The Goldenberg conspiracy

The game of paper gold, money and power

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INTRODUCTION

In February 2003, hardly a month after being sworn in, Kenya's President Mwai Kibaki appointed a Commission of Inquiry into one of the largest financial scandals in Kenya's history. The fiddle, popularly known in Kenya and even in international financial and donor circles simply as 'Goldenberg', is estimated to have cost Kenya some US $600 million in just less than three years. This estimate is considered in some circles to be conservative; there are computations which indicate that as much as US $1 billion could have directly and indirectly been siphoned through Goldenberg networks.

Goldenberg tore through Kenya's political, economic and social fabric not just during the years when the actual transactions took place but also long afterwards. The recorded transactions associated with Goldenberg were mainly between 1990 and 1993 but the spill-over effects continued to be felt for more than a decade thereafter, even until President Kibaki's election, under the National Rainbow Coalition (NARC) party, in December 2002.

Goldenberg tore through Kenya's political, economic and social fabric

At the peak of the scandal in 1993, transactions associated with Goldenberg networks together accounted for over 10% of Kenya's Gross Domestic Product (GDP). Yet the regime of Kibaki's predecessor, Daniel Arap Moi, and the Kenya National African Union (KANU) party, was not only reluctant to have the scam investigated but it also interfered with the machinery of justice to shield the perpetrators of the economic crime from being prosecuted and convicted.

In appointing the commission, President Kibaki brought to an end a circus in the courts that had become an all too familiar result of any attempt to prosecute the principal suspects in the Goldenberg affair. Kenya's Attorney General, Amos Wako, terminated all court cases related to Goldenberg, paving the way for the commission, which was empowered to hear evidence about the matter in open court. The commission, chaired by Justice Samuel Bosire, was appointed in the public interest "to inquire into allegations of irregular payment of export compensation to Goldenberg International Limited" and also to look into "payments made by the Central Bank of Kenya (CBK) to Exchange Bank Limited in respect of fictitious foreign exchange claims".[1]

The appointment of the commission pulled the rug out from under Moi, who had ruled Kenya with an iron grip for 24 years. He retired under pressure in December 2002, paving the way for a democratic election in which NARC was swept to power.[2] It was a shocking end to the KANU administration, which had governed Kenya since independence in 1963. Moi had tried to impose Uhuru Kenyatta, son of Kenya's first president, the late Mzee Jomo Kenyatta, as his successor in the leadership of both KANU and the government. To many observers, Moi's motivation was to ensure that the regime he presided over was shielded from prosecution for the economic and political crimes it was widely accused of abetting during its years in office. The Goldenberg scam hung over the regime's head like the sword of Damocles, but a pro-Moi administration would possibly have ensured it was buried and forgotten with time.[3]

By all accounts, Goldenberg was a high-level conspiracy by senior officials of the Moi administration, together with local and international wheeler-dealers who ostensibly capitalised on the government's desperation for foreign exchange and the greed of Moi's cronies. These cronies displayed an insatiable appetite for plundering the economy even when it was flat on its back.[4] It was the climax of a series of monumental cases of corruption but it was the most blatant of all that Moi was associated with, which turned one of Africa's most promising economies into a state of desperation. Endemic corruption in Kenya's public sector, including government ministries, state corporations, banks and financial institutions, depressed Kenya's economic performance to the lowest level in history and the business community, as well as Kenya's development partners, found it increasingly difficult to continue operating under an increasingly hostile economic and political environment.[5]

The genesis of financial buccaneering

It is important to understand the political and economic environment which prevailed in Kenya before 1993 to understand how a small financial operation was able to get so out of hand that it became a scandal of mega proportions. Kenya was a fairly closed economy, with the government controlling prices, interest rates and foreign exchange transactions. Two laws were of particular significance to Goldenberg: the Exchange Control Act and the Export Compensation Act.

Under the Exchange Control Act, all authority for dealing in hard currency was vested with the CBK, which then licensed commercial banks to deal in foreign currency on behalf of their customers. However, the banks were required to sell to the CBK all the foreign currency they received within a stipulated period and it was illegal for anyone else, either individuals or firms, to be in possession of or trade in foreign currency. This law stipulated that all exports leaving the country had to be certified by the Department of Customs and Excise. Exporters were required to complete customs declaration forms (referred to as CD3 forms) for all exports, declaring the goods being exported and their value. They were then required, through their banks, to account for all their export earnings and convert these proceeds into Kenyan Shillings within a stipulated period. The essential element of these controls was that no Kenyan individual or firm could deal in foreign currency or retain any part of the proceeds of exports, even if they needed the funds to finance their imports or foreign commercial obligations. Importers who needed foreign exchange to import raw materials, for instance, were required to apply for import licenses from the Ministry of Commerce and Industry and then await foreign exchange allocation approval by the Treasury and the CBK. This process often took several months and allocations even for essential imports were not always assured because of the abuse and corruption involved in import licensing and foreign exchange allocation procedures.

The Export Compensation Act was intended to provide incentives to Kenyan exporters, particularly if they ventured into the export of non-traditional goods, but, like the exchange controls, this was widely abused through corruption. The compensation was paid in the form of cash, equivalent to a percentage of the total value of the goods exported. All that the law required to process compensation claims was CD3 forms stamped by the necessary authorities and confirmation that all the foreign exchange relating to the exports had been received and sold to the CBK. The loophole was that the authorities did not require or verify details such as the volume and the true value, including unit prices, of the goods exported. Under the circumstances, it was possible for an exporter to bribe government officials to secure all the stamps required to show that an export transaction had taken place and foreign exchange earned, provided that the exporter could organise for a hard currency remittance for the receiving bank to sell to the CBK as confirmation that payments for the exports were received.

The Export Compensation Act was intended to provide incentives to Kenyan exporters

To see just how easy it was to abuse this incentive, a Kenyan student (call him KK) told of how he used export compensation to support his family when he was studying overseas. He simply arranged with his wife to export a calabash every month and, since he was doing part time jobs overseas, he remitted part of this money to the wife, who confirmed that she had received export earnings and therefore claimed export compensation. The important thing here is that the wife had to declare on the CD3 forms an inflated price for the calabash as what the importer was willing to pay, and the husband did not have to sell the calabash because he did not have a market for it. Assume the wife bought a calabash at US $5 equivalent but on the CD3 forms declared that it was worth US $500. As long as her husband could send US $500 back to Kenya, she could claim US $100 (20% of the export value) as compensation. How much they could make from the deal would depend entirely on how much the husband was able or willing to remit back home. Though export compensation supported KK's family in a small way, he could not make a fortune from it because his earnings overseas were limited. An exporter with more resources, however, or a good source of hard currency remittances, could make millions of dollars out of this simple process.

The architects of the Goldenberg scheme turned KK's modest idea into a multi-million dollar operation because they had several advantages, including financial resources and the right connections in the right places. Goldenberg's roots are traced to August 1990, when a firm called Goldenberg International Limited was registered by the Registrar of Companies, the Kenyan company registry which is under the auspices of the Attorney General. Two months later, Goldenberg offered the government an alternative source of foreign exchange from what was described on paper as a "pilot scheme" involving gold and diamond jewellery exports. The company exploited the fact that the government was experiencing a serious foreign exchange crisis due to declining earnings from the export sector, combined with increasing threats of aid cuts by development partners who were using aid to press Moi's regime for political and economic reform.[6] Moreover, Moi and the ruling party, KANU, were desperate for money to finance national elections at the end of 1992—the first time that the president and KANU were being challenged in democratic elections. The crisis for Moi was that the bilateral donors who had funded his election campaigns before were unlikely to do so again as it was apparent that his continued stay in power was a key factor in Kenya's political, economic and social instability.

From the outset, it was apparent that Goldenberg was a neatly packaged conduit designed to plunder public funds. It started as a pilot gold and diamond jewellery export scheme but as more and more money was made and certainly, as the demand for more and more payoffs from the Goldenberg networks increased, the scheme spread like a spider's web, penetrating the CBK and several commercial banks.

It took a sustained media campaign, public outcry and considerable pressure from Kenya's development partners to stop the money laundering associated with Goldenberg. The government admitted since 1993 that there was a scandal, but it scuttled every effort to have public officials associated with Goldenberg prosecuted. The problem was that Goldenberg was no ordinary business; its roots have over the years been traced to the most powerful people in Moi's administration, including Moi's sons, Gideon and Philip, the former Vice-President, Prof George Saitoti, the then-head of Moi's dreaded Security Intelligence, James Kanyotu, and former heads of the CBK, the Treasury, and customs, mines and geology departments. Another key figure mentioned in the scandals was Hezekiah Oyugi (deceased), who was the former Permanent Secretary in the President's office in charge of the powerful portfolio of internal security and provincial administration.

> The powerful connections with the state elite were the single largest factor that facilitated the Goldenberg transactions

The powerful state connections that sanctioned Goldenberg

The powerful connections with the state elite were the single largest factor that facilitated the transactions associated with Goldenberg. The first signal, perhaps, was the registration documents filed at the office of the Registrar of Companies, which listed Goldenberg's original subscribers (or proprietors) as Kamlesh Pattni and James Kanyotu. The latter was at that time the head of Kenya's dreaded Security Intelligence, which was then known as the Special Branch (now called the National Security Intelligence Service). Pattni was listed as a director of China Trade Ltd while Kanyotu was listed as a farmer—he did not disclose that he was the director of security intelligence.[7] Kanyotu was also a director of Firestone East Africa (1969) Ltd and First American Bank Ltd. Firestone, a large tyre manufacturing outfit, and First American Bank are part of the Sameer Investments Ltd industrial and financial conglomerate, which is substantially owned by Naushad Merali, a business tycoon widely regarded as Moi's business proxy and associate.[8]

The evidence available also shows that the Office of the President established an inter-ministerial committee to consider Goldenberg's application for a monopoly export license for gold and diamond jewellery and when it was finally approved, it was handed over to the Ministry of Finance for implementation. The responsibility of pushing this process further befell Prof. George Saitoti, the then-Minister of Finance, who was also Kenya's Vice-President.[9] Pattni, writing as the chairman of Goldenberg International, made a formal application to the Minister of Finance to be given exclusive rights to export diamond jewellery from Kenya for an initial period of five years, with an option of renewing it for another five years. In his letter dated 8 October 1990, Pattni argued that the gold and diamond trade was controlled by smugglers and hence Kenya earned very little from exports, though the potential was considerable. He sought to guarantee the government that he would earn and remit to the CBK at least US $50 million a year, provided he was accorded monopoly status and was paid an export compensation of 35%, even though the normal compensation to exporters at that time was 20%.[10] Pattni also applied, in the same letter, for a license to operate a finance company under the name of Goldenberg Finance Ltd.

Prof. Saitoti granted the request a few weeks later, justifying his action on the basis of the foreign exchange earnings promised by Goldenberg, but disregarded the fact that his action was illegal under Kenyan law. In particular, it was against the spirit of the Monopolies and Price Control Act, which prohibited concentration of economic power, and the Export Compensation Act, which permitted maximum compensation of 20% to exporters of stipulated processed exports.

Saitoti's decision was communicated to Pattni in November 1990 by Charles Stephen Mbindyo, then Permanent Secretary in the Ministry of Finance, who stated that the Minister had approved, "on experimental basis", the application by Goldenberg for monopoly rights to export gold and diamond jewellery but declined to issue a licence for Goldenberg Finance.[11] The letter stipulated that Goldenberg was bound under the scheme to generate at least US $50 million a year and that the company was expected to comply with all Exchange Control regulations administered by the CBK, the requirements of the Department of Customs and Excise (under the Ministry of Finance) and pre-shipment inspection by the Department of Mines and Geology under the Ministry of Environment and Natural Resources. Copies of the letter was sent to Eric Kotut, then-Governor of the CBK, to Francis Cheruiyot, then-Commissioner of Customs and Excise, and to Collins Owayo, then-Commissioner of Mines and Geology, with instructions to ensure that Goldenberg complied with all the stipulated regulations.

The approval by Prof. Saitoti was particularly significant because it granted Pattni monopoly rights and, therefore, effective control of the entire export business of gold, diamond and other precious metals from Kenya. All precious metal dealers were from then on required to sell their commodities either directly to Goldenberg or to export them through the company, and indeed, Pattni used this clause to harass those who continued to export directly. Moreover, the 35% export compensation granted Goldenberg was a subsidy from taxpayers that was illegal in law and also much higher than the normal export compensation of 20% that the government used to promote non-traditional exports.[12] The additional 15% was not even provided for in the annual budget for export compensation but was disguised in the Ministry of Finance's budget as a customs refund.

Based on the approval of the Goldenberg scheme by the Minister of Finance, the CBK drafted an agreement binding Goldenberg to comply with all exchange control regulations and account for all export earnings. The agreement was drafted by Jacinta Mwatela, a senior officer in the CBK's exchange control department and Pattni signed on behalf of Goldenberg.[13] This was necessary to show the nature and value of the goods exported, and the same forms were used to account for the hard currency received by the exporter's bank.[14]

Once these formalities were completed, Goldenberg started business in offices at View Park Towers in Nairobi's central business district.[15] Goldenberg opened its first bank account at the First American Bank—the bank owned by Sameer Investments and in which Kanyotu (director of Security Intelligence) was a director.

Paper exports to ghost companies

Suspicions about the nature of Goldenberg's business started as soon as the company submitted its first CD3 returns, claiming that it had exported gold and diamond jewellery. By April 1991, the company had presented to its bankers (First American Bank) nine CD3 forms. The bank was supposed to confirm that foreign exchange was received and to submit the returns to the CBK together with the funds remitted by Goldenberg's customers overseas. The CBK would then endorse the forms so that Goldenberg could claim export compensation from the Ministry of Finance.

All precious metal dealers were required to sell their commodities directly to Goldenberg or to export them through the company

However, both the CBK and First American Bank observed that Goldenberg did not comply with exchange control regulations and was therefore in breach of the agreement it had signed with the CBK. What triggered the problem was that although Goldenberg claimed to have exported its gold and diamond jewellery to two specific firms overseas (Servino Securities Inc. and Solitaire of Switzerland), payments were not received through the normal inter-bank transfer. Instead, the bankers noted, Goldenberg's earnings were accounted for through numerous direct cash deposit transactions in various hard currencies, including US dollars, British pounds, Swiss francs, French francs, Italian lira and Japanese yen.[16] The banks widely suspected that Goldenberg completed CD3 forms purporting to have exported the products, then bought cash in hard currencies on the black market and deposited it in the Goldenberg account as 'payment' for its 'exports'. The black market in Nairobi, Mombassa and other major Kenyan cities was thriving because official exchange controls by the government made it particularly difficult for Kenyans to secure foreign exchange for imports and foreign payments.[17] Nonetheless, Goldenberg sometimes had difficulties raising sufficient hard currency to cover its transactions: it sometimes took several weeks before the value of one CD3 form was fully covered, and even then, the cash deposited in the account did not balance with the figures invoiced.

Although Goldenberg breached the exchange control regulations and the agreement its proprietor signed with the CBK, the Ministry of Finance paid export compensation to the company after its claim was processed by Customs and Excise. The Governor of the CBK (Kotut) was alerted to this by T K Birech-Kuruna, the Exchange Controller, who wrote a memo reporting that Goldenberg's claim for export compensation was processed and paid, even though the company had failed to comply with the exchange control regulations stipulated in the contract signed between the company and the CBK. Birech-Kuruna also indicated that Goldenberg was selling foreign currency to its bank to cover its transactions (which was irregular and illegal under the law) and advised the Governor that the company should be compelled to comply fully with the regulations.[18] Pattni tried, but failed, to circumvent the system by applying for Goldenberg to be exempted from the condition that required the company (like all exporters) to surrender a copy of each CD3 form to the CBK following receipt of payments for exports. Kotut directed First American Bank to ensure that all earnings from Goldenberg were properly accounted for.[19]

The authorities did nothing to stop Goldenberg's illegal activities

Despite the queries raised about Goldenberg's transactions, Goldenberg became increasingly powerful and succeeded in manipulating the authorities in its favour. For example, First American Bank took issue with the manner in which Goldenberg accounted for its purported foreign exchange earnings, which was irregular and unorthodox. Moreover, Goldenberg committed an offence because only banks were permitted under the Exchange Control Act to handle foreign currency. Instead of dealing with this illegality, the CBK issued a foreign exchange dealer's licence to Goldenberg on 18 April 1991. The CBK made history and breached its own regulations by granting a dealer's licence to a trading company that was not in the banking business, thus playing a significant role in facilitating Goldenberg's transactions.[20] Even though some of the CBK officers demanded that Goldenberg comply with all exchange control regulations, it was becoming apparent that the Central Bank itself was becoming a key player in the Goldenberg fiddle.

Goldenberg's initial transactions were small but they quickly multiplied as the company started receiving export compensation from the government. In May 1991, the company opened another account at the Nairobi branch of Citibank NA, a subsidiary of Citicorp of the United States, apparently because the company was having difficulties at First American Bank. Citibank may have realised soon after that it could not deal with the kind of transactions in which Goldenberg was involved. The bank became alert when Goldenberg submitted one CD3 form purporting to have exported goods worth KSh186 million (equivalent then to US $6.6 million) in a single consignment on the same day but without documents to support the purported exports. Citibank wrote to the CBK seeking guidance on whether Goldenberg was exempted from providing supporting documents as stipulated by law for all exports.[21] The response from the CBK was that Citibank had to ensure that all proceeds received on account of Goldenberg were properly documented and accounted for, as Goldenberg was subject to the general conditions that applied to all exporters.[22]

The authorities did nothing to stop Goldenberg's illegal activities and the company continued to enjoy export compensation. In October 1991, Cheruiyot, the Commissioner of Customs and Excise, notified the Ministry of Finance and the CBK that Goldenberg contravened exchange control regulations by invoicing its clients abroad in Kenyan shillings instead of in foreign currency, as the exchange control regulations stipulated. Cheruiyot instructed Goldenberg to invoice its exports in the specified foreign currency and to comply with exchange control regulations.[23]

The issues raised by the CBK and Customs about the operations of Goldenberg could have prompted Citibank to stop dealing with the company. In 1992, Goldenberg opened an account with a government-controlled bank, Kenya Commercial Bank, and also operated another account at Delphis Bank—a local bank that was established through a scheme brokered by the Kenyan authorities in 1991 specifically to acquire the Kenyan operations of the Bank of Credit and Commerce International (BCCI), the Pakistani-based bank which collapsed with debts of over US $10 billion worldwide.[24]

Goldenberg's transactions expanded exponentially and by early 1992, the company was licensed to open a commercial bank in the name of Exchange Bank, presumably to overcome the difficulties it was experiencing at other banks. Banking licenses in Kenya are issued by the Minister for Finance on the recommendations of the Governor of the CBK, so the decision to allow Goldenberg to venture into banking business was sanctioned by Minister George Saitoti and Governor Eric Kotut. This confounded bankers and banking sector analysts because, since 1989 the government had introduced stringent procedures and requirements for licensing new banks through major amendments to the Central Bank of Kenya Act and the Banking Act. These measures were designed to enhance banking prudence and strengthen the viability of the financial sector, following a series of serious banking crises between 1986 and 1989.[25]

The establishment of Exchange Bank was a turning point in the Goldenberg scandal because it meant

Goldenberg's transactions were controlled under one umbrella and it was more difficult to subject them to the kind of scrutiny that had been possible when its affairs were reported on by the bankers who previously dealt with Goldenberg accounts. Indeed, this marked the beginning of new money laundering operations that quickly evolved into one of the biggest financial scandals ever seen in Kenya and probably in the whole of the Eastern Africa region. A significant development around this time was that the international aid donors had just unanimously agreed, during the consultative group meeting for Kenya held in Paris in November 1991, to suspend all balance of payments aid to the Kenyan government until reform and corruption issues were addressed. However, there was no evidence at this time that they knew that there was a major financial scandal brewing.

The key dimensions of Goldenberg

Goldenberg, with the support of the authorities, exploited several facilities that sounded great on paper when they were introduced by the government to increase Kenya's foreign exchange reserves. The first was a pre-shipment export finance scheme, which was launched by the CBK in 1989 to provide bridging finance to Kenyan exporters of non-traditional goods who did not have sufficient funds to finance the manufacture or preparation of their export products.[26] This was a short-term revolving facility under which the beneficiaries were required to pay back the funds they had borrowed within three months, by which time it was presumed they would have been paid for their exports. This was explained as a timely intervention by the government on the premise that exporters of non-traditional exports had the potential to substantially increase Kenya's export earnings but were mostly constrained by a lack of capital to finance their manufacturing or processing operations.

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However, the facility was turned into a money laundering operation for Goldenberg and a few other phoney export firms, which siphoned funds directly from the CBK through a few banks that were widely regarded as enjoying political patronage. In one major transaction in January 1992, Goldenberg applied to the CBK for pre-shipment finance of KSh 185.8 million (US $6 million) supposedly to acquire and process diamond jewellery for export to Servino Securities of Geneva, Switzerland. The application was approved and the money advanced to Goldenberg through its account at Delphis Bank. The application indicated that the exports would be shipped out by 30 March 1992 but as this date approached, Goldenberg applied to have the facility extended to July, arguing that the importer (Servino) had requested that the shipment be delayed because the consignments sent earlier had not all been sold.[27]

Available records show that there were no exports arising from this transaction and even though Goldenberg failed to pay back the money, no action was taken against it or against Delphis Bank, which was obliged to ensure that the money advanced to its client was recovered. Moreover, in November 1992, the company used the pre-shipment facility to discount bills of US $18 million in a period of five days through National Bank of Kenya (a state-controlled bank), Delphis Bank and Trust Bank. Although the CBK questioned the legality of these transactions, again no action was taken to recover the funds.

The other principal beneficiary of the facility was Spiro Voulla Rousalis (SVR), a Greek-owned firm that applied for and secured US $22 million through Trade Bank to finance fish processing for export. However, the company never remitted the foreign exchange earned from its exports and the directors of the company eventually ran away from Kenya when the authorities moved in to arrest them. The CBK, in exercise of its authority under the terms of the pre-shipment facility, shut down Trade Bank when it failed to repay the funds advanced to Spiro Voulla Rousalis.[28]

Goldenberg also emerged as a principal player in another scheme launched by the CBK, also in the name of dealing with Kenya's foreign exchange crisis. In what appeared like partial liberalisation of the foreign exchange regime, the CBK in 1992 issued a foreign exchange bearer certificate, popularly referred to as 'forex-c', whose stated objective was to give importers access to foreign currency from the market to finance their operations. It was also designed to tap hard currency from the black market and therefore it was widely regarded as a deliberate move to converge the black market hard currency exchange rate with the official exchange rate published by the CBK. It was also the first time that Kenyans were being allowed to handle and trade in foreign currency without the risk of being prosecuted.

The important element of the scheme was that anyone with foreign currency could buy forex-cs from the CBK and trade them at a premium at either at the Nairobi Stock Exchange or at a private auction that emerged to create a secondary market for the paper. But this facility was so widely abused by Goldenberg, Exchange Bank and a few other players that the CBK abolished it in 1993. Available records indicated that by this time, Goldenberg and Exchange Bank were indeed controlling the forex-c market and were manipulating the trade in their favour. When the facility was shut down, Exchange Bank was left holding US $132.9 million worth of forex-cs on account of Goldenberg and a deal was struck where the CBK redeemed all of them at KSh15/dollar. However, the proceeds were assigned to cover part of the debts that Exchange Bank owed to the CBK. A specific agreement covering this transaction was drawn up and signed by Kamlesh Pattni, in his capacity as chairman of Goldenberg, and by Micah Cheserem, the Governor of the CBK who was appointed in July 1993 when Kotut resigned under pressure.[29]

Analysis of Goldenberg transactions showed that the company used the export compensation payments it had received irregularly from the government to manipulate the forex-c market. Morever, Goldenberg also featured prominently in investigations relating to manipulation of the treasury bills market, particularly in 1993, when the CBK offered interest rates of up to 82% to recall excess liquidity from the money market, which was causing high growth in money supply and pushing up inflation. Much of this liquidity arose from the money poured into the economy during the December 1992 general election in which Moi and KANU retained power, despite a heavy assault from the budding opposition. Exchange Bank was finally closed in September 1993 and records indicated that it was holding treasury bills of US $100 million on account of Goldenberg. Like the forex-cs redeemed by the CBK, these treasury bills were also assigned to repay part of Exchange Bank's debts at the CBK and were covered by the agreement signed between Pattni and Cheserem referred to earlier.

The company used the export compensations payments from government to manipulate the forex-c market

While pressure was mounting on the government to take action to stop the money laundering operations associated with Goldenberg, it emerged that the same network was used to execute the largest single financial fraud in a record time of less than three months. The key players, again, were Goldenberg and Exchange Bank, which transacted some US $900 million in three highly brokered deals, all involving siphoning money directly out of the CBK.

In the first deal, Exchange Bank, together with four other politically connected banks, fraudulently obtained advances of US $530 million from the CBK through kiting. The deal, which was done in only four days, from 2-6 April 1993, involved Postbank Credit, Pan African Bank, Delphis Bank and Transnational Bank, and was designed to cover Pan African Bank, which was threatened with closure for failing to pay a huge overdraft at the CBK. Even though the CBK recovered half the money, US $265 million went under with Exchange Bank when it was shut down. In this transaction, the CBK breached the law and its own prudence regulations and the gains Exchange Bank made increased its financial muscle to influence the treasury bills and forex-c markets.

The second money laundering operation involved US $210 million which was siphoned out of the CBK by Goldenberg through Exchange Bank from April to July 1993.[30] The process was fairly simple: Exchange Bank declared to the CBK that it had received US $210 million from Goldenberg's gold and diamond jewellery exports. Exchange Bank signed an instrument called a 'forward contract', which was widely used in genuine foreign currency transactions between commercial banks and the CBK. In this transaction, Exchange Bank informed the CBK that it had deposited the hard currency earnings from Goldenberg in the CBK's accounts in New York and London and in return, it was immediately credited with the KSh equivalent of US $210 million (then about KSh 13.5 billion), which was credited to the Goldenberg account. However, an audit of the CBK's accounts later revealed that no dollars were deposited in its foreign accounts as indicated by Exchange Bank. It also emerged that two senior CBK officials, namely Job Kilach, the director of the CBK's foreign exchange department, and Michael Wanjihia Onesmus, the chief dealer in the same department, were involved in the execution of the deal and were also used to develop a cover up scheme when the International Monetary Fund (IMF) questioned imbalances in the CBK's accounts.[31] They arranged with Banque Indosuez Sogem Aval and American Express (Amex) branches in London to open accounts in the name of the CBK and create book entries referred to as 'notional deposits' because they did not involve real financial transactions. The CBK's account at Indosuez Aval was then credited with US $100 million, while the one opened at Amex was credited with US $110 million.[32] These balances were to remain in the accounts from June to December 1993 to balance the books of the CBK. This was particularly critical because the CBK, under pressure from the IMF and the World Bank, had commissioned special audits of Exchange Bank and the other banks involved in the money laundering schemes. It emerged from the audit (which was conducted by Price Waterhouse though its findings were never made public), that Exchange Bank refunded the US $210 million it had irregularly secured from the CBK and was charged a penalty interest of 3.0% as stipulated by the authorities. This penalty was a mere token considering that Goldenberg and Exchange Bank made millions of shillings by investing the money in treasury bills and forex-cs for three months.

The third deal was a direct transfer of US $100 million from the CBK to Goldenberg's account in Kenya Commercial Bank. Evidence available shows that the transfer was made in three instalments on specific instructions issued by Dr Wilfred Karuga Koinange, who was the then-Permanent Secretary at the Treasury. In each case, he wrote a one-sentence letter directing the CBK to transfer the funds from the government account to Kenya Commercial Bank (KCB) but did not specify who the beneficiary was.[33] However, the CBK governor made a submission to the Public Accounts Committee, a parliamentary watchdog on public funds expenditure, that the bank had investigated the matter and established that the money was credited to Goldenberg's account at KCB.[34]

The official cover-up

By early 1992, there was circumstantial evidence that Goldenberg was not a genuine exporter but was simply claiming export compensation on paper transactions, which were backed up by official stamps from the Commissioner of Mines and Geology, the customs department and the CBK. However, the deals did not capture public attention until April 1992, when the *Daily Nation* published the first story on Goldenberg's gold and diamond export activities and the abuse of the pre-shipment export finance scheme.[35]

By early 1992 there was circumstantial evidence that Goldenberg was not a genuine exporter

The article elicited instantaneous reactions from Goldenberg and the authorities who were facilitating its transactions. In separate but similarly worded statements, Goldenberg, the Ministry of Finance and the Commissioner of Mines and Geology, denied that Goldenberg was involved in dubious export deals and claimed that the firm was a genuine exporter of precious metals and had actually earned the country substantial foreign exchange.[36] The statement issued by Dr Wilfred Karuga Koinange of the Ministry of Finance claimed Goldenberg had earned more than US $50 million since it embarked on a pilot export scheme and that it undertook to deliver more foreign exchange.

Besides these statements, there was an attempt by the proprietors of Goldenberg and the authorities to suppress further publication of articles on Goldenberg's affairs but this proved a futile exercise when, in May 1992, the government's Controller and Auditor General published an audit report questioning the illegal payment of US $9 million export compensation to Goldenberg by both the Ministry of Finance and the Customs and Excise Department. The report by the Controller and Auditor General, D.G. Njoroge, questioned why export compensation was paid to Goldenberg for exports that could not be verified and fingered the Ministry of Finance and the Customs and Excise Department for making payments without evidence that the purported exports by Goldenberg ever left the country. The report also questioned the legality of the 35% preferential export compensation granted to Goldenberg when the law allowed a maximum of 20%.[37] The matter was taken up in Parliament but in defence, Prof Saitoti said Goldenberg was entitled to 20% export compensation like any other exporter of non-traditional exports and also claimed that the additional 15% compensation was actually approved by Parliament and was thus legal.

Saitoti also claimed that the exports and foreign exchange earnings were properly documented by the authorities who were given the responsibility of ensuring that Goldenberg complied with the terms and the conditions of the agreement approved by the Ministry of Finance. Indeed, he stated, the CBK had confirmed receiving the foreign exchange earned from Goldenberg's exports and it was on the basis of this that export compensation was paid. "The entire transactions have been conclusively conducted by the three institutions (the CBK, Department of Mines and Geology and Department of Customs and Excise) in accordance with the laid down procedures," he said.[38] There was uproar in Parliament over the matter, particularly when it turned out that the additional compensation in dispute was disguised as a customs refund, which misled Parliament. However, the Speaker of the National Assembly at the time, Francis ole Kaparo, refused to have the issue debated.[39]

Even though the government made a spirited attempt to defend Goldenberg, it became apparent that the official defence was crumbling under mounting pressure from donors and local watchdogs, including the press. When President Moi named a new cabinet in January 1992 following KANU's victory in the December 1992 elections, Prof Saitoti was moved from the Ministry of Finance to the Ministry of Planning and National Development, being replaced by Musalia Mudavadi. Strangely, Mudavadi was quick to adopt the government's line of defence. He issued a statement that by early 1993 Goldenberg had earned and remitted US $145 million. He subsequently contradicted himself when he issued a legal notice withdrawing export compensation for gold exports in February 1993.[40] Shortly thereafter, the entire export compensation facility was scrapped for all exports. Moreover, Mudavadi scrapped the pre-shipment export finance scheme and ordered all the banks that had secured funds under this facility from the CBK to settle their accounts by 30 April 1993. The banks that had benefited from this scheme included Exchange Bank, Pan African Bank and Trade Bank, and it was significant that they were unable to settle their accounts by the due date and collapsed one after another.[41]

The government's defence mechanism finally fell apart in June 1993 when the Central Bureau of Statistics (CBS), under the Ministry of Planning and National Development, published the 1993 Economic Survey.[42] The report, which was ironically released by Prof Saitoti in his capacity as Minister for Planning, showed no records of the gold and diamond jewellery that Goldenberg claimed to have exported. All the key sections of the survey in which the output and sale of the precious metals would have featured showed no records of any significant activity in gold and diamond jewellery. For instance, based on the export figures issued by the government, gold and diamond jewellery exports should have featured as the second most important source of Kenya's export earnings after tea but export figures did not even record minerals among the nearly 20 most important foreign exchange earners. Moreover, while Goldenberg was supposed to have earned Kenya some US $145 million by the end of 1992 (according to the statement issued by Mudavadi), the Economic Survey showed that the value of all mineral output recorded by the Department of Mines and Geology was only US $40 million in 1993, and about US $36 million in 1992.

Though there was an uproar in Parliament, the Speaker refused to have the issue debated

The Goldenberg figures also failed the test in terms of the value of goods exported to the destinations to which the gold and diamond jewellery were allegedly sent. Goldenberg claimed its consignments were shipped to two companies in Switzerland, Servino Securities and Solitaire, and one in Dubai, World Duty Free – which was associated with the Kenya Duty Free. However, the trade figures reported by the Economic Survey showed insignificant values of exports to the two countries. World Duty Free also denied importing gold and diamond jewellery from Goldenberg.[43]

The government also found itself on the spot when, in July 1993, the report of the Controller and Auditor General for 1991/92 questioned further irregular export compensation payments to Goldenberg. This report stated that Goldenberg was illegally paid export compensation of KSh 1.5 billion (US $50 million) by March 1992 and, like the previous year, the government auditor said no evidence confirmed that gold and other precious metals were actually exported in order for the firm to claim 35% export compensation.[44] The report also questioned the payment of export compensation without evidence that the goods exported originated from or were processed in Kenya. There was also no proof that the import content of the goods supposed to have been exported did not exceed 70% of their ex-factory value. The Export Compensation Act required evidence that the goods were produced in Kenya and evidence that the local content in the value of such goods when processed exceeded 30%. Goldenberg's exports did not fulfill these conditions and the source of gold and diamonds purported to have been processed in Kenya was unknown. However, there was speculation that Goldenberg was trading in gold and diamonds smuggled from Kenya's neighbours including Congo, Rwanda and Burundi.

The cookies finally crumble

The Economic Survey and the Controller and Auditor General's reports fuelled a crisis that was already in the making for the government, following an audit ordered by the IMF and World Bank in April 1993 of all the banks involved in kiting and in dubious foreign exchange dealings. The special audit of Exchange Bank and the five other banks implicated in irregular deals was commissioned by the CBK and Price Waterhouse (now Price Waterhouse Coopers), which conducted the audit, had just handed in its report to the CBK.[45] Although the report was not made public, it triggered a series of events that clearly left no doubt that the cookies had finally started crumbling. The first significant move was on 18 July, when Mudavadi ordered the immediate liquidation of Exchange Bank by the Deposit Protection Fund, even though the proprietors of the bank were later allowed to appoint their own liquidator. A few days later, Eric Kotut, the CBK governor, resigned and was replaced by Micah Cheserem.[46]

In due course, investigations by Price Waterhouse revealed that Exchange Bank and Goldenberg were at the centre of extensive money laundering activities with the other politically connected banks and the CBK. Shortly after being appointed governor, Cheserem requested Simeon Mauncho, a lawyer with close links to the Moi regime, to examine the Price Waterhouse report and give a legal opinion. Mauncho handed in a legal opinion in August 1993 which, among other issues, stated that Exchange Bank inserted missing text over US $12 million in a short period from October 1992 to May 1993 through abuse of forex-c and foreign exchange regulations. Moreover, Goldenberg was credited with US $8 million which Exchange Bank had realised from selling hard currency to the CBK on behalf of "certain parties".

The report also mentioned the pre-shipment export finance and the kiting between Exchange Bank and the other four banks.[47] Records also show that the CBK confiscated Treasury Bills and bearer forex-cs worth more than US $125 million when it shut down Exchange Bank.

This series of revelations was the turning point in the Goldenberg saga, but the government failed to prosecute those involved. Amos Wako, the Attorney General, faced considerable pressure to start prosecution but he always scuttled the matter, saying the police were still investigating and there was insufficient evidence to sustain a prosecution. The Law Society of Kenya (LSK) took up the matter and gave Wako until 31 August 31 1993 to prosecute those associated with Goldenberg and, when he failed to do so, the society filed a private prosecution in the Kenyan High Court.[48] However, the Attorney General used his constitutional powers to sabotage the prosecution by taking it over and thereafter terminating it.[49]

By the time the curtain fell on Goldenberg's operations, the company had filed more than 160 CD3 forms with the CBK, claiming to have exported gold and diamond jewellery worth US $375 million, including US $250 million worth to World Duty Free and US $30 million worth to the two phony Swiss firms named in the gold and diamond jewellery export transactions.

The money irregularly paid to Goldenberg was reported to have caused considerable damage to the economy

The money irregularly paid to Goldenberg, combined with the funds poured into the economy during the 1992 elections, was reported to have caused considerable damage to the economy including causing rapid growth in money supply and inflationary pressure. Kenya was on the verge of an economic crisis that was only averted when the CBK subjected Kenyans to a shock therapy that included mopping up excess money supply from the money market and painful reforms that left the majority of poor Kenyans poorer. The measures implemented late in 1993, aimed at curbing rapid growth in money supply and inflation, caused interest rates on commercial bank lending and Treasury Bills to rise from around 20% to as much as 70-80%, further fuelling inflation. Many businesses collapsed as they were unable to service debts. The value of the Kenya shilling depreciated substantially and the level of absolute poverty increased.[50] However, the economy started showing signs of recovery in 1994.

The spider's web

It is difficult to get comprehensive records of how much Goldenberg actually made from the irregular transactions sanctioned by the authorities and how such funds were used, but it was apparent that even as the Goldenberg operations were being shut down, its spin-offs had spread like the proverbial spider's web. Besides the circumstantial evidence that part of the money was used to finance the 1992 elections and pay off debts (in 1993) spilling over from the elections, it transpired that the Goldenberg proceeds were used to acquire one of the large commercial banks associated with the Moi regime. The proprietors of Goldenberg acquired the assets of the Pan African Bank (one of the banks involved in kiting with the CBK), together with its subsidiaries, Pan African Credit and Finance, Pan African Building Society, Uhuru Highway Development and Safariland Lodge. President Moi, through a firm called Hedam (an acronym for His Excellency Daniel arap Moi), had a beneficial interest in the bank. The Pan African Bank group fell into trouble following the death in 1991 of its founder chairman, Mohamed Aslam (then popularly known as the President's banker), who died a few days before he was due to testify at the commission appointed to investigate the murder of Dr Robert Ouko.

An agreement for the takeover of the bank and its assets was signed in January 1993 between representatives of the Aslam family and a new investment firm, Pan African Salvage (Pansal) Investment. Pansal took over the bank and its subsidiaries for US $14 million but the Aslam family successfully negotiated to retain ownership of Corporate Insurance Company, which was the insurance arm of the group.[51] It was significant that, although the agreement was made in 1992, it was not until 8 March 1993 that Pansal Investment was officially registered by the Kenyan authorities.[52] One of the signatories to the transaction was Abraham Kiptanui, the then-Comptroller of State House, but it was not clear in what capacity he participated in the deal.

The takeover of the Pan African Bank was a disguised scheme aimed at protecting it from liquidation by the CBK over an overdraft of US $125 million. The bank was suffering liquidity problems due to non-performing debts owed by H Z group of companies.[53] The bank was also reported to have diverted substantial public funds to the construction of a grandiose five-star hotel in Nairobi, which initially started as Hotel Meridien but was renamed the Grand Regency Hotel when it was finally completed. The debt was never paid; instead, Pan African Bank tried to cover it through the June 1993 kiting transactions mentioned earlier in this paper.

The Grand Regency was developed by Uhuru Highway Development, the property arm of the Pan African Bank, and, by acquiring the property business, the beneficiaries of Goldenberg also acquired the Grand Regency. Although the hotel is an impressive landmark in the heart of Nairobi, it could well have been an extension of the money laundering transactions associated with Goldenberg and Exchange Bank. Such a possibility is apparent from the funds pumped into the construction and refurbishment of the hotel. When construction started in 1989, the estimated cost of the development was US $30-40 million but by 1992, the cost had escalated to US $75 million. By the time it was completed in 1993, the cost had overrun to over US $100 million.

Investigations by the Kenyan authorities into the financing of the hotel pointed to massive cost increases associated with overpricing by suppliers.[54] The cost comparisons drawn by the investigators showed that the average cost of developing the Grand Regency, which is a 220 room facility, was estimated at US $340,000, which was nearly three times the international average cost of US $120,000 for comparable facilities. This could well mean that money was laundered through construction and supply contracts.

Indeed, the cost of the hotel was an issue between Pattni and the CBK, which has been claiming ownership of the Grand Regency on the grounds that all the funds used in its development were siphoned from the CBK.[55] While the CBK put the hotel's real value at US $40 million, Pattni claimed that the hotel was worth double that amount, presumably based on the actual cost paid to the contractors and suppliers.

The Grand Regency is not the only prime investment that Pattni claimed to have acquired at the height of the Goldenberg scandal. Pattni is embroiled in a dispute over the ownership of Kenya Duty Free with the owner, Nassir Ibrahim Ali, who was deported by the Kenya government while the dispute was going on in the Kenyan courts. Ali has taken the government to the International Court at The Hague in Netherlands, claiming that it was facilitating the forceful takeover of his investment through Pattni. Moreover, Pattni is involved in another dispute over the ownership of businesses associated with Ketan Somaia, which include Marshalls East Africa (the French Peugeot franchise motor dealer), Block Hotels, Tourist Paradise Investment (which operates casinos in Nairobi and Mombasa cities), United Touring Company and A Baumann. The courts are yet to determine who the rightful owners of these investments are and whether Pattni indeed acquired them from their previous owners. Presently, the businesses are being run by receiver managers appointed by the courts.

The intrigues and controversy that never end

When President Kibaki appointed the Commission of Inquiry to investigate the Goldenberg affair, it was widely assumed that the matter would be brought to finality. But after calling more than a hundred witnesses and spending an estimated US $20 million of taxpayers' funds, the Goldenberg Commission turned into a sort of circus where most of the witnesses, including the prime suspects in the corruption, claimed whatever they did was done expressly under instructions from Moi. Moi refused to testify. The Commission has yet to publish its findings and guide the government on what action should be taken against the perpetrators of the corruption. Kiraitu Murungi, the Minister for Justice and Constitutional Affairs, initially stated that the report would be published by August 2005 but more recently, he said it will be completed in November 2005. Considering the high stakes involved, and the intrigues that were evident during the Commission's public hearings, it remains to be seen whether the Goldenberg chapter will be finally closed, or the findings will open up fresh controversy that will take years to put to rest. Whatever the outcome, Goldenberg remains a serious and complex scandal that simply refuses to go away.

Endnotes

1 A Judicial Commission of Inquiry is open to receive all possible evidence on the subject of its inquiry, unlike a court which is restricted to the charges preferred against the suspects. The specific terms of the Commission of Inquiry into Goldenberg are detailed in the *Kenya Gazette* published by the Government on February 24, 2003.

2 NARC is a coalition made up of two main political forces, the National Alliance Party of Kenya (itself a coalition of several former opposition parties) and the Liberal Democratic Party, which is made up of powerful politicians who disagreed with Moi's choice of his political successor in KANU.

3 During his rule Moi was accused of a number of significant economic and political crimes, including Goldenberg, corruption in state enterprises, human rights violations, the murder of a former foreign affairs minister (Dr Robert John Ouko) and many others. Kibaki's government has appointed commissions to investigate some of these matters, including the murder of Ouko.

4 The Commission of Inquiry was told by former permanent secretaries Joseph Magari (now Permanent Secretary in the Ministry of Finance) and Dr Wilfred Karuga Koinange that Moi personally ordered them to pay Goldenberg International, even though they knew it was illegal, as the payments were not supported by genuine export transactions.

5 Kenya's economic performance.

6 Political repression was high as pro-democracy forces campaigned against Moi, demanding constitutional changes to make Kenya a multi-party state.

7 Kanyotu, as dreaded himself as the security intelligence he headed, admitted having been one of the original subscribers to Goldenberg but claimed that he had resigned soon after the company was formed.

8 Merali took over several large enterprises from American investors in the late 1980s in high-powered deals that raised more questions than answers as to how he financed them and also how he secured foreign currency to pay for them when Kenya was under strict foreign exchange controls. Merali, a former accountant at Ryce Motors, which he later acquired, bought out American investors First National Bank of Chicago (which was renamed First American Bank), then later bought majority shares in Firestone East Africa, then bought Union Carbide (which was renamed Eveready Batteries). His Sameer group also owns Sameer Industrial Park, Equatorial Commercial Bank, Sasini Tea and Coffee, Aristocrats Concrete and First Assurance (also previously owned by American investors).

9 Saitoti, a professor of Mathematics, was drafted by Moi from the University of Nairobi and made Minister of Finance in 1983. During the 1988 elections, Philip Odupoy, the Member of Parliament for Kajiado North, was forced to step down to make way for Saitoti to be elected unopposed. Saitoti was thereafter appointed Vice President and Minister of Finance. He served a troubled term as Vice President, often being openly humiliated by Moi and his cronies. He is one of the politicians who resigned from KANU to join LDP when Moi anointed Uhuru Kenyatta as his political successor. Saitoti is now Minister of Education, Science and Technology.

10 Letter of application by Goldenberg International signed by Kamlesh Pattni to the Vice President and Minister of Finance, Prof. George Saitoti, dated 8 October 1990.

11 Letter from Charles Stephen Mbindyo, the Permanent Secretary in the Ministry of Finance, dated November – 1990, advising Pattni that Saitoti had, in principle, approved Goldenberg's application for monopoly rights to export gold and diamond jewellery from Kenya and draw an export compensation of 35% from the government.

12 Export subsidies were granted under the Export Compensation Act. Under this Act, the government granted export compensation of 20% to promote exports of non-traditional products with the aim of diversifying Kenya's export base away from traditional commodities, mainly coffee and tea. The Act was specific about the goods that qualified for export compensation and the conditions that applied, including substantial local content and value added. The Act was scrapped early in 1993 and all export subsidies were abolished due to widespread abuse, especially through Goldenberg.

13 Agreement drafted by the CBK and signed by Pattni binding Goldenberg to comply with all exchange control regulations in force at the time. Exchange controls were abolished in 1993 and CBK consequently disbanded its exchange control department. Jacinta Mwatela, who was later promoted to director of CBK's financial markets, became a key witness in the Goldenberg inquiry.

14 One copy of the CD3 forms was left with the Department of Customs and Excise, another was sent to CBK, the third was kept by the exporter's bank and the fourth was retained by the exporter. On receipt of payments for the exports, the exporter's bank sent the copy it retained together with all the proceeds received to CBK, and only after this was done was the export transaction deemed to have been completed.

15 View Park Towers is itself a symbol of grand corruption during Moi's reign. The 21-storey building was constructed by Harbans Singh, a contractor who was well connected with Moi and Prof. Saitoti, and later sold at a considerable profit to the National Social Security Fund, which is the workers' pension fund.

16 See a sample copy of Goldenberg's CD3 form showing how the company accounted for export earnings in various currencies paid directly into its bank account at First American Bank.

17 The exchange control regime made it difficult for genuine users of foreign exchange (for imports and payment of other foreign obligations) to secure their needs because of endemic red tape in the system and its wide abuse by government officials and their cronies. The processing of import applications by the import management committee of the Ministry of Commerce and Industry and foreign exchange allocations by the foreign exchange allocation committee of the Ministry of Finance was a laborious procedure that took eight months to a year, or even more in some cases.

18 Letter from T K Birech-Kuruna, the CBK's exchange controller, to Governor Eric Kotut, quoted in the *Economic Review*, 3 May 1993.

19 Letter from Eric Kotut, the Governor of the CBK, to First American Bank, quoted in the same issue above.

20 Only banks were licensed to handle foreign exchange and they were required to sell all proceeds from exports, tourism and other foreign remittances to the CBK within a stipulated time.

21 Citibank letter to the CBK enquiring if Goldenberg was exempted from providing the required documentation supporting its exports as stipulated by law for all exporters.

22 Letter from the CBK to Citibank responding to the query about Goldenberg failing to provide supporting documents for its exports.
23 Letter from Francis Cheruiyot, Commissioner of Customs and Excise, notifying the Ministry of Finance and the CBK that Goldenberg continued to contravene exchange control regulations and was invoicing its clients in Kenya shillings instead of using hard currency.
24 Delphis Bank was born out of a scheme hushed up by the government, through George Saitoti and Eric Kotut, to take over all the Kenyan assets and liabilities of BCCI. Bankers suspected the move was aimed at shielding the Kenyan business from scrutiny by international investigators. The registered owner of the new bank was Ketan Somaia, another controversial tycoon of Indian extraction, who, just two years earlier at the age of 29, caused ripples in Nairobi business circles when he took over several established and profitable businesses including Marshalls East Africa (the local franchise for Peugeot vehicles) and Tourist Paradise Investment, a firm running the largest casinos in Nairobi and Mombassa. He later acquired Block Hotels and Miwani Sugar Company. Somaia's acquisition of the Casino was the most interesting: the President ordered casinos to stop gambling in Kenyan shillings at a time when Kenyans did not have access to foreign currency due to exchange controls. After Somaia bought out the casinos, the President lifted this sanction on the casinos. It was also significant that Somaia was a close associate with of Oyugi, and he was also implicated in irregular deals including supply to the Fourth All Africa Games held in Nairobi in 1987, supply of security equipment to the Kenya Administration Police and supply of London lookalike taxis in a GBP 10 million deal transacted through National Bank of Kenya. Since Somaia relocated from Kenya to Dubai he has been involved in a number of controversial deals, including the establishment of Delphis Bank in Mauritius and the acquisition of Mpumalanga Park in South Africa.
25 The Banking Act and the Central Bank of Kenya Act were amended extensively in 1988 and 1989 to prevent future crises. In 1989, the Consolidated Bank of Kenya was established to take over the assets and liabilities of 10 small indigenous-owned banking institutions that collapsed between 1986 and 1989 due to what the government said was poor management. The Deposit Protection Fund was also established to protect small depositors.
26 The incentive was designed to diversify Kenya's export base away from coffee and tea, the principal export commodities, which were vulnerable to unfavourable terms of trade. The targeted exports included textiles, handicrafts and fish.
27 Application by Goldenberg for pre-shipment export finance and subsequent letter requesting the shipment period to be extended to July 1992.
28 The *Economic Review*, 19 April 1993.
29 Kamlesh Pattni, the chairman of Goldenberg, and Micah Cheserem, the governor of the CBK, made an agreement under which Exchange Bank was credited withK Sh15 per dollar for the forex-cs it was holding. The agreement was intended to resolve the indebtedness of Exchange Bank to the CBK.
30 The shilling depreciated so fast after March 1993 that by July, the rate was US $1=KSh.64.
31 The two were later charged in court with the offence, together with Pattni and Goldenberg.
32 Indosuez Laval letter and agreement
33 Koinange's instructions
34 Public Accounts Committee's deliberations on Goldenberg and the banking frauds.
35 Peter Warutere, Goldenberg's Sh186 million pre-shipment scheme, *Daily Nation*, 21 April 1992.
36 Press statements by Goldenberg International, Ministry of Finance and the Commissioner of Mines and Geology reacting to the *Daily Nation* article on Goldenberg's export activities.
37 The Report of the Controller and Auditor General Together With the Appropriation Accounts, Other Public Accounts and the Accounts of the Fund for the Year 1990/91.
38 Statement in Parliament by Prof George Saitoti, Minister for Planning and National Development, who was Minister for Finance when the Goldenberg scheme was approved, 15 June 1993.
39 The *Economic Review*, 21 June 1993.
40 Press statement on Goldenberg by Musalia Mudavadi, Minister for Finance, 27 March 1993.
41 Trade Bank was the first to collapse in April 1993 when it was unable to settle its preshipment finance account with the CBK. It was followed in May by Postbank Credit and then Pan African Bank. In July 1993, the Ministry of Finance also shut down Exchange Bank.
42 The *Economic Survey* is the official government annual report on all economic transactions including rate of growth, production and exports for all sectors in any given year. It is published just before the annual Budget in June.
43 Investigations with Swiss authorities indicated that the two firms supposed to have been receiving Goldenberg's exports were not registered in Switzerland, hence were non-existent. The proprietor of World Duty Free, Nizar Ali Ibrahim, was deported by the Kenyan authorities at the height of a dispute in the Kenyan high court with Kamlesh Pattni over the ownership of Kenya Duty Free.
44 The Report of the Controller and Auditor General Together With the Appropriation Accounts, Other Public Accounts and the Accounts of the Fund for the Year 1991/92.
45 The other banks were Postbank Credit, Pan African Bank, Transnational Bank, Trade Bank and Delphis Bank.
46 A statement on Kotut's departure said he had resigned and President Moi had accepted his resignation. Cheserem, who was a director of Unilever Malawi, was also a director of the CBK before being appointed governor.
47 Legal opinion by Simeon Mauncho, advocate, to Micah Cheserem, governor, CBK on special audit of Exchange Bank by Price Waterhouse.
48 The Law Society of Kenya filed a private prosecution against the then-Vice President, Prof George Saitoti, permanent secretaries Charles Mbindyo and Wilfred Karuga Koinange, the Commissioner of Mines and Geology, Collins Owayo, and the others implicated in the Goldenberg scandal.
49 The Attorney General is the chief government prosecutor and legal adviser and has powers under the Kenyan Constitution to take over any prosecution in the Kenyan courts.
50 To curb growth in money supply and inflation, the CBK offered high yielding Treasury Bills during weekly auctions and the impact of this was felt in terms of high commercial bank interest rates, high prices, inflation and increased poverty levels.

51 Sale agreement between Pan African Bank and Pansal Investment dated 25 January 1993.
52 Copy of Pansal Investment registration certificate dated 8 March 1993 and issued on 10 March 1993 by the Registrar of Companies.
53 The H Z group of construction companies were associated with former minister Nicholas Biwott, then regarded as President Moi's most powerful aide. Biwott was mentioned by Scotland Yard detectives as one of the prime suspects in the murder of Dr Robert Ouko but later sued for defamation.
54 Investigations report by the Criminal Investigations Department, a branch of the Kenyan Police, published in the *Economic Review*, 21-27 March 1994.
55 When the CBK shut down Exchange Bank, it took out a security charge of US $40 million on the Grand Regency to cover part of the debt it was claiming from Pan African Bank. The hotel was first placed in receivership by the CBK on 15 April 1994.

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About this paper

Goldenberg was a high level conspiracy by senior officials of the Moi administration in Kenya, together with local and international wheeler dealers, who capitalised on the government's desperation for foreign exchange and the greed of the administration's cronies. It was the most blatant case of corruption associated with the Moi government. This paper shows how these corrupt activities, which had a devastating impact on one of Africa's most promising economies, were crafted and carried out. The political and economic environment in Kenya in the early 1990s probably mirrors that of other countries in the region and for that reason, this paper holds useful lessons for the region.

About the author

An economist by profession, Peter Warutere has been an advisor on Governance and Communications in the Office of the President of Kenya since July 2004. He has also rendered his professional expertise in the investigation of corruption in general and to the commission of enquiry into the Goldenberg corruption cases in August 2003. He holds a B Ed from the University of Nairobi, Kenya and an MA in Development Economics from the University of Manchester, UK.

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