

**ANNUAL REPORT**

**BY**

**THE HON. ATTORNEY GENERAL**

**IN RESPECT OF PROSECUTIONS OF ANTI- CORRUPTION  
/ECONOMIC CRIME RELATED CASES**

**PURSUANT TO THE**

**PROVISIONS OF SECTION 37 OF THE ANTI-CORRUPTION  
AND ECONOMIC CRIMES ACT NO.3 OF 2003**

**FOR THE PERIOD MAY 2003 TO DECEMBER 2003**

# P R E A M B L E

The commencement date of the Anti-Corruption and Economic Crimes Act 2003 is 2<sup>nd</sup> May 2003. Section 37 (1) of the Act requires the Attorney General to prepare an annual report with respect to prosecutions for corruption or economic crime. Section 37(2) further provides that the period covered by the annual report shall be the year ending 31<sup>st</sup> December.

The contents of the report as provided for under section 37 (3) of the Act shall include a summary of the steps taken by the Attorney General, during the year, in each prosecution and the status, at the end of the year, of each prosecution.

Pursuant to the provisions of section 37(4) of the aforementioned Act the Annual report shall also indicate if a recommendation for corruption or economic crime was not accepted and shall set out succinctly the reasons for not accepting the recommendation.

The Attorney General is required to lay each annual report before the National Assembly following the first ten sitting days of the National Assembly following the end of the year to which the report relates as provided for under section 37(5) of the Anti Corruption and Economic Crimes Act.

The Attorney General is empowered by the Constitution of Kenya to conduct all public prosecutions in the Republic of Kenya. Section 26 (1) of the Constitution provides;

**“There shall be an Attorney General whose Office shall be an office in the public service”**

Section 26(3) provides;

**"The Attorney General shall have power in any case in which he considers it desirable to do so"**

- (a) To institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed by that person.
- (b) To take over and continue any such criminal proceedings that have been instituted or undertaken by another person or authority ; and
- (c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or another person or authority.

The powers of the Attorney General under this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

The Attorney General has continued to exercise his constitutional and statutory mandate to prosecute the cases that were referred to his office by the Anti-Corruption Commission pursuant to the provisions of the Anti-Corruption Act Section 35(1) which provides that;

**"Following an investigation the commission shall report to the Attorney General the results of an investigation"**

In exercise of his powers under section 26(3) of the Constitution the Attorney General advised, directed upon and prosecuted various cases that were forwarded to his office and hereby tables this report before the National Assembly in compliance with section 37 of the Anti-Corruption and Economics Crimes Act.

This report is divided into the following categories.

- (a) Cases prosecuted to conclusion.
- (b) Cases pending in court.
- (c) Cases *stayed* pending determination of constitutional reference.
- (d) Cases pending judicial review.
- (e) Cases recommended for prosecution.
- (f) Cases referred to back to KACC for further investigation.
- (g) Cases forwarded to the Director of Criminal Investigations for re-evaluation of evidence for penal code offences.
- (h) Administrative action recommended.
- (i) Recommended for closure with no further action.
- (j) Restitution accepted *in lieu* of prosecution.

During the year under review the Attorney General exercised his mandate his mandate to direct on and prosecute the investigation file cases that were brought to his attention. However it should be noted that the Commission was not fully operationalized and the quality of investigations was affected by incompetence and lack of specialized training on the part of officers seconded from the Kenya Police. This led to files being constantly returned to the Commission for further investigations.

Cases were not immediately filed in court, due to the fact that Special Magistrates were not appointed and gazzetted by the Chief Justice until 5<sup>th</sup> August 2003 vide Legal Notice Number 5342 of 2003. Thereafter my office despite severe capacity limitations as indicated here under proceeded to vigorously mount prosecutions under the new Act. For the entire balance of 2003 the accused persons aggressively challenged the constitutionality of Act No. 3 of 2003, the Commission, the Special Magistrates, the power of the Commission to investigate offences under the Penal Code and present charges etc. At some point the special magistrates went as far a refusing to accept charge sheets or arguments on law relating to validity of charges. At some point special magistrates exercising normal penal jurisdiction would refuse to admit any

corruption related charges. This triggered a slow down on the filing and prosecution of corruption cases.

In the cases where accused persons raised constitutional challenges, heavy reliance was placed on the Constitution of Kenya (Protection of Fundamental Rights & Freedoms of the Individual) Practice and Procedure Rules, 2001 promulgated and Gazzetted by the Chief Justice which provides under Rule 8 that "***While the reference to the High Court is pending, all proceedings in the subordinate court shall be stayed pending the determination of the reference.***" The rules as framed provide a loophole as no court is empowered to determine whether or not the constitutional reference filed has any probability before a stay is granted. These rules have been grossly abused to the extent that in 2003 very few cases proceeded to determination before the Special Magistrates while at the same time due to the large numbers of references made to the constitutional court a bottleneck was created further slowing down the prosecution of corruption cases.

I wish to point out, as will be seen later in the report that some of the files were returned to the Anti-Corruption Commission for further investigations.

## **PROSECUTION OF CASES TO CONCLUSION**

### **1. CRIMINAL CASE NO.1/3/2003 ACC 41/2003 (NO.1, Oct-Dec '03)**

The Case involved a sub-chief in Dandora who had solicited a sum of Kshs.15.000/-. There was overwhelming evidence to sustain a prosecution.

## **STATUS**

The case was successfully prosecuted and the accused was convicted on 3<sup>rd</sup> September, 2004 and sentenced to a fine of Kshs.10,000/- on each count in default 12 months imprisonment.

2. **KCC/INO/11(C)-12.02.2003 court case No.279/04 ( No.7, Oct – Dec '03)**

This was an inquiry into allegations that the former Director of National Aids Control Council (NACC) forged a letter dated 14<sup>th</sup> November 2000 leading to her inflated salary at the Council to a total sum of Kshs.27 million.

Upon perusal of the evidence the Attorney General directed that the said Director be charged with Abuse of Office c/s 101 (1) of the Penal Code and Obtaining by False Pretences contrary to Section 313 of the Penal Code and that the former Chairman NACC who arbitrarily increased the former Director's salary without consulting the Board be charged with Abuse of Office.

## **STATUS**

The former Chairman of NACC was acquitted under Section 215 of the Criminal Procedure Code (Cap 75 Laws of Kenya) while former Director was convicted and sentenced to one year on all counts on 30<sup>th</sup> August, 2004.

## **CASES PENDING IN COURT** (No.6, May – Sept '03)

3. **KACC/INO 11/6.05.03 (CR 142/181/2003 CF ACC 35/03**

This file relates to allegations that the Officer Commanding Hardy Police Station in Nairobi corruptly solicited a sum of Kshs.50,000/- in order to release a motor vehicle detained at Hardy Police Station as an exhibit in a criminal case in which the complainant was an accused person.

The Attorney General was satisfied that there was sufficient evidence to warrant a charge of Corrupt Transaction by Agent contrary to Section 39 (3) as read with Section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003.

### **STATUS**

The case is pending in court.

4. **ACPU/INO.75C/8.10.02** (No.11, May – Sept '03)

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

### **STATUS**

The investigation against the former Member of Parliament was inconclusive. However, Euro Bank's Chairman and the bank's former Managing Director were recommended to be charged jointly with the offence of obtaining money through Fraud.

5. **ACPU/INO/76/27.3.2003** (No.18, May – Sept '03)

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

Upon perusal of the file the Hon. Attorney General directed that the following officers who were involved in the irregular payments be charged with the offence of Abuse of Office Contrary to Section 101 (1) of the Penal Code.

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

**STATUS**

All these suspects have been charged in court with the recommended offences. The case is pending before court.

**STATUS**

The case is pending before Court.

6. **ACPU /INO. 24b/14.3.03 CRIM CASE 1538/04** ( No.7 May –  
Sept '03)

This is an inquiry that stemmed from an earlier investigation into allegations that the Chief Executive and Senior Management of **Postal Corporation of Kenya** abused their offices by depositing a sum of **Ksh.50,000,000/-** in the now-collapsed Euro Bank without following the laid down procedures thereby causing loss of the funds. The purpose of this inquiry was to establish the beneficiaries of the funds deposited in Euro Bank.

Three former Directors of Euro Bank were charged in the Nairobi Chief Magistrate's Court, CHIEF MAGISTRATES CRIMINAL Case No. 1538/04 with the offence of Obtaining by False Pretences Contrary to Section 313 Penal Code.

**STATUS**

The case is pending in court

7. **KACC/INO41/10.11.03** (No.5, Oct – Dec '03)

This was an inquiry into an allegation that Kamlesh Pattni had given a bribe on 14<sup>th</sup> August 2003 to a Judge before whom he had a pending case so as to facilitate the release of his passport.

Upon perusal of the file the Hon. Attorney General was satisfied that there was sufficient evidence to warrant a charge of corruption contrary to Section 39 (3) (b) as read with Section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003.

**STATUS**

The suspect was subsequently charged with the offence. The case has been stayed by the Court of Appeal pending hearing of a formal application for stay.

8. **ACPU/INO/25/2003 CRIMINAL CASE NO. 1808/03.** (No.2, May – Sept '03)

This is an inquiry into allegations of Abuse of Office by the Chief Executive, Pyrethrum Board of Kenya, who irregularly deposited Ksh. 150 million in the collapsed Euro Bank thereby occasioning a loss of Kshs.150 million together with accrued interest.

**STATUS**

The former director was charged with one count of Abuse of Office Contrary to Section 101(1) of the Penal Code vide Criminal Case No.2808/03.

**STATUS**

The hearing commenced on 22<sup>nd</sup> September, 2004 before Court No.87. The case is pending in court.

9. **ACPU/INO/28/14.03.03 COURT CASE NO.2124/04** (No.9, May – Sept '03)

This case involves alleged Abuse of Office by the former Director of Kenyatta National Hospital after he irregularly invested Kshs. 400 million in the collapsed Euro-Bank.

**STATUS**

The Director was charged with thirteen counts of Abuse of Office contrary to Section 101 (2) of the Penal Code vide Criminal Case No.2124/04.

The hearing commenced on 15<sup>th</sup> November, 2004 before Court No. 1. Case is pending in court.

10. **ACPU/INO 31b/14.03.03** (No.8, May – Sept '03)

**COURT FILE NO. 26/2003**

The investigation stemmed out of an earlier inquiry into allegations that the management of Kenya Post Office Savings Bank illegally banked Kshs.66,000,000/= with the collapsed Euro-Bank occasioning loss of the entire amount. This is an inquiry to establish the beneficiaries of the monies deposited in Euro Bank.

Former Managing Director be charged with offence of Obtaining Advantage without Consideration contrary to section 6(1) of the Prevention of Corruption Act.

**STATUS**

The Managing Director is facing trial for the offence of Abuse of Office. The case is pending in court. The recommendation for obtaining advantage without consideration was held in abeyance pending the clarification on the way forward on the cases falling under Prevention of Corruption Act.

11. **KACC/ INO.6/ 14.5.03** (No.13, May – Sept '03)

**Court file No. 3156/03**

This is an inquiry into irregular privatization of Kenya Seed Company leading to the privatization of Kenya Seed Company through private placement.

## **STATUS**

Ten former government officials, officers from Kenya Seed Company and others from Agricultural Development Corporation are facing trial. The case is pending in Court.

12. **APCU/INO 75A/8.10.02** *(No. May – Sept '03)*

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

## **STATUS**

The former Managing Trustee of NSSF and the Deputy were charged with the Offence of Abuse of Office contrary to Section 101 (1) of the Penal Code.

Three employees of Euro Bank i.e. the Foreign Business Manager, the Chief Accountant, a driver and a private employee of the Foreign Business Manager were also jointly charged with the offence of Destruction of Evidence (Computer server) contrary to Section 116 of the Penal Code.

Warrant of arrest in respect of two accused persons who are at large were issued and are yet to be apprehended. The case is pending before court.

12(ii) **ACPU/INO 75b/02** (No.12, May – Sept '03)

**COURT FILE No.2185/03**

The further inquiry into the loss of the Ksh. 251 million deposited in the now collapsed Euro Bank resulted in the Attorney General directing that the four directors of Euro Bank be charged with the offence of Obtaining the funds by False Pretences.

**STATUS**

The case is pending before court. One of the accused has since passed away.

13. **ACPU/INO.28/14.03.03**

**COURT FILE NO. 22/03**

This is an inquiry into allegations that a former Director of Kenyatta National Hospital and Permanent Secretary irregularly deposited Kshs.50 million to the now collapsed Euro Bank.

**STATUS**

He is now charged with the offence of Abuse of Office. The case is pending in court.

14. **ACPU/INO.28/14.3.03**

This is an inquiry into allegations that a former Director of Kenyatta National Hospital irregularly deposited over Kshs.400 million belonging to the Hospital at the Euro Bank.

A Board member could not be charged immediately as there were areas to be covered by way of further investigation. He was also expected to testify in other criminal case

### **STATUS**

The former Director has been charged with the offence of Abuse of Office contrary to Section 101(2) of the Penal Code. The case is pending trial.

15. **KACC/INO.30/14.3.2003** (No.4. May – Sept '03)

This is an inquiry into an allegation that the former Managing Director of Kenya Pipeline Company irregularly deposited kshs.50 million in the now collapsed Euro Bank. Charges of Abuse of Office would not be sustained as Kenya Pipeline was by then a private company. The Directors of Euro Bank were instead charged with the offence of Obtaining Money through False Pretences under the Penal Code.

### **STATUS**

The case is pending in court. One of the suspects the former Director Director Kenya Pipeline has since fled the country and there is a warrant in force for his arrest.

16. **ACPU/INO/29/2003** (No.5, May – Sept '03)

### **COURT FILE NO. ACC.27 OF 2003**

This is an inquiry into the loss of Kshs.50 million deposited in the collapsed Euro Bank.

**OFFENCE:** A former Chief Executive Officer and a senior official are in court facing charges of Abuse of Office.

## **STATUS**

The case is pending in court.

## **STAYED PENDING CONSTITUTIONAL REFERENCE**

17. **ACPU/INQ/24B** (No.7, May – Sept '03)  
**COURT FILE NO. ACC 24/2003**

This is an inquiry into the Kshs.50 million deposit into the collapsed Euro-Bank. A former Post Master General and a senior official of Kenya Postal Corporation of Kenya.

## **STATUS**

Case still pending in court tied down by constitutional reference filed by former Chief Executive, being High Court Miscellaneous Application No. 600 of 2003 which is still pending.

18. **KACC 1/1/5/2003**  
**COURT FILE NO. ACC 25/2003**

This is an inquiry into allegations that former Chief Executive of Kenya Sugar Authority deposited a total of Kshs.55 million in the collapsed Euro-Bank Ltd.

## **STATUS**

The case is still pending hearing, tied by a constitutional reference filed by

the former Chief Executive, in High Court Miscellaneous Application No. 574 of 2003.

19. **ACPU INQ.27/14.03.03** *(No.17, May – Sept '03)*

**COURT FILE NO. ACC 36 /2003**

An inquiry into the loss of Kshs.55 million deposited in the collapsed Euro Bank. A former Chief Executive and a Senior Official are now charged with the offence of abuse of office.

**STATUS**

The case is in court pending hearing before the constitutional court filed by Former Chief Executive, being High Court Miscellaneous Application No.806 of 2003.

**CASES STAYED PENDING JUDICIAL REVIEW**

20. **ACPU/INO. 96(C)/25.4.2000** *(No.1 May, - Sept '03)*

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

**STATUS**

The accused has filed a judicial review which is yet to be determined

## **DIRECTED PROSECUTION**

21. **ACPU/INO.63A/10.10.02** (No. 16 May – Sept '03)

Inquiry into allegations of Mismanagement of Financial Resources at the Directorate of Industrial Training in reimbursement of Industrial training Levy.

### **STATUS**

The file was forwarded to the Attorney General on 17<sup>th</sup> September 2003. Upon perusal, it was found that there is sufficient evidence to charge the 1<sup>st</sup> and 3<sup>rd</sup> suspects of Conspiracy to defraud the Directorate of Industrial Training of Ksh. 173,000/- and that the 2<sup>nd</sup> and 4<sup>th</sup> suspects be treated as witnesses. The 1<sup>st</sup> suspect was at time of the offence Principal of the National Industrial Vocational Training Centre, while the 3<sup>rd</sup> suspect was Assistant General Manager of the company that claimed reimbursement of the levy.

22. **ACPU/INO/26(A) 03** (No.6 Oct – Dec '03)

This is the second phase of an inquiry into the allegations of irregular deposits in the collapsed Euro Bank. The inquiry was conducted with a view to establishing the beneficiaries of the funds deposited in Euro Bank.

A manager with Euro Bank be charged with stealing and that the former Chief Executive be charged with the Offence of Corruption contrary to Section 3(1) of Act No.3 of 2003. The Directors of N. K. Brothers be charged with the offence of Corruption.

## **STATUS**

The Attorney General has directed the prosecution as recommended.

## **REFERRED TO KACC FOR FURTHER INVESTIGATION**

### 23. **INO NO.65/24/9/2002** (*No.19 May – Sept '03*)

This is an inquiry into an allegation that the Director of Physical Planning Ministry of Lands allocated himself land that had been set aside for Nairobi West Friends Church. A dispute arose as to the ownership of the plot and legality of titles.

## **STATUS**

File has been forwarded to KACC to await implementation the recommendations of the Ndungu Land Report.

## **FORWARDED TO DIRECTOR OF CRIMINAL INVESTIGATIONS FOR FURTHER INVESTIGATIONS**

### 24. **ACPU/INO.69A/27.9.2002** (*No.20 May – Sept '03*)

This is an inquiry into allegations that a Police Constable attached to Ruiru Police Station together with another person obtained a total of Ksh.165,000/-from the complainants by falsely pretending that they could facilitate their recruitment to the Kenya Police Training College Kiganjo.

## **STATUS**

The investigations into the circumstances surrounding the inquiry were not complete. The Attorney General forwarded the file to the CID directing further investigations into 8 areas pointed out. Once the Investigations are complete the Attorney General will then give directions.

### 25. **KACC/INO.16/2003** *(No. 4 Oct – Dec '03)*

This is an inquiry into allegations that a former Managing Director, East African Portland Cement Co. Ltd. irregularly authorised purchase of Land Rover Discovery Reg. No. KAN 220V, worth Ksh.5, 849,354/- and irregular payment of allowances to the former chairman of the company.

## **STATUS**

The investigations into this allegations were found to be unsatisfactory and the file was sent to the Director of Criminal Investigations. Upon completion of the further investigations the file be forwarded to the Attorney General for his directions.

### 26. **ACPU/INQ.14A/24.2.2003** *(No.14 May – Sept '03)*

Allegations of irregular payment of management fee of over Kshs.5.5 million to La Pillule Ltd. By the management of Harambee Sacco Society. KACC recommended prosecution of offences of Forgery, Uttering and Stealing under the Penal Code.

## **STATUS**

The Attorney General directed that the file be referred to CID for re-evaluation of evidence and submission to him for appropriate direction.

## **ADMINISTRATIVE ACTION RECOMMENDED**

### **27. ACPU/INO 16/24.02.03 I (No.10 May – Sept '03)**

This file relates to an allegation of bribery made against two Criminal Investigation Department's officers from Kikuyu Police Station. The two are alleged to have demanded Kshs.80,000/= from the complainant in order to forebear arresting and charging the complainant and her staff for dealing in fake PSV and inspection certificates.

#### **STATUS**

Upon perusal of the same, the Hon. Attorney General directed that the evidence gathered was not sufficient to sustain the offence of corruption. He directed that charges of corruption leveled against the suspects be withdrawn and Commissioners of Police to institute the necessary administrative/disciplinary action against the two officers as their conduct was in breach of their code of service.

### **28. ACPU/INO/75/20.3.2000 (No.15 May – Sept '03)**

An Inquiry based on allegations that the-then Office Superintendent, Nairobi Law Courts was awarding contracts to his friends on repairing and carpeting of offices at the High Court, and that payments were made for work that was never done.

#### **STATUS**

The Attorney General has direct prosecution of the suspect on charges of Forgery and making False Claims.

## **DIRECTED FOR CLOSURE**

### **29. KACC/INO 36/28.08.2003 (OCT-DEC. 2003)**

Inquiry into allegations of fraudulent auction of L.R. No. Nandi/Cheptarit/104 by Thabiti Finance Company Ltd. The complaint was of a civil nature and the complainant was advised to seek and remedy.

#### **STATUS**

The Attorney General accepted the recommendation of KACC for closure of the file.

## **STATISTICAL SUMMARY OF ECONOMIC CRIMES AND CORRUPTION RELATED CASES**

<b>PARTICULARS OF CASES</b>	<b>NUMBER</b>
<b>A INVESTIGATION FILES RECEIVED BY THE ATTORNEY GENERAL</b>	
From KACC	31
<b>TOTAL</b>	<b>31</b>
<b>B ACTION TAKEN BY THE ATTORNEY GENERAL</b>	
Prosecutions concluded	2
Pending in Court	17
Stayed Pending Constitutional Reference	3
Stayed Pending Judicial Review	1
Directed for Prosecution	2
Referred to the KACC for further investigation	1
Forwarded to the Director of Criminal	2

Investigations for re-evaluation of evidence	
Administrative action recommended	2
Directed for closure with no further action	1
Restitution	0
<b>TOTAL</b>	<b>31</b>

**DATED** at Nairobi this <sup>4<sup>th</sup></sup> day of <sup>April</sup> 2005



**S. AMOS WAKO**  
**ATTORNEY GENERAL**