



## 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><b><u>Unconstitutional / Inconsistency with the Constitution</u></b></p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• Article 10 (2) The national values and principles of governance include - (c) good governance, integrity, transparency and accountability;</li> <li>• 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</li> </ul>

			<p>objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings 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"> <li>• 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.</li> <li>• 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;</li> </ul>
--	--	--	--

			<ul style="list-style-type: none"> <li>• 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, moral and ethical requirements prescribed by this Constitution or an Act of Parliament;</li> <li>• Article 232. Values and principles of public service (1) The values and principles of public service include— (a) high standards of professional ethics;</li> </ul> <p><b><u>Void and Invalid</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
--	--	--	---

			<p><b><u>International Law</u></b></p> <ul style="list-style-type: none"> <li>• 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 corruption from public office. It encourages states to consider implementing measures to this effect.</li> <li>• 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.</li> </ul>
--	--	--	--

			<p><b><u>Parliamentary Decisions</u></b></p> <ul style="list-style-type: none"> <li>In the 12<sup>th</sup> 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.</li> </ul> <p><b><u>Court Decisions</u></b></p> <ul style="list-style-type: none"> <li>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</i></li> </ul>
--	--	--	---



			<p><i>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></p>
--	--	--	---

**CONTACT INFORMATION:**

Sheila Masinde

Transparency International Kenya

PO BOX 198 - 00200, City Square,

Tel: +254 (0) 202 727 763/5 Mobile: +254 (0) 722 296 589

Kindaruma Road, Off Ring Road, Kilimani

Gate No. 713; Suite No. 4.

Email: [transparency@tikenya.org](mailto:transparency@tikenya.org)

NAIROBI, KENYA