



DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

MR. NOORDIN M. HAJI, OGW, CBS

PRESS RELEASE ON INVESTIGATIONS OF ERROR AND

KIMWARER DAMS

Good Morning everyone.

Thank you for coming.

Our Constitution articulates some of our national values and principles of governance to include Integrity, Transparency, Accountability, Equity, Human Dignity, Inclusiveness, Patriotism and Sustainable development, aspects that citizens expect everyone especially those in positions of authority to uphold.

Upholding these values which form the core of our soul as a Nation is vital to our very existence as a people. Whenever these values are betrayed by those in positions of authority, who misuse their privilege to conspire, connive and commit crimes against the

people; our laws expressly mandate the law enforcement agencies and the Office of the Director of Public Prosecutions to step up and safeguard the public good and interest.

Public corruption is a blatant abuse of power by persons in position of authority and it threatens the very fabric of our nation. Kenyan's have seen and experienced firsthand how public corruption tears us apart, undermines and destroys our governance structures, betrays the citizens' trust and kills the civic spirit of people by robbing them of the hope that they can live in a country that is not fundamentally rigged against them and in which nobody is above the law no matter how powerful.

The Office of the Director of Public Prosecutions draws its mandate directly from Kenyans who enshrined it in the Constitution, as a safeguard against crime and criminal elements.

As the Director of Public Prosecutions, I take my constitutional mandate seriously. Having seen the adverse effects of corruption in our society, the Office of the Director of Public Prosecutions has stepped up efforts to prosecute corruption and economic crimes and bring to account those culpable no matter their station in life. I know that when citizens trust that our laws apply to all and I mean everyone, then they will in turn uphold and respect the rule of law.

The crime of Corruption is not only against each of us individually, but also against all of us collectively as the people of

Kenya. Each time we make the decision to charge and prosecute corruption cases, we know that we are safeguarding the public good. Each prosecution sends a powerful message to the corrupt or those being tempted by opportunities to steal that they shall be prosecuted. As a society guided by laws, we collectively agree that those corrupt individuals who put honest hardworking *Mwananchi* at a disadvantage at times even condemning them to loss of lives; must pay for their crimes. Most importantly, our message to every hardworking, law abiding Kenyan, those who play by the rules and pay their taxes, is - we are going to stand by you.

On 18th September 2018, the Director of Criminal Investigations received complaints touching on governance and operation challenges in the management of the two dam projects (Arror and

Kimwarer) that required urgent attention. Upon investigations by the DCI, it was established that the conception, procurement and payment process for the Arror and Kimwarer Dam projects in Elgeyo Marakwet County were riddled with massive illegalities. Having established this, the DCI and I set up a joint team that conducted further in-depth investigations which revealed that several persons and legal entities committed criminal acts and omissions.

In late February 2019, I received a preliminary investigation report and upon review, I directed, on the 8th of March 2019, that the breaches of the law disclosed, and their consequences were serious and merited a detailed and thorough investigation. I further directed that the joint team fast track the investigations and engage international partners.

In June 2019 the DCI submitted the investigation file to the ODPP for direction.

The investigations established that government officials flouted all procurement rules and abused their oath of office to ensure the scheme went through. Many procurement procedures as stipulated by the law for such projects were ignored and the law was circumvented to ensure that CMC di Ravenna got the contract. KVDA chose Public Procurement and Disposal Act (PPDA), 2005 for the concession agreements despite the fact that the law in 2013 prescribed Public Private Partnerships (PPP). The officials who should have pointed this out failed to do so and went ahead to award the contracts to CMC De Ravenna of Italy to run concurrently while aware that the firm was, at the time of award, straining and getting into voluntary liquidation back in Italy. We

also note that the same firm had been awarded three other mega dam projects that are either incomplete or are yet to commence.

KVDA management failed to comply with the principle of value for money which demands that there be competition amongst suppliers, efficiency and effectiveness in the procurement process, fairness and non-discrimination, integrity, transparency, and accountability. This was, in flagrant disregard to the laid down public procurement laws, regulations and rules resulting in massive loss of public resources.

Whereas the alleged commercial contract signed between KVDA and CMC Di Ravenna/Itinera JV clearly states that Kimwarer Dam would cost USD 204,020,149.02 while Arror Dam would cost USD 252,188,732.27 totaling to USD 456,208,881

(approximately Kshs 46 Billion), the National Treasury negotiated a commercial facility increasing the amount to approximately Kshs. 63 Billion which is 17 Billion more than necessary or required payable on a timely basis without regard to performance or works. We now also know that CMC di Ravenna submitted draft technical designs in February 2019 four years behind schedule.

Further, the National Treasury entered into a facility contract in Euros while the commercial contracts were in USD therefore occasioning further loss to the Kenyan Government through exchange rates. Of note, out of the Kshs 63 Billion in respect of the projects, as at January 2019, the government of Kenya has made the following payments: advance payment, commitment fee, insurance and other costs totaling Kshs 19,714,366,991. Out

of this, Kshs 11 Billion for insurance was paid upfront. In contrast, if the borrowing was justified, a government guarantee would have sufficed at no cost to the Government of Kenya and *Mwananchi*. Further, Euros 40,031,927 (approximately Ksh 4.6 Billion) was borrowed in addition to the principle amount to pay interest in advance during the construction period which to date has not commenced. As a country, we continue to pay interest on the loan.

A further Kshs. 643 Million was released by the National Treasury as counterpart funds which was intended for the resettlement of the persons that would be affected by the said projects, as compensation for the land acquired. However, there is no evidence that land has been acquired four years down the line. Furthermore, Kenya Forest Service in a bid to protect our

environment strongly opposed any excision of forest land pointing to significant adverse impact on the forest ecosystem.

Based on expert opinion, if this project was carried out in strict adherence to the law and existing Policies in place for safeguarding the public interest it should not have cost Kshs 63 Billion.

The evidence established malpractices that impacted on our public debt a treasury report dated 3 march 2017 opined that, “if this borrowing is converted into Kshs at the prevailing rate of 106.2 it translated to a approximately a loan amount of 61 Billion. Added to the GoK total public debt stock of KSHs 3,983 Billion as at 27th February 2017 debt stock increases to Ksh 4,043 billion equivalent to 52.9% in the Net Present Value of Debt to GDP

which is above the limit of 50% provided for in section 26 (1) of the Public Finance Management Regulations.” This advice was ignored. It is a high betrayal of public trust to disregard and breach public debt regulations. This kind of crime and irresponsibility enslaves us with unnecessary debt and mortgages our future generations.

The persons we are charging today were mandated with safeguarding our public interest and deliberately breached this trust and not only bound Kenya to a loan but they ensured that the funds did not come into the consolidated fund, in effect guaranteeing that no one was oversighting its use, they broke the law on *Public finance Management*. Under the guise of carrying out legitimate commercial transactions colossal amounts were unjustifiably and illegally paid out through a well-choreographed

scheme by government officers in collusion with private individuals and institutions.

Upon receiving and reviewing the evidence, I am satisfied there is sufficient evidence to charge and prosecute the perpetrators. It is instructive to note that the National Prosecution Policy requires the evidential test to be met before the public interest can be considered. Therefore, in applying the evidential test, one must consider all the evidence and information availed to the prosecutor, and in concluding that it is in the public interest to prosecute these cases, I have considered that such infractions are crimes against *Mwananchi* individually and collectively and the decision to prosecute is in line with safeguarding the public good. This decision has been made professionally, independently,

devoid of any external influence, political consideration, or any other extraneous matters.

Consequently, I have today directed the DCI to effect the arrest and immediate arraignment before court, of the accused persons named herein below:

NO	NAME	COMMITTEE
1.	Henry Kiplagat Rotich	Cabinet Secretary, National Treasury
2.	Kamau Thugge	Principal Secretary National Treasury
3.	Dr. Susan Jemtai Koech	Principal Secretary, Ministry of East Africa Community

4.	David Kipchumba Kimosop	Managing Director, Kerio Valley Development Authority (KVDA)
5.	Kennedy Nyakundi Nyachiro	Chief Economist and Head of Europe II Division National Treasury
6.	Jackson Njau Kinyanjui	Director Resource Mobilization Department National Treasury
7.	Titus Murithii	Inspector General of State Corporations
8.	Paolo Porcelli	Director CMC di Ravenna
9.	CMC di Ravenna – Itinera JV Italy	
10.	CMC di Ravenna – Itinera JV Kenya	

11.	William Kipkemboi Maina	Head of Supply Chain Management (KVDA)
12.	Paul Kipkoech Serem	Manager Engineering Services (KVDA)
13.	Francis Chepkonga Kipkech	Tender Committee
14.	Samuel Kimutai Koskei	Tender Committee
15.	David Juma Onyango	Tender Committee
16.	Patrick Kiptoo	Tender Committee
17.	Elizabeth Kebenei	Tender Committee
18.	Esther Jepchirchir Kiror	Tender Committee
19.	Moses Kipchumba	Ad hoc Technical and Financial Evaluation Committee Team 2

20.	Eng. Nelson Korir	Ad hoc Technical and Financial Evaluation Committee Team 2
21.	Eng. Isaac M. Kiiru	Ad hoc Technical and Financial Evaluation Committee Team 2
22.	Eng. Patrick Kipsang	Ad hoc Technical and Financial Evaluation Committee Team 2
23.	Fredrick Towett	Ad hoc Technical and Financial Evaluation Committee Team 2
24.	Jotham Rutto	Ad hoc Technical and Financial Evaluation Committee Team 2
25.	Charity Muui	Ad hoc Technical and Financial Evaluation Committee Team 2
26.	Geoffrey Mwangi Wahungu	CEO, National Environment Management Authority (NEMA)

27.	David Ongare	Walunya	National Management Authority (NEMA)	Environment
28.	Boniface Lengisho	Mamboleo	National Management Authority (NEMA)	Environment

For the following offences:

1. Conspiracy to Defraud contrary to section 317 of the Penal Code, Cap 63 Laws of Kenya.
2. Wilful Failure to Comply with applicable Procedures and Guidelines relating to Procurement contrary to section 45 (2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003;

3. Engaging in a project without prior planning contrary to section 45 (2) (c) as read with section 48 of Anti-Corruption and Economic Crimes Act No. 3 of 2003;
4. Abuse of Office contrary to section 46 as read with section 48 of Anti-Corruption and Economic Crimes Act No. 3 of 2003.
5. Committing an offence of financial misconduct contrary to section 197 (1) (o) (i) of the public finance management act no. 18 of 2012.
6. Fraudulent Acquisition of Public Property contrary to section 45 (1) (a) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003.
7. Knowingly giving a Misleading Document to Principal contrary to section 41 (2) as read with section 48 of Anti-

Corruption and Economic Crimes Act no. 3 of 2003 of the Laws of Kenya.

8. Wilful Neglect to Perform Official Duty contrary to section 128 as read with section 36 of the Penal Code.

The Director of Public Prosecutions is cognizant of the principle of innocent until proven guilty the determination of which can only be made by a court of law. The decision to charge is based on the evidence that is available to the DPP at the time the decision is made.

In view of the international nature of these crimes, we realize that we cannot fight corruption on our own and as a strategy to fighting economic crimes, the Office of the Director of Public Prosecutions (ODPP) has prioritized tracing of proceeds of crime,

benefits and instruments of crime, asset confiscation and forfeiture. Consequently, this investigation has been phased. To this end, the ODPP has made several international mutual legal assistance requests to the UK and Italy to assist in the financial investigations. Once investigations are complete more charges will be preferred.

Being cognizant that corruption always fights back and that there may be elements who may seek to exploit these indictments to instigate social unrest we have put in place mechanisms to monitor any such attempts, which will be countered with whole of government response!