

Kenya Civil Society Task Force on Grand Corruption

Friday, September 14, 2007

AN OPEN LETTER TO THE BILATERAL AND MULTILATERAL INTERNATIONAL DEVELOPMENT PARTNERS OF THE GOVERNMENT OF KENYA REGARDING THE AMNESTY FOR ECONOMIC CRIMES IN KENYA

On Wednesday September 12th 2007, the Parliament of Kenya approved (by a vote of 38 to 27) the insertion of a *proviso* at the end of section 7 of the Anti Corruption and Economic Crimes Act. This section of the law sets out the powers and functions of the Kenya Anti Corruption Commission, an independent anti-corruption agency mandated to investigate corruption and economic crimes, and to pursue recovery of the proceeds of corruption.

The effect of the *proviso* is to give corruption perpetrators an amnesty for corruption offences committed prior to May 2003. The amendment was proposed by the Parliamentary Committee on the Administration of Justice, chaired by Paul Muite, and at various stages was moved by the Attorney General, Amos Wako, and the Minister for Justice and Constitutional Affairs, Martha Karua.

Parliament has changed our law to prevent the Kenya Anti Corruption Commission from performing any of its functions in respect of corruption offences committed prior to May 2003. It can no longer investigate or institute recovery actions in relation to notorious corruption scandals such as contractor's pending bills (over 1 billion US dollars), defrauded banks and public corporations (billions of US dollars) and the perpetrators of Anglo Leasing (over 777 million US dollars), land grabbing documented in the Ndungu Report (billions of dollars), Goldenberg (over 1 billion US dollars), Ken Ren Fertilizer (*circa* 700 million US dollars) and the Kroll Report (*circa* 2 billion US dollars) will now have no case to answer to the Kenyan people and cannot be investigated by KACC.

Our objection is not to the legislative authority of Parliament. But, by passing this amendment to the Anti Corruption and Economic Crimes Act, Parliament has given the perpetrators of corruption prior to May 2003 a rock solid defence against KACC investigating or taking any other actions against them under the Anti Corruption and Economic Crimes Act. If this amendment receives Presidential Assent, Kenyans will have lost their chance to recover some of the billions of US dollars stolen from them, and which we had been told KACC was investigating in Kenya and abroad. The final result is an amnesty for any corruption prior to May 2003. No one sought the opinion of the Kenyan people on whether or not this amnesty should be given.

Whereas the KACC's performance has been abysmal and unsatisfactory, it should be remembered that the KACC is in possession of over 10 years of

Kenya Civil Society Task Force on Grand Corruption

corruption evidence gathered by itself and its predecessor institutions the Kenya Anti Corruption Authority and the Anti Corruption Police Unit.

Specifically, the KACC has in its possession the Goldenberg Report, the Kroll Report on the wealth of associates of former President Moi, and the Price Waterhouse Coopers Report on 18 Anglo Leasing security related contacts. If KACC can no longer exercise its functions, this evidence must be given to other institutions.

Under Kenyan law only the Kenya Police or the Attorney General can continue the work of KACC on pre-May 2003 offences. Unfortunately, both are not trusted or credible institutions as far as corruption punishment is concerned.

By way of example, it was because of the inaction of the Attorney General during the 1990s that the idea of an independent anti-corruption agency was first conceived. The Attorney General then and now remains the same man, Amos Wako. Further the Kenya Police has been for the last 6 years ranked as the most corrupt public institution in Kenya by Transparency International.

KACC's own latest quarterly report demonstrates the scale of the corruption problem in the Kenya Police when it reports that 9 of the 25 investigations during the 2nd quarter of 2007 related to corrupt Police Officers. Finally both the Attorney General and the Commissioner of Police are regarded as being personally complicit on corrupt transactions related to the Anglo Leasing promissory notes on the one hand, and 60 million US dollars worth of contracts for the Police Air wing.

It is our contention that the Attorney General and the Kenya Police Force cannot, and should not be trusted with the custody of evidence or the investigation and prosecution of grand corruption cases.

In any democratic society, and especially given the bad record of the two institutions, the possibility that Parliament would place all asset tracing and recovery efforts in their hands would be unacceptable and even laughable. We are heartened by the fact that on this matter Parliament need not have the last word. We will be appealing to the President to withhold his assent to the amendment, and encourage others to do the same. The experience of Kenya is that sustained campaigns against bad laws can yield results, as was seen with the Media Bill last month.

The Government of Kenya has recently accused the international community of obstruction of international corruption investigations and asset recovery efforts. These accusations have been made by the Minister for Justice and Constitutional Affairs, Martha Karua and by the Minister for Internal Security, John Michuki as well as by other senior ranking Government officers. We are aware that this position is exaggerated and not borne out by the evidence. It is

Kenya Civil Society Task Force on Grand Corruption

a political excuse for a failed anti-corruption drive, and designed to shift blame for non-performance on the anti-corruption pledge made by the President during his inauguration on December 27th 2003.

Nevertheless, Kenyans need to be reassured that, on such matters as grand corruption which has debilitated the Kenyan economy for decades, the international community will be prepared to condemn anti-poor actions such as an unconditional amnesty for economic crimes. Today, we face a situation where, talking of one corruption case alone, Parliament has purported to forgive the accumulation of over 2 billion US dollars by the Ex President Moi, his family and business associates, days after the publication of a suppressed Government commissioned Report which places the stolen assets in over 28 countries around the world (mostly in the developed world).

The questions that arise are:

1. Will the international community stand aside and watch as the Parliament of Kenya conspires to deny the poor Kenyan people the opportunity to trace and recover billions of US dollars of stolen assets, by immunizing those who stole from us; even as new revelations emerge of the scale of the theft e.g. in the Kroll Report on former President Moi and his associates?
2. As creditors to the Government of Kenya, and recent signatories to the Kenya Joint Assistance Strategy, will the international community come to the aid of the poor Kenyan people by raising its voice to condemn unilateral amnesties which neither punish the corrupt nor reconstitute the property and assets they stole to the true owners - the Kenyan citizenry?
3. What in practical terms can the international community immediately do, to promote the attainment of "more aggressive leadership on governance throughout the government" to ensure "substantial and durable progress" in the fight against corruption in Kenya, as stated in the KJAS document?

The answers to these questions are the reason we write to you. We would also request you all to consider making representations through your own channels to the President of Kenya asking him not to give his assent to this anti-people amnesty. Failing which we would ask you to consider suspending your current engagement with the Government of Kenya and/or future support under the KJAS until the amnesty clause is withdrawn unconditionally or repealed.

We feel that we have the right to make these requests to you because most of you are representatives of parties to the United Nations Convention Against Corruption which calls for parties to cooperate in international efforts to detect, trace and recover the proceeds of corruption. The debts owed to you by Kenyans are being compounded by the theft of our resources and the burden on the Kenyan people is becoming unbearable.

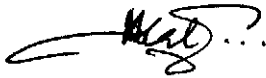
Kenya Civil Society Task Force on Grand Corruption

Remember, 17 million Kenyans live below the absolute poverty line of 1 US Dollar a day. Imagine what, the billions of dollars which Parliament wishes to forget about, would do the achievement of the Millennium Development Goals for the benefit of poor Kenyans.

Forgiving the looters of our economy and allowing them to keep their loot, will do nothing to reduce the biting poverty of Kenyans and is an injustice that cannot be left to stand by anyone who advocates for pro-poor policy and social justice.

We will, do our part. We beg you to do yours.

We remain yours truly,



Mwalimu Mati
CEO, Mars Group Kenya



Gladwell Otieno
CEO, AfriCOG

[for and on behalf of the Kenya Civil Society Task Force on Grand Corruption]

Kenya Civil Society Task Force on Grand Corruption

To:

1. The Canadian High Commissioner
2. The Ambassador of Denmark
3. The British High Commissioner
4. The Head, United Kingdom Department for International Development
5. The Head of Delegation, European Commission
6. The Ambassador of Finland
7. The Ambassador of France
8. The Ambassador of Germany
9. The Ambassador of Italy
10. The Ambassador of Japan
11. The Ambassador of the Netherlands
12. The Ambassador of Sweden
13. The Ambassador of Norway
14. The Resident Representative, United Nations Development Programme
15. The Director, United States Agency for International Development
16. The Country Resident Director, The World Bank
17. The Resident Representative, African Development Bank
18. The Ambassador, United States of America
19. The Resident Representative, International Monetary Fund