



DECriminalising Procurement Offences Undermines Anti-Corruption Efforts in Kenya!

We, the undersigned civil society organisations working on promoting good governance, rule of law, transparency and accountability in government, wish to unequivocally and in unison express our displeasure on the proposed amendments contained in the Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 sponsored by Mbeere North MP, Geoffrey Kariuki Ruku because they pose a significant threat to the progress made thus far in the fight against corruption.

The bill proposes to repeal two instrumental sections of the Anti-corruption and Economic Crimes Act (ACECA), 2003 – a legal framework for preventing, investigating, and prosecuting corruption-related offences and economic crimes. Hon. Geoffrey Kariuki proposes amendments to sections 45(2) (b) and (c) of the ACECA that specifically address offences related to non-compliance with procurement guidelines and the implementation of unplanned projects.

We aver that the drafters of the ACECA did not intend section 45 to be merely superfluous, lofty or ornamental to the ACT, they intended to have these sections as a substantive bite – to promote responsible and ethical practices in public procurement, ensuring that guidelines are followed and that no officer engages in a project without prior planning, to maintain transparency and accountability. Since the establishment of ACECA in 2003, provisions of section 45 have been instrumental in the successful prosecutions of several individuals involved in corruption. In fact, procurement-related graft cases have been among the most litigated provisions in anti-corruption offences. As such, any attempt to tamper with or weaken these provisions will lead to the inevitable fatality of ACECA and the war on graft. We are therefore perplexed by Hon. Ruku's suspicious sinister and misadvised motives to propose the repeal of

these sections that dictate such drastic and gross offences, which according to his proposal, should be relegated to the realm of administrative processes which are of less deterrence to individuals intent on engaging in acts of corruption.

We also wish to remind Hon. Ruku that our country loses close to one-third of its budget on corruption with procurement being the biggest avenue for graft. Kenyans can still remember the procurement-related scandals that occurred at the Kenya Medical Supplies Authority (KEMSA) during the height of the Covid-19 pandemic, in which we lost about Ksh 7 billion; the National Youth Service (NYS) scandal that amounted to Ksh. 1.9 billion in losses, and the recent Mosquito nets procurement scandal at KEMSA that has seen Kenyans lose about Ksh 3 billion. These are just but among the numerous procurement-related scandals that have riddled this country despite having ACECA and other legislative, policy and enforcement mechanisms, which have not fully addressed the corruption headache and thus if anything, they need to be strengthened and not weakened. In fact, Kenyans should be more worried about the magnitude of the corruption scandals we are likely to face if ACECA is weakened.

Moreover, the current government, including President Ruto himself has acknowledged the scourge of corruption and its negative impact on the economy and realisation of the government's goals and commitment to fighting corruption. Besides, public opinions and perception reports have indicated the high levels of corruption in government and the lack of commitment by the government in fighting corruption. A proper reflection on these facts leads to the inevitable conclusion that the MP's proposal is misguided.

That notwithstanding, we acknowledge that Parliament in its entirety has the final mandate to debate and pass legislation. We invite Parliament, through the relevant Committee (Justice and Legal Affairs Committee) and through the plenary, to do the honourable thing for this country, and resoundingly reject the Bill. In the highly unlikely event that the Bill goes through Parliament, we ask the President, William Ruto, to reject it as it will only serve to derail his agenda to rebuild Kenya's economy as the proposed amendments only serve to escalate fraud, waste and abuse of public resources amidst a severe economic crisis.

Lastly, we call upon all other stakeholders to come together in one voice and oppose this draconian bill. We are cognisant that Kenyans are currently going through a difficult economic period with the high cost of living, rising prices of basic commodities, and high taxes. The least we can put up with is the pilferage of public funds. If we don't speak up now against this and any other attempts to weaken our laws, things will only get worse. Power belongs to us, the people of Kenya, and we must remind our MPs that they should only be subservient to the public interest, and Kenyans are watching keenly.

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Signed

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