

SPECIAL ISSUE

Kenya Gazette Supplement No. 125 (National Assembly Bills No. 40)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

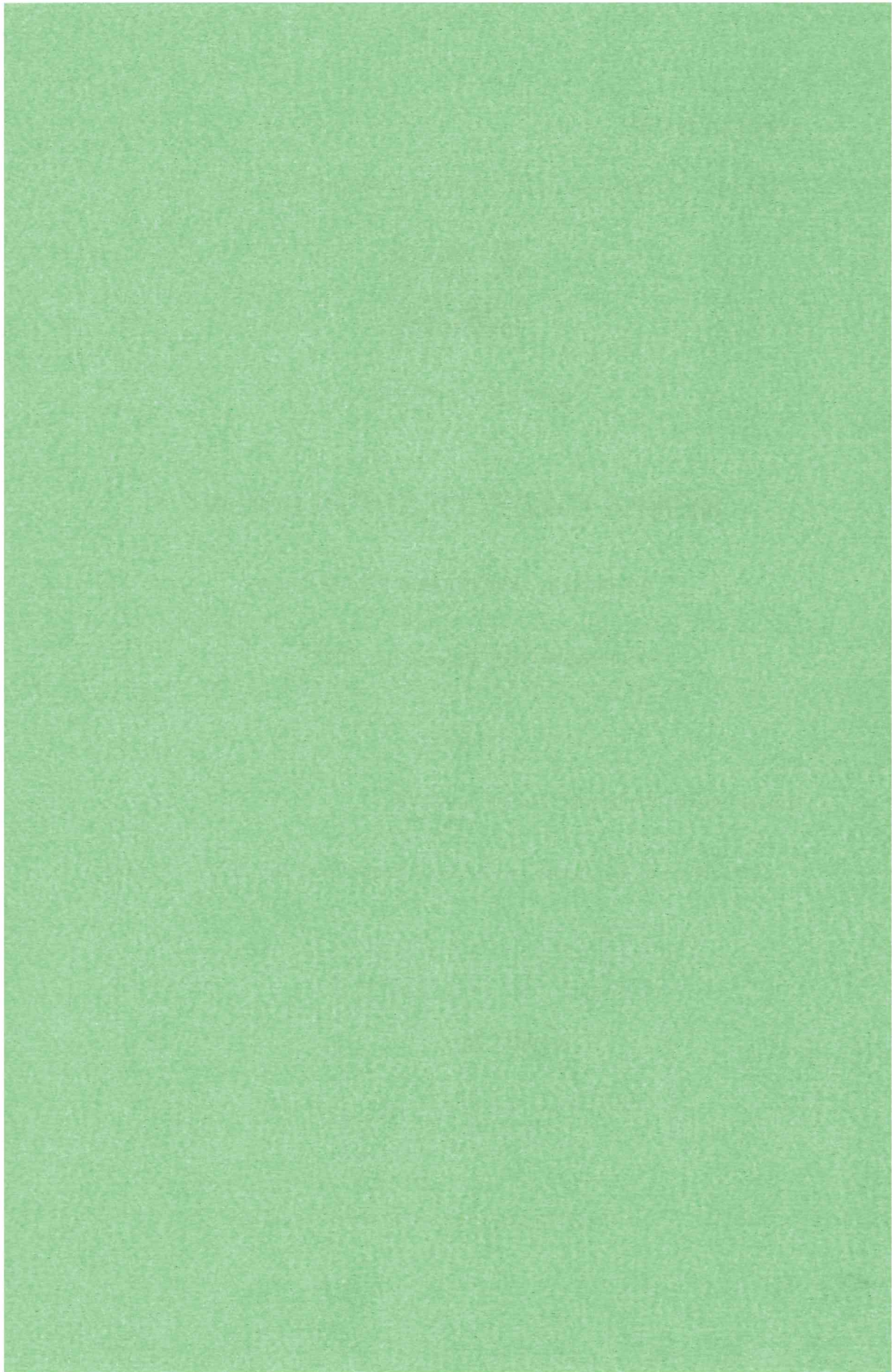
NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 2nd August, 2023

CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Anti-Corruption and Economic Crimes (Amendment) Bill, 2023 ..	1269





**THE ANTI-CORRUPTION AND ECONOMIC
CRIMES (AMENDMENT) BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Anti-Corruption and Economic Crimes Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Anti-Corruption and Economic Crimes (Amendment) Act, 2023.

Short title.

2. Section 45 of the Anti-Corruption and Economic Crimes Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 45 of No.3 of 2003.

“(2) An officer or person whose functions concern administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person fraudulently makes payment or excessive payment from public revenues for —

- (i) sub-standard or defective goods;
- (ii) goods not supplied or not supplied in full;
or
- (iii) services not rendered or not adequately rendered.”

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend section 45 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 in subsection 2 by deleting subsection 2(b) and 2(c) in order to remove the inordinate and undue criminalization of flaws in public procurement law.

The object of the Bill is to remove the inordinate culpability prescribed on persons in charge of administration, custody, management, receipt or use of any part of public revenue or public property as administrative flaws as they are capable of being adequately and administratively addressed in accordance with Article 226(5) of the Constitution of Kenya, 2010; the Public Procurement and Asset Disposal Act, 2015, the Fair Administrative Action Act, 2015, the Employment Act, 2007 among other Acts of Parliament governing the professional conduct of the various professionals that are engaged in the procurement process. The Bill further proposes to remove the ambiguity of the term prior planning, which is strange to the legislation governing public procurement in Kenya.

The Bill does not contain any provisions limiting any fundamental rights or freedoms.

The Bill does not affect the functions of county governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning county governments.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 27th July, 2023.

GEOFFREY KARIUKI RUKU,
Member of Parliament.

Section 45 of the principal Act which it is proposed to amend—

Protection of public property and revenue, etc.

45. (1) A person is guilty of an offence if the person fraudulently or otherwise unlawfully—

- (a) acquires public property or a public service or benefit;
- (b) mortgages, charges or disposes of any public property;
- (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service;
- (d) or (d) fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges.

(2) An officer or person whose functions concern the administration, custody, management, receipt or use of any part of the public revenue or public property is guilty of an offence if the person—

- (a) fraudulently makes payment or excessive payment from public revenues for—
 - (i) sub-standard or defective goods;
 - (ii) goods not supplied or not supplied in full; or
 - (iii) services not rendered or not adequately rendered,
- (b) willfully or carelessly fails to comply with any law or applicable procedures and guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of expenditures; or
- (c) engages in a project without prior planning.

(3) In this section, “public property” means real or personal property, including money, of a public body or under the control of, or consigned or due to, a public body.





