

Critique of proposed amendments to the Anti-Corruption and Economic Crimes Act, 2003,

The Statute Law (Miscellaneous Amendments) Bill, 2005, ("the Bill") proposes amendments to the Anti-Corruption and Economic Crimes Act, 2003, that will have far reaching consequences to businesses and to the public.

To begin with, the Bill attempts an improvement on the definition of "unexplained assets" by defining these to be those assets acquired at or around the time the person was ***reasonably suspected*** (rather than allegedly guilty) of corruption or economic crime.

This definition totally fails to identify which persons or institutions were capable of reasonably suspecting, and fails to set a threshold above which it can be concluded that suspecting is reasonable. Clearly, this definition is so ambiguous that it can be "reasonably suspected" that it may be used for mischievous purposes, which can even include extracting bribes from the "reasonably suspected" persons.

The Bill also seeks to add a new Section 12A to the Act by which the Commission is empowered, at any time, with prior notice to the Commissioner of Police, assume the responsibility for an investigation commenced by the police for an investigation involving corruption.

To begin with, and as we all know, the effective time that it will take for the Commission to actually assume such responsibility as proposed, will, going by the painfully slow bureaucratic Government procedures, (and even slower in our archaic Police force), probably take more than a couple of weeks. This is probably because the investigating police officer shall need to confirm with the Commissioner of Police that indeed, conduct of the investigations should be placed on the shoulders of the Commission. And we all know how long that can take.

The "reasonably suspected" *mwananchi*, will be the victim of these delays. Woe to him if he is unable to secure his release on police bond or bail given by a Court.

Further, and even more seriously, the proposed new section makes no reference to economic crimes and related offences. Accordingly, it can reasonably be surmised that the Commission can only take over investigation of offences strictly touching on corruption.

It must also be pointed out that the section does not even indicate the "form of notice to the Commissioner". This omission may end up causing unnecessary complications and objections by Counsel defending the "reasonably suspected". Nothing would have been simpler than to indicate

that the notice would be in writing, perhaps with a copy to the investigating officer.

However, it is the proposed addition of a new subsection 3 to section 23, which is thought to be the most controversial.

The proposed section 23(3) purports to clothe the Director and an investigator, with all the powers arising from the Criminal Procedure Code, the Evidence Act, the Police Act and any other law conferring on the police the powers, privileges and immunities necessary or expedient for the detection, prevention, investigation and prosecution of offences. The proposed insertion goes on to equate a police station and a police officer to include the premises of the Commission and the Director or investigator.

To begin with, it is unclear why it the Hon. The attorney general thought it necessary to grant the Commission such wide powers, which arguably may be put to wrongful purposes. Further, the Attorney General does not even provide for provisions to check on possible excesses by the Director or his investigators.

In effect, the Commission and its investigators propose to be empowered to detain suspects at the premises of the Commission, on the slightest suspicion that it is necessary for purposes of not only prosecution of offences, but also prevention.

The proposed insertion automatically authorizes the Commission's officers to use even deadly force if in their unilateral view it is necessary to achieve the objects of the Act.

Undoubtedly, the proposed Section 23(3) may be thought to create an ogre that may be used as an instrument of terror and aggrandisement of the officials sitting at the Commission.

Notwithstanding the fact that section 56 of the Act is already contentiously drafted in that it empowers the High Court to prohibit the transfer or disposal of property without providing for an *inter-partes* hearing, it is now proposed to empower the High Court to appoint a Receiver of such property.

The proposed amendment fails to prescribe the qualifications and description of such a Receiver and the extent to which the Receiver can deal with such property. Yet again, the proposed amendment opens the door to possible improper application.

Most interesting is a proposed insertion of Section 61A, which declares, that costs shall not be awarded for or against the Commission in any civil proceedings. There is no other organ of the Government that enjoys the protection of the proposed insertion. Once again, this proposed amendment opens the door for misuse by the Commission of its powers, and without

even providing any checks to such misuse. It is most absurd that the Commission wants to avoid paying costs for actions instituted by itself, which are subsequently found to be unwarranted, by a court of law. In the same breathe, the proposed insertion of section 61B to enable the Commission escape from execution or attachment of its property, is also arguable.

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