

REPUBLIC OF KENYA




Approved
5/10/2023

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

REPORT ON THE CONSIDERATION OF THE ANTI-CORRUPTION AND ECONOMIC
CRIMES (AMENDMENT) BILL, 2023 (*NATIONAL ASSEMBLY BILL NO. 30 OF 2023*)

 THE NATIONAL ASSEMBLY PAPERS LAYD	
DATE: 05 OCT 2023	
DAY: THUR 5/10/2023	
TABLED BY:	Hon. George Munigara, mp
CLERK-AT THE-TABLE:	Chairperson, JLAC A. Shubuko

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2023

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3. Trusted Society of Human Rights Alliance v Attorney General & 2 others; Matemu (Interested Party); With Kenya Human Rights Commission & another (Amicus Curiae) (Petition 229 of 2012) [2012] KEHC 2480 (KLR) (Constitutional and Human Rights) (20 September 2012) (Judgment).

LIST OF ABBREVIATIONS AND ACRONYMS

EACC	-	Ethics and Anti-Corruption Commission
FATF	-	Financial Action Task Force
IEBC	-	Independent Electoral and Boundaries Commission
KLRC	-	Kenya Law Reform Commission
LLP	-	Limited Liability Partnership
LSK	-	Law Society of Kenya
MCCP	-	Maendeleo Chap Chap Party
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecutions
UDA	-	United Democratic Alliance
WDM	-	Wiper Democratic Movement

ANNEXURES

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 (*National Assembly Bill No. 30 of 2023*) which was published on Monday 19th June 2023.

The Bill was read for the first time in the House on Wednesday 2nd August 2023 and thereafter committed to the Departmental Committee on Justice and Legal Affairs for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The principal object of this Bill is to amend the Anti-Corruption and Economics Crimes Act, 2003 to repeal Section 64 which provides for the disqualification of persons convicted of corruption or economic crimes from holding public office.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3), the Committee placed an advertisement in the print media on Monday 31st July 2023 inviting the public to submit memoranda by way of written statements on oath (*affidavit*) on the Bill.

In addition, the Committee vide letter dated 10th August 2023 of Ref. No. *NA/DDC/JLAC/2023/089* invited key stakeholders to submit views on the Bill. The memoranda were to be received on or before Friday 18th March 2023 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received eight memoranda. Further, the Committee invited key stakeholders to attend a public participation forum on Tuesday 22nd August 2023 vide letter dated 10th August 2023 of Ref. No. *NA/DDC/JLAC/2023/089*.

The Ethics and Anti-Corruption Commission (EACC), the Independent Electoral and Boundaries Commission (IEBC), the Kenya Law Reform Commission (KLRC), the Law Society of Kenya (LSK), the Office of the Director of Public Prosecutions (ODPP), Transparency International, *Mzalendo* Trust and *Uraia* Trust attended the public participation forum and gave their views on the Bill which the Committee considered in the preparation of this report.

While considering the Bill, the Committee observed from a majority of the submissions received that the proposal would weaken the fight against corruption and economic crimes.

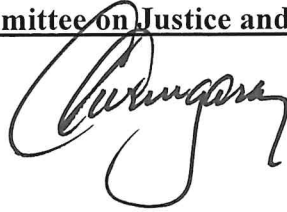
The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank the EACC, the IEBC, the KLRC, the LSK, the ODPP, Transparency International, *Mzalendo* Trust, Anjarwalla and Khanna LLP and the Hon. Shakeel A. Shabbir Ahmed, CBS, MP for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the

Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 (*National Assembly Bill No. 30 of 2023*)

Committee on its consideration of the Anti-Corruption and Economic Crimes (Amendment) Bill
(*National Assembly Bill No. 30 of 2022*).

Hon. Murugara George Gitonga, MP
Chairperson, Departmental Committee on Justice and Legal Affairs

A handwritten signature in black ink, appearing to read 'Murugara', is written over the underlined title of the Chairperson.

CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
- viii. *To examine treaties, agreements and conventions;*
- ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
- x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider¹:-

¹ National Assembly Standing Orders, 6th Edition.

- a) The Judiciary;
- b) Tribunals;
- c) Access to Justice;
- d) Public prosecutions;
- e) Ethics, Integrity and Anti-corruption;
- f) Correctional services;
- g) Community service orders and witness protection;
- h) Constitutional Affairs;
- i) Sovereign immunity;
- j) Elections including referenda;
- k) Human rights;
- l) Political parties; and
- m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.

3. In executing its mandate, the Committee oversights the following Ministries, Departments and Agencies:

- a) State Department of Correctional Services;
- b) State Law Office and Department of Justice;
- c) The Judiciary;
- d) Judicial Service Commission;
- e) Office of the Director of Public Prosecutions;
- f) Ethics and Anti-Corruption Commission;
- g) Independent Electoral and Boundaries Commission;
- h) Commission on Administrative Justice;
- i) Office of the Registrar of Political Parties;
- j) Witness Protection Agency;
- k) Kenya National Commission on Human Rights;
- l) Kenya Law Reform Commission; and
- m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October 2022 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency
UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency
MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency
WDM-Kenya

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency
ODM Party

Hon. Junet Mohamed, CBS, MP
Suna East Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency
ODM Party

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Muriu Wakili Edward, MP
Gatanga Constituency
UDA Party

Hon. Maina Jane Njeri, MP
Kirinyaga (CWR)
UDA Party

Hon. Gichohi Kaguchia John Philip, MP
Mukurweini Constituency
UDA Party

Hon. Mogaka Stephen M, MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa Township (CWR)
Jubilee Party

1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Douglas Katho
Clerk Assistant I/Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Vivienne Ogega
Research Officer III

Mr. Stanley Lagat
Senior Serjeant-At-Arms

Ms. Faith Jully
Public Communication Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Antony Kariuki
Serjeant-At-Arms

Mr. Omar Abdirahim
Fiscal Analyst II

Ms. Fridah Ngari
Media Relations Officer III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Peter Mutethia
Audio Officer III

Mr. Abdikafar Abdi
Clerk Assistant III

Mr. Alex Amwatta
Hansard Reporter III

Mr. Alvin Ochieng'
Research Officer III

Mr. Silas Opanga
Hansard Reporter III

CHAPTER TWO

2 OVERVIEW OF ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 30 OF 2023)

2.1 Background

6. The Bill which was sponsored by Hon. George Peter Kaluma, MP was published on Wednesday 19th June 2023 and read for the first time in the House on Wednesday 2nd August 2023. It was thereafter committed to the Departmental Committee on Justice and Legal Affairs for review and reporting to the House in line with the provisions of Standing Order 127(3).

2.2 Summary of Legal Provisions

7. The proposal seeks to amend the Anti-Corruption and Economic Crimes (Amendment) Act, 2003 by repealing Section 64 which provides that:

“Disqualification if convicted of corruption or economic crime

(1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.

(2) This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.

(3) This section does not apply with respect to a conviction that occurred before this Act came into operation.

(4) At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.”

CHAPTER THREE

3 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 Legal Framework on Public Participation

8. Article 118 (1)(b) of the Constitution provides that:

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

9. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

“(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism including-

(a) inviting submission of memoranda;

(b) holding public hearings;

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

3.2 Memoranda Received on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023

10. Pursuant to the aforementioned provisions of law, the Committee placed an advertisement in the print media on Monday 31st July 2023 inviting the public to submit memoranda by way of written statements on the Bill. Further, the Committee vide letters dated 10th August 2023 and of Ref. No. NA/DDC/JLAC/2023/089 invited key stakeholders to submit views on the Bill and attend a public participation forum on Tuesday 22nd August 2023.

11. To this end, the Departmental Committee on Justice and Legal Affairs received nine memoranda from the EACC, IEBC, KLRC, LSK, ODPP, Transparency International, Mzalendo Trust, Anjarwalla and Khana LLP and the Hon. Shakeel A. Shabbir Ahmed, CBS, MP. The memoranda are annexed to this report as **Annexure 7**.

12. The **Judiciary** vide letter of Ref. No. CRJ 48 dated 1st August 2023 submitted that Section 64 of the Act proposed for deletion is subject of active litigation before the Courts which have recently rendered judgment barring persons convicted under the Act from assuming public office as required under the Act. It further noted that the decisions from the Report of the Departmental Committee on Justice and Legal Affairs on the Consideration of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 (*National Assembly Bill No. 30 of 2023*)

Magistrates Courts, being open to appeal, it is imperative that it refrains from giving views on the proposal so as to allow determination of the cases without any appearance of bias on its part.

13. **Uraia Trust** attended the public participation forum and made oral submissions opposing the proposal on grounds that it would weaken the fight against corruption.
14. The EACC, the IEBC, the LSK, the ODPP, Transparency International, *Mzalendo Trust*, Anjarwalla and Khana LLP and the Hon. Shakeel A. Shabbir Ahmed, CBS, MP submitted memoranda strongly opposing the proposed amendment.
15. The **KLRC** submitted memoranda in support of the proposal but with some reservations and stated that Section 64 of the Anti-Corruption and Economic Crimes Act, 2003 is inconsistent with the provisions of Article 75(3) of the Constitution and thus should be deleted. It further submitted that while the section provides for a timeframe after which a person convicted of an economic crime can hold a public office, after conviction, Article 75 (3) of the Constitution contemplates an eternal bar by providing that a person who has been dismissed or removed from office for contravention of the article is disqualified from holding any other State office.
16. It added that Article 75(3) of the Act was further buttressed by the Supreme Court of Kenya in *Sonko v Clerk, County Assembly of Nairobi City & 11 others (Petition 11 (E008) of 2022) [2022] KESC 26 (KLR) (15 July 2022) (Judgment)* where it was stated as follows:

“Chapter six of the Constitution was not enacted in vain or for cosmetic reasons. The authority assigned to a State officer is a public trust to be exercised in a manner that demonstrates respect for the people; brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office. It vests in the State officer the responsibility to serve the people, rather than the power to rule them.”
17. To this extent, the KLRC submitted that the proposed repeal of Section 64 of the Act is justified for the reason that it is contrary to Articles 2(4) and 75(3) of the Constitution.
18. The **EACC** submitted that corruption or economic crimes are serious offences against the public and have wide-ranging effects and negative impacts on the society thus their punishment must be proportionate to the damage occasioned to society as provided for in Section 64 of the Anti-Corruption and Economic Crimes Act, 2003. It further stated that the

punishment prescribed therein is not permanent as there is a ten-year period meant for reform after which persons so disqualified would be eligible for appointment.

19. The EACC added that the proposed amendment is regressive, will erode public confidence and respect for the law and will weaken the fight against corruption.
20. The **IEBC** submitted that the repeal of Section 64(1) of the Act would be mis-advised as it would render its deterrence element lost. It also stated that with respect to Section 64(2) of the Act, Articles 99, 137 and 193 of the Constitution outline the qualifications for the offices of the Members of Parliament, the President and Members of County Assemblies thus should be retained since it applies to appointive public offices.
21. The **IEBC** added that Section 64(3) of the Act be retained as it is in order and applies in prospect and not retrospectively. It also stated that Section 64(4) of the Act should be upheld as it undergirds the provision of Chapter Six of the Constitution on Leadership and Integrity, particularly, sharing of information with the public on the character of persons indicated and therefore unfit to hold public office.
22. The **IEBC** was of the general view that the Bill does not provide sufficient objects and reasons to warrant the repeal of Section 64 of the Act and is counterproductive in the fight against corruption and a clawback on the constitutional aspiration of accountability in leadership.
23. The **LSK** noted the risks associated with repealing Section 64 of the Act including undermining anti-corruption efforts, erosion of public trust, diminishing the significance of the rule of law and weakening the overall legal system, embezzlement and misuse of public resources and damaging Kenya's international reputation in the fight against corruption. It added that the proposal could negatively impact Kenya's standing on the global stage and undermine efforts to secure foreign investments, partnerships and support.
24. The **ODPP** submitted that Section 64 of the Act is in compliance with Article 7 of the United Nations Convention on Against Corruption which Kenya signed and ratified on 9th December, 2003 and its repeal would be against the spirit of the Constitution. It further stated that the proposal would hamper the application of the Leadership and Integrity Act, 2012. Specifically, that the EACC would have difficulty ensuring the enforcement and actualization of Section 13 of the Act because a State or public officer, already convicted of a corruption

and economic crime, hence failing the moral and ethical requirements, will still be eligible to hold a public office.

25. The ODPP noted that the proposal would make the Anti-Corruption and Economic Crimes Act, 2003 ineffective and not act as a deterrence to would-be offenders.

26. **Transparency International** opposed the proposal in its entirety citing its inconsistency with the following provisions of law:

- a) The Constitution under Articles 10 on the national values and principles of governance; 73 on the responsibilities of leadership; 75 on the conduct of State officers; 99 on the qualifications and disqualifications for election as Member of Parliament; 193 on the qualifications for election as Member of County Assembly; and 232 on the values and principles of public service;
- b) Article 30(7) of the United Nations Convention Against Corruption on the prosecution, adjudication and sanctions including provisions related to the disqualification or removal of individuals convicted of corruption from public office;
- c) Article 7 of the African Union Convention on Prevention and Combating Corruption on the requirement for state parties to adopt measures to hold individuals accountable for corruption offences;
- d) Parliamentary decisions such as the decision of the Departmental Committee on Finance and National Planning in the Twelfth Parliament which rejected the appointment of Mr. Ben Chumo as the Chairperson of the Salaries and Remuneration Commission on the grounds that he did not meet the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act, 2012 having been charged in the Anti-Corruption Court.
- e) Court decisions such as the decision of the Supreme Court of Kenya in *Sonko v Clerk, County Assembly of Nairobi City & 11 others (Petition 11 (E008) of 2022) [2022] KESC 26 (KLR) (15 July 2022) (Judgment)* as discussed above.

27. *Mzalendo Trust* opposed the proposal stating that the proposal contravenes Articles 73(1), 73(2) and 99 of the Constitution as echoed in the case of *Trusted Society of Human Rights Alliance v Attorney General & 2 others; Matemu (Interested Party); With Kenya Human Rights Commission & another (Amicus Curiae) (Petition 229 of 2012) [2012] KEHC 2480*

(KLR) (Constitutional and Human Rights) (20 September 2012) (Judgment). It relied on a quote by the Rtd. Justice Ringera who stated as follows:

“any country scourged by corruption, integrity and ethical reforms should never weakened the strides that may have been made through the sweat of citizens’ brow in fighting corruption but rather strengthen them.”

28. Anjarwalla and Khanna LLP also opposed the proposal stating that it contravenes Chapter Six of the Constitution as it disregards requirements that public officials must have integrity, not decide based on improper motives or corrupt practices and not have perverse interests. It made reference to the case of ***Republic v Ethics and Anti-Corruption Commission Ex parte Nairobi City County Assembly & 13 others [2019] eKLR*** where it was found that Kenyans declared that propls whose conduct does not bring honour, public confidence and integrity have no place in the management of public affairs.

29. Anjarwalla and Khanna LLP further cited the case of ***Trusted Society of Human Rights Alliance v Attorney General & 2 others; Matemu (Interested Party); With Kenya Human Rights Commission & another (Amicus Curiae) (Petition 229 of 2012) [2012] KEHC 2480 (KLR) (Constitutional and Human Rights) (20 September 2012) (Judgment)*** where the High Court established the standard for integrity as follows:

“To our mind, a person is said to lack integrity when there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness and reputation, the soundness of his moral judgment or his commitment to the national values enumerated in the Constitution.”

30. It added that the proposal undermines and attempts to dilute the overriding national values and principles of governance as enumerated in Article 10 of the Constitution. It further submitted that the proposal will reward public office abusers with positions of power to carry on with mismanagement and will result in impunity as those convicted of corruption and economic crimes will feel untouchable and disregard the rule of law and good governance.

31. Anjarwalla and Khanna LLP also noted that the proposal places Kenya at the risk of being grey-listed and monitored by the Financial Action Task Force (FATF) as evidenced by the passage of the Proceeds of Crime and Anti-Money Laundering Act, 2009 and the proposed Anti-Money Laundering and Combating of Terrorism Laws (Amendment) Bill, 2023 which

incorporate the FATF Recommendations. It was its submission that the proposal undermines the progress Kenya has made so far in the fight against corruption.

32. The Hon. Shakeel A. Shabbir Ahmed, CBS, MP submitted memoranda opposing the Bill on the grounds that it is a direct breach of Articles 73, 75(3) and 99(2)(h) of the Constitution; is impractical to the extent that its removal would result in harsher sanctions for a person suspected of corruption as opposed to one convicted of the offence; will weaken the deterrence objective of Section 62 of the Act; and will promote impunity among public office abusers.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

33. Upon reviewing the Bill and the submissions received, a majority of the Committee made the following observations:

- a) That the proposal is inconsistent with Article 75(3) of the Constitution which disqualifies any State officer who has been found to have acted outside the prescribed conduct of State officers from holding any other State office.
- b) That the repeal of Section 64 of the Anti-Corruption and Economic Crimes Act, 2003 would amount to loosening the laws governing corruption and economic crimes. In the Committee's view, the section should instead be amended to align it with the provisions of Chapter 6 of the Constitution on Leadership and Integrity.

CHAPTER FIVE

5 COMMITTEE RECOMMENDATIONS

34. The Committee, having considered the Anti-Corruption and Economic Crimes (Amendment) Bill (*National Assembly Bills No. 30 of 2022*) and the submissions from members of the public and stakeholders, **recommends that the House approves the Bill with amendments as proposed in Chapter 6 of this report.**

SIGNED.......... DATE.....*5.10.2023*.....

HON. GEORGE GITONGA MURUGARA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

35. In view of the observations made, the Committee proposed the following amendments to the Bill:

- 1 **THAT** the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause—

Repeal and replacement of section 64 of No. 3 of 2003.	2. The Anti-Corruption and Economic Crimes Act, 2003 is amended by deleting section 64 and substituting therefor the following new section—	
	Disqualification if convicted of corruption or economic crime.	64. (1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer. (2) This section does not apply with respect to a conviction that occurred before this Act came into operation. (3) At least once a year, the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.

Rationale: To align section 64 of the Anti-Corruption and Economic Crimes Act, 2003 with section 75(3) of the Constitution.

ANNEXURES

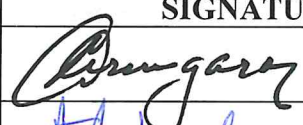
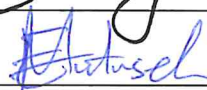


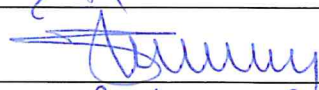
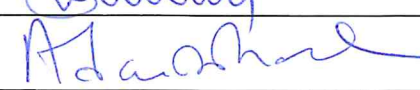
ANNEXURE 1: ADOPTION SCHEDULE



**THE NATIONAL ASSEMBLY
13TH PARLIAMENT – SECOND SESSION - 2023
JUSTICE AND LEGAL AFFAIRS COMMITTEE**

ADOPTION SCHEDULE

AGENDA: Adoption of the Report on the Consideration of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 by the Hon. George Peter Kaluma, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	<i>Virtual</i>
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	<i>Virtual</i>
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. ADEN DAUD, EBS, MP	
15.	HON. SIYAD AMINA UDGOON, MP	

ANNEXURE 2: MINUTES



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**MINUTES OF THE 119TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON 5TH OCTOBER, 2023 AT 10:00 AM AT THE KOITALEL I,
WESTON HOTEL, NAIROBI**

PRESENT

Members

1. Hon. Murugara George Gitonga, MP
2. Hon. Mutuse Eckomas Mwengi, OGW, MP
3. Hon. Francis Kajwang' Tom Joseph, MP
4. Hon. Makali John Okwisia, MP
5. Hon. Mogaka Stephen M, MP
6. Hon. Muchira Michael Mwangi, MP
7. Hon. Gichohi Kaguchia John Philip, MP
8. Hon. Maina Jane Njeri, MP
9. Hon. Aden Daud. EBS, MP

- Chairperson

-Vice- Chairperson

ABSENT

1. Hon. Maalim Farah, MP
2. Hon. Onyiengo Silvanus Osoro, CBS, MP
3. Hon. Junet Mohamed, CBS, MP
4. Hon. (Dr.) Otiende Amollo, SC, MP
5. Hon. Muriu Wakili Edward, MP
6. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | | |
|---------------------------|---|----------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant I |
| 2. Mr. Walala Ronald | - | Senior Legal Counsel |
| 3. Mr. Omar Abdirahim | - | Fiscal Analyst |
| 4. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 5. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 6. Ms. Vivienne Ogega | - | Research Officer III |

- | | | |
|-----------------------|---|------------------|
| 7. Mr. Peter Mutethia | - | Audio Officer |
| 8. Mr. Silas Opanga | - | Hansard Reporter |
| 9. Mr. Stanley Lagat | - | Serjent-at-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Consideration and Adoption of the Report of the Anti-Corruption And Economic Crimes (Amendment) Bill, 2023 (National Assembly Bill No. 30 Of 2023)**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2023/580: PRELIMINARIES

The meeting was called to order at fifteen minutes past ten o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2023/581: CONFIRMATION OF MINUTES

The agenda was deferred.

MIN.NO/DC/JLAC/2023/582: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Muchira Michael Mwangi, MP

MIN.NO/DC/JLAC/2023/583: CONSIDERATION AND ADOPTION OF THE REPORT OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 30 OF 2023)

COMMITTEE OBSERVATIONS

Upon reviewing the Bill and the submissions received, a majority of the Committee made the following observations:

- a) That the proposal is inconsistent with Article 75(3) of the Constitution which disqualifies any State officer who has been found to have acted outside the prescribed conduct of State officers from holding any other State office.

- b) That the repeal of Section 64 of the Anti-Corruption and Economic Crimes Act, 2003 would amount to loosening the laws governing corruption and economic crimes. In the Committee's view, the section should instead be amended to align it with the provisions of Chapter 6 of the Constitution on Leadership and Integrity.

COMMITTEE RECOMMENDATIONS

The Committee, having considered the Anti-Corruption and Economic Crimes (Amendment) Bill (*National Assembly Bills No. 30 of 2022*) and the submissions from members of the public and stakeholders, **recommends that the House approves the Bill with amendments as proposed in Chapter 6 of this report.**

SCHEDULE OF AMENDMENTS

In view of the observations made, the Committee proposed the following amendments to the Bill:

THAT the Bill be amended by deleting Clause 2 and substituting therefor the following new Clause—

Repeal and replacement of section 64 of No. 3 of 2003.	2. The Anti-Corruption and Economic Crimes Act, 2003 is amended by deleting section 64 and substituting therefor the following new section—	
	Disqualification if convicted of corruption or economic crime.	64. (1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer. (2) This section does not apply with respect to a conviction that occurred before this Act came into operation. (3) At least once a year, the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.

Rationale: To align section 64 of the Anti-Corruption and Economic Crimes Act, 2003 with section 75(3) of the Constitution.

MIN. NO/DC/JLAC/2023/584:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past twelve o'clock.
The next meeting will be held on notice.

SIGNED:  DATE: 5.10.23
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

THIRTEENTH PARLIAMENT - SECOND SESSION - 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**MINUTES OF THE 109TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 22ND AUGUST, 2023 AT 12.00 P.M. IN THE, MINI
CHAMBER, FIRST FLOOR, COUNTY HALL**

PRESENT

Members

- | | |
|---|---------------------|
| 1. Hon. Murugara George Gitonga, M.P | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, M.P | - Vice- Chairperson |
| 3. Hon. Maalim Farah, M.P | |
| 4. Hon. Francis Kajwang' Tom Joseph, M.P | |
| 5. Hon. Mohamed Aden Daudi, M.P | |
| 6. Hon. Muchira Michael Mwangi, M.P | |
| 7. Hon. Gichohi Kaguchia John Philip, M.P | |
| 8. Hon. Makali John Okwisia, M.P | |
| 9. Hon. Muriu Wakili Edward, M.P | |
| 10. Hon. Mogaka Stephen M, M.P | |
| 11. Hon. Maina Jane Njeri, M.P | |
| 12. Hon. Siyad Amina Udgoon, M.P | |

ABSENT WITH APOLOGY

1. Hon. Onyiego Silvanus Osoro, M.P
2. Hon. Junet Mohamed, M.P
3. Hon. (Dr.) Otiende Amollo, SC, M.P

SECRETARIAT

- | | |
|---------------------------|--------------------------|
| 1. Mr. Douglas Katho | - Senior Clerk Assistant |
| 2. Mr. Walala Ronald | - Senior Legal Counsel |
| 3. Mr. Shadrach Omondi | - Legal Counsel |
| 4. Ms. Jael Ayiegi Kilaka | - Clerk Assistant III |
| 5. Mr. Abdikafar Abdi | - Clerk Assistant III |

- | | | |
|------------------------|---|-------------------------|
| 6. Ms. Vivienne Ogega | - | Research Officer III |
| 7. Ms. Fridah Ngari | - | Media Relations Officer |
| 8. Mr. Peter Mutethia | - | Audio Officer |
| 9. Ms. Wanjiku Charity | - | Attache |
| 10. Mr. Stanley Lagat | - | Serjent-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters arising
5. **Public Hearing of the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 by the Hon. Peter Kaluma, MP**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/525: PRELIMINARIES

The meeting was called to order at five minutes past eight o'clock by the Chairperson followed by a word of prayer from the Chairperson.

MIN.NO/DC/JLAC/2022/526: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Farah Maalim M.P and seconded by Hon. Aden Daud, EBS M.P

MIN. NO/DC/JLAC/2022/527: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN. NO/DC/JLAC/2022/528: PUBLIC HEARING ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023 BY THE HON. GEORGE PATER KALUMA

ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)

The Director of the Commission, Mr. David K. Too, appeared before the Committee on behalf of EACC and submitted that corruption or economic crimes are serious offences against the public and have wide-ranging effects and negative impacts on the society thus their punishment must be proportionate to the damage occasioned to society as provided for in Section 64 of the Anti-Corruption and Economic Crimes Act, 2003. The Commission further stated that the punishment prescribed therein is not permanent as there is a ten-year period meant for reform after which persons so disqualified would be eligible for appointment.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

Ms. Emily Kamau, on behalf of the ODPP, appeared before the Committee and submitted that Section 64 of the Act is in compliance with Article 7 of the United Nations Convention on Against Corruption which Kenya signed and ratified on 9th December, 2003 and its repeal would be against the spirit of the Constitution. It further stated that the proposal would hamper the application of the Leadership and Integrity Act, 2012. Specifically, that the EACC would have difficulty ensuring the enforcement and actualization of Section 13 of the Act because a State or public officer, already convicted of a corruption and economic crime, hence failing the moral and ethical requirements, will still be eligible to hold a public office.

TRANSPARENCY INTERNATIONAL

The Executive Director, Ms. Sheila Masinde, appeared before the Committee opposing the proposal in its entirety citing its inconsistency with the following provisions of law:

- a) that the Constitution under Articles 10 on the national values and principles of governance; 73 on the responsibilities of leadership; 75 on the conduct of State officers; 99 on the qualifications and disqualifications for election as Member of Parliament; 193 on the qualifications for election as Member of County Assembly; and 232 on the values and principles of public service;
- b) Article 30(7) of the United Nations Convention Against Corruption on the prosecution, adjudication and sanctions including provisions related to the disqualification or removal of individuals convicted of corruption from public office;
- c) Article 7 of the African Union Convention on Prevention and Combating Corruption on the requirement for state parties to adopt measures to hold individuals accountable for corruption offences;
- d) Parliamentary decisions such as the decision of the Departmental Committee on Finance and National Planning in the Twelfth Parliament which rejected the appointment of Mr. Ben Chumo as the Chairperson of the Salaries and Remuneration Commission on the grounds that he did not meet the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act, 2012 having been charged in the Anti-Corruption Court.

LAW SOCIETY OF KENYA (LSK)

The Deputy Secretary Mr. Collins Odhiambo, appeared before the Committee and stated that the LSK had noted the risks associated with repealing Section 64 of the Act including undermining anti-corruption efforts, erosion of public trust, diminishing the significance of the rule of law and weakening the overall legal system, embezzlement and misuse of public resources and damaging Kenya's international reputation in the fight against corruption. It added that the proposal could negatively impact Kenya's standing on the global stage and undermine efforts to secure foreign investments, partnerships and support.

MZALENDO TRUST

Mr. Philip Gichana, the Head of Policy and Partnerships at Mzalendo appeared before the Committee and opposed the proposal stating that the proposal contravenes Articles 73(1), 73(2) and 99 of the Constitution as echoed in the case of *Trusted Society of Human Rights Alliance v Attorney General & 2 others; Matemu (Interested Party); With Kenya Human Rights Commission & another (Amicus Curiae) (Petition 229 of 2012) [2012] KEHC 2480 (KLR) (Constitutional and Human Rights) (20 September 2012) (Judgment)*. It relied on a quote by the Rtd. Justice Ringera who stated as follows:

"any country scourged by corruption, integrity and ethical reforms should never weakened the strides that may have been made through the sweat of citizens' brow in fighting corruption but rather strengthen them."

KENYA LAW REFORM COMMISSION (KLRC)

Mr. James Nombi, a legislative counsel at the KLRC appeared before the Committee stating that whereas section 64 of ACECA provides for a time frame after which a person who has been convicted of an economic crime can hold a public office, following a conviction, Article 75(3) of the Constitution on the other hand, does not provide for such time frame, but instead, contemplates an eternal bar, by providing that a person who has been dismissed or removed from office for contravention of the Article is disqualified from holding any other State office.

The Commission made reference to the *Sonko v Clerk, County Assembly of Nairobi City & 11 others (Petition 11 (E008) of 2022) [2022] KESC 26 (KLR) (15 July 2022) (Judgment)* stating that the proposed repeal of section 64 of ACECA is justified for the reason that it's contrary to Articles 2(4) and 75(3) of the Constitution.

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

The Director Legal Services, Mr. Chrispine Owiye appeared before the Committee and submitted that the repeal of Section 64(1) of the Act would be mis-advised as it would render its deterrence element lost. It also stated that with respect to Section 64(2) of the Act, Articles 99, 137 and 193 of the Constitution outline the qualifications for the offices of the Members of Parliament, the President and Members of County Assemblies thus should be retained since it applies to appointive public offices.

The Commission added that Section 64(3) of the Act be retained as it is in order and applies in prospect and not retrospectively. It also stated that Section 64(4) of the Act should be upheld as it undergirds the provision of Chapter Six of the Constitution on Leadership and Integrity, particularly, sharing of information with the public on the character of persons indicated and therefore unfit to hold public office.

The Commission was of the general view that the Bill does not provide sufficient objects and reasons to warrant the repeal of Section 64 of the Act and is counterproductive in the fight against corruption and a clawback on the constitutional aspiration of accountability in leadership.

MIN. NO/DC/JLAC/2022/529: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past nine o'clock. The next meeting will be held tomorrow 24/11/2022 at 9.00 a.m.

SIGNED:  DATE: 5. 10. 2023
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)

ANNEXURE 3:
THE ANTI-CORRUPTION AND
ECONOMIC CRIMES (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL
NO. 30 OF 2023)

SPECIAL ISSUE

Kenya Gazette Supplement No. 94 (National Assembly Bills No. 30)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

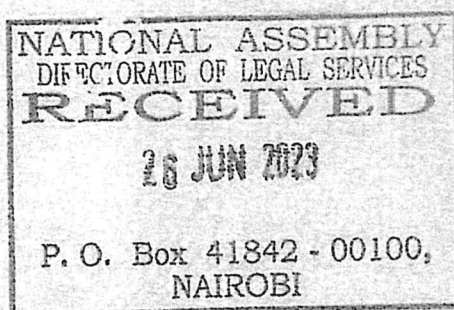
NAIROBI, 19th June, 2023

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 .. 1007



PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

**THE ANTI-CORRUPTION AND ECONOMIC
CRIMES (AMENDMENT) BILL, 2023**

A Bill for

**AN ACT of Parliament to amend the Anti-Corruption
and Economic Crimes Act**

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Anti-Corruption and
Economic Crimes (Amendment) Act, 2023.

Short title.

2. The Anti-Corruption and Economic Crimes Act,
2003 is amended by repealing section 64.

Repeal of section
64 of No. 3 of
2003.

MEMORANDUM OF OBJECTS AND REASONS**Statement of Objects and Reasons**

The objective of this Bill is to amend the Anti-Corruption and Economic Crimes Act, 2003 to delete the provision providing for the disqualification of persons convicted of corruption or economic crimes from being elected or appointed as public officers.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative or contain any provisions limiting any fundamental right or freedom.

Indication of whether the Bill concerns counties

The Bill does not contain any provisions affecting the functions, powers or finances of county governments.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated 14th June, 2023.

GEORGE PETER KALUMA,
Member of Parliament.

Section 64 of No. 3 of 2003 that it is proposed to repeal—

Disqualification if convicted of corruption or economic crime

64. (1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.

(2) This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.

(3) This section does not apply with respect to a conviction that occurred before this Act came into operation.

(4) At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the *Gazette*.

ANNEXURE 4:
ADVERTISEMENT INVITING THE
PUBLIC TO SUBMIT MEMORANDA
ON THE BILL



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION**

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

- 1. THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2023)**
- 2. THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 30 OF 2023)**

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 Of 2023); and the Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 Of 2023) were read a First Time on **Wednesday, 2nd August, 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

- 1. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 of 2023)** is a Bill sponsored by the **Member for Sirisia Constituency (The Hon. John Waluke, MP)** with the principal object being to amend the Parliamentary Pensions Act, Cap 196. It proposes to raise the amount of pension due to former Members of Parliament who served between 1st July, 1984 and 1st January 2001 to a minimum sum of Kenya Shillings one hundred thousand.
- 2. The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 of 2023)** is a Bill sponsored by the **Member for Homa Bay Constituency (The Hon. George Peter Kaluma, MP)** with the principal object being to amend the Anti-Corruption and Economic Crimes Act, 2003 to delete the provisions providing for the disqualification of persons convicted of corruption or economic crimes from being elected or appointed as public officers.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

S/ NO.	BILL	COMMITTEE
1.	The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 15 of 2023)	Finance and National Planning
2.	The Anti-Corruption and Economic Crimes (Amendment) Bill (National Assembly Bill No. 30 of 2023)	Justice and Legal Affairs

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 4184200100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Friday 18th August, 2023 at 5.00 p.m.**

S. NJOROGÉ

CLERK OF THE NATIONAL ASSEMBLY

8th August 2023

“For the Welfare of Society and the Just Government of the People”

**ANNEXURE 5:
LETTER FROM THE CLERK OF THE
NATIONAL ASSEMBLY INVITING
STAKEHOLDERS TO SUBMIT
MEMORANDA ON THE BILL AND
ATTEND THE PUBLIC
PARTICIPATION FORUM**



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

Ref: NA/DDC/JLAC/2023/(89)

10th August 2023

Hon. Justin Muturi, EGH
The Attorney-General of the Republic of Kenya,
Sheria House, Harambee Avenue,
NAIROBI

Ms. Anne Amadi,
Chief Registrar Judiciary of Kenya/Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Maj. (Rtd) Twalib Mbarak, CBS
Chief Executive Officer
Ethics and Anti-Corruption Commission
Integrity Centre, Jakaya Kikwete/Valley Road Junction
NAIROBI

Mrs. Dorcas Oduor
Principal Deputy Director of Public Prosecutions
ODPP House, Ragati Road, Upper Hill
NAIROBI

Mr. Marjan Hussein Marjan
Chief Executive Officer/Commission Secretary
Independent Electoral and Boundaries Commission
University Way, Anniversary Towers, 6th floor,
NAIROBI

Mr. Bernard Mogesa
Chief Executive Officer,
Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
NAIROBI

Mr. Joash Dache, MBS
Chief Executive Officer/Commission Secretary
Kenya Law Reform Commission,
Reinsurance Plaza, 3rd Floor, Taifa Road,
NAIROBI

Dr. Simon K. Rotich, CBS
Chief Executive Officer/Commission Secretary
Public Service Commission
Commission House,
Harambee Avenue
NAIROBI

Ms. Florence Muturi,
Chief Executive Officer
Law Society of Kenya (LSK)
Lavington, Opposite Valley Arcade, Gitanga Road
NAIROBI

Ms. Christine Gakii Nkonge,
Executive Director
Katiba Institute, House No.5 -the Crescent-Off Parklands Road
NAIROBI

Dr. Mshai Mwangola
Chairperson,
Uraia Trust
Jacaranda Avenue, off Gitanga Road
NAIROBI

Ms. Caroline Gaita
Executive Director,
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A,
1st Ngong Avenue
NAIROBI

Dr. Annette Mbogoh
Executive Director
Kituo cha Sheria
Ole Odume Rd, Off Argwings Kodhek Rd
NAIROBI

Mr. Irungu Houghton
Executive Director,
Amnesty International,
Riverside Studios,
NAIROBI

Ms. Sheila Masinde
Executive Director
National Integrity Alliance
Kindaruma Road, Off Ring Road, Kilimani
Next to Commodore Office Suites
NAIROBI

Dear **M_r Amed**,

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS TO SUBMIT VIEWS ON THE ANTI-CORRUPTION AND
ECONOMIC CRIMES BILL, 2023**

The Departmental Committee on Justice and Legal Affairs is established under National Assembly Standing Order 216 and is mandated to amongst others, *"study and review all legislation referred to it"*.

The Anti-Corruption and Economic Crimes Bill, 2023 sponsored by the Hon. George Peter Kaluma, MP is before the Committee for consideration and reporting back to the House. The Bill seeks amend the Anti-Corruption and Economic Crimes Act, 2003 to delete the provision providing for the disqualification of persons convicted of corruption or economic crimes from being elected or appointed as public officers.

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee has resolved to meet stakeholders to discuss the Bill.

This is therefore to invite you to the meeting with the Committee scheduled for **Tuesday 22nd August, 2023 at 11.30 am**. The venue of the meeting will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions to be availed at the meeting while soft copies should be sent to the Office of the Clerk, Main Parliament Building or email the same to cna@parliament.go.ke.

Hard copies of the Bill is available at the National Assembly Table Office, Main Parliament Building while an electronic copy may be accessed on the Parliament website: www.parliament.go.ke/the-national-assembly/house-bills for reference.

Our Liaison Officers on this matter are **Mr. Douglas Katho** who may be contacted on tel. No. 072233145 or email: douglas.katho@parliament.go.ke **Ms. Jael Ayiego Kilaka** tel. No. 0725385945 or email: jael.kilaka@parliament.go.ke and **Mr. Abdikafar Abdi Sheikh** tel. No. 0715456503 or email: abdikafar.sheikh@parliament.go.ke

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

ANNEXURE 6:
MEMORANDA BY STAKEHOLDERS

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

SUBMISSIONS ON

THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023

Dated 22nd August, 2023

Independent Electoral & Boundaries Commission (IEBC)

Anniversary Towers, 6th Floor, Off University Way

P.O. Box 45371 – 00100, Nairobi – Kenya

Telephone: + 254 (0) 20 29925

A. Introduction

1. The Independent Electoral and Boundaries Commission (IEBC) is a Constitutional Commission established under Chapter 15 of the Constitution of Kenya with its objects provided for under Article 249(1).
2. Article 88(4) of the Constitution of Kenya, 2010 outlines the Commission's specific mandate to conduct or supervise referenda and elections to any elective body or office established by the Constitution and any other election as prescribed by an Act of Parliament.
3. Chapter 6 of the Constitution of Kenya, 2010 is on Leadership and Integrity. In particular, this Chapter was formulated to govern the aspect of ethics of holders of state/public offices. It is supplemented by a host of other statutes and regulations including but not limited to; Leadership and Integrity Act, The Public Officers Ethics Act and The Anti-Corruption and Economic Crimes Act.
4. Article 75 (3) of the Constitution of Kenya, 2010 provides that any person who has been dismissed or otherwise removed from office for contravening the provisions of Article 75(1) is disqualified from holding any other state office.
5. Section 13 (2) of the Leadership and Integrity Act outlines that; A person who wishes to be elected to a State office shall, submit to the Independent Electoral and Boundaries Commission a self-declaration in the form set out in the First Schedule.
6. The Self-Declaration form is also filled out as part of the job application documents submitted by a person seeking a state/public office. It has been argued that the form is merely a formality since there is rarely anyone to follow up to determine whether whatever the applicant filled in the form is true.

7. The IEBC notes The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 and makes the following submissions:

Purpose of the Bill

8. The Bill seeks to repeal the whole of Section 64 of The Anti-Corruption and Economic Crimes Act.
9. We wish to make comments on it as outlined below.

B. General Comments

10. Section 64(1) was crafted as a measure of deterrence and in a way to ensure that ethics and integrity in Leadership and specifically, leadership in public/state offices are upheld.
11. The idea was that a Public Office is not occupied by a person who has been convicted of corruption or economic crimes. A period of 10 years seems to be enough deterrence.
12. Repeal of this section will be in contravention of the provisions of Chapter 6 of the Constitution of Kenya, 2010 on Leadership and Integrity.

Specific Comments

13. The IEBC has endeavored to highlight its submissions in matrix format highlighting the relevant clause in the Act, observations on the clause and its proposal on the same.

Table: Matrix of IEBC's comments on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023


S No.	Provision of the Act	Observations	IEBC Comments
1.	Section 64 (1) - A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.	Repeal of this would mean that a person would be convicted of a corruption related offence, then after paying the fine imposed, vie for a state/public seat.	1. Repeal of this section would be mis-advised as it would mean that the deterrence element would be lost.
2.	Section 64 (2) - This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.	This section is relevant since it is applicable to appointive public office since the Constitution sets out the qualifications for each elective office.	Articles 137, 99, 193 outline the qualifications for office for the President, Members of Parliament and Members of County Assemblies respectively. Section 64(2) should be retained since it applies to appointive public offices.
3.	Section 64 (3) - This section does not apply with respect to a conviction that occurred before this Act came into operation.	This section is in order since the law applies in prospect and not retrospectively.	This section needs to be retained.
4.	Section 64 (4) - At least once a year the Commission shall cause the names of all persons disqualified under this	Publishing of such names is important especially for those seeking elective offices since	This sub-section touches on a mandate of the Ethics and Ant-Corruption Commission (EACC), which should be upheld. The section

	section to be published in the Gazette.	this would be crucial information for the electorate.	undergirds the provision of chapter Six of the Constitution on Leadership and Integrity and in particular sharing of information with the public on the character of persons indicted and therefore unfit to hold public office.

*It is however important to note that sub-sections 2 and 3 are dependent on 64(1). They cannot exist independently. The section should be read holistically.

B. CONCLUSION

14. The Bill does not provide sufficient objects and reasons or at all in favour of a repeal of Section 64 of Anti-corruption and Economic Crimes Act, 2003.
15. The Commission submits that the intention of the Amendment Bill is counter-productive in the fight against Corruption and is a clawback on the Constitutional aspiration of accountability in Leadership. We urge this Honourable House to consider the proposals herein.

P.P. 

MARJAN HUSSEIN MARJAN
COMMISSION SECRETARY/CEO



LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
P.O. Box 72219-00200
NAIROBI
Tel. 387 4664
0720 904983

MEMORANDUM TO
PARLIAMENT

ON

THE ANTI-CORRUPTION AND ECONOMIC CRIMES
(AMENDMENT) BILL, 2023

AUGUST, 2023

Eric Theuri, President Law Society of Kenya
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THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amany, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Linda Kiome, Michael Wabwire, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions on The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023

**GENERAL COMMENT ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES
(AMENDMENT) BILL, 2023**

The Law Society of Kenya (LSK) wishes to express its vehement opposition to the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 currently under consideration, which proposes the repeal of Section 64 of the Anti-corruption and Economic Crimes Act (ACECA), 2003. This section provides for the disqualification of individuals convicted of corruption or economic crime from being elected or appointed as public officers for a period of ten years following their conviction.

Our position is grounded in a thorough analysis of the potential repercussions that would arise if this section is removed from the statute. We believe that repealing this crucial provision would have significant adverse effects on the integrity of public office, the fight against corruption, and the rule of law in Kenya.

Section 64 of the Anti-corruption and Economic Crimes Act (ACECA), 2003 serves as a crucial deterrent against corruption and economic crimes within the public sector. Its intention is to maintain the integrity of public offices and prevent individuals with proven records of misconduct from holding positions of power where they could potentially abuse their authority for personal gain. The potential repercussions of removing this section are profound and could undermine the principles of transparency, accountability, and good governance.

Risks Associated with Repealing Section 64 of the Anti-corruption and Economic Crimes Act (ACECA), 2003

1. Undermining Anti-Corruption Efforts

Corruption and economic crimes have long been detrimental to Kenya's socio-economic development and governance. The presence of a disqualification period

acts as a deterrent and serves to maintain the credibility of public institutions. Removal of this provision could send a message that corrupt individuals can seek public office without facing adequate consequences, which would gravely undermine anti-corruption efforts.

2. Erosion of Public Trust

One of the key foundations of a well-functioning democracy is the trust that citizens place in their elected officials. Allowing individuals with corruption convictions to hold public office within a short span of time after their conviction would erode public confidence in the political system and deepen cynicism about the effectiveness of the legal framework.

3. Preserving the Rule of Law

The disqualification period is not only a punitive measure but also a reflection of the commitment to upholding the rule of law. By removing this provision, there is a risk of sending a message that political power can be exploited to circumvent legal consequences, thereby diminishing the rule of law's significance and weakening the overall legal system.

4. Protecting Public Resources

Public office entails the responsibility of managing public resources and making decisions that affect the lives of many. Allowing individuals convicted of corruption to resume public office quickly after their conviction increases the risk of embezzlement and misuse of public funds, which directly harms the nation's development and welfare.

5. International Reputation

Kenya's international reputation in the fight against corruption and its commitment to good governance are paramount. Removing the disqualification

period could negatively impact Kenya's standing on the global stage and undermine efforts to secure foreign investments, partnerships, and support.

Given the myriad potential risks outlined above, the Law Society of Kenya firmly advocates for the retention of Section 64 of the Anti-corruption and Economic Crimes Act (ACECA), 2003. This provision resonates with our nation's commitment to transparency, accountability, and the eradication of corruption.

We earnestly request your reconsideration of the bill's implications and the broader ramifications of eliminating this critical provision. The Law Society of Kenya remains steadfast in upholding the rule of law, championing good governance, and safeguarding the rights and interests of the Kenyan populace.

In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Eric Theuri', with a stylized flourish at the end.

Eric Theuri
President Law Society of Kenya



TRANSPARENCY INTERNATIONAL KENYA MEMORANDUM TO THE NATIONAL ASSEMBLY

CALL FOR PUBLIC PARTICIPATION: ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) ACT,

2023

ORGANISATION

Transparency International Kenya (TI-Kenya) is a not-for-profit organisation established in 1999 in Kenya with the aim of developing a transparent and corruption free society through good governance and social justice initiatives. TI-Kenya is one of the autonomous chapters of the global Transparency International movement that is bound by a common vision of a corruption-free world. TI-Kenya works towards its vision of a corruption-free society with a mission to champion the fight against corruption by promoting integrity, transparency, and accountability in both public and private spheres.

INTRODUCTION

TI-Kenya strongly opposes the proposed amendment to repeal section 64 of the Anti-Corruption and Economic Crimes Act, 2003. This proposed amendment is inconsistent with the Constitution of Kenya and offends several constitutional provisions including: Article 10 on the National Values and Principles of Governance; Chapter Six on Leadership and Integrity; Article 99 (1) (b) and Article 193 (1) (b) on qualifications for election as member of parliament and county assembly respectively; Article 232 on the Values and Principles of Public Service; among many other provisions in law that would be inconsistent with the proposed amendment.

Recognising the supremacy of the Constitution of Kenya and provisions of Article 2 (4) of the Constitution, we deem the proposed amendment VOID and any act to attempt at passing such an amendment INVALID.

Pursuant to our Constitutional obligations under Article 3 to respect, uphold and defend the Constitution of Kenya, we make the following substantive submissions regarding the proposed amendments:

Clause	Provision of the Bill	Specific proposed amendment/recommendation	Justification/Rationale for Amendment Recommendation
Clause 2	The Anti-Corruption and Economic Crimes Act, 2003 is amended by repealing section 64.	Reject proposed amendment in its entirety	<p><u>Unconstitutional / Inconsistency with the Constitution</u></p> <ul style="list-style-type: none"> Article 10 (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—(b) enacts, applies or interprets any law; Article 10 (2) The national values and principles of governance include - (c) good governance, integrity, transparency and accountability; Article 73. Responsibilities of leadership (1) Authority assigned to a State officer— (a) is a public trust to be exercised in a manner that— (i) is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings

			<p>honour to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office;</p> <ul style="list-style-type: none"> • Article 75 Conduct of State Officers (3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office. • Article 99. Qualifications and disqualifications for election as member of Parliament (1) Unless disqualified under clause (2), a person is eligible for election as a member of Parliament if the person— (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament; • Further Article 99(2)(h) expressly disqualifies individuals found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six. • Article 193. Qualifications for election as member of county assembly (1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person— (b) satisfies any educational,
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		<p>moral and ethical requirements prescribed by this Constitution or an Act of Parliament;</p> <ul style="list-style-type: none"> • Further Article 193(2)(g) expressly disqualifies individuals found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six • Article 232. Values and principles of public service (1) The values and principles of public service include— (a) high standards of professional ethics; <p><u>Void and Invalid</u></p> <ul style="list-style-type: none"> • Subsequently, in line with Article 2 (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. <p><u>International Law</u></p> <ul style="list-style-type: none"> • Article 30 (7) of United Nations Convention Against Corruption (UNCAC) focuses on Prosecution, adjudication and sanctions and includes provisions related to the disqualification or removal of individuals convicted of
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		<p>corruption from public office. It encourages states to consider implementing measures to this effect.</p> <ul style="list-style-type: none"> • Article 7 of the African Union Convention on Prevention and Combating Corruption (AUCPCC) dealing with the fight against corruption and related offences in the public service requires state parties to adopt measures to hold individuals accountable for such offenses, including individuals who hold public office, including requiring states to establish and promote use of codes of conduct for public officials and promote ethics. <p><u>Parliamentary Decisions</u></p> <ul style="list-style-type: none"> • In the 12th Parliament, while considering Mr. Ben Chumo as the nominee for appointment as Chairperson of the Salaries and Remuneration Commission, the Committee noted that the nominee did not meet the requirements of Chapter Six of the Constitution and the Leadership and Integrity Act by the fact that he had been charged in the Anti-Corruption Court. <p><u>Court Decisions</u></p>
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			<ul style="list-style-type: none"> • Among many other decisions, the Supreme Court in the Petition 11 (E008) of 2022 while agreeing with the decision to bar Mike Sonko from running for Governorship in the 2022 elections noted that, <i>“It bears mentioning in conclusion that chapter six of the Constitution was not enacted in vain or for cosmetic reasons. The authority assigned to a State officer is a public trust to be exercised in a manner that demonstrates respect for the people; brings honour to the nation and dignity to the office; and promotes public confidence in the integrity of the office. It vests in the State officer the responsibility to serve the people, rather than the power to rule them.”</i>
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CONTACT INFORMATION:

Sheila Masinde

Transparency International Kenya

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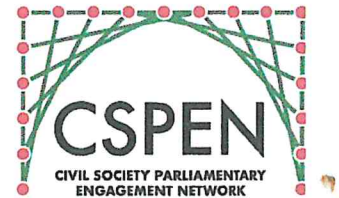
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NAIROBI, KENYA



22nd August 2023

Our Ref: MT/CSPEN/NA/JLAC/16/23
NA/DDC/JLAC/2023 (89)

Your Ref:

Clerk of the National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI.

Dear Sir,

RE: Memorandum on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023

[Mzalendo](#) ('Patriot' in Swahili) Trust is a Kenyan non-partisan Parliamentary Monitoring Organization started in 2005 and whose mission is to '*promote open, inclusive, and accountable Parliaments in Kenya and Africa.*' We do so by creating and managing civic tech tools, producing evidence-based research, and leading and facilitating advocacy and partnerships with Parliaments, citizens, and other relevant stakeholders. We believe that success in our work will build more effective and responsive legislation and political processes that ultimately support Kenya's national development goals. In line with our [Strategic Plan 2021-2025](#), we anchor our work on three main pillars: Openness, Inclusion, and Accountability.

In addition, Mzalendo Trust convenes various networks and collaboration initiatives to facilitate engagement in the legislative [process](#). Key among these is the [Civil Society Parliamentary Engagement Network \(CSPEN\)](#), a network of [35 organizations](#) with an interest in working in Parliament. In addition, Mzalendo is also the Convenor of the CSO partners within the Open Government Partnership framework and the lead for the Public Participation and Legislative Openness Commitment as articulated in the 4th National Action Plan currently under implementation. This Memorandum is informed by our role and also incorporates the views of other partner organizations including the Kenya Parliamentary Caucus on SDGs & Business, Kenya Conference of Catholic Bishops (KCCB), Election Observation Group (ELOG), Kenya Legal and Ethical Issues Network (KELIN), National Democratic Institute (NDI), Follow The Money, National Taxpayers Association (NTA), Centre for Fiscal Affairs (CFA), Centre for Minority Rights Development (CEMIRIDE) The Institute of Social Accountability (TISA), Katiba Institute, International Republican Institute (IRI), URAIA Trust, Transparency International and Slums Information Development and Resource Centres (SIDAREC).

Comments on the Bill

Clause	Proposed Amendments / Ramifications	Comments on Proposed Amendments/ Recommendations
2	Repeal of Section 64 of the Anti-corruption and Economic Crimes Act, 2003.	<p>We proffer that the proposed amendment and consequently the Bill should not be passed and effected as it is in contravention with several edicts of the Constitution of Kenya, 2010 and against general principles of public service.</p> <p>Firstly, Article 73(1) of the Constitution of Kenya, 2010 stipulates that authority assigned to a state officer should be exercised in a manner that is consistent with the purpose and objects of the Constitution and also promotes public confidence in the integrity of the office. The proposed repeal would prevent the disqualification of a person convicted of corruption or an economic crime from being elected or appointed into public office. This does not in any way promote public confidence in the integrity of the office and it does not fulfill the envisions of the Constitution. This is so as a public officer holds resources in trust for the public and such a person should be of high integrity.</p> <p>Further, Article 73(2) of the Constitution further outlines the guiding principles of leadership and integrity, among them being selection on the basis of personal integrity, competence and suitability, honesty in the execution of public duties and accountability to the public for decisions and actions. The proposed repeal stands in contravention with this provision as it would otherwise allow persons who have been convicted of corruption and economic crimes to be cleared for public office.</p> <p>This position has also been echoed in the case of <i>Trusted Society of Human Rights Alliance v the Attorney General and 2 Others</i>, where it espoused that the people of Kenya did not intend that the provisions on integrity and suitability for public offices be merely suggestions, superfluous or ornamental or include these provisions as lofty aspirations. Kenyans intended that the provisions on integrity and suitability for office for public and State offices should have substantive bite. In short, the people of Kenya intended that the provisions on integrity of our leaders and public officers will be enforced and implemented. They desired these collective commitments to ensure good governance in the Republic will be put into practice.</p>
		Article 99 of the Constitution enlists the qualifications and disqualifications for election as a member of Parliament, among them being,

	<p>where one is found to have misused or abused a state or public office or in any way to have contravened Chapter six. A member of Parliament is a public officer, and therefore the proposed repeal would be inconsistent with the edicts of the Constitution, both in spirit and word.</p> <p>Moreover, the proposed Bill raises contention on the interpretation and the practicality aspect of the Bill as it would consequently mean that there is more focus on suspects rather than convicts. Ironically, one who is convicted for corruption, or an economic crime would be cleared for an elective or appointive post in a public office.</p> <p>Additionally, there is no clear justification of the Bill and the inspiration behind it is not clearly communicated.</p> <p>In conclusion, we wish to quote Rtd. Justice Ringera who said, <i>'any country scourged by corruption, integrity and ethical reforms should never weaken the strides that may have been made through the sweat of citizens' brow in fighting corruption but rather strengthen them'</i>. The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 is antithetical to the provisions of Chapter 6 and will only serve to weaken the implementation of Chapter 6 of the Constitution of Kenya, 2010.</p> <p>We therefore oppose the proposed amendment and invite the Committee to make a similar finding after concluding the exercise.</p>
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We hope our proposals will be considered during the deliberations of the Bill.

Sincerely,



**Caroline Gaita,
Executive Director.**



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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
The Clerk of the National Assembly
National Assembly
Main Parliament Buildings
P. O. Box 41842 -00100
NAIROBI.

RE: INVITATION TO SUBMIT VIEWS ON THE ANTI- CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023

The above matter refers.

This Office received an invitation to submit it's views on the Anti-Corruption and Economic Crimes (amendment) Bill, 2023 vide a letter dated 10th August 2023.

Kindly find the ODPP's Submissions on the Anti – Corruption and Economic Crimes (amendment) bill, 2023 in the enclosed matrix for your further action.

For 
MRS. DORCAS ODUOR, SC, EBS, OGW
SECRETARY, PUBLIC PROSECUTIONS
Ag. DIRECTOR OF PUBLIC PROSECUTIONS

Encls.

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023

1. The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 seeks to amend Section 64 (1) by deleting the words ***“for ten years after the conviction”*** and substituting therefor the words ***“or a state officer”***.
2. The said section is one of the most progressive section in ACECA against the fight against corruption. In that it bars persons convicted of a corruption offence from holding public offices.
3. This enables public office is held by individuals of integrity. In addition, it seeks to promote those holding public offices to be people who execute tasks on behalf of the government with the good of the country and its people in mind and not betray the trust and confidence placed in them.
4. Further it provides that some period should lapse before a person convicted of a corruption offence holds office. This ensure that there is time to dismantle corruption networks.

What is corruption

5. Corruption which has been taken to among others refers to the misuse of public power for personal gain. It can be done by an elected politician, civil servant, anyone in authority. This however, does not leave out the private section as there is also corruption between individuals and businesses.
6. Forms of corruption include bribery, embezzlement, extortion, networking, under-the-table transactions, manipulation of the election result, money laundering, and more.

Effects of corruption

7. The effects of corruption are wide-ranging. These include: -
 - Corruption can permanently disrupt a society, it undermines the integrity of the government and leads to unfair commercial competition.
 - It Hinders the the attainment of the United Nations Sustainable Development Goals (SDGs). SDG's aim at "a better and more sustainable future for all". Corruption however, advocates for the interests of a few at the expenses of the majority.
 - hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.
 - Poverty and inequality i.e. is a state of unequal opportunity in which advantages arise only for those within a corrupt network.
 - Corruption erodes the public trust in government institutions and systems
 - It weakens democracy,

Why was section 64 as it is included in the ACECA

8. Section 64 provides as follows:

Section 64. Disqualification if convicted of corruption or economic crime

- (1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.*
- (2) This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.*
- (3) This section does not apply with respect to a conviction that occurred before this Act came into operation.*
- (4) At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.*

9. Article 7 of the United Nations Convention Against Corruption provides that:-

Article 7. *Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from: (a) Holding public office; and (b) Holding office in an enterprise owned in whole or in part by the State.*

10. The said Article require their signatories to impose effective, proportionate and dissuasive sanctions or sanctions that take into account the gravity of the offence. Sanctions must therefore be sufficiently severe to deter or dissuade the offender and others from committing the offence, but not so heavy as to be disproportionate to the gravity of the offence.
11. Kenya signed and ratified the Convention, and deposited its instrument of ratification, on 9 December 2003. It was the country to ratify UNCAC.
12. Section 64 (1) of ACECA therefore complies with Article 7 of UNCAC in that it bars persons convicted of corruption from holding public office and indicates the period of time.

Effects of the proposed amendments to section 64

13. The proposes amendments to Section 64 of ACECA of deleting the words ***“for ten years after the conviction”*** will have the effects of: -

- (i) It will be a sign that Kenya is relegating its international commitment to UNCAC.
- (ii) Public officials found guilty of corruption offences will ran for public offices and there is the danger that these individuals will seek to sow the seeds of corruption

to other members, or even revert to their old ways and continue to dabble in corruption.

(iii) It seeks to serve as a deterrence measure to would be offenders.

14. The fight against corruption should be taken seriously and for the aforementioned reasons we oppose the proposed amendments to the ACECA bill.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)
SUBMISSIONS ON THE ANTI CORRUPTION AND ECONOMIC CRIMES BILL, 2023

Section of the Bill	Specific Clause	Proposed Amendment	Comments in opposition of the proposed amendment
1. PART VIII Miscellaneous	Section 64 – Disqualification of convicted of corruption or economic crime	<p>The Anti-Corruption and Economic Crimes (Amendment) Act, 2023 aims to repeal section 64 of the Anti-Corruption and Economic Crimes Act, 2003 (hereafter referred to as ACECA, 2003).</p> <p>The section sought to be repealed provides as follows:</p> <p>64. Disqualification if convicted of corruption or economic crime</p> <p>(1) A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer for ten years after the conviction.</p>	<p>Article 7 of the United Nations Convention Against Corruption provides that:-</p> <p>Article 7. <i>Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:</i></p> <p>(a) <u>Holding public</u></p>

		<p>(2) <i>This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.</i></p> <p>(3) <i>This section does not apply with respect to a conviction that occurred before this Act came into operation.</i></p> <p>(4) <i>At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.</i></p> <p>The section deters state and public officers from engaging in corrupt activities, as it essentially bars a person convicted of corruption or economic crime from holding a public office for ten years following their conviction.</p> <p>Moreover, it sends a strong message to the public that the government is serious about fighting corruption.</p>	<p><u>office; and (b)</u> <i>Holding office in an enterprise owned in whole or in part by the State.</i></p> <p>Kenya signed and ratified the Convention, and deposited its instrument of ratification, on 9 December 2003.</p> <p>Section 64 (i) of ACECA therefore complies with article 7 of INICAC in that it bars a person convicted of corruption offences from holding public office and it indicates the period of time.</p> <p>The section in question is a significant tool in the fight against corruption, and its repeal would significantly affect the Country's Anti-Corruption landscape.</p> <p>Repealing section 64 of the ACECA, 2003 would negatively impact the fight against corruption and undermine public trust in the government and its anti-corruption efforts.</p> <p>Time is required to dismantle networks.</p> <p>Further, repealing section 64 would be detrimental to the implementation of Chapter Six of the Constitution as a state officer, already convicted of</p>
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			<p>corruption and economic crimes, cannot promote public confidence in the integrity of the office that they hold.</p> <p>Additionally, Articles 99 (2) and 193 (2) of the Constitution of Kenya, 2010 state that a person will be disqualified for election as a member of parliament and as a member of the county assembly, respectively, <i>'where they have been found to have misused or abused a state or public office or in any way to have contravened Chapter Six.'</i></p> <p>Therefore, the repeal of section 64 is against the spirit of the Constitution of Kenya, 2010.</p> <p>Also, the application of the Leadership and Integrity Act, 2012 would be hampered. More specifically, the EACC would have difficulty ensuring the enforcement and actualization of section 13 of the Act if section 64 of the ACECA, 2003 is repealed. This is because a state or public officer, already convicted of a corruption or economic crime, hence failing the moral and ethical requirements, will still be eligible to hold a public office.</p> <p>Lastly, the proposed amendments Anti-Corruption and Economic Crimes (Amendment) Act, 2023 is tantamount to making the ACECA, 2003 ineffective</p>
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				and not act as a deterrence to would be offenders. Therefore, we oppose the Anti-Corruption and Economic Crimes (Amendment) Act, 2023, in its entirety.
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MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO.30)

1. Background

Vide letter Ref. No. **NA/DDC/JLAC/2023/ (89)** dated 10th **August 2023**, the Ethics and Anti-Corruption Commission was invited by the National Assembly Departmental Committee on Justice and Legal Affairs to submit views on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023. The Bill seeks to amend by repealing section 64 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. The provision of section 64 disqualifies persons convicted of corruption or economic crime from being elected or appointed as public or state officers for ten (10) years after conviction. Consequently, the Commission has prepared its submissions to the Committee as elaborated below.

2. International Obligation under UNCAC

- In 2003, Kenya signed and ratified the United Nations Convention Against Corruption ("**UNCAC**").
- Article 30 (1) of UNCAC provides that state parties shall make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of offences.
- Article 30 (7) of UNCAC further provides that; where warranted by gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons

convicted of offences established in accordance with this Convention from holding public office.

- The provision in section 64 of the ACECA providing for disqualification of persons convicted of corruption or economic crime is in furtherance of Article 30 (7) of UNCAC.

3. Comparative analysis

Ineligibility to hold public on account of conviction for serious offences which corruption or economic crimes is a recognized practice in other jurisdictions. Some of these countries include;

- Indonesia
- Australia
- Brazil
- Canada
- United Kingdom
- New Zealand
- Zambia
- Sri Lanka
- Uganda

4. Comments by EACC on the Proposed Amendment

The Commission has reviewed and analyzed the proposed amendment to section 64 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 as contained in the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023. The Commission is strongly opposed to the proposed amendment based on the following reasons-

No.	Statute	Proposed Amendment	Remarks by EACC
1.	Anti-Corruption and Economic Crimes Act, No. 3 of 2003	amend by repealing section 64 of the ACECA	<p>1. Corruption or economic crime are serious offences against the public whose effects are wide ranging and impacts on the society negatively; some of these effects include; economic loss, poor service delivery, poverty and compromises national security. The nature of corruption and economic crime offences hurt public interest and thus the punishment must be proportionate to the damage occasioned to society.</p> <p>2. Persons convicted of corruption or economic crime should be disqualified from holding public office for the period provided in section 64 of the ACECA, since they are likely to perpetrate further acts of corruption.</p> <p>3. The period defined in section 64 of the ACECA is not a permanent punishment. Persons so disqualified would be eligible</p>

			<p>for appointment upon lapse of the 10 years. the prescribed period is meant for reflection and reform</p> <p>4. The proposed amendment will derogate the guiding principles of leadership and integrity espoused in Chapter Six of the Constitution and Leadership and Integrity Act thereby occasioning a significant negative impact in the fight against corruption</p> <p>5. Section 64 of the ACECA is a deterrent measure, which denies the convicted person opportunity to engage in acts of corruption and economic crimes. Deterrence is a key tool in aiding the war against corruption.</p> <p>6. Deleting Section 64 of ACECA will not amount to double punishment as indicated in the proposed amendment. On the contrary, this amendment will have adverse effects considering the impact and effects occasioned by acts of corruption and economic crime to the citizenry and the attendant loss of public resources.</p> <p>7. The proposed amendment is therefore regressive, it is against public interest and will serve to negate national values and principles of governance; This will erode public confidence and respect for the law and betray the Constitution. Deleting Section 64 of ACECA would further weaken framework for implementing Chapter Six of the Constitution.</p>
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Dated at **Nairobi**, this **Tuesday, 22nd August 2023**.



Abdi A. Mohamud, MBS
Deputy Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission

Comparative analysis

Countries where persons convicted of a crime are disqualified from standing for elections

Ineligibility to hold public office on account of conviction for ~~serious offences which~~ corruption or economic crimes is a recognized practice in other jurisdictions. Some of these countries include;

1. Indonesia

The relevant laws

- i. The Legislative Election Regulation
- ii. Criminal Code

The Legislative Election Regulation in Indonesia prohibits people who had been **convicted of corruption**, drug trafficking and child sexual violence from running in the election. Under the Indonesian Criminal Code, a judge can **bar a perpetrator of a crime from holding public office** as an additional form of punishment. But, in addition to the Criminal Code, a number of laws also bar ex-offenders from working in the public sector.

2. Australia

The relevant laws

- i. The Legislative Election Regulation
- ii. Criminal Code

Australia Laws restricting the ability of criminals to stand for office exist in every Australian jurisdiction, although they vary widely by state and territory. **Thus, while in Western Australia a person convicted of a felony is barred for life from holding public office, in Queensland convictions for certain kinds of criminal activity, such as political bribery, prevent a person from standing for office for a fixed length of time**, even if they are not serving a prison sentence. A useful overview is provided by Holland (2003). At the national (Commonwealth) level, any person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable by imprisonment for one year or longer is considered ineligible to stand for elections until the sentence has been served (Australian Electoral Commission 2016).

3. Brazil

Clean Record Law, disqualifies those convicted of racism, homicide, rape, drug trafficking and misuse of public funds by a second-level court (even if an appeal is still pending), as well as those who resigned to avoid impeachment, from holding political office for a period **of eight years**

4. Canada

The relevant laws

- i. The Canada Election Act (Government of Canada 2016; Elections Canada 2016):

The period of ineligibility for public office may be prescribed by law, as in Canada, where a person may be disqualified from running for election for a **period of seven years following the date of conviction in cases of corruption.**

Any person who is convicted of having committed an offence that is an illegal practice (for example, **exceeding election spending limits, submitting false statements, or failing to file an election finance report**) is not entitled to be elected or sit in the House of Commons **for five years after the date of the conviction** (Section 502 [1], Canada Elections Act).

• **Any person who is convicted of a corrupt act** (for example, offering bribes or accepting gifts and advantages, among others) **is not entitled to be elected for seven years after the date of conviction** (Section 501 [2] Canada Elections Act).

5. United Kingdom

United Kingdom is among that has that prevent persons from being eligible for office is a criminal record. Among the factors considered are severity of the crime, the time that has elapsed since the crime was committed, as well as the nature of the punishment. It has also established specific ineligibility conditions for election to public office relating **to corrupt practices.**

The relevant laws

- i. The Representation of the People Act 1981
-

It established restrictions on the right to stand for election, including making ineligible those people:

- who are serving a prison sentence of more than one year
- who have been convicted, or even reported guilty of **corrupt** or illegal electoral practices, or offences relating to political donations.

In the UK, legislators' parliamentary privilege providing civil immunity for libel do not extend from **criminal investigation or prosecution**.

Convicted MPs automatically lose their seat to prevent them from continuing with their parliamentary duties, and they are not entitled to vote in general elections (Myttenaere 1998).

In the 2009 expenses scandal, many of the implicated MPs facing custodial sentences resigned to pre-empt their disqualification as MPs under the Representation of the People Act 1981 (The Telegraph 2009).

- 6. In New Zealand** (New Zealand Electoral Commission 2014) **and Zambia** (Inter-Parliamentary Union 2016a), conviction for a corrupt or illegal electoral practice in the previous three to five years disqualifies citizens from the electoral register. As this is in itself a precondition for standing for election, those found guilty of corrupt electoral practices can exercise neither active nor passive suffrage.

7. Sri Lanka

The relevant laws

- i. Article 89 of the Sri Lankan constitution
- ii. Public Bodies Prevention of Corruption Ordinance

Under the Sri Lankan constitution, citizens under, lose the right to vote if they have been imprisoned for six months or more in the preceding seven years, or have a conviction for a corrupt or illegal practice connected with elections (Sri Lankan Parliamentary Secretariat 2015).

In addition, **they are ineligible to stand for public office if they have been found guilty of accepting a bribe** or gratification offered with a view to influencing their judgement as an MP in **the preceding seven years**, or have in the past five years been sentenced under Public Bodies Prevention of Corruption Ordinance.

CASE LAW

Obore v inspector general of government & anor (HCT-04-CV-MC-005-2013) [2015] UGHCCD 59 (14 May 2015);

This is a Judicia Review Application (JR) seeking orders of certiorari, prohibition and an injunction against the Ugandan IGG'S pursuant to a directive issued to the Applicant vacate office upon conviction of corruption offences.

The Applicant was charged at the Chief Magistrate's Anti-Corruption Court and convicted of abuse of office under Section 11 of the Anti-Corruption Act and theft c/s 253 and 254 of the Penal Code. He was sentenced to imprisonment of 24 months or payment of a fine of Uganda shs. 1,500,000/= on abuse of office and 12 months or fine of shs. 500,000/= on theft. He paid the fines. He was also ordered to refund shs. 7,000,000/= to Malaba Town Council; which he claims he did. By letter annexed as 'A' the IGG wrote to the applicant to vacate office by directive issued to the Minister of Local Government, basing on section 46 of the Anti-Corruptions Act.

In the JR, the Applicant cites that the IGG's directive to vacate office as illegal, and contrary to the Local Government Act and contrary to natural justice since it did not arise out of a court order.

The issue for determination is whether the directive/order by the first respondent to the Minister for Local Government to remove the applicant from office when court did not order so, was proper and regular. OR whether the IGG can after a successful prosecution order removal from office of the convict, basing on the provisions of Section 46 of the Anti-Corruption Act.

The provisions of Section 46 of Anti-Corruption Act 2009 of Ugandan Law is similar to provisions of Section 64(a) of the ACECA, it provides that;

"A person who is convicted of an office under section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 and 25 shall be disqualified from holding a public office for a period of 10 years from his or her conviction."

In his determination, Henry I. Kawesa, Jdismissed the JR Application; He observed that;

*"The use of the word **"Shall be disqualified" from holding a public office for a period of 10 years from his or her conviction,**" imposes a statutory ban on any convicted person under the said sections from holding a public office from the time of conviction to the time frame of 10 years thereafter. It is a self-regulating order in built within the statute itself to accompany every conviction meted out against all convicts under this law. It is a standalone provision which comes into operation upon conviction, whether court makes a specific order re-emphasizing its provisions or not."*

He further state that;

"Given the above interpretation of this section of the law therefore it is true that the applicant was charged under section 11 of the Anti-Corruption Act and convicted. The consequence of that conviction as rightly argued by the 1st Respondent brought Section 46 of the Act into play. Once convicted, the law bars him from holding a public office from date of conviction, irrespective of whether he serves the sentence or pays the fine."

The Judge laid emphasis on the powers of the IGG in the enforcement of the provisions of the Anti-Corruption Act, to ensure that convicted persons vacates office.

He further observed that;

*"In my view Section 46 of the Act is couched in mandatory terms. Once convicted for any of the listed offences therein, you automatically cease to hold any public office under the law for 10 years from date of conviction. **It would therefore be a mockery of justice if after conviction, the IGG waited for the respondent to be disqualified at "nomination" as argued by the applicant.**"*

Galan v. Italy

The European Court of Human Rights in **Galan v. Italy (application no. 63772/16)** dismissed Galan's complaint against the decision of Parliament declaring his seat forfeited. Galan, an elected MP, had been convicted of corruption which attracted a sentence of six to ten years. The Court in dismissing his application held that elected representatives who were removed from their office were excluded from the elected body to which they belonged because they had lost their moral capacity, an essential condition in order to continue to represent electors. The Court further held that the disqualification from standing as an electoral candidate had been consistent with the legislature's stated aim, namely to exclude persons convicted of serious offences from Parliament and thus to protect the integrity of the democratic process. This disqualification from standing as a candidate in elections could not be regarded as arbitrary or disproportionate.

In **CIVIL APPEAL Nos.7437-7438 OF 2021, THE SECRETARY, LOCAL SELF GOVERNMENT DEPARTMENT & ORS v K. CHANDRAN**, the respondent was working as Village Extension Officer. He was sentenced to 2 years and a fine of Rs.5,000 for receiving Rs.500 as bribe from one K.K. Mohanan. This was after he retired. He appealed and the sentence was suspended. According to existing Rules, his Death-cum-Retirement Gratuity (for short 'DCRG') could not be released in the light of the conviction. He applied to the Administrative Tribunal for release of his retirement benefits. His application was dismissed. However, another Respondent, Alexander who had been convicted, applied to the Tribunal and the Tribunal allowed the release of his DCRG leading to conflicting decisions. On appeal to the High Court, it was held that the

respondents were entitled to the release of the DCRG. The State appealed to the Supreme Court of India. The question before the Indian Supreme Court was: is the employee still entitled to the release of his Death-cum-Retirement Gratuity (for short 'DCRG') pending determination of their appeals. The Supreme Court held that the State was entitled to withhold the DCRG pending the determination of the appeals upon conviction. This is because, the State was entitled to dismiss an employee after conviction and the employee having been convicted after retirement, the state would be entitled to recover the compensation paid to him when he should have been dismissed.



THE JUDICIARY

OFFICE OF THE CHIEF REGISTRAR OF THE JUDICIARY

Our Ref: CRJ 48

Your Ref: NA/DDC/JLAC/2023(089)

Date: August 21, 2023

Clerk of the National Assembly
The National Assembly
Office of the Clerk
P. O. Box 41842-00100
NAIROBI

DDC-1100
22/08
Douglas Katoo
Is facilitate
23/8/23

RE: INVITATION BY JLAC TO SUBMIT VIEWS ON THE ANTI-CORRUPTION & ECONOMIC CRIMES (AMENDMENT) BILL, 2023

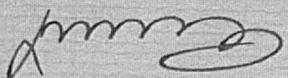
We refer to your letter Ref: NA/DDC/JLAC/2023(89) dated 10th August 2023 on the above subject.

The Chief Registrar of the Judiciary will be participating in the launch of e-filing in Mandera County on 22nd August 2023 when the Justice & Legal Affairs Committee is scheduled to meet with stakeholders to discuss the above referenced Bill.

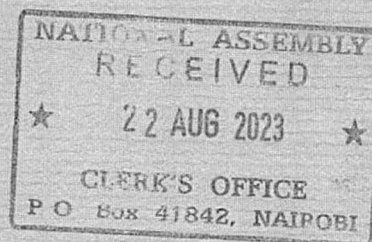
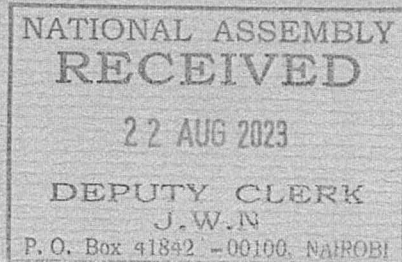
Additionally, the section of the Anti-Corruption & Economic Crimes Act that is proposed for deletion is subject of active litigation before the Courts which have recently rendered judgment barring persons convicted under the Act from assuming public office as required under the Act. These decisions from the Magistrates Courts are open to appeal through the system of superior courts.

In order for the courts to determine these cases and appeals without any appearance of bias on the part of the Judiciary, we write to request the Committee and the House to exercise their discretion during deliberations on the proposed amendment.

We, nonetheless, register our appreciation to the Justice & Legal Affairs Committee for the opportunity to comment on the Bill.


HON. ESTHER NYAIYAKI
FOR: CHIEF REGISTRAR OF THE JUDICIARY

aaa/ko



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through Access to Justice

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Tel. +254 0730 181600/700/800 | chiefregistrar@court.go.ke | www.judiciary.go.ke

Justice Be Our Shield and Defender
23 AUG 2023

Directorate of Departmental Committees

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote
KLRC/8/64VOL.IX(34)

Ref. No.
and Date

② Boylas Katto
Seal



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

① DDC
Please deal
25/08/23

22nd August, 2023

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

(Attn: Mr. Jeremiah Ndombi, MBS)

Dear

Jerem,



RE: COMMENTS ON THE PROPOSED ANTI-CORRUPTION AND ECONOMIC
CRIMES (AMENDMENT) BILL, 2023

Please refer to the above matter and your letter Ref: NA/DDC/JLAC/2023/ (089) dated
10th July, 2023.

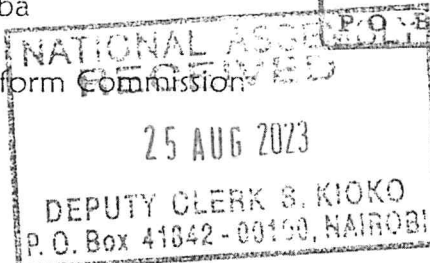
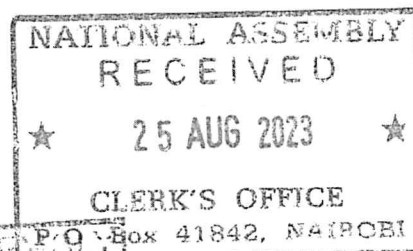
Enclosed herewith please find the Commission's comments on Anti-Corruption and
Economic Crimes (Amendment) Bill, 2023, for your further action.

As always, we thank the National Assembly for the continued support and cooperation.

Yours

Joash Dache, MBS
SECRETARY/CEO

Copy to: Christine Agimba
Chairperson
Kenya Law Reform Commission





COMMENTS ON THE PROPOSED ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2023

A. INTRODUCTION

The Kenya Law Reform Commission, hereinafter referred to as “the Commission”; *Vide* a letter dated 10th August, 2023 and referenced as NA/DDC/JLAC/2023/089), from the Clerk of the National Assembly, received an invitation for comments on the proposed Anti-Corruption and Economic Crimes (Amendment) Bill, 2023.

According to its memorandum of reasons and objects, the proposed Anti-Corruption and Economic Crimes (Amendment) Bill, 2023, seeks to amend the Anti-corruption and Economic Crimes Act, No. 3 of 2003, ACECA, by deleting section 45(2) and substituting therefor a new subsection.

Section 45(2) of the Act, provides that --

An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person--

- (a) fraudulently makes payment or excessive payment from public revenues for--
 - (i) sub-standard or defective goods;*
 - (ii) goods not supplied or not supplied in full; or*
 - (iii) services not rendered or not adequately rendered,**
- (b) wilfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or*
- (c) engages in a project without prior planning.*

The justification for the proposed amendment according to its memorandum of reasons and objects, is that the issues are already addressed under Article 226(5) of the Constitution, the Fair Administrative Act, 2015, the Employment Act, 2007 and the Public Procurement and Assets and Disposal Act, 2015.

Against this background, and pursuant to the Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013, the Commission, undertook an analysis of the proposed amendment against the relevant provisions of the Constitution.

B. ANALYSIS OF THE BILL

Provision in the Bill	KLRC Proposal	Rationale
Clause 2 — Proposed deletion and substitution of section 45(2) of the Anti-corruption and Economic Crimes Act (ACECA).	The Commission holds the considered view that the proposed amendment is not necessary.	<p>The law making process is often informed by the need to address certain social problems in the society. This could be addressed either through an amendment or standalone Bill. The proposed draft does not provide a proper justification necessitating the need to delete paragraphs 45(2) (b) (c).</p> <p>Although, the provisions of paragraphs 45(2)(b)(c) may have been addressed under certain existing laws such as Article 226(5) of the Constitution, the Fair Administrative Act, 2015, the Employment Act, 2007 and the Public Procurement and Assets and Disposal Act, 2015, this is not enough reason to amend the section, unless those provisions were not in harmony.</p>
	The Commission, however, recommends that the use of the phrase “is guilty of” appearing in subsection 45(2), be deleted and substituted therefore the word “commits”.	<p>The proposal to delete the phrase “is guilty of” appearing in subsection 45(2), and the proposal to substitute therefore the word “commits”, is grounded on the fact that, the section as is, including the proposed draft amendment, takes away a person’s right to presumption of innocence as contemplated under Article 50(2)(a) of the Constitution. The section is therefore inconsistent with Article 50(2)(a) of the Constitution, hence void to the extent of that inconsistency.</p>

C. CONCLUSION

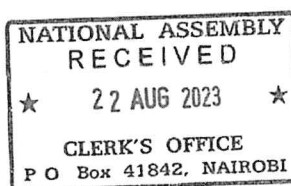
Whereas, the KLRC acknowledges the legislative authority of Parliament as provided for under Article 94 of the Constitution, the KLRC holds the considered view that the proposed amendments is unnecessary. Further, it is our considered view that, should the proposed amendment be adopted, the culpability of a person who fails to comply with the law on procurement or a person who engages in a project without prior planning, will essentially be expunged from the provision of ACECA.



Our Ref GEN/AA
Your Ref TBA
Date 22 August 2023

The Clerk of the National Assembly
P.O Box 41842-00100
Nairobi, Kenya

Attn: Mr. Samuel Njoroge



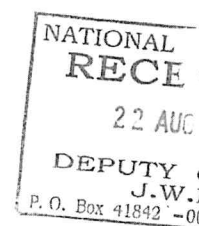
via email: cn@parliament.go.ke

Dear Sirs,

Re: Comments on the Anti-Corruption and Economic Crimes (Amendment) Bill 2023

Pursuant to your invitation for public participation and submission of memoranda on the Anti-Corruption and Economic Crimes (Amendment) Bill 2023 (the Bill) dated 10 August 2023, we have set out our comments below.

Anjarwalla & Khanna LLP (the Firm) has a policy to contribute to the development of legislation in Kenya and to encourage the advancement of the rule of law. The Firm is grateful for the opportunity to share its views and has provided detailed comments on the Bill.



1 Detailed Comments

Proposed Amendment	Comment/Observation
<p>Clause 2 of the Bill proposes to repeal Section 64 of the Anti-Corruption and Economic Crimes Act, 2003 (the Principal Act).</p> <p>Section 64 of the Principal Act provides for the disqualification of a person convicted of corruption or economic crime from being elected or appointed as a public officer for a period of ten (10) years after the conviction.</p>	<p>Parliament should reject the proposed amendment for the following reasons:</p> <p>1. The proposed amendment contravenes Chapter Six of the Constitution</p> <p>Chapter Six of the Constitution is predicated on the premise that state officials are the nerve centre of the Republic; they carry the highest level of responsibility for the management of state affairs and should therefore be individuals of good character, probity, and uprightness. In <i>Republic v Ethics and Anti-Corruption Commission Ex Parte Nairobi City County Assembly & 13 Others</i> [2019] eKLR, the court observed that in the leadership and integrity chapter, Kenyans decreed that people whose conduct does not bring honour, public confidence, and integrity have no place in the management of public affairs.</p> <p>For the above rationale, Article 73(1) of the Constitution states that the authority assigned to a state officer is a public trust that must be exercised in a manner that demonstrates respect for the people, brings honour to the nation and dignity to the office, and fosters public confidence in the office's integrity. Permitting corruption or economic crime offenders to run for office or be appointed to public positions, in our opinion, dishonours state offices, brings shame, and does not promote public confidence. Instead, it promotes the plundering of public resources at the expense of <i>Wananchi</i> and erroneously demonstrates that integrity is irrelevant in leadership.</p> <p>Article 73(2) of the Constitution outlines the guiding principles of leadership and integrity. The proposed amendment is inconsistent with these principles. According to the supreme law, leadership and integrity are guided by the following principles: selection on the basis of personal integrity, competence, and suitability; objectivity and impartiality in decision-making; ensuring that decisions are not influenced by nepotism, favouritism, or other improper motives or corrupt practises; selfless service based solely on the public interest, exemplified by honesty in the execution of public duties; and the disclosure of any perverse interests.</p> <p>As a result, the proposed amendment disregards the requirement that public officials must have integrity, not decide based on improper motives or corrupt practises, and not have perverse interests. In <i>Trusted Society of Human Rights Alliance v The Attorney General & 5 Others</i> [2012] eKLR, the High Court established the following</p>

Proposed Amendment	Comment/Observation
	<p>standard for integrity: <i>"To our mind, a person is said to lack integrity when there are serious unresolved questions about his honesty, financial probity, scrupulousness, fairness, and reputation, the soundness of his moral judgement or his commitment to the national values enumerated in the Constitution"</i>.</p> <p>Therefore, if the Bill passes, there is a high likelihood that those convicted of corruption and economic crimes will continue their corrupt practises and will have no incentive to desist from the same. Such an amendment rewards selfish behaviour and, since public officers are in leadership positions, will encourage the worst traits in others.</p> <p>2. The proposed amendment undermines and attempts to dilute the overriding national values and principles of governance</p> <p>Article 10 of the Constitution stipulates that all persons, state organs, and state offices must adhere to national values and principles when applying or interpreting the Constitution, enacting, applying, or interpreting any law, or making and implementing public policy decisions. The relevant national values include the rule of law, integrity, good governance, transparency, and accountability. The proposed amendment rewards public office abusers with positions of power to carry on with mismanagement. This amendment will result in impunity because those convicted of corruption and economic crimes will feel untouchable and disregard the rule of law and good governance. In addition, the proposed amendment appears to dilute the national values, such as integrity and the rule of law, without complying with the requirements of Article 255 of the Constitution, which stipulates that any amendment to the national values must be approved by referendum. Contrary to Article 10 of the Constitution, by repealing the prohibition on a person convicted of corruption or economic crime from being elected or appointed as a public officer, the amendment effectively waives the requirement of integrity that must be met to assume public or state office.</p> <p>3. Kenya risks being grey listed and monitored by the Financial Action Task Force (FATF)</p> <p>Over the years, Kenya has endeavoured to convince investors and the international community that its financial and economic system is stable and secure by implementing measures to combat money laundering and terrorist financing. This is evidenced by the passage of the Proceeds of Crime and Anti-Money Laundering Act No. 9 of 2009 (POCAMLA) and the proposed Anti-Money Laundering and Combating Terrorism Financing Laws</p>

Proposed Amendment	Comment/Observation
	<p>(Amendment) Bill 2023, which incorporate FATF recommendations. That notwithstanding, the proposed amendment to the Principal Act undermines the progress made by Kenya by allowing corruption or economic crime offenders to run for office or be appointed as public officers. In fact, it blatantly contradicts Kenya's efforts and the government's official policy to strengthen the nation's anti-money laundering and anti-terrorism financing laws in accordance with FATF-set global standards. It shows that such policies and laws are seemingly hypocritical and that the government has no interest in efficacy.</p> <p>Kenya already risks being subjected to increased FATF scrutiny and grey listing, and this amendment would be the final nail in the coffin. FATF places nations on grey lists as a warning to the financial community that the nation in question is not making sufficient efforts to combat financial crime. Consequences of being grey listed include economic sanctions imposed by the IMF and the World Bank, which make it difficult to obtain loans and grants; a significant decrease in capital inflows that can lead to a balance of payments crisis; and a decline in the global competitiveness of Kenyan businesses.</p>

2 Conclusion

- 2.1 As shown, passing the Bill will have serious adverse consequences for Kenya. We urge Parliament to reflect the true wishes of Kenyans and reject it. Parliament should also remember that Articles 94(4) and 10(1) require it to protect the Constitution and uphold national values like the rule of law and integrity when passing laws. Passing the Bill would violate its constitutional obligation. Please contact us should you require any clarification.

Yours faithfully,



Aisha Abdallah

for and on behalf of Anjarwalla & Khanna LLP



REPUBLIC OF KENYA
PARLIAMENT

Hon. Shakeel A. Shabbir Ahmed, CBS, MP.

MBA (UK), GeMBA, (USA), M.A.PolSc (Kenya) FFA, F inst D, FCMI, MCIM, BA Hon BS

Kisumu East Constituency

Chairman: African Parliamentarians Network Against Corruption - (APNAC- Kenya)

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+254 733 606 192

HON.GITONGA MURUGARA
THE CHAIRMAN
NATIONAL ASSEMBLY COMMITTEE ON
JUSTICE AND LEGAL AFFAIRS
PARLIAMENT BUILDINGS
NAIROBI.

22/08/2023

Dear Sir,

RE: REJECTION OF HON. PETER KALUMA'S PROPOSED AMENDMENT VIDE THE ANTI-CORRUPTION AND ECONOMIC CRIMES BILL NO. 30 OF 2023

I wish to appeal to the National Assembly Committee on Justice and Legal Affairs (JLAC) to reject the amendment proposed by Hon. Kaluma by his intention to repeal Section 64 of ACECA which provides as follows;

Section 64

Disqualification if convicted of corruption or economic crime.

1. A person who is convicted of corruption or economic crime from being elected or appointed as a public officer for ten years after the conviction. (It is important to note that the Constitution of Kenya 2010, and particularly, Chapter Six on Leadership and Integrity, does not have expiry clauses. This brings into question the validity of this provision's 10-year expiry clause to begin with).
2. This section does not apply with respect to an elected office if the Constitution sets out the qualifications for the office.
3. This section does not apply with respect to a conviction that occurred before this Act came into operation.
4. At least once a year the Commission shall cause the names of all persons disqualified under this section to be published in the Gazette.

The impact of a successful repeal of this section will mean that;

1. Persons convicted of corruption or economic crimes can occupy any public office immediately after conviction.
2. The Ethics and Anti-Corruption Commission (EACC) will no longer publish names of persons convicted under ACECA.

The proposed amendment presents the following challenges:

1. Conflict with the Constitution of Kenya 2010:

African Parliamentarian Network Against Corruption - (APNAC), Kenya
Email: kenyaapnac@gmail.com - Tel: 0733 606 192

- a. Article 73 of the Constitution states that the authority assigned to a state officer is "*a public trust*" and must be exercised in a manner that brings honour to the nation and dignity to the office and promotes public confidence in the office. In the present context of the Anti-Corruption and Economic Crimes Act, employing convicts to public office will certainly compromise public confidence in such offices.

The article further provides guiding principles for leadership and integrity, including "*selfless service based solely on the public interest*" and "*accountability to the public for decisions and actions*".

- b. Article 75(3) of the Constitution disqualifies any person who has been dismissed or removed from office for contravening Chapter Six from holding any other state office.
- c. Article 99(2)(h) of the Constitution of Kenya disqualifies any individual who "*is found, in accordance with any law, to have misused or abused a State Office or public office or in any way to have contravened Chapter Six*" from being elected a Member of Parliament.

For the sake of emphasis, the proposed amendment is a direct contravention to the provisions, the spirit and the values of the Constitution of Kenya 2010.

2. **Practicality:** Ironically, a person suspected of corruption would face more sanctions i.e., stepping aside and a halved salary, than a person found guilty of corruption.
3. **Deterrence:** The deterrence objective aligned with the punishment of such crimes would be severely derailed. The only punitive element would be jail service or a fine. This is hardly sufficient considering the amount of responsibility placed on public officers and the dire impact that corruption and economic crimes leave on the social, economic, and political development of Kenya.

In China, the penalties for corruption and related offences by public officers include a life imprisonment sentence. Officers found guilty of high embezzlement or bribe taking are liable for execution. Public officers certainly have a high degree of responsibility to the people that they serve. As demonstrated in China, breach of this responsibility is unacceptable and should be prevented at all costs.

4. **Impunity:** Hon. Kaluma offers the explanation that the punishment of conviction or a fine is sufficient. The judicial processes in this country, whether in tribunals or in courts, offer a way for truth to be determined by way of evidence. Therefore, for a public officer to be found guilty of corruption or other economic crime there is sufficient evidence of their actions.

Furthermore, Chapter Six of the Constitution of Kenya 2010 envisages that public officers owe the people of Kenya respect, accountability, honesty, and discipline in the execution of their duties. They have a high degree of responsibility as demonstrated in the Chapter Six provisions, and being found guilty for such crimes is proof that they failed to meet this threshold.

Consequently, punishment by conviction or a fine is insufficient. Public officers have a high threshold in terms of responsibility and character as demonstrated by Chapter Six of the Constitution. Secondly, the dire impact that corruption and economic crimes have on the social and economic lives of Kenyans can well be observed presently. There is the impending danger that if reappointed, such public officers would engage in further grand corruption. Public officers found guilty of corruption and/or economic crimes should not be allowed back into office.

It is also important to note that this is the second attempt to weaken the Anti-Corruption and Economic Crimes Act in less than 2 months. We have also objected to a proposed amendment by Hon. Geoffrey Ruku to decriminalize flouting of procurement rules.

The spirit and values of the Constitution of Kenya 2010 demand the integrity and accountability of public officers. Among the reasons that public officers hold the powers and privileges that they do, is to allow them to effectively serve the people of Kenya. As a manifestation of the rule of law, Section 64 of the Anti-

