

THE PUBLIC COMPLAINTS STANDING
COMMITTEE

The First Quarterly Report

for the

Year 2009/2010

Covering the Period

1st July, 2009

to

30th September, 2009

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EXECUTIVE SUMMARY

This Report consists of five Chapters.

Chapter One is an introductory Chapter which outlines PCSC's legal mandate and jurisdiction.

Chapter Two covers Complaints and Inquiries in the Quarter under review. It outlines the process of handling complaints and reviews complaints in the following categories:

- i. Complaints in which Complainants were advised to seek redress from other appropriate agencies;
- ii. Complaints determined to be without merit;
- iii. Complaints settled by the public institution to the satisfaction of the Complainant;
- iv. Complaints that revealed no instance of maladministration after PCSC inquiries;
- v. Complaints in which PCSC has initiated further inquiries.

It also contains details on activities undertaken in fulfillment of the PCSC oversight mandate.

Chapter Three provides a statistical analysis of Complaints and Inquiries within the Quarter as well as a comparative analysis with the previous Quarter. The analysis of the Complaints received is based on the following categories; typology of Complaint, public institutions or officers involved, gender, provincial distribution and mode of lodging Complaints.

Chapter Four gives an outline of advocacy, outreach and media activities within the Quarter.

Chapter Five outlines, in detail, administrative and legislative recommendations which the PCSC has made in the Quarter arising from the complaints handled.

The Annexure catalogues the Complaints handled by PCSC and their status.

FOREWORD FROM THE CHAIRMAN

This 1st Quarterly Report for 2009/10 covers the period July 1, 2009 to September 30, 2009. It is submitted in accordance with the Gazette Notice No. 5826 of June 29th 2007 which requires the Public Complaints Standing Committee (PCSC) to submit to H.E. the President Quarterly Reports of this kind.

The PCSC continues to receive a large number of Complaints and enquiries on a regular basis from the public in accordance with its mandate of recording, processing and redressing public Complaints against the Government Institutions and its officials. To date the PCSC has received 2,061 Complaints out of which 317 were received in the reporting Quarter. PCSC was able to assist the Complainants by initiating enquiries with the public institutions complained against, channelling them where necessary to other bodies for advice or resolution.

During the Quarter, the PCSC maintained its operational liaison arrangements with public institutions through informally exchanging information, views and consultations with the purpose of dealing with public Complaints in a more effective way. To this end, the Committee would like to thank the public institutions involved for their constructive and helpful manner evinced in the resolution of the Complaints in question. This cooperative and positive atmosphere, in which the PCSC has been working during the Quarter, demonstrates a genuine commitment among the parties involved towards a more responsive public sector.

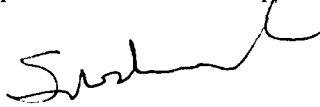
Further, in the execution of its mandate, the Committee conducted a survey on the existing complaints-handling mechanisms within public institutions with a view to helping public sector institutions set up internal complaints handling capacities. Chapter two of the present report deals with the findings of the survey, which we urge, should be implemented in order to hasten resolution of the complaints made to these public institutions.

As pointed out in the last Quarter, the 2009/10 Performance Contracting Guidelines require all Ministries, Departments and Agencies (MDAs) to establish mechanisms of working together with the PCSC for effective resolution of Complaints. PCSC continued with this initiative in the reporting Quarter mainly for the purpose of fine-tuning the necessary framework that will be used to assess MDAs.

The PCSC endeavours to publicize its services through advocacy and media throughout the country and this time round additional Information, Education and Communication (IEC) materials have been developed for distribution.

Another important development in the Quarter concerned the Ombudsman Bill. PCSC jointly with the Kenya Law Reform Commission held a workshop to consider Stakeholders' input in the Ombudsman Bill. This Bill will ensure that the public can have full confidence in the PCSC's ability to redress public Complaints with sufficient powers to execute the Ombudsman's mandate.

Finally, I would like to express my appreciation to the Ministry of Justice, National Cohesion and Constitutional Affairs for continued logistical support and to PCSC Secretariat for commendable efforts in the production of this report.



Amb. James Simani
CHAIRMAN

MESSAGE FROM THE EXECUTIVE DIRECTOR

In the short reporting cycle of the PCSC, the fundamentals reported on in the previous Quarter ending 30th June 2009 continued to hold true. The number of complaints received increased from 270 in the last period to 317 in the present period. The number of complaints actually processed also increased from 16% of all complaints received to 21%. These increases are attributable mainly to a concerted effort by the Secretariat, in the face of overwhelming undercapacity, to address the backlog of complaints pending attention by the Committee.

The reporting period was also characterised, significantly, by the close of the Governance, Justice, Law and Order Sector (GJLOS) Reform Program on 30th September 2009. As is wont to happen, the latter part of the Quarter was heavily preoccupied with efforts to meet obligations contracted under the program, and in mitigating the administrative hitches that are unavoidable in such endeavours. Nevertheless, the PCSC was able to leverage, to commendable advantage, the GJLOS planned activities, mainly on production of IEC material and Media presence.

The Committee also commenced work on the draft *Ombudsman Bill 2009* with the help and practical assistance of the Kenya Law Reform Commission. The draft Bill is still under review and will be finalized and submitted to the Honourable Minister for Justice, National Cohesion and Constitutional Affairs in the next reporting period.

As the country prepares for the upcoming review of the Constitution of Kenya, it is hoped that the long-established need for the Office of Ombudsman in Kenya will find constitutional footing in the draft Constitution of Kenya. The Committee was fortunate to receive technical support from the German Technical Cooperation Agency (GTZ-Kenya) for background research specifically geared towards ensuring that the constitutional and statutory underpinnings of the Office of Ombudsman are as sound as possible.

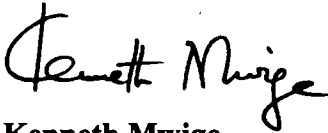
The next reporting period, which is also the last quarter of the calendar year 2009, is expected to see the conclusion of PCSC's migration to an IT platform for complaints-management and complaints-handling. This is recognition not only of Government's ongoing reforms in e-Government, but also in recognition of the fact that in this day and age, information technology is a necessary hand-maiden of improved service-delivery, especially in the public sector.

Long-pending works to PCSC's offices, geared towards improving the working environment for staff and clients, are also planned for this period. It is hoped that the Ministry of Justice, National Cohesion and

Constitutional Affairs will play its part to ensure that these mission-critical objectives of the PCSC are met, and in good time.

Finally, the role of the PCSC/Ombudsman as an oversight institution requires to be reviewed critically in terms of staffing, resources, mandate and remuneration of staff. The Directorate of Personnel Management has been requested to undertake a survey for this purpose, which should occur in the next reporting period. It is hoped that the ongoing haemorrhage of staff heading for better-paying climes will be stemmed by an urgent review of the terms, working environment and terms and conditions of service of staff.

In the meantime, I wish to salute my fellow Committee Members, and my staff, for their efforts to deliver on the expectations of Kenyans for a just and efficient public service, while working with a bare minimum of resources. Needless to say, the continued support of the Government, particularly through the Office of the Right Honourable The Prime Minister (Public Sector Reforms and Performance Contracting Department) and the Ministry of Justice, National Cohesion and Constitutional Affairs, cannot be gainsaid.



Kenneth Mwiriga

Executive Director

CHAPTER ONE

1 INTRODUCTION

The Public Complaints Standing Committee {PCSC} was established by H.E the President through *Kenya Gazette Notice No. 5826 of 29th June 2007*.

1.1 Mandate of the PCSC

Kenya Gazette Notice No. 5826 of 29th June 2007 confers the PCSC with the following functions:

1. *To receive, register, sort, classify and document all complaints against public officers in Ministries, Parastatals/State Corporations, Statutory Bodies or any other Public Institution;*
2. *To inquire into allegations of misuse of office, corruption, unethical conduct, breach of integrity, maladministration, delay, injustice, discourtesy, inattention, incompetence, misbehavior, inefficiency or ineptitude etc;*
3. *To help set up and build complaint-handling capacity in the sectors of the public service registering high incidences of Complaints (including but not limited to the following areas; health, local authorities, police, lands, financial services etc);*
4. *To oversee, co-ordinate, monitor and follow up specific action on channeled complaints;*
5. *To review regulations, codes of conduct, processes and procedures in the public service and recommend changes necessary to avoid or reduce complaints;*
6. *To promote alternative dispute resolution through mediation;*
7. *To perform any other duties or tasks with regard to complaints, with a view to giving meaningful effect to the same;*
8. *To ascertain whether on the face of it, there is merit in a complaint, and thereafter to act on the complaint appropriately, which may include channeling it to the responsible department of government for action;*
9. *To recommend, where the committee deems fit so to do, compensation or other remedial action against Government or a public body or officer over any or some of the complaints the committee attends to;*

10. *To prepare advisory opinions or proposals on appropriate remedial action to be taken by the permanent secretaries or chief executives of affected ministries or public bodies;*
11. *To recommend appropriate legislative reforms; and*
12. *To publish quarterly reports for public information on the number and nature of complaints received and the action taken by the committee.*

1.2 Jurisdiction of the PCSC

The PCSC has jurisdiction over public officers and public institutions. This jurisdiction covers Ministries, Parastatals/State Corporations, Statutory Bodies and any other public institutions.

The PCSC is mandated to receive and address complaints from any Kenyan citizen or any person (including legal persons) lawfully present in Kenya concerning maladministration in the conduct of public affairs. The exception to PCSC's mandate is the Courts acting in their judicial capacity and Parliament in exercise of its legislative functions. A complaint is therefore outside the PCSC's mandate if;

- (a) It does not concern a public institution or a public officer; or if
- (b) It concerns the Courts in exercise of their Judicial role or Parliament in exercise of its Legislative functions; and if
- (c) It does not concern possible maladministration by a public officer or institution.

It is important to note that the PCSC receives and deals with complaints from or concerning the conduct of private individuals or the private sector. However, the PCSC entertains such complaints from the point of view and to the extent that the conduct complained of is in one way or another regulated or overseen by a public institution or public officer.

1.3 Admissibility of Complaints

A complaint that is within the mandate of the PCSC must satisfy the further criteria of admissibility before the PCSC can initiate inquiries;

- i. The Complainant and the public institution complained against must be clearly identified;
- ii. The Complainant must have suffered some injustice resulting from the public institutions/ officer act or omission ;
- iii. The complaint needs to have first been lodged with the institution concerned, or otherwise brought to their attention, with either no reaction or with an unsatisfactory reaction;

- iv. The relevant administrative intervention channels need to have been exhausted;
- v. The complaint must not question the merits of a Court's ruling or judgment; and
- vi. The complaint must not question the legislative process in Parliament.

CHAPTER TWO

2.0 COMPLAINTS AND ENQUIRIES

The primary business of the PCSC is to receive, process, resolve and prevent future occurrence of complaints brought against public officers and public institutions - Ministries, Parastatals/State Corporations, Statutory Bodies, or any other public institution. The PCSC also conducts inquiries on its own initiative in appropriate cases.

PCSC is an independent avenue for Complainants to lodge a complaint if they are unable to reach a satisfactory resolution within the public institution concerned. This provides the Complainant with an opportunity to have their issue reviewed independently while also affording PCSC opportunity to identify necessary administrative or legal reforms.

2.1 How to lodge a Complaint

Members of the public can lodge complaints through personal visits to PCSC's offices, email, telephone calls and postal mail. Figure 6 shows the percentage of complaints received through the various contact modes available to the public.

Complaints made through personal visits amount to the largest proportion of complaints received in the Quarter. PCSC continues to provide the opportunity for Complainants to visit our offices and approach PCSC staff during regional publicity events.

All Complaints must be lodged through a Complaints Form - *PCSC Form I*. A Complainant is required to provide the following information;

- (a) Complainant's name and contact information.
- (b) The Public institution or officer complained against.
- (c) A Summary of the complaint.
- (d) A Statement on exhaustion of other available remedies.
- (e) The action expected from the PCSC.
- (f) Copies of relevant documentation to support the complaint.

2.2 The Complaints-handling Process

All Complaints are registered and acknowledged. The Complaints are then assessed in order to determine if they fall within the PCSC's mandate. Straightforward Complaints are handled at the intake stage, usually by informally contacting the Government Department complained against. This may involve telephone inquiries seeking preliminary information on the Complaint or referring the Complainant to the Department for further assistance.

Assessment Stage

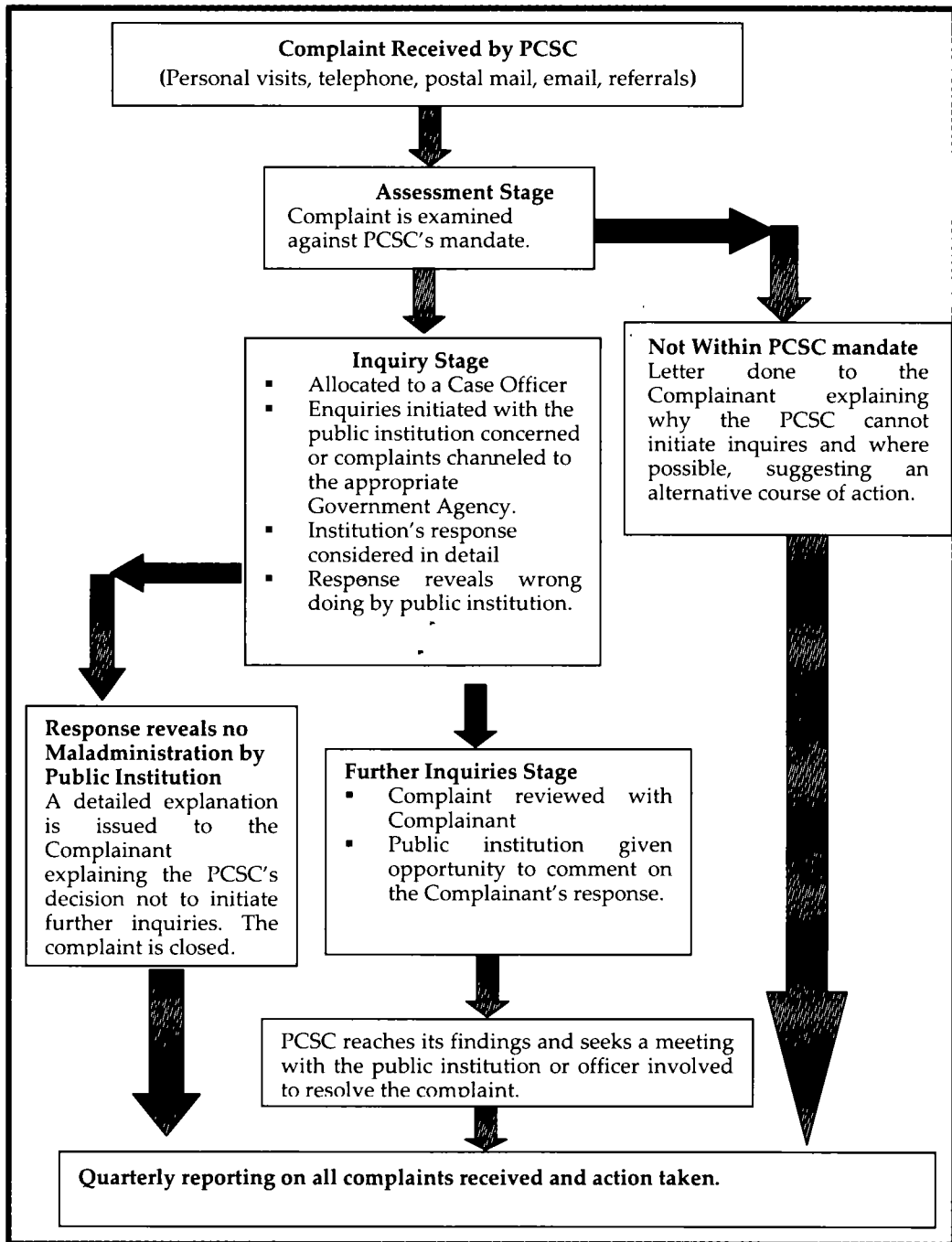
Each Complaint is checked to ensure that;

- The institution or person complained of falls within PCSC's jurisdiction ;
- The matter complained of is within PCSC's jurisdiction;
- The Complaint has been lodged with the public institution concerned;
- Sufficient information has been provided regarding the Complaint; and
- The Complaint is not before the courts or another adjudicative body.

Where one or more of the above is not satisfied, PCSC writes to the Complainant explaining why PCSC cannot initiate inquiries. Where appropriate, the letter will detail a course of action which may be appropriate to the Complainant, such as reference to a more appropriate Government Department, a request for further details or reference to the internal complaints procedure of the public institution or officer concerned.

Where a Complaint satisfies the above requirements PCSC initiates inquiries with the relevant Government Department.

The Process



Inquiry Stage

The purpose of the inquiry is to ascertain whether there is an instance of maladministration by the public body concerned. The first step is to make detailed inquiries to the public body. These inquiries usually take the form of a written request for information to the Permanent Secretary or Chief Executive Officer of the public institution concerned. Once these inquiries have been completed, a decision is taken on to the appropriate course of action for each complaint. The possible outcomes are;

- **Where there is no evidence of maladministration by the public institution or officer concerned** – PCSC writes to the Complainant explaining that there was no instance of maladministration and stating the reasons why the complaint does not warrant further investigation;
- **Where there is evidence of maladministration** – PCSC initiates further inquiries.

If, at the inquiry stage the maladministration and the injustice caused to the Complainant can be readily identified, the PCSC writes to the public institution or officer outlining the maladministration identified and suggesting an appropriate remedy. If the proposed remedy is accepted, the complaint is quickly resolved. However, if the proposed remedy is not accepted, the PCSC initiates further inquiries.

Further Inquiries Stage

At this point, the complaint is reviewed with the Complainant. The public institution or officer concerned is given an opportunity to comment on the facts as presented, PCSC's findings and the redress recommended. Upon receipt of any comments from the public institution or officer concerned, PCSC advises both the Complainant and the public institution or officer concerned.

2.3 Complaints Trends in the Quarter

PCSC received 317 new Complaints. Therefore, the total caseload for the Quarter was 1,455 Complaints. 1,138 of these Complaints were on-going inquiries carried over from the previous Quarter.

Of the 317 Complaints received in the Quarter, 313 were within the PCSC's mandate while 4 were outside PCSC's mandate. Action was taken in 66 Complaints out of which 20 Complaints were satisfactorily resolved while 251 Complaints were carried forward to the next Quarter.

2.4 Complaints Received and Measures Taken

The following Complaints illustrate Complaints received by PCSC, their processing and the measures taken to redress the Complaints.

2.4.1 Complaints Where Advice were provided

At the assessment stage, once a Complaint is determined to be outside the PCSC mandate either because it does not relate to a public officer or a public institution, PCSC advises the Complainant of another agency that is best suited to handle the Complaint.

Breach of integrity by an Auctioneer

The Complainant alleged that **Nyuki Auctioneers** wrongfully and without notice entered her house and carried away household goods and cash worth Kshs. 280, 000/- in the pretext that the Complainant had rent arrears of Kshs. 3,000/-. The Complainant wanted Nyuki Auctioneers reprimanded and ordered to pay her Kshs. 280, 000/-. PCSC considered that Nyuki Auctioneers is not a public institution hence the complaint was not within the PCSC mandate. The Complainant was consequently advised to lodge the complaint with the Auctioneers Licensing Board in the High Court.

Delay in Payment of a Life Assurance Policy

A complaint was lodged in August 2009 against **Trinity Assurance Company** alleging delay in payment of a life assurance policy. The Complainant stated that he had visited the offices of the Company on several occasions since 2006 and despite assurances that the payment would be made, he had not received payment to date. The Complainant was advised to lodge the complaint with the Insurance Regulatory Authority since Trinity Assurance Company is not a public institution.

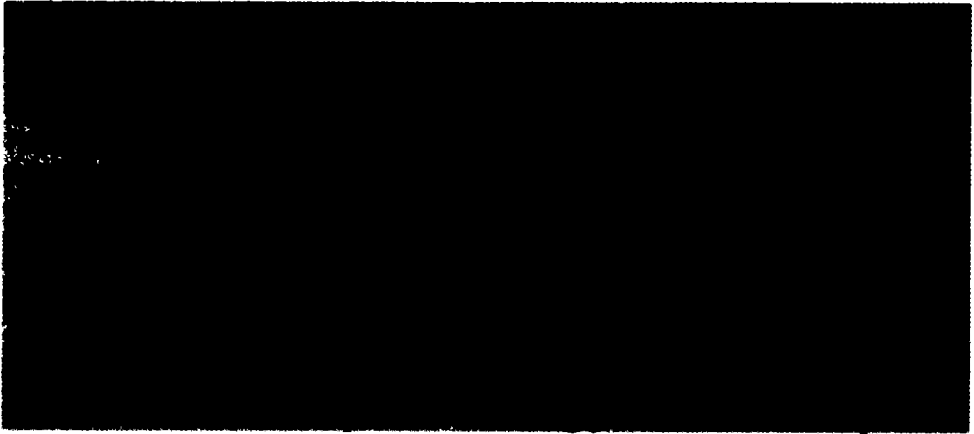
In other instances, upon assessment of a Complaint, PCSC may find that the Complainant has not lodged the Complaint with the public institution concerned. PCSC therefore advises the Complainant to exhaust the internal redress mechanisms within the public institution and if still dissatisfied, only then contact the PCSC. The rationale is to give the public institution concerned an opportunity to address the complaint since PCSC is a committee of last resort.

Delay in the Lands Office in Kajiado

The Complainant alleged delay by an officer in the **Ministry of Lands Office** in Kajiado. The Complainant stated that the officer had failed to act on documents to facilitate processing of the Complainant's loan from the Agricultural Finance Corporation. Upon assessment of the complaint, PCSC found that the complaint had not been lodged at the Ministry of Lands. PCSC therefore advised the Complainant to lodge the complaint at the Ministry of Lands and, if dissatisfied, contact PCSC.

2.4.2 Complaints Determined to be Without Merit

Kenya Gazette Notice 5826 of June 29th 2007, gives PCSC discretion to ascertain whether on the face of it a complaint has merit or not, and thereafter take appropriate action on the complaint. Some complaints while within the PCSC mandate were found not to warrant further inquiry by PCSC and were therefore closed and the Complainants advised accordingly.



Breach of integrity by an Advocate

The Complainant alleged that her deceased friend had entrusted an Advocate with her money and property. However, the advocate had failed to remit the property and money to her. The Complainant further alleged that she had lodged the complaint with the Advocates Complaints Commission but the Commission had declined and/or failed to take action on the complaint. Upon assessment of the complaint, PCSC observed that the Commission had written to the Advocate asking for a response to the complaint. The Complainant had failed to provide documents to prove that there was an Advocate-Client relationship between her deceased friend and the Advocate. PCSC therefore found the complaint without merit and advised the Complainant accordingly.

2.4.3 Complaints settled by the Public Institution

In most instances, the PCSC strives to achieve a positive outcome that is satisfactory to both the Complainant and the public institution or public officer complained against. Below are examples of complaints which were settled by the public institution concerned to the satisfaction of the Complainant.



Delay in Payment of Death Gratuity and Salary Arrears

The Complainant alleged undue delay by the **Ministry of Medical Services** in payment of death gratuity for his deceased son. The Complainant stated that previously, the Ministry of Medical Services and the National Hospital Insurance Fund (NHIF) had intimated to him that his claim could not be processed because the deceased's relevant documents were at their archives in Industrial Area and that it would be cumbersome for the Ministry and NHIF officers to retrieve the documents. PCSC initiated inquiries with the Ministry of Medical Services and NHIF regarding delay in payment of the death gratuity. The Ministry of Medical Services responded to PCSC's inquiries advising that the deceased's death gratuity claim had been forwarded to Treasury for processing and that the salary arrears had been dispatched to The Public Trustee. The Complainant confirmed that the documents had been forwarded to Treasury.

Inattention

A complaint was lodged in February 2009 against the **Ministry of Roads** alleging that the Ministry had failed to carry out repairs for damages on the Complainant's house and water tank occasioned by construction of the Thogoto – Gikambura - Mutarakwa road. The Complainant stated that the Ministry of Roads Resident Engineer had verified the damage in September 2008 but no further action had been taken in relation to the complaint. PCSC initiated inquiries with the Ministry of Roads. Subsequently, the Ministry of Roads responded to PCSC's inquiries advising that the Complainant should liaise with Site Engineer for repairs. The PCSC advised the Complainant accordingly and, pending information to the contrary, considered the complaint resolved satisfactorily.

Delay in Issuance of a PIN Certificate

The Complainant alleged delay by the **Kenya Revenue Authority (KRA)** in issuing a PIN Certificate for his company. The Complainant alleged that initially he was informed that the delay was occasioned by a switch to online taxpayers-registration system but KRA had taken inordinately long. PCSC initiated inquiries with the KRA into the allegations of delay. KRA wrote to the PCSC advising that the Complainant had been issued with a PIN Certificate. The Complainant confirmed that he had received the PIN Certificate. PCSC considered the complaint satisfactorily resolved.

Delay in Issuing Results

A complaint was lodged in May 2008 alleging delay by the **Kenya National Examination Council (KNEC)** in issuing the Complainant with Practical Teaching Examination (PTE) results. The Complainant alleged that she completed the PTE in 1999 but ten years later, the results had not been released to her. PCSC initiated inquiries into the delay. KNEC responded to PCSC's inquiries indicating that the results were dispatched to the Complainant's duty station in April 2008. Further, KNEC undertook to dispatch the results to the Complainant's duty station once again. The Complainant confirmed that she had received the results. PCSC considered the Complaint resolved.

Inattention

The Complainant alleged inattention by the **Police Department** in replacing his destroyed General Service Unit Discharge Certificate. The Complainant stated that on numerous occasions he had written to the Police Department requesting a replacement of the Discharge Certificate but no action had been taken. PCSC wrote to the Police inquiring into the allegations of inattention. The Police Department responded to PCSC inquiries advising that the Complainant should obtain a police abstract then follow-up with the Police Department. PCSC considered the complaint satisfactorily resolved.

2.4.4 Complaints that Revealed no Maladministration

Upon inquiry, PCSC may find that the action taken or decision made by the public institution does not reveal any instance of maladministration. PCSC therefore writes to the Complainant explaining that there was no instance of maladministration and stating the reasons why the complaint does not warrant further inquiries.

Injustice

The Complainant alleged that in 2008 the **City Council of Nairobi** wrongfully and without notice re-allotted his plot of land to another allottee. The Complainant alleged that he had paid the rates consistently from 1987 until 2005. However, in 2008 when he visited the City Council's offices, he was informed that the plot had been allotted to someone else. PCSC initiated inquiries into the alleged irregularities. The City Council of Nairobi responded advising that in December 2007, the Complainant was issued with a notice to repossess the plot due to heavy arrears but he failed to clear the arrears. The plot was subsequently repossessed and re-allotted. In addition, the City Council made an intimation that the only possible remedy for the Complainant was to explore if the Council could reconsider him on humanitarian grounds for an alternative plot subject to availability. PCSC found that there was no

instance of maladministration in the Complaint and advised the Complainant accordingly.

2.4.5 Complaints where PCSC Initiated Further Inquiries

Some responses to PCSC's inquiries were either not satisfactory or only partially addressed the issues that the PCSC had raised. PCSC invited the Complainant to make comments on these responses and initiated further inquiries with the public institution concerned.

Inattention

A Complaint was lodged in August 2008 against the **Ministry of Provincial Administration and Internal Security** alleging Inattention. The Complainant alleged that a pub and restaurant situated in his residential neighborhood plays loud music in the night beyond hours thus occasioning noise pollution. Further, the Complainant alleged that the noise pollution has been going on since 1997 and despite numerous complaints to the Ministry of State for Provincial Administration, the matter has not been resolved to date. PCSC initiated inquiries with the Ministry of Provincial Administration into the allegations of inattention. The Ministry responded to PCSC inquiries by providing resolutions of a meeting held between the Complainant and the owner of the pub and restaurant in June 2006. However, PCSC considered the response to be unsatisfactory since despite the resolutions of June 2006, the alleged nuisance had continued unabated to date. PCSC has initiated further inquiries with the Ministry with a view to ensuring that the matter is satisfactorily resolved.

2.5 Preventive Mandate of PCSC

PCSC has a dual role to provide an independent and impartial review and resolution of individual complaints while also assisting public institutions improve their administrative practices and quality of services.

2.5.1 Administrative Review

Gazette Notice 5826 of June 29, 2007 mandates the PCSC;

To prepare advisory opinions or proposals on appropriate remedial action to be taken by the Permanent Secretaries or Chief Executive Officers of affected Ministries or public bodies;

During review of Complaints received, PCSC often identifies instances where administrative practices and procedures of a public institution result in complaints. PCSC makes recommendations or provides information to the public institution concerned for the improvement of its practices and procedures. PCSC has identified the following as the causes of systemic problems which lead to complaints:

- i. Inadequate or unclear legislation or policies;
- ii. Failure to give reasons for decisions made;
- iii. Inadequate record keeping;
- iv. Inadequate communication within the public institutions and between the institutions and the public; and
- v. Delegations to levels lacking the required competence.

The following are some of the public institutions whose complaints against the PCSC identified instances of faulty administrative and procedural practices within the Quarter under review.

i. Ministry of Labour and Human Resource Development

As a follow up to the systemic trends identified from the **Ministry of Labour and Human Resource Development** complaints, PCSC held a consultative meeting with the Ministry of Labour and Human Resources Development officers. PCSC recommended review or revision of the Ministry's procedures and policies to ensure that complaints relating to labour officers failing to remit Complainant's dues after conciliation meetings do not recur.

ii. Advocates Complaints Commission

PCSC has also identified systemic trends in Complaints relating to the **Advocates Complaints Commission**. PCSC considered that most of the complaints related to the procedure of handling the complaint once it is lodged with the Commission. Most Complainants raised the issue of poor communication between the Commission and themselves and also the procedure once a Complainant is invited to appear before the Commission for a review of their case. This pointed to delegation to levels lacking the required competence as Complainants alleged that they appeared before subordinate officers lacking the competence to preside over their complaints. PCSC intends to bring these issues to the attention of the Commission and offer proposals on appropriate remedial actions.

iii. National Census and Housing Surveys

In the Quarter, PCSC also received numerous complaints relating to recruitment in the August 2009 Population Census against the **National Census and Housing Surveys**. PCSC wrote to the National Census regarding the alleged irregularities in the recruitment process. Most allegations related to issues of corruption, nepotism, discrimination and lack of openness in the recruitment exercise of Senior Supervisors, Supervisors and Enumerators. It is hoped that the issues raised will enable the National Census and other Government

Departments improve their administrative practices and procedures in the future.

iv. Systemic Trends in Complaints regarding the Judiciary

Over the Quarters, PCSC has also identified systemic trends in Complaints against the Judiciary regarding handling of dismissals. Dismissed judicial officers allege inconsistencies in the handling of disciplinary cases and in particular as relates to officers who are charged in court and subsequently acquitted. While the Judiciary reinstates some of the officers it summarily dismisses others without advancing any reasons for the variance in the decisions taken. In the absence of an explanation, there appears to be inconsistencies in the disciplinary procedures. PCSC recommends that the Judiciary should review its disciplinary procedures to ensure that these instances of inconsistencies do not recur.

PCSC will continue to review mechanisms for early identification of complaints which may indicate serious or systemic maladministration and to provide timely advice on appropriate remedial action to the relevant public institution.

Public Institutions advising Complaints to seek redress in court

The principal function of the PCSC is to provide an independent evaluation of complaints against public institutions by inquiring into the allegations and seeking a resolution of the complaints in a way which is acceptable to both the Complainant and the public institution concerned in a non - adversarial way, obviating the need for costly litigation. It therefore defeats the purpose and objective for which the PCSC is established for a public institution to decline to address a complaint and instead advice PCSC that the Complainant should go to court. In appropriate cases, such an attitude by a public institution, which would thereby spend public funds in avoidable litigation, might itself amount to Abuse, or Misuse, of office on the part of the responsible public officer.

2.5.2 Building Complaint-handling Capacity in Public Sector Agencies

Kenya Gazette Notice 5826 of June 29, 2007 mandates PCSC;

To help set up and build complaint-handling capacity in the sectors of public service registering high incidences of complaints (including but not limited to the following areas, health, local authorities, police, lands, financial services etc);

In the Quarter, PCSC conducted a survey on the complaint-handling processes in the Public Sector with a view to providing PCSC with

baseline information on complaint-handling in the public sector and how the processes could be improved.

The survey findings revealed that:

- i. Despite the elaborate displays of redress mechanisms in Service Charters, Ministries have not proceeded to actually operationalise their complaints-handling systems, even at the level of a complaints office/desk;
- ii. In most Ministries, the Permanent Secretary's office is in charge of public complaints relating to service-delivery;
- iii. There is no formal method of tracking complaints, nor is there a log of complaints received and their fate.

Arising from the Survey, key among PCSC's recommendations is;

- i. Establishment of designated complaint-handling desks and officers in all public institutions;
- ii. Migration of complaints-handling to an IT platform across the public sector; and
- iii. Actual operationalisation and institutionalization of complaint-handling practices in the public sector.

2.5.3 Performance Contracting 2009/10 Guidelines

As pointed out in the last Quarterly Report, timely and effective resolution of public complaints is now a measurable indicator affecting the ranking of Ministries and Public Institutions in the annual Performance Contracting cycle.

The PCSC, working with the Office of the Prime Minister, Public Sector Reforms and Performance Contracting, has taken a proactive approach towards improving administrative practices and service-delivery in public institutions. Consultations are underway to develop a uniform, standard mechanism across the public sector that enables logging and tracking of all complaints and service-delivery issues on an IT platform.

Besides providing a base for certification by the PCSC of satisfactory complaints-handling and improved service-delivery, this innovation will transform the interaction between citizens and public officers and institutions.

2.5.4 Liaison with other Oversight Agencies

PCSC has established operational liaison arrangements with the Kenya Anti-Corruption Commission and the Kenya National Commission on Human Rights, with a view to appropriate handling of complaints

regarding the different mandates of the institutions. PCSC maintained regular contact with the two agencies to avoid duplication of investigations. In the Quarter under review, PCSC referred 2 complaints and received 5 referrals from these agencies.

The PCSC also has good working relations with The Advocates Complaints Commission and The International Federation of Women Lawyers, (FIDA), Kenya Chapter.

2.5.5 Liaison with Public Sector Agencies

PCSC maintains regular contact with public institutions with a view to effective and efficient resolution of individual complaints. In the Quarter, PCSC held a number of consultative meetings and exchanges with the Ministry of Information and Communications, the Ministry of Cooperatives and Marketing Development, the State Law Office, the Kenya Police and the Office of the Prime Minister (Public Sector Reforms and Performance Contracting Department).

2.6 Non-Responsive Government Institutions

The listing below comprises public institutions that have not responded to the PCSC's initial inquiries and gives the corresponding number of inquiries Not Responded- To.

Table 2.6: Analysis of Non-Responsive Public Institutions

Public Institution	Number of PCSC Inquiries NOT Responded to					
	3 to 6 Months	7 to 9 Months	10 to 12 Months	Over ONE Year	Total	Percentage
Kenya Police	25	26	46	9	106	20
Ministry of Labour	21	22	17	3	63	12
Nairobi City Council	4	7	45	3	59	11
Provincial Administration	15	11	28	4	58	11
Ministry of Lands	14	8	11	6	39	8
Ministry of Local Government	8	6	8	1	23	4
The Judiciary	7	3	5	1	16	3
State Law Office	5	2	8	1	16	3
Ministry of Education	6	3	4	0	13	3
Ministry of State for Defence	3	1	8	0	12	2
Teachers Service Commission	2	3	4	2	11	2
Ministry of Transport	2	4	3	0	9	2
Ministry of Finance	5	1	3	0	9	2
Advocates Complaints Commission	3	0	6	0	9	2
Ministry of Agriculture	5	3	0	0	8	2

Public Institution	Number of PCSC Inquiries NOT Responded to					
	3 to 6 Months	7 to 9 Months	10 to 12 Months	Over ONE Year	Total	Percentage
Ministry of State for Immigration and Registration of persons	3	0	2	1	6	1
Public Service Commission	0	3	2	1	6	1
Pensions Department	3	2	0	1	6	1
Ministry of Roads	2	1	1	1	5	1
Ministry of Medical Services	1	1	2	1	5	1
Telkom Kenya Ltd	3	1	1	0	5	1
Ministry of Higher Education	2	1	0	1	4	1
Ministry of Cooperative Development and Marketing	2	1	1	0	4	1
Ministry of Public works	1	1	0	2	4	1
Ministry of Gender, Children and Social Development	1	0	1	1	3	1
Ministry of Forestry and Wildlife	0	2	0	1	3	1
Ministry of Energy	2	0	1	0	3	1
Kenya Revenue Authority	1	1	1	0	3	1
Ministry of Housing	2	0	0	0	2	0
Ministry of state for National Heritage and Culture	1	0	1	0	2	0
Ministry of Environment and Mineral Resources	0	1	0	1	2	0
Office of the Vice President	1	0	0	0	1	0
Ministry of Livestock Development	0	1	0	0	1	0
Ministry of Tourism	0	0	1	0	1	0
Ministry of Water and Irrigation	1	0	0	0	1	0
TOTAL	151	116	210	41	518	100%

The causes of non-responsiveness vary from the excusable, the partially excusable, to the completely non-excusable. The PCSC's experience to date has provided a clear picture of the institutions that fall in these categories. This experience will be reflected in the PCSC's Strategic Planning process.

CHAPTER THREE

3.0 STATISTICAL ANALYSIS

3.1 Complaints Received

In this Quarter, PCSC received of 317 new complaints as shown in the table below.

TABLE 3.1: Complaints received in the Quarter

Quarter Complaints		
Month	Number	Percentage
July	105	33%
August	90	28%
September	122	39%
Sub-total	317	100%
Synopsis of the PCSC Complaints since inception		
Total number of complaints received by PCSC from July 2007 to 30th September 2009	2,061	-
Number of matters resolved from July 2007 to 30 th September 2009	498	24%
Number of ongoing inquiries from July 2007 to 30th September 2009	1,455	70%
Complaints channeled or referred to departments of government or oversight agencies for action.	108	5%

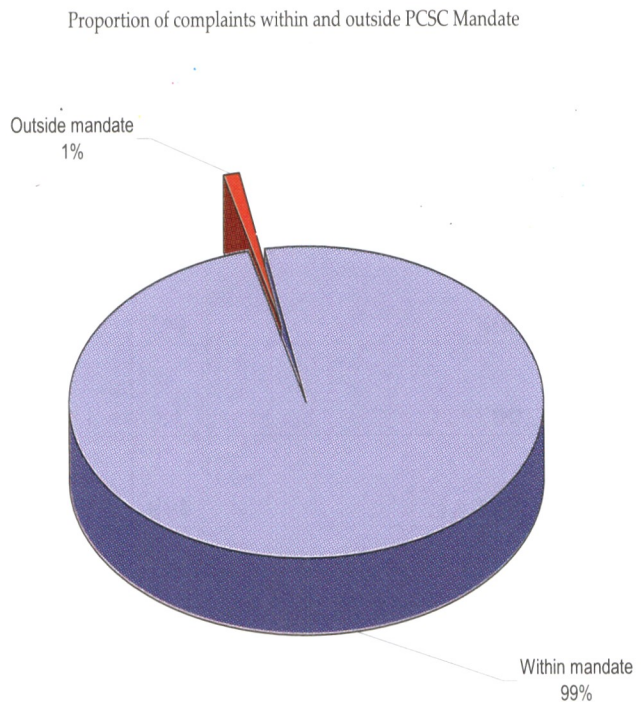
TABLE 3.2: Statistical Summary of PCSC Complaints

Year	Quarter	Resolved		Ongoing		Referred		Channeled	
		No.	%	No.	%	No.	%	No.	%
2009	Q3	73	21	269	76	2	0.5	9	2.5
	Q4	42	14	232	80	1	0	16	6
	Q1 (2009/10)	20	6	290	92	0	0	7	2
Sub-total		135	-	791	-	3	-	32	-
2008		345	33	640	61	23	2%	43	4
2007		18	37	24	49	5	10	2	4
TOTAL		498	24%	1,455	70%	31	2%	77	4%

3.2 Classification of Complaints Received in the Quarter by Mandate

- Within mandate: 313 (99 %)
- Outside mandate: 4 (1%)

FIGURE 1: Distribution of Complaints According to the PCSC mandate.



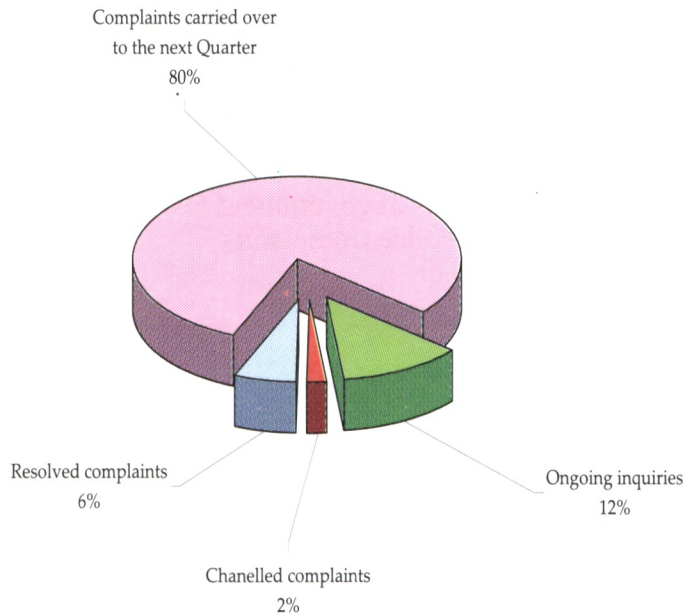
3.3 Analysis According to Action Taken by PCSC

TABLE 3.3: Analysis on Processing of Complaints Received During the Quarter

No.	Category	Total	%
1.	Complaints where inquiries were initiated	39	12
2.	Complaints channeled to responsible departments of government for action e.g. The Police Complaints Department	7	2
3.	Complaints resolved ¹	20	6
4.	Complaints carried over to the next quarter.	251	79
	TOTAL	317	100%

¹ Complaints resolved is a generic term comprising; complaints withdrawn by Complainants, complaints settled by the public institution, complaints found to be without merit and complaints where Complainants were properly advised.

FIGURE 2: Categorization of Complaints Processed by the PCSC



3.4 Analysis Based on Categories of Complaints

This report captures categories of complaints received as stipulated in PCSC's mandate as follows:-

- (a) **Injustice;** includes allegations of wrongful dismissal from work, premature retirement, negative ethnicity and discrimination by public officers and public institutions.
- (b) **Delay;** refers to unexplained and unnecessary time taken to perform or deliver normal and routine duties and services by public officers.
- (c) **Misuse of Office;** includes claims of harassment by public officers and allegations of improper or forceful charges levied upon Complainants.
- (d) **Inattention;** refers to unjustifiable failure to attend to necessary detail, e.g. failure to respond to complaints, failure

to charge suspects, cases not investigated to a reasonable standard by relevant institutions, and the like.

- (e) **Inefficiency**; Inability to perform /render services to the expectation and satisfaction of citizens.
- (f) **Unethical conduct**; want of probity by public officers in the conduct of public affairs.

TABLE 3.4: Complaints Categories

Category	No. Of Complaints	Percentage
Delay	91	29
Injustice	65	21
Misuse of Office	48	15
Unethical conduct	31	10
Inattention	20	6
Inefficiency	11	3
Others ²	51	16
TOTAL	317	100%

The Complaints received during the Quarter were diverse in nature. The most common complaints focused on delay in service delivery, misuse of office and inefficiency by public officers.

Based on the above statistics, the bulk of public complaints have to do with poor service delivery, law enforcement issues and concerns touching on delivery of Justice.

A full 29% of the Quarter complaints alleged delay in service-delivery. Many Kenyans feel that unnecessary and inexcusable time is taken to perform or deliver normal and routine duties and services to them. A considerable number of complaints reported related to allegations of wrongful dismissal from work, discrimination by public officers and public institutions and negative ethnicity. In

² 'Others' is a general term comprising of complaints categories such as Maladministration, Breach of integrity, corruption, incompetence, misbehaviour and ineptitude

Public Institution	Number of PCSC Inquiries NOT Responded to					
	3 to 6 Months	7 to 9 Months	10 to 12 Months	Over ONE Year	Total	Percentage
Ministry of State for Immigration and Registration of persons	3	0	2	1	6	1
Public Service Commission	0	3	2	1	6	1
Pensions Department	3	2	0	1	6	1
Ministry of Roads	2	1	1	1	5	1
Ministry of Medical Services	1	1	2	1	5	1
Telkom Kenya Ltd	3	1	1	0	5	1
Ministry of Higher Education	2	1	0	1	4	1
Ministry of Cooperative Development and Marketing	2	1	1	0	4	1
Ministry of Public works	1	1	0	2	4	1
Ministry of Gender, Children and Social Development	1	0	1	1	3	1
Ministry of Forestry and Wildlife	0	2	0	1	3	1
Ministry of Energy	2	0	1	0	3	1
Kenya Revenue Authority	1	1	1	0	3	1
Ministry of Housing	2	0	0	0	2	0
Ministry of state for National Heritage and Culture	1	0	1	0	2	0
Ministry of Environment and Mineral Resources	0	1	0	1	2	0
Office of the Vice President	1	0	0	0	1	0
Ministry of Livestock Development	0	1	0	0	1	0
Ministry of Tourism	0	0	1	0	1	0
Ministry of Water and Irrigation	1	0	0	0	1	0
TOTAL	151	116	210	41	518	100%

The causes of non-responsiveness vary from the excusable, the partially excusable, to the completely non-excusable. The PCSC's experience to date has provided a clear picture of the institutions that fall in these categories. This experience will be reflected in the PCSC's Strategic Planning process.

3.5 Analysis Based on Ministries and Public Sector Institutions

TABLE 3.5: Ministries and public sector Institutions complained against

No.	Public Institution	No. of Complaints	Percentage
1	Kenya Police	50	16
2	Provincial Administration	46	14
3	Ministry of Lands	37	12
4	Ministry of Labour	28	9
5	The Judiciary	16	5
6	State Law Office	12	4
7	Advocates Complaints Commission	11	3
8	Ministry of Education	10	3
9	Teachers Service Commission	9	3
10	Pensions Department	8	3
11	Ministry of Local Government	7	2
12	Ministry of Cooperative Development and Marketing	6	2
13	Ministry of State for Planning, National Development and Vision 2030	6	2
14	Nairobi City Council	6	2
15	Ministry of State for Defence	5	2
16	Ministry of Medical Services	5	2
17	Ministry of Roads	5	2
18	Ministry of Gender, Children and Social Development	4	1
19	Kenya Railways Corporation	3	1
20	Kenya Power & Lighting Co. Ltd	3	1
21	Kenya Revenue Authority	3	1
22	Ministry of Forestry and Wildlife	3	1
23	Ministry of Youth Affairs & Sports	3	1
24	Kenya Medical Research Institute	2	1
25	Kenya Electricity Generating Co. Ltd (Kengen)	2	1
26	Ministry of Agriculture	2	1
27	Ministry of Finance	2	1
28	Ministry of Fisheries Development	2	1
29	Ministry of State for Immigration and Registration of Persons	2	1
30	Ministry of Water and Irrigation	2	1
31	Public Service Commission	2	1
32	Interim Independent Electoral Commission	1	0
33	Kenya Agricultural Research Institute	1	0
34	Kenya Prisons	1	0
35	Kenya Pipeline	1	0

No.	Public Institution	No. of Complaints	Percentage
36	Kenya Wine Agencies Ltd	1	0
37	Kenyatta University	1	0
38	Ministry of Information and Communications	1	0
39	Ministry of Livestock Development	1	0
40	Ministry of Public Works	1	0
41	Ministry of Transport	1	0
42	National Anti Corruption Steering Committee	1	0
43	National Social Security Fund (NSSF)	1	0
44	Postal Corporation of Kenya	1	0
45	Telkom Kenya	1	0
46	Individual (Private) Complaint	1	0
	Total	317	100

The complaints received involved a wide range of Government Ministries and public sector institutions. The highest number of Complaints received was against the Ministry of State for Provincial Administration and Internal Security, totaling 96, which represents 30% of the total Complaints received during the Quarter.

This Ministry remains the undisputed butt of complaints by the public, having consistently topped the PCSC's rankings in this regard. Out of the 96 Complaints received against this Ministry, 50 complaints were against the Kenya Police while 46 complaints were against the Provincial Administration.

The Ministry of Lands recorded 12% of the total complaints in the Quarter. The Ministry of Labour and the Judiciary followed with 9% and 5% respectively.

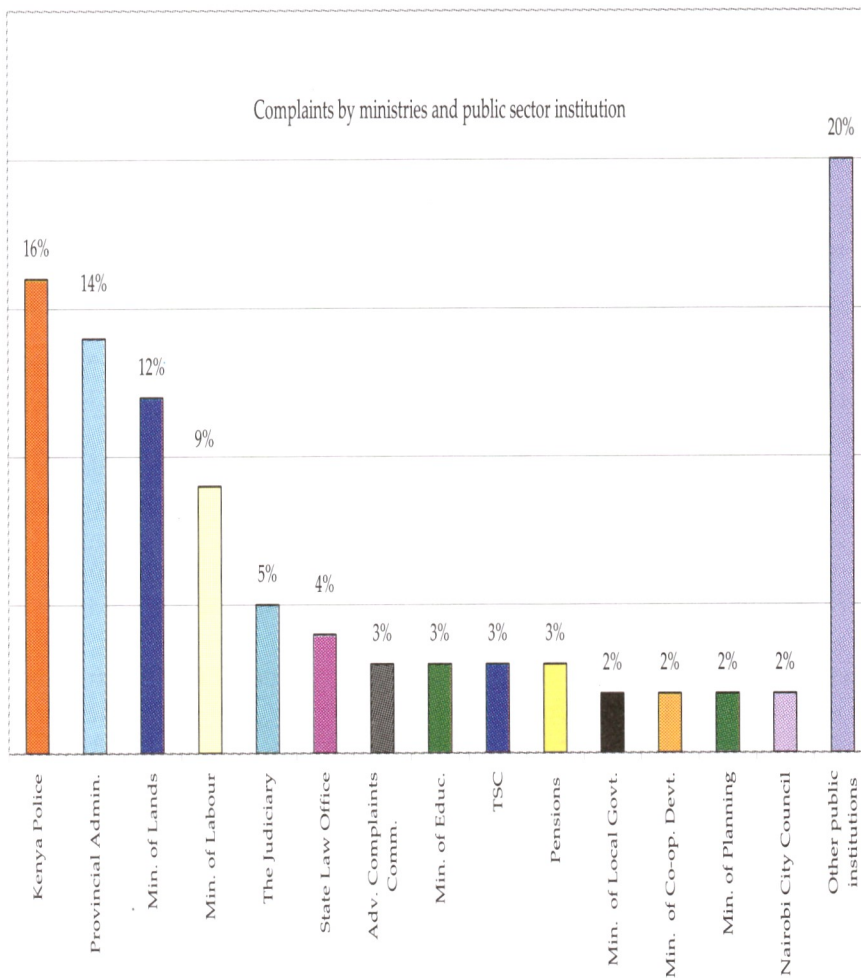
Other notable institutions complained against include the State Law Office with 4%, the Advocates Complaints Commission with 3%, and the Ministry of Education, the Teachers Service Commission, and the Pensions Department with 3% each. Institutions with only one complaint against them during the Quarter include the Ministry of Public Works, the Interim Independent Electoral Commission, The Kenya Prisons and the National Social Security Fund (NSSF).

Based on these empirical statistics, some key public service institutions like the Kenya Police, the Provincial Administration, the Ministry of Lands and the Judiciary have a clear obligation to urgently address their service-delivery and complaints-management systems and standards. This applies not just to the highest-ranking institutions in terms of the number of complaints registered, but to all public sector institutions.

An increase in the number of public complaints is also a reliable pointer to the service-delivery standards in the concerned public institution. At the same time, it is a valuable indicator that points out the priority reform areas in the public sector that require attention.

The PCSC applauds the on-going public sector reforms and challenges all stakeholders, whether in the public sector, private sector, or individual citizens, to support the ongoing systemic and structural reforms in public sector institutions.

FIGURE 4: Graphical Representation of Complaints Received by Ministries and Public Sector Institutions.



3.6 Analysis of Complaints Based on Provinces.

TABLE 3.6: Distribution of Complaints across the Provinces

Province	No. Received	Percentage
Nairobi	87	27
Central	68	21
Eastern	38	12
Western	37	12
Nyanza	34	11
Rift Valley	34	11
Coast	15	5
North Eastern	4	1
TOTAL	317	100%

The highest number of Complaints was received from Nairobi Province at 27%, followed by Central Province at 21% and Eastern Province at 12%.

The least number of Complaints was received from Coast and North Eastern Provinces at 5% and 1% respectively. This variance in distribution can be attributed to the proximity, or otherwise, of PCSC's services which are presently only available in Nairobi.

These statistics highlight the urgent need to spread PCSC's presence to, at the very least, all Provincial Headquarters, and subsequently to District Headquarters. This is emphasized by the fact that 74% of all Complaints received by the PCSC come to our attention through personal visits to PCSC offices at Shell & BP House, Harambee Avenue, Nairobi – see **Table 7** below.

The PCSC is concerned with the persistent low rate of complaints lodged from the Coast and North Eastern Provinces. The two Provinces remain at the bottom of the table of the PCSC complaints geographic distribution for the second year running.

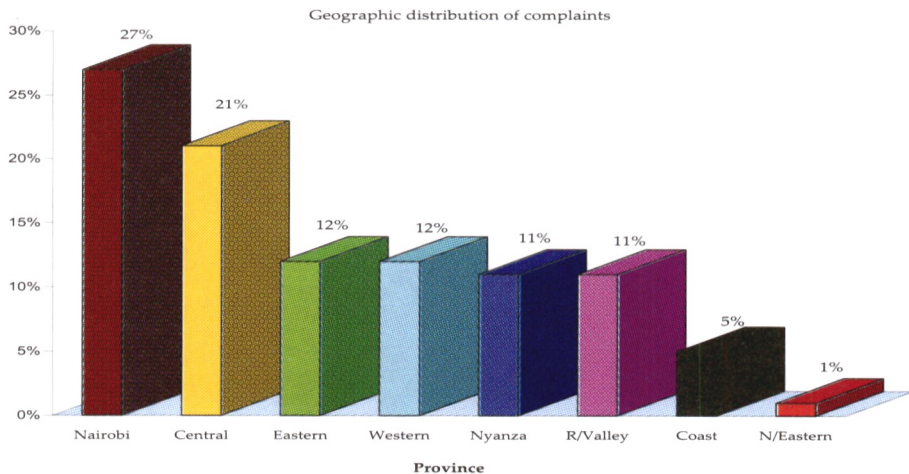
Out of the Four (4) complaints received from North Eastern during the Quarter, Three (3) complaints were reported to PCSC by visiting its office at Shell and BP House.

In its Provincial tours in the second Quarter of the last financial year 2008/09, the Committee got a clear sense in Garissa, Mombasa and Kisumu that it is not only essential, but vital, that PCSC's services be cascaded to Provincial Headquarters urgently, and to District Headquarters in the short to medium term.

As a short-term remedy to address the above concerns, the PCSC has collaborated with local Community Based Organizations (CBO) in three districts as a pilot project. These are Garissa, Kerugoya and Kakamega.

The CBOs, which are active at the local level, will facilitate and bridge the gap between the PCSC and the locals at the lower geographic levels in the selected districts.

FIGURE 5: Graphical Representation of Complaints received by Province

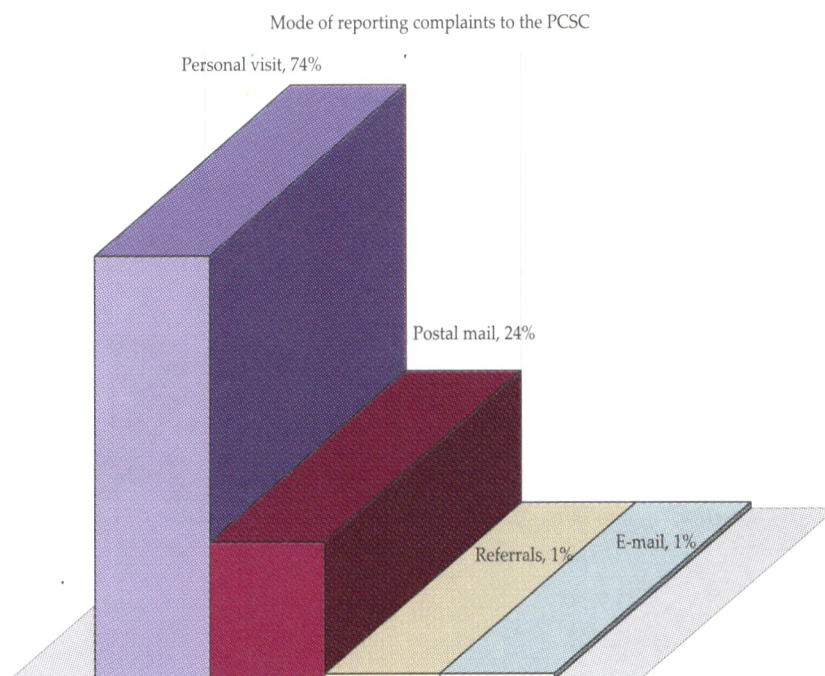


3.7 Analysis by Mode of Lodging Complaint

TABLE 3.7: Mode of Lodging Complaints

Mode Of Reporting	No. Received	Percentage
Personal Visit	234	74
Postal mail	75	24
Referral from other institutions	5	1
Email	3	1
TOTAL	317	100%

FIGURE 6: Graphical Representation of Mode of Reporting Complaints



3.8 Analysis by Gender

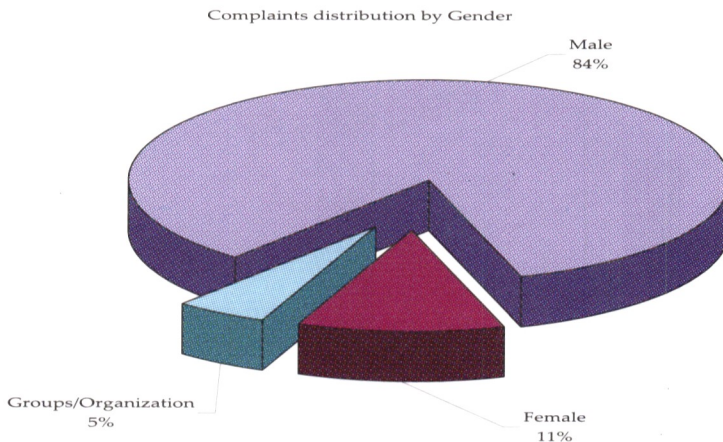
TABLE 3.8: Complaints Distribution by Gender

GENDER	NUMBER	PERCENTAGE
Male	265	84
Female	36	11
Organizations/Groups	16	5
TOTAL	317	100%

As evident from distribution of the Quarter Complaints in the above table, there is a large disparity in the number of complaints received from women as compared to men. Women reported a mere 11% of the Quarter Complaints as compared to men's 84%.

As has been noted before, this figure of 11% does not indicate a deep satisfaction by the females in the population with public service delivery; rather, it is probably a reflection of cultural and access issues – a matter of continuing concern to the PCSC.

FIGURE 7: Graphical Representation of Complaints received by Gender

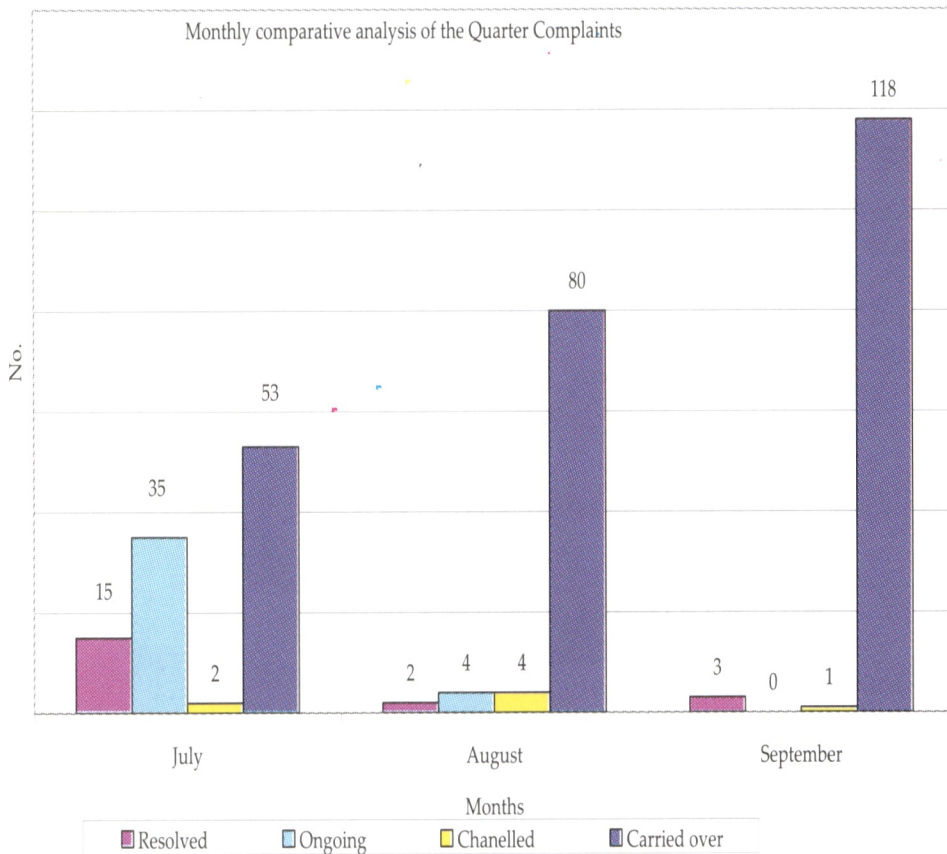


3.9 Monthly Analysis of Complaints in the Quarter

TABLE 3.9: Status of Current Quarter Complaints

STATUS				TOTAL	%
	July	August	September		
Inquiries initiated by the PCSC	35	4	0	39	12
Carried over	53	80	118	251	79
Complaints resolved	15	2	3	20	6
Channeled to other government institutions	2	4	1	7	2
TOTAL	105	90	122	317	100%

FIGURE 8: Monthly comparative analysis of the Quarter Complaints

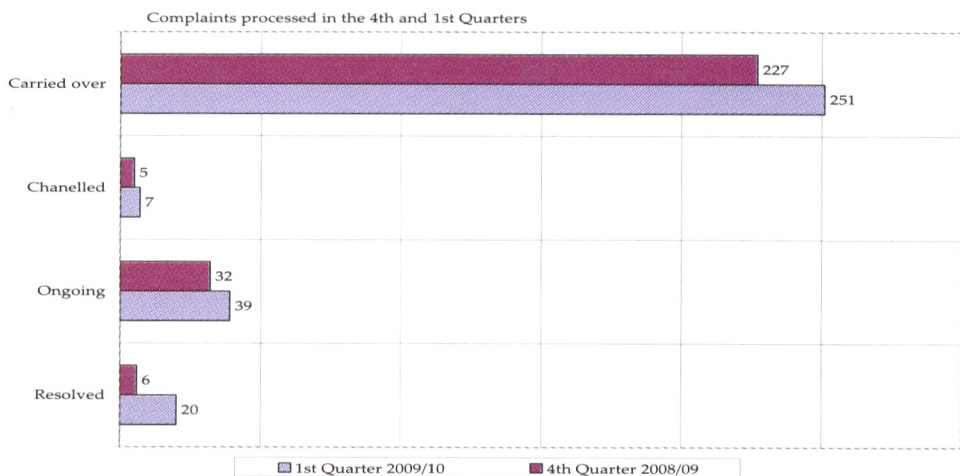


3.10 Comparative Analysis by Quarters

TABLE 3.10: Comparison of Complaints Processed in the 4th Quarter 2008/09 and 1st Quarter 2009/10

STATUS	Q4 '08/09	%	Q1'09/'10	%
Inquiries initiated by PCSC	32	12	39	12
Carried Over	227	84	251	79
Complaints channeled to responsible department of government for action e.g. The Police Complaints Department.	5	2	7	2
Resolved by the PCSC	6	2	20	6
TOTAL	270	100%	317	100%

FIGURE 9: Graphical Representation of Complaints processed in 4th Quarter of 2008/09 and 1st Quarter 2009/10



CHAPTER FOUR

4.0 ADVOCACY, OUTREACH & MEDIA ACTIVITIES

PCSC appreciates that communicating to the general public on the role of the office is a key component of PCSC's business. Opportunities to communicate to the public arise through media events, advocacy and outreach activities, easily accessible and understandable information literature and the internet.

To this end, PCSC undertook a number of initiatives with the support of the Governance, Justice, Law and Order Sector (GJLOS) Reform programme as described below.

4.1 Advocacy and Outreach

PCSC staff participated in week-long events to publicise the role and functions of the office. PCSC staff attended the Central province Agricultural Society Show in Nyeri. During these events, PCSC staff received Complaints and also offered advice on other relevant Government Departments that could handle the complaints lodged.

4.2 Establishing an Effective Online Presence

The PCSC continues to be hosted on the World Wide Web by the Ministry of Justice, National Cohesion and Constitutional Affairs on its website. In the next Quarter, the PCSC will establish and design its own user-friendly website with useful resources for public institutions and the public in general. Key features of the website will include:

- PCSC Form 1 for Complainants to lodge Complaints online;
- PCSC Quarterly Reports;
- Information about PCSC; and
- Information and tips for the public on resolving complaints.

4.3 Maximising on Media Opportunities to Increase Awareness

During the Quarter, PCSC consolidated its media activities to communicate its dual role of resolving individual complaints and improving service-delivery in the public sector. The activities implemented as part of media activities included;

- Media advertising campaigns aired on KBC Radio and Television and on Citizen TV communicating the role of the PCSC and how the public can access PCSC's services;
- Educative and informative programmes aired on the KBC *Je, Huu Ni Uungwana?* programme on the role of the PCSC;

- Release of the PSCSC's Fourth Quarterly Report for 2008/09 Financial Year pursuant to *Kenya Gazette Notice 5826* of June 29th 2007 which requires the PCSC..... (xii) *To publish Quarterly Report for public information on the number and nature of complaints received and action taken by the Committee.*

To this end, PCSC released its 4th Quarterly Report to the public on August 18th, 2009. The Report was also circulated to all Government Ministries, Government Departments, Development Partners and the public during regional visits.

4.4 Information Literature

During the Quarter, PCSC published a suite of new information material which explains the role and mandate of PCSC, how the public can lodge complaints and the services PCSC offers. These IEC material include PCSC booklets, flyers, brochures, key-holders, branded clocks, t-shirts and branded bags. This material will be distributed to the public during upcoming PCSC events and regional visits.

CHAPTER FIVE

5.0 RECOMMENDATIONS

5.1 Complaints Specific Recommendations

Kenya Gazette Notice No. 5826 of June 29 2007 mandates the PCSC:

- (vii) *To perform any duties or tasks with regard to complaints with a view to giving meaningful effect to the same*

1) Unfair Rescission of Terms of Service

A complaint was lodged against the Pensions Department regarding payment of the Complainant's retirement benefits. The Complainant alleged that while she was in the service in the Ministry of Health, her terms of service were converted from Contractual to Permanent and Pensionable in September 1996. However, upon retirement, the Pensions Department declined to pay her benefits on the ground that her terms of service were Contractual. The PCSC took the view that this constituted a clear case of Injustice and initiated inquiries with the Pensions Department. The Pensions Department clarified that it was the Public Service Commission that rescinded its earlier decision on the conversion of the Complainant's terms of service to Permanent and Pensionable. The PCSC has initiated further inquiries with the Public Service Commission on the reasons for rescinding the Complainant's conversion of terms, and is awaiting a response.

2) Improper Rescission of Promotion

The Complaint related to improper rescission of promotion by the Public Service Commission. The Complainant alleged that he had been appointed/ promoted to the position of Director, Performance & Efficiency Audit, in the Public Sector Reform and Development Secretariat by the Public Service Commission. The Commission later rescinded the decision and ordered disciplinary proceedings to be instituted against the Complainant. The Complainant's authorizing officer declined to institute disciplinary action on the basis that there was no justifiable reason for the same. PCSC opined that there was an instance of Administrative Injustice and initiated inquiries with the Public Service Commission. The Public Service Commission responded to PCSC's inquiries stating, summarily, that they upheld their earlier decision. In May 2009, the PCSC wrote to the Public Service Commission requesting a meeting to resolve the complaint. However, the request for a meeting was verbally declined by the Chairman of the Public Service Commission.

3) Unfair Rescission of Appointment

The Complainant, X, was appointed a Member of the Non-Governmental Organizations Coordinating Board for a term of three years, by the Vice-President, vide a gazette notice dated 11th April 2008. She was appointed to represent gender interests. However, following a cabinet reshuffle the incoming Minister of State for National Heritage and Culture revoked the Complainant's appointment in July 2008, and instead replaced her with a man from his ethnic tribe.

PCSC initiated inquiries with the Ministry of National Heritage and Culture. In response the Ministry stated that the Complainant participated in elective politics during the 2007 elections 'contrary to the Public Servants Ethics Act' and that out of the eight (8) appointments to the Board, two (2) were women.

However, the PCSC notes that the appointment of the Complainant to the Board was in April 2008, months after the elections. Further, one of the gentlemen appointed with her also participated in the 2007 elections as a candidate. Interestingly enough, his appointment has not been de-gazetted. Further, the two women on the present Board represent the NGO Council while the Government side has no representation. This is the position the Complainant was expected to fill.

The PCSC views the removal of the Complainant from the Board as a case of maladministration since it translates to improper discrimination. It is evidence of the inconsistent application of policies and a failure to perform a duty impartially and equitably, which goes against the spirit of the Constitution.

The PCSC recommended to the Permanent Secretary of the Ministry of State for National Heritage and Culture on 3rd August 2009 that the Complainant be reinstated to the Board. Appointments to the Board are at the discretion of the Minister but the holder of the office is expected to act within certain confines of policies that are intended to address gender disparity. In their letter of 1st September 2009 the Ministry has indicated clearly that they do not intend to review this complaint.

4) Unfair Dismissal

The Complainant, X, a Higher Clerical Officer with the Judiciary, was, in March 1998, dismissed from the Service, for gross misconduct. Prior to the dismissal, the Complainant was informed that the Ministerial Advisory Committee had recommended to the Judicial Service Commission (JSC) that he should be retired in the

Public Interest. The Complainant was therefore called upon to Show Cause why he should not be retired from the Service in the Public Interest. Despite the Complainant's response, he was dismissed by the JSC on grounds of gross misconduct, without any explanation.

The PCSC initiated inquiries and observed that the implications of retiring an officer in the Public Interest or dismissing him are totally different. i.e. with and without benefits. There should also have been strict adherence to the principles of natural justice. The Complainant should have been given an opportunity to defend himself against dismissal, and also given reasons why the JSC opted to dismiss him against the recommendation of the Ministerial Human Resource Advisory Committee. The PCSC notes that as a matter of procedure, the JSC does not avail reasons for dismissal to employees, thereby giving raise to claims of nepotism, bias and favouritism, as in this case.

The PCSC recommended to the Secretary of the Judicial Service Commission on September 17th 2009 that the Complainant's dismissal be revoked and instead that he be retired in the Public Interest. Their response of 15th October 2009 implies their reluctance to review the dismissal taking into account the issues raised by the Complainant.

5) Unfair Termination of Employment

The Complainant, X, then an employee of the Kenya Power and Lighting Company (KPLC) was transferred from Nairobi to Kisumu in February 2004. However, he was soon thereafter verbally recalled from Kisumu to Nairobi. Once again, whilst in the Nairobi office the Complainant was instructed to proceed to Kisumu. These transfers adversely affected the Complainant, both physically and financially. Subsequently, on September 4, 2004, he tendered his resignation to the Chief Human Resources and Administration Manager (Chief HR & Admin Manager) through the Assistant Regional Manager, West Kenya. His intention was to take up a job offer by the Allen Grove School Limited with effect from October 4, 2004. In his resignation letter the Complainant gave his formal 30 days notice and proceeded on leave which was meant to end on October 4, 2004.

On September 15, 2004, the Complainant was recalled before the expiry of his leave by the Chief HR & Admin Manager and instructed to avail himself for work on September 17th through to September 27th. Moreover, on October 4, 2004, the Chief Marketing Officer requested the Chief Manager, Distribution and Customer Service (the Complainant's immediate supervisor) to release the Complainant from his duty Station in Kisumu to assist in regional

Shows that were to take place on October 14th to 16th and November 4th and 6th.

As a result of these instructions, on September 27, 2004, the Complainant acting on the advice of the Chief Marketing Officer and the Chief Manager, Distribution and Customer Service withdrew his resignation letter by a memo to the HR & Admin through the Chief Manager, Distribution and Customer Service.

However, on October 21, 2004, the Chief HR & Admin wrote to the Complainant informing him that the withdrawal of his resignation was not approved and that his resignation of September 3, 2004 stood. In the letter the Chief HR & Admin instructed the paymaster to pay the Complainant cash in lieu of notice for the leave days together with his salary up to and including October 22, 2004.

PCSC has observed that there was an instance of maladministration in the handling of the Complainant's matter. In particular, the PCSC opined that administrative errors made by senior employees of KPLC due to lack of proper and clear procedures within KPLC, should not occasion injustice to the Complainant. PCSC therefore recommended to the Managing Director of KPLC, with a copy to the Permanent Secretary of the Ministry of Energy, that the Complainant's case be considered as a retrenchment and compensation be based on packages offered by KPLC to employees in his position; or, in the alternative, that KPLC pay the Complainant the two year's salary the Complainant would have earned had he taken up the two year contract with Allen Grove School Limited. PCSC has not received a response from KPLC to our correspondence dated 15th July 2009.

6) Irregular Revocation of Appointment

The Complainant, X, was appointed, by the Minister for Information and Communication, Director to the Kenya Film Censorship Board, for a term of 5 years, *vide a Kenya Gazette* notice dated 20th May 2005. In June 2008, the Chief Executive of the Kenya Film Commission, acting on the instructions of the Chairman of the Board, directed that the Complainant should not sign the Duty Attendance Register and the Classification Cinema Certificates which formed the basis for payment of allowances. The Complainant was also not allowed to attend Board meetings.

Since the Complainant regarded these instructions as illegal, he continued to perform his duties as a Director until 26th September 2008 when, *vide a Kenya Gazette* notice, the Minister revoked his appointment. Thereafter, the Complainant submitted his claim

allowances for the period June to September 2008, which the Kenya Film Censorship Board has refused to pay.

The PCSC initiated enquiries and has determined that neither the CEO nor the Chairman have powers under the Board Regulations or any other law or regulation to 'dismiss' the Complainant. Both these gentlemen acted *ultra vires* since the appointment and revocation of Board members is the prerogative of the Minister. In our view, the reasons that led to the initial "dismissal" of the Complainant could very well be personal, lending credence to the likelihood of discrimination. Therefore, we concluded that the action of the Chairman and Chief Executive Officer constitutes maladministration.

The PCSC has recommended to the Permanent Secretary of the Ministry of Information and Communications that the Complainant be paid his allowances for the period between June and September 2008. The Committee has received no response to our last correspondence dated 6th August 2009.

7) Unfair Dismissal

The Complainant, X, was employed in the Judiciary in 1994 as a Court Clerk until April 2003 when he was dismissed from service on allegations of gross misconduct. This stemmed from a criminal prosecution for which he was convicted and sentenced to 12 months probation. The Complainant lodged an appeal which was upheld by the Court of Appeal. He thereafter lodged an appeal to the Judicial Service Commission (JSC) requesting to be reinstated. The administrative appeal was disallowed.

The PCSC made enquiries and established that there have been instances where some public officials within the Judiciary have been charged with criminal offences and cleared by the court have been reinstated. The reasons given for their reinstatement has been that the charges against them were not established or that their past record was considered and they were given another chance to prove themselves. In this instance, the charge against the Complainant was not established and prior to his dismissal, he had been promoted in 1999 and 2002.

The PCSC formed the opinion that this is a case of maladministration since there is an inconsistent application of policies and administrative practices. This has resulted in claims of favoritism and tribalism in the Judiciary. In our letter to the Chairman of the Judicial Service Commission dated 6th October 2008, PCSC recommended that the Complainant should be paid his accrued salary and retired in the normal manner having

regard to the lapse of time. We have received no response to this letter.

5.2 Recommendations made in Previous Quarters

MADE IN QUARTERS Q4, FY 2008/09:

STATUS: NOT ACTIONED YET.

ADDRESSEE: HEAD OF THE PUBLIC SERVICE.

1. Judging from complaints received, and media reports, issues of gender disparity in public service appointments remain a concern to Kenyans, as the number of women in key positions has remained low. This is in spite of the Government having signed and ratified several international instruments that impact on the gender issue. This spirit of non discrimination is also echoed in our Constitution even though the Constitution does not substantiate how gender can be a ground for discrimination; neither does it give sanctions if such discrimination were to occur.

On the contrary, cases of injustice and discrimination against women are rampant in public appointments. The following is an illustrative complaint.

Unfair Rescission of Appointment

A Complainant alleged that in April 2008 she was appointed as a Board Member in the NGO Coordinating Board to represent gender interests. However, following a cabinet reshuffle, the incoming Minister of State for National Heritage and Culture revoked the Complainant's appointment and instead nominated two men from his ethnic tribe. PCSC initiated inquiries with the Ministry of National Heritage and Culture. In response the Ministry stated that out of the eight (8) appointments to the Board, two (2) were women. This is still far below the minimum requirement of one third. PCSC is pursuing the matter with the Ministry.

Sessional Paper No. 2 of 2006 on Gender Equality and Development recommends a 50% or equal representation of women and men in various government bodies. However, it remains unclear whether mechanisms to implement this policy have been put in place or not. The PCSC recommends that the Ministry of Gender, Children and Social Affairs urgently work towards establishing the legal framework on Gender, Equality and Development policy to make it binding as law and ultimately to reduce the systemic trends of injustice and discrimination against women in public appointments.

2. Systemic Trends in Labour Complaints

The PCSC constantly strives to not only assist Complainants in getting redress or a remedy to their complaint where maladministration has been identified, but also to encourage public institutions improve their policies and procedures to ensure that similar complaints do not recur.

In the course of examining complaints against the Ministry of Labour and Human Resource Development, PCSC has identified the Ministry's complaints resolution process as a major source of complaints. When disputes arise between employers and employees, despite successful conciliation meetings between the labour officer, the Complainants and former employers, resolution of these complaints stagnate after the conciliation stage since labour officers do not remit the agreed-on payment/s to Complainants and also do not normally follow-up complaints to satisfactory resolution.

PCSC has pointed out this systemic trend to the Permanent Secretary in the Ministry of Labour and Human Resource Development and recommends review and or revision the Ministry's procedures and policies to ensure similar complaints do not recur.

MADE IN QUARTERS Q3, FY 2008/09:

STATUS: NOT ACTIONED YET.

ADDRESSEE: HEAD OF THE PUBLIC SERVICE.

1. It came to the attention of the PCSC that there was substantial corruption attending the spending by public officers of some budget lines, particularly those relating to Personal Allowances not paid as part of Salary.

The proximate causes for this corruption were found to be

- (a) Weak or even complicit administrative oversight by public officers with Authority-to-Incur-Expenditure; and
- (b) Opportunistic, self-serving interpretations by public officers of Administrative Circulars issued by the Head of the Public Service.

While the opportunism of public officers in taking advantage of loose financial oversight is decried, the following must be acknowledged;

- (c) that there is a multiplicity of Circulars governing the entitlements of public officers to allowances;
- (d) that the Circulars are quite vague in their definitions;

- (e) that the Circulars fail to anticipate reasonably foreseeable situations necessitating payment of special allowances due to exigencies of duty, thereby encouraging public officers to become 'creative' in their interpretation of applicable Circulars.

It is therefore strongly recommended that all Administrative Circulars on Allowances payable to public officers be reviewed and consolidated. Secondly, oversight by Permanent Secretaries should be improved dramatically to prevent situations where public officers raise claims, justify them to themselves and then proceed to pay themselves, often in reliance on wrong or self-serving interpretations of Administrative Circulars.

MADE IN QUARTERS 1 & 2 OF FY 2008/09:

STATUS: NOT ACTIONED YET.

ADDRESSEE: HEAD OF THE PUBLIC SERVICE.

1. Policy on the Judicial Service Commission Staff.

The Judicial Service Commission [JSC], was delinked from the Public Service Commission [PSC] in 1998. The Judiciary was then expected to set up its own contributory superannuation pension service scheme for its staff. This has not been done to date. This has caused unnecessary tensions and friction between several government departments particularly the Pensions Department in processing of gratuity and pensions payments.

The PCSC observes that this is a policy issue that needs further consultation and resolution at Cabinet level expeditiously in order to forestall complaints from retired judicial officers.

**MADE IN QUARTERS 3 & 4 OF FY 2007/08:
STATUS: NOT ACTIONED YET.
ADDRESSEE: HEAD OF THE PUBLIC SERVICE.**

1. Review of the Disciplinary Process

Many Commissions do not permit aggrieved public officers who have disciplinary cases before them to appear in person to argue or appeal their cases. In essence, this denies them the opportunity to be heard and to explain themselves personally. From the Committee's experience, many Complainants are unable to adequately communicate their grievances in writing when filling out the Complaint Form. The essence of their Complaints only becomes evident after they have been heard by the Committee. It can safely be assumed that this affects the existing Public Service modalities of dealing with Complainants. It is therefore imperative that the disciplinary process in the Public Service be participatory and as fair as possible. Indeed, justice must not only be done, but be seen to be done.

**MADE IN QUARTERS 1 & 2 OF FY 2007/08:
STATUS: NOT ACTIONED YET.
ADDRESSEE: HEAD OF THE PUBLIC SERVICE.**

1. Future Establishment of New Committees and Commissions –

The experience of the PCSC since its inception highlights the challenges that face new committees and commissions in setting up their operations. Navigating government procedures is a challenge for all new agencies. In recognizing that Government will need to establish Commissions and Committees in the future, it is the recommendation of the PCSC that such bodies should only be established after all critical authorizations are in place. For example, the authority from the Department of Personnel Management [DPM] enabling deployment of staff and setting out their emoluments is crucial for any institutional and organizational development to commence. So is the issue of Office Space and Administrative Support (Telephones, Vehicles, Temporary Staff etc). As matters stand, a newly established Committee or Commission finds tremendous difficulty in getting to its feet, lacking as it may be in necessary experience or exposure to the labyrinthine workings and administrative procedures of Government. This leads to a substantial waste of time by public sector novices as they try to execute their mandate and get going, which could be easily avoided by the simple expedient of a

dedicated team whose work is to get new bodies functioning and executing their mandate in the shortest possible time. A typical example is the newly-appointed Committee of Experts on the Constitution which, in light of its target of delivering a draft Constitution by the end of the year barely 9 months away, will need to hit the ground running on its core mandate, rather than spending months trying to get off the ground.

A simple Administrative Procedure Protocol for Committees and Commissions, run from the Office of the Head of the Public Service, should be established and implemented urgently. The Office of the Head of the Public Service would then guide and assist Committees and Commissions establishing their operations in compliance with existing government rules and procedures, and in the quickest time possible. The PCSC would like to use its experience as a learning tool for the benefit of future Committees and Commissions.

2. Hierarchical recognition of the PCSC in the Public Service

The administrative oversight mandate of the PCSC is broad and encompasses the entire public service. By its establishment, it is expected that the PCSC will complement Public Service reform efforts to provide quality services to Kenyans by playing an effective oversight role over public servants and public institutions. It is therefore our view that the PCSC should enjoy higher administrative status within the organization of Government. Moreover, in view of the fact that the realization of the PCSC's mandate is linked to its independence (financial and operational) and impartiality, its position as a Semi-Autonomous Government Agency under the Ministry of Justice, National Cohesion and Constitutional Affairs is deserving of review.

3. Service Charters

Service charters in Ministries and Government Departments should be presented in both Kiswahili and English. The PCSC has not come across a Swahili version of a service charter in any of the government offices it has visited. Kiswahili is the national language that is most commonly used in national administrative matters.

