



LISTEN TO THE KENYAN PEOPLE AND ACT WITHIN THE CONSTITUTION BY ENACTING A NEW BUDGET.

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The call by the Gen Z and Kenyans at large is that the government's appetite for spending far outmatches the country's capacity to realize such revenues. Gen Zs and Kenyans are asking that we live within our means! President Ruto's assent of the Appropriation Bill is a betrayal and insult to the public. His actions are tantamount to signing off expenditures whose financing Kenyans have forced him to reject. The glaring and connected consequence is a spending deficit of more than Ksh. 1 trillion in FY 2024/25, which the government will conveniently convert to public debt against citizens' preference, and a disproportionate intergenerational debt burden.

President Ruto proposed to Parliament that the Appropriation Act should be amended through a supplementary budget. Already, these adjustments are set to be regularized by the FY 2024/25 Supplementary Estimates No. 1. Pending approval, the government asserts it will exercise expenditure control through the implementation of austerity measures on the provisions for operations and maintenance. This goes against the letter and the spirit of Article 223(1) of the constitution, which provides that 'Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if –

- (a) the amount appropriated for any purpose under the Appropriation Act is insufficient, or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or**
- (b) money has been withdrawn from the Contingencies Fund.**

Therefore, a supplementary budget cannot be used to amend the Appropriation Act. To give effect to the people's intentions to live within their means, the Appropriation Act must be amended exhaustively. This is not just a suggestion but a necessity to reduce expenditures to ensure that appropriations meet the requirements of Article 201 of the Constitution. The urgency of this situation cannot be overstated. We need to make these amendments to ensure a more prudent and responsible use of public funds.

The rush to sign the Appropriation Bill reeks of mischief, mainly because any failure to finalize the Appropriation Bill in time is well anticipated in the Constitution under Article 222(1), which permits the National Assembly to authorize the withdrawal of up to 50% of the estimated expenditures from the Consolidated Fund pending presidential assent to the Appropriation Bill. Therefore, there would be no crisis in meeting Kenyans' demands for prudent and responsible expenditure instead of betraying the people's will by using a route to enact very high expenditure for the national government while stopping that of county governments which are responsible for most essential services. It is especially curious what will be the basis of amending the County Allocation of Revenue bill seeing as the signed appropriation act which is the basis has the entire budgets without any cuts.

The continued statement on using the supplementary budget to amend the Appropriation Act must cease and allow redress of measures for grave budgetary expenditure violations. Indeed, the government, in seeking to address the demands of Kenyans led by Gen Zs, must come with clean hands through strict adherence to the rule of law.

Further, in recent developments, the President has outrightly violated and annihilated the provisions of the Constitution of Kenya, 2010, in issuing Gazette Notice No. 5261 of 2024, establishing a Presidential Task Force on Forensic Audit of Public Debt. We wish to emphasize that we have called for a forensic audit of public debt that covers a longer term so as to give an end-to-end state of our public debt. The Terms of Reference of the Taskforce are what Kenyans need. We are, however, concerned that the establishment of the taskforce is in contravention of aspects of Article 229 of the Constitution, which establishes the Office of the Auditor General and vests the responsibility of auditing public debt exclusively on this Office. Article 229(4) stipulates that such audits are to be performed by the Auditor General within six months after the end of each financial year. As such, the 90 days given to the taskforce seem short if they are to look into multiple years.

Additionally, as per article 226(2), the Constitution notes that all accounting officers at the national government level shall be answerable to the National Assembly, and 226(3) mandates that all accounts shall be audited by the auditor general. Therefore, any audit, regular or forensic, is a mandate of the auditor general, and any request for a forensic audit may only be done by parliament pursuant to Section 37 of the Public Audit Act. Mr President, you have no power to appoint a task force to audit public debt; that power belongs to Parliament. Indeed, as per Article 211 of the Constitution, Parliament has the power to impose reporting requirements, and whenever they require any information, the same information should be given to them within 7 days. The Task Force's appointment raises serious concerns about respect, recognition, and support for the rule of law, separation of powers and respect for independent constitutional offices, and in particular the Office of the Auditor General and Parliament. In the same breath, we demand that parliament takes up its responsibility to approve the audit reports and also provide the auditor general with sufficient resources to undertake detailed public debt audits. We are also demanding that the OAG makes public all audits undertaken on public debt and what the recommendations are.

Despite the government's elaborate efforts to adjust to the citizen demands, it has been clear that the administration is not committed towards the fight against revenue leakages through corruption, illicit trade and money laundering. According to the Ethics and Anti-Corruption Commission, Kenya loses Ksh. 608 billion/= (7.8% of the country's GDP) to corruption annually. The Corruption perception index 2023 places Kenya at a score of 31/100, which shows deterioration in the Kenya anti-corruption efforts. We also continue to note the continued reluctance in prosecution of corrupt individuals, as well as withdrawing of corruption cases.

Under the current circumstances, we advise that the executive headed by the President and especially the National Treasury be ready to supply Parliament with all information on all public debt within 7 days when Parliament adopts a motion requiring it. The information submitted to parliament will then be handed to the Auditor General to conduct the forensic audit of public debt and submit the findings to parliament and we, the people of Kenya, for action.

The government should not sacrifice the constitutional imperative for prudent and responsible expenditure and adherence to the rule of law through respect of institutions on the altar of populism, misinformation, and convenience for the ruling class.

Moving forward:

We demand that

- 1. Parliament should enact a new appropriation law per the people's wishes and in strict compliance with the Constitution and the law, preferably one based on zero-based budgeting, to disrupt the entrenched templates that have continued to perpetuate fiscal imprudence.**
- 2. Parliament exercises its powers under Article 95(4)(c) and Article 211 of the Constitution as read with Section 37 of the Public Audit Act, to adopt a resolution requesting the Auditor General to undertake both a forensic and performance audit of all public debt acquired by Kenya since the promulgation of the Constitution of Kenya 2010. Parliament should provide clear terms of reference for the audit and put all its resources at the disposal of the Auditor General in undertaking this task. Parliament should also give the Auditor General a limited timeline within which to conclude the audit and report back to Parliament.**
- 3. Upon receipt of the request from Parliament, the Auditor General submits to Parliament through a public memorandum everything the Office would require to conduct a comprehensive forensic and performance audit of Kenya's public debt.**
- 4. The findings should inform the restructuring of Kenya's debt with necessary institutional and legislative reforms accompanied by firm corrective action against all government officials who may be found to have violated the Constitution and thereby subjected Kenyans to more than a decade of economic violence.**
- 5. The budget allocations are reduced further by Ksh. 119,491,636,547 in addition to the Ksh. 177,000,000,000 cuts proposed by the President, which now totals Ksh.**

296,491,636,547. All unconstitutional expenditures, including NGCDF, NGAAF, payment of advisors in place of established institutions, and payment of Chief Administrative Secretaries and offices of spouses of constitutional office holders, be struck off and not expended in any form or manner during this redress period as we await a new appropriation act for the year 2024/25.

6. The president rescinds and retracts the appointed forensic debt audit task force and allows the Auditor General to undertake the audit as part of the Office's mandate under the Constitution
7. That the consolidation and austerity measures respect and recognize that we are a devolved system of government. Therefore, accord county governments adequate revenue and equal treatment.
8. The ODPP, EACC, Judiciary & ARA to fast-track the prosecution corruption cases, and review of charge sheets to include criminal proceedings to the accused persons implicated in the prosecutions, and in the same vein, sanction and debar public prosecutors who bangle public interest cases

The Okoa Uchumi campaign is a citizen and civil society platform committed to working with stakeholders to resolve Kenya's public debt crisis. The campaign advocates for balanced and equitable budgets to achieve debt sustainability and economic inclusion. It seeks to bolster constitutional safeguards in public debt management and push for political leaders' accountability in public debt management.