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QUARTERLY REPORT BY THE KENYA ANTI-CORRUPTION COMMISSION

MAY TO SEPTEMBER 2003

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PREAMBLE

The Anti-Corruption and Economic Crimes Act became operational on 2nd May 2003. The Act provides for the setting up of the Kenya Anti-Corruption Commission with powers to investigate, to educate the public on the dangers of corruption, to prevent conduct constituting corruption / economic crime and to institute civil proceedings against those who have either abetted or benefited from corrupt transactions.

The Kenya Anti-Corruption Commission (KACC) took over and continued with the activities and programmes that were being undertaken by the Anti-Corruption Police Unit (ACPU), some of which were taken over from the defunct Kenya Anti-Corruption Authority (KACA).

Section 35 of the Anti- Corruption and Economic Crimes Act provides as follows:

- (1) Following an investigation, the Commission shall report to the Attorney General on the results of the investigation
- (2) The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime.

Section 36 on the other hand provides as follows:

- (1) The Commission shall prepare quarterly reports setting out the number of reports made to the Attorney General under section 35 and such other statistical information relating to those reports as the Commission considers appropriate
- (2) A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was not accepted
- (3) The Commission shall give a copy of each quarterly report to the Attorney General
- (4) The Attorney General shall lay a copy of each quarterly report before the National Assembly
- (5) The Commission shall cause each quarterly report to be published in the Gazette.

This report is therefore prepared pursuant to the provisions of Sections 35 and 36 of the Anti-Corruption and Economic Crimes Act.

The Kenya Anti-Corruption Commission is also under a statutory obligation to prepare an annual report each financial year and the report is to contain among other things, information set out in the quarterly reports. The Commission's financial year is the period of twelve months ending on 30th June each year.

For that reason, the quarterly reports should be in line with the financial year. This report is meant for the first quarter covering the period of July to September 2003, but the months of May and June have been included as the Commission was established in May 2003.

INVESTIGATIONS CONCLUDED IN THE MONTHS OF MAY AND JUNE 2003 BY THE KENYA ANTI-CORRUPTION COMMISSION (KACC)

1. ACPU/INQ 96(C)/ 24.5.2000

Inquiry into allegations that three individuals fraudulently obtained a sum of Kshs. 2,970,000 from the now defunct Kenya Posts and Telecommunications Company (KPTC) by falsely pretending that they could supply, deliver, install and commission a 1000 KVA diesel engine generator set at KPTC's Mombasa telephone exchange, through a non existent company trading as Kigs International.

Recommendations:

After completion of the investigations, it was recommended that the three suspects be charged with the offence of obtaining by false pretences contrary to section 313 of the Penal Code.

It was also recommended that KPTC's former Company's Secretary be charged with the offence of obtaining advantage without consideration contrary to section 6 (1) of The Prevention of Corruption Act.

The file was forwarded to the Attorney General on 2nd May 2003 and action is awaited.

2. ACPU/INQ 25b/14.03.03:

This was further investigation following an earlier inquiry into allegations of irregular investments by officials of Pyrethrum Board of Kenya (PBK). A further investigation was undertaken to establish whether there was any conspiracy between the Directors and senior officials of PBK and Euro Bank to defraud public funds.

Recommendations: Other than an earlier recommendation to prosecute three officers of PBK with the offence of abuse of office, the evidence gathered so far was not sufficient to sustain any other offence against members of the Board or any of the senior officers of the institution.

The file was forwarded to the Attorney General on 22nd May 2003. The Attorney General required further investigations to be carried out on 8th June 2003. The file was re-submitted on 15th July 2003 and action is awaited.

3. ACPU/INQ 75A/ 8.10.02:

An inquiry into an allegation that the National Social Security Fund (NSSF) lost Kshs. 256,000,000 through irregular discounting of a Treasury Bill No. 1471 and a subsequent irregular deposit of proceeds with Euro Bank. There was evidence that the former Managing Trustee and his Deputy invested the said funds without authority of the Board.

Recommendation: 1. That the former Managing Trustee of NSSF and the Deputy be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code.

2. That three employees of Euro Bank i.e the Foreign Business Manager, the Chief Accountant and a Driver, be charged together with a private employee of the Foreign Business Manager, with the offence of destruction of evidence (computer server) contrary to section 116 of the Penal Code.

The file was forwarded to the Attorney General on 6th May 2003 and the recommendation was accepted. The suspects have already been charged and the case is pending before court.

4. ACPU/INQ 30/14.03.03:

The inquiry was into an allegation that the management of Kenya Pipeline Company Ltd. abused their offices by irregularly investing surplus funds in fixed deposits in the collapsed Euro Bank, thereby causing loss of Kshs. 50,000,000 to the said Institution.

Recommendation: That two former Managing Directors of Kenya Pipeline Company Ltd. be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code, Cap 63, Laws of Kenya.

The file was forwarded to the Attorney General on 5th April 2003 and the Attorney General required further investigations to be carried out on 8th of April 2003. The file was re-submitted to the AG on 25th April 2003 and further investigations were asked for on 24th June 2003. The file was finally re-submitted to the AG on 8th of September 2003. Action from the Attorney General is awaited.

5. ACPU/INQ 29b/14.3.2003:

This was a further inquiry following an earlier investigation into allegations of irregular investment of Kenya Tourism Development Corporation (KTDC) funds by its senior management in Euro Bank. The further investigation was undertaken with a view to establish whether there was any conspiracy between Euro Bank officials and senior officers of KTDC, and whether KTDC Officials had personally benefited out of the proceeds.

Recommendations:

It was recommended that the earlier charge against the former Managing Director of KTDC be substituted with that of abuse of office contrary to section 101(2) of the Penal Code. In addition, the General Manager, Finance be charged with the offence of abuse of office contrary to section 101(1) of the Penal Code while the Foreign Business Manager with Euro Bank, be charged with the offence of fraudulent false accounting contrary to section 330(b) of the Penal Code.

The file was forwarded to the Attorney General on 11th June 2003. Action is awaited.

6. KACC/INQ 11/6.05.03 (CR 142/181/2003 CF ACC 35/03)

Investigations were instituted following allegations that the Officer Commanding Hardy Police Station solicited for a sum of Kshs.50,000 in order to release a motor vehicle detained at Hardy Police Station as an exhibit in a criminal case in which the complainant was an accused person.

Recommendations:

That there was sufficient evidence to warrant a charge of corrupt transaction by agent contrary to 39(3) as read with section 48(1)(a) of the Anti- Corruption and Economic Crimes Act, 2003.

The file was forwarded to the Attorney General on 24th June 2003 and the recommendation was promptly accepted. The suspect was duly charged and the case is pending before court.

7. ACPU/INQ 24b/14.03.03:

This matter stemmed from an earlier investigation into allegations that the senior management of Postal Corporation of Kenya abused their offices by depositing a sum of Kshs. 50,000,000 in the now-collapsed Euro Bank without following the laid down procedures thereby causing loss of funds. The purpose of this inquiry was to establish the beneficiaries of the funds deposited in Euro Bank.

Recommendations:

Upon the conclusion of investigations, no clear evidence emerged to pinpoint the actual beneficiaries. It was recommended that there be no further action.

The file was forwarded to the Attorney General on 22nd May 2003 and action is awaited.

8. ACPU/INQ.31b/14.3.03:

The investigation stemmed out of an earlier inquiry into allegations that the management of Kenya Post Office Savings Bank (Post Bank) illegally banked Kshs. 66,000,000 with the collapsed Euro Bank occasioning the loss of the entire amount. This particular inquiry was to seek to identify the beneficiaries of the monies deposited in the bank.

Recommendation: The investigation did not identify the beneficiaries of the specific amounts deposited by Post Bank. However, there was evidence that the former Managing Director of Kenya Post Office Savings Bank had received Kshs. 1,000,000 as a result of investing Post Bank's money in Euro Bank. It was recommended that he be charged with the offence of obtaining an advantage without consideration contrary to section 6(1) of the Prevention of Corruption Act.

The file was forwarded to the Attorney General on 21st May 2003 and further investigations were required on 15th August 2003. The file was re-submitted on 25th September 2003. Action is awaited on the recommended offence of obtaining advantage without consideration.

9. ACPU/INQ 28b/14.3.03:

The inquiry herein stemmed out of an earlier investigation into allegations that the Management of Kenyatta National Hospital (KNH) irregularly invested KNH funds in the now collapsed Euro Bank without authority of the Board. This particular inquiry was to find out whether KNH officials received any benefits after making the huge deposits with Euro Bank. There was evidence that the then Director of KNH received a total sum of Kshs.10,750,000 whereas a member of KNH Board at the time, received a sum totaling to Kshs. 2,720,000.

Recommendation: That the former Director, KNH and the Board member be charged with the offence of corruption in office contrary to section 3 of the Prevention of Corruption Act, and / or abuse of office contrary to section 101(2) of the Penal Code.

The file was forwarded to the Attorney General on 22nd May 2003. The Attorney General asked for further investigations on 27th June

2003. The file was re-submitted on 8th September 2003 and action is awaited.

10. ACPU/INQ 16/ 24.02.03:

An allegation of bribery was made against two Criminal Investigation Department officers from Kikuyu Police Station. The two are alleged to have demanded Kshs. 80,000 from the complainant in order for the suspects to forbear arresting and charging the complainant and her staff for dealing in fake PSV and inspection certificates.

Recommendation: The evidence gathered was not sufficient to sustain the offence of corruption. It was recommended that the charges of corruption leveled against the suspects be withdrawn. It was further recommended that the Commissioner of Police do institute the necessary administrative/ disciplinary action against the two officers as their conduct was in breach of their code of service.

The file was forwarded to the Attorney General on 12th June 2003. The Attorney General accepted the recommendation and as a result, the two accused persons were discharged under section 87(a) of the Criminal Procedure Code. A response on our recommendation for Administrative action to be taken is awaited.

REPORT COVERING THE PERIOD BETWEEN JULY AND SEPTEMBER 2003

11. ACPU/INQ.75C/8.10.02:

The inquiry was into an allegation that on 3rd day of July 2002, a former Member of Parliament obtained a loan of Kshs. 32,000,000 from the now collapsed Euro Bank without any securities through his companies namely Kuza Farms & Allied Ltd, Riveton Investments Ltd and Rajab Waliaula Trust, with an intention to defraud the bank of the money.

Recommendation: The investigation did not disclose any offence against the former Member of Parliament. However, Euro Bank's Chairman and the bank's former Managing Director, were recommended to be charged jointly with the offence of reckless

lending contrary to section 11(g) as read with section 49 of the Banking Act.

The file was forwarded to the Attorney General on 30th July 2003 and the recommendation was accepted. The two suspects have been charged with the offences. The case is pending before court.

12. ACPU/ INQ. 75b/2002:

The investigation herein was to establish the beneficiaries of the sum of Kshs. 256,000,000 invested into Euro Bank by National Social Security Fund (NSSF). There was an allegation that on the 1st of July 2002, the Monarch Insurance Company obtained a loan of Kshs. 80,000,000 from the now collapsed Euro Bank without having an account in the said bank and in contravention of the Banking Act.

Recommendation: The money loaned to Monarch Insurance Company was secured by an undertaking by a firm of Advocates and the monies were repaid on 9th July 2002. Though the Insurance Company did not have an account at the time the loan facility was extended to it, no offence could be established from the evidence gathered against the Insurance Company, both under the Banking Act and the Penal Code.

It was recommended that the file be closed.

The file was forwarded to the Attorney General on 30th July 2003 and action is awaited.

13. KACC/ INQ.6/ 14.5.03:

This was an inquiry into irregular privatization of Kenya Seed Company Ltd. (KSC). The Government of Kenya had a controlling shareholding of Kenya Seed Company through Agricultural Development Corporation (ADC), a statutory corporation.

Several officers in Government conspired and proceeded with the privatization of KSC without following the relevant procedures. A good number of them acquired the shares. The illegal increase of share capital reduced the Government's share capital in KSC and consequently, the Government lost its monopoly in the Company.

Recommendations:

1. That the following persons be charged with the offences of abuse of office contrary to section 101(2) of the Penal Code, (Cap 63, Laws of Kenya):

- a. The former Managing Director, KSC
- b. The then Managing Director, ADC
- c. A Board member, KSC
- d. The former Deputy MD, KSC
- e. Company Secretary, KSC
- f. A former Minister for Agriculture

2. That five other Directors mainly representing various Ministries in the KSC Board be charged with the offence of abuse of office contrary to section 101(1) of the penal code

3. That the persons listed in (1) and (2) above be subjected to administrative disciplinary action if they are still in public service.

4. That the following directors be charged with the offences of making false statements with intent to defraud the ADC and the Government contrary to section 329 of the penal code.

- a. The former Managing Director, KSC
- b. The Deputy Managing Director, KSC
- c. Representative of the Office of the President in KSC Board
- d. Former Managing Director, ADC
- e. Three other Directors of KSC
- f. Representative of the Ministry of Agriculture in KSC Board

5. That the irregular privatization be rectified through civil process so as to restore the company into the hands of Government ownership.

The file was forwarded to the Attorney General on 18th August 2003 and the Attorney General asked for further investigations on a number of occasions. The file was finally re-submitted on 10th February 2004. Other than the former Minister for Agriculture, the Attorney General has already preferred charges of abuse of office against all the persons listed above as recommended. However,

the offence of making false statements with intent to defraud has not been preferred.

14. ACPU/INQ 14A/ 24.2.2003:

The inquiry herein was as a result of information that the management of Harambee Sacco and Credit Society entered into an irregular staff cover contract with Medi Plus Services Ltd in which over Kshs. 5, 500,000 was irregularly paid as management fee to La Pillule Ltd thereby occasioning loss to the Society. Investigations revealed that some officials of the Sacco and La Pillule defrauded the Sacco of Kshs 5,000,000 using the management fee as a cover.

Recommendations:

1. That the following persons be charged with the offence of stealing contrary to section 275 of the Penal code.
 - a. The former Chairman of Harambee Sacco
 - b. The former Honorary Secretary of Harambee Sacco
 - c. The former General Manager of the Sacco
 - d. Two partners of La Pillule Ltd
2. That the two partners of La Pillule be further charged with the offences of forgery and uttering of a false document contrary to sections 349 and 353 of the Penal Code.

The file was forwarded to the Attorney General on 12th August 2003 and action is awaited.

15. KACA/INQ/75/20.3.2000:

The inquiry was based on allegations that the Office Superintendent at the Nairobi Law Courts was awarding contracts to his friends on repairing and carpeting of offices at the High Court. It was also alleged that payments were made for work that was never done.

Recommendation: That the suspect be charged with eleven counts of forgery contrary to section 347 of the Penal Code.

The file was forwarded to the Attorney General on 16th September 2003 and action is awaited.

16. ACPU/INQ/63A/10.10.2002:

The inquiry was into an allegation of mismanagement of financial resources at the Directorate of Industrial Training (DIT) in the reimbursement of Industrial Training Levy. There was evidence that a son to the Assistant Director in charge of curriculum development at DIT illegally benefited from the Levy by colluding with officers of Kenindia Assurance Co. Ltd.

Recommendation:

1. That the Assistant Director in charge of Curriculum Development at DIT, his son and two officers from Kenindia Assurance Co. Ltd be charged jointly with the offence of obtaining Kshs. 173,000 by false pretences contrary to section 313 of the Penal Code.

2. That an officer of Kenindia Assurance Co. Ltd be charged with the offence of giving false information to an officer employed in the public service.

The file was submitted to the Attorney General on 17th September 2003 and action is awaited.

17. ACPU/INQ 27b/14.03.2003:

The initial inquiry was into the allegation that the management of Kenya Sugar Authority (KSA) had abused their offices by illegally investing Kshs. 55,000,000 into the collapsed Euro Bank without following the laid down procedures. The investigation culminated with the charging of KSA's former Chief Executive, and the Head of Finance, with the offence of abuse of office. The second phase of investigation was undertaken with a view to establish the beneficiaries of the money paid into Euro Bank by KSA.

Recommendation: The investigation did not identify the beneficiaries of the specific amounts deposited by KSA. The debit vouchers prepared around the time of the deposit indicate that the money was for marketing expenses and the beneficiaries are carefully omitted from the debit vouchers. No further action was recommended in the file.

The file was forwarded to the Attorney General on 8th July 2003 and action is awaited.

18. ACPU/INQ/76/27.3.2000

The inquiry was commenced as a result of allegations of irregularities regarding tendering process for Kericho Vocational Rehabilitation Centre and illegal payments to a contractor. No formal contract was ever executed between the Government and the contractor. There was evidence that the contract was to cost Kshs. 5,900,000 but the contractor ended up being paid Kshs. 91,926,203.90 and the project is incomplete to date.

Recommendation: That the officers who were involved in the irregular payments be charged with the offence of abuse of office contrary to section 101(1) of the penal code.

- a. Former Permanent Secretary, Ministry of Home Affairs, National Heritage and Sports
- b. Former Permanent Secretary, Ministry of Culture and Social Services
- c. Assistant Quantity Surveyor, Kericho District
- d. District Quantity Surveyor, Kericho
- e. District Architect, Kericho
- f. District Works Officer, Kericho

The file was initially forwarded to the Attorney General on 12th March 2003 and the Attorney General asked for further investigations on 1st of August 2003. The file was re-submitted on 8th September 2003 and action is awaited.

19. ACPU/INQ.65/24.9.2002

The inquiry was instituted as a result of allegations by members of the Nairobi West Friends Church, that the Director of Physical Planning in the Ministry of Lands and Settlement was allocated a plot that the said church had applied for.

Recommendation: No offence was disclosed and the file was recommended for closure

The file was forwarded to the Attorney General on 21st August 2003 and action is awaited.

20. ACPU/INQ.69A/27.9.2002

The inquiry was into an allegation that a Police Constable attached to Ruiru Police station together with another person obtained a total sum of Kshs. 165,000 from the complainants by falsely pretending that they could facilitate their recruitment to the Kenya Police Training College, Kiganjo.

Recommendation: That the two suspects be charged with the offence of obtaining by false pretences contrary to section 313 of the Penal Code.

The file was forwarded to the Attorney General on 23rd July 2003 and action is awaited.

STATISTICAL SUMMARY

No. of files forwarded to the Attorney General	20
No. of files recommended for prosecution	14
No. of files recommended for administrative or other action	1
No. of files recommended for closure	5
No. of files where recommendation to prosecute accepted	0
No. of files where recommendation for administrative or other action accepted	0
No. of files where recommendation for closure accepted	0
No. of files where recommendation to prosecute not accepted	0
No. of files where recommendation for administrative or other action not accepted	0
No. of files where closure not accepted	0
No. of files awaiting Attorney General's action	15

Dated at Nairobi this 9th day of November, 2004


JUSTICE (RTD) AARON G. RINGERA
DIRECTOR/ CHIEF EXECUTIVE
KENYA ANTI-CORRUPTION COMMISSION.