

REPUBLIC OF KENYA



*Paper laid by the  
Leader of majority  
on 30/4/2014  
@muli:*

**KENYA NATIONAL AUDIT OFFICE**



**REPORT**  
**OF**  
**THE AUDITOR-GENERAL**  
**ON**  
**THE FINANCIAL STATEMENTS OF**  
**OFFICE OF THE DIRECTOR OF PUBLIC**  
**PROSECUTIONS**

**FOR THE YEAR ENDED**  
**30 JUNE 2013**



# REPUBLIC OF KENYA

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## KENYA NATIONAL AUDIT OFFICE

### REPORT OF THE AUDITOR-GENERAL ON THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE YEAR ENDED 30 JUNE 2013

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#### REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of the Office of the Director of Public Prosecutions which comprise the Statements of Assets and Liabilities – Recurrent and Development as at 30 June 2013, and the Appropriation Accounts – Recurrent and Development for the year then ended, and a summary of other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 8 of the Public Audit Act, 2003.

#### **Accounting Officer's Responsibility for the Financial Statements**

The Accounting Officer - Office of Director of Public Prosecutions is responsible for the preparation and fair presentation of these financial statements in accordance with Government Financial Regulations and Procedures and Public Finance Management Act, 2012 and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The Accounting Officer is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 4 of the Public Audit Act, 2003.

#### **Auditor-General's Responsibility**

My responsibility is to express an opinion on these financial statements based on the audit and to report in accordance with the provisions of Section 9 of the Public Audit Act, 2003. The audit was conducted in accordance with International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the

purpose of expressing an opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

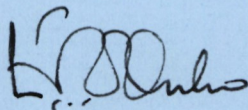
I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my audit opinion.

### **Opinion**

In line with my responsibility, I express unqualified opinion on the following financial statements.

- (i) Appropriation Account for Recurrent Vote R.163
- (ii) Statement of Assets and Liabilities for Recurrent Vote R.163
- (iii) Appropriation Account for Development Vote D.163
- (iv) Statement of Assets and Liabilities for Development D.163

In my opinion, the financial statements, present fairly in all material respects, the financial position of the Office of the Director of Public Prosecutions as at 30 June 2013 and of its financial performance for the year then ended, in accordance with Government Financial Regulations and Procedures and the Public Finance Management Act, 2012.



**Edward R.O. Ouko, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**25 March 2014**



**OFFICE OF THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

DEVELOPMENT 163

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**FINANCIAL STATEMENTS FOR THE  
YEAR ENDED 30<sup>TH</sup> JUNE 2013**

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**SEPTEMBER 2013**

## **PART I: INTRODUCTION**

The Office of the Director of Public Prosecutions (ODPP) was established as an independent constitutional office under the Constitution of Kenya, 2010 article 157. The office was created to ensure a revamped, professional, and accountable prosecution service.

### **1.1. Mandate and Responsibility**

The office of the DPP is mandated to undertake the following functions:

#### **a) Constitutional;**

1. Exercise prosecutorial powers by: -
  - Instituting and undertaking criminal proceedings against any person. These proceedings may be instituted before any court other than a court martial;
  - Taking over and continuing any criminal proceedings instituted or undertaken by another person or authority; and
  - Discontinuing at any stage before judgment is delivered any criminal proceedings.
2. Direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct; and
3. Ensure due regard to the public interest, the interest of the administration of justice and the prevention and avoidance of abuse of legal process.

#### **b) Other functions**

The Director of Public Prosecutions' other functions include:-

- Advising the Police and other law enforcement Agencies on possible prosecutions;
- Representing the State in all criminal applications and appeals;
- Engaging private legal practitioners to assist in the prosecution mandate, when need arises;
- Inspecting of prosecution operations;
- Undertaking extradition proceedings;

- Offering mutual legal Assistance to other jurisdictions;
- Undertaking action to ensure the tracing, seizure and forfeiture of assets connected to criminal proceedings;
- Disseminating and enforcing the National Prosecution Policy (NPP) and the Code of Conduct for Prosecutors;
- Ensuring control, supervision, regulation and gazettelement of public prosecutors;
- Carrying out any necessary functions that are incidental to instituting and conducting criminal prosecutions;
- Addressing parliamentary questions relating to administration of criminal justice;
- Advising Government Ministries, Departments and State Corporations on matters pertaining to the application of criminal law;
- Addressing complaints raised by members of the public, watchdog bodies and other institutions; and
- Undertaking other administrative roles relating to the efficient and effective administration of criminal law in the country

## **1.2. Vision, Mission and core values of the ODPP**

### **a) Vision**

The ODPP'S vision is *"An independent prosecution Authority providing efficient, effective, fair and just prosecution service for the people of Kenya"*.

Achievement of this vision will be through provision of just, independent, accountable, effective and efficient prosecution service.

### **b) Mission**

The ODPP'S Mission is *"To serve the public by providing quality, impartial and timely prosecution services anchored on the values and principles enshrined in the Constitution"*

### **c) Core Values**

The ODPP's Core Values are:

- Respect and promotion of Human Rights and the rule of Law;
- Integrity and Ethics;
- Professionalism;
- Fairness and impartiality
- Teamwork

### **1.3. Key Strategic Objectives**

Key objectives of the Office of the Director of Public Prosecutions include;

1. Conducting cases ethically, professionally and efficiently
2. Recruit, develop and retain high quality staff
3. Continuously improve ODPP performance
4. Improve access to prosecutorial services
5. Provide professional & timely advice to investigative & other agencies
6. Promote Inter-agency co-operation & collaboration
7. Actively contribute to law reform & Government law enforcement initiatives

### **1.4. Strategic Programmes**

The Office of the Director of Public Prosecutions has one programme namely; **"Public Prosecution Services"**

The programme is derived from the mandate of the Office of the Director of Public Prosecutions which is to prosecute all criminal offences on behalf of the Government. The ODPP also handles appeals and revisions and advises Government departments, ministries and agencies (MDAs) on criminal matters.

The overall objective of the programme is to provide efficient, effective and fair prosecutions which are a critical element in the administration of justice.

The programme is supported by six sub-programmes namely;

1. Prosecutions of all criminal offences.
2. Witness and victims of crime services.
3. Penal and criminal law reform.
4. Management of public prosecutions.
5. Co-operation in criminal matters.
6. Institutional Reforms, Restructuring and Strengthening

### **1.5. Key Strategic Priorities**

The Key Strategic priorities as envisaged in the ODPP Strategic Plan include;

- i) Restructuring and reforming of the ODPP in line with the Constitution.
- ii) Decentralization of prosecution services to promote access to justice.
- iii) Professionalization of prosecution services.
- iv) Witness and victim care and support
- v) Improvement in the criminal justice system
- vi) Enactment of an enabling and facilitative legislation for the ODPP.
- vii) Review and revision of key prosecutorial instruments
- viii) Automation and modernization of processes and procedures
- ix) Capacity Building and staff development
- x) Rebranding and repositioning of the ODPP
- xi) Promotion of Inter and Intra Agency cooperation and collaboration in criminal matters.
- xii) Monitoring and evaluation.

### **1.6. Key Management Staff**

The development of the ODPP organizational structure was informed by the fact that the pre-existing structures of the ODPP were not adequately suited to address the need for effective and efficient prosecution services in the work place thus necessitating the need for ODPP to refine and put in place an organization structure that aimed at ensuring consistent delivery of

services to the public and co-operation with stakeholders. The new structure established the the office of the prosecution secretary, four broad departments i.e. three legal one central facilitation. The departments are headed experienced deputy directors and administrators.

*Table 1 : Departments and respective heads*

<b>Department</b>	<b>Division</b>	<b>Head</b>
<b>Department Of Offences Against The Person</b>	Penal Code Offences	<b>Mrs. Grace Murungi (HOD) SADPP</b>
	Sexual & Gender-Based Offences	Tabitha Ouya SADPP
	Human Rights & Judicial Offences Division	Edwin Okello SPPPC Principal Prosecution Counsel
	Supreme Court & Appeals	
	Children, Victims & Witness Support	Mary Wang'ele Prosecution Counsel II
<b>Department of Economic International and Emerging Crimes</b>	Extradiction, MLA & International Co-operation	<b>Dorcas Oduor (HOD) Dep Director of Public Prosecutions</b>
	War Crimes, Genocide and Crimes against Humanity	
	Anti-Corruption & Economic Crimes	Emily Kamau SADPP
	Counter-Terrorism	
	Narcotics, Organized & Cyber Crime	Vincent Monda SPPC
	Piracy & Maritime	
<b>Department Of County Affairs And Regulatory Prosecutions</b>	Delegated Prosecution	<b>Patrick Gumo SADPP</b>
	General & Regulatory Offences	
	County Affairs Division	Jacob Ondari SADPP
	Delegated Prosecution Services Division	Fridah Mwanza
	General & Regulatory Offences Division	Jacinta Nyamosi
<b>Central facilitation Services (CFS)</b>		<b>Elijah T. Nduati, MBS (HOD) Director of</b>

Department	Division	Head
		<b>Administration</b>
	Administration	<b>Philip Langat</b>
	Human Resource Management	Mrs. Monica Mburugu Asst. Director, HRM
	Human Resource Development	Mr. Benedict Muthini Snr. Asst. Director, HRD
	Finance	Arthur Chege Senior Principal Finance Officer
	Planning	Mark Kimutai Snr. Economist
	Accounts	Rose Baraza Chief Accountant
	Supply Chain Management	Beatrice Wanderi Asst. Director Supply Chain Management officer
	Public Affairs and Corporate Communication	Peter Macharia Principal Information Officer
	Audit	Ann Titus, Chief Internal Audit
	ICT	Leonard Maritim Snr. ICTO
	Prosecution Registry	Allan Madara Chief Records Mgt. Officer
	Library	Ramadhan Wesonga Snr. Librarian

A detailed organizational structure is herein attached

## PART II: MANAGEMENT REPORTS

### Accounting officer's report

#### 2. Key Achievements

##### 2.1 Delivery on the core mandate

The services provided by the ODPP as mandated by the constitution of Kenya 2010 include; prosecution services, advising investigation agencies, and handling of complaints lodged by the public and other agencies.

During the 2012/13 financial year, the services were discharged by the prosecutors in the Court Appeal and High Court in Nairobi and 20 County offices where Court Appeal and High Courts are established.

The categories of cases handled include criminal cases (Murder, Anti-Corruption, and Piracy), Appeals and Applications (Appeals, Constitutional Review, and Revisions), Legal advice and Complaints from the Public.

Summary of cases concluded and pending is as follows;

#### 1. Criminal cases

Table 2: Criminal trials

Category	Case type	No. registered	No. pending	No. concluded		
				Conviction	Acquittal	Withdrawal
Criminal	Murder	1625	1750	131	63	65
	Piracy	1	9	4	0	0
	<b>TOTAL</b>	<b>1627</b>	<b>1760</b>	<b>131</b>	<b>63</b>	<b>65</b>

Table 3: Appeals & Applications

Category	Case type	No. registered	No. pending	No. concluded		
				Dismissed	Allowed	Withdrawn
Appeals & Applications	Appeals	4727	4494	445	388	243
	Constitutional Applications	291	109	41	22	0
	Judicial Review	444	134	99	3	12
	Revisions	1069	572	141	100	55
	Other Bail Applications	1628	815	121	626	53
<b>TOTAL</b>		<b>8159</b>	<b>6124</b>	<b>847</b>	<b>1139</b>	<b>363</b>

## 2. Corruption Cases

Table 4: Cases from EACC

Forwarded files	DPPs Decision	No.
110	Accepted to prosecute	80
	Rejected to prosecute	2
	Recommended Administrative Action or other Departmental Action	5
	recommended for further Investigations	9
	Recommended for Closure of files	14
	<b>Total</b>	<b>110</b>

Table 5: Status of cases recommended for prosecution

Cases recommended for prosecution	Status	No.
80	Pending	63
	Conviction	9
	Acquittals	6
	Withdrawals	2
	<b>Total</b>	<b>80</b>

Table 6: Corruption Cases investigated by other agencies

Case type	No registered	No pending	No concluded		
			Conviction	Acquittal	Withdrawal
Corruption	147	54	9	6	4

## **2.2 Institutional and governance structure**

During the year, the ODPP managed to undertake significant reform initiatives centred on reforming the institution and operationalizing it. This included; reviewing of the organization/establishment structure, strategic planning, recruitment of staff, decentralization of our services and other operational/administrative reforms.

### **a) Enactment of ODPP ACT**

During the year, Parliament enacted the **Office of the Director of Public Prosecutions Act, No. 2 of 2013** (ODPP Act) whose operations commenced on 16<sup>th</sup> January, 2013. The Act was passed to give effect to Article 157 and 158 of the Constitution.

The Act, among other things, establishes an ODPP Advisory Board to primarily advise the ODPP on issues of recruitment, promotions, terms and conditions of service of staff, discipline and other matters referred to it by the DPP. It empowers the ODPP to recruit its own staff, determine its terms and conditions of service in consultation with the Salaries and Remuneration Commission and also negotiate its budgetary requirements directly with the National Assembly.

The DPP constituted a task team within the Office to fast track the operationalization of the Act.

### **b) Advisory board**

The ODPP Act 2013, set up an Advisory Board whose principle function are to advise the office on recruitment and appointment of staff, promotions, discipline and any other matter that may be referred to.

Members of the Board consist of the Principal Secretary (PS), Public Service, DPP, Attorney General, PS, National Treasury, Chief Registrar Judiciary, Chairperson LSK, Chairperson KNCHR and Inspector General.

### **c) Sensitization of police prosecutors**

Currently, there are three hundred and five (305) police prosecutors who undertake prosecutions country wide. These prosecutors are however not answerable and accountable to the DPP since they fall under the National Police Service.

To address this matter, the DPP established a multi agency taskforce in 2011/12 financial year to advise on modalities for the absorption of police prosecutors to the ODPP. One hundred and ninety five (195) Police Prosecutors expressed their willingness to join ODPP. The recommendations of the taskforce are under consideration.

During the period under review, the ODPP continued with general capacity building, sensitization on key policy documents, and basic material support of the police prosecutors.

Other than police prosecutors, the DPP has to date gazetted officers from 14 institutions to undertake prosecutions on his behalf under their institution's legislation. For the period under review the ODPP has gazetted 244 prosecutors.

### **d) Benchmarking Visits**

As a newly established office, and given the desire to compare with the best in the ODPP's quest to offer professional, efficient and effective services to the Kenyan citizens, the office identified the need to learn from various established organizations and institutions.

The ODPP benchmarked on best practices concerning, among others: the organizational and grading structures, Staffing, Job specification/competencies/duties and responsibilities for all staff cadres, terms and conditions of service, resource mobilization strategies, performance management tools, and Strategic/operational plans.

In its determination to establish lasting and remarkably functional systems and structures, the ODPP benchmarked with Botswana, Australia, Hong Kong, Canada and the UK. The benchmarking findings have been collated and the best practices are being implemented in phases.

**e) Establishment and operationalization of specialized thematic divisions and sections**

The reporting period saw the development of a new organisational structure based on clearly defined thematic areas. The new structure established three technical departments namely the Department of Offences Against the Person; Department on Economic, International and Emerging Crimes; and Department of County Affairs and Regulatory Prosecutions to cater for the varied thematic areas of prosecution. The departments are further divided into specialized divisions and sections.

There was also established a department of Central Facilitation Services (CFS) to provide administrative support to the technical departments, as well as other Office operations.

**i) Department of Offences Against the Person**

This department deals with prosecutions relating to all penal code offences, SGBV, juvenile offences as well as human rights, judicial review and appeals. The reporting period will critically be remembered as the period during which the implementation of the new constitution has been on-going. This department contributed immensely in the promotion of the bill of rights and the prosecution of numerous constitutional petitions and judicial review applications.

**ii) Department of Economic International and Emerging Crimes**

The department is responsible for prosecution of corruption and economic crime, narcotics, organized crime, money laundering, piracy and terrorism cases. It also handles the docket of extradition requests and international cooperation in general.

The bulk of the operational work of the department comprised the handling of anti-corruption and economic crime cases whose performance is statutorily accounted for both quarterly and annually under the provisions of the Anti Corruption and Economic Crimes Act.

### **iii) Department of County Affairs and Regulatory Prosecutions**

The Department Of County Affairs And Regulatory Prosecutions was set up to ensure efficient management of all ODPP County Offices and to exercise control and supervision over delegated and regulatory prosecutions. The Department has been critical in the ODPP's drive towards devolving its services to all Kenyans by coordinating the opening of new offices.

During the reporting period, the department also offered guidance and collaborated with numerous agencies exercising delegated powers of prosecution such as the Kenya Revenue Authority, Kenya Wildlife Service, Kenya Forest Service, Immigration and Registration of Persons amongst others.

### **f) Rationalization and recruitment of Staff**

To facilitate the full functioning of the Office a workforce/workload analysis was conducted in 2011 which indicated the optimal staffing requirement for the ODPP. This informed the development of an organizational/establishment structure and staffing norm for prosecution services. The staffing norm rationalized the need for every level of courts to be manned by a given number and appropriate cadre of prosecutors. Therefore the optimal staffing level was determined as 927 Prosecution Counsel and 370 Central Facilitation Services for effective service delivery. Highlight the figures

To meet the optimal staffing levels the Office embarked on a major recruitment drive. The recruitment which is ongoing was done in phases.

Initially, the office sought authorization and concurrence of both the MSPS and the Treasury to recruit various cadres of staff from the job market, which

approval was granted. The approval allowed the recruitment of **130** prosecution counsel and **37 CFS** staff annually to fill the deficit.

So far the ODPP has managed to recruit a total of **87 legal** staff **65 CFS** staff and is in the process of recruiting an additional **180 legal** staff and **88 CFS** staff

The total number of promotions by the PSC and also the ODPP Human Resource Management Advisory Committee are **fifty six (56)** legal staff and **thirty seven (37)** non legal staff.

#### **g) Staff resourcing and development**

Continuous staff capacity building and development is key in enhancing employee satisfaction and performance. The changing global environment has given rise to emerging issues and new forms of criminality for which Prosecution Counsels require to be trained on.

In the financial year 2011/2012 the ODPP carried out a Training Needs Assessment for staff country wide, recognizing that a well capacitated ODPP would ensure quality service delivery to the public.

In the period under review, the office achieved the following key milestones;

- Developed pupillage/attachment guidelines
- Sponsored several staff for their post-graduate degree courses
- Undertook several relevant trainings at group and individual level.

The general outlook of the trainings so far undertaken is as indicated in the tables below:

*Table 7: Individual Training Programmes*

<b>TYPE OF TRAINING</b>	<b>NO OF OFFICERS</b>
Masters	16
Undergraduate	4
Higher Diploma	7

TYPE OF TRAINING	NO OF OFFICERS
Diploma	10
Certificate	8
<b>Total</b>	<b>45</b>

*Table 8: Group Training Conducted During the Period*

TRAINING PROGRAMME	NO OF OFFICERS
Fraud Investigation	18
Counter Terrorism & Transnational Crimes	6
Sexual and Gender Based Violence (SGBV)	3
Skills Improvement	2
Advocates Teacher Training	7
Trial Advocacy	22
Public Relations & Customer Care	11
Economic crimes training	50
Training of Police Prosecutors on sexual offences	30
<b>Total</b>	<b>263</b>

#### **h) Proposals on improvement of terms and conditions for ODPP staff**

Over the years, there has been a high turnover of ODPP legal staff which has impacted negatively on provision of prosecution services in the country. This has been attributed to the current Terms and Conditions of Service that are not competitive and it is therefore difficult to attract and retain qualified staff. This was identified as the key challenge affecting service delivery by a taskforce on Development of Organizational Structure and Staff Establishment for ODPP which carried out a workload/workforce analysis in September, 2011.

In an effort to attract and retain qualified staff for continuous and effective service delivery and raise employee satisfaction, a proposal for terms and conditions of service for ODPP staff was developed.

During the financial year, Salaries and Remuneration Commission approved an interim prosecutor's allowance pending reconsideration of the entire package of the office.

### **i) Development of Key prosecutorial and other policy documents**

Among the 15 identified strategic priority areas of intervention under the Strategic Plan (2011-2015), was review and revision of key prosecutorial instruments.

To align these documents with the Constitution 2010, the office continued with review and revision of the documents during the reporting period, culminating in: -

- The Revised National Prosecution Policy 2013 and
- The Revised Code of Conduct and Ethics for Prosecutors, 2013.

Other internal policy documents that have also since been developed by the Office in the year to guide its operations. These are:-

- ODPP's Communication Strategy, 2012;
- ODPP's Career Progression Guidelines, 2012;
- ODPP's Human Resource Manual, 2012;
- ODPP's ICT Strategy Framework, 2013;
- ODPP's Status Reports on Processes and Procedures, 2013;
- ODPP's General Prosecution Guidelines, 2013;
- ODPP's Anti-Corruption Prosecution Guidelines, 2013;
- ODPP's Sexual and Gender Based-Violence Prosecution Guidelines, 2013; and
- ODPP's Guidelines for Taking over and Consolidating Delegated Prosecutions, 2013

### **j) Harnessing ICT at the ODPP**

The ODPP began from scratch on its ICT infrastructure and capacity. It had no internet connectivity and still lacks a LAN and WAN systems. It also lacked and still does lack an automated case file management and other business systems necessarily for optimal operation.

In collaboration with development partners, the Office during the year developed an ICT strategy to guide it; in addressing the ICT gaps it faces, in

its pursuit to harness ICT as an integral component of all its processes. The ICT strategy framework notes that the Office has poor ICT infrastructure and a wanting data environment.

The four year ICT strategy framework identified various interventions needed to make the office fully automated and a world class prosecution service, providing timely service to the public. Discuss what we are doing about it e.g. committee on case management roll out

The office has also developed an automated complaints system akin to that of the Judiciary (running on both email and SMS platforms), which is scheduled for a public launch. This system will enable the ODPP to respond in a timely fashion to all complaints that it receives, track them during the resolution processes and gather data to inform appropriate remedial policy an administrative interventions.

The office was able to lay the ICT infrustrucure including LAN and ensuring access to and use the government's fibre optic network (GCCN) thus ensuring that staff have reliable internet connectivity. The internet connectivity is however not available in the county offices and this is being addressed. Going forward the Office's access to GCCN will help it in its quest of fully automating the operations of the Office country-wide.

#### **k) Full Establishment and strengthening of Central Facilitation services**

To support the independent discharge of functions in the ODPP, ODPP received more central facilitation staff as well as recruiting new staff to provide administrative support in order to free the prosecution counsel to concentrate on the key mandate of the ODPP. This include staff to provide the following services; Administration; Accounts; Finance; Procurement; ICT; Planning; and Human resource management, library, procurement amongst others.

## **l) Standing Committees**

In order to effectively discharge its prosecution function the ODPP established a number of Committees to address various issues.

### **a) Standing Committee on Law Reform**

This Committee was established to review existing laws touching on criminal law practice with the aim of initiating and recommending amendments. Notably, during the period under review, the Committee developed the rules, guidelines and practice notes on plea negotiations.

### **b) Tender Committee**

This is a statutory committee established to handle all matters relating to procurement of services and goods in the ODPP.

### **c) Ministerial Human Resource Advisory Committee**

This Committee was established to address all matters relating to the management of staff including leave, discipline, staff promotions, amongst others.

### **d) Leadership and Management Committee**

This Committee comprises the heads of county offices as well as heads of department in the headquarters. It was established to review performance and other reforms undertaken in the wake of the establishment of the ODPP.

### **e) Adhoc Committees**

During the period, numerous other Adhoc committees were established to handle assignments on a needs basis. These committees mainly dealt with the development of policy documents, the decentralization of ODPP services and other operational matters.

## **2.3 Decentralization to County Offices**

The ODPP is a key player in ensuring access to justice for all Kenyans as envisaged in Article 48 and the principle of devolution in the Constitution. It

aims to offer its service in an efficient, effective, fair and just manner through quality, impartial and timely delivery of prosecution services. Such aspirations are anchored not only on the values and principles enshrined in the Constitution, but also on international best practices.

During the year, decentralization of prosecution services remained a priority towards provision of effective and efficient delivery of services. This has been rolled out in line with the devolved system of government as well as the expansion of the Judiciary.

The ODPP set up new offices in Wajir, Lodwar, Narok, Kajiado, Voi, Marsabit, Bomet, Kerugoya, Homabay, Murang'a, Isiolo, Nyahururu and Thika. This is in addition to the 17 County offices which existed as at the time of de-linking from the SLO. This accounts for the 30 of the 47 county offices that the office intends to open.

The establishment of these new county offices involved acquisition of office space, deployment of staff and procurement of furniture and equipment. The decentralization process also involved the re-vamping of existing office space through the acquisition of additional office space, deployment of additional staff, refurbishment as well as provision of the necessary furniture and equipment.

In addition vehicles were procured for all county offices to facilitate mobility within the respective counties. These measures have contributed to efficiency and effectiveness in the discharge of the prosecution mandate as prosecutors now have the basic necessities for their work.

## **2.4 Witness and Victim support**

### **a) Establishment of Integrated public complaints handling mechanism**

The office established a fully functional complaints and compliments section in November 2011 to cater for public complaints. To date the section has received and handled **1,526** complaints

## **b) Establishment of Juvenile Justice Unit**

As part of supporting victims of crime and in particular the children, a juvenile justice unit was established.

The objectives of the unit are;

- i. Handling prosecutions in respect of children
- ii. Drafting documents relating the prosecution and conduct of cases in respect of offences against children
- iii. Advising Government, Ministries, Departments and other agencies on matters relating to children, victims and witnesses
- iv. Conducting research, review and making recommendations on the status and quality of the laws on children, victims and witnesses to the Law Reform Committee
- v. Guiding and advising investigating agencies in matters relating to children, victims and witnesses

## **2.5 Promotion of Inter-Agency Cooperation**

### **(i) International Cooperation**

Crime has not only become sophisticated, complex, and borderless, but it keeps mutating. Cooperation with other Agencies and jurisdictions has therefore become imperative if crime is to be contained. ODPP is a member of a number of international organizations, notably the East African Association of Prosecutors, the African Prosecutors Association and the International Association of Prosecutors. In addition to these organizations, the ODPP cooperates and collaborates with other jurisdictions in offering and receiving mutual legal assistance.

### **(ii) Interagency Cooperation**

In order to have a truly effective and proper functioning criminal justice system, there must be cooperation amongst and between justice agencies.

Through the National Council on the Administration of Justice where the DPP is a member, a broad based cooperation amongst justice agencies continues to grow.

The ODPP has also ensured and promoted cooperation through joint trainings, workshops, seminars, conferences and meetings on various topical issues with various Agencies.

### **(iii) Engagement with Civil Society**

The new Constitution expressly provides that citizens are to be involved in governance. In that regard, the ODPP has continued to engage the International Justice Mission, Constant Gardner Trust, Law Society of Kenya, among others.

### **(iv) Engagement with Development Partners**

The numerous reforms and initiatives required to be undertaken by the ODPP have not been adequately resourced by the Government. The ODPP therefore engaged with various development partners notably ,GIZ, US Department of Justice/OPDAT, United Nations Office on Drugs and Crime (UNODC), United Nations High Commissioner for Human Rights and the Commonwealth Secretariat to plug the void. Through this engagement the ODPP has managed to, among others, develop key prosecutorial documents, develop the ICT strategy and hold its inaugural prosecutors colloquium.

## **3. Key targets un-achieved and associated challenges**

The ODPP continued to experience acute financial constraints due to inadequate budgetary allocation during the year. This, no doubt, had great implications on the expectations of establishing a new office.

During the 2012/13 financial year the ODPP was allocated **Kshs 1.071 Billion** which was way below the requirements for operationalization of the office.



Because of the underfunding, the office was not able to implement the programmes/projects listed below;

- Recruitment of additional staff to address the current shortage of prosecution and administrative officers
- Decentralization of prosecution services to the counties
- Automation of services
- Capacity development both for prosecution and administrative staff
- Victims and witness support
- Absorption and support of police prosecutors
- Infrastructural development to cater for the expanded mandate and increased work load

The inability to carry on the above programmes/projects significantly hampered the implementation of the necessary reforms within the ODPP for effective and efficient delivery of prosecution services.

During the process of service delivery, the Office has faced and continues to face a number of challenges which include:

**a) Understaffing**

ODPP is currently operating at a mere **27.8%** of the optimal staff establishment. The current in-post of legal staff is a mere **169** as against an optimal requirement of **927** which translates to **(17.4%)**, while that of the non legal Staff is currently **188** as against an optimal of **364** which translates to **54.3%** of the optimal establishment. This situation negatively impacts on the ODPP's effective and efficient discharge of the prosecutorial function. A comparative analysis of the current judicial strength against ODPP's existing prosecutorial capacity is as follows;

*Table 9 : Comparison of Staffing levels for the Judiciary and ODPP*

	Judiciary	Expected Staffing Norm for ODPP	Actual ODPP Staffing Levels	Shortfall
Judges	104	208	-	-
Magistrates	436	436	-	-
Prosecution Counsel	-		161	

	Judiciary	Expected Staffing Norm for ODPP	Actual ODPP Staffing Levels	Shortfall
Police Prosecutors willing to join ODPP	-		230	
<b>Total</b>	<b>540</b>	<b>644</b>	<b>391</b>	253
Projected Recruitment 2013/2014 FY	280	280	-	280
<b>Projected Total at the end of Financial year</b>	<b>820</b>	<b>924</b>	<b>391</b>	<b>533</b>

The established staffing norm is two (2) prosecutors for every Supreme, Appeal and High Courts' Judge and one (1) prosecutor for every magistrate. From the table, ODPP has therefore to recruit **533** Prosecution counsel in order to meet the deficiency and match the ongoing expansion of the Judiciary.

The situation as it is now forces one prosecutor to serve many magistrates and courts resulting in idle capacity in the Judiciary where magistrates do not have corresponding prosecutors thus delaying dispensation of justice.

#### **b) Excessive Case Load**

Due to the acute shortage of staff at the ODPP and the huge backlog of cases in court, prosecution counsel have had to deal with excessive case and workloads. It is estimated on average, each prosecutor is handling about 450 pending cases.

There is therefore need to move with speed to fill the approved establishment in order to clear the backlog of cases.

#### **c) Unattractive terms and conditions of service**

The unattractive remuneration package offered to the staff of the ODPP has impacted immensely on the ability of the organization to hire and retain the best professionals in the job market. A proposal for improved terms for ODPP staff has already been forwarded to the Salaries and Remuneration Commission for consideration and advice.

#### **d) Emergence of new forms of crime**

New and emerging crimes such as money laundering, drug and human trafficking, cyber crime, terrorism, wildlife crimes and maritime piracy require specialized prosecution skills which calls for continuous training and skills development.

#### **e) Capacity constraints within other criminal justice agencies.**

The criminal justice is a chain, and is only as strong as its weakest link. A number of the other key agencies within the justice system such as the Police, and the Government Chemist suffer acute capacity constraints that inevitably affect the efficient delivery of services by the entire system.

#### **f) Budgetary Constraint**

ODPP resource allocation during the year was **Kshs1.072 billion**. Against a requirement of **Kshs 4.56 billion**. The Recurrent Vote allocation was **Kshs1.010billion** and the Development Vote was **Kshs 61.4 million**.

From above data it is evident that the ODPP continues to experience financial constraints due to inadequate budgetary allocation which no doubt, has great implications on the expectations of establishing a new office such as the ODPP.

#### **g) Inadequate office accomodation, equipment and facilities in both ODPP and Police prosecution offices.**

#### **h) Limited automation of services**

The systems in the ODPP are by and large manual resulting in cumbersome and lengthy processes, as well as delay in the delivery of services. An ICT strategy framework has already been developed and implementation will commenced in 2013-14 FY.

#### **4. Conclusion**

The Office of the Director of Public Prosecutions plays a very important role in the maintenance of law, order and security. The Office has identified the core projects and activities to be implemented over the medium term expenditure framework (MTEF) period to enable it deliver its mandate as enshrined in the constitution effectively.

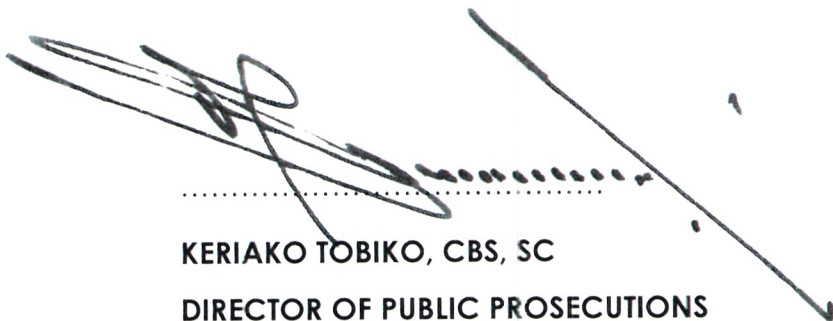
In the light of the central role played by the Office in the administration of justice, and the enormous challenges confronting it, the ODPP requires allocation of adequate resources in order to fully implement its core projects and activities. In addition, the ODPP being a newly established Office needs to be operationalized hence requiring considerable resources. There is an urgent need to devolve prosecution services to all counties by opening offices and posting prosecutors. The effective discharge of the ODPP's mandate will result in a more peaceful, safe, secure and economically prosperous Kenya.

### **PART III: STATEMENT OF THE ACCOUNTING OFFICER RESPONSIBILITY**

I accept responsibility for the maintenance of accounting records which may be relied upon in preparation of the financial statements as well as adequate systems of internal control.

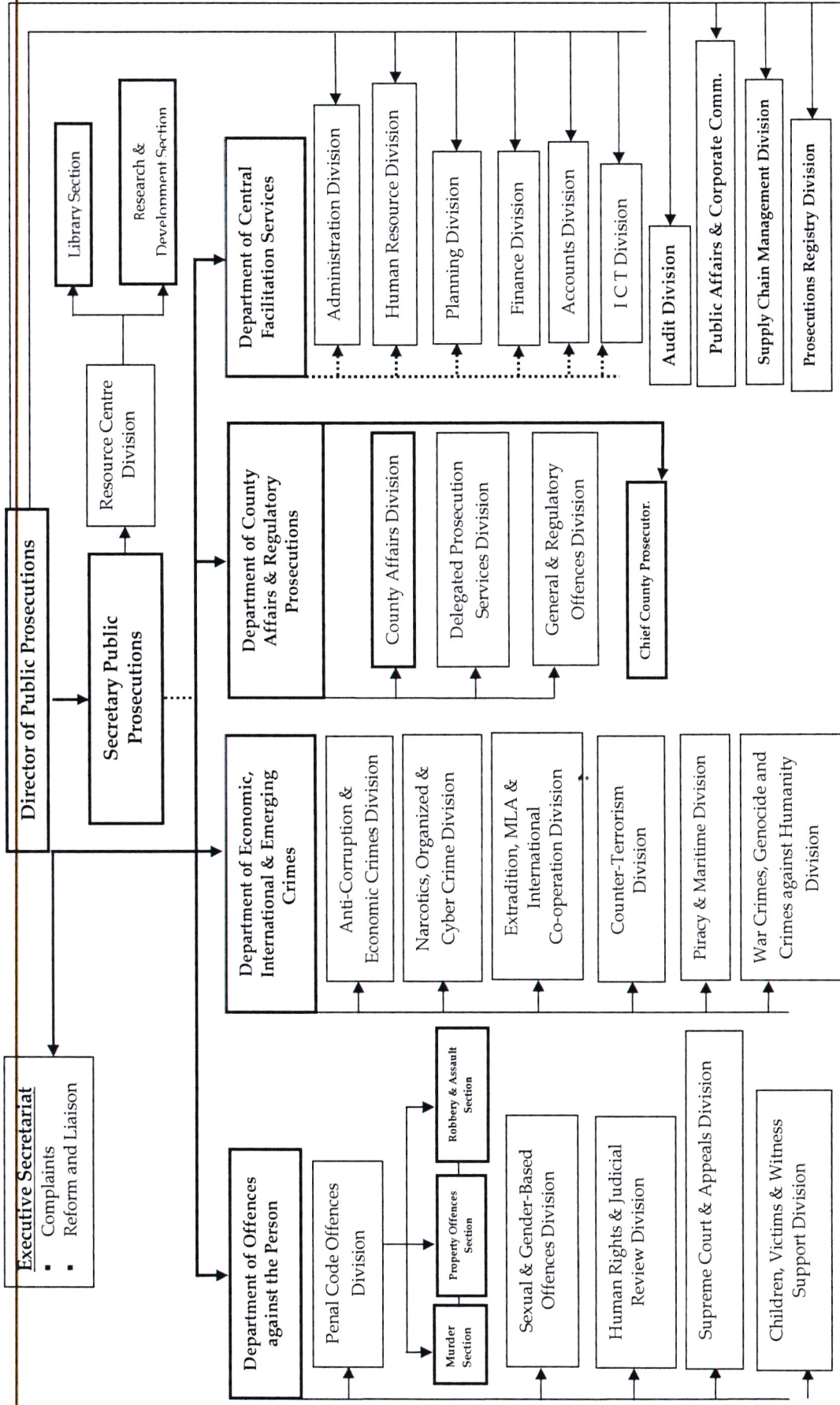
I further accept responsibility for the attached annual accounts which have been prepared in conformity with Treasury directions and appropriate Government Financial Regulations and procedures.

I am of the opinion that the attached Appropriations and other Financial Statements present fairly the financial state of affairs of the **Office of the Director of Public Prosecutions Vote 163** as at 30<sup>th</sup> June, 2013

A handwritten signature in black ink, appearing to read 'Keriako Tobiko', is written over a horizontal dotted line. The signature is stylized and extends above and below the line.

**KERIAKO TOBIKO, CBS, SC**  
**DIRECTOR OF PUBLIC PROSECUTIONS**  
**ACCOUNTING OFFICER**

# APPENDIX 1: ODPD Organizational Structure



**KEY:** Administrative Reporting  
Professional/Technical Reporting

## **PART V: FINANCIAL STATEMENTS**

The financial statements include;

- i. Appropriation Accounts
- ii. Statement of Assets and Liabilities
- iii. Statement of Pending Bills

**DEVELOPMENT APPROPRIATION ACCOUNT SUMMARY- FOR THE PERIOD FROM JUL-12 TO JUN-13**

		Approved Estimates	Actual Expenditure
<b>ADMINISTRATIVE</b>			
	<b>GROSS EXPENDITURE</b>		
163000500	County Affairs and Regulatory Prosecutions Department	KShs 53,400,000.00	KShs 51,962,571.50
163000600	Central Facilitation Services Department	8,000,000.00	7,850,933.60
	<b>Gross Total Expenditure ... ..</b>	<b>61,400,000</b>	<b>59,813,505.10</b>
			<b>1,586,494.90</b>
			<b>Surplus of Gross Estimates Over Expenditure Kshs</b>
	<b>Appropriation in Aid ... ..</b>	<b>Approved Estimates</b>	<b>Applied Receipts</b>
		0.00	0.00
	<b>NET TOTAL VOTE D163</b>	<b>61,400,000.00</b>	<b>59,813,505.10</b>
	Directorate of Public Prosecutions		
			<b>0.00</b>
			<b>Surplus/Deficiency in Appropriation in Aid Kshs</b>
			<b>Net Surplus to be surrendered to Exchequer Kshs</b>
			<b>1,586,494.90</b>

DEVELOPMENT APPROPRIATION ACCOUNT SUMMARY - FOR THE PERIOD FROM JUL-12 TO JUN-13

DETAILS OF APPROPRIATION IN AID

	Approved Estimates KShs	Actual Receipts KShs
ADMINISTRATIVE		

VOTE D163 DIRECTORATE OF PUBLIC PROSECUTIONS  
 DEVELOPMENT APPROPRIATION ACCOUNT ON SUMMARY ITEM - FOR THE PERIOD FROM JUL-12 TO JUN-13


HEAD	SUB HEAD	ITEM	TITLE AND DETAILS	Original	Add/Less Supplementary	Approved Estimates	Actual Expenditure	Over	Under
				KShs	KShs	KShs	KShs	KShs	KShs
0000			Directorate of Public Prosecutions						
			Net Expenditure Head 000000 . . . . .	KShs					
0005			County Affairs and Regulatory Prosecutions Department						
	01		Headquarters County Affairs and Regulatory Prosecutions Department						
		3110300	Refurbishment of Buildings	62,000,000	-18,100,000	43,900,000	42,462,572	0	1,437,429
		3111100	Purch. of Specialised Plant, Equipment & Mach.	10,000,000	-500,000	9,500,000	9,500,000	0	0
			GROSS EXPENDITURE	72,000,000	-18,600,000	53,400,000	51,962,572	0	1,437,429
			Appropriations in Aid						
			Total Appropriations in Aid . . . . .	KShs		53,400,000	51,962,572	0	1,437,429
			Net Expenditure SubHead 01 . . . . .	KShs	-18,600,000	53,400,000	51,962,572	0	1,437,429
			Net Expenditure Head 000500 . . . . .	KShs	-18,600,000	53,400,000	51,962,572	0	1,437,429
0006			Central Facilitation Services Department						
	01		Headquarters Central Facilitation Services Department						
		3110300	Refurbishment of Buildings	0	0	0	0	0	0
		3111100	Purch. of Specialised Plant, Equipment & Mach.	8,000,000	0	8,000,000	7,850,934	0	149,066
			GROSS EXPENDITURE	8,000,000	0	8,000,000	7,850,934	0	149,066
			Appropriations in Aid						
			Total Appropriations in Aid . . . . .	KShs		8,000,000	7,850,934	0	149,066
			Net Expenditure SubHead 01 . . . . .	KShs	8,000,000	8,000,000	7,850,934	0	149,066
			Net Expenditure Head 000600 . . . . .	KShs	8,000,000	8,000,000	7,850,934	0	149,066
			Total Net Expenditure vote D163	KShs	80,000,000	61,400,000	59,813,505	0	1,586,495
			Directorate of Public Prosecutions						

Class		Development		Totals	
Vote	Directorate of Public Prosecutions				
Assets					
Item	Account	Previous Years	Current Year		
Ministry/County HQ Development Bank A/C	6540101		2,693,569.50		
District - Development Bank Accounts	6540111		84,653.60		
	<b>Total:</b>		<b>2,778,223.10</b>		
Liabilities					
Item	Account	Previous Years	Current Year		
General Deposits	7310101		-1,591,728.40		
Exchequer Releases/Provisioning Account	9910201		-61,000,000.00		
	<b>Total:</b>		<b>-62,591,728.40</b>		
	<b>Difference:</b>		<b>-59,813,505.30</b>		

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**(i) APPROPRIATION ACCOUNTS**

(ii) STATEMENT OF ASSETS AND LIABILITIES

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS			
<u>D163-DEVELOPMENT STATEMENT OF ASSETS AND LIABILITIES AS AT 30<sup>TH</sup> JUNE</u>			
<u>2013</u>			
ASSETS			
DETAILS	2011/2012	2012/2013	TOTAL
	Kshs	Kshs	Kshs
Advances	-	-	-
Suspense Accounts	-	-	-
Exchequer Account	-	400,000.00	400,000.00
Temporary Imprest	-		
PMG Headoffice Bank A/C	-	2,693,569.50	2,693,569.50
PMG Field A/C S	-	84,653.60	84,653.60
<b>TOTAL.....Kshs.</b>	<b>0</b>	<b>3,178,223.10</b>	<b>3,178,223.10</b>
LIABILITIES			
DETAILS	2011/2012	2012/2013	TOTAL
	Kshs	Kshs	Kshs
General Account Vote	-	1,586,495.00	1,586,495.00
General Deposits	-	1,591,728.40	1,591,728.40
Exchequer Account	-	-	-
Appropriation In Aid	-	-	-
<b>TOTAL.....Kshs.</b>	<b>0</b>	<b>3,178,223.10</b>	<b>3,178,223.10</b>
<b>ROSE BARAZA</b>			
<b>HEAD OF ACCOUNTING UNIT</b>			
		30 <sup>th</sup> , SEPTEMBER, 2013	

(iii) Statement of Pending Bills

There were no pending bills for the financial year 2012/2013