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CONFLICT OF INTEREST A REVIEW OF KENYAN LAWS AND THE PATH TO NON-CONFLICT DEVELOPMENT

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ABSTRACT

Conflict of interest (COI) intersects private gain and public duty. For all the disadvantages COI presents, governments have put in place mechanisms to reduce the influence and the continuation COI bears. The extent to which a nation tolerates conflict of interest indirectly reports the quality of its governance.

In this paper, I examine the discourse around conflict of interest as a concept and as a documented Kenyan problem. Drawing on three influential scholars, Michael Davis, Dennis Thompson, and Andrew Stark, the paper builds on where their different points of view agree and where they disagree. The paper also gives the 3 main types of conflict of interest before turning to Kenya's legal architecture under the Constitution of Kenya 2010, the defunct Public Officer Ethics Act 2003, the Leadership and Integrity Act 2012, the Anti-Corruption and Economic Crimes Act 2003, and the newly enacted Conflict of Interest Act, 2025, alongside the United Nations Convention against Corruption.

A few case studies, including past headlines involving the Goldenberg scandal, the Anglo Leasing scandal, and the National Youth Service scandal, will be highlighted to illustrate how conflicted officials have cost Kenya sums that, converted into today's currency equivalents, are still mind-blowing to think of.

Summarily, the paper then surveys live cases of conflict of interest, some emerging conflict-of-interest risks, connects unmanaged COI to the economy-draining capital flight and Kenya's odious debt debate, and closes with suggestions that call for tougher, better-enforced measures.

INTRODUCTION

Public officers serve the interests of the people through the government in any functional system. As such, citizens place their trust in their leaders, who, in turn, ideally entrust or delegate service delivery from top-level management to the last mile. This is done to further representation and bring services as close as possible to the grassroots, ensuring that equality and justice are met. In Kenya's context, this is guided by representation through the Presidency, parliament, county assemblies, various unions, among others. The key understanding in representation is that the authority should be used for the public's benefit rather than the officeholder's own.

However, misuse and abuse of office and positions is not new to Kenyan democracy. More often than not, it is easier to name a Kenyan public officer who has a scandal to their name than those who. Do not, gender notwithstanding.

Conflict of interest presents when that understanding is placed under the choice to dispense official duties with the prospect of gaining irregularly from it, when the person entrusted with a decision also has something personally at stake in its outcome through monetary or any other resource gain. It is one of the oldest and most persistent problems in government because the temptation it is built on is tailored within the structure of holding power at all.

In Kenya, conflict of interest is not a distant ethical puzzle confined to newspaper headlines and hushed tones. It has a heavy human cost that we can see in stalled hospitals with unstocked pharmacies and shared beds for women in labour, potholed roads that cause more annual deaths than collective deaths from terrorism nationally, unpaid pensions in the face of unstable social welfare and a strained economy, and a national debt that a growing chorus of citizens and lawmakers now calls odious and illegitimate.

This paper defines conflict of interest through the eyes of scholars who have shaped how the field thinks about it, classifies its major forms, maps Kenya's legal and institutional response to it, and then tests that framework against some of the country's most damaging scandals. It closes by looking at where conflicts of interest are surfacing today, at the connection between corruption and Kenya's odious debt burden, and at what a genuinely non-conflict path to development would require.

Conceptualising Conflict of Interest: Scholarly perspectives

Conflict of interest has been theorised most rigorously in applied and professional ethics, a field that took the concept seriously well before lawmakers did. Three scholars in particular have shaped the modern understanding of the term: Michael Davis, Dennis Thompson, and Andrew Stark, thus reading them together and engaging with their perspectives is useful precisely because they do not say quite the same thing, and the differences matter for how a country like Kenya should write its laws in a way that separates the benefits of public office from what is duly owed versus what is owed to the public.

i. Michael Davis: The relational account

Davis, whose foundational 1982 essay on the subject helped establish conflict of interest as a serious object of philosophical study, defines it structurally by painting the picture that a person has a conflict of interest when two conditions hold together simultaneously: the person stands in a relationship that requires them to exercise judgment on someone else's behalf, and the person also has a separate, competing interest that has a tendency to interfere with that judgment. What matters for Davis is not that the person actually behaves badly, but that a conflict of interest can exist even where the rational decision of the individual in question is ultimately decided with total integrity. What matters is the structural fact of the competing pull, hence it shifts attention away from character and motive, which are hard to prove, and onto situations, which can be identified and regulated in advance.

Davis's account also insists that conflict of interest is not the same thing as wrongdoing. A conflict of interest that cannot be avoided outright can still be escaped through the rule of law, recusal, disclosure to those affected, or actively managed through oversight. This distinction between having a conflict and mishandling one is central to how modern ethics codes, including Kenya's, are built, where the law does not generally try to outlaw the mere existence of competing interests, since that would be practically impossible; it tries to force disclosure and management of them.

ii. Dennis Thompson: The probabilistic account

Dennis Thompson, in the New England Journal of Medicine in 1993, offered a definition that has stood the test of criticism and analysis, that conflict of interest is a set of conditions in which professional judgment about a primary interest, a patient's welfare, in his original medical context, or the public's welfare in a governmental one, tends to be unduly influenced by a secondary interest, commonly financial gain. Thompson's key contribution is inherently in the word tends. His definition is probabilistic rather than binary: a conflict of interest is not a yes-or-no fact about a situation but a risk that varies in degree. This means that the mere existence of a secondary interest is not damning by itself, as Thompson is careful to note, but are often legitimate and even necessary. However, according to him, the conflict becomes serious as the likelihood that it will bend judgment increases.

This probabilistic framing technically explains why ethics laws bother to regulate conflicts of interest before any actual harm occurs, since the risk itself is the thing being managed, on the reasoning that waiting for proof of an unduly influenced decision arrives far too late to protect the public interest.

iii. Andrew Stark: The political and historical account

Stark, a political scientist, approaches the concept less as a static definition and more as a moving historical target. In his influential study of conflict of interest in American public life, he traces how the concept's two component words have drifted in opposite directions over decades of political practice. The idea of conflict, he argues, has moved from a subjective test where a key question asked is 'did this particular official's motives actually get compromised?' toward an objective one, in which broad, blanket rules bar entire categories of circumstance regardless of whether any individual officeholder would actually have been swayed. At the same time, the idea of interest has moved the opposite way: from a narrow focus on money toward a much broader, more subjective notion that takes in loyalties, relationships, and personal commitments of every kind.

Stark's value addition to this paper is that he reminds us that conflict of interest law is not a fixed, timeless doctrine handed down from first principles, rather, it is a live political compromise that societies keep renegotiating, usually after a scandal forces the question. Kenya's own legal history, traced later in this paper, fits this pattern closely: each major law reform followed a scandal that exposed the previous framework's gaps.

Placed side by side, Davis, Thompson, and Stark are not in serious disagreement so much as they are answering different questions. Davis answers the structural question: what, precisely, is a conflict of interest made of? Thompson answers the practical question: how do we know when one is serious enough to worry about? Stark answers the historical and political question: why do societies draw the line where they do, and why does the line keep moving? A workable definition for this paper, and arguably for Kenyan law, borrows from all three: a conflict of interest exists whenever a person holding a position of trust also holds a private interest that carries a meaningful risk of skewing the judgment they owe to the public, and the acceptable response to that risk recusal, disclosure, divestment, or a flat prohibition is itself a political choice that shifts as a society's tolerance for compromised public decisions shifts.

Types of Conflict of Interest

1. Actual conflict of interest: the competing interest exists right now and is already bearing on a decision the officer is making or is about to make. For example, a government procurement officer awarding a tender through an opaque tendering process to a company owned by his or her spouse.
2. Potential conflict of interest: the competing interest does not yet bear on any live decision but could reasonably be expected to arise, for example, a Cabinet Secretary who retains shares in an industry that their ministry regulates.
3. Apparent (or perceived) conflict of interest: no real competing interest may exist, but a reasonable observer, aware of the relevant facts, would suspect that one does, for example, an official awarding a contract to a former business partner even where no current financial link remains.

Additionally, other sub-types may also present including financial conflicts which involve money directly through shareholdings, business interests, gifts, or the prospect of future employment with a party the official currently regulates or contracts with. Non-financial conflicts may involve competing loyalties that carry no direct monetary payoff but still distort judgment, for example, favouring a relative, a clan, an alma mater, a political patron, or a religious or ethnic network. Kenyan corruption scholarly reference has often flagged non-financial conflicts, particularly ethnic and political patronage networks, as at least as damaging as financial ones, even though they are harder to prosecute.

Equally, sub-types such as direct and indirect conflict exist. Direct conflict involves the officer's own personal or business interest. An indirect conflict often runs through a proxy to ward off scrutiny, and this may be a friend, colleagues, spouse, child, sibling, or a company in which the officer holds a beneficial but concealed interest. Kenya's newest legislation, the Conflict of Interest Act of 2025, deliberately widens the net here, extending disclosure obligations beyond immediate family to a broader circle of associates precisely because indirect conflicts had become the preferred route around the older law's narrower family-based test.

Finally, most legal attention falls on individual conflicts where a single officer's private stake becomes the focus of investigating the admission criteria for conflict of interest. However, institutional conflicts also matter. As such, an entire agency's incentive structure can be skewed, for instance where a regulator depends financially on fees paid by the industry it regulates, or where a state corporation's board is stacked with individuals who supply it.

Institutional conflicts are harder to legislate against because no single rule violation is usually visible; they require structural reform rather than individual disclosure.

The Kenyan Legal and Institutional Framework

The Constitution of Kenya 2010 anchors the entire framework in Chapter Six, titled 'Leadership and Integrity'. Its guiding principles require State officers to provide selfless service based solely on the public interest, demonstrated in part through the declaration of any personal interest that may conflict with public duties, and require that officers conduct themselves in a manner that avoids any conflict between personal interests and public or official duties. Chapter Six applies to a very wide definition of State officer, running from the President down through Cabinet Secretaries, MPs, judges, county governors, and senior civil servants, and Kenyan courts have treated it as binding and directly enforceable rather than merely aspirational.

Beneath the Constitution, Kenya built a two-tier statutory structure for roughly two decades. The Public Officer Ethics Act of 2003 was the first dedicated ethics statute, requiring officers to declare their wealth, income, assets, and liabilities and barring them from holding interests that would conflict with their official duties. The Leadership and Integrity Act of 2012 followed, giving fuller effect to Chapter Six by prescribing a general Leadership and Integrity Code, establishing registers of conflicts of interest that public entities must keep and publicise, and barring State officers from using non-public information gained through office to further any private interest. Running alongside both was the Anti-Corruption and Economic Crimes Act of 2003, which criminalises the underlying corrupt conducts of bribery, abuse of office, and unlawful acquisition of public property that often emanate from unmanaged conflicts of interest.

This two-Act structure was long criticised as fragmented and full of loopholes; officials were, for example, permitted to hold minority, non-controlling shares in companies that later won government contracts, a gap that anti-corruption researchers flagged as an obvious avenue for abuse for years. In 2025, Kenya moved to close that gap through the Conflict of Interest Act, Act No. 11 of 2025, which was assented to by the President in July 2025 and came into force that August, repealing the Public Officer Ethics Act outright and consolidating conflict-of-interest regulation into a single, stricter statute.

The new Act bars public officers from being party to, or benefiting from, contracts for goods or services with their own institutions; bars them from influencing recruitment or procurement processes in which they hold a private interest; widens accountability from immediate family to a broader circle of associates in an effort to close the proxy-ownership loophole; and requires declarations of wealth, income, assets, and liabilities to be filed with the Ethics and Anti-Corruption Commission through designated reporting institutions, with compliance reports due to the Commission by the end of July 2026. Whether this new framework closes the enforcement gap that undid its predecessors is, at the time of writing, still an open and actively litigated question — county governments and the Law Society of Kenya have already challenged some of its procurement restrictions in court as overly blunt.

Further, the Ethics and Anti-Corruption Commission (EACC), established under Article 79 of the Constitution and the EACC Act, is the body charged with receiving conflict-of-interest declarations, investigating breaches, maintaining the statutory conflict-of-interest registers, and referring cases for prosecution. Kenya's recurring problem has rarely been the absence of rules on paper; it has been the gap between the rules and their enforcement, a gap this paper returns to directly in Section 6.

Kenya's domestic framework does not sit in isolation. Around the globe, the United Nations Convention against Corruption (UNCAC), adopted by the UN General Assembly in October 2003 and in force since December 2005, is the only legally binding, universal anti-corruption treaty and the central international mechanism governing conflict of interest at the state level. Kenya is a State Party to the Convention, having ratified it into law, with the Constitution recognizing it as part of the law in Chapter 1, Part 2. UNCAC's preventive chapter obliges States Parties to promote integrity, honesty, and responsibility among public officials, including through codes of conduct that address conflicts of interest, and to require officials to make disclosures regarding, among other things, outside activities, investments, assets, and gifts that may give rise to a conflict of interest with their official functions. The Convention also addresses the criminalisation of related conduct which may include (but is not limited to) bribery, embezzlement, abuse of functions, and trading in influence, and, importantly for the debt discussion in Section 8, commits States Parties to cooperate on the recovery and return of assets derived from corruption.

Case Studies

Kenya's post-independence history offers no shortage of scandals rooted in unmanaged conflicts of interest, but these 2 stand out for their scale, economic weight, their documentation, and the lessons each offers. To give a sense of true scale, it helps to fix a reference point: Kenya's nominal GDP stood at roughly USD 147 billion in 2026. A loss equivalent to ten per cent of GDP at that scale would be about USD 14.7 billion today, larger than the annual national budget for entire sectors such as health or education combined.

i. The Goldenberg Scandal (1990–1993)

Goldenberg is Kenya's largest and longest-shadowed corruption scandal. Under an export-compensation scheme meant to encourage foreign-currency earnings, the government promised exporters of non-traditional goods a subsidy on top of their earnings. Goldenberg International Limited, a company fronted by the controversial businessman Kamlesh Pattni, exploited the scheme by claiming to export gold and diamonds that Kenya barely produced, using forged documents and, eventually, cheque-kiting through Pattni's own Exchange Bank to draw down Central Bank funds for exports that never happened. The scheme required, and received, the active cooperation of senior officials, including at the Treasury and the Central Bank, whose willingness to authorise irregular payments is itself a textbook conflict of interest, officials whose duty was to protect public funds instead served the private interests of Pattni's network, in several documented instances on the direct instruction of figures at the apex of President Daniel arap Moi's government.

The actual estimates vary because a lot of the money could never be traced, but the most widely cited figure, corroborated by Kenya's own commission of inquiry and by independent economists puts the loss at roughly ten per cent of Kenya's annual GDP at the time, with the 2006 Bosire Commission tracing about KSh 158.3 billion in Goldenberg-linked transactions and other estimates running as high as KSh 500 billion or over a billion US dollars. Applying that same ten-per-cent-of-GDP benchmark to Kenya's 2026 economy of roughly USD 147 billion yields a present-day equivalent on the order of USD 14–15 billion, which is a figure so large it is easier to grasp by what it could buy: at current construction costs, several hundred fully equipped county hospitals, or years of the national fertiliser subsidy programme, in a single scandal.

Perhaps the biggest catch to Goldenberg is institutional, that despite two decades of inquiry, no one was ever convicted for the fraud itself. The whistleblower who first exposed it, David Munyakei, a junior Central Bank clerk, was fired for his trouble and died in 2006, having spent much of the intervening period unemployed, an outcome that still shapes how cautiously Kenyan public servants weigh the personal cost of reporting a superior's conflict of interest against the shelved Whistleblower's Bill.

ii. The Anglo Leasing Scandal of 2003–2006 and beyond

Anglo Leasing takes its name from one of eighteen fraudulent state-security contracts for passport printing, forensic laboratories, naval vessels, and secure communications equipment, some of which were signed for in the last years of the Moi government and continued into Mwai Kibaki's supposedly reformist administration. Contracts were awarded to shell companies with no real operating capacity, at prices analysts later found were inflated several times over market rates, for goods that in several cases were never delivered at all. The scandal became a landmark case study in conflict of interest specifically because it was exposed from inside the government, John Githongo, appointed by Kibaki as Permanent Secretary for Governance and Ethics. In effect, the president's anti-corruption czar uncovered the scheme in 2004, found it led to ministers and senior officials in Kibaki's own inner circle, and, after mounting pressure and covert recordings of colleagues discussing the cover-up, resigned and fled into exile in the United Kingdom rather than suppress his findings. His detailed dossier remains one of the most consequential whistleblower documents in Kenyan history precisely because it showed, in the principals' own words, how personal and political interest overrode public duty at the highest levels of the state.

The economic cost of the eighteen Anglo Leasing-type contracts was collectively worth an estimated USD 770 million, roughly KSh 55 billion at the time, a figure commentators have noted was about one-and-a-half times the total foreign aid Kenya received in 2004, and enough, on one widely cited comparison, to have funded a decade of antiretroviral treatment for every HIV-positive Kenyan. Adjusting for the roughly 65–70 per cent cumulative inflation the US dollar has experienced since the mid-2000s, that USD 770 million carries a present-day purchasing power of somewhere in the region of USD 1.3 billion. Kenya continued paying out Anglo Leasing-linked judgment debts more than a decade after the scandal broke, including a Sh1.4 billion payment authorised in 2014 specifically to reassure international investors ahead of a sovereign bond issue, meaning the scandal's fiscal cost was still compounding a full decade after the contracts were signed.

Current Potential Conflict of Interest Instances and Projected Costs

Conflict of interest in Kenya is not only a spot in history. Several live situations illustrate that the risk Thompson describes, where judgment tends to be swayed by a secondary interest, is very much active in 2026.

i. County-level procurement conflicts: In 2025, Trans Nzoia Governor George Natembeya was charged with conflict of interest and unlawful acquisition of public property after allegedly receiving indirect financial benefits from companies contracted by his own county government — following a similar 2025 conviction of former Kiambu Governor Ferdinand Waititu for funnelling a Sh588 million tender through his own business interests. These cases, now working through the courts under the newly activated Conflict of Interest Act, suggest devolved government has reproduced many of the same conflict-of-interest patterns seen historically at the national level, simply at a smaller, more dispersed scale that is individually harder to detect.

ii. Untested enforcement of the Conflict of Interest Act 2025: The Act's asset-declaration and beneficial-ownership provisions are only now being operationalised, with the EACC's compliance deadline for reporting institutions set for July 2026. Early legal challenges to its procurement restrictions, for instance, disputes over county governments' ability to hire independent legal counsel, mean the practical scope of the new law, and therefore its deterrent value, will only become clear as courts interpret it over the coming year.

Projected forward, if Kenya's historical pattern holds, a major conflict-of-interest scandal surfacing roughly once per presidential term, at a scale in the low billions of dollars, the country stands to lose the equivalent of one to two per cent of GDP per electoral cycle to this single governance failure, a recurring tax on development that no amount of foreign aid or borrowing can offset.

Conflict of Interest, intentional development, and the Odious Debt question

The connection between conflict of interest and stalled development is mechanically intertwined. Money diverted through a conflicted procurement deal is money that does not build the market, hospital, road, or classroom it was budgeted for. Worse, in Kenya's case, much of the diverted spending was never raised from domestic revenue in the first place. Rather, it was borrowed, meaning conflicted decisions of the past are now being repaid, with interest, by citizens who received no benefit from them.

Kenya's public debt has grown from roughly KSh 2.4 trillion in 2014 to approximately KSh 12.8 trillion by 2026, which is more than a fivefold increase in little over a decade, now equivalent to well above the 55 per cent of GDP ceiling Parliament itself has approved (current figures estimate it at about 70 per cent), and consuming a share of tax revenue that critics put at around three-quarters, crowding out spending on health, education, and infrastructure. A portion of that borrowing is now the subject of a landmark constitutional petition before the Kenyan courts, invoking the doctrine of odious debt, the principle, recognised in international legal scholarship, that debt incurred without genuine public benefit, without proper parliamentary authorisation, or in circumstances tainted by corruption should not be enforceable against the citizens who never consented to it and never saw its benefit. The petition specifically challenges roughly KSh 6.95 trillion borrowed between the 2014/15 and 2023/24 financial years, including Eurobond proceeds the petitioners allege were not properly appropriated, not tied to identifiable development projects, and in part unaccounted for entirely.

This is the deepest cost of unmanaged conflict of interest: it not only steals what has already been collected in taxes, but it also mortgages what has not yet been earned. A generation of Kenyans now faces higher per-person debts of about 240,ooo KES for the approximately 55 million Kenyans, higher taxes, costlier fuel, and underfunded hospitals and academic institutions in significant part to service debt whose origins are, by the government's own admission in court filings and by independent audits, entangled with the same pattern of conflicted decision-making documented in Section 6. Conflict of interest and odious debt are, in this sense, two ends of the same problem: officials who serve private interests over public ones at the point of borrowing or spending, and ordinary citizens who inherit the bill decades later.

9. The Path to Non-Conflict Development: Recommendations

iii. Close enforcement, not just legislative, gaps. Kenya's problem has rarely been an absence of law — Chapter Six, the Leadership and Integrity Act, the Anti-Corruption and Economic Crimes Act, and now the Conflict of Interest Act 2025 form a reasonably comprehensive text. What has been missing is consistent prosecution: as the case studies show, decades can pass with headline scandals producing resignations but few convictions. The EACC's investigative capacity and independence from executive interference need to be protected as a first-order priority, not an afterthought.

iv. Protect whistleblowers as a matter of institutional survival, not charity. Both Goldenberg and Anglo Leasing were exposed by insiders who paid a steep personal price — one lost his job and was blacklisted for a decade; the other went into exile. A credible, funded, and genuinely enforced whistleblower-protection regime would lower the personal cost of the single mechanism that has, historically, been most effective at surfacing conflicted dealing before it metastasises.

v. Make beneficial-ownership disclosure real, not nominal. The Conflict of Interest Act's extension of scrutiny to associates beyond immediate family is a meaningful step, but its value depends entirely on whether beneficial-ownership registers are actually checked against procurement awards in real time, rather than filed and forgotten.

vi. Tie public debt to independent, pre-disbursement audit. Given the scale of the odious debt controversy, Kenya should consider binding, independent parliamentary and judicial sign-off before large sovereign borrowing is disbursed, with published, project-linked accounting for how every shilling borrowed was actually spent — closing the exact gap the Eurobond litigation has exposed.

vii. Impose asset forfeiture and lifetime public-office bans as standard, not exceptional, penalties. A conflict-of-interest conviction that ends in a fine an official can absorb, or a governorship a few years later, is not a deterrent. Recovered assets should be a routine remedy, and disqualification from public office should follow conviction automatically rather than requiring a separate political fight each time.

viii. Build citizen-facing transparency into procurement by default. Open, machine-readable contract registers — not just conflict-of-interest declarations filed with the EACC — would let journalists, civil society, and ordinary citizens cross-check who is contracting with whom long before a scandal requires a whistleblower to surface it.

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