

Who is being investigated by KACC?

The Kenya Anti Corruption Commission (KACC) has recently taken the trouble to tell Kenyans, who pay its wages, what it does with at least some of its 1 billion shilling *per annum* budget. On 19th January 2007, KACC Director, Aaron Ringera, published the anti graft body's 4th quarterly report for 2006 (October-December) in the Kenya Gazette (Notice No. 490 of 2007). Since then, acres of newsprint have been devoted to the purported exculpation of David Mwiraria (ex Minister for Finance) and Kiraitu Murungi (ex Minister for Justice and Constitutional Affairs, presently Minister for Energy) to the almost total exclusion of some other very interesting items in the same gazette notice.

Of course, it is proper that outrage has been expressed by the Kenyan public as these two key figures were let off the hook for trying to dissuade John Githongo (ex PS Governance and Ethics) from pursuing his inquiry into the 56 billion shilling corruption scandal now known as Anglo Leasing. Kenyan outrage is all the more justified following the Internet release (www.githongo.blogspot.com) by Githongo of an audio recording of a three way conversation between him and the two Ministers which took place on June 11, 2004 in his State House Office, on which Mr. Mwiraria is clearly heard expressing his fears that the scandal "*will come down with our government.*" The broadcast resulted in stunned silence on the part of government, broken only by yet another communication from KACC in which PR man Nick Simani dismissed Githongo saying: "KACC acknowledges having possession of tape recordings of former Finance minister Mwiraria and Kiraitu Murungi by former PS Governance Ethics John Githongo. The tapes are the same ones that had been released earlier by Mr. John Githongo in Feb 2006....The information on the tapes is not new to the commission." Put another way, KACC was telling the world, 'we have all the recordings of Mr. Githongo, in good order - and they prove... nothing'!

Back to the point, KACC, and the collective investment by Kenyans of 1 billion shillings in it, can be castigated or defended on the basis of reports, which KACC is required by the Anti Corruption and Economic Crimes Act (ACECA) of 2003 to make public after they have been sent to the Attorney General (AG). As a public service, MARS has taken the trouble of trawling through the *minutiae* of the 4th Quarterly KACC Report for the period October through December 2006, to bring readers the what's what of grand corruption investigations, between October and December 2006, at least according to KACC.

The KACC gazette notice, in its entirety, makes interesting reading. In it, KACC reports on 33 files forwarded to the AG for action. 20 recommendations for prosecution were accepted by the AG. Significantly, of the 11 cases that KACC deemed deserving of closure, the AG disagreed with KACC on 2 cases and directed further investigations in both; the first involving 70% of a giant joint venture and the second a pending bill of Ksh 121 million). Apart from David Mwiraria and Kiraitu Murungi, the other prominent personalities whose investigation files have been closed are:

- 1 Cabinet Minister
- 2 Members of Parliament
- 1 Managing Director of a large State Corporation
- 2 former Managing Directors of large State Corporations
- 2 Boards of Directors of Large Statutory Authorities
- 2 Kenya Revenue Authority officers
- A firm of advocates
- 1 Construction Company
- The putative Chairman of a Constituency Development Fund Committee

One obvious, albeit superficial, conclusion from reading the quarterly report is that prominent personalities are more likely to benefit from a recommendation by KACC to close their files than less prominent public officers. While this is not the appropriate tool to evaluate the entirety of KACC's work, we invite readers to draw their own conclusions as to whether KACC's work rate and priorities are defensible or not. KACC's most recent annual report (2005-6) can be read at www.kacc.go.ke and Mars has published an analysis of the same at www.marskenya.org In any event, what follows is a summary of the major points in the quarterly report as published in Gazette Notice 490/2007.

	Person(s) under Investigation by KACC	Public Institution Concerned	Subject matter of the Allegation being Investigated by KACC	Size of Bribe/ Amount in Issue (Ksh where stated)	KACC recommendation and date	Attorney General's decision and date
1	Estate Officer	Nairobi City Council	a bribe from 8 Shauri Moyo council tenants	96,000	Prosecution 4 Counts of Corruption July 21, 2006	Accepted October 9, 2006
2	3 Nairobi City Council Employees	Nairobi City Council	a bribe to waive the recovery of Ksh 102,000, which had been underpaid for a bar and lodging business licence	15,000	Prosecution 2 counts of corruption October 13, 2006 on	December 15, 2006

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3	Police Officer	Kericho Police Station	bribes from two people in order to forbear charging their sons with infringement of copyright	35,000	Prosecution 2 counts of corruption November 1, 2006	Accepted December 22, 2006
4	Acting Chief Cashier Internal Auditor	Nairobi City Council	theft of Ksh 2,255,201.70 being part of the Cash Office Section daily revenue for 29 th December 2005	2,254,706	Prosecution s.280 of the Penal Code November 1, 2006	Accepted December 29, 2006
5	Managing Director	National Oil Corporation of Kenya	asking an oil exploration licence applicant to shop for the MD in Barcelona, Spain. KACC investigations "revealed no credible evidence of impropriety or wrongdoing on the part of the MD."	-	Closure recommended November 1, 2006	Accepted December 22, 2006
6	2 Employees	Nairobi City Council	a bribe to give a favourable assessment of the trade licence fee payable to the NCC Debt Collection Unit by a company. Investigations implicated 1 of them	10,000	Prosecution on 2 counts of corruption November 2, 2006	Accepted December 22, 2006
7	Ex Managing Director & Ex Deputy Managing Director	Kenya Wine Agencies Limited	Allegedly obtained an irregular house purchase loan	6,000,000	Prosecution s.45 & 46 ACECA November 2, 2006	Accepted December 22, 2006
8	Minister, Cooperative Development; MP, Nyeri Town; & Directors, Coffee Board of Kenya	Coffee Board of Kenya	Allegation that the Directors of the Coffee Board of Kenya were influenced to award an insurance tender to companies in which the Minister and MP were Directors. KACC investigations found no impropriety	-	Closure recommended November 3, 2006	Accepted December 22, 2006
9	Construction Company	Nairobi City Council	Allegation that the construction company fraudulently obtained a consent judgement in a lawsuit against the NCC. KACC investigations found no wrongdoing	121,708,169.73	Closure recommended November 3, 2006	Not accepted. Further investigation January 4, 2007
10	Former Director	National Aids (Control) Council	Alleged to have attempted to embezzle funds under the guise of paying school fees arrears for orphaned children under the (OVC) (orphaned and Vulnerable Children Programme. KACC investigations found that "no such funds had been set aside that could have	-	Closure recommended November 6, 2006	Accepted December 21, 2006

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			been diverted, nor was there any attempt to commit theft, embezzlement or any such related offence.”			
11	Ex Justice Minister & Ex Finance Minister	Justice & Finance Ministries	Allegations by former PS Governance and Ethics that the 2 Ministers had interfered with Anglo Leasing investigations. KACC investigation disclosed no offence	56,300,000,000	Closure recommended November 6, 2006	Accepted January 15, 2007
12	Chief	Marama North Location, Butere-Mumias District	Alleged to have solicited a bribe to provide security for the complainant’s brother’s funeral	3,000	Prosecution on 2 counts of corruption November 9, 2006	Accepted December 22, 2006
13	MP Muhoroni	Muhoroni Constituency	Allegation that <i>the MP</i> “received a motor vehicle as a gift in order to support the construction of a new sugar factory at Kibos.” KACC investigations “revealed that none of the allegations...had any merit.”	-	Closure recommended November 9, 2006	Accepted December 22, 2006
14	Probation Officer	Nyayo House	Alleged to have asked for a bribe of Ksh 8,000 to produce a favourable probation report for the complainant’s brother	5,000	Prosecution on 2 counts of corruption November 27, 2006	Accepted December 21, 2006
15	Assistant Commissioner of Police	CID Headquarters	Unable to account for imprest of Ksh 508,000 for a security operation. KACC investigations established that “the sum unaccounted for is about Ksh 42,200 only.”	508,000	Audit by Kenya National Audit Office & Ministry of Tourism & Wildlife. November 30, 2006	Accepted December 21, 2006
16	Police Officer	Muthangari Station, Nairobi	Solicited a bribe to release someone who had been arrested for selling traditional liquor outside the officially licensed business hours.	900	Prosecution on 2 counts of corruption November 30, 2006,	Accepted December 22, 2006
17	2 Employees	Kikuyu Town Council	Solicited a bribe to release the complainant’s goats which had been seized and detained in the Town Council yard.	55,000	Prosecution for solicitation and receipt of a benefit November 30, 2006	Accepted December 22, 2006
18	Field Officer	Nairobi City Council	Solicited a bribe to issue an invoice for a business advertisement sign	-	Prosecution for solicitation and receipt of a benefit November 30, 2006	Not stated
19	Children’s Officer	Embakasi Division,	Solicited a bribe not to charge complainant’s wife and domestic worker with an alleged offence of child	20,000	Prosecution for solicitation and	Accepted December

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		Nairobi	neglect and assault		receipt of a benefit December 1, 2006,	29, 2006
20	Administration Police Officer	Magina AP Post, Kiambu	Allegedly took a bribe not to charge the complainant with robbery with violence which carries the death penalty	20,000	Prosecution s.39(3)(a) & 66(1)(a) ACECA December 4, 2006,	Accepted December 29, 2006
21	2 Employees	Kenya Revenue Authority	Demanded a bribe from Rolf Schmidt, the owner of the Horseman Restaurant, Karen, Nairobi to resolve a dispute in respect of the 1993 tax return for the restaurant. Mr. Schmidt videotaped the transaction and it was broadcast on the evening television news.	600,000	Prosecution for corruptly soliciting and receiving a benefit December 5, 2006,	Accepted December 29, 2006
22	Administration Police Constable	Kayole, Nairobi	Solicited a bribe to release complainant arrested on suspicion of being a member of the unregistered <i>Mungiki</i> sect.	3,000	Prosecution s. 39(3)(a) ACECA December 19, 2006	Accepted December 29, 2006
23	Board of the Kenya Sugar Board (Authority) KSB Lawyers	Kenya Sugar Board	Alleged that the KSB irregularly paid a firm of advocates or preparation and registration of a debenture for Miwani Sugarcane Outgrowers Company Limited. KACC investigations found no impropriety.	1,111,557.20	Closure recommended December 19, 2006	Accepted December 29, 2006
24	Kangema Constituency Development Fund Chairman	Kangema Constituency Development Fund	Alleged that the Chairman of the Kangema CDF influenced the award of a contract of a laboratory at Kibutha Mixed Secondary School to himself. KACC investigations established that the unidentified suspect "was not the Chairman of the Kangema CDF"	2,000,000	Closure recommended December 19, 2006	Accepted December 29, 2006
25	Chief	Ruaraka Location, Nairobi	Allegedly demanded a bribe to permit the complainant to renovate and operate a kiosk.	2,000	Prosecution s.46 ACECA December 20, 2006	Accepted January 4, 2007
26	Former Managing Director	Kenya Railways Corporation	Allegedly abused the authority bestowed on his office to resolve a salary dispute in his favour. The Ex MD has sued the government for terminal benefits. The AG has filed a counterclaim.	889,134.45	Closure recommended Counter Claim in Civil Suit December 20, 2006	Accepted January 4, 2007
27	Public Health Officer	Nairobi City Council	Allegedly took a bribe from 2 different complainants to facilitate withdrawal of cases filed against them by the NCC.	10,000	Prosecution s.39(3)(a) ACECA December 21, 2006	Accepted January 4, 2007
28	Board and Management	Tana and Athi Rivers Development Authority	It was alleged that the TARDA board had irregularly signed a Joint Venture Agreement with a sugar trading company, MAT International Limited, giving it a 70% shareholding in a proposed Tana Delta Sugar Limited.	-	Closure recommended December 21, 2006	Not accepted. Further investigation

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		(TARDA)	KACC investigations concluded that no procurement regulations or guidelines were breached.			s January 4, 2007
29	Administration Police Commander	Mbeere District	Alleged to have solicited a bribe to assist a prospective female recruit to join the Administration Police	20,000	Prosecution s.39(3)(a) ACECA December 21, 2006	January 4, 2007
30	Chief	Thitani Location, Mwingi District	Allegedly demanded a bribe to recover a cell phone and Ksh 5,000 which had been allegedly stolen by the complainant's step-daughter.	2,000	Prosecution s.39(3)(a) ACECA December 21, 2006	Accepted January 4, 2007
31	2 KRA Officers	Kenya Revenue Authority	Alleged to have abused their office in the award of a tender for procurement of a card printer for the KRA. KACC investigations "revealed no irregularity"	-	Closure recommended December 21, 2006	Accepted January 4, 2007
32	Chief Inspector of Police	Police Department Telkom Kenya Limited	It was alleged that the Chief Inspector was receiving double payment by the Police Department while he was on secondment to Telkom Kenya Ltd. KACC investigations found "no proof of fraudulent intent" essential for a prosecution under s.45 ACECA	-	Administrative action for recovery of overpayment December 22, 2006	Accepted January 4, 2007
33	Employee,	Nairobi City Water and Sewerage Company	Alleged to have demanded a bribe from 2 complainants separately as an inducement to release their property which had been seized during a raid on a suspected illegal water connection sites	-	Prosecution s.39(3)(a) ACECA December 22, 2006	Accepted January 4, 2007