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Kenya's dam scandal is the latest in a long line of major corruption scandals that have bedevilled its political environment. The scale of the scandal escalates as the investigation moves to Italy, Germany, the United Kingdom and South Africa. Early investigations show the projects were phantom and designed to siphon money from the treasury. Despite competent investigators and prosecutors, arrests and convictions are unlikely. A corruption scandal close to deputy president William Ruto has increased divisions in the ruling alliance as President Uhuru Kenyatta (2013-present) sidelines Ruto in favour of Orange Democratic Movement (ODM) leader Raila Odinga. Ethiopian Airlines' Boeing 737 Max 800 crash claims the lives of 32 Kenyan nationals. Kenya Airways calls on the government to nationalise it and assume its KSh220 billion (\$2.2 billion) debt, which will sharply increase the fiscal deficit.

Latest corruption scandal points to Ruto

Treasury cabinet secretary (finance minister) **Henry Rotich's** career is hanging in the balance as **Kenya's** latest corruption scandal points to the involvement of the deputy president, **William Ruto**. In extent and value, the dam scandal is as big as Kenya's most notorious corruption scandals, the \$400m **Goldenberg** affair that rocked the country during the 1990s, and the **Anglo Leasing** contract scandal valued at KSh55 billion (\$550m) in the early 2000s. It appears that the projects to build the **Arroyo** and **Kimwarer** dams in **Elgeyo-Marakwet County** were phantom, conceived as a money-laundering scheme with no plans for an actual build. Kenya may have to repay bankers' loans for a project that exists only on paper.

Detectives from the **Directorate of Criminal Investigations (DCI)** questioned Rotich for several hours over three days from 5 March on details of two multi-billion shilling tenders awarded to **Italian** company **CMC di Ravenna**, which has since claimed bankruptcy (see *ARC Briefing Kenya February 2019*). The DCI launched investigations after bankruptcy filings in Italy revealed that the bulk of KSh6.3 billion (\$63m) paid by Kenya's treasury to CMC di Ravenna and its joint venture partner, Italy-based **Ilinera SPA**, was re-routed back to Kenya. Some KSh4 billion (\$40m) was routed via **London (United Kingdom)(UK)** to banks in the **Nairobi** business district of **Westlands**.¹ Although no charges have been brought against Rotich, the DCI has handed a preliminary report to the **Director of Public Prosecutions (DPP), Noordin Hajji**.²

The scale of the corruption scandal has since escalated. Deputy president William Ruto intervened to challenge DCI chief **George Kinoti's** claim that the amount was KSh21 billion (\$210m), saying the amount was KSh7 billion (\$70m). Finance minister Rotich took out a full-page newspaper advert in **The Standard** to confirm that the treasury paid KSh21 billion (\$210m) to the contractor and an insurance firm in Italy.³

¹ The Sunday Standard, 24 Feb 2019

² Kenya Today, 11 Mar 2019

³ Daily Nation, 5 Mar 2019

“The difference between the KSh21billion (\$210m) and KSh6.3 billion (\$63m) is the insurance arrangements against non-payment to the lenders for the loan agreement. The insurance amount is the investigators who found it out and is disclosed in the minister’s statement.”⁴

Rotich reported that four banks – led by Italian bank **Intensa Sanpaolo SPA** and including **Belgium**-based **BNP Paribas Fortis**, Italy-based **Unicredit SPA**, and **Germany**-based **Unicredit Bank AG** – were involved in financing 12% of the dam loans⁵ to the tune of KSh65 billion (\$650m) and are seeking repayment of loans.

The investigation has spread to Italy, the UK and **South Africa**. CMC di Ravenna South Africa director **Paolo Porcelli** signed the contract, although none of the Italian directors in Italy, South Africa or **Munich** (Germany) have been prepared to make a statement.⁶ The DCI has called on the UK’s **National Crime Agency (NCA)** for support. In Kenya, parliament’s national committee on the environment has suspended work on all dam projects worth KSh188 billion (\$1.88 billion) and called on the DCI and the **Ethics and Anti-Corruption Commission (EACC)** to investigate how these projects were procured.⁷

Questions surround how treasury and officials from **Kerio Valley Development Authority (KVDA)** – a body established in 1979 for river-based development programmes in the **Kerio Valley** basin – released billions of shillings to a project with no feasibility study, whose engineering had not been designed, and to a contractor that reportedly has never been to the site. Fourteen months after the treasury paid KSh7 billion (\$70m), no work has been done on the dams, and CMC di Ravenna’s bankruptcy means it has abandoned the **Itare** dam in **Nakuru County**. KVDA MD **David Kimosop** reportedly only carried out due diligence into CMC di Ravenna after it had signed a contract but failed to pick up that the company was in financial difficulties and that it is facing fraud charges after a southern Italy court opened a criminal investigation into the award of a contract for a new port in **Molfetta** (Italy).

Investigators are developing information around the flow of money from treasury to the contractor and back to a host of Kenyan suppliers. The DCI has summoned representatives of 27 companies and interviewed 100 of them to explain payments the Italian firm made to them.⁸ CMC di Ravenna was reportedly required to release money to settle people that the dams would displace. However, Kenyan firms that received the cash were instructed to supply and deliver material unrelated to construction of a dam to sites in **Eldoret (Uasin Gishu County)** and in Nairobi. These include luxury towels worth KSh20m (\$200,000), tiles, carpets, mattresses, bedding and headboards, and payments to tour and travel companies.

Newspaper reports of the investigations to date have linked some very high profile Kenyans to the scandal. Most prominent is the claim the Italian firm paid a company associated with deputy president Ruto's chief of staff, **Ken Osinde**, some KSh47m (\$470,000).⁹ Osinde, a former envoy to Germany, **Romania** and **Bulgaria**, is also listed as a director of South Africa-headquartered **Sanlam General Insurance Ltd**. Osinde’s company sent a director, **George Ngugi Kuria**, to the DCI to explain the payments.¹⁰

Other high profile names mentioned as associated with the investigation include:

- Agriculture minister **Mwangi Kiunjuri**;
- Devolution minister **Eugene Wamalwa**;
- Former environment minister **Judi Wakhungu**;

⁴ ARC source

⁵ Business Daily, 5 Mar 2019.

⁶ Daily Nation, 6 Mar 2019.

⁷ Kenyans, 6 Mar 2019.

⁸ The Standard, 25 Feb 2019.

⁹ Daily Nation, 27 Feb 2019.

¹⁰ Daily Nation, 27 Feb 2019.

- **Telkom Kenya** CEO and former director-general of **Kenya Vision 2030 Delivery Board**, **Mugo Kibati**;
- **Ramesh Vora's Heritage Insurance Company**;
- Former attorney-general **Charles Njonjo**;
- Former civil service head **Jeremiah Kiereini**;
- Former cabinet minister **Simeon Nyachae** and his company **Kentainers Ltd.**¹¹

Despite the extensive investigations, previous experience shows it is highly unlikely that anyone involved will face criminal prosecutions or jail time, particularly the senior politicians who are undoubtedly involved. The **2010 Constitution** gives new powers and independence from political interference to both DPP head Noordin Hajii and DCI chief George Kinoti. ARC sources describe Hajii as one of the most dedicated and competent prosecutors: a former intelligence officer, he is reported to have the nerves of steel that are required to take on a corrupt and criminal political elite. Similarly Kinoti, fully aware of the threats facing him, has created a multi-agency team, allowing him to work with agencies such as the **Financial Reporting Centre**, the **Banking Fraud Investigation Unit** of the **Central Bank of Kenya**, the **Asset Recovery Agency**, and the **Kenya Revenue Authority (KRA)**. Local journalists report that Kinoti makes good use of Kenya's highly free and competent press to get corruption stories out into the open to elicit further information.

Rifts in the Rift, a year since the handshake

A corruption scandal so close to deputy president William Ruto, and one which may yet implicate him, has put him under pressure at a time when his followers in his **Rift Valley** home turf fear he has been sidelined in President **Uhuru Kenyatta's** (2013-present) administration.¹² The rapidly unfolding corruption story (see above) will increase divisions in the **Jubilee** coalition and provide the Kenyatta camp with ammunition to sideline Ruto further. ARC sources have reported for the past two years the increase in corruption emanating from the deputy presidency and his entourage. Sources report that Ruto has taken interests in companies including cement telephone polls, hotels, banks and, controversially, in land.¹³

*"Both sides [Kenyatta and Ruto] are highly corrupt but Ruto is building a war chest for the election in 2022. It's the only way he will win. He is not popular. People fear him."*¹⁴

Another says,

*"Don't underestimate Ruto or his ambition. He is a workaholic. He doesn't drink. He is up at 5 am. During the election it was he who kept the show on the road, while Kenyatta bowled up mid-morning having had a few. Ruto is up early and hosting meetings from early until late at night. All signs were initially that they were holding the [Jubilee] coalition together."*¹⁵

However, the sidelining is increasingly apparent one year on from what has become known as the "handshake deal" between opposition **Orange Democratic Party (ODM)** leader **Raila Odinga** and Uhuru Kenyatta, his long-standing opponent, on 9 March 2018. The handshake brought an end to a year-long impasse after Odinga claimed he had won the controversial 8 August 2017 presidential elections and set up a rival government. The handshake effectively co-opts Odinga as de-facto prime minister.

*"The handshake deal was deliberate and a clever move to curb the power of the deputy president. Kenyatta has surprised with the move. People fear a Ruto presidency and are doing everything to prevent it or curb his power when the time comes. There is much talk of a referendum."*¹⁶

¹¹ The Daily Nation, 27 Feb 2019

¹² Journalist source

¹³ Business sources, Nairobi

¹⁴ Business executive, Nairobi

¹⁵ Business executive, Nairobi

¹⁶ Journalist, Nairobi

Two major changes to the constitution were mooted at the **6th Annual Devolution Conference** of Kenya's 47 governors from 4 - 8 March at **Kirinyaga University (Kirinyaga County)**. Kenyatta loyalist and **Meru County** governor **Kiraitu Murungi**, who chairs the **Council of Governors' (COG)** constitution committee, raised the need to change the constitution to trim the president's powers further and to create the post of prime minister with two deputy prime ministers.¹⁷ More than one source believes this constitutional change is to allow Uhuru Kenyatta to step down as president and then become prime minister for the duration of Raila Odinga's term, thus extending his control on power. Adding salt to the wounds, Odinga was prominently seated at the conference with equal stature to the deputy president.

Devolution – an avenue for corruption rather than delivery?

Government graft, financing of the counties, and further changes to the constitution were prominent subjects of the devolution conference. Kenyatta lambasted the assembled governors in an anti-graft message that was a veiled swipe at Ruto whose supporters claim the anti-graft war is being directed at them to reduce the chance of Ruto winning in 2022.

“Thieving ways in both the national and county governments will not be allowed to continue and seeking shelter into ethnic solidarity will not win that war.”¹⁸

Odinga is reportedly behind a move to reduce the number of counties because of their cost. However, devolution and guarantees to counties of a portion of the budget were among the main changes of the 2010 Constitution.¹⁹ Several of the governors have built significant local political power bases and oppose central government attempts to curb their powers. Governors countered the government proposals with complaints about treasury's delays in releasing funds and paralysing operations in the counties. Independent commentators voice concern that devolution has entrenched tribalism in the counties, which has led to violence against minority groups.

“And [a further concern is] the levels of corruption, with governors building big houses and enriching themselves.”²⁰

Devolution cabinet secretary Eugene Wamalwa countered the governors' complaints that the ballooning wage bill and county corruption were the main problems with devolution.

“When more money is spent on salaries then little development takes place, this is not helping Kenya.”

In the counties themselves, devolution is still popular:

*“Devolution is good. Before it was only Nairobi. Everything happened in Nairobi. We did not matter. The old governor of **Lamu** was very good. He went to live with the communities all over Lamu County to hear their concerns and then work out what could be done for them. The new governor is not as good, he is only interested in money.”²¹*

Another source said that since the first elections, the Nairobi government had been able to organise **Kikuyu** people to vote for a governor who would support them locally.

Ethiopian Airlines crash undermines Boeing rather than Ethiopian Airlines ...

An **Ethiopian Airlines** crash on 10 March claimed the lives of 32 Kenyans out of a total 157 people killed.²² The **Boeing 737 Max 800** aircraft crashed shortly after takeoff from Ethiopian Airlines' regional hub, **Addis Ababa (Ethiopia)**. Several of the passengers were en route for Nairobi to attend

¹⁷ Daily Nation, 7 Mar 2019

¹⁸ President Uhuru Kenyatta quoted in Daily Nation, 6 Mar 2019

¹⁹ Kenya constitution August 2010

²⁰ Nairobi lawyer

²¹ Lamu resident, Lamu County

²² Standard, 12 Mar 2019.

a **United Nations Environment Assembly (UNEA-4)**.²³ State-owned Ethiopian Airlines, which has been in service since 1945, is a highly successful business and has an excellent safety record given its longevity. The Boeing 737 Max 800 was new to the Ethiopian fleet and is the second Boeing to have crashed on takeoff in six months after an **Indonesian Lion Air** Boeing 737 Max 800 crashed in Indonesia in October with the loss of 189 people. The Ethiopian Airline crash has prompted a worldwide ban on the Boeing 737 Max 800. On 13 March, the **United States** became the latest country to ground the aircraft pending investigation.

The Ethiopian Airlines crash obscured the news of debt and disarray at **Kenya Airways (KQ)**. Kenya Airways' board has called on the government to nationalise the airline and assume its KSh220 billion (\$2.2 billion) debt.²⁴ A memo presented to President Kenyatta, transport minister **James Macharia** and cabinet reported that the airline had no cash flow buffer and its revenue would not allow it to generate a positive cash flow. Kenya Airways said that the alternative was insolvency, which would see lessors repossessing KQ aircraft and engines, and trigger the government's existing KSh74 billion (\$740m) sovereign guarantee.

The airline proposes to create a new company, **Kenya Aviation Holdings**, which would run the nationalised airline and other aviation-related business within the airport to generate more revenue. The nationalisation would see the government buy out the airline's foreign partner, **Netherlands-based KLM**, banks whose debts had turned into equity, as well as minority shareholders. The Kenyan government is currently the majority shareholder in KQ, with a 48.9% stake.²⁵ Finally, the Kenya Airways board urged the government to support its plan to take control of the **Jomo Kenyatta International Airport (JKIA)**, as 60% of airport business is derived from KQ traffic. The suggestions prompted the **Kenya Aviation Workers Union** members to strike, fearing job losses.

Should the government agree to assume the Kenya Airways debt, it could be a dramatic and destabilising economic event with a negative impact on the country's firming currency. This would add to Kenya's fiscal deficit, standing at KSh635.5 billion (\$6.355 billion) for the current year, which is financed by external borrowing of KSh321.5 billion (\$3.215 billion) and domestic borrowing of KSh310 billion (\$3.1 billion). This may in turn impact the country's ability to raise a fresh **Eurobond**. US-based bank **Citi's** chief economist for Africa, **David Cowan**, said Kenya may need to agree a new **International Monetary Fund (IMF)** standby facility before going to the market for a new Eurobond.²⁶ One of the key IMF conditions is to remove the rate cap on bank loans, which would involve the president spending considerable political capital to persuade parliament to drop this popular but economically damaging measure.

²³ Al Jazeera, 13 Mar 2019.

²⁴ Daily Nation, 8 Mar 2019.

²⁵ Daily Nation, 8 Mar 2019.

²⁶ Business Daily, 5 Mar 2019.

Planner

27 Mar 2019 **Nairobi (Kenya)** *Central Bank of Kenya*. **Monetary Policy Committee** meeting;
 Aug 2019 **(Kenya)** *The Star*. National census planned;
 2022 **(Kenya)** *Daily Nation*. General elections to be held;

Chronology

13 Mar 2019 **Nairobi (Kenya)** *Business Day* **France's** president, **Emmanuel Macron**, makes the first visit of a French president to co-host the fourth session of the **United Nations Environment Assembly (UNEA-4)**;

13 Mar 2019 **Washington DC (USA)** *Washington Post* President **Donald Trump** orders that all **US Boeing 737 Max 800** be grounded;

10 Mar 2019 **Addis Ababa (Ethiopia)** *Daily Nation* **Ethiopian Airlines** new Boeing 737 Max 800 crashes shortly after takeoff, killing all 157 onboard;

6 Mar 2019 **Nairobi (Kenya)** *Business Daily* Business confidence in the private sector drops to a 15-month low on subdued operating conditions, according to **Stanbic Bank Kenya Purchasing Managers Index (PMI)**.

6 Mar 2019 **Nairobi (Kenya)** *Business Daily* **Citi** chief economist **David Cowan** says Kenya would need to agree a new **International Monetary Fund (IMF)** standby facility before going to the market for a new **Eurobond**;

2019 **Nairobi (Kenya)** *Business Daily* Global property group **Knight Frank** reports that 306 Kenyans became dollar millionaires in 2018, of whom 125 are valued at more than KSh3 billion (\$30m), while 9,482 Kenyans are worth more than KSh100m (\$1m) each;

6 Mar 2019 **Nairobi (Kenya)** *Daily Nation* **Africa** subsidiary of US-based **Coca-Cola Beverages Africa Ltd (CCBA)** will suspend a clause that allows it to set prices for its distributors of non-alcoholic drinks after an audit carried out by the **Comesa Competition Commission** on the grounds that it was inflationary.

6 Mar 2019 **Nairobi (Kenya)** *Daily Nation* **Kenya Airways** and **Astral** have objected to the **Kenyan Civil Aviation Authority (KCAA)** over the award of rights to **Ethiopian Airlines** to operate cargo flights between Kenya and **Europe**; Ethiopia does not allow cargo airlines to run the **Nairobi-Addis Ababa** routes;

6 Mar 2019 **Nairobi (Kenya)** *The Standard* Investigators question cabinet secretary **Henry Rotich** with his lawyer over KSh6.3 billion (\$63m) dam projects;

5 Mar 2019 **Nairobi (Kenya)** *Daily Nation* **National Land Commission (NLC)** says **James Finlay, Unilever George Williamson** and **Sotik Highlands** tea estates' leases will not be renewed unless agreed with devolved governments;

5 Mar 2019 **Nairobi (Kenya)** *Daily Nation* Agriculture minister **Mwangi Kiunjuri** confirms that the ministry received KSh2.7 billion (\$27m) to pay sugar farmers as **Orange Democratic Movement (ODM)** party leader **Raila Odinga** says state-owned sugar companies such as **Chamelil, Miwani, Muhuroni, Nzoia** and **Sony** sugar will be privatised;

5 Mar 2019 **Tharaka-Nithi (Kenya)** *Daily Nation* **National Land Commission (NLC)** has granted 3,500 residents 10,000 acres of **Mount Kenya** forest reserve, a **Unesco** biosphere reserve and world heritage site;

5 Mar 2019 **Nairobi (Kenya)** *Daily Nation* Trial of former **Nairobi County** governor **Evans Kidero** and eight others on charges of graft and abuse of office is postponed; All are charged on

conspiring to commit fraud, which led to the theft of KSh213,327,300 (\$2.13m);

5 Mar 2019 **Nairobi (Kenya)** *Daily Nation* **Italy**-based **CMC di Ravenna** reportedly abandoned a project in **Nepal** in December; The Nepalese government seized its performance bond of NPR2 billion (\$17.8m) after it failed to complete its project;

4 Mar 2019 **Juba (South Sudan)** *Al Jazeera*. **Ethiopia's** prime minister, **Abiy Ahmed** and **Eritrea's** president, **Isaias Afwerki**, visit President **Salva Kiir** to revive the peace deal;

26 Feb 2019 **Nairobi (Kenya)** *VOA* **Kenya**-based ride hailing app **Little Cab** expands its business to **Tanzania** and **Ghana**;



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Getting in touch

Please contact us by email info@africariskconsulting.com or call + 44 (0) 20 7078 4080
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