

Journal of Conflict Management & Sustainable Development



- Fostering the Principles of Natural Resources Management in Kenya Kariuki Muigua
- Mediation-Negotiation: A Template Therapy for Global Conflicts* Prof. Adesina T. Bello
- *Decrypting Cryptocurrencies and Corruption: Respite, Adspice, Prospice* Paul M. Gachoka
- Reconciling Refugees Right to Non-Refoulement and of Refugees as a Counterterrorism Measure intended to Uphold National Security in Kenya Peter M. Muriithi
- Presumption of Citizenship for Foundlings: Exploring Enforceability of Article 14(4) of The Constitution of Kenya 2010 Vincent G. Yatani
Njoki Mboce
- Boosting Biodiversity Conservation through improved Forest Resources Management Kariuki Muigua
- Health Related -Intellectual Property Rights in Africa in Light of the Covid- 19 Pandemic Leah Aoko
- Defining Democracy: A Review of Sen, Amartya Kumar (1999)? Democracy as a Universal Value. Journal of Democracy, (3), 3-17 ARTICLE REVIEW Henry K. Murigi
- An Examination of the Legal and Policy Framework on Child Refugee Education in Kenya Leah Aoko

Volume 8

Issue 1

2022

ISBN 978-9966-046-15-4

‘Decypting Cryptocurrencies and Corruption: Respice, Adspice, Prospice’

By: *Paul Mwaniki Gachoka**

Abstract

Time has come for us to introspectively think about the place of digital currencies and the war on corruption. Time has come for us to examine the past, examine the present and examine in the present. Increasingly, diverse world jurisdictions have adopted an array of measures aimed at combating the war on corruption aided by digital currencies.

As our country, our legal infrastructure on cryptocurrency remains built on quicksand while the winds of cryptocurrency continue to rage ferociously. The rationale of this paper is to engage in an academic endeavour to locate the role of digital currencies in the fight against corruption. The paper notes the inadequacies of the legal system and also proposes that perhaps time has come for us to take wings into the future.

1.1 Introduction

Governments globally survive on the basis of tax payers’ money to fund its operations and render crucial services to its citizen’s such as health, education, security and Infrastructure among others.¹ These services are capital intensive

** Paul Mwaniki Gachoka is an Advocate of the High Court of Kenya and the Founding Partner of Mwaniki Gachoka & Company Advocates. He is also a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators and holds a Masters of Arts (Philosophy and Ethics) from Strathmore University. He served as a Commissioner of Ethics and Anti Corruption Commission, Kenya between 17TH December 2015 and 16th December 2021.*

¹ World Bank REPORT: Kenya Economic Update: In Search of Fiscal Space; Government Spending and Taxation: Who Benefits? Published on 10th October, 2018, Available at <https://www.worldbank.org/en/country/kenya/publication/kenya-economic-update-how-kenya-is-using-tax-revenues-to-enhance-access-to-education-and-healthcare-for-low-income-families> accessed on 27/01/2022

in nature therefore they remain largely a preserve of the state to render them via the collected pool of taxes or sovereign borrowing. The utilisation of these public resources by government entities has since time immemorial attracted strong criticism from the public on account of deficiencies brought by weak legal safeguards in ensuring accountability.

Unending pilferage of public resources from all sectors of government operations have inevitably scaled down the standards of living of our people as well as lowering our mortality rate.² Surprisingly, such vices have permeated from every sphere of governance structure; judiciary, executive and the legislature which makes an individual question the nobility of the social contract theory philosopher as a camouflage which is parasitical upon the subjugations of classes of persons.³

Five decades post-independence, Kenya has been perennially been singing the same tune of eradicating corruption with different regimes coming to power yet the vice continues to be bigger and lethal as evidence by remarks made by President Kenyatta when he stated that;

“Corruption has become an accepted way of life. As individuals and as a collective, we have sacrificed our traditions, customs and values at the altar of materialism. Rather than shunning those who have made their wealth through illicit means, we celebrate them, even in places of worship.”⁴

This acknowledgment by the head of state explains in great length the deep-rooted nature of this vice and despite the presidential assurance of total erosion of it and absence of sacred cows in his regime, which elicited some

² Migai Akech, *evaluating the impact of corruption (perception) indicators on governance discourses in Kenya*, *Int. Law: Rev. Colomb. Derecho Int.* no.25 Bogotá July/Dec. 2014

³ <https://iep.utm.edu/soc-cont/> accessed on 27/01/2022

⁴ President Uhuru Kenyatta’s speech on January 25, 2019 at the National Anti-Corruption Conference at the Bomas of Kenya (Kenya), available online: www.president.go.ke accessed on 27/01/2022

considerable optimism, the reality is that corruption in Kenya grows at an average rate of 2.4% annually.⁵

Despite these alarming statistics, the war on corruption is a milestone that we are quite far from covering, though we must admit that Kenya is moving in the right direction going reports in the annual reports by Ethics and Anti-corruption Commission, Kenya on convictions and recovery of illicitly acquired assets. The technological advancement in the world trade and banking sectors has rendered the desire of eroding corruption fictional. Kenya is a third world country which operates on very limited resources hence unable to keep up with this fast-moving financial technological innovativeness.⁶ This crisis has primarily given birth to illicit financial flows and trade therefore posing a hindrance to curbing the menace of corruption.

2.1 The digital currency as a medium of exchange

Digital currencies are now a hot potato of discourse in the global economy which is said to hold more than KES 163 billion (approx. USD 1.62 billion) worth of Bitcoin, which is approximately 2.3% of Kenya's gross domestic product (GDP). With only 4 countries having a higher Bitcoin to GDP ratio than Kenya, this is an indication of Kenyans' thirst for the cryptocurrency.⁷ Majority of these transactions have been on peer-to-peer cryptocurrency exchanges. Kenyans have embraced this paradigm shift financial avenue due to the problems bedevilling the fiat currency which have outraged them which operated from a decentralised system. Transactions challenges ranging from

⁵<https://knoema.com/atlas/Kenya/Corruption-perceptions-index> accessed on 27/01/2022 <In 2020, corruption perceptions index for Kenya was 31 score. Corruption perceptions index of Kenya increased from 20 score in 2001 to 31 score in 2020 growing at an average annual rate of 2.54%. CPI Score relates to perceptions of the degree of corruption as seen by business people and country analysts, and ranges between 100 (highly clean) and 0 (highly corrupt).

⁶ Bruno Gurtner, *The Financial and Economic Crisis and Developing Countries, Dossier | Africa: 50 years of independence — Review |Major development policy trends, open edition journals*, 2010.

⁷ Sonal Sejpal and Geunhak Shin, *Bitcoin And Other Virtual Currencies From A Kenyan Legal Perspective*, 2018

privacy concerns, counterparty trade risk and elimination of intermediaries are the primary reasons influencing use of digital currency.⁸

The enormous use of cryptocurrency has acquired some notoriety in the financial trade enabling it to acquire the character of fiat currency save for being a legal tender since it's not approved by the Central Bank. These features enjoyed by cryptocurrency include; a medium of exchange, store of value and unit of account.⁹

3.1 Shortcomings of the Capitalist economy

The evolution of the financial market has seen the rise of the use of cryptocurrency in trading.¹⁰ The viability of cryptocurrency has been enhanced by the deficiency experienced by the use of fiat currency which has inhabited trade in a manner that has diminished the user's investment. The most attractive feature of cryptocurrency is its novel concept of eliminating intermediaries in the financial market¹¹. The modern capitalist financial economy has a chain of legal imperatives that one must follow to gain value. For instance; financial institutions such as Banks provide services such as; savings accounts, mobile money transfer, trade in stocks etc with the ultimate aim of making profit.

The birth of cryptocurrency is a revolt into this money-making schemes which have been of severe financial implications to economic trade. The bank imposes ledger charges as fees for the services rendered and further loans out money to other uses for purposes of generating interest for their own gain which some people perceive this as predatory lending.¹² Parts of Kenya have

⁸https://hedera.com/learning/what-is-a-central-bank-digital-currency-cbdc?gclid=Cj0KCQiA6NOPBhCPARIsAHAY2zD_OKTIZsikJo8g9JAVNA0P47uO-diMYFDGSC_eDtf6E2CXsTiCCdUaAmpDEALw_wcB accessed on 29/01/2022

⁹ *The Point*, a bulletin published by Institute of Economic Affairs November 2018 available < https://media.africaportal.org/documents/cryptocurrencies_in_kenya.pdf accessed on 29/01/2022 >

¹⁰ Saiedi, E., Broström, A. & Ruiz, F. *Global drivers of cryptocurrency infrastructure adoption. Small Bus Econ* 57, 353–406 (2021). <https://doi.org/10.1007/s11187-019-00309-8>

¹¹ *ibid*

¹² <https://www.debt.org/credit/predatory-lending/> accessed on 30/01/2022

bought into this novel idea at Mnarani in Kilifi where they use cryptocurrency in the form of Sarafu, Sarafu, to sell his vegetables, and to buy supplies without having to use any cash.¹³ The elimination of the intermediaries has ensured that they reap the best of their resources without having to pay other additional cost in relation to the same.

Cryptocurrency has also acts as a digital wallet which can be utilised as medium of exchange for small and large purchases of goods and services. This feature reduces to a great length the risk of theft through mugging as a potential risk facing the use of fiat currency. This safety is further endorsed by the building of ATM's which can easily convert cryptocurrency into liquidity in Kenya.

In addition to these features, cryptocurrency has been fronted as a safeguard to the potential risk of currency devaluation over financial economic dynamics. This occurs when a country wishes to attract foreign investors hence it will deliberately tamper with the foreign exchange rate to reduce its currency value. The effects of capital inflows though good for investments as it improves economic growth, it equally results in inflation. Cryptocurrencies, not only provide protection against currency devaluation but offer it in a way that provides some protection for currency devaluation, liquidity and convenience.¹⁴ Cryptocurrency value is the same all over the world as opposed to the currency superiority which exist in the world using the fiat currency and further benefit is exhibited in countries experiencing super abnormal inflation rates such as Venezuela whose inflation rate at one point was 65,000%.¹⁵ Cryptocurrency as a store of value come in handy when deciding an individual purchasing power in times of inflation.

4.1 Lethal implication in the use of Cryptocurrency in Kenya

¹³ Ruud Elmendorp, *Cryptocurrency Booming Among Kenyan Farmers*, published on 26th July, 2021. https://www.voanews.com/a/africa_cryptocurrency-booming-among-kenyan-farmers/6208732.html accessed on 30/01/2022

¹⁴<https://www.binance.com/en/blog/fiat/lets-talk-about-whether-crypto-is-a-hedge-against-currency-devaluation-421499824684902548> accessed on 30/01/2022

¹⁵ *Ibid*

Kenya is a member of FATF through the regional body Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog¹⁶.

Kenya being a member of FATF, it is bound by the recommendations. One of the recommendation deals with New Technologies¹⁷.

The recommendation requires countries to “ensure that virtual asset service providers are regulated for Anti-Money Laundering /Combating Financing Terrorism purposes, and licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations”.

Further the recommendations require that countries should ensure that there is competent Authority to supervise Virtual asset providers which is different from a supervisory body.¹⁸

Contrary to the overwhelming evidence in support of the use of cryptocurrency, empirical evidence exists in the contemporary world which unequivocally suggest that, the cryptocurrency financial model is premature and should be suspended*.¹⁹ This is based on the absence of legal and regulatory mechanisms which act as safeguards in the operation of the financial market.

Existence of cryptocurrency operates on two fronts either; Retail Central Bank Digital Currency and Wholesale Central Bank Digital Currency.²⁰ Retail Central Bank Digital Currency entails the use of block chain technology which

¹⁶ <https://www.fatf-gafi.org/> accessed on 9th February 2022.

¹⁷ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html> accessed on 9th February 2022.

¹⁸ Ibid

¹⁹ <https://www.capitalfm.co.ke/business/2021/02/akoin-launches-in-kenya-with-promise-for-alternative-continent-wide-currency/>

²⁰ *Supra no.8*

is anonymous and traceable around the clock.²¹ Wholesale Central Bank Digital Currency on the other hand is tailor made for financial institution which operate a reserve deposit with the central bank. They serve to increase payments and security settlement efficiency while resolving liquidity and counterparty risk issues.²²

The current situation in Kenya is that we have none of those two types of currency despite trading in cryptocurrency witnessed. This is because the Central Bank of Kenya has through a public statement warned its citizens of the dangers of trading with cryptocurrency. In the statement, the central bank stated the following;

“This is to inform the public that virtual currencies such as Bitcoin are not legal tender in Kenya and therefore no protection exists in the event that the platform that exchanges or holds the virtual currency fails or goes out of business.... The public should therefore desist from transacting in Bitcoin and similar products.”²³

The effects of this public proclamation did not in any way render the trading in cryptocurrency illegal neither did it legitimise it. Notwithstanding this caution which for all intent and purpose, Kenya continues to trade in cryptocurrency which is reported to be to tune of Kenya Shillings One Hundred and Sixty-Three Billion constituting 2.3% of the Gross Domestic Product.²⁴

²¹ *Ibid*

²² *Ibid*

²³ *Public Notice Caution To The Public On Virtual Currencies Such As Bitcoin available at*

, <https://www.centralbank.go.ke/images/docs/media/Public_Notice_on_virtual_currencies_such_as_Bitcoin.pdf accessed on 30/01/2022 >

²⁴ <https://www.businessdailyafrica.com/news/Citi-warns-over-risk-of-Kenya-bitcoins/539546-4263658-mhoko2z/index.html> accessed on 30/01/2022 a 2017 report by Citibank citing the rising popularity of cryptocurrency.

More cautionary pronouncement was made by the Judiciary as was observed in the case of *Lipisha Consortium Limited & another v Safaricom Limited [2015] eKLR*²⁵ this case, Safaricom suspended its MPESA services to Lipisha Consortium and Bitpesa because Bitpesa was engaged in a money remittance business using Bitcoin without approval from the CBK. The court held that Safaricom was within its rights to have suspended its services to Lipisha and Bitpesa for operating a money remittance business without CBK approval. Further, the court would not force Safaricom to trade with Lipisha and Bitpesa, as Safaricom could be found to be in breach of anti-money laundering regulations by allowing Bitcoin trading and remittances through its M-PESA platform. This is due to the anonymity associated with Bitcoin trading, which is in contravention of know-your-client (KYC) requirements in remittances and money transfer regulations.²⁶

Whereas Safaricom's policy to require its agents to obtain government approval from CBK before transacting into the crypto trade was held valid, the same has not hindered operators of cryptocurrency to innovative measures to maintain their practices. Cryptocurrency trading centres such as Vietnam-based Remitano²⁷ a new entrant into the crypto financial market has circumvented the hurdle by providing their MPESA account details of a seller of Bitcoin to a purchaser of who wishes to have Bitcoins which have upon confirmation of deposit of the amount. In the alternative, crypto traders provide bank details for a purchaser of Bitcoin to carry out a bank-to-bank transfer. This therefore means that willing Kenyans can therefore exchange their cash towards the purchasing of cryptocurrency without any hindrance giving rise to a series of questions why Kenyans are determined into this financial trade that has already been flagged as unregulated.

5.1 The legal framework of Cryptocurrency

To examine the utility and safeness of the financial transactions one must first unearth the legal basis underpinning this model of financial trade. Of key

²⁵ *Lipisha Consortium Limited & another v Safaricom Limited [2015] eKLR*

²⁶ *Supra* Note 2

²⁷ <https://remitano.com/ke> accessed on 30/01/2022

statute is the Central Bank of Kenya Act which gives credence to the adoption of crypto in Kenya. The Act provides that;

“The Bank shall have the sole right to issue notes and coins in Kenya and, subject to subsection (4), only those notes and coins shall be legal tender in Kenya...”²⁸

Despite the existence of this express provision the Central Bank has declined to issue digital currency or in any way issue regulations in giving legitimacy of the trade of cryptocurrency. In support to this legal instrument other pieces of legislations such is (1) The National Payments Systems Act (NPSA); (2) the Capital Markets Act (CMA); and (3) the Kenya Information and Communication Act (KICA). The NPSA is administered by the Central Bank of Kenya (CBK). In contrast, the CMA is administered by the Capital Markets Authority (CMA). Finally, the KICA is administered by the Communications Authority.²⁹

In addition, the Kenya’s Money Remittance regulations also aid Central Bank of Kenya in regulating the operations of cryptocurrency in Kenya. Under these regulations, cryptocurrency companies must acquire licensing from Kenyan authorities to offer transmission services within Kenya. Licensing is required whenever a company offers a service for the transmission of money or any representation of monetary value without any payment accounts being created in the name of the payer or the payee, including: (1) where funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or another payment service operator acting on behalf of the payee; or (2) where funds are received on behalf of and made available to the payee.³⁰

A judicial stretch application of the law may bring the Proceeds of Crime and Anti-Money Laundering Act into one of the legislative instruments which

²⁸ *Ibid* Section 22(1)

²⁹ *Kenya Cryptocurrency Laws Regulation of Digital Currencies: Cryptocurrency, Bitcoins, Blockchain Technology* available at < <https://freemanlaw.com/cryptocurrency/kenya/> accessed on 30/01/2022 >

³⁰ *Legal Notice No. 66 The Central Bank Of Kenya Act (Cap. 491) The Money Remittance Regulations, 2013*

ought to govern the operations of cryptocurrency traders. Since users of cryptocurrency can acquire property using digital currency hence it's safe to assert that fintech innovations which include the transfer of money or value may be deemed to be "reporting institutions" under the AML Act and have reporting and compliance obligations.³¹

6.1 Cryptocurrency as a catalyst of corruption

Despite the existence of legislative statutes to curb financial illicit practices such as corruption in Kenya, the absence of regulation by the Central Bank has provided an avenue for individuals to unjustly enrich themselves. One for instance wonders why despite the cautionary statements given by the Central Bank on cryptocurrency, individuals still trade in huge amounts to the tune of over 163 billion as was the case in the year 2017.

The truth of the matter is that the Kenyan legal environment at the moment favours hugely illicit trade due to the laxity or unwillingness by the Central Bank to recognize digital currency as a legal tender hence an economic fodder to stash ill-gotten wealth³². Therefore, institutions such as the Ethics and Anti-Corruption Commission becomes a toothless dog since cryptocurrency trade is not a recognised legal tender neither does it leave a paper trail. It follows then that a person may receive a benefit in his capacity as a public servant and be immune to prosecution if the same was done via cryptocurrency due to their anonymity character which lives no paper trail and has no intermediaries such likes banks which require proper documentation.

The constitution of Kenya is the supreme law in the country and any other law contrary to it is of null and void to the extent of its unconstitutionality.³³ The Constitution further forbids the prosecution of an individual with a crime which was not an offense in Kenya at the time it was done or a crime under

³¹ David Geral, Irene Muthoni and Brian Kalule, *Unscrambling Blockchain: Regulatory Frameworks In Cryptocurrency* published in 2019.

³² <https://theconversation.com/kenya-needs-to-grasp-the-cryptocurrency-nettle-how-a-digital-currency-could-help-172092>

³³ Article 2 of the Constitution 2010 Supremacy of the Constitution

international law.³⁴ This was judicially reinforced in the case of *Geoffrey Kirinya Igweta vs Republic Cr. App. 81 of 2011* where Judge Ngah held that:

“At the time the appellant is alleged to have committed the offences for which he was convicted, the law that defined those offences was the relevant provisions of the Penal Code. Under Article 50 (2) (n) (i) of the Constitution those acts were only offences because they were so defined and punishable under particular provisions of the Penal Code. Much as the same acts may have been defined in the Sexual Offences Act, they cannot be said to have been offences under the Act, because this latter Act was not in existence. Put simply, the offence of defilement as defined under Section 8(1) and (3) of the Sexual Offences Act could not have been such an offence in 2004 before this Act was conceived and therefore in the words of article 50 (2) (n) of the Constitution the appellant could not have been tried and convicted for an act that at the time it was committed was not an offence”.

In the same breadth, anticorruption officers as well as the office of Director of Public prosecution are bound to face legal challenges in mounting a charge for corruption against a person who is said to have illegitimately benefitted himself in the discharge of the office, that is held through cryptocurrency. This is because the current operating space of cryptocurrency is anonymous and the only charge that can be sustained is that of trading centre without a license from CBK.

There have been accusations of inflated cost of projects which end up in the pockets to those who initiated therefore constituting a corrupt conduct. However, despite Kenya losing these huge amounts of money, tracing the same has been difficult for anti-corruption officers as there is no paper trail linking them to this crime. This gives credence that such high-level graft payments are made using digital currency which could have been paid from any country.

³⁴*Ibid* Article 50(2n)

Corrupt individuals are aware of the schemes that the government does in order to suppress corrupt individuals who have stashed a lot of cash in their homes away from the scrutiny of the unsuspecting public. Such practices have gained unprecedented momentum since institutions such as the Ethics and Anti-Corruption Commission, Kenya and Kenya Revenue Authority, in exercise of their statutory powers can seize the cash and demand answers on how the same was acquired. This has proven difficult to many people since one need to identify the legitimate revenue stream where such money was earned not to mention a corresponding tax deduction they incurred and paid for.

This was evident in the case of *Asset Recovery Agency v Ali Abdi Ibrahim*,³⁵ where the applicant sought preservation orders in respect to two accounts belonging to the respondent for the sum of Kshs. 39,647,426.00 and Kshs. 3,857,943.02 held at Equity Bank, Mandera Branch. The applicant filed forfeiture proceeding believing that the said amounts constituted proceeds of crime. In the case the respondent lacked any plausible defence to defeat the applicant's relief and the Court having found the inconsistencies contained therein on the part of the respondent granted the prayers sought. This case demonstrates the ease which the usage of fiat currency allows the enforcement authorities to undertake their duty.

However, the privacy nature of cryptocurrency trading is unregulated more so in remittances and money transfers, by the CBK. This therefore poses a hurdle to investigative agency who first as a matter of law need to get a warrant from a magistrate to investigate those accounts. This may not be possible since the current crypto trading has no ledger which identifies the parties to monetary transactions, exchange rates of each crypto when compared to shillings and finally the amount as well as the material date this is said to have happened. This issue goes directly to the core in proving elements of corruption as per the charge sheet without which no count can stand a trial.

³⁵ *Asset Recovery Agency v Ali Abdi Ibrahim* [2020] eKLR

7.1 The future of enforcement of corruption through cryptocurrency

The current regulatory regime spells doom in the fight against corruption. With Kenyans trading in billions through cryptocurrency yet the source of this cash cannot be ascertained places the countries national security as well as the economy into a vulnerable position. Kenya must wake up and realise we are in digital era and efforts to get cash stashed at home currently is a story of the past and find ways upon which accountability can be enhanced in the trade of crypto.

The Central Bank of Kenya must stop to shy away from inculcating accountability if the fight against the scourge against corruption stands a chance to be won. This can only happen through the Central bank accepting cryptocurrency as a legal tender and fully adopting Blockchain technology which shall allow total transparency between Remittances and money transfers of the party's involved and further regulations which shall require every institution trading in crypto to be not only licensed but be a reporting agency to the CBK with stiff penalties for default.

Blockchain technology has been fronted as the solution to allow enforcers of corruption carry out their job in a manner that is in tandem to the present realities. More importantly, Blockchain technology is referred to as Blockchain is an open ledger that several parties can access at once.³⁶ Blockchain helps in the verification and traceability of multistep transactions needing verification and traceability. It can provide secure transactions, reduce compliance costs, and speed up data transfer processing. Blockchain technology can help contract management and audit the origin of a product. It also can be used in voting platforms and managing titles and deeds.³⁷

³⁶ *By Sana Afreen, Why is Blockchain Important and Why Does it Matters available at <https://www.simplilearn.com/tutorials/blockchaintutorial/whyisblockchainimportant?source=sl_frs_nav_playlist_video_clicked accessed on 31/01.2022>*

³⁷ *Ibid*

With Blockchain technology, features such as an immutable public digital ledger, which means when a transaction is recorded, it cannot be modified, security, transactions are done instantly and transparently, as the ledger is updated automatically, elimination of intermediary and finally the authenticity of a transaction is verified and confirmed by participants goes along way into fighting corruption while securing the safety of financial transaction.

8.1 Conclusion

The paper inevitably comes at the conclusion that the absences of regulations and solutions which are in tandem with the technological advancement have hugely been an economic fodder for the soaring corruption cases.

Kenya has made major progress in the fight against corruption. We now have high level convictions and major recoveries in corruptly acquired assets as evidenced by the annual reports released by the Ethics and Anti-Corruption Commission.

Despite Kenya not having regulations on virtual assets, Kenyan Authorities responsible for fight against corruption have continued to invest heavily in training investigators on emerging issues including investigation, prosecution and recovery of crypto currencies.

These gains could be eroded if Kenyan Authorities do not put in place regulations on Crypto and virtual assets as it is an avenue for criminals to exploit.

Lack of regulations could have negative effect on the Kenya as it could be categorized as a high-risk jurisdiction posing a threat to global financial system. This could greatly impact negatively on Kenyan economic relationship with other countries. Such classification will result in other countries and global financial institution like world bank and IMF apply enhanced due diligence measures on our financial institutions.

One asks themselves why is it that despite the huge loss of tax payers' money through corruption, the conviction rate and the recovery of the stolen properties continue to be a raging debate in view of the amount alleged to have been stolen?

The only answer to this question is the need to enact strong regulations and adapt to new technology such as digital currencies to fight the anonymity character of cryptocurrency for purposes of enhancing accountability and transparency in the digital currency financial trade.

References

World Bank REPORT: Kenya Economic Update: In Search of Fiscal Space; Government Spending and Taxation: Who Benefits? Published on 10th October, 2018, Available at

<https://www.worldbank.org/en/country/kenya/publication/kenya-economic-update-how-kenya-is-using-tax-revenues-to-enhance-access-to-education-and-healthcare-for-low-income-families> accessed on 27/01/2022

Migai Akech, evaluating the impact of corruption (perception) indicators on governance discourses in Kenya, *Int. Law: Rev. Colomb. Derecho Int.* no.25 Bogotá July/Dec. 2014

<https://iep.utm.edu/soc-cont/> accessed on 27/01/2022

President Uhuru Kenyatta's speech on January 25, 2019 at the National Anti-Corruption Conference at the Bomas of Kenya (Kenya), available online: www.president.go.ke accessed on 27/01/2022

<https://knoema.com/atlas/Kenya/Corruption-perceptions-index> accessed on 27/01/2022

Bruno Gurtner, *The Financial and Economic Crisis and Developing Countries, Dossier | Africa: 50 years of independence — Review | Major development policy trends*, open edition journals, 2010.

Sonal Sejpal and Geunhak Shin, *Bitcoin And Other Virtual Currencies From A Kenyan Legal Perspective*, 2018

https://hedera.com/learning/what-is-a-central-bank-digital-currency-cbdc?gclid=Cj0KCQiA6NOPBhCPARIsAHAy2zD_OKTIZsikJo8g9JAVNA0P47uO-diMYFDGSC_eDtf6E2CXsTiCCdUaAmpDEALw_wcB accessed on 29/01/2022

The Point, a bulletin published by Institute of Economic Affairs November 2018 available

< https://media.africaportal.org/documents/cryptocurrencies_in_kenya.pdf accessed on 29/01/2022>

<https://www.debt.org/credit/predatory-lending/> accessed on 30/01/2022

Ruud Elmendorp, Cryptocurrency Booming Among Kenyan Farmers, published on 26th July, 2022.

https://www.voanews.com/a/africa_cryptocurrency-booming-among-kenyan-farmers/6208732.html accessed on 30/01/2022

<https://www.binance.com/en/blog/fiat/lets-talk-about-whether-crypto-is-a-hedge-against-currency-devaluation-421499824684902548> accessed on 30/01/2022

Public Notice Caution To The Public On Virtual Currencies Such As Bitcoin available at <

https://www.centralbank.go.ke/images/docs/media/Public_Notice_on_virtual_currencies_such_as_Bitcoin.pdf accessed on 30/01/2022 >

<https://www.businessdailyafrica.com/news/Citi-warns-over-risk-of-Kenya-bitcoins/539546-4263658-mhoko2z/index.html> accessed on 30/01/2022 a 2017 report by Citibank citing the rising popularity of cryptocurrency.

Lipisha Consortium Limited & another v Safaricom Limited [2015] eKLR

<https://remitano.com/ke> accessed on 30/01/2022

Kenya Cryptocurrency Laws Regulation of Digital Currencies: Cryptocurrency, Bitcoins, Blockchain Technology available at

< <https://freemanlaw.com/cryptocurrency/kenya/> accessed on 30/01/2022>

*Decypting Cryptocurrencies and Corruption:
Respice, Adspice, Prospice:
Paul Mwaniki Gachoka*

(2022) Journalofcmsd Volume 8(1)

Legal Notice No. 66 The Central Bank Of Kenya Act (Cap. 491) The Money Remittance Regulations, 2013

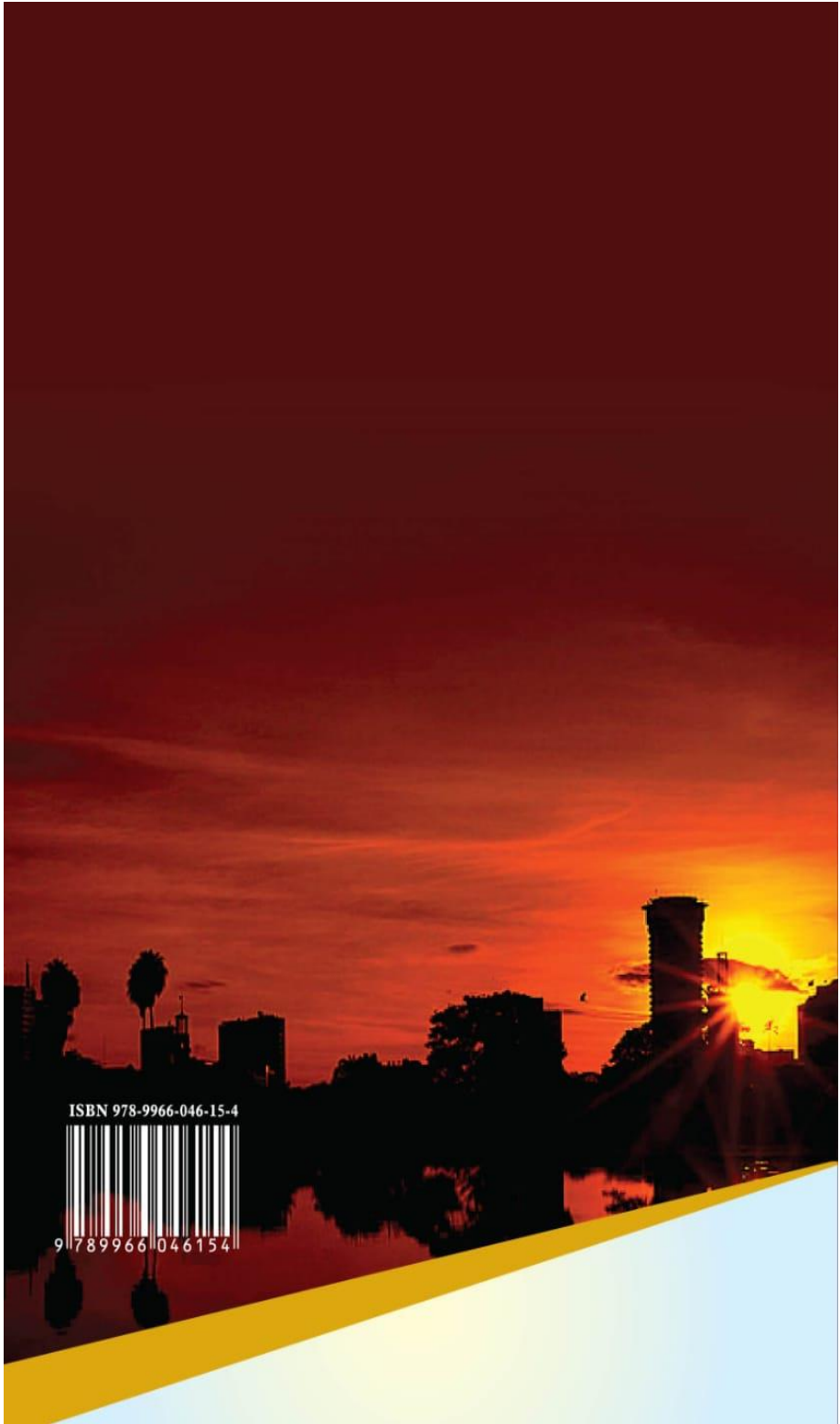
David Geral, Irene Muthoni and Brian Kalule, Unscrambling Blockchain : Regulatory Frameworks In Cryptocurrency published in 2019.

Robalst Kelvin, Most expensive roads in Kenya published on 29th October, 2021 available at < <https://www.jambodaily.com/most-expensive-roads-in-kenya-2021/> accessed on 31/01/2021

Asset Recovery Agency v Ali Abdi Ibrahim [2020] eKLR

By Sana Afreen, Why is Blockchain Important and Why Does it Matters available at

<https://www.simplilearn.com/tutorials/blockchaintutorial/whyisblockchainimportant?source=sl_frs_nav_playlist_video_clicked accessed on 31/01.2022>



ISBN 978-9966-046-15-4



9 789966 046154