



**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**ANNUAL ANTI-CORRUPTION REPORT**

**BY**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**IN RESPECT OF PROSECUTION OF ANTI-CORRUPTION AND**

**ECONOMIC CRIME RELATED CASES**

**PURSUANT TO THE PROVISIONS OF SECTION 37**

**OF**

**THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT**

**No. 3 OF 2002**

**FOR THE PERIOD**

**1<sup>ST</sup> JANUARY 2013 TO 31<sup>ST</sup> DECEMBER 2013.**





## P R E A M B L E

I am pleased once again, to submit the report on Anticorruption and Economic Crimes cases handled by my office. This is the second annual report since I was appointed as the Director of Public Prosecutions (DPP) under the new constitution; a position that I am honored to have been entrusted with. The report covers the period from 30 December 2011 to 30 December 2012. The report has been prepared in compliance with section 37(1) of the Anti-Corruption and Economic Crimes Act, which came into operation on May 2, 2003. Section 37(2) of the Act enjoins the DPP to prepare an annual report with respect to prosecutions for corruption or economic crimes for the period ending 31<sup>st</sup> December of the preceding year. Pursuant to section 37 (3) of the Act, the report is to include a summary of the steps taken by the DPP in respect to each matter forwarded to him and the status of each case dealt with during that period. Further, section 37(4) of the Act requires that the report shall also indicate if any recommendation for corruption or economic crime was not accepted and shall succinctly set out the reasons for not having accepted the recommendation.

The Act further requires that, as provided for under section 37(5) that the stated Annual Report must be laid annually before the National Assembly within the first ten sitting days of the National Assembly following the end of the year to which the report relates. Since the commencement of the Act in 2003, ten (10) such reports have been laid before the National Assembly.

The Office of the Director of Public Prosecutions (ODPP) is established under Article 157 of the Constitution of Kenya, 2010. The fundamental function of the DPP is to give direction and supervision of public prosecutions and related criminal matters as provided for under section 157 of the Constitution. The ODPP is structured into four (4) departments. Each of the departments has divisions. The anti-Corruption division falls within the department of Economic, Emerging and International Crimes.

During the year under review (2013), the DPP exercised his mandate to direct and prosecute cases submitted to him by EACC and other investigative agencies such as the Criminal Investigations Department and Banking Fraud Department. In that period, Ethics and Anti-Corruption Commission forwarded Fifty Six (56) cases. Other investigative agencies also forwarded cases for consideration and advice.

Previous annual reports have cited a variety of challenges confronting the discharge of obligations placed upon the Director of Public Prosecutions. These include severe legislative, administrative, regulatory, institutional and operational challenges just to mention but a few. They include but not limited to inadequate capacity, shortage of professional and support staff, poor terms and conditions of service, insufficient budgetary allocation, limited office space and library facilities, as well as lack of research facilities and other resources. Special mention is the inability to attract and retain qualified legal staff. The ODPP continued to pursue the issue of improving Conditions of Service in order to prevent the high staff turnover that had characterized the Office in previous years. However, by the end of the year the issue of salary increases for the staff had not been conclusively resolved

In an effort to address these challenges, the DPP has made major strides among them the following:-

- i. The Office of the Director of Public Prosecutions Act was enacted on 3<sup>rd</sup> January 2013 by Parliament and assented to by H.E the President on 14<sup>th</sup> January 2013. The Act came into effect on 16<sup>th</sup> January, 2013. The object of the Act is to give effect to the provisions of Article 157 and 158 and other relevant Articles of the Constitution. The Act provides for the operationalization framework of the ODPP and its functional autonomy. In the year under review major strides have been made in the implementation of the Act.
- ii. The ODPP has made a proposal for improvement of terms and conditions of service for its staff to the Salaries and Remuneration Commission.
- iii. The ODPP has established an integrated Public Complaints handling mechanism.
- iv. In order to increase the capacity of the office, the ODPP has so far hired two forty eight (248) prosecutors to enhance prosecution capacity in the office and two seventy-six (276) non-legal staff.
- v. The ODPP is undertaking continuous training for all the staff In order to enhance capacity of the staff in the ODPP.
- vi. In the spirit of devolution, the ODPP has opened new regional offices in Kerugoya, Muranga, Homabay, Voi, Kajiado, Turkana, Nyahururu, Bomet,

Wajir, Marsabit, Kiambu(Thika) and Narok in order to take ODPP's services to the grassroots and to cope with the caseload. The ODPP is in the process of opening other regions offices in order to ensure that its services are easily accessible to the Public.

- vii. In a bid to professionalize prosecution services, the ODPP has embarked on taking over prosecution of cases in the subordinate courts by posting prosecution counsel in these courts. By the end of the year, prosecution counsel was handling majority of Corruption and Economic Crimes. DPP aim to take over hundred percent prosecutions of corruption and Economic Crimes.

### **Inter-Agency Cooperation and Collaboration**

1. The Office of the Director of Public Prosecutions is one of a number of agencies working within the criminal justice system. It is essential to the work of this Office that we continuously strive to enhance relationships develop initiatives to improve delivery of service. On a day-to-day basis, the Office of the ODPP works with a number of investigative agencies from whom we receive investigation files. The vast majority of these files subject of this report are submitted to this office by the EACC. We therefore work closely with EACC in the area of legal developments and capacity building.

Other collaborative initiatives included the following:

- i. In February 2013, officers from ODPP together with officers from EACC and Department of Justice were involved in reviewing Malaysia in its implementation of the United Nations Convention against Corruption.
- ii. The same team has been working for the Kenya's Review on its implementation of the United Nations Convention against Corruption, which commenced in September 2013 and is expected to be completed in March 2014.
- iii. In June 2013, officers from ODPP attended and participated in the Leadership and Integrity Conference, which was hosted by the

EACC at the Kenya School of Monetary Studies and opened by His Excellency the President Hon. Uhuru Kenyatta C.G.H.

- iv. In July 2013 the DPP attended and fully participated the fourth East African annual conference on good Governance held at Kigali-Rwanda on 8<sup>th</sup> – 9<sup>th</sup> July 2013, whose theme was **"forging relationships between law enforcement Agencies: Anti-Corruption Agencies and the prosecution in the fight against corruption"**
- v. In year under review ODPP closely worked with the Kenya Integrity Forum in executing the National Anti-Corruption Plan and participated in activities such as sensitization of members of public through field visits and during the International Anti-Corruption day celebrated in Nakuru on 9<sup>th</sup> December 2013. This gave the ODPP officers an opportunity to meet with members of the public and sensitize them on the role of DPP in the fight against corruption.

2. In addition to the above, The ODPP has entered into and fostered collaboration with other related agencies in order to ensure and enhance the realization of the ODPP Act and the mandate of the ODPP. Some of the key activities that ODPP has collaborated in are highlighted herein below.

In order to improve the quality of investigations and prosecution of Corruption and Economic Crimes cases, In March 2012, the ODPP and EACC entered into partnership with GIZ for technical assistance, which included enhancing of collaboration mechanisms between our agencies. Under this partnership the EACC/ODPP joint collaboration committee came into being and has achieved the following:

- i. A major step forward was the development of draft guidelines for prosecution of Corruption and Economic Crimes. The guidelines will be launched soon after validation. The guidelines will provide a comprehensive resource for prosecution counsel and will ensure a consistency of approach in dealing with cases.
- ii. Pursuant to the ODPP Act, the DPP assigned prosecution counsel to work with EACC investigators who gave guidance and advise in the course of the on going major investigations. This mode of working has proved useful in complex investigations and reduced significantly the time delays normally occasioned when files are submitted by EACC without DPP's input.

- iii. Additionally, in order to improve the management of files within ODPP and EACC, a consultant was retained to document the ODPP processes and procedures for the purposes of developing an integrated file management system. The consultants has come up with a report which will be implemented in 2014.
- iv. In a move to enhance the organization's capacity officers from EACC and ODPP attend joint trainings such as:
  - a. In August 2013 officers from ODPP, EACC and other institutions had a joint training: **"Trial Advocacy focusing on electronic evidence and financial Analysis"**.
  - b. In November 2013, officers from the ODPP had a training workshop on **"Computer Forensics for intellectual property, health and safety, and other white collar crimes"**.
  - c. In December 2013, under the auspices of GIZ, officers from ODPP and EACC held a one-day joint workshop where they analysed selected finalized corruption cases. This exercise will be conducted regularly in future to enable the officers learn from the good practices and avoid past mistakes.

## **THE ORGANISATION**

### **Mission**

The mission of the Office of the Director of Public Prosecutions is 'To service the Government and the public in providing professional, effective and efficient prosecution services'.

### **Vision**

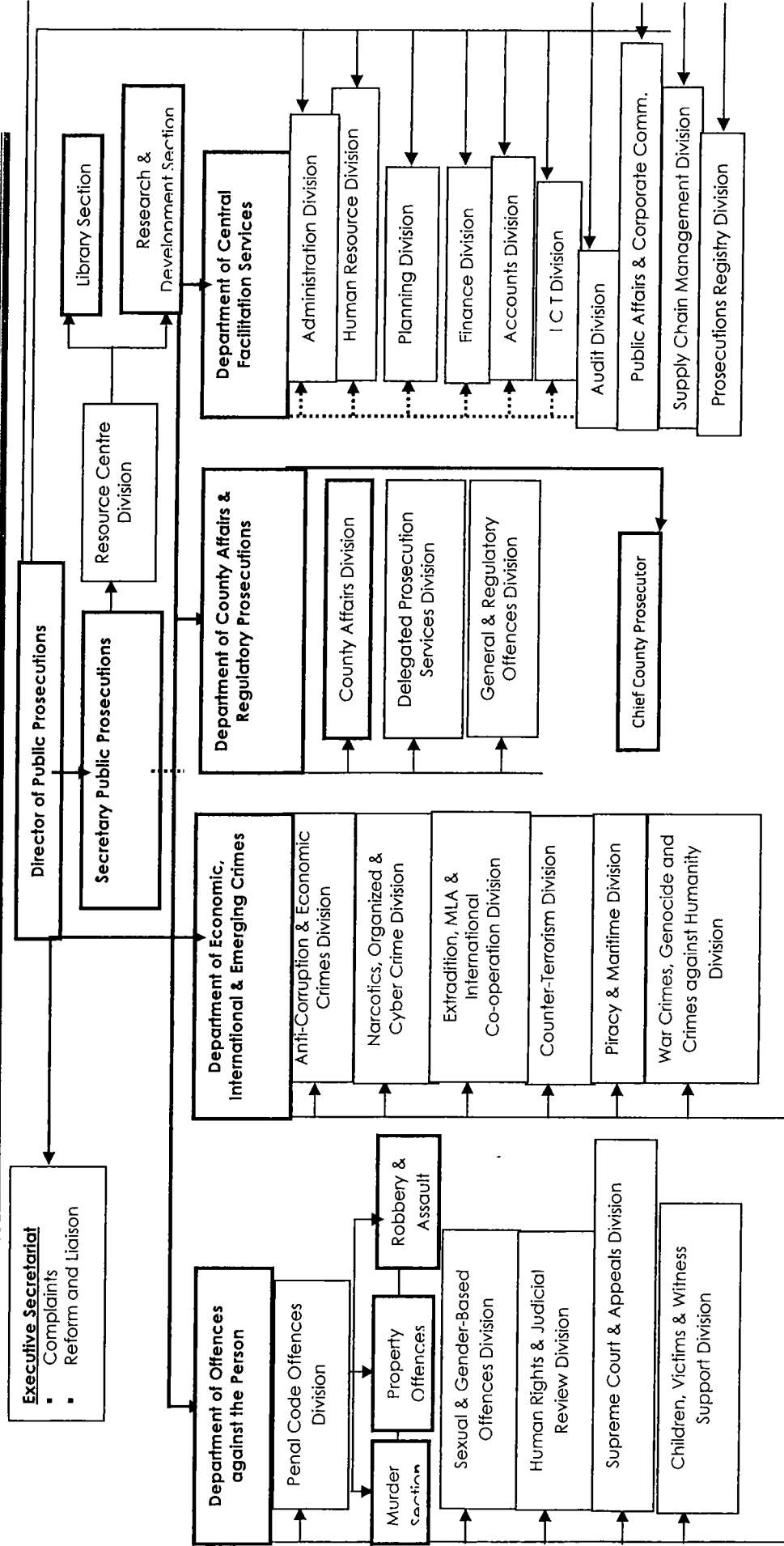
The vision of the Office of the Director of Public Prosecutions is 'To be a highly professional, effective and efficient prosecuting body in Kenya'.

### **Core Values**

In pursuit of excellence in delivery of service, the Office of the Director of Public Prosecutions' staff will be guided by the following values: -

- The principles of integrity, transparency and accountability.
- Team spirit, discipline, respect and courtesy among staff.
- Commitment and dedication to duty.
- Professionalism in service delivery.
- Impartiality and fairness.

**ORGANIZATIONAL STRUCTURE**



**KEY:**  
 ..... Administrative Reporting  
 \_\_\_\_\_ Professional/Technical Reporting

**(A) FILES SUBMITTED IN THE FIRST (1<sup>ST</sup>) QUARTER OF THE YEAR - 1<sup>ST</sup> JANUARY TO 31<sup>ST</sup> MARCH 2013**

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**1. KACC/FI/INQ/29/2011**

**NO. 1 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of irregularities in the procurement of a Chancery and Ambassador's residence for the Kenyan Embassy in Tokyo, Japan.

The property that was the subject of investigation comprises of land and buildings and is located at 3-24-3 Yakumo, Meguro-Ku in the city of Tokyo, Japan, (hereinafter referred to as the **Meguro-Ku property**). It was purchased by the Government of Kenya at Japanese Yen 1,750,000,000 to house the Kenya Chancery and Ambassador's Residence. It was alleged that the purchase price was exaggerated by over Kshs. 700 Million with suggestions that senior officials at the Ministry of Foreign Affairs and the Kenyan Mission in Japan may have benefited from the procurement. The matter was taken up for investigations in May 2010 with local and international investigations being undertaken contemporaneously.

Investigation by EACC established that there were irregularities in the procurement process, including concealment of crucial information from the decision-makers, such as the Negotiation Team and the Ministerial Tender Committee, and that this directly culminated in the Government of Kenya purchasing the property at the higher price, more than it would have cost taking into account the Valuation Reports that had been prepared by various valuers both in Tokyo and from Kenya.

Investigations further established that, whereas there was sufficient justification to acquire the property in Japan to house the Chancery and Ambassador's Residence on the grounds of high rent, among others, the evidence obtained revealed that the procurement of the Meguro-Ku property was not done in strict conformity with the relevant procurement laws and regulations. However, the investigation did not reveal any evidence to prove that any of the public officers involved in the purchase of the property benefited in any way.

EACC forwarded the file to the Director of Public Prosecutions on 8<sup>th</sup> February, 2013 with the recommendation that the PS, Ministry of Foreign Affairs, the former Charge 'D' Affairs Kenyan Embassy Tokyo and the former Deputy director of Administration, Ministry of Foreign Affairs be charged jointly with the offences of abuse of office contrary to section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) of the ACECA, Conspiracy to commit an offence of corruption contrary to section 47A(3) of the ACECA and the Charge 'D' Affairs also be charged with the offence of deceiving principal contrary to section 41 (2) of the ACECA.

Upon perusal of the file, the Director of Public Prosecutions found that there was sufficient evidence to support the proposed charges and directed prosecution to ensue.

#### **STATUS**

The suspects were charged with the offences of abuse of office contrary to section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) of the ACECA, Conspiracy to commit an offence of corruption contrary to section 47A(3) of the ACECA and the Charge 'D' Affairs also be charged with the offence of deceiving principal contrary to section 41 (2) of the ACECA. Upon being charged the accused raised a constitutional application which was dismissed. The case is pending hearing.

## **2. EACC/NYR/FI/INQ/09/2012**

### **NO. 2 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of irregular procurement of motor vehicles and lecture chairs at Kagumo Teachers Training College.

Investigation by EACC established that in September 2011, the Board of Governors, Kagumo Teachers Training College approved a budget for the purchase of three motor vehicles and 600 lecture chairs. After this approval was granted, the college commenced the process of sourcing for the said items. Investigations further established that the school principal, the procurement officer and the Tender Committee participated in the procurement of the items and went ahead to purchase them through direct procurement. This was in contravention of the procurement procedures as set out in the Public Procurement and Disposal Act, 2005.

The evidence obtained established that the Principal, Tender Committee members and the Procurement officer were culpable for the non-compliance. However, it was evident from the evidence obtained that the members of the Tender Committee were appointed by the principal from various departments and were not conversant with the procurement laws. In their evidence, it was clear that they solely relied on the procurement officer who was perceived to be the procurement expert. The procurement officer therefore bore the greatest responsibility for the breach of the procurement regulations.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> February, 2013 with recommendations that the principal who was the accounting officer and the procurement officer be charged jointly with the offence of wilful failure to comply with the law relating to the procurement of goods contrary to section 45 (2) (b) of the Anti-Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution to ensue. The Director of Public Prosecutions also directed that administrative action be taken against the officers who released the money for the purchase of furniture and the two vehicles without justification.

## **STATUS**

The suspects were jointly charged in court with the offence of wilful failure to comply with the law relating to the procurement of goods contrary to section 45 (2) (b) of the Anti-Corruption and Economic Crimes Act, 2003. The matter is part-heard in court.

### **3. KACC/FI/INQ/33/2011**

#### **NO. 3 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of embezzlement of public funds amounting to Kshs.17, 800, 000/= by a Cashier at the Ministry of Higher Education, Science and Technology.

Investigation by EACC established that the Ministry of Higher Education, Science and Technology (Ministry) receives funds from the Government and donors; and these funds are channelled to the Ministry through the Treasury. The investigations further established that on various occasions between 11<sup>th</sup> February 2008 and 28<sup>th</sup> July 2010, the cashier, who is the suspect, prepared several requisition forms for the withdrawal of a total sum of Kshs.17.8 million from the Ministry's Recurrent account held at the Central Bank of Kenya. Upon the receipt of the cash, the suspect did not make any entries in the cash book to reflect the receipt of the money contrary to the Government Financial Regulations which requires all cash transactions to be recorded on daily basis. It was further established that the requisitions had to be approved by other officers in the Ministry's Accounts Department before being taken to the Central Bank of Kenya. These officers were not expected to approve the requisitions when the Ministry had sufficient funds. However, contrary to the normal procedure, the officers approved the requisitions even when the Ministry's cashbook showed that they had sufficient funds. The cashier was unable to account for a sum of Kshs.16.4 million of the sum withdrawn from the Ministry's Recurrent Account in Central Bank.

EACC forwarded the file to the Director of Public Prosecutions on 25<sup>th</sup> February, 2013 with the recommendation that the suspects namely the cashier, the Chief Accountant and Head of Accounting Unit and the Accounts Assistant, Ministry of Higher Education, Science and Technology be charged with the offences of conspiracy to defraud the public contrary to Section 317 of the Penal Code, fraudulent acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public

Service contrary to Section 268 (1) as read with Section 280 of the Penal Code. Further recommendations made were that; administrative action be taken against other officers working in the accounts department in the Ministry who approved the aforementioned requisitions; civil recovery proceedings be instituted for the recovery of the lost public funds amounting to Kshs.16.4 million and a system audit be conducted by the Commission in the Central Bank of Kenya.

Upon perusal of the file, the Director of Public Prosecutions found sufficient evidence to support the recommended charges and directed prosecution to ensue. Further, concurred with the recommendation that administrative action be taken against two other officers working in the accounts department in the Ministry; civil recovery proceedings be instituted for the recovery of the lost public funds amounting to Kshs. 16.4 million and a system audit be conducted in the Ministry of Higher Education, Science and Technology.

#### **STATUS**

The suspects were charged with the offences of conspiracy to defraud the public contrary to Section 317 of the Penal Code, fraudulent acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public Service contrary to Section 268 (1) as read with Section 280 of the Penal Code. The matter is part heard in court.

#### **4. KACC/CR.141/40/2013**

##### **NO. 4 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of corruption against a Senior Inspector at the Anti-Counterfeit Agency, Ministry of Industrialization.

A Senior Inspector attached at the Anti-Counterfeit Agency, Ministry of Industrialization solicited for a benefit of Kshs. 50,000 from the complainant as an inducement to forbear charging him with an offence of being in possession of counterfeit goods.

Investigations by EACC established the solicitation and receipt of the benefit

The file was forwarded to the Director of Public Prosecutions on 18<sup>th</sup> February, 2013 with the recommendation that the case be prosecuted to its logical conclusion.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to warrant prosecution of the suspects and directed that prosecution ensue.

## **STATUS**

The suspects was charged in court with the offence of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The matter is part heard in court.

### **5. KACC/FI/INQ/12/2012**

#### **NO. 5 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of irregular issuance of an entry permit to a non-citizen by the Ministry of State for Immigration and Registrations of Persons officials.

Investigations by EACC established that in November 2011, the Ministry of State for Immigration and Registrations of Persons issued a class "H" work permit to a non-citizen who was a British national. The investigations further established that when the application for the permit was made, all the requisite documents were produced by the applicant. The application was thereafter discussed by the Entry Permits Steering Committee, approved and an Entry Permit issued. The applicant paid the fees for the permit. Contrary to the allegations made, the investigation established that due process was followed in the issuance of the permit to the said non-citizen. No culpability was established against the officers from the Immigration Department who processed the permit to warrant any action against them.

EACC forwarded the report to the Director of Public Prosecutions on 25<sup>th</sup> February, 2013, with recommendations that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found gaps and deficiencies in the investigations and directed EACC to conduct further investigations along the areas identified and resubmit the file.

## **STATUS**

The file was returned to EACC with directions to conduct further investigations and resubmit for further directions.

### **6. EACC/GSA/FI/INQ/04/2012**

#### **NO. 6 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of flouting of procurement rules during the tender opening and evaluation for the construction of classrooms at Madogo Secondary School, Tana North District.

Investigations by EACC established that after tenders were invited for the contract to construct classrooms at the Madogo Secondary School; several bids were received from contractors. However, during the opening and evaluation of the tenders, some of the bid documents were tampered with. The investigations further revealed that the tampering was in respect to bid documents belonging to one particular tenderer with a view to assisting the bidder to get the award of the tender. This was done through addition of documents to that particular bid which the tenderer had failed to attach at the time of the submission of the tender. At the end of the procurement process, the said bidder was awarded the contract.

The investigations also established that the tampering with the tender documents was done through collusion of the County Public Works Officer, the head teacher and the bidder who was awarded the contract. The act of tampering with the tender documents and the procurement process amounted to a breach of the procurement procedures as outlined in the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations.

EACC forwarded the file to the Director of Public Prosecutions on 25<sup>th</sup> February, 2013 with the recommendation that the suspects involved be charged with the offences of conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, Colluding to change a tender document contrary to Section 42(1) (b) as read with Section 137 of the Public Procurement and Disposal Act, 2005, and Wilful failure to comply with the law relating to procurement contrary to Section 45(2)(b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found that there was sufficient evidence to warrant prosecution of the suspects and directed that prosecution ensue. The Director of Public Prosecutions further directed that one of the suspects be treated as prosecution witness.

## **STATUS**

The suspects were charged with the offences of conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, Colluding to change a tender document contrary to Section 42(1) (b) as read with Section 137 of the Public Procurement and Disposal Act, 2005, and Wilful failure to comply with the law relating to procurement contrary to Section 45(2)(b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The case is part heard in court.

## **7. EACC/NYR/PI/INQ/10/2013**

### **NO. 7 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of irregular disposal of 88 houses constructed on Nanyuki Municipal Block 8/898 by the Kenya National Assurance (2001) Limited (KNAC); conflict of interest and embezzlement of the proceeds of sale thereon.

Investigation by EACC established the following facts; that sometime in 1979, KNAC entered into a mortgage housing financing scheme with the Municipal Council of Nanyuki, and loaned the latter Kshs. 4.84 million to put up 88 housing units. A loan agreement to this effect was entered into. Under the terms of the agreement, the Council was required to repay the loan together with interest over a period of twenty years. The Council defaulted in payment and also mismanaged the construction of the housing estate. KNAC took over the construction of the houses. Investigations further established that by the year 2008, the loan by the Council was still outstanding under the terms of the loan agreement. KNAC made several attempts to discuss the issue with the council with no success. This prompted KNAC to seek authority from the Treasury to sell the houses and recover the debt owed by the Council.

The investigation further established that after KNAC advertised for the sale of the houses, the Council and the tenants occupying the houses obtained court orders restraining the intended disposal by KNAC. To settle the matter, a Memorandum of Understanding was entered between the Council and KNAC and a consent subsequently entered in court, which served to discharge the injunctive orders earlier obtained against KNAC. Investigations also established that KNAC and the Council agreed that the property would be surveyed and subdivided into several units for sale. The tenants in occupation were also given first priority to purchase the houses.

The evidence obtained revealed that due process was thereafter followed in the disposal of the houses by KNAC. The proceeds of sale were used to redeem the loan owed by the Council and to meet costs that were incidental to the sale. No criminal culpability was established against the officers who were involved in the sale of the houses and all the proceeds of the sale were accounted for.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> February, 2013, with recommendations that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to warrant prosecution of the suspects and directed that the investigation file be closed with no further action.

## **STATUS**

The file was returned to EACC with directions to close.

### **8. EACC/GSA/FI/INQ/06/2012**

#### **NO. 8 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of corruption against County Council of Garissa officers in the procurement for the purchase of furniture for the Council.

Investigation by EACC established furniture worth Kshs. 2 million was purchased for the offices of Garissa County Council. Investigations established that the said furniture was unilaterally sourced by the Chairman, Garissa County Council. This was done without the involvement of the Tender Committee and the furniture was single sourced through direct procurement. This was in contravention of the Public Procurement and Disposal Act 2005. Investigations further established some of the furniture was not supplied to the Council. However, both the Council's Clerk and Treasurer went ahead to approve payments for the furniture despite the fact that procurement laws and regulations were not followed. They also approved payment for goods that were not delivered to the Council.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> February, 2013 with the recommendation that the suspects be charged with the offences of Wilful failure to comply with the law relating to procurement contrary to Section 45(2)(b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges against the suspects and directed prosecution to ensue.

## **STATUS**

The suspects were charged with the offences relating to procurement contrary to Section 45(2)(b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and conspiracy to commit an offence of corruption contrary to Section 47A as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The matter is part heard in court.

### **9. EACC/GSA/PI/INQ/1/2012**

#### **NO. 9 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of wilful failure to comply with the law and guidelines relating to the management of public funds by the Head Teacher of Ukasi Primary School.

Investigations by EACC established that procurement laws and regulations were not strictly followed by Ukasi Primary School in the procurement of textbooks and instructional materials. The procurement was done by the School's Instructional Materials Selection Committee instead of a Tender Committee as stipulated in the Public Procurement and Disposal Act, 2005. However, no loss was occasioned in the process and the goods procured were all delivered to the school. In the circumstances, it was deemed appropriate that the head teacher be admonished for allowing the school's Instructional Materials Selection Committee instead of the Tender Committee.

EACC forwarded the file to the Director of Public Prosecutions on 15<sup>th</sup> January, 2013 with the recommendation that the Head teacher of Ukasi Primary School be admonished and that the Ministry of Education be advised to sensitize primary school heads on the need to adhere to the procurement laws and regulations.

Upon perusal of the file, the Director of Public Prosecutions found no evidence to support any criminal charge and concurred with EACC that the matter be dealt with administratively.

#### **STATUS**

The file was returned to EACC with directions to deal administratively.

#### **10. KACC/MSA/FI/INQ/18/2011**

##### **NO. 10 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations of corruption against a Senior Police Officer based at Malindi was taking bribes from matatu operators arrested for committing traffic offence.

Investigations by EACC did not establish the solicitation and receiving of the benefit as alleged by the complainants. None of the complainants who were alleged to have given bribes to the said officer were willing to record statements. Investigations however established that the suspect owned a plot at Malindi and he had applied to the Municipal Council of Malindi for the approval of a building plan. However, in collusion with some Council's officials, the documents were altered to reflect a different applicant. The conduct by the Council officials of changing the official records amounted to professional misconduct. The evidence obtained did not therefore establish that the suspect corruptly solicited for and received a benefit as alleged.

EACC forwarded the file to the Director of Public Prosecutions on 15<sup>th</sup> January, 2013 with the recommendation that administrative action be taken against the officers of the Council involved.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to warrant prosecution of the officer and directed that administrative action be taken against the officers of the Council.

#### **STATUS**

The file was returned to EACC with directions to deal with the matter administratively.

**(B) FILES SUBMITTED IN THE SECOND (2<sup>ND</sup>) QUARTER OF THE YEAR- 1<sup>ST</sup> APRIL TO 31<sup>ST</sup> JUNE 2013**

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**11. KACC/KSM/FI/INQ/06/2011**

**NO. 1 EACC 2<sup>ND</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of misappropriation of Kshs. 490,000, funds allocated to Saroiyot Bridge by the Eldoret South Constituency Development Fund. Investigations established that in the 2009/2010 financial year, A sum of Kshs. 490,000 drawn from the Constituency Development Fund was allocated for the Saroiyot Bridge Project by the Eldoret South Constituency Development Fund Committee. The money was deposited in an account opened by the Project Management Committee (PMC) for the said project. Investigations however established that the said PMC was a creation of four persons who put in an elaborate scheme to fraudulently dispose of the CDF funds. The four suspects purported to register a Self Help group for purposes of receiving the funds allocated for the bridge. Investigations by EACC established that the purported registration was irregular, since the registration number issued for Saroiyot Bridge project was for another project. The Certificate of Registration issued to the suspects for their self help group was established to be a forgery.

Investigations further revealed that after the suspects purporting to be the bona fide PMC for the Saroiyot Bridge Project received the Kshs. 490,000, they withdrew the entire sum. However, the funds were not utilized for the intended purpose, which was the bridge. They jointly conspired to embezzle the money and could not account for it. The bridge which was intended for the benefit of the local community was also not constructed. The evidence revealed that the suspects were culpable for embezzlement of CDF funds.

EACC forwarded the file to the Director of Public Prosecutions on 20<sup>th</sup> May, 2013 with recommendations that the suspects namely the four officials of the Saroiyot Bridge Project be charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (b) of the Anti- Corruption and Economic Crimes Act, 2003 and Misappropriation of CDF Funds contrary to section 51 of the CDF Act.

Upon perusal of the file, the DPP found the evidence sufficient to support the proposed charges and directed prosecution to ensue.

### **STATUS**

The suspects were charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (b) of the Anti- Corruption and Economic Crimes Act, 2003 and Misappropriation of CDF Funds contrary to section 51 of the CDF Act. The case is pending in Court.

## **12. EACC/NYR/FI/INQ/7/2011**

### **NO. 2 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of embezzlement Kshs. 1, 181,800 Local Authority Transfer Fund (LATF) disbursed for the construction of Karama Dispensary in Nyambene County Council and making fictitious payment for non-existing road projects.

Investigations by EACC established that in the 2010/2011 Financial Year, the Ministry of Local Government disbursed LATF funds to the County Council of Nyambene. The money was meant for the implementation of projects that included construction of dispensaries and grading of roads in specific wards. Investigations also established that the projects were to be identified by the local community. The construction of six dispensaries was identified. One such dispensary was the Karama Dispensary.

Investigations also established that whereas the money was specifically allocated for the said dispensary, it was purportedly diverted for road grading. This was however done without the requisite approval required from the Council and from the local community that had agreed on the construction of the dispensary. The purported change of the project was manoeuvred by the Councillor of Karama Ward who alleged that due consent had been granted. However, investigations established that the purported use the funds meant for the dispensary to grade the roads in Karama

Ward was a cover up for the Councillor and others to embezzle the money. Whereas the Councillor purported that the sum of Kshs. 1,181,800 was paid to casual workers who did the manual road grading, the investigations established that no road works were carried out, nor were any casual workers paid.

Investigations further established that forged documents were used in a bid to account for the money. These included a forged Completion of Certificate presented as evidence of the purported road grading and false payment schedules for the purported casual workers. It was established that the sum of Kshs. 1,181,800 was received by the Councillor with the authority and knowledge of the Council Treasurer and Clerk. The LATF funds were neither used for the construction of the dispensary as intended nor the road grading but were embezzled.

EACC forwarded the file to the Director of Public Prosecutions on 10<sup>th</sup> June, 2013 with the recommendation that the suspects, namely; the former Councillor of Karama Ward, the Nyambene County Council Clerk and Treasurer be charged jointly with the offences of Abuse of Office contrary to section 46 and Fraudulent making payment from public revenue contrary to section 45(2) (a) of the Anti- Corruption and Economic Crimes Act, 2003; and the Councillor be charged with uttering false documents contrary to section 353 and false accounting by a public officer contrary to section 331 (1) of the Penal Code.

Upon perusal of the file, the DPP found the evidence sufficient to support the proposed charges and directed prosecution to ensue.

### **STATUS**

The suspects, namely; the former Councillor of Karama Ward, the Nyambene County Council Clerk and Treasurer were charged jointly with the offences of Abuse of Office contrary to section 46 and Fraudulent making payment from public revenue contrary to

section 45(2) (a) of the Anti- Corruption and Economic Crimes Act, 2003; The Councillor was also charged with uttering false documents contrary to section 353 and false accounting by a public officer contrary to section 331 (1) of the Penal Code. The case is part heard in court.

**13. EACC/FI/INQ/31/2012**

**NO. 3 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations that a Supply Chain Management Assistant in the Ministry of Public Works, failed to account for 2,172 reams of photocopying papers worth Kshs. 4,316,000 while he was in charge of the Central Stores.

Investigations by EACC established that sometime in August, 2009 the Ministry of Public Works was given the mandate to undertake documentation for the various projects under the Economic Stimulus Programme (ESP). The Ministry therefore received funds to procure 13,000 reams of photocopying papers. These reams were purchased at a cost of Kshs. 4,316,000. The suspect was mandated to collect the photocopying papers from the Central Stores. Investigations revealed that he collected the reams of paper, but before he could collect all, he was transferred to another Department.

Investigations further established that even after the said transfer, the suspect without authority, returned to the stores on various dates and collected 2,172 reams of paper worth Kshs.755,856. He however did not deliver them to their destination, nor did he account for them when he was asked to.

EACC forwarded the file to the Director of Public Prosecutions on 10<sup>th</sup> June, 2013 with recommendations that the suspect be charged with the offence of unlawful acquisition of public property contrary to section 45 (1 ) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charge and directed prosecution to ensue.

## **STATUS**

The suspect was charged with the offence of unlawful acquisition of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003. The case is pending hearing.

### **14. EACC/MSA/FI/INQ/5/13**

#### **NO. 4 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of irregular transfer of Kshs. 2 million CDF funds allocated to Mrima Secondary School to Likoni Secondary School

Investigation by EACC revealed that the National CDF Board through the Likoni CDF Committee allocated a sum of Kshs. 9 million for the construction of an administration block at Mrima School. While the CDF project was on going, the CDF Fund Manager, Likoni, the school Principal and the Chairman of the Board authorized the transfer of Kshs. 2 million meant for the said project to Likoni Secondary School. Such transfer was unlawful as stipulated in the CDF Act.

However, investigations established that the said transfer by the three officials was effected after much pressure was put on them by the area M.P. It was further established that transfer of the CDF funds from one project to another was a common practice in Likoni.

The Commission was of the opinion that due to the fact that the area MP may have influenced the transfer but without anything on record, this is a matter that administrative action would suffice against the Fund Manager and the officials of the Mrima School.

EACC forwarded the file to the Director of Public Prosecutions on 24<sup>th</sup> May, 2013 with recommendations that administrative action be taken against the three officers who authorized the transfer of funds.

Upon perusal of the file, the Director of Public Prosecutions found that there was evidence to support a charge of wilful failure to comply with the law relating to procurement contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes

Act, 2003 against the three CDF officials and directed prosecution to ensue against the three CDF officials.

### **STATUS**

The CDF three officials were charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) of the Anti-Corruption and Economic Crimes Act, 2003. The case is part heard in court.

### **15. EACC/NYI/FI/INQ/02/2011**

#### **NO. 5 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of abuse of office against public officers attached to the Nyeri District Lands Office. It was alleged by the complainant that he was unlawfully dispossessed of his land through corrupt means and in collusion with officers at the Nyeri Lands Office

Investigations by EACC revealed that several public officers at the Nyeri Lands Office colluded with private persons, approved and registered the Transfer of a parcel of land belonging to the complainant notwithstanding the subsistence of a valid Caution and a court order in respect of the same title. As a result, the complainant who was in occupation of the land was evicted from the land after it was transferred to a third party. Investigations further established that false documents were used in the Land Control Board and in the assessment of stamp duty. The Green card was also forged to facilitate the irregular transfer of the land in question.

EACC forwarded the file to the Director of Public Prosecutions on 27<sup>th</sup> May, 2013 with recommendations that all the suspects be jointly charged with conspiracy to commit an offence of corruption contrary to section 47(a)(3) of the ACECA. It was further recommended that the Land registrar who assessed the stamp duty be charged with forgery contrary to section 345 of the Penal Code.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution to ensue against the suspects who were officers in the Lands Office Nyeri.

### **STATUS**

The suspects were jointly charged with conspiracy to commit an offence of corruption contrary to section 47(a) (3) of the ACECA. The Land registrar who assessed the stamp duty was charged with forgery contrary to section 345 of the Penal Code. The case is part heard before court.

### **16. KACC/FI/INQ/56/2011**

#### **NO. 6 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of misappropriation of public funds amounting to Kshs. 19 million in the construction of Manguva Water and Sanitation Project in Mwingi District.

Investigations by EACC established that the Manguva Water and Sanitation Project was a project approved and funded by the Water Services Trust Fund. This was a community based project and was being implemented by a local NGO. The Water Trust was to contribute Kshs. 27, 327,500 towards the project. Investigations further established that pursuant to the said funding, the NGO sourced for and identified a contractor through procurement. The contractor commenced works on the project but the dam walls that were constructed were washed away by torrential rains before completion of the project.

Investigations further established that at the time the damage occurred, the Water Services Trust Fund had already disbursed Kshs. 19,585,543 to the NGO. The fund engaged an expert to conduct an investigation to establish the cause of the damage. The report by the expert revealed that the damage was as a result of poor design and construction, as well as insufficient supervision of the works. The Fund terminated the

contract and stopped further disbursements. The project was taken over and completed by the National Water Conservation and Pipeline Corporation. Investigations established that the dam is being used by the community for domestic and livestock needs. The Fund also instituted a Civil Suit for the recovery of the sum of Kshs. 10,163,479.15 from the NGO being payment received for uncompleted works.

The investigations did not establish any misappropriation of the money allocated for the Manguva Dam Project. It was only established that the contract with the NGO was terminated after the dam was damaged before completion due to poor workmanship. No culpability was however established to warrant any criminal proceedings against the officials of the Water Services Trust Fund and the NGO.

EACC forwarded the file to the Director of Public Prosecutions on 6<sup>th</sup> June, 2013 with recommendations that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and concurred with EACC that the inquiry file be closed.

### **STATUS**

The file was returned to EACC with directions to close.

### **17. KACC/FI/INQ/19/2012**

#### **NO. 7 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an inquiry into allegations of conspiracy between a former Chair of the Law Society of Kenya (LSK) and former Town Clerk, City Council of Nairobi to defraud the Nairobi City Council through verification of legal fees and diversion of a contract meant for the LSK to the chairman's law firm.

Investigations by EACC revealed that the Town Clerk, City Council, being concerned with the huge debts arising from legal fees in litigations against the Council, requested the former chair of LSK to carry out a verification exercise. This was to ascertain the authenticity of the legal fees being claimed by the lawyers.

Investigations further established that the verification was duly done and the LSK chair submitted the Report to the Council. The LSK chair did not charge the Council any fees for the benefit of his law firm as alleged. The investigation did not establish any conspiracy between the Town Clerk and the LSK chair to defraud the City Council of Nairobi. There was no culpability established to warrant any action against them.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> April, 2013 with recommendations that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and concurred with EACC that the inquiry file be closed.

### **STATUS**

The file was returned to EACC with directions to close.

### **18. KACC/FI/INQ/155/2010**

#### **NO. 8 EACC 2<sup>nd</sup> QUARTELY REPORT**

This was an Inquiry into allegations that officials of the Municipal Council of Nanyuki (Council) fraudulently and without following the laid down public procurement procedures irregularly bought 93 acres of land for cemetery at a cost of Kshs. 4,185,000.

Investigations by EACC established that sometime in 2008, a need arose for the Council to acquire alternative land for cemetery purposes since the existing cemetery was full.

The purchase was recommended by the Department of Public Health. Approval for the purchase of land was given by the relevant committee of the Council. Investigations further established that the procurement process was commenced and an Expression of Interest for the sale of the cemetery land was advertised in the newspapers. Evaluation of the bids received was carried out and the Tender Committee awarded the tender to the most responsive and lowest evaluated bidder who was to sell the Council 93 acres of land.

Investigations also established that the land was valued by the Ministry of Lands and its suitability for use as a cemetery ascertained by the Public Health Department. The seller was duly paid the sum of Kshs. 4,185,000 after entering into and signing an agreement with the Council. The investigations did not reveal irregularities or non-compliance with the Public Procurement and Disposal Act and the Regulations in the purchase of the land nor was the price exaggerated. No culpability was established on the part of the Council officers who were involved in the purchase of the cemetery land to warrant any action being taken against any of them. The Council did not also incur any financial loss in the said purchase.

EACC forwarded the file to the Director of Public Prosecutions on 26<sup>th</sup> June, 2013 with recommendations that the file be closed.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and concurred with EACC that the inquiry file be closed.

### **STATUS**

The file was returned to EACC with directions to close.

### **19. KACC/FI/INQ/43/2011**

#### **NO. 9 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations that the Nairobi Water and Sewerage Company Limited (NWSCL) was paying debt collection fees for accounts that did not exist or accounts that were already settled.

Investigations by EACC established that in its 2009/2010 Annual Business Plan, the Company prioritized sustainable revenue growth. To achieve this, it decided to outsource debt collection services for purposes of recovering debts that stood at Kshs. 5 billion. An invitation for bids to provide consultancy services for debt collection was advertised. Several bids were received and after due procurement was followed; the successful firms were awarded the contract. Investigations further established that the firms commenced the debt collection exercise in the various regions under the supervision of the Regional Managers who were to allocate the cut off period for debt collection.

Investigations further established that the contracted firms performed the task of debt collection and invoiced the NWSCL for services rendered. The firms were duly paid at the agreed commission rate. There was no evidence to show that NWSCL paid the debt collectors for services not rendered, nor that any public money was lost in the exercise.

EACC forwarded the file to the Director of Public Prosecutions on 13<sup>th</sup> June 2013 with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found some gaps and deficiencies in the investigations and directed that the areas outlined be covered by way of further investigations.

#### **STATUS**

The file was returned to EACC with directions that further investigations be conducted along the identified lines and be resubmitted for further directions.

#### **20. EACC/FI/INQ/28/2012**

##### **NO. 10 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of irregular procurement of a school bus by the management of Kimaeti Secondary School using funds from the Bumula Constituency Development Fund.

Investigations by EACC established that sometime in 2005, the school purchased a school bus for Kshs. 1.5 million. The school borrowed money from other schools to pay for the bus. The school also received Kshs. 600,000 from the Bumula CDF. The bus after sometime developed mechanical problems and was therefore disposed of. Investigations further established that the school purchased a new bus after the disposal of the old one.

Investigations also established that at the time of the purchase and disposal of the buses, the school did not have a Tender Committee or Disposal Committee to approve the sale and disposal. It was evident that the Board of Governors (BOG), the school Principal and the PTA resolved to buy a bus and also dispose of the old one. They also used Kshs. 600,000 CDF funds allocated for the school laboratory to pay for the bus. This was contrary to the public procurement procedures and the Constituency Development Fund Act.

Nonetheless, the investigations did not establish any loss of public funds or personal financial gain on the part of either the school Principal or the BOG members. It was however evident that the management of the Board and the school Principal were not well conversant with the public procurement laws and regulations.

EACC forwarded the file to the Director of Public Prosecutions on 17<sup>th</sup> June, 2013 with recommendations that; the current and former Principal of the school and the Board of Governors be warned against non-compliance with procurement laws and regulations, the Ministry of Education be advised to train school principals of public schools of the requirements and need to comply with the Public Procurement Law and Regulations in their procurements and use of CDF funds; and the Commission (EACC) to educate and create awareness in public schools on the issues of procurement.

Upon perusal of the file, the Director of Public Prosecutions found no evidence to support any criminal charge, and concurred with EACC recommendations to have the matter dealt with administratively.

## **STATUS**

The file was returned to EACC with directions to deal administratively.

### **21. EACC/KSM/OPS/INQ/5/2012**

#### **NO. 11 EACC 2<sup>nd</sup> QUATERLY REPORT**

This was an Inquiry into allegations of corruption against a Zonal Quality Assurance and Standards officer in Ombeyi Zone, Muhoroni District. It was alleged that the suspect solicited for a benefit from the complainant as an inducement to help him gain entry to a Teachers Training College.

Investigation by EACC revealed that the suspect who is an employee of the Ministry of Education corruptly solicited for and received a benefit of Kshs. 10,000 from the complainant as an inducement to facilitate his selection to join a Teachers Training College as a P1 Trainee Teacher. She was arrested upon receipt of the benefit.

EACC forwarded the file to the Director of Public Prosecutions on 20<sup>th</sup> May, 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a ) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution to ensue.

## **STATUS**

The suspect was charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a ) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

**22. EACC/40476/2013**

**NO. 12 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of corruption against an Advocate based in Nyeri County. It was alleged that the Advocate corruptly solicited for a benefit from the complainant as an inducement to assist her obtain a favourable judgment in a case in which she was the complainant.

The investigations established that the advocate solicited for the money and indeed received a sum of Kshs. 8,000 given to him by the complainant in a trap operation. However, whereas the advocate received the money, the Commission was of the opinion that an offence under section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003 would not be sustained since the essential elements of the offence under the said section were not established.

EACC forwarded the file to the Director of Public Prosecutions on 3<sup>rd</sup> May, 2013, with the recommendations that the matter concerning the Advocate be referred to the Advocates Disciplinary Committee, Law Society of Kenya for disciplinary action to be taken against the Advocate.

Upon perusal of the file, the Director of Public Prosecutions found some gaps and deficiencies in the investigations and directed that the areas outlined be covered by way of further investigations and the file be resubmitted for further direction.

**STATUS**

The file was returned to EACC with directions that further investigations be conducted in the outlined areas and be resubmitted for further directions.

**23. EACC CR.720/40/2013 COURT FILE NAKURU ACC.NO. 1/2013**

**NO. 13 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations that an Inspector with the Kenya Forest Service, Maralal, corruptly solicited for a benefit of Kshs. 60,000 from the complainant as an inducement to issue him with a Forest Produce Movement Permit.

Investigations by EACC established that the suspect solicited for and received a benefit from the complainant.

EACC forwarded the file to the Director of Public Prosecutions on 17<sup>th</sup> April, 2013 with recommendations that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution to ensue.

### **STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

### **24. EACC/MSA/PR/INQ/1/2013**

#### **NO. 14 EACC 2<sup>nd</sup> QUARTERLY REPORT**

This was an Inquiry into allegations of corruption against, a Loading Clerk at the Kenya Ports Authority (KPA).

Investigations by EACC revealed that the suspect, who is an employee of the Kenya Ports Authority, corruptly offered a benefit of Kshs. 20,000 to a Security Officer at the KPA as an inducement to release a truck that had been detained for carrying excess bags of wheat belonging to the World Food Programme.

EACC forwarded the file to the Director of Public Prosecutions on 20<sup>th</sup> May, 2013 with recommendations that the suspect be charged with the offences of corruptly offering and giving a benefit contrary to section 39 (3) (b) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution to ensue.

**STATUS**

The suspect was charged with the offences of corruptly offering and giving a benefit contrary to section 39 (3) (b) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

**(C) FILES SUBMITTED IN THE THIRD (3<sup>RD</sup>) QUARTER OF THE YEAR – 1<sup>ST</sup> JULY TO 30<sup>TH</sup> SEPTEMBER 2013**

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**25. EACC/FI/INQ/18/2012**

**NO. 1 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of irregular procurement of a private medical Centre by THE National Hospital Insurance Fund (NHIF) for the provision of Outpatient Medical Cover under the Civil Servants and Disciplined Services Medical Scheme leading to irregular payment of Kshs. 116,935,000 for services not rendered or not adequately rendered.

Investigations by EACC established that sometime in 2011, the Government through the Ministry of State for Public Service (MSPS) decided to provide medical cover to civil servants and members of the disciplined forces. Pursuant to this the MSPS entered into negotiations and subsequently a contract with the NHIF was entered into. NHIF was to roll out the scheme on behalf of the Ministry. The Ministry released funds to NHIF for payment to service providers who would be contracted to provide the medical services.

Investigations further revealed that the NHIF Board approved the scheme and advised the management to ensure that the scheme was implemented in accordance with the Government Circular. It was expected that in identifying the service providers for the scheme, NHIF would advertise for interested service providers to submit their bids. Investigations however established that there was no Procurement done for the said medical scheme. Instead, NHIF unilaterally picked two service providers without following the laid down procurement procedures and awarded them the contract to provide medical care for civil servants and the members of the disciplined forces. In addition, NHIF did not comply with the accreditation guidelines before contracting the

service provider. The result of this was that NHIF enlisted the services of the service provider's facilities which were not accredited.

Whereas the service provider contracted by NHIF received the full payment of Kshs. 116, 935, 500, investigations revealed that the provider did not have presence in all the parts of the country where civil servants and disciplined forces members were to access the medical services. Therefore, the medical service provider received payment even for services that were not rendered since they had no facilities in some areas.

EACC forwarded the file to the Director of Public Prosecutions on 1<sup>st</sup> August, 2013, with recommendations that the former Chief Executive Officer, NHIF, and the Manager, Strategy and Corporate Planning be charged with the offence of wilful failure to comply with the law relating to procurement of services contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, the two together with the Assistant Manager, Benefits and Quality Assurance be charged with the offence of abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act; that the three officers together with the Directors of the service provider be charged with conspiracy to defraud contrary to section 317 of the Penal Code and the General Manager Benefits and Quality Assurance, NHIF be charged with the offence of neglect of official duty contrary to section 128 of the Penal Code.

Upon perusal of the file, the Director of Public Prosecutions found sufficient evidence to support prosecution of all the suspects except the General Manager, Benefits and Quality Assurance for the recommended charges and directed prosecution to ensue.

## **STATUS**

The suspects were charged with the offence of wilful failure to comply with the law relating to procurement of services contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, the two together with the Assistant Manager, Benefits and Quality Assurance be charged with the offence of abuse of office contrary to section

46 of the Anti- Corruption and Economic Crimes Act; that the three officers together with the Directors of the service provider be charged with conspiracy to defraud contrary to section 317 of the Penal Code and the General Manager Benefits and Quality Assurance, NHIF be charged with the offence of neglect of official duty contrary to section 128 of the Penal Code. Hearing is yet to commence.

**26. EACC/FI/INQ/22/2013**

**NO. 2 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of misappropriation of Kshs.1,133,500 meant for training programmes in five constituencies in Upper Eastern province by a Senior Research and Policy Officer, Youth Enterprise Development Fund.

Investigations by EACC revealed that, the officer who is working with the Youth Enterprise Development Fund as a Senior Research and Policy Officer received an imprest of 1,133,500/- to cater for trainings four districts in the Upper Eastern Province. The said imprest was to cater for reimbursement for lunch and transport for participants and facilitation fees for facilitators at the training. Investigations established that the training was conducted. However, investigations further established that out of the total imprest received by the officer, he misappropriated a sum of Kshs. 608,678/=. He also surrendered the imprest using false documents in an attempt to account for the money.

EACC forwarded the file to the Director of Public Prosecutions on 5<sup>th</sup> August, 2013 with recommendations that the suspect be charged with the offences of fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, Abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003 and False Accounting by a public officer contrary to section 331(1) and (2) of the penal code. It was further recommendation that the Civil Litigation and Asset Tracing

Department of the Commission institutes recovery proceedings in respect of the money of Kshs. 608,678 which the accused fraudulently acquired.

Upon perusal of the file, the Director of Public Prosecutions found sufficient evidence to support the proposed charges and directed prosecution to ensue. The Director of Public Prosecutions further concurred with the recommendation that civil proceedings be instituted for the recovery of the misappropriated funds.

## **STATUS**

The suspects were charged with the offences of fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, Abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003 and False Accounting by a public officer contrary to section 331(1) and (2) of the penal code. Case part heard before court.

### **27. KACC/FI/INQ/88/2008**

#### **NO. 3 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of irregular extension of Service Contract, by officials of KenGen to Great Wall Drilling Company Ltd of China for drilling of 15 production wells at Olkaria Domes.

Investigation by EACC revealed that KenGen advertised for the provision of drilling services for six geothermal wells at Olkaria Domes in April 2006. Following the advertisement, KenGen received 3 bids and the Evaluation Committee settled on the lowest evaluated responsive bidder. The recommendation was placed before the Tender Committee which awarded the tender for provision of drilling services for the six geothermal wells to the Chinese Company at their quoted price.

Investigations further established that, it was a term in the Tender document that there was a possibility that the contract between the successful bidder and KenGen there was a possibility for extension of the contract to drill additional wells upon successful drilling of the initial six wells. Pursuant to this clause in the contract, the successful company after drilling the initial six wells was contracted by KenGen to drill additional fifteen wells. The investigations did not reveal that the extension clause in the contract was only intended to benefit the Chinese Company. It was established that all the bidders who participated in this particular tender were aware of the extension clause to drill additional wells. The extension of the contract was also approved by the KenGen Tender Committee. There were no procurement irregularities to warrant or support any criminal charges against the officials of KenGen.

EACC forwarded the file to the Director of Public Prosecutions on 2<sup>nd</sup> September, 2013, with recommendations for closure of the inquiry file.

Upon perusal of the file, the Director of Public Prosecutions found gaps and deficiencies in the investigations and directed that further investigations be conducted along the identified areas and the file be resubmitted for further directions.

#### **STATUS**

The file was returned to EACC with directions that further investigations be conducted and the file be resubmitted for further directions.

#### **28. KACC/FI/INQ/15/2012**

##### **NO. 4 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of conflict of interest and abuse of office against the Top Management of the National Housing Corporation (NHC) by way of allocating themselves several housing units from Schemes developed by the Corporation

Investigations by EACC established that the members of House Allocation Committee (HAC) at NHC irregularly allocated houses developed by NHC to themselves, their friends and relatives. They neither declared their interest during the meetings in which the HAC deliberated on the allocations nor did they disqualify themselves from participating in the allocations that directly favoured them. The investigations established that the said members of the House Allocation Committee were culpable for conflict of interest and abuse of office.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> September, 2013 with recommendations that former Managing Director, the Company Secretary, the Technical Manager, Chief Estate Officer, Senior Legal Officer and the Finance Officer, all members of the National Housing Corporation, House Allocation Committee be charged with the offences of Abuse of Office contrary to section 46 of and Conflict of Interest contrary to section 42 of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

#### **STATUS**

The above named suspects were charged with charged with the offences of Abuse of Office contrary to section 46 of and Conflict of Interest contrary to section 42 of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

#### **29. KACC/FI/INQ/43/2011**

##### **NO. 5 EACC THIRD QUARTERLY REPORT**

This is an inquiry into allegations that an Accountant II in the Ministry of Education misappropriated a sum of Kshs.3,666,178.00 which was meant for the facilitation of workshops for Primary School Teachers at Migori Teachers Training College.

Investigations by EACC established that a workshop for primary school teachers in western Kenya facilitated by the Ministry of Education was held at Migori Teachers Training College. Investigations further established that a sum of Kshs.3,684,000/= was

approved for this exercise. Investigations also established that the said money was given to the Accountant as imprest to cater for transport reimbursement and for payment for the workshop facilities.

Investigations however revealed that part of the imprest in the sum of Kshs. 63,000 was misappropriated by the officer assigned the task of paying reimbursements to the workshop participants. In an attempt to account for the imprest, the suspect used forged payment schedules.

EACC forwarded the file to the Director of Public Prosecutions on 23<sup>rd</sup> September, 2013 recommending that the suspect, an Assistant Director Quality Assurance and Standards in the Ministry of Education be charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (a), Abuse of office contrary to Section 46 and Deceiving principal contrary to section 41 of the Anti- Corruption and Economic Crimes Act, 2003. It was further recommended that civil proceedings be instituted against the suspect to recover the sum embezzled.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue. Further DPP concurred with the recommendation for the recovery of the sum embezzled.

## **STATUS**

The suspect was charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (a), Abuse of office contrary to Section 46 and Deceiving principal contrary to section 41 of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

30. EACC/GSA/FI/INQ/7/2011

**NO. 6 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations that land belonging to Garissa Municipal Council namely Garissa Township Block II/96 was fraudulently leased out to a private person to the detriment of the Government and people of Kenya.

Investigations by EACC established that the land was allocated to a private person and a Certificate of Lease registered on 30/6/1997 was issued to him. Whereas the allegation made was that the land was part of a road reserve of the Thika-Garissa road and therefore not available for alienation, investigations established that the land was outside the road reserve area, described as the area inside the 30 metres width on either side of the road. Investigations however established that although the land was outside the road reserve area, it was still part of Government land. Therefore for any allocation to take effect, the process of alienation of Government land was applicable.

Investigations further established that the due process of alienation of public land as prescribed under the Government Land Act (Now repealed) was not followed in allocating this particular parcel of land to the private person.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> July, 2013 recommending that the Civil Litigation and Asset Recovery Department of the Commission demands from the allottee of the said land, the surrender of the title and in default civil recovery proceedings be instituted.

Upon perusal of the file, the Director of Public Prosecutions found gaps and deficiencies in the investigations and directed that further investigations be conducted in the outlined areas and the file resubmitted for further directions.

**STATUS**

The file was returned to EACC with directions that further investigations be conducted and be resubmitted for further directions.

**31. CR.INQ. FILE NO.7/2013**

**NO. 7 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against an Assistant Chief, Lenana sub-Location.

Investigations by EACC commenced after a report was made to the Commission that the suspect,, who is an Assistant Chief, Lenana Sub-Location had solicited for a a benefit from members of a Self Help Group in Lenana as an inducement to allow the group to continue operating a car wash along Ngong Road. Since none of the complainants who reported the solicitation was involved in the investigations, one of the officers of the Commission posed as the Chairman of the Self Help Group. The suspect solicited for a benefit of Kshs.20,000/= which he later reduced to Kshsl.15,000/= from the officer. He also received a benefit from the said officer. In view of the fact that the person who made the report against the suspect did not record a statement and was not involved in the investigation, the Commission was of the opinion that the evidence would not be sufficient to sustain corruption charges against the suspect.

EACC forwarded the file to the Director of Public Prosecutions on 20<sup>th</sup> September 2013 with recommendations that administrative action be taken against the suspect since he had used his office to improperly enrich himself in contravention of the provisions of section 11(1) of the Public Officer Ethics Act.

Upon perusal of the file, the DPP found that there was no sufficient evidence to support any criminal charge against the suspect and directed that administrative action be taken against him.

**STATUS**

The file was returned to EACC with directions to deal with the matter administratively.

**32. CR.141/284/2013**

**NO. 8 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against a Police Officer based at the Ruiru Criminal Investigations Department office.

Investigations by EACC established that the suspect, who is a Police Officer attached to Ruiru Criminal Investigations Divisional Police Headquarters corruptly solicited for a benefit of Kshs.30,000/= and Kshs.20,000 respectively on different dates from the complainant as an inducement to forbear charging him with an offence of obtaining money by false pretences. Investigations further established that the officer received a benefit.

EACC forwarded the file to the DPP on 30<sup>th</sup> August 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003 and that he should therefore be prosecuted accordingly.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

**STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part- heard in court.

**33. EACC/MSA/RP/INQ/2/2013**

**NO. 9 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against an Inspector, National Hospital Insurance fund, Mombasa Branch.

Investigations by EACC established that the accused who is an employee of National Hospital Insurance Fund, Mombasa Branch corruptly solicited and received from the complainant a benefit of Kshs.150,000/= as an inducement to forbear charging the complainant with the offence of failure to remit employee NHIF contributions.

EACC forwarded a report to the Director of Public Prosecutions on 22<sup>nd</sup> August, 2013, with the recommendations that the accused be charged with the offence of corruptly soliciting for and receiving a benefit.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that prosecution ensue.

#### **STATUS**

The suspect was charged with the offences of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. Case part heard before court.

#### **34. EACC/KSM/OPS/INQ/1/2012**

##### **NO. 10 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations that a Police Officer based at Kilgoris Divisional Criminal Investigations Office corruptly solicited for a benefit of Kshs.20,000/= from the complainant as an inducement so as to forbear charging him with the offences of dealing in illegal firearms and poaching.

Investigations by EACC did not manifestly indicate the solicitation of a benefit by the officer to sustain any corruption charges against him.

EACC forwarded the file to the Director of Public Prosecutions on 16<sup>th</sup> July, 2013 with recommendations that, due to lack of evidence to sustain any criminal charges, the file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was not sufficient to support any criminal charge against the suspect and directed that the file be closed. He however further advised that the matter be referred to the Inspector General of Police for appropriate administrative action to be taken against the Police Officer.

## **STATUS**

The file was returned to EACC with directions that the file be forwarded to the Inspector General of Police for appropriate administrative action to be undertaken against the police officer.

### **35. EACC/INQ/3/2013**

#### **NO. 11 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against a Senior Assistant Programme Director, Public Sector Reforms and Performance Contracting Department, Office of the Prime Minister.

Investigations by EACC established that the suspect who was an employee in the Office of the Prime Minister identified a hotel in Embu to host a training for trainers in a programme organized by the Department of Public Sector Reforms and Performance Contracting and which was sponsored by the United Nations Development Programme (UNDP). Investigations further established that the officer in cahoots with an employee of the hotel hatched a plan to get a 10% commission from the hotel once UNDP made payments. In this regard, the officer received a sum of Kshs.76,600/= from the Hotel as a commission for facilitating the procurement of the hotel. Investigations also established

that after the matter reached the office of the Permanent Secretary, the officer refunded back the entire sum to the hotel cashier.

EACC found that the officer's conduct went against the tenets of the provisions of the Public Officers Ethics Act, 2003 which requires a public officer to carry out his duties in a manner that maintains public confidence in the integrity of his public office.

EACC forwarded a report to the Director of Public Prosecutions on 7<sup>th</sup> August, 2013 with recommendations that administrative action be taken against the suspect for acting contrary to Section 11 of the Public Officers and Ethics Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to support criminal charges against the suspect and concurred with EACC recommendation that the matter be dealt with administratively.

#### **STATUS**

The file was returned to EACC with directions that the matter be dealt with administratively.

#### **36. CR.141/297/2013**

##### **NO. 12 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against the Member of Parliament for Kasarani Constituency.

Investigations by EACC established that the Member of Parliament corruptly solicited from the complainant a benefit of Kshs.100,000/= as an inducement to facilitate payment of Kshs.3,342,716.77 to the complainant for a CDF project which the complaint's company had been awarded and completed at Baba Ndogo Secondary School.

EACC forwarded the file to the Director of Public Prosecutions on 30<sup>th</sup> July, 2013, with the recommendations that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 48 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that prosecution ensue.

### **STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part- heard in court.

### **37. CR 760/434/2013**

#### **NO. 13 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of corruption against three Police Officers attached to the Anti-Narcotic Drugs Police Unit, Nakuru.

Investigations by EACC established that the suspects corruptly solicited for a benefit from the complainant as an inducement to forbear charging her with unspecified charges and to offer protection for her business. The suspects were arrested and charged before the Nakuru Anti- Corruption Court.

EACC forwarded the file to the Director of Public Prosecutions on 22<sup>nd</sup> July, 2013 with recommendations that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 48 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that prosecution ensue.

**STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

**38. CR 764/243/2013**

**NO. 14 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations that a Police Officer attached to Kinangop Police Station corruptly solicited for a benefit from the complainant as an inducement to forbear charging him with the offence of murder.

The investigations revealed that the suspect, corruptly solicited for and received a benefit of Kshs.20, 000/= from the complainant. He was arrested and charged before the Nakuru Anti- Corruption Court.

EACC forwarded the file to the Director of Public Prosecutions on 16<sup>th</sup> July 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that prosecution ensue.

**STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The case is part heard in court.

**39. EACC/OP/INQ/NYR/1/2013**

**NO. 15 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations that the Officer in Charge of Laare Police Station corruptly solicited for a benefit of Kshs. 10,000 from the complainant as an inducement to facilitate the conduct of investigations into his complaint of malicious damage to church property.

Investigations by EACC established that the suspect solicited for a benefit from the complainant. He however did not receive the benefit during the investigations. He was arrested and charged before the Meru Anti-Corruption Court.

EACC forwarded the file to the DPP on 9<sup>th</sup> July 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and agreeing to receive a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to warrant prosecution of the suspect and directed that administrative action be taken against the him.

**STATUS**

The file was returned to EACC with directions that the matter be dealt with administratively.

**(D) FILES SUBMITTED IN THE FOURTH (4<sup>th</sup>) QUARTER OF THE YEAR- 1<sup>ST</sup> OCTOBER TO 31<sup>ST</sup> DECEMBER 2013**

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**40. EACC/INQ/26/2013**

**NO.1 EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations that the Independent Electoral and Boundaries Commission (IEBC) irregularly awarded the tender for the supply of Solar Lanterns to a private company.

Investigations by EACC established that the procurement of solar lanterns was done together with several other materials that were required by IEBC in preparation for the March, 2013 General Elections.

Investigations further established that after the tenderers submitted their bids and they were subsequently opened, the tender price in respect of the successful bidder was irregularly changed before evaluation thus giving the said bidder undue advantage over other prospective bidders. The changing of the bid price was done in collusion between officials of IEBC and the successful bidder. The evidence obtained disclosed offences of conspiracy, forgery and breach of public procurement laws and regulations against the IEBC officers and those of the private company that was awarded the tender for the supply of the solar lanterns.

EACC forwarded the file to the Director of Public Prosecutions on 2<sup>nd</sup> October, 2013 with the recommendation that the IEBC officials and the Directors of the private company be charged jointly with the offences of conspiracy to commit an offence of corruption contrary to section 47(A) (3) of the Anti- Corruption and Economic Crimes Act, 2003 and colluding to change a tender document contrary to section 42 (1) of the Public Procurement and Disposal Act. It was further recommended that the IEBC officials be

charged with careless failure to comply with the law relating to procurement contrary to section 45(2) (b) of the ACECA and the directors of the private company with the offence of forgery contrary to section 349 and an alternative charge of uttering a false document contrary to section 353 of the Penal Code.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The IEBC officials and the Directors of the private company were charged with the offences of conspiracy to commit an offence of corruption contrary to section 47(A) (3) of the Anti- Corruption and Economic Crimes Act, 2003 and colluding to change a tender document contrary to section 42 (1) of the Public Procurement and Disposal Act. The IEBC officials were further charged with wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) of the ACECA. The Directors of the private company were also further charged with the offence of forgery contrary to section 349 and an alternative charge of uttering a false document contrary to section 353 of the Penal Code. The hearing is yet to commence.

## **41. EACC/FI/INQ/33/2013**

### **NO.2. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations that the Independent Electoral and Boundaries Commission (IEBC) irregularly awarded the tender for the supply of Electronic Voter Identification Kits (EVID) and accessories to a private company.

Investigations by EACC established that the procurement for the EVID was done together with several other materials that were required by IEBC in preparation for the March, 2013 General Elections. Investigations further established that the hand held devices that were to be supplied as per the tender technical specifications and award

were irregularly changed thus leading to the supply of lap tops instead of the hand held devices provided for in the contract signed between IEBC and the successful tenderer. Investigations further revealed that the said changes to the devices that were supplied were effected without the approval of the Tender Committee as required under the Public Procurement and Disposal Act and Regulations. The evidence obtained disclosed offences of abuse of office and breach of public procurement laws and regulations against the IEBC officers and those of the private company.

EACC forwarded the file to the Director of Public Prosecutions on the 4<sup>th</sup> October, 2013 with a recommendation for the prosecution of several officials of the IEBC for the offences of abuse of office and breach of procurement laws and regulations.

Upon perusal of the file the DPP found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The IEBC officers were charged with the offences of:

- i. Willful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with section 48 of the Anti-corruption and Economic Crimes Act, 2003.
- ii. Abuse of office contrary to section 46 as read with section 48 of the Anti-corruption and economic Crimes Act, 2003.

The case is part heard before the court.

## **42. EACC/FI/INQ/40/2013**

### **NO.3. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of irregular procurement of a private medical Centre by the National Hospital Insurance Fund (NHIF) for the provision of outpatient medical

cover under the Civil Servants and Disciplined Services Medical Scheme leading to irregular payment of Kshs. 202, 161, 187.50 for services not rendered or not adequately rendered.

Investigations by EACC established that sometime in 2011, the Government through the Ministry of State for Public Service (MSPS) decided to provide medical cover to civil servants and members of the disciplined forces. Pursuant to this the MSPS entered into negotiations and subsequently a contract with the NHIF. NHIF was to roll out the scheme on behalf of the Ministry. The Ministry released funds to NHIF for payment to service providers who would be contracted to provide the medical services.

Investigations further revealed that the NHIF Board approved the scheme and mandated the management to ensure that the scheme was successful. It was expected that in identifying the service providers for the scheme, NHIF would advertise for interested bidders. Investigations however established that there was no procurement done for the said medical scheme. Instead, NHIF handpicked two service providers and awarded them the contract to provide medical care for civil servants and the members of the disciplined forces without following due procurement process. In addition, NHIF did not comply with the accreditation guidelines before contracting the service provider. The result of this was that NHIF enlisted the services of the service provider's facilities which were not accredited.

Whereas the service provider contracted by NHIF received the full payment of Kshs. 202, 161, 187.50, investigations revealed that the provider did not have presence in all the parts of the country where civil servants and disciplined forces members were to access the medical services. Therefore, the medical service provider received payment even for services that were not rendered since they had no facilities in some areas.

EACC forwarded the file to the Director of Public Prosecutions on 11<sup>th</sup> October, 2013 with the recommendation that the former Chief Executive Officer, NHIF, and the Manager, Strategy and Corporate Planning be charged with the offence of wilful

failure to comply with the law relating to procurement of services contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, the two together with the Assistant Manager, Benefits and Quality Assurance be charged with the offence of abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act; that the three officers together with the Directors of the service provider be charged with conspiracy to defraud contrary to section 317 of the Penal Code. It was further recommended that the Directors of the service provider be charged with obtaining money by false pretences.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

#### **STATUS**

The former Chief Executive Officer, NHIF, and the Manager, Strategy and Corporate Planning were charged with the offence of wilful failure to comply with the law relating to procurement of services contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, the two together with the Assistant Manager, Benefits and Quality Assurance were also charged with the offence of abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act; In addition the Chief Executive Officer, NHIF, the Manager, Strategy and Corporate Planning, Assistant Manager, Benefits and Quality Assurance and the Directors of the service provider were charged with conspiracy to defraud contrary to section 317 of the Penal Code. The Directors of the service provider were further charged with obtaining money by false pretences. Upon being charged the accused persons made an application for judicial review which was heard and dismissed. The case was referred back to the trial court for hearing which is yet to commence.

#### **43. KACC/F1/INQ/25/2011**

##### **NO.4. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations that Kitutu Chache Constituency Development Fund (CDF) irregularly used public funds to purchase sugar worth Kshs.137, 058, 429.80/= for

internally displaced persons from Chemelil Sugar Company Limited and withheld value added tax amounting to Kshs. 18, 461, 196/= which was never remitted to the Kenya Revenue Authority.

Investigations by EACC established that Kitutu Chache CDF through its Member of Parliament applied for and was issued with a Tax Withholding Certificate. Pursuant to this appointment, the MP wrote a request to Chemelil Sugar Company for the purchase of sugar for internally displaced persons. Investigations further established that the purchase did not materialize since the Kitutu Chache CDF Committee did not approve the intended purchase. Documents obtained from the sugar factory purported to indicate that Kitutu Chache CDF had purchased sugar worth Kshs.132,859,110. However, investigations revealed that Kitutu Chache CDF did not purchase any sugar. Instead, businessmen purchased the sugar through an agent using the account of Kitutu Chache CDF at the factory and the agent attached the Withholding VAT Certificates purporting that Kitutu Chache, being a tax withholding agent had withheld a sum of Kshs. 21,250,628 as VAT for the sugar purchased.

The evidence obtained therefore revealed that although there was purchase of sugar from Chemelil Sugar Company, no money from Kitutu Chache CDF kitty money was used. However, it was established that documents belonging to Kitutu Chache Constituency Development Fund (CDF) were used by the suspects to acquire the sugar at a price less Value Added Tax. The VAT which amounted to Kshs. 21, 250, 628/= were never remitted to the Kenya Revenue Authority as required by the law.

EACC forwarded the file to the Director of Public Prosecutions on 17<sup>th</sup> December, 2013, with the recommendation that the MP for Kitutu Chache Constituency and the agent who purchased the sugar jointly be charged with the offence of conspiracy to commit an economic crime contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003, that the MP be charged with Abuse of Office contrary to section 46 and the agent with the offence of fraudulent acquisition of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The former MP for Kitutu Chache Constituency and the agent were charged with the offence of conspiracy to commit an economic crime contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003. The MP was further charged with Abuse of Office contrary to section 46 and the agent was further charged with the offence of fraudulent acquisition of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003. Hearing is yet to commence.

### **44. EACC/ELD/F1/INQ/03/2011**

#### **NO.5. EACC FOURTH QUARTERLY REPORT**

This was Inquiry into allegations that officials from the Municipal Council of Kabarnet and Ministry of Lands colluded to irregularly allocate public land number Baringo/Kapropita 483 to private individuals.

Investigations by EACC established that the subject parcel of land belonged to the County Council of Baringo. Investigations further established that in spite of this land being public land and not available for alienation, it was irregularly subdivided and allocated to private individuals. In addition, no consent to transfer the land was obtained from the Minister for Local Government as required. The irregular allocation was facilitated by the Town Clerk of the Council, the District Land Registrar and a Councillor who was the chairman of the Town Planning Housing and Works Committee even with the knowledge that the land was public land.

EACC forwarded the file to the Director of Public Prosecutions on 18<sup>th</sup> November, 2013 with the recommendation that all the officers involved be charged with the offences of unlawful disposal of public property contrary to section 45(1) (b) of the Anti- Corruption

and Economic Crimes Act, 2003 failure to comply with applicable guidelines relating to disposal of public property contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, 2003 and abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The suspect officers from the Municipal Council of Kabarnet and Ministry of Lands were charged with offences of unlawful disposal of public property contrary to section 45(1) (b) of the Anti- Corruption and Economic Crimes Act, 2003 and failure to comply with applicable guidelines relating to disposal of public property contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, 2003 and abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act, 2003. Case part heard before court.

### **45. KACC/AT/INQ/21/2011-F1**

#### **NO.6. EACC FOURTH QUARTERLY REPORT**

This was Inquiry into allegations that a private construction company, with intent to defraud the Government, submitted two claims totaling to Kshs. 13, 648, 622.41 to the Ministry of Finance.

Investigations by EACC established that in the year 2005, a private company submitted two claims to the Government's Pending Bills Committee which arose from projects undertaken by the company in Vihiga District. The Committee recommended that the company be paid a sum of Kshs. 100 million as full and final settlement of the claim. The company accepted the money and was duly paid. The Directors of the company also executed agreements for the discharge of claims against the Government to the effect that the payment received was in full and final settlement of the claims for the projects.

However, in the year 2010, the said company wrote to the Ministry of Finance claiming for the payment of Kshs. 13.5 billion for the same projects in respect of which full payment had been received and acknowledged.

By re-opening claims for which the company had already received payment, EACC was of the opinion that the company intended to defraud the Government.

EACC forwarded the file to the Director of Public Prosecutions on 6<sup>th</sup> December, 2013 with the recommendation that the Director of the company be charged with the offence of attempt to commit an offence of corruption contrary to section 47 A (1) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

#### **STATUS**

The Director of the company was charged with the offence of an attempt to commit an offence of corruption contrary to section 47 A (1) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

The case is pending hearing.

#### **46. EACC/NYI/FI/INQ/07/2012**

##### **NO.7. EACC FOURTH QUARTERLY REPORT**

This was Inquiry into allegations of embezzlement of funds and irregularities in the procurement of works for routine repair and maintenance of roads by the Municipal Council of Chuka.

Investigations by EACC established that in the 2009/2010 Financial Year, the Municipal Council of Chuka received Kshs. 4,734,577 from the Kenya Roads Board to cater for routine repair and maintenance of roads within the Municipality. Five roads were earmarked for the repairs and tenders advertised. Investigations established that the tenders were opened, evaluated and awarded to the successful bidders. Investigations

further established that the contractors carried out the works under the supervision of the Council Works Officer and Council Engineer.

Investigations further revealed that the procurement process for the works was riddled with irregularities in that the successful contracting companies were neither the lowest bidders nor did they comply with the law governing procurement as to competence. The companies awarded the contracts were not qualified. The evidence obtained revealed an elaborate scheme to defraud the Municipal Council of Chuka of the funds set aside for the maintenance of the roads.

EACC forwarded the file to the Director of Public Prosecutions on 19<sup>th</sup> November, 2013 with the recommendation that the suspects namely; the Acting Town Clerk and Municipal Engineer, Chuka Municipal Council be charged jointly with the directors of the various companies contracted to carry out the works with the offence of conspiracy to commit an offence of corruption contrary to section 47A of the Anti-Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The Acting Town Clerk and Municipal Engineer, Chuka Municipal Council were charged with the offence of conspiracy to commit an offence of corruption contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003. Case part heard before court.

### **47. EACC/FI/INQ/21/2013**

#### **NO.8. EACC FOURTH QUARTERLY REPORT**

This was Inquiry into allegations of irregular procurement of a private medical provider by NHIF to provide outpatient medical services to NHIF members under a Pilot Scheme.

Investigations by EACC revealed that after NHIF decided to extend outpatient medical services to its members, it was resolved that health providers be identified. In this regard, investigations established that NHIF advertised an Expression of Interest and responses were received from several health providers. Investigations further established that after evaluation of proposals, NHIF identified appropriate providers. The successful bidders were therefore engaged by NHIF to provide outpatient medical services to NHIF members through their four health outlets in Nairobi.

Investigations further established that due procurement process was followed in engaging these providers and no irregularities were established. The evidence obtained further revealed that the health providers engaged under the Outpatient Pilot Scheme adequately offered services and were duly paid the contract sum. No culpability was established on the part of any of the officers involved in the implementation of the Out Patient Pilot Scheme.

EACC forwarded the file to the Director of Public Prosecutions on 28<sup>th</sup> October, 2013, recommending the closure of the file.

Upon perusal of the file the Director of public Prosecutions found the evidence insufficient to support any criminal charge and concurred with EACC that the inquiry file be closed.

## **STATUS**

The file was returned to EACC with directions to close.

### **48. EACC/FI/INQ/35/2013**

#### **NO.9 EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of failure to comply with procurement procedures in the disposal of a Mercedes Benz by the Insurance Regulatory Authority (IRA).

Investigations by EACC established that in December, 2009, a Circular was issued by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service on the implementation of a Government Transport Policy stipulating that senior officials in Government were only allowed to have official vehicles with an engine capacity not exceeding 1800cc. Investigations further established that prior to this circular being issued the Insurance Regulatory Authority had acquired a Mercedes Benz. Although its engine capacity was within the allowed limit, IRA decided to dispose it off and use the proceeds to buy a Passat for the CEO.

It emerged that the process of disposal was initiated and bids invited through advertisement. After receiving the bids, IRA observed that the highest bid was below the reserve price. A re-advertisement was done and the highest price offered was Kshs. 4 million. The Tender Committee approved the sale to the said bidder. Investigations however established that, the CEO as the accounting Officer, was of the opinion that the price of Kshs. 4 million was way below the market price and he thus decided that the vehicle be retained by IRA and thus the sale did not materialize. No irregularities were established with regard to the intended disposal. In addition, the action of the CEO as the accounting Officer was not arbitrary since it was his responsibility to ensure that IRA got value for money from the sale of the vehicle. No culpability was established on the part of IRA officials to warrant any action against them.

EACC forwarded the file to the Director of Public Prosecutions on 30<sup>th</sup> September, 2013 with a recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that there was no culpability demonstrated either against any of the officers of the Insurance Regulatory Authority or its CEO in regard to the disposal of the subject Mercedes Benz to warrant any action against them and concurred with EACC that the inquiry file be closed.

## **STATUS**

The file was returned to EACC with directions to close.

**49. EACC/F1/INQ/39/2012**

**NO.10 EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations that a Senior Immigration Officer was extorting money from aliens who were seeking Passports, Visas and Work Permits.

Investigations by EACC established that an Inter-Ministerial Committee on citizenship and work permits in the Immigration Department is charged with the responsibility of determining whether applicants satisfy the requirements for being issued with work permits, visas and passports. Investigations further established that whereas it was alleged that the Senior Immigration Officer was extorting money to issue work permits, visas and passports to aliens, no such evidence was revealed. In addition members of the Citizen Advisory Committee confirmed that the officer did not influence the decisions of the Committee. Investigations also established that the officer alleged to be collecting bribes was not a member of the Vetting Committee. The evidence obtained neither disclosed any impropriety on the part of the officer nor linked him with any wrong doing.

EACC forwarded the file to Director of Public Prosecutions on 4<sup>th</sup> December, 2013 with a recommendation that the inquiry file be closed.

Upon perusal of the file the DPP found the evidence insufficient to support any criminal charge and concurred with EACC recommendation that the file be closed.

**STATUS**

The file was returned to EACC with directions to close.

**50. EACC/F1/INQ/55/2013**

**NO.11. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of irregularities in the procurement of hotel facilities for a luncheon for the Insurance Regulatory Authority (IRA) Board.

Investigation by EACC established that it was an annual activity by the IRA Board to hold a luncheon in which meeting the Board and the management would take stock of the achievements of IRA to discuss the projected activities for the next year. Investigations established that a budget to hold the 2011 annual luncheon was approved and procurement for a venue commenced. A hotel was identified for the event. However, investigations established that the approval for the identified venue was not sought from the IRA Procurement Committee as required under the Public Procurement and Disposal Act. Investigations established that this lapse occurred when the officers responsible for ensuring that the Procurement Committee met to give approval were away from office.

Whereas there was this breach, there was no evidence of fraud in the procurement of the hotel and no loss of public funds. EACC further found that this breach pointed to a lack of proper systems in IRA Board.

EACC forwarded the file to the Director of Public Prosecutions on 2<sup>nd</sup> December, 2013 with recommendation that the inquiry file be closed and that IRA be advised to put its procurement systems in order.

Upon perusal of the file the DPP found the evidence insufficient to support any criminal charge and concurred with EACC that the file be closed.

## **STATUS**

The file was returned to EACC with directions to close.

### **51. NAIROBI ACC. NO.10/2013**

#### **NO.12. EACC FOURTH QUARTERLY REPORT**

This is an Inquiry into allegations of corruption against an Assistant Commissioner, Domestic Tax Department at the Kenya Revenue Authority (KRA).

Investigations by EACC established that the suspect who was an Assistant Commissioner, KRA corruptly solicited for a benefit of 57, 000 USD (Kshs. 5 million) from the complainant as an inducement to forbear charging the complainant with an offence of failure to submit self-assessment returns to KRA. The suspect also received a benefit from the complainant.

EACC forwarded the file to the Director of Public Prosecutions on 28<sup>th</sup> October, 2013 recommending that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Upon perusal of the file, the DPP found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The suspect was charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. The case is pending hearing.

## **52. CR.141/336/2013**

### **NO.13. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of corruption against a Police Constable based at the Nairobi Area Traffic Police Headquarters.

Investigation by EACC established that the suspect corruptly solicited for a benefit from the complainant as an inducement to facilitate the signing of a Kenya Revenue Authority Form necessary for application for a PSV licence. The suspect also received a benefit from the complainant.

EACC forwarded the file to the Director of Public Prosecutions on 2<sup>nd</sup> October, 2013 recommending that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No 3 of 2003.

Upon perusal of the file the DPP found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

#### **STATUS**

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No 3 of 2003. The case is pending hearing.

#### **53. EACC/INQ/9/2013**

##### **NO.14. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations that an Immigration Officer at Nyayo House corruptly solicited for a benefit of Kshs. 20,000/= from the complainant as an inducement to facilitate the processing of a passport for her son and Dual Citizenship.

Investigation by EACC established that the suspect solicited for a bribe. The suspect also received a benefit of Kshs. 20,000 from the complainant. The Commission was of the opinion that the evidence obtained was sufficient to sustain the charges of corruption against the suspect. However, the complainant in the matter who is a resident of and works in Sweden indicated that she would not be available during the trial as she is in full employment in Sweden. She also indicated that she did not wish to proceed with the case. On the basis of this indication by the complainant, the prosecution of the suspect would not be sustained.

The basis of this recommendation in lieu of prosecution was that the complainant who made the complaint in her statement was categorical that she did not wish to proceed with the case. She is a resident of Sweden on full time employment and therefore she

indicated that she will not be available during the trial. Her son who was also present during the time of solicitation and receipt of the benefit also lives abroad and did not record a statement. Without the evidence of the complainant, the prosecution would not have been sustained.

EACC forwarded the file to the Director of Public Prosecutions on 23<sup>rd</sup> October, 2013 recommending that instead of prosecution, administrative action be taken against the suspect.

Upon perusal of the file and consideration of the fact that the complainant would not be available to testify before court, the DPP concurred with EACC that the suspect be dealt with administratively in lieu of prosecution.

## **STATUS**

The file returned to EACC with directions to deal administratively.

### **54. EACC/KSM/OPS/INQ/5/2012**

#### **NO.15. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of corruption against the acting District Commissioner, Borabu District in Nyamira County and an Administration Police Officer attached to the same office.

The investigations established that the suspects corruptly offered and gave a benefit of Kshs. 40,000 to Military Officers who were conducting recruitment of officers to the Kenya Defence Forces at Menyanya High School in Nyamira County.

EACC forwarded the file to the Director of Public Prosecutions on 18<sup>th</sup> November, 2013 with the recommendation that two suspects be charged with the offences of corruptly offering and giving a benefit contrary to section 39 (3) (b) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 and conspiracy to commit

an offence of corruption contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the files, the DPP found gaps and deficiencies in the investigations and directed EACC to conduct further investigations along the areas identified and resubmit the file for further directions.

#### **STATUS**

The file was returned to EACC with directions to cover the areas identified and resubmit for further directions.

#### **55. KACC CR. 801/4272/2013 KERICHO ACC.2/2013**

##### **NO.16. EACC FOURTH QUARTERLY REPORT**

This was an Inquiry into allegations of corruption against the District Health Officer, Bureti and the District Works Officer, Sotik.

Investigation by EACC established that the suspects corruptly solicited for a benefit of Kshs. 50,000 and Kshs. 30,000 respectively from the complainant as an inducement to facilitate the payment of a retention fee of Kshs. 364, 843.55/= in respect of a project that the complainant had completed at Siomo Model Health Centre. The suspects also received a benefit from the complainant.

EACC forwarded the file to the Director of Public Prosecutions on 17<sup>th</sup> December, 2013 recommending that the two suspects be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Upon perusal of the file the DPP found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The two suspects were charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. The case is pending before court.

### **56. EACC/MSA/RPD/INQ/03/2013**

#### **NO.17. EACC FOURTH QUARTERLY REPORT**

This was an inquiry into allegations of corruption against officials of a production company in Mombasa.

Investigation by EACC established that the suspects corruptly solicited for a benefit of Kshs. 40,000 from the complainant as an inducement to facilitate the release of a suspect who had been arrested for infringement on music copyright. The suspects also received a benefit from the complainant.

EACC forwarded the file to the Director of Public Prosecutions on 22<sup>nd</sup> November, 2013 recommending that the two suspects be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Upon perusal of the file the DPP found the evidence sufficient to support the recommended charges and directed prosecution to ensue.

## **STATUS**

The two suspects were charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. The case is part heard in Court.

**1.7 STATISTICAL SUMMARY OF CASES FORWARDED TO THE DIRECTOR OF PUBLIC PROSECUTIONS BY EACC BETWEEN 1<sup>ST</sup> JANUARY 2013-31<sup>ST</sup> DECEMBER 2013 AND ACTION TAKEN**

<b>S/No.</b>	<b>PARTICULARS OF CASES</b>	<b>NUMBER</b>
1.	INVESTIGATION FILES SUBMITTED BY EACC TO THE DIRECTOR OF PUBLIC PROSECUTIONS/DPP FROM EACC FROM 1 <sup>ST</sup> JANUARY 2012 – 31 <sup>ST</sup> DECEMBER 2013	<b>56</b>
2.	FILES WHERE DPP DIRECTED PROSECUTION TO ENSUE	<b>34</b>
3.	FILES WHERE DPP DIRECTED FURTHER INVESTIGATIONS	<b>6</b>
4.	FILES WHERE DPP DIRECTED ADMINISTRATIVE OR OTHER DEPARTMENTAL ACTION	<b>8</b>
5.	FILES WHERE DPP DIRECTED CLOSURE	<b>8</b>
6.	FILES AWAITING DPP'S DIRECTIONS	<b>NIL</b>
	<b>TOTAL</b>	<b>56</b>

## 1.8 ABBREVIATIONS

ACC	-	Anti-Corruption Court
ACECA	-	Anti-Corruption and Economic Crimes Act No.3 of 2003
DPP	-	Director of Public Prosecutions
CF	-	Court File
CDF	-	Constituency Development Fund
CID	-	Criminal Investigations Department
CPC	-	Criminal Procedure Code
COMMISSION	-	Ethics and Anti-Corruption Commission
C/S	-	Contrary to Section
EACC	-	Ethics and Anti-Corruption Commission
GIZ	-	Gesellschaft für Internationale Zusammenarbeit
INQ	-	Inquiry
OCS	-	Officer Commanding Police Station
ODPP	-	Office of the Director of Public Prosecutions

Dated at Nairobi this 26<sup>th</sup> day of February, 2014

  
MR. KERIAKO TOBIKO, CBS, SC  
DIRECTOR OF PUBLIC PROSECUTIONS