



PRESS STATEMENT BY THE DIRECTOR OF THE KENYA ANTI-CORRUPTION COMMISSION (KACC) ON THE LAUNCH OF THE FOURTH ANNUAL REPORT (2007/2008) OF THE COMMISSION

Ladies and Gentlemen of the press,

The Kenya Anti-Corruption Commission is required by law to prepare an annual report detailing its activities for presentation to Parliament. We have done so and forwarded sufficient copies to the Ministry of Justice, National Cohesion and Constitutional Affairs for presentation to Parliament.

Today, I have great pleasure in launching the annual report and opening it to the Kenyan public for their information.

As our crucial partners in the fight against graft, may I take this opportunity to invite and rally members of the public through you, the press, to access the Report and closely scrutinize it in order to know not only our achievements and challenges in the anti-corruption war but also to evaluate their own contribution in this fight.

I am convinced that with this information at their disposal, the public will be in a position to make correct and informed opinions about Kenya Anti-Corruption Commission's performance. Without such information there is always a danger of making conclusions about the Commission that, more often than not, are based either on misrepresentation of facts or skewed information.

The Commission's activities and achievements:

The details of the Commission's activities, achievements and challenges are contained in the Annual Report itself. However, for purposes of this event I will highlight just enough to whet your appetite to study and disseminate the Report.

As you are aware, the Commission's mandate comprises of investigations and asset tracing, asset recovery and corruption prevention.

Ladies and Gentlemen,

In the area of investigations, the Commission during the period under review **completed 500 investigations** files out of

which **111 cases** were forwarded to the Attorney-General and **389 closed by the Commission after preliminary investigations**. Out of the cases forwarded to the Attorney-General, **86 cases** were recommended for prosecution. The Attorney-General accepted our recommendations in **70 cases** of which proceedings were lodged in court. 21 cases were recommended for closure for want of evidence to prosecute and **four (4)** were recommended for administrative action.

You will note in the Annual Report that some of the high profile cases investigated and prosecutions commenced by the Attorney-General include the fraudulent disposal of the Kenya Reinsurance Corporation's property by the Corporation's former managing director and finance director. The two have been charged in court with appropriate offences and recovery proceedings instituted to recover the corporation's assets.

The Commission also commenced investigations into alleged Pending Bills under which several claimants are claiming from the Government an **estimated amount of Kshs. 80 billion** for goods and services allegedly rendered to the Government. There are also investigations into the judiciary on

procurement and financial irregularities that could have led to substantial loss of public funds. Complaints and reports by members of the public have also led the Commission to undertake investigations into the alleged misuse or misappropriation of the Government's devolved funds, that is, the CDF, the LATF and the Fuel Levy Fund. In some cases legal suits have been instituted for recovery of these funds.

The Commission has also completed investigations into fraudulent **financing contract for Kshs. 2 billion** between Kenya Pipeline Company and Triple A Capital Limited. The investigation report with recommendations to charge the suspects with various counts has been forwarded to the Attorney General.

On the Asset Tracing front, the Commission traced several corruptly acquired assets including **bank deposits of more than Kshs.128 Million** by a public servant whose income is not proportional to this amount of wealth.

The Commission also traced the illegal disposal and acquisition by a private company of a sugar estate called Nucleus Estate of Miwani Sugar Company **valued at over**

Kshs. 2.3 billion. Suits for recovery of these assets are in court. The recovery of this asset will obviously benefit the local sugar-cane farmers and guarantee continued employment of many Kenyans who would otherwise lose their jobs with the illegal disposal of this asset.

During the period under review, the Commission detected and disrupted a transaction involving the Kenya Sugar Board **in which Kshs. 2.2 billion** would have been irregularly approved and paid out.

The Commission also smashed a tax evasion ring at the Mombasa Old Port in which un-customed goods were being imported into the country and those meant for export diverted to the local market. Pursuant to this operation, KRA **recovered about Kshs. 2 million in taxes**.

Ladies and Gentlemen,

Besides investigation and asset tracing, the Commission instituted legal processes for freezing of assets suspected to have been acquired through corruption or economic crimes. 103 preservative applications were filed to preserve various properties **valued at approximately Kshs.930 million**, while one hundred (100) substantive suits were filed for recovery of

those assets that have been lost, damaged, or acquired through corruption and economic crimes, all valued at **approximately Kshs. 860 million.**

During the period under review, the **Commission recovered assets worth Kshs. 3,779,099,324.80.**

Notable among the recoveries are the Grand Regency Hotel, which had been acquired with monies fraudulently obtained from Central Bank of Kenya and 12 City Council Nairobi houses in Woodley estate in Nairobi.

The Commission also recovered 14 parcels of land hived off Karura Forest that had been illegally allocated to private persons. This recovery was crucial, not only to the Forest Department, but also to the Ministry of Public Works which could have been unduly hindered in the construction of the earmarked Northern by-pass, part of which passes through the portion of Karura forest that had been illegally allocated.

Ladies and Gentlemen,

In exercise of its mandate to prevent corruption, the Commission's Officers while on routine systems

examination at the Mombasa Port detected a flawed procurement of cranes by the Kenya Ports Authority at **a cost of Kshs. 1 billion**. At the intervention of the Commission the contract was stopped, saving the treasury an **amount of Kshs. 160 million** that was in excess of the **budgeted figure of Kshs. 840 Million**.

During the period under review the Commission also prevented an **irregular payment of Kshs. 63 Million** to a contractor by the Ministry of Education.

The Commission also undertook several programs geared towards examining systems, policies, procedures and practices of public bodies and made recommendations for sealing corruption loopholes identified in such bodies. The examination was carried out in, among other institutions and departments, KEMSA, Motor Vehicle Registration and Licensing Department, the Traffic Department, Immigration Department, City Council of Nairobi, Municipal Council of Mombasa, Department of Pensions and the Teachers Service Commission. The corruption prevention work involved systems review; training integrity assurance officers in the public and

private sector; facilitating codes of conduct and formation of corruption prevention committees and; forging partnerships with other organizations and institutions involved in the fight against corruption.

The Commission **trained 17,846 persons** drawn from **48 institutions** among them, state corporations, Government departments, community based organizations, religious and educational institutions, **including 580 officers** in the cooperative sector across the country.

Ladies and Gentlemen,

Like in previous years, last year was not a walk in the park. During the period, the Commission faced several challenges in its bid to achieve the set targets. The most common and chronic of these challenges are in the area of enforcement of anti-corruption laws.

First, many suspects of corruption and economic crimes have, as in the past, resorted to courts to curtail the Commission's activities; they have routinely filed

constitutional petitions and judicial review applications to stop investigations and derail criminal proceedings. Many of these applications and petitions are neither based on valid complaints against the Commission nor do they have any foundation in law. The net effect of such abuse of the due process of the law is to protract the investigations and delay the prosecution and determination of corruption related cases.

Secondly, the judiciary itself is overloaded with a backlog of cases pending for determination. Even where the suspects or defendants have not filed any application or petition against corruption related cases, the hearing and determination of these cases expeditiously is still not possible because of the large ratio between the number of magistrates or judges and the number of cases pending for determination. For this reason, although special magistrates have been appointed to preside over corruption related criminal cases on day to day basis until they have been determined, it has not been possible to achieve this goal because the same magistrates have also been tasked with other ordinary cases that call for their attention.

Thirdly, the decisions emanating from some of the courts have questioned the Commission's powers in the exercise of its investigatory mandate and stopped the Commission in its tracks from continuing investigations into mega-scandals like the Anglo-leasing contracts.

Those are however not the only challenges. They are just the most significant.

The slow pace in determination of corruption related cases, whether in the prosecution of those charged with corruption related offences or in the suits for recovery of corruptly acquired assets and the negative decisions that continue to flow from our courts have, understandably, led to public frustration, if not apathy, with respect to the efforts to fight corruption.

Ladies and Gentlemen,

In order to overcome many of the legal challenges that are threatening to clog the anti-corruption wheels and frustrate the Commission's war on graft, it will be necessary for Parliament to undertake a major overhaul of the anti-

corruption laws and anchor the Commission in the Constitution of Kenya in view of the reservations the judiciary has expressed on the existing laws.

In some cases, we need new laws. One such area is mutual legal assistance. There is need for a comprehensive law on mutual legal assistance to facilitate international investigation of corruption and economic crimes. We would also urge Parliament to move fast and pass into law the Proceeds of Crime & Anti-Money Laundering Bill, 2008 that has been due for third reading since April, 2008.

And of course I need not belabour the need for enhanced capacity in the judiciary and in the prosecution department for expeditious disposal of corruption related cases both in the criminal and civil courts.

In conclusion, allow me to reiterate that even with the strongest laws against graft, we cannot succeed without the crucial partnership of the public. There is dire need for practicing corruption hostile values. Without a change in values, we shall labour in vain. In addition, I would encourage

members of the public to join the Commission on the frontline against corruption and not watch from the sides, waiting for KACC to score or miss and then comment. It is only by working together in one accord that we can foster zero tolerance to corruption in Kenya.

With those few remarks, may I declare the Kenya Anti-Corruption Commission's Annual Report for 2007/2008 officially launched.

Thank you and God Bless Kenya.

DATED at Nairobi this **10th** day of **November, 2008**

A handwritten signature in black ink, appearing to be 'A. Ringera', with a horizontal line extending to the right.

Justice (Rtd) Aaron .G. Ringera, EBS

Director/Chief Executive