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# The Quest for Fairness: Civil Society's Reflections on Selective Justice in Corruption Combat

Issued this 13<sup>th</sup> day of September 2023 at Mzuzu

We, the undersigned civil society organizations, unite to express our deep concerns regarding the issue of selective justice, unconstitutional practices, and illegal conduct in the ongoing battle against corruption by law enforcement agencies (LEAs). This approach carries severe consequences, including the erosion of the rule of law and public trust. We fear that, once again, we stand on the precipice of losing the fight against corruption.

## 1. ACB-Kapondamgaga Amnesty

We highlight a concerning case involving the Anti-Corruption Bureau (ACB) and Prince Kapondamgaga. After an extensive investigation into corrupt practices linked to Zuneth Sattar, during which 84 individuals were suspected of receiving bribes from Sattar, the ACB concluded in its report to the President that Prince Kapondamgaga, Chief of Staff of State Residences, had corruptly benefited from Sattar. Consequently, on June 21, 2022, the President dismissed Kapondamgaga, making him subject to prosecution.

However, in a dramatic twist of events, on July 7, 2023, ACB announced that it had exercised prosecutorial discretion by choosing not to file criminal charges against Kapondamgaga in the corruption investigations. Instead, ACB entered into an agreement with Kapondamgaga for the restitution of a Mercedes S-Class 350d and **K 70,150,674.00**, an advantage he admitted to receiving from Sattar. ACB justified this discretion on the grounds of "insufficient evidence" against Kapondamgaga.

Given this backdrop, we express deep concern over ACB's discretion, which we believe lacks both legal and moral foundations. There is no legal basis for ACB to enter into a restitution agreement or amnesty of this nature. The Corrupt Practices Act, which governs the operations of the Bureau, does not provide for any

scheme or provision under which ACB can exercise 'prosecutorial discretion' not to lay charges against an individual under investigation.

We wish to reiterate that this questionable and covert amnesty reinforces fears of selective justice by law enforcement agencies and poses a risk to public trust and confidence in LEAs in the fight against corruption. Furthermore, several individuals accused of accepting or receiving benefits as inducements for favors from Sattar, including the Vice President, Former ACB Director Reyneck Matemba, former Minister Kezzie Msukwa, and the former Inspector General of Police, have not been offered a restitution deal to return their property and avoid prosecution.

It is a well-established principle that Section 12(1)(e) of the Republican Constitution ensures equal status before the law for all individuals. Therefore, we expect the Bureau, as a public institution, to exercise its mandate under the Constitution and the Corrupt Practices Act in accordance with this provision. In this regard, the Bureau should ensure that decisions concerning investigations and prosecution adhere to established practices and the law. These decisions must be made transparently and with the utmost objectivity. In summary, ACB's discretion is both unconstitutional and illegal, and we strongly call for its immediate reversal.

## **2. Unfrozen Sattar Bank Accounts and Assets**

We are aware that, following the expiration of a court order in August 2023 that restricted Sattar's accounts and assets, Malawians have expressed concerns about the Bureau's failure to renew the restriction order in a timely manner, granting the suspect access to his assets. Meanwhile, assets of other suspects linked to Sattar have remained restricted. We call upon the Bureau to account for this oversight and expedite the renewal of the restriction order.

## **3. MK 750 million botched fertilizer deal**

In the aftermath of the failed MK 750 million-fertilizer deal, we acknowledge that ACB conducted an investigation, which concluded several months ago. However, we are deeply concerned about the Bureau's slow pace in prosecuting the suspects. This delay raises suspicions that it may be due to the suspects' proximity to the top political leadership. Such delays not only undermine the rule of law and justice but also erode the fight against corruption. Therefore, we urge the Bureau to act promptly on this investigation and ensure that all suspects are held accountable without fear or favor.

#### **4. Sattar-linked Eisenhower Mkaka vehicle**

We are aware of ACB's investigations into allegations of a suspicious vehicle belonging to Mr. Mkaka, linked to Zuneth Sattar. Despite the completion of the investigation several months ago, there has been no apparent action taken. We call on the Bureau to update the public on the status of this case and to act in accordance with the law without bias.

#### **5. Eastbridge Fertilizer Deal Mishandling and Corruption Allegations**

The mishandling of the Eastbridge Fertilizer Deal in Malawi has raised significant concerns about corruption and mismanagement in the agricultural sector. This initiative aimed to provide affordable, high-quality fertilizers to Malawian farmers but became tainted by corruption allegations, opaque procurement processes, and suspicions of kickbacks. These issues have not only compromised agricultural integrity but also harmed the livelihoods of smallholder farmers. Consequently, there is a pressing need for robust government oversight and accountability mechanisms to combat corruption.

Furthermore, the decision to transfer the failed Eastbridge Fertilizer Deal to SFFRFM carries negative implications. It perpetuates the corruption legacy, erodes public trust, risks misallocation of funds, and hampers SFFRFM's effectiveness. This transfer deepens the governance and accountability crisis in Malawi.

Additionally, the PAC's decision to abandon the Eastbridge fertilizer deal inquiry undermines the institution's integrity. Reforms, including unbiased members, enhanced investigative powers, transparency, and open proceedings, are needed to rebuild public trust and combat corruption effectively. We recommend the resignation of the current Chairperson and an independent investigation into PAC's decision-making processes to rectify its ineffectiveness. Despite no money being spent, PAC should still use its oversight powers to hold the Ministry of Agriculture and other players accountable.

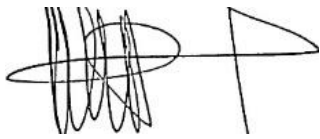
#### **6. Questionable discontinuance of corruption cases by DPP**

We acknowledge the Director of Public Prosecution's decisions to discontinue several financial crime-related cases, including all corruption charges against former President Dr. Bakili Muluzi and Mr. Anderson Mwakyelu. While Section 99(2)(c) of the Constitution grants the DPP the power to discontinue criminal proceedings, such powers must be exercised with utmost transparency and

accountability. Subsection (3) of the same provision requires the DPP to provide reasons for the exercise of such powers to the Legal Affairs Committee (LAC) of Parliament within 10 days. Unfortunately, the DPP's discretion has been clouded by suspicion and secrecy, raising concerns of potential abuse for political expediency by the ruling elite.

In light of these pressing concerns, we, as civil society organizations, stand united in our call for transparent and accountable law enforcement agencies and a just war against serious and organized corruption. We vehemently oppose selective justice and remain committed to ensuring a corruption-free Malawi for the benefit of future generations.

**Signed by:**

A handwritten signature in black ink, consisting of a series of vertical, wavy lines on the left and a horizontal line extending to the right, ending in a small upward-pointing triangle.

**Charles Kajoloweka,**

**On behalf of the following organisations:**

1. National Advocacy Platform (NAP)
2. Youth and Society (YAS)
3. Centre for Social Accountability and Transparency (CSAT)
4. Human Rights Defenders Coalition (HRDC)
5. Centre for Human Rights and Rehabilitation (CHRR)
6. Nyika Institute (NI)