

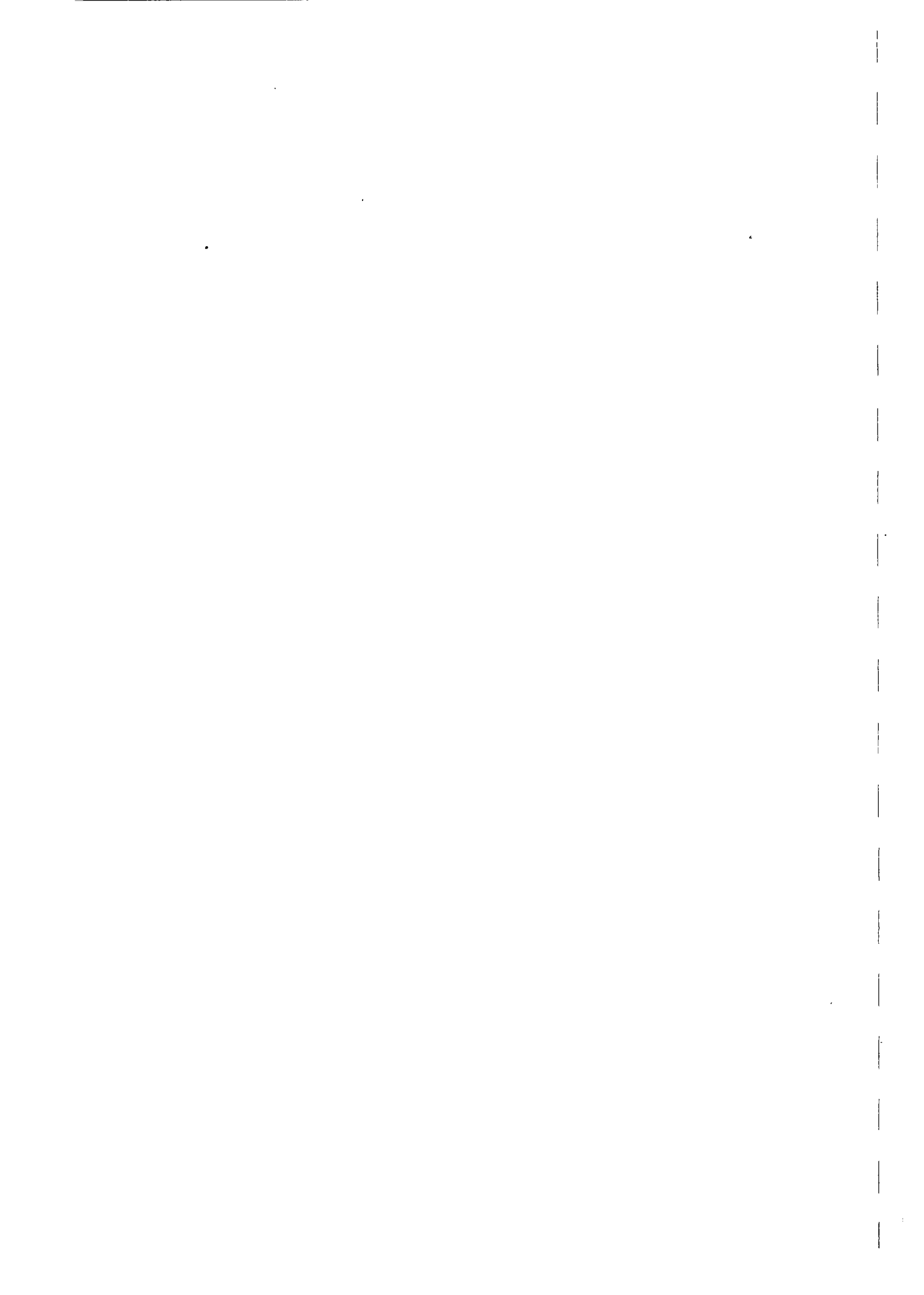


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THE THIRD QUARTERLY REPORT FOR
THE YEAR 2008 COVERING THE PERIOD
1ST JULY 2008 TO 30TH SEPTEMBER 2008

THE KENYA ANTI-CORRUPTION
COMMISSION



PREAMBLE

The Kenya Anti-Corruption Commission is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003, to prepare quarterly reports.

Section 35 provides that:

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

Section 36 provides that:

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

This report is therefore made pursuant to section 36 of the Anti-Corruption and Economic Crimes Act, 2003. The report covers the third quarter of the year 2008 and is for the period commencing 1st July, 2008 to 30th September, 2008.

1. KACC/FI/INQ/58/2007

Inquiry into allegations of irregularities in the award of tender for Kshs. 84,236,027 for the supply and delivery of non pharmaceutical products to Kenya Medical Supplies Agency (KEMSA) Investigations established that procurement law was flouted during the award of the tender.

The file was forwarded to the Attorney General on 12th September 2008 with a recommendation that the Chief Executive Officer and Procurement Manager of KEMSA be prosecuted for wilful failure to comply with the law relating to procurement contrary to Section 45(2)(b) of ACECA along with members of the Technical Evaluation Committee. They were also to be charged with an alternative charge of abuse of office contrary to Section 46 of ACECA. Advice of the Attorney General is awaited.

2. KACC/FI/INQ/56/2007

Inquiry into allegations of fraudulent transfer of Kenya Reinsurance Corporation's property situated in Villa Franca Estate, Nairobi, to an individual who worked for an insurance company. Investigations established that indeed the said property comprising a 3 bed-roomed maisonette valued at Kshs 3 million was fraudulently transferred to the individual on 20th April 2004 by the then Director of Finance & Corporate Services at Kenya Reinsurance Corporation.

The file was forwarded to the Attorney General on 15th July 2008 with the recommendation that the Director of Finance and Corporate Affairs of Kenya Reinsurance Corporation be charged with the offence of abuse of office contrary to section 46 of ACECA with an alternative charge of fraudulent disposal of public property contrary to Section 45(1)(a) of ACECA. It was further recommended that the person to whom the house was transferred be charged with the offence of fraudulent acquisition of public property contrary to Section 45(1) (a) of ACECA and obtaining registration by false pretences contrary to Section 320 of the Penal Code. The recommendation was accepted on 20.8.08.

3. KACC/FI/INQ/55/07

Inquiry into allegations of fraudulent transfer of Kenya Reinsurance Corporation's property in Villa Franca Estate, Nairobi, to an individual who worked for an insurance company. The investigation established that indeed the said property comprising a 4 bed-roomed maisonette valued at Kshs 3 million was fraudulently transferred to the individual on 16th April 2003 by the then Director Finance & Corporate Services of Kenya Reinsurance Corporation.

The file was forwarded to the Attorney General on 15th July 2008 with the recommendation that the Director of Finance and Corporate Affairs of Kenya Reinsurance Corporation be charged with the offence of abuse of office contrary to Section 101(1) of the Penal Code, the individual to whom the property was transferred be charged with obtaining by false pretences contrary to Section 313 of the Penal Code and the two of them be charged with conspiracy to defraud contrary to Section 317 of the Penal Code. The recommendation was accepted on 20.8.08.

4. KACC/FI/INQ/26/06/17E

Inquiry into allegations that the Managing Director and the Board Chairman of Kenya Pipeline Co Ltd (KPC) acquired government houses contrary to Treasury requirements. Investigations revealed that the Managing Director and the Company Secretary wilfully failed to comply with the guidelines given by the Board of Directors of KPC and failed to seek approval of the sale from the Ministry of Energy. There was however no evidence implicating the Chairman of the Board of Directors in the transaction.

The file was forwarded to the Attorney General on 14th July 2008 with recommendation that the Managing Director and Company Secretary of KPC be charged with the offence of wilful failure to comply with applicable procedures and guidelines relating to disposal of public property contrary to Section 45(2) (b) of ACECA. Advice of the Attorney General is awaited.

5. KACC/FI/INQ/09/2008

Inquiry into allegations of embezzlement of Kshs. 2,784,594 belonging to the National Museums of Kenya by a former Acting Financial Controller. Investigations established the fraudulent appropriation of the funds by the Financial Controller.

The file was forwarded to the Attorney General on 14th July 2008 with recommendation that the Acting Financial Controller be charged with

three counts of the offence of fraudulent acquisition of public property contrary to Section 45(1)(a) of ACECA and alternative charges of abuse of office contrary to Section 46 of ACECA. The file was returned on 4.9.08 with recommendation that further investigations be undertaken.

6. KACC/MSA/INQ/FI/7/2008

Inquiry into an allegation that the Managing Director of the Mombasa Water & Sewerage Company Ltd flouted procurement rules by awarding the 2007/2008 tender for the provision of general insurance services for the company's assets to a company that had been disqualified during the evaluation process for not meeting mandatory requirements for the particular procurement. Investigations established that the procurement processes were not followed as the company that was awarded the contract was not the successful bidder.

The file was forwarded to the Attorney General on 1st July 2008 with recommendation that the Managing Director of Mombasa Sewerage & Water Company be charged with abuse of office contrary to Section 46 of ACECA. It was further recommended that he be charged with an alternative charge of wilful failure to comply with the law applicable to tendering of contracts contrary to Section 45(2) (b) of ACECA. The file was returned on 11.9.08 for further investigations.

7. KACC/FI/103A/05

Inquiry into allegations of irregular advance of Kshs. 900,000 to the Finance and Administration Manager of Kenya Wine Agencies Limited (KWAL) by the Managing Director. Investigations established that the Managing Director approved a loan to the Finance Manager to purchase a car even before he had qualified for the Car Loan Scheme for Managers or a salary advance. KWAL ended up losing the money.

The file was forwarded to the Attorney General on 14th July 2008 with recommendation that the Managing Director of KWAL be charged with the offence of abuse of office contrary to Section 46 of ACECA for conferring a benefit on the Finance and Administration Manager. The recommendation was accepted on 20.8.08.

8. KACC/AT/INQ/33/05

Inquiry into allegations that an employee of Kenya Revenue Authority, Customs Department and formerly a Revenue Officer at Jomo Kenyatta

International Airport was living beyond her means. The investigation had been prompted by a report to Langata Police Station that the employee had been robbed of Kshs. 1.6 million from her house. The suspect availed an agreement to the KACC investigator to establish that she had been given the money by her friend for purposes of buying a house. The agreement was however established to be false. She had also submitted false information in her wealth declaration forms.

The file was forwarded to the Attorney General on 1st July 2008 with the recommendation that the suspect be charged with submitting a false declaration of income, assets and liabilities under the Public Officer Ethics Act, 2003 and deceiving an investigator of KACC by presenting to him a false agreement contrary to Section 66(1) (b) as read with Section 66(2) of ACECA. Advice of the Attorney General is awaited.

9. KACC/INQ/AT/15/2006

Inquiry into allegations of irregular allocation of plot number Mombasa/Block/XV/210, a public utility plot within Majengo Estate of Mombasa Municipality. The investigation established that the said parcel of land was a subdivision of an older block title known as Section XV/1/M.I (Mombasa Island). Over time, the parcels of land were leased out to several tenants who proceeded to settle on the land and provision for open spaces and roads was made in a layout plan lodged with the Municipal Council sometimes in 1973. Following intervention of the government, the tenants were settled on the land on a willing buyer willing seller basis and it was at this stage that portions previously marked as roads and open spaces were subdivided under a new subdivision scheme which largely adopted the 1973 scheme. The open spaces were never surrendered to the Government or the Municipal Council of Mombasa. The disputed open space was therefore private land and cannot be investigated or recovered by the Commission as public property under section 7(1)(h) of the Anti-Corruption and Economic Crimes Act, 2003. Nevertheless some anomalies raised serious doubts as to the accuracy, fidelity and completeness of the survey done by a private surveyor. The issues arising were referred to the Land Surveyor's Board to establish whether the said private surveyor or any other licensed surveyor was guilty of professional misconduct and take appropriate disciplinary action as empowered by section 17 of the Surveyors Act (Cap 299, Laws of Kenya).

The file was forwarded to the Attorney General on 2nd September 2008 with recommendation that the same be closed. The recommendation for closure was accepted on 3rd October, 2008.

Inquiry into allegations of massive loss of revenue by Telkom Kenya Limited through middle men referred to as Tier 2 carriers, contracted by Telkom for the conveyance of telecommunication traffic on its behalf at a commission where there was no bilateral link between Telkom and the so called traditional or Tier 1 carriers. It was further alleged that the loss was on account of lopsided interconnection agreements that Telkom entered into with some Tier 2 operators which had no equipment of their own and thus used the equipment of Telkom. Investigations established that the allegations were unfounded and that, to the contrary, Telkom earned US \$ 5.5 Million from the contracts which would otherwise have been lost to the internet service providers. It was further established that the contracts were terminated in 2003 when their viability was brought into question. Though irregularities were detected in respect of one of the contracts, no charges were proposed since the suspect has since died.

The file was forwarded to the Attorney General on 4th September 2008 with the recommendation that the same be closed. Advice of the Attorney General is awaited.

11.KACC/AT/INQ/27/2006

Inquiry into allegations of overpayment to a construction company for landscaping and construction of a sports field in Garissa Primary Teachers Training College. It was alleged that the construction company received an overpayment of Kshs. 57,230,433 in respect of the landscaping contract. Investigations conducted by the Commission confirmed the allegation. However, no criminal offence was detected.

The file was forwarded to the Attorney General on the 15th July, 2008 with a recommendation that the inquiry file be closed and that the overpayment, established to be Kshs. 63,215,331.07, be recovered by the Commission's Civil Litigation & Asset Recovery Department on behalf of the Government of Kenya. The recommendation was accepted by the Attorney General on 15th October, 2008.

12.KACC/INQ/7/11.2.04

Inquiry into an allegation that a Senior Labour Inspector with the Ministry of Labour solicited for a benefit of Kshs. 600,000 as an inducement so as to agree with the computations of dues owed to the workers of a garment manufacturing company and to have a warrant of arrest issued against

the Managing Director lifted and also have his passport released. The investigation established that the Labour officer did engage in corrupt conduct but the evidence available was not sufficient to sustain a criminal case

The file was forwarded to the Attorney General on 30th September 2008 with the recommendation that administrative action be taken against the Senior Labour Inspector. Advice of the Attorney General is awaited.

13. KACC/FI/51/2007

Inquiry into allegations that the management of Local Authority Pensions (LAP) Trust paid Kshs. 102,080 to a supplier for wall calendars that were never supplied during the re-launch of the Trust in 2005. Investigations established that the Managing Trustee carelessly failed to comply with known procedures and guidelines relating to public procurement by not only failing to tender or carry out a pre-qualification exercise of suppliers of goods and services, but also authorizing the payment of the sum of Kshs. 102,080 to the supplier without any security. However, the Managing Trustee could not be charged with any procurement related offence as LAP Trust has a statutory exemption from the operations of the mainstream procurement requirements that apply to public bodies.

The file was forwarded to the Attorney General on 10th September 2008 with recommendation that the same be closed. Advice of the Attorney General is awaited.

14. KACC/FI/INQ. 40B/2006

Inquiry into allegations that the Export Processing Zones Authority (EPZA) Management had in abuse of their office disposed off seven vehicles at unrealistically low prices without the requisite Ministry approval. Investigations established that the sale of the vehicles had been done through open tender and the sale yielded more money than had been expected.

The file was forwarded to the Attorney General on 28th July 2008 with the recommendation that the file be closed. The recommendation was accepted on 19.9.08.

15. KACC CR 142/29/2008: NAIROBI ACC 10/2008

Inquiry into an allegation that an Assistant Commissioner in the Domestic Tax Department of Kenya Revenue Authority had solicited for a benefit of Kshs. 300,000 as an inducement so as to forbear charging the complainant's employer with an alleged offence of failing to enter a sales transaction into an Electronic Tax Register. The investigation established the solicitation and receipt of Kshs. 40,000. The suspect was arrested and charged before the Nairobi Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 2nd September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

16. KACC CR 760/148/2008: KERICHO ACC 1/2008

Inquiry into allegations that a Clerical Officer attached to the Provincial State Law Office in Nakuru, who was falsely representing himself as the Deputy State Counsel, had solicited for a benefit of Kshs. 100,000 from officials of a land buying company as an inducement to facilitate the re-arrest of a suspect in a murder case. The investigations established the solicitation and receipt of Kshs. 55,000. The suspect was arrested and charged before the Kericho Anti-Corruption Court with soliciting and receipt of a benefit.

The file was forwarded to the Attorney General on 1st July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 3.9.08.

17. ACPU CR 141/990/2002: NAIROBI ACC NO. 38/2002

Inquiry into allegations that two Public Health Technicians employed by the Ministry of Health had solicited for a benefited of Kshs. 50,000 as an inducement to forbear charging the complainant with an alleged offence of selling industrial rectified spirit for human consumption in contravention of the Foods, Drugs and Chemicals Substances Act, Cap 254, Laws of Kenya. Investigations established the solicitation and receipt of Kshs. 25,000. The suspects were charged before Court but the case was terminated under Section 89(5) of the Criminal Procedure Code as they had been charged under the Prevention of Corruption Act, Cap 65, which had since been repealed. The Commission reviewed the matter.

and found that some of the key witnesses are no longer available and the available evidence may not be adequate to sustain a conviction

The file was forwarded to the Attorney General on 1st July 2008 with the recommendation that the file be closed. The recommendation was accepted on 20.8.08

18. KACC CR 230/61/2008: NYERI ACC 2/2008

Inquiry into an allegation that the Murang'a District Labour Officer had solicited for a benefit of Kshs. 50,000 from a Muslim Teacher at Mukuyu mosque as an inducement to facilitate the withdrawal of a criminal case pending before Murang'a law courts. Investigations established the solicitation and receipt of Kshs. 11,000. The suspect was arrested and charged before the Nyeri Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 14th July 2008 with recommendation that the case pending before Court be prosecuted to the logical conclusion. The recommendation was accepted on 8.9.08.

19. KACC CR 011/29/2008: NAIROBI ACC 6/2008

Inquiry into an allegation that a Police Constable based at CID Central Division, Nairobi, had corruptly solicited for a benefit of Kshs. 50,000 so as to forbear charging the complainant with an alleged offence of extortion. Investigations established the solicitation and receipt of Kshs. 15,000. The suspect was arrested and charged with the offence of soliciting and receiving of a benefit before the Nairobi Anti-Corruption Court.

The file was forwarded to the Attorney General on 28th July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 8.9.08.

20. KACC CR 461/87/2008: EMBU ACC 1/2008

Inquiry into an allegation that the Deputy Chief State Counsel based in Meru in Eastern Province had corruptly solicited for a benefit of Kshs. 50,000 as an inducement to forbear the arraignment of the complainant before court to face charges of assault and malicious damage to property in criminal case number 472/235/2005. Investigations established

the solicitation and receipt of Kshs 20,000. The suspect was arrested and charged before Embu Anti-Corruption Court with soliciting and receiving of a benefit

The file was forwarded to the Attorney General on 8th September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion

21.KACC CR 141/168/2008: NAIROBI ACC 14/2008

Inquiry into an allegation that some public Health Officers from the City Council of Nairobi had solicited for a benefit of Kshs. 40,000 from an employee of a hotel as an inducement to forbear executing a warrant of arrest. Investigations established that one of the officers solicited and received the benefit. He was arrested and charged before the Nairobi Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 8th September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion.

22.KACC CR 030/08/2008: NAKURU ACC 1/2008

Inquiry into an allegation that a Revenue Officer II with Kenya Revenue Authority had solicited for a benefit of Kshs. 40,000 as an inducement so as to release the complainant's motor vehicle registration number KAW 974Z trailer ZC 5351 impounded for alleged non payment of transit licence and lack of documents for transportation of local goods. Investigations established the solicitation and receipt of Kshs. 20,000 by the suspect. He was arrested and charged before the Nakuru Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 14th July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 26.8.08.

23.KACC CR 011/52/2008: NAIROBI ACC 15/2008

Inquiry into an allegation that a Police Constable based at Muthaiga Police Station had corruptly solicited for a benefit of Kshs. 30,000 as an inducement so as to forbear charging the complainant with an alleged offence of obtaining money by false pretences. The investigation established the solicitation and subsequent receipt of Kshs. 10,000. The

Inquiry into an allegation that an officer of the Mombasa Water & Sewerage Company Ltd had solicited for a benefit of Kshs. 10,000 as an inducement so as to reconnect the complainant's water supply to his business premises situated within Mkomani area of Mombasa Municipality. The investigation established the solicitation, which had increased to Kshs. 15,000 and receipt of Kshs. 10,000. The suspect was arrested and charged before the Mombasa Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 15th July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 20.8.08.

27. KACC CR 141/667/2007: NAIROBI ACC 67/2007

Inquiry into an allegation that an Administration Police Constable based in Nairobi Provincial Headquarters in Nyayo House had corruptly solicited for a benefit of Kshs. 10,000 as an inducement so as to assist the complainant in the processing of a passport. Investigations established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Nairobi Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 2nd September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 6.10.08.

28. KACC CR 141/58/2008: KERICHO ACC 2/2008

Inquiry into allegations that two Administrative officers based at Ongata Kongai Chief's Camp, Kajjumo District, had solicited for a benefit of Kshs. 5,000 as an inducement to facilitate the release of a cell phone confiscated from the complainant. The investigation established the solicitation. The suspects were arrested and charged with two counts of soliciting for a benefit before the Kericho Anti-Corruption Court.

The file was forwarded to the Attorney General on 1st July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 21.8.08.

29. KACC CR 011/24/2008: NAIROBI ACC 5/2008

Inquiry into an allegation that an Office Clerk employed by the City Council of Nairobi had corruptly solicited for a benefit of Kshs. 5,000 as an inducement to facilitate the release of a certificate authorising external repairs of a restaurant. Investigations confirmed the solicitation and receipt of the benefit. The suspect was arrested and charged with the offence of soliciting and receiving of a benefit before the Nairobi Anti-Corruption Court

The file was forwarded to the Attorney General on 28th July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 26.8.08.

30. KACC CR 032/10/2008: KISUMU ACC 147/2008

Inquiry into an allegation that a Police Corporal based at Nyamirio Police Station had corruptly solicited for a benefit of Kshs. 5,000 as an inducement to forbear charging the complainant with an alleged offence of attempted rape. Investigations established the solicitation and receipt of Kshs. 3,000. The suspect was arrested and charged before the Kisumu Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 3rd September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 3.10.08

31. KACC CR 032/11/2008: KISUMU ACC 22/2008

Inquiry into an allegation that an Administration Police Constable based at Kibirigo Chief's Camp in Nyamira District had solicited for a benefit of Kshs. 2,500 as an inducement so as to effect the arrest of four suspects who were to be charged with the offence of malicious damage to property belonging to the complainant. Investigations established the solicitation and receipt of a benefit. The suspect was arrested and charged before the Kisumu Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 4th September 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 3.10.08

32. KACC CR 141/169/2008: NAIROBI ACC 13/2008

Inquiry into an allegation that a Mortuary Attendant working for the City Council of Nairobi and based at the City Mortuary in Nairobi had corruptly solicited for a benefit of Kshs. 2,000 as an inducement so as to issue a burial permit. Investigations established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Nairobi Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 29th July 2008 with the recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was accepted on 26.8.08.

33. KACC CR 142/62/2008: NAIROBI ACC 20/2008

Inquiry into an allegation that a Valuer based at the District Lands Office in Kiambu East had solicited for a benefit of Kshs. 1,000 as an inducement so as to facilitate the valuation of Plot No. Dagoreti/Uthiru/1516. Investigations established the solicitation and receipt of Kshs. 500. The suspect was arrested and charged before Nairobi Anti-Corruption Court with soliciting and receiving of a benefit.

The file was forwarded to the Attorney General on 31st July 2008 with recommendation that the case pending before Court be prosecuted to its logical conclusion. The recommendation was not accepted and on 11.9.08, the Attorney General instructed that the case be terminated by way of a nolle prosequi under Section 82 of the Criminal Procedure Code.

STATISTICAL SUMMARY OF FILES FORWARDED TO THE ATTORNEY GENERAL

Total No. of files forwarded to the Attorney General	33
No. of files recommended for prosecution	26
No. of files recommended for administrative or other action	2
No. of files recommended for closure	5
No. of files where recommendation to prosecute accepted	21
No. of files recommended for prosecution and the cases are already lodged before Court	18
No. of files where recommendation for administrative or other action accepted	0
No. of files where recommendation for closure accepted	3
No. of files returned for further investigations	2
No. of files where recommendation to prosecute not accepted	1
No. of files where recommendation for administrative or other action not accepted	0
No. of files forwarded in previous quarters and received during this quarter	11
No. of files where closure not accepted	0
No. of files awaiting Attorney General's action	6

DATED AT NAIROBI THIS 21st DAY OF October 2008


 FATUMA SICHALE (MRS)
 DEPUTY DIRECTOR

