Raffer (2010) and aligned with Mageto's (2022) legal-institutional framework, would be to use the courts, exactly as Omtatah is doing, to distinguish legitimate from odious debt, seek negotiated write-downs on the latter, and pursue criminal accountability for officials who enabled extra-constitutional borrowing.

RECOMMENDATIONS

Drawing on the scholarly literature and the empirical evidence canvassed above, this paper offers the following recommendations:

- 1. An immediate and independent national debt audit.** The Omtatah petition's KES 6.16 trillion discrepancy between Central Bank and National Treasury records cannot remain unresolved. Parliament should commission a multi-agency debt audit involving the Controller of Budget, Auditor General, Kenya Revenue Authority, and an independent external auditor. Every loan contracted since 2010 should be mapped against its Appropriation Act authorization, its disbursement records, and its documented development outcomes. This is the foundational step without which all other reforms float in the air.
- 2. A constitutional amendment to hardcode borrowing ceilings and parliamentary approval.** Bett (2018) argues convincingly that Kenya's legal framework for debt management lacks both ceiling provisions and enforcement mechanisms. This paper recommends a constitutional amendment requiring that: (a) all borrowing above a de minimis threshold receive prior parliamentary approval through Appropriation Acts; (b) all loan proceeds pass through the Consolidated Fund without exception; and (c) any amendment to the Public Finance Management Act relating to borrowing require approval by both the National Assembly and the Senate, reversing the governance erosion of the 2014 amendment.
- 3. Repeal the unconstitutional 2014 PFMA amendment.** The amendment that exempted loan proceeds from the Consolidated Fund and bypassed Senate oversight is the structural 'original sin' of Kenya's odious debt crisis. Both Omtatah and Wanjigi identify this amendment correctly. Its repeal is a necessary, though not sufficient, condition for restoring constitutional fiscal governance.
- 4. Pursue negotiated restructuring of odious debt.** Rather than unilateral repudiation, which carries severe market access consequences, Kenya should use the judicial process

initiated by Omtatah's petition to build a legally credible case for debt restructuring. Ecuador's 2008 experience provides a template: use a thorough audit to establish which debts fail the odiousness test, present creditors with the legal findings, and negotiate write-downs on that basis. This approach, supported by Raffer (2010), allows Kenya to reduce its debt burden while maintaining the rule-of-law credentials that protect its long-term credit standing.

5. Prosecute officials responsible for extra-constitutional borrowing. Omtatah's petition seeks to compel former President Kenyatta and other respondents to refund KES 4.6 trillion in odious debts plus interest. This paper supports the principle of personal accountability. Cormier (2021) argues that political elites resist debt transparency precisely because opacity protects their interests; only credible prosecution risk changes these incentives. The Ethics and Anti-Corruption Commission, the Director of Public Prosecutions, and the Asset Recovery Agency should be empowered and directed to pursue officials implicated in extra-constitutional borrowing.

6. Create a sovereign debt court or independent arbitration mechanism. Mageto (2022) calls for legal and institutional innovation to resolve East Africa's debt sustainability crisis. This paper recommends that Kenya advocate, within the African Union framework, for a standing African Sovereign Debt Court, analogous to the Heavily Indebted Poor Countries initiative but with teeth, that can adjudicate odious debt claims, impose creditor accountability, and provide orderly sovereign insolvency procedures akin to those available to corporate debtors under the Insolvency Act.

CONCLUSION

Kenya's debt crisis is not merely a fiscal problem. It is a democratic crisis, a constitutional crisis, and, on the terms of the odious debt doctrine articulated by Alexander Sack nearly a century ago, a crisis of political legitimacy. When a government borrows KES 9.11 trillion over a decade but can demonstrate parliamentary authorization for less than KES 2.57 trillion of that sum; when Eurobond proceeds bypass the Consolidated Fund and are routed through offshore accounts; when a KES 6.16 trillion discrepancy exists between the records of two arms of the same government; and when 73 percent of tax revenue is consumed by debt service, leaving little for hospitals, schools, or roads, the ordinary citizen is justified in asking: whose debt is this?

The scholarly literature reviewed in this paper converges on a common diagnosis: Africa's debt accumulation has outpaced both its developmental returns and its institutional capacity

to govern borrowing transparently (Adeniran et al., 2018; Fole, 2003; Cormier, 2021). Kenya exemplifies this pattern with particular intensity. The voices of Senator Omtatah and Jimi Wanjigi, far from being mere political noise, represent a legally and empirically grounded challenge to a debt architecture that violates the Constitution, the Public Finance Management Act, and the basic democratic principle that those who bear the burden of repayment should have consented to the borrowing.

This paper agrees with Omtatah that the petition before the High Court is a matter of national survival, not merely legal procedure. It agrees with Wanjigi that the 2014 PFMA amendment was the structural inflection point that enabled unchecked odious borrowing. And it agrees with the scholarly consensus, Bett (2018), Mageto (2022), Raffer (2010), that the path forward requires legal reform, institutional rebuilding, and the courage to apply the doctrine of odious debt not as a theoretical abstraction but as a practical instrument of fiscal justice.

The question Wanjigi asks is simple and devastating: 'If debt was borrowed, where did it go and what development did it finance?' Until Kenya can answer that question for every shilling of its KES 13.1 trillion public debt, the citizens of this country will remain hostage to obligations they may never have legitimately incurred. Public policy in Kenya must now choose between two futures: one in which debt accountability is pursued relentlessly through legal and institutional reform, and one in which the cycle of odious borrowing continues until it is interrupted—violently—by fiscal collapse. The time for half-measures has passed.

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