



Approved for tabling

Ben  
SWA  
30/7/2020

 REPUBLIC OF KENYA	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 30 JUL 2020	
TABLED BY:	V/Chairperson, DC - Justice & Legal Affairs
CLERK-AT THE TABLE:	Sarah Kwaro
 THE NATIONAL ASSEMBLY	



TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE CONSIDERATION OF THE ANTI-CORRUPTION AND ECONOMIC  
CRIMES (AMENDMENT) BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 72)  
BY HON. SILAS TIREN, MP

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

JULY, 2020

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- Annexure 1:** Minutes of Committee sittings on consideration of the Bill and adoption of report.
- Annexure 2:** Adoption List
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## **CHAIRPERSON FOREWORD**

The Anti-Corruption and Economic Crimes (Amendment) (No. 72) Bill, 2019 underwent First Reading on 9th May, 2019. Thereafter, the Bill was committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 127(1) and 216 (5) (c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3) the Committee through an advertisement in the local daily newspapers of 11th November, 2019 invited the public to make representations on the Bill.

The Ethics and Anti-Corruption Commission submitted its views which the Committee extensively considered. The Committee held two sittings during which it considered the Bill and unanimously adopted its report.

May I take this opportunity to express gratitude to committee members for their resilience and devotion to duty which made consideration of the Bill successful. May I also appreciate the Speaker and Clerk of National Assembly for always providing guidance and direction to Committees in the discharge of their mandate. Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

Hon. Speaker, on behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199 (6), it's my pleasant privilege and duty to present to the House a report of the Committee on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 (National Assembly Bill No. 72)

**Hon. Muturi Kigano, MP.**

## CHAPTER 1

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
  - (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - (b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
  - (c) study and review all legislation referred to it;
  - (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (e) investigate and enquire 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;
  - (f) 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)
  - (g) examine treaties, agreements and conventions;
  - (h) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
  - (j) Examine any questions raised by Members on a matter within its mandate.
1. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
  - (a) Constitutional affairs;
  - (b) The administration of law and Justice
  - (c) The Judiciary;
  - (d) Public prosecutions;
  - (e) Elections;

- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

## 1.2 Committee Membership

2. The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017. The current membership is as follows-

### **Chairperson**

Hon. Clement Muturi Kigano, M.P.

### **Kangema Constituency Jubilee Party**

### **Vice Chairperson**

Hon. (Dr.) Paul Otiende Amollo, M.P.

### **Rarieda Constituency ODM - Party**

Hon. John Olago Aluoch, M.P.  
**Kisumu West Constituency  
FORD-Kenya**

Hon. George Peter Kaluma, M.P.  
**Homa Bay Town Constituency  
ODM-Party**

Hon. Roselinda Soipan Tuya, M.P.  
**Narok County  
Jubilee Party**

Hon. Junet Sheikh Mohammed, M.P.  
**Suna East Constituency  
ODM-Party**

Hon. Emmanuel Wangwe, M.P.  
**Navakholo Constituency  
Jubilee-Party**

Hon. W. Kamoti Mwamkale, M.P.  
**Rabai Constituency  
ODM-Party**

Hon. Josephine Naisula Lesuuda M.P.  
**Samburu West Constituency  
KANU-Party**

Hon. Zuleikha Hassan, M.P.  
**Kwale County  
ODM-Party**

Hon. Jennifer Shamalla, M.P.  
**Nominated MP  
Jubilee Party**

Hon. Robert Gichimu Githinji, M.P.  
**Gichugu Constituency  
Jubilee-Party**

Hon. Anthony Oluoch M.P.  
**Mathare Constituency  
ODM-Party**

Hon. John Munene Wambugu, M.P.  
**Kirinyaga Central  
Jubilee -Party**

Hon. George Gitonga Murugara, M.P.  
**Tharaka Constituency  
Democratic Party (DP)**

Hon. Anthony Githiaka Kiai, M.P.  
**Mukurueni Constituency  
Jubilee-Party**

Hon. John Kiarie Waweru, M.P.  
**Dagoretti South Constituency**  
**Jubilee-Party**

Hon. Japheth Mutai, M.P.  
**Bureti Constituency**  
**Jubilee-Party**

Hon. Adan Haji Yussuf, M.P.  
**Mandera West Constituency**  
**Economic Freedom Party**



### 1.3 Committee Secretariat

3. The Committee secretariat is as follows--

Mr. Abenayo Wasike  
**Senior Clerk Assistant  
Lead Clerk**

Mr. Denis Abisai  
**Principal Legal Counsel I**

Ms. Halima Hussein  
**Clerk Assistant II**

Mr. Ahmed Hassan Odhawa  
**Principal Research Officer**

Mr. Omar Abdirahim  
**Fiscal Analyst III**

Ms. Roselyne Ndegi  
**Serjeant-at-Arms I**

Mr. Joseph Okongo  
**Media Liaison Officer**

4. Minutes of sittings of the Committee on the consideration of the Bill are attached to this report as **annexure 1**

## CHAPTER 2

### 2.0 BACKGROUND

#### 2.1 The Anti-Corruption and Economic Crimes (Amendment) (No. 72) Bill, 2019

#### 2.2 Memorandum of objects and reasons of the Bill

5. The principal object of the Anti-Corruption and Economic Crimes (Amendment) (No. 72) Bill, 2019 is to amend the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, to insert a provision that would hold managers, chief executive officers, directors of public institutions personally liable for running down institutions. Further, the Bill seeks to permanently bar anyone convicted of an offence under the Anti-Corruption and Economic Crimes Act from holding office as a public or state officer.
6. The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.
7. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.
8. The enactment of this Bill will not occasion additional expenditure of public funds.

#### **Section 64 of the Anti-Corruption and Economic Crimes Act, 2003 which the Bill proposes to amend;**

*(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 the all persons disqualified under this section to be published in the Gazette"*

## CHAPTER 3

### 3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

9. Through an advertisement on 11th November, 2019 the Committee pursuant to the provision of Article 118 (1) (b) of the Constitution as read together with Standing Order 127 (3) invited the public to make submissions regarding the proposed amendment Bill. A copy of the newspaper advertisement is attached as **annexure 3**.
10. Following the newspaper adverts in the dailies, the Committee received submissions from the Ethics & Anti-Corruption Commission on the proposed amendment Bill. A Copy of the EACC submission is attached as **annexure 4**.
11. The Committee extensively considered the contents of the submission and details of the deliberations and the Committee's observations and resolutions are contained in Chapter 4 of the report.
12. It is worthy to note that the Committee considered the Bill at the legislative proposal stage and sought the views and comments of the Office of the Office Attorney-General and Department of Justice as well as the Kenya Law Reform Commission. The Kenya Law Reform Commission submitted the following comments on the proposal that;
  - a) Clause 2 of the Bill proposes to introduce a new clause (clause 50A) on personal liability for loss of public property on the part of the management of a public company, institution or state organ. However, section 51 of the Anti-Corruption and Economic Crimes Act currently contains a similar provision which states as follows;

*"A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered"*.
  - b) The proposed new section 50A and the current section 51 of the Act have similar meaning but are worded differently. The Commission therefore proposes that instead of inserting a new provision, section 51 should be amended to include the element of conviction.
  - c) Clause 3 of the Bill proposes to amend section 64 (1) of the Act which provides that *"A person who is convicted of corruption or economic crimes shall be disqualified from being elected or appointed as a public officer for ten years after the conviction"* to read *"A person who is convicted of corruption or economic crime shall be disqualified from being elected or appointed as a public officer or a state officer"*
  - d) The amendment of section 64(1) of the Act is therefore not necessary because the constitutional definition of public officer pursuant to Article 260 of the

Constitution includes a State officer. The definition in the Act should instead be amended to align it to the Constitution.

- e) In addition, disqualifying a person from being appointed to public office indefinitely does not take into account the aspect that the person may have since reformed and therefore it is the Commission's view that ten years is adequate time for a person convicted of corruption or of an economic crime to reform and recommends that the Bill should not be approved.

13. Upon studying the views of the Kenya Law Reform Commission, the Committee made the following observations at the pre-publication scrutiny stage that;

- (a) The level of corruption in the country was worrying and there was need for stiffer penalties against the corrupt to act as deterrent measure;
- (b) The ten (10) years disqualification from holding public office upon conviction for committing corruption as provided for in section 64 (1) of the Anti-Corruption and Economic Crimes Act is adequate punishment for a person convicted of corruption or an economic crime;
- (c) The Bill should be reviewed to take into consideration that convicted persons do reform after punishment and should be given another chance in life.

## CHAPTER 4

### 4.0 CONSIDERATION OF THE PROPOSED AMENDMENTS

#### 4.1 Clause 1 on the short title

14. This Act may be cited as the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019.

#### 4.2 Committee's observations

15. The Committee observed that there was no stakeholder submission on the clause.

#### 4.3 Clause 2 on insertion of a new section into the Act (No. 3 of 2003)

16. The clause provides for personal liability for loss of public property. "The Anti-Corruption and Economic Crimes Act is amended by inserting the following new section immediately after section 50" -

50A (1) *A person who is convicted of an offence of corruption or economic crime and who was involved in the management of a public company, institution or state organ that suffered pecuniary loss as a result of that corruption or economic crime shall be personally liable for such loss.*

(2) *A person who is personally liable under this section is jointly and severally liable in respect of losses incurred by the public company, institution or state organ with any other person who is so liable.*

#### 4.4 Stakeholder submissions

#### 4.5 The Ethics & Anti-Corruption Commission (EACC)

17. The Commission submitted that the wording of the proposed new section 50A in the Bill on personal liability for loss of public property presents challenges on the proper interpretation or construction of the provision in the following manner;

- (i) The words "*and who was involved in the management*" in the proposed new section are vague and not capable of clear meaning which can assign responsibility in law. Management is a term which cannot be specifically attributed to a particular activity. It can mean anything or any activity by an employee at various levels of an institution. To cure this, it would be imperative to state the levels of management targeted by the provision, for example, an accounting officer, chief executive officer, director, etc. The listing should be exhaustive.
- (ii) The words "*public company, institution or state organ*" is limiting. To cure this, the provision should incorporate the definition of "public body" as used in section 2 of the Anti-Corruption & Economic Crimes Act which provides a

broader definition this will also ensure consistency of terms. In the alternative, of the intention was to widen the scope of application to public companies within the meaning of the Companies Act which may not be encompassed in the definition of "public entity" under section 2, then a definition of the entities comprising "public company" can be inserted in the new section to be inserted through the amendment.

- (iii) The use of the term "pecuniary loss" is limiting on the extent of liability to which such managers may be held. Loss may occur in other forms which are not entirely pecuniary. Therefore, the provision should list the various types of loss which the person would be held personally liable.

18. The Commission further submitted that the proposed section 50A is a replication of existing provisions in Anti-Corruption & Economic Crimes Act in the following ways;

- (i) The proposed new section 50A provides for conviction based orders of compensation for loss occasioned by corrupt conduct. To this extent, this remedy is already provided for under section 51 as read together with sections 53 and 54 of the Anti-Corruption & Economic Crimes Act. However, these provisions extend the liability to "any person" whereas the intended new section 50A seeks to limit the liability to those in management of a public body. This is an inherent conflict, and may pose a challenge of interpretation.
- (ii) In addition, it should be noted that the Commission is empowered to institute recovery proceedings against any person whom it has investigated for corruption, economic crime and related conduct prior to, or even in the absence of a conviction. Such proceedings can be instituted alongside a criminal trial, and are not dependent on the eventual outcome of the prosecution of the suspect. To that extent, the proposed new provision would hamper or constrain such recovery procedures since it would appear to make a recovery process conditional upon conviction.
- (iii) The intention or objective of the new provision is to ensure that those who are in charge of managing public bodies exercise enhanced vigilance in order to prevent the occurrence of corruption or economic crime which leads to losses in the public body. To this extent, the liability to compensate for loss by making them personally liable should not be made conditional upon conviction. This may cure the latent conflict.

19. The Commission also submitted on the proper placement of the proposed new section 50A, as follows-

- (i) The proposed new section 50A falls within Part VI of the Anti-Corruption & Economic Crimes Act, which is titled "*Compensation and Recovery of Improper Benefits*". Therefore, it should ideally come after section 51. As such, the new section should be section 51A immediately after section 51.

## CHAPTER 5

### 5.0 COMMITTEE OBSERVATIONS

#### 5.1 Observations on Submissions on proposed new section 50A

20. The committee agreed with the submissions from the Kenya Law Reform Commission that the proposed new section 50A and the current section 51 of the Act have similar meaning but are worded differently. The difference between the two provisions is that the proposed amendment seeks to make a person liable for the loss occasioned by corrupt conduct only upon conviction unlike the current provision where the person may still be liable even in the absence of a criminal conviction.
21. The Committee also agreed with the submissions by the Ethics and Anti-Corruption Commission that the words "*and who was involved in the management*" in the proposed new section 50A are vague and not capable of clear meaning which can assign responsibility in law. Management is a term which cannot be specifically attributed to a particular activity. In this regard, the Committee was of the view that the text of the proposed amendment was vague and it would be difficult to obtain the standard of proof required to establish personal liability for the loss as the provision seeks to establish.
22. The Committee further agreed with the submission by the Ethics and Anti-Corruption Commission proposed new section 50A would hamper or constrain its recovery procedures since it would make a recovery process conditional upon conviction. Under the current laws, the EACC is empowered to institute recovery proceedings against any person whom it has investigated for corruption, economic crime and related conduct prior to, or even in the absence of a conviction.
23. **Recommendation:** The Committee recommends that the House rejects Clause 2 of the Bill.

#### 5.2 Justifications

24. The use of the words "*and who was involved in the management*" in the proposed new section 50A makes the amendment vague and not capable of clear meaning which can assign responsibility in law. Management is a term which cannot be specifically attributed to a particular activity. It can mean anything or any activity by an employee at various levels of an institution. In this respect, the vagueness of the proposed amendment will make it difficult to obtain the standard of proof required to establish personal liability for the loss as the amendment seeks to establish.
25. The proposed new section 50A would hamper or constrain the Ethics and Anti-Corruption Commission's capacity to initiate recovery proceedings since it would make the recovery process conditional upon the conviction of an accused person. Under the current laws, the EACC is empowered to institute recovery proceedings against any

person whom it has investigated for corruption, economic crime and related conduct prior to, or even in the absence of a conviction.

### **5.3 Clause 3 on amendment of 64 of the Act (No. 3 of 2003)**

*“Section 64 of the Principal Act is amended in subsection (1) by deleting the words “for ten years after the conviction” substituting therefore the words “or state officer”*

### **5.4 Stakeholder submission**

### **5.5 The Ethics & Anti-Corruption Commission**

26. The Commission submitted that the proposed amendment to section 64 of the Anti-Corruption and Economic Crimes Act seeks to bar persons convicted of corruption or economic crime from forever being elected or appointed to public or state office, instead of the current provision which limits the bar to ten (10) years after conviction. This is a deterrent measure which will aid the war on corruption. Further, it also seeks to amplify that the bar extends to appointment or election to both public and state office, which are the terms used in the Constitution.

### **5.6 Observations on Clause 3 on amendment of 64 of the Act (No. 3 of 2003)**

27. The Committee agreed with the submissions from the KLRC that the ten (10) years disqualification from holding public office upon conviction for committing corruption as currently provided for in section 64 (1) of the Anti-Corruption and Economic Crimes Act is adequate punishment for a person convicted of corruption or an economic crime.

28. The Committee observed that the sponsor of the Bill (Hon. Silas Kipkoech Tiren) had not amended the Bill as recommended by the Committee during pre-publication scrutiny of the Bill. The Committee had recommended that the Bill be reviewed to take into consideration the fact that convicted persons do reform after punishment and should be given another chance in life.

29. The Committee noted the submissions by the EACC that the proposed amendment to section 64(1) of the Anti-Corruption and Economic Crimes Act to permanently bar persons convicted of corruption or economic crime from being elected or appointed to public or state office was a deterrent measure which will aid the war on corruption.

30. **Recommendation:** The Committee recommends that the House rejects Clause 3 of the Bill.

### **5.7 Justifications**

31. The ten (10) years disqualification from holding public office upon conviction for committing corruption as currently provided for in section 64 (1) of the Anti-Corruption and Economic Crimes Act is adequate punishment for a person convicted of corruption or an economic crime.

32. The sponsor of the Bill (Hon. Silas Kipkoech Tiren) had not amended the Bill as recommended by the Committee during prepublication scrutiny of the Bill.



The Committee had recommended that the Bill be reviewed to take into consideration the fact that convicted persons do reform after punishment and should be given another chance in life instead of permanently being barred from being elected or appointed to public or state office as proposed in the Bill.

CHAPTER 6

6.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the proposed amendments to the Anti-Corruption and Economic Crimes Act (No.3 of 2003) recommends to the House that the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 (National Assembly Bill No.72) should not be proceeded with.

Signed.....Date.....30-07-2020



Hon. Muturi Kigano, M.P.

Chairperson, Departmental Committee on Justice and Legal Affairs

# **ANNEXURE 1:**

## **MINUTES OF COMMITTEE SITTINGS**

**MINUTES OF THE TWENTY SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WENESDAY 24<sup>TH</sup> JUNE, 2020 AT 2:30 PM IN COMMITTEE ROOM ON 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS**

**PRESENT-**

1. Hon. Adan Haji Yussuf, M.P - (Chairing)
2. Hon. John Olago Aluoch, M.P.
3. Hon. Peter Opondo Kaluma, M.P.
4. Hon. William K. Mwamkale, M.P
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Charles Gimose, M.P
7. Hon. George G. Murugara, M.P
8. Hon. Beatrice Adagala, M.P.
9. Hon. Anthony G. Kiai, M.P.
10. Hon. John Kiarie Waweru, M.P.
11. Hon. John M. Wambugu, M.P.

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P
3. Hon. Japheth Mutai, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. Gladys Boss Shollei, CBS, M.P.
6. Hon. Jennifer Shamalla, M.P.

**IN ATTENDANCE-**

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Mr. Abenayo Wasike | - | Senior Clerk Assistant  |
| 2. Mr. Denis Abisai   | - | Principal Legal Counsel |
| 3. Ms. Halima Hussein | - | Second Clerk Assistant  |
| 4. Mr. Job Owaga      | - | Audio Officer           |
| 5. Mr. Richard Sang   | - | Sergeant-At -Arms       |

**COMMITTEE SECRETARIAT-**

**MIN No. 105/2020:-**

The meeting commenced at 2:30 pm with a word of prayer by the Hon. Adan Haji who was the session Chairperson.

**PRELIMINARIES**

**MIN No. 106 /2020:-**

Confirmation of minutes was deferred.

**CONFIRMATION OF MINUTES**

MIN No. 107/2020:-

CONSIDERATION AND ADOPTION OF  
DRAFT REPORTS

The Committee considered and unanimously adopted the following reports;

- (i) The report on the Law of Succession (Amendment) Bill, 2019 by Hon Peter Kaluma. The adoption was proposed by Hon Anthony Kiai and seconded by Hon. William Kamoti
  
- (ii) The report on the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 by Hon Silas Tiren. The adoption was Hon Japheth Mutai and seconded by Hon Peter Kaluma.

MIN No. 108/2020:

ANY OTHER BUSINESS

No matter arose.

MIN No. 109/2020:

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 3:20 pm.

Signed.....  
Chairperson

Date.....  
.....

**MINUTES OF THE NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY 10<sup>TH</sup> MARCH, 2020 AT 10:30 A.M IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS.**

**PRESENT-**

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Hon. William Cheptumo, M.P.     | - | <b>Chairperson</b>      |
| 2. Hon. Alice Muthoni Wahome, M.P. | - | <b>Vice Chairperson</b> |
| 3. Hon. John Olago Aluoch, M.P.    |   |                         |
| 4. Hon. Peter Opondo Kaluma, M.P.  |   |                         |
| 5. Hon. Charles Gimose, M.P.       |   |                         |
| 6. Hon. William K. Mwamkale, M.P.  |   |                         |
| 7. Hon. Japheth Mutai, M.P.        |   |                         |
| 8. Hon. Anthony G. Kiai, M.P.      |   |                         |
| 9. Hon. George G. Murugara, M.P.   |   |                         |
| 10. Hon. Jennifer Shamalla, M.P.   |   |                         |
| 11. Hon. Beatrice Adagala, M.P.    |   |                         |

**ABSENT WITH APOLOGIES-**

1. Hon. Roselinda Soipan Tuya, M.P.
2. Hon. Ben Momanyi, M.P.
3. Hon. Zuleikha Hassan, M.P.
4. Hon. Johana Ng'eno, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Adan Haji Yussuf, M.P.
7. Hon. Gladys Boss Shollei, CBS, M.P.
8. Hon. John Kiarie Waweru, M.P.

**IN ATTENDANCE-**

1. Ms. Halima Hussein
2. Mr. Denis Abisai
3. Mr. Job Owaga
4. Mr. Simon Maina

**COMMITTEE SECRETARIAT-**

- |   |                         |
|---|-------------------------|
| - | Second Clerk Assistant  |
| - | Principal Legal Counsel |
| - | Audio Officer           |
| - | Support Staff           |

**MIN No. 42/2020:-**

The meeting commenced at 10:30 a.m with a word of prayer from Chairperson.

**MIN No. 43/2020**

Confirmation of minutes was deferred.

**MIN No. 44/2020:**

**PRELIMINARIES**

**CONFIRMATION OF MINUTES**

**CONSIDERATION OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2019**

The Committee was taken through the Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 by Hon. Silas Tiren as follows; THAT;

- (i) The principal object of the Bill was to amend the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, to insert a provision that would hold managers, chief executive officers, directors of public institutions personally liable for running down institutions.
- (ii) The Bill sought to permanently bar anyone convicted of an offence under the Anti-Corruption and Economic Crimes Act from holding office as public or state officer.
- (iii) The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

The Committee resolved to seek the views of the Ethics & Anti-Corruption Commission (EACC) on the proposed amendments in the Bill.

**MIN No. 45/2020:**

**ANY OTHER BUSINESS**

The Committee resolved to invite the Director of Public Prosecutions (DPP) to apprise the Committee on the following;

- a) Serialization of evidence on the media and its likely impact on the accused persons and protection of evidence.
- b) Challenges the Office of the Director of Public Prosecutions was facing in prosecution of cases and areas that require improvement.
- c) Clarification on the summons from the Senate Committee on Justice, Legal Affairs and Human Rights.

**MIN No. 46/2020:**

**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at 11:53 am.

Signed.....

**Chairperson**

Date.....

**ANNEXURE 2:**

**ADOPTION LIST**









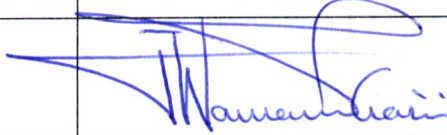


**DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**


**ADOPTION LIST FOR THE REPORT ON THE CONSIDERATION  
OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT)  
(NO. 72) BILL, 2019 BY HON SILAS TIREN, MP**

**DATE: WENDESDAY 24<sup>TH</sup> JUNE, 2020**

**VENUE: COMMITTEE ROOM ON 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE**

NO.	NAME	SIGNATURE
1.	Hon. John Olago Aluoch, MP.	
2.	Hon. Roselinda Soipan Tuya, MP.	
3.	Hon. Ben Momanyi, MP.	
4.	Hon. William Kamoti, MP.	
5.	Hon. Peter Opondo Kaluma, MP.	
6.	Hon. Zuleikha Hassan, MP.	
7.	Hon. Johana Ngeno Kipyegon, MP.	
8.	Hon. Charles Gimose, MP.	
9.	Hon. John Kiarie Waweru, MP.	

10.	Hon. George Gitonga Murugara, MP.	
11.	Hon. Adan Haji Yussuf, MP.	
12.	Hon. Japheth Kiplangat Mutai, MP.	
13.	Hon. Anthony Githiaka Kiai, MP.	
14.	Hon. Jennifer Shamalla, MP.	
15.	Hon. Beatrice Adagala, MP.	
16.	Hon. John Munene Wambugu, MP.	
17.	Hon. Boss Shollei, CBS, MP.	

  
Awasice

**ANNEXURE 3:**

**COPY OF THE  
NEWSPAPER  
ADVERTISEMENT**

# Activists accuse politicians of fuelling narcotics trade

Dealers give huge amounts of money during campaigns in return for protection when they assume office



**Drug addicts at a drug den at the shores of Indian Ocean.**  
PDI/NDEGWA GATHUNGU

US government of trafficking in drugs, dropped names of some of the politicians who had been named by Saitoti as drug barons. Involvement of politicians in drug trade has been a matter of concern with reports indicating that close to 10 former and current elected leaders from the Coast region could be selling drugs.

"A big number of politicians in Coast region are in power courtesy of sponsorship from drug barons. They receive huge amounts of money during elections to fund their campaigns. In return, they have to offer protection," said Coalition against Drug and Crime executive director Fuad Abdalla.

Adding: "We cannot win the war against drugs because there is no political goodwill in the fight. Politicians and police have been the major stumbling block and that is why no politician in Mombasa speaks against the vice. They will never take part in protests or raid on the drug dens."

Council of Imams and Preachers of Kenya (CIPK) claims some politicians in Mombasa have been queuing to get hand-outs from drug dealers.

"Unlike in other places where politicians join hands with residents to weed out vices such as drugs and illicit brews, our politicians do not want to be associated with that. This is because they do not want to be seen to fight hands that feed them," said CIPK organising secretary Sheikh Khalifa Mohammed.

by **Murimi Mutiga**  
@murimimutiga

Magodoroni, is one of the infamous 24 hours drug dens in Mombasa where no police officer dares to set foot in.

In Swahili, Magodoroni means a place with a lot of mattresses. The area got its name from drug addicts who would carry with them their bedding to take a nap after getting high on drugs.

Here, cocaine, heroin, bhang, methamphetamine, among others, are sold in the open and the last time when police officers attached to the Flying Squad dared to step foot there while chasing a member of a criminal gang, one of them lost his life.

The officer was stabbed in the chest on June 13, 2018 while he and his colleagues were chasing members of Wakali Kwanza. Police have listed the area a crime hotspot in Kisauni.

Anti-drug activists say around 2,000 addicts visit Magodoroni to buy and abuse drugs daily.

"It is one of the oldest drug dens in Mombasa. It operates like an open-air market, sometimes you will mistake the area for a political rally except for the high number of intoxicated men lying on the alleys of Swahili houses helpless and hopeless," said Citizen Against Child and Drug Abuse (Cicada) director Farouk Saad.

The area is a no-go-zone for strangers and those who have strayed in the vicinity have lived to narrate how they survived death or walked back naked, having been robbed off their valuables and clothes.

"The den is also the hideout for criminal gangs who have over the years been attacking Public Service Vehicles and shops on Old Mombasa-Malindi road," Saad added. The area has become notorious for gang violence that has spilled over into the entire Kisauni. Fears of violence and muggings have forced people to flee the area and those who own houses there have to be at home before dusk.

**Ground fee**

Another notorious drug den is located at Shimanzi go-down. Here owners of the warehouses, which include government departments, have been unable to stop sale of drugs. Saad says about 1,500 addicts buy their dosage here.

"Drugs have played a major role in undermining the economic well-being of our county. It is hard for drug users to hold onto job, stay in class or care for a child because they spend all the money and attention on getting stoned," said Saad.

Drug dealers operate their businesses behind the warehouses and no one dares to step foot there except a group of police officers who normally come to collect bribes every day. The bribes are known as "Pesa ya Kiwanja" meaning ground fee in drug business circles. Other notable drug dens include Bamburi, Jomvu, Madhubaa and Old Town.

Anti-drug campaigners claim politicians in Coast have been fuelling drug trade by either being directly involved in the business or receiving proceeds by way of campaign money or projects sponsorship.

**865** The number of males on treatment for heroin addiction. Doctors say the number could be more than that.

**135** The number of women undergoing rehabilitation from heroin in Mombasa

**11** One-litre bottles of methadone are dispensed daily at Kisauni Methadone Centre in Mombasa.

**THE FACTS...**

- The commonly consumed drug both legal and illicit in Kenya include cannabis, cocaine, heroin, khat, tobacco and alcohol.
- Studies show that majority of drug users start to use at their youthful age between 15 to 30 years of age and a significant proportion of the users start using at old age.
- Peer pressure and curiosity greatly influences drug use among the youth. In addition to this, availability of drugs and cost plays a major role during inception.
- To address the problem, parents and the community in general should take an active role than being spectators by forming drug competence committees for effective collective action towards a drug-free society.

One such recovering patient is 43-year-old Makame Mwana, who says despite forming and registering a group - Kiweve Recovery Group hoping to get funding and start a business, his efforts have been fruitless.

"I was a heroin addict for more than 20 years before I was rehabilitated. I suffered several relapses before the Mat programme came. Now I am fully recovered but I am forced to volunteer with Reachout Center Trust because it is very difficult to get a job. I have a registered group but every door I knock to seek funding nobody appears to trust me," the father of three says.


"I am an experienced driver. I have a family to feed yet I have to volunteer. Coming for mat clinic itself was not easy because I would trek for 10 kilometres from Likoni to Kisauni and back daily to get the treatment," he says.

Mohammed Msellem, addiction Counsellor at Mewa Rehabilitation Centre, says idleness amongst the recovering addicts is a major setback in the fight against drugs and addiction in the region.

"This is a challenge for the government to come up with training programmes and offer gainful employment to the addicts to keep them busy," Msellem says.

Kaluma Maghanga from Maloe, Kisauni, one of the few youths who has been able to start a car wash business at Bakarani in Kisauni after undergoing through Mat, says: "When I completed the programme, I was just idle and I could easily relapse but now I am very busy. I eat, drink, dress and live from my own pocket."

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT – THIRD SESSION**

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In the Matter of consideration by the National Assembly –

1. The Waqf Bill, 2019 (National Assembly Bill No. 73)
2. The Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 (National Assembly Bill No. 72)

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**SUBMISSION OF MEMORANDA**

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The Waqf Bill, 2019 (National Assembly Bill No. 73) seeks to provide for the establishment of the Waqf Commission, the administration of waqf property, to repeal the Waqf Commissioners Act (Cap. 109 of the laws of Kenya) and for connected purposes.

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 (National Assembly Bill No. 72) seeks to amend the Anti-Corruption and Economic Crimes Act to hold managers, Chief Executive Officers, Directors of public institutions personally liable for running down institutions and further seeks to completely bar anyone convicted of an offence under the Act from holding office as public or state officer.

The Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the **Departmental Committee on Justice and Legal Affairs** for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bills. The submissions may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to **clerk@parliament.go.ke**; to be received not later than **Monday, 18th November, 2019 at 5.00pm**.

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**MICHAEL R. SIALAI, EBS  
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When former Internal Security minister George Saitoti tabled names of five Kenyans allegedly involved in drug trade in Parliament in 2010, many anti-drug activists in Mombasa were not surprised.

Four of the suspects are high flying politicians. Police investigations, however, concluded that there was no evidence to link the individuals as well as a leading businessman to drug trafficking.

The names of the five were contained in a confidential Drug Enforcement Administration report given to the Ethics and Anti-Corruption Commission by former US ambassador to Kenya Michael Ranneberger.

Last year, two Akasha brothers; Baktash Akasha and Ibrahim Akasha accused by

US government of trafficking in drugs, dropped names of some of the politicians who had been named by Saitoti as drug barons. Involvement of politicians in drug trade has been a matter of concern with reports indicating that close to 10 former and current elected leaders from the Coast region could be selling drugs.

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REPUBLIC OF KENYA



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MICHAEL R. SIALIA, EBS  
CLERK OF THE NATIONAL ASSEMBLY

# **ANNEXURE 4:**

## **SUBMISSION FROM STAKEHOLDERS**

**MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION ON THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL, 2019 (NATIONAL ASSEMBLY BILLS NO. 72)**

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The Anti-Corruption and Economic Crimes (Amendment) Bill, 2019 (National Assembly Bills No. 72) is a private members Bill sponsored by Hon. Silas Kipkoech Tiren. It seeks to amend the Principal Act (ACECA) by inserting a new section 50A and amend section 64; to the extent and with the following stated objectives-

- a) The proposed new section 50A seeks to hold managers, chief executive officers and directors of public institutions personally liable for running down institutions;
- b) The amendment to section 64 seeks to bar persons convicted of corruption or economic crime from forever being elected or appointed to public or state office, instead of the current provision which limits the bar to ten (10) years after conviction.

The Commission has scrutinized the proposed amendments, *vis-à-vis* the intention and objective of the proposals, and makes the following observations/comments:

**1. Wording**

The proposed new section 50A states-

*“A person who is convicted of an offence of corruption or economic crime and who was involved in the management of a public company, institution or state organ that suffered pecuniary loss as a result of that corruption or economic crime shall be personally liable for such loss”*

The wording of the section presents challenges on the proper interpretation or construction of the provision. Issues which arise are-

- a) The words “...and who was involved in the management...” are vague and not capable of clear meaning which can assign responsibility in law. Management is a term which cannot be specifically attributed to a particular activity. It can mean anything or any activity by an employee at various levels of an institution. To cure this, it would be imperative to state the levels of management targeted by the provision, for example, an accounting officer, chief executive officer, director, etc. The listing should be exhaustive.
- b) The words “...public company, institution or state organ...” are limiting. To cure this, the provision should incorporate the definition of “public body” as used in section 2 of the ACECA, which provides a broader definition. This would also ensure consistency of terms. In the alternative, if the intention is to widen the scope of application to public companies within the meaning of the Companies Act which may not be encompassed in the definition of “public entity” under section 2, then a definition of the entities comprising “public

company” can be inserted in the new section to be inserted through the amendment.

- c) The use of the term “*pecuniary loss*” is limiting on the extent of liability to which such managers may be held. Loss may occur in other forms which are not entirely pecuniary. Therefore, the provision should list the various types of loss which the person would be held personally liable.

**2. Inherent conflict with, or replication of existing provisions in ACECA**

The proposed new section 50A provides for conviction based orders of compensation for loss occasioned by corrupt conduct. To this extent, this remedy is already provided for under section 51 as read together with sections 53 and 54 of the ACECA. However, these provisions extend the liability to “any person” whereas the intended new section 50A seeks to limit the liability to those in management of a public body. This is an inherent conflict, and may pose a challenge of interpretation.

In addition, it should be noted that the Commission is empowered to institute recovery proceedings against any person whom it has investigated for corruption, economic crime and related conduct prior to, or even in the absence of a conviction. Such proceedings can be instituted alongside a criminal trial, and are not dependent on the eventual outcome of the prosecution of the suspect. To that extent, the proposed new provision would hamper or constrain such recovery procedures since it would appear to make a recovery process conditional upon conviction.

The intention or objective of the new provision is to ensure that those who are in charge of managing public bodies exercise enhanced vigilance in order to prevent the occurrence of corruption or economic crime which leads to losses in the public body. To this extent, the liability to compensate for loss by making them personally liable should not be made conditional upon conviction. This may cure the latent conflict.

**3. Proper placement of the proposed new section 50A**

The proposed new section 50A falls within Part VI of the ACECA, which is titled “*Compensation and Recovery of Improper Benefits*”. Therefore, it should ideally come after section 51. As such, the new section should be section 51A immediately after section 51.

**4. Amendment to section 64**

The amendment to section 64 seeks to bar persons convicted of corruption or economic crime from forever being elected or appointed to public or state office, instead of the current provision which limits the bar to ten (10) years after conviction. This is a deterrent measure which will aid the war on corruption. Further, it also seeks to amplify that the bar extends to appointment or election to both public and state office, which are the terms used in the constitution.

===== END =====



