

# KENYA ANTI-CORRUPTION COMMISSION

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## KACC PRESS RELEASE ON IMPORTANT TOPICAL INVESTIGATIONS

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### 1. INVESTIGATIONS INTO SECURITY PROCUREMENTS (ANGLO LEASING TYPE CASES)

#### **Background to the Investigations**

Government contracts on security related procurements involved large sums of money, being a bulk buyer and consumer of various goods and services. Between 1998 and 2003, the various suppliers and financiers were contracted to undertake what was considered priority development projects in different departments and state corporations. These projects were to enhance communication and operational capacities of these institutions. To circumvent stringent procurement and audit procedures, these projects were described as “security projects” during the procurement stage, so as to justify direct sourcing from identified “suppliers” and “financers”. The exemption from Procurement Regulations granted in the procurement of the alleged “security equipment” appears to have been misused in this manner so as to avoid following laid down procurement procedures over the years.

In April 2004, the Anglo Leasing Finance Company contracts on passports and border control and the forensic laboratory projects were made public. It also emerged that there were other Government contracts which had been procured in the same manner. The issue was widely publicized and the Kenyan public demanded investigations into all



government security projects, and prosecution of those found culpable. The Government, in line with its policy of zero tolerance to corruption and in public interest ordered immediate audit of all security related projects. The audit revealed various malpractices in the procurement of these security projects. These findings were forwarded to the Kenya Anti-Corruption Commission for further investigation. Parliament also recommended the investigations into the procurement of the security contracts and subsequent prosecution of those found to have committed crimes.

All concerned ministries and departments were requested to halt implementation of the projects and payments, pending investigations and audit into the projects now commonly referred to as Anglo Leasing Type Contracts.

## **KACC Investigations**

Corruption and economic crime is transnational. Proceeds of crime are transmitted to foreign jurisdictions with varying legal systems. Investigating transnational crime and gathering evidence becomes a complex, protracted multi-jurisdictional process that requires various investigative agencies collaboration and mutual assistance.

KACC is investigating allegations of complex corruption and economic crime related offences against senior government officials alleged to be colluding with corrupt businessmen who use foreign registered shell firms and fronts to procure huge multi-million dollar contracts with the Government of Kenya.

## **Progress Of Investigations**

So far over 270 people have been interviewed either as witnesses or suspects and over 250 statements recorded locally. We intend to interview about 70 other witnesses and suspects, mostly foreign based businessmen and experts.

These investigations into the security contracts have been conducted in two phases, local and overseas.

#### **a) Local investigations**

Local investigations have been conducted in two phases. The first phase of the investigation begun in 2004 with the first two Anglo Leasing and Finance Company Limited investigation into passports and forensic laboratory projects. Three former Permanent Secretaries and three senior officers were charged in court in February 2005 and the cases are pending before court. In the second phase of the local investigations, KACC has now completed investigations into five contracts and case files thereon were forwarded to the Attorney General on the 28<sup>th</sup> and the 29<sup>th</sup> September 2006. The Commission has made recommendations in those case files to prosecute as follows:

- **Four former Ministers** i.e two in the Ministry of Finance, one in the Ministry of Transport and Communications and one Minister of State for Internal Security and Provincial Administration.
- **Three former Permanent Secretaries;**
- **One former Financial Secretary** and
- **Four senior officials.**

The case files are as follows:

#### **PROJECT:**

Computerization of the security, law and order systems for the Kenya Police by M/s Infotalent Systems Limited- procured by the Office of the

President. (Popularly known as **Project E-Cops**)- The contract was signed on **19<sup>th</sup> November 2003**. This was an ambitious project to computerise all operations of the Kenya Police Department countrywide with automated crime reporting, automated fingerprint identification, computerised filling and installation of closed circuit cameras in Nairobi City.

### **AMOUNT INVOLVED**

Euros 59,688,250 (approximately Kshs.5.5 billion)

### **PROJECT**

Supply and installation of a multi-channel security system for the Administration Police Department by M/s Globetel Incorporated of the United Kingdom- procured by Office of the President. The contract was signed on **29<sup>th</sup> May 2002**. The project involved the supply and installation of a backbone communication infrastructure dedicated to the Administration Police independent of the Kenya Police.

### **AMOUNT INVOLVED**

Euros 49,650,000 (approximately Kshs. 5 billion)

### **PROJECT**

Modernization of Police Equipment and Accessories for the Kenya Police Department by M/s Sound Day Corporation of the United Kingdom- procured by the Office of the President. The contract was signed on **17<sup>th</sup> December 2003**. The project entailed supply of security equipment and accessories for the Police Department involving an assortment of arms and ammunitions.



## **AMOUNT INVOLVED**

Euros 40,000,000 (approximately Kshs. 3.8 billion)

## **PROJECT**

Supply and installation of an early warning food security system for the Kenya Meteorological Department (Popularly known as **Project NEWSS**) – procured by the Ministry of Transport and Communications. The contract was signed on **6<sup>th</sup> June 2002**. The project entailed supply and installation of meteorological equipments to provide accurate forecasts of weather and weather related hazards like flash floods, lightning and storms. The system was projected to modernize weather related data collection, transmission and publishing for both agricultural and aviation purposes.

## **AMOUNT INVOLVED**

U.S Dollars 35,000,000 (approximately Kshs. 2.6 billion)

## **PROJECT**

Supply and installation of VSAT equipment to the Postal Corporation of Kenya by M/s Spacenet Corporation of U.S.A (otherwise known as **the Spacenet Project**)– procured by the Ministry of Transport and Communications. The contract with the financier was signed on **11<sup>th</sup> July 2002** while the contract with the supplier was signed on **2<sup>nd</sup> September 2002**. The project involved the installation of internet services in all post offices even in rural post offices where there is no electricity. This rendered most of the procured equipment unutilized.

## **AMOUNT INVOLVED**



U.S Dollars 6,872,750 (approximately Kshs.5.2 billion)

Further details on these investigations will be published in the Commission's quarterly report this month.

## **b) International investigations**

The international investigations may take time and it is not possible for the Commission to determine how long these will last.

### **Efforts made to obtain evidence abroad**

The international arm of the investigations spans more than twelve countries and offshore jurisdictions. We have sent official letters of request for Mutual Legal Assistance (MLA) to United States of America, United Kingdom, France, Germany, Switzerland and the Netherlands. Other countries to be involved in the investigations are Spain, Liechtenstein, Channel Islands, Italy, Caribbean Islands and India.

The MLA requests are aimed at establishing the identities of the individuals behind the supplier and financier companies including the beneficiaries. It will reveal the directors and beneficiaries of the companies that contracted with the Government. They are also expected to reveal the beneficiaries of funds paid out by the Government to the suppliers and financiers.

We have also enlisted the support of Interpol and other foreign investigative agencies to obtain information concerning companies domiciled overseas. Between September 2004 and February, 2006 KACC sent messages to Interpol stations in the United Kingdom, Liechtenstein, Luxembourg, Switzerland, Spain, Netherlands, UK, Israel,

and USA. Varying responses have been received from these countries. In all the countries however, the companies that contracted with the Kenya Government were found not to be registered or domiciled there. These investigative agencies have supported the commission and have been prompt in responding to our requests and we are working very closely with them.

Contrary to the allegations that the Commission has been very slow in finalizing the investigations, the commission has worked tirelessly to ensure that it gathered sufficient evidence that can be used to prosecute those involved.

### **Challenges faced by the Commission.**

The process of investigation has not been without hindrances. Some of the challenges that emerged were:-

- a) Non availability of critical documents. In the course of interviewing, it emerged that the Commission may not have all the critical documents relevant to the investigation. The process of collecting documents from various ministries was prolonged when these documents could not be easily located or in some cases, the staff had been re-deployed.
- b) Lack of co-operation from various departments and ministries. Many officers did not readily cooperate with the investigators and some even attempted to mislead them.
- c) Document collection has been very slow. Various offices cite difficulties in retrieving documents given that some documents were not diligently kept by officers who have since left public service.

- d) Non availability of persons both locally and internationally required for interviewing and recording of statements has also largely delayed the completion of these investigations.
- e) Fear by potential witnesses due to inadequate legal protection. Many would be whistle blowers have not been willing to divulge whatever they may know for fear of victimization given that there isn't sufficient protection offered to whistle blowers. As a result of such fear, many public officers have maintained a code of silence in the course of these investigations.
- f) Lack of forensic tools and technology required for the examination of materials gathered both in hard and electronic versions necessitating the need for outsourcing which has also been protracted.
- g) Complexity of the investigation given that the nature of the contracts is such that the transactions extend to multiple foreign jurisdictions with complex legal systems and procedures. This has resulted in the investigations being broken into two parts, local and international.
- h) Delays occasioned by litigation and injunctions obtained by people required to appear before the Commission to record statements.

In sharing our experience with foreign investigative agencies, we have learnt that similar investigations of this magnitude, in some jurisdictions have taken well over five years to conclude and the experience of the Commission in this case is not any different. Despite these challenges, the Commission has vigilantly investigated the matters and concluded 7 case files.

The Commission takes this opportunity to assure fellow Kenyans that it will conduct its investigations at all times, without any fear or favor, in strict adherence to the law and will leave no stones unturned. We



can also confirm that the local investigations into the remaining 11 contracts will soon be completed and files forwarded to the Attorney General. KACC has no intention of inordinately delaying or killing the investigation or prosecution of culprits and recognizes that this matter is of grave public concern.

## 2. ANOTHER IMPORTANT INVESTIGATION

The Commission has completed investigations into allegations of false mileage claims by a member of the Cabinet and has forwarded the file to the Attorney-General recommending prosecution of the said Minister on three counts of Economic crimes.

## 3. PROSECUTIONS UNDER THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003 AND/OR THE PENAL CODE, CAP. 63 OF THE LAWS OF KENYA

It should be noted that instances where the offences were committed before 2<sup>nd</sup> May, 2003 when the Anti-Corruption and Economic Crimes Act came into force, recommendations have been made to prefer charges under the Penal Code. However, instances where the offences were committed after the commencement of the Anti-corruption and Economic Crimes Act, recommendations have been made to prosecute under said Act. The public should know that the Anti-corruption and Economic Crimes Act has a stiffer penalty regime than the Penal Code.

## 4. POLITICISATION OF ANTI-CORRUPTION WAR

Last but not least, the Commission appeals to all Kenyan political leaders and the people as a whole to refrain from politicizing the fight against corruption. Such politicization not only undermines

investigations but it also has the potential to derail any prosecutions that might arise from those investigations. Let the rule of law be left to take its course.

**DATED** the .....2<sup>nd</sup> ..... day of ...October... 2006



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