



**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
(ODPP)**

**THE FIRST PROGRESS REPORT**

**Pursuant to the Provisions of Articles 10 (2) (c), 35, 232 (1) (f) and  
254 of the Constitution and Section 7 of the ODPP Act, 2013**

**FOR THE PERIOD  
1ST JULY 2011 - 30TH JUNE 2013**



## **Vision**

The ODPP'S vision is *"An independent prosecution Authority providing efficient, effective, fair and just prosecution service for the people of Kenya"*. This vision will be achieved through the provision of just, independent, accountable, effective and efficient prosecution service.

## **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"*

## **Core Values**

The ODPP's Core Values are:

Respect & promotion of Human Rights and the rule of Law;

Integrity and Ethics;

Professionalism;

Fairness and impartiality;

Teamwork.

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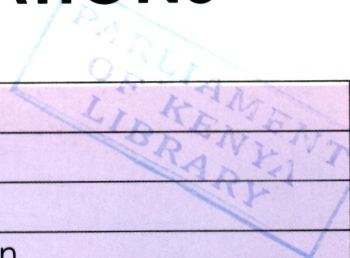
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# ACRONYMS & ABBREVIATIONS

AG	Attorney General
CFS	Central Facilitation Services
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HRD	Human Resource Development
HRM	Human Resource Management
ICJ	International Commission of Jurists
ICT	Information Communication Technology
IJM	International Justice Mission
ISS	Institute for Security Studies
LSK	Law Society of Kenya
MSPS	Ministry of State for Public Service
ODPP	Office of the Director of Public Prosecutions
PEV	Post-Election Violence
PSC	Public Service Commission
SG	Solicitor General
SGBV	Sexual and Gender-Based Violence
SLO	State Law Office
UNODC	United Nations Office on Drugs and Crime
UNOHCHR	United Nations Office of the High Commissioner on Human Rights
USAID	United States Agency for International Development
USDOJ	United States Department of Justice





# FOREWORD & ACKNOWLEDGEMENT

I have the greatest pleasure to present to the President and Parliament of the Republic, the first Annual Status Report for the Independent Office of the Director of Public Prosecutions (ODPP) for the period since establishment in July, 2011 to July, 2013.

The submission of this report is pursuant to Articles 10 (2) (c), 35, 232 (1) (f) and 254 of the Constitution as well as Section 7 of the ODPP Act, 2013.

The ODPP is a newly created Office under the Constitution of Kenya, 2010. Its mandate was previously executed under the erstwhile Department of Public Prosecutions in the Attorney General's Office.

Since it's delinking from the State Law Office to date, the ODPP has undertaken institutional reforms and capacity building measures to lay a strong operational environment for a fair, independent and efficient prosecution service as envisaged in the Constitution.

This report has five chapters namely; an Introduction, Performance on core mandate (in which the caseload is highlighted and analysed), Implementation of the ODPP Strategic Plan and Institutional Reforms, Governance and Management of the ODPP, and Finance and Resource Development.

The report details the successes made towards operationalization of the ODPP and reforms undertaken in that regard, the challenges which the ODPP has faced in its operationalization phase, and recommendations/plans mooted to redress the same going forward.

Some of the notable institutional reforms of the ODPP, include; the development of a Strategic Plan [2011-2015], the enactment of the ODPP Act, 2013, the establishment of the ODPP Advisory Board under the ODPP Act, the operationalization of a new organizational structure, the development of institutional and prosecutorial policies and guidelines to steer the operations of the Office and guide prosecutions (such as the National Prosecution Policy, Code of Conduct for Public Prosecutors, General Prosecution Guidelines), the establishment of new 13 ODPP County Offices, the recruitment of 76 new prosecution counsels which increased our establishment to 169 Prosecution Counsel, development of quality assurance measures and good governance systems, increased inter-agency collaboration particularly with investigative agencies (namely, the National Police Service and EACC) and increased engagement with civil society and development partners.

These reforms, have been undertaken albeit in the face of considerable odds and challenges, particularly of sub-optimal funding to implement the establishment of county offices in all 47 Counties within the Republic, hire more prosecution counsel so as to reach the optimal staffing norm of 927 Prosecution Counsel and harnessing of ICT into the operations of the Office. Other key challenges faced include; the poor terms of

service for staff which have made it hard to attract and retain staff, a weak legal and policy framework for the administration of criminal justice in Kenya and lack of specialized prosecutorial training for prosecution counsel.

Our vision as the ODPP is to become a bastion of efficiency and effectiveness in the provision of prosecution services within the region. These services will be anchored not only on a value based framework but will also bear the mark of the best international standards, principles and practices. It is our hope that all stakeholders within the criminal justice system will support the realization of our collective strategic goals considering that we are all part of the criminal justice chain.

As an Office, we will continue to cascade our services to Kenyans in the spirit of the Constitution. We also intend to further improve the discharge of our prosecution mandate i.e., provision of timely prosecution services, facilitation of victims/witnesses assistance, professionalization of prosecution services, promotion of inter-agency cooperation and collaboration and implementation of a quality management system. To this end, I humbly urge the President, Parliament, relevant government offices, development partners, the civil society and members of the Public to do all they can to improve the funding and other capacitation of the ODPP, in its quest for institutional reforms and growth. This will ensure that the on-going judicial reforms are deepened and the rule of law strengthened in our great Republic.

I wish to end by acknowledging and most sincerely thanking all my staff, whose endurance despite great odds has contributed to delivering an improving prosecution service.

I wish to also recognize with appreciation all those who in various ways contributed to the drafting of this First Progress Report. It certainly is a fruit of great labour, particularly in data mining, in an institution which has hitherto been plagued by poor management of records and data.

I also express my gratitude to our external stakeholders, for their valuable input throughout the eventful process of operationalizing the ODPP. Their views, critique and contributions spurred the development of the ODPP to what it is now.

I look forward to the Office realizing and maintaining its role in the criminal justice system in this age of new technology, emerging and complex crimes and increased public scrutiny. I am confident that ODPP will achieve a high standing in the discharge of the prosecution mandate locally and internationally.



**Keriako Tobiko CBS, SC**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

## **EXECUTIVE SUMMARY**

The First Progress Report of the ODPP covers the period between 1<sup>st</sup> July 2011 and 30<sup>th</sup> June 2013. It is submitted to National Assembly pursuant to the provisions of Articles 10 (2) (c), 35, 232(1) (f) and 254 of the Constitution as well as section 7 of the ODPP Act, 2013.

The report draws attention to the achievements of the ODPP since it delinked from the State Law Office, its challenges and the status of the discharge of its mandate. While the reporting period covers 1<sup>st</sup> July 2011 to 30<sup>th</sup> June 2013, this report takes into account some achievements post 30<sup>th</sup> June 2013.

The report is divided into five (5) chapters. Chapter one is the introduction, which gives the background on the establishment of the Office under the Constitution of Kenya and the ODPP Act; the mandate, powers and functions of the ODPP and the aspirational framework of the Office.

Chapter Two of the report focuses on the institutional and governance structure established for the effective delivery of prosecution services by the ODPP. In this regard, it extensively details the milestones achieved during the reporting period, such as the establishment of the organizational/establishment structure and the staffing norm adopted, recruitment of staff, a standards benchmarking exercise undertaken, the review, revision and development of key prosecutorial and other policy documents including the first ODPP strategic plan, the professionalization and decentralisation of prosecution services,

interagency collaboration and public engagement and the harnessing of ICT in ODPP operations.

In Chapter Three, the report maps out various statistical perspectives on the delivery of the prosecution mandate. In particular, it details the matters/cases directly handled by the ODPP, both in the superior courts and the magistrates' courts. It also provides an overview of the cases handled by police prosecutors and other institutions exercising delegated prosecutorial powers.

Chapter Four elaborates on the challenges faced by the ODPP during the reporting period in its endeavours to offer effective, efficient, professional and timely prosecution services to all Kenyans, while Chapter Five gives an account of the management of public funds allocated to it.

The report also represents an attempt by the ODPP to improve its nascent knowledge management system so as to live by the constitutional requirements of transparency and accountability of a public office which is critical in ensuring good governance and the rule of law in Kenya. It marks the inaugural effort of the ODPP to expand the right of Kenyans to information relating to the workings of the criminal justice system.

It is the ODPP's sincere hope that this report will awaken and promote constructive public discourse on the state of criminal justice in Kenya with specific emphasis on the improvement of prosecutions in the country.



# **Office of The Director of Public Prosecutions**

# **Strategic Plan**

**2011 - 2015**

*The ODPP Strategic plan of 2011 - 2015*

# CHAPTER ONE: **BACKGROUND**

## **1.1 The Old Constitution of Kenya**

1. Before the promulgation of the Constitution of Kenya 2010, the prosecution function was discharged by the Attorney General (AG) through the erstwhile Department of Public Prosecutions, as was provided under Section 26 of the old constitution. The Department of Public Prosecutions was just one of the departments of the larger State Law Office (SLO). All Central Facilitation Services (CFS) were centrally provided under the leadership of the Solicitor General (SG) who was the Principal Administrator and Accounting Officer in the SLO.
2. The Office of the Director of Public Prosecutions (ODPP) officially delinked from the State Law Office on the 1<sup>st</sup> of July 2011.

## **1.2 The Constitution of Kenya 2010 and establishment of the ODPP**

1. Article 157 of the Constitution of Kenya 2010, established an independent Office of the Director of Public Prosecutions, with the aim of ensuring a revamped, professional, and accountable prosecution service.

2. The promulgation of the new Constitution necessitated the recruitment of a Director of Public Prosecutions (DPP) as a substantive head of the ODPP. Pending the recruitment of the DPP, the transitional provisions of the Constitution (*under Schedule VI- Section 31(5)*) required the Attorney General to perform the functions of the DPP. The AG through Legal Notice no. 134 of 2010 delegated the prosecutorial powers to a Chief Public Prosecutor.
3. The first DPP under the Constitution of Kenya 2010 was competitively and publicly recruited and assumed office on the 20<sup>th</sup> of June 2011.

### **1.3 The ODPP Act, 2013**

1. During the reporting period, Parliament enacted the **Office of the Director of Public Prosecutions Act, No. 2 of 2013** (ODPP Act), which took effect on 16<sup>th</sup> January, 2013. The Act was passed to implement Articles 157 and 158 of the Constitution.
2. 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 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.

3. Following the establishment of the ODPP, the DPP constituted a task team within the Office to fast track the implementation of the Act.

#### **1.4 Mandate, Power and Functions of the ODPP**

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

##### **a) Constitutional Functions:**

1. To 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. To direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct; and
3. To 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 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 the 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 the criminal law in the country.

## 1.5 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"*. This vision will be achieved through the 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 & promotion of Human Rights and the rule of Law;

Integrity and Ethics;

Professionalism;

Fairness and impartiality

Teamwork



*The DPP handing over copies of various legal resources to police prosecutors during a sensitization forum*

## CHAPTER TWO:

# INSTITUTIONAL RESTRUCTURING, GOVERNANCE & REFORMS

### 2.1 Overview

1. The reporting period heralded a paradigm shift in the manner in which prosecution services are offered to the citizens of Kenya.
2. The institutional separation from the SLO necessitated a reorganization of the prosecutorial function if the ODPP were to provide effective, efficient, professional, timely prosecution services as required by the Constitution.
3. The activities of the ODDP during the review period as discussed in this chapter were centred on reforming the institution and operationalizing it. These activities included: reviewing of the organization/establishment structure, strategic planning, recruiting staff, and decentralizing services and other operational/administrative reforms.

### 2.2 Strategic Focus

1. With its revamped mandate, the ODPP was expected to deliver its functions effectively, efficiently and impartially, without fear or favour. This mandate was to be realized in an environment in

which the Government in its development blue print, '**Kenya Vision 2030**', had set the development agenda for the country to be realized by the year 2030, and in particular identified reforms in the criminal justice system as one of the key enablers of Vision 2030.

2. To action this perspective, the **ODPP's first Strategic Plan 2011-2015** was developed. It provides a structured and specific framework through which the vision and the goals of the ODPP will be operationalized and seeks to steer critical aspects of the ODPP into a specific direction for purposes of achieving the core mandate.
3. The development of this Strategic Plan was informed by the experiences in the implementation of the Department of Public Prosecution's strategic objectives under the **SLO Strategic Plan 2008-2012**.
4. The strategic focus is further clarified in the table below:

Table 1: Strategic Focus

S/No.	Strategic issues	Strategies
1	Limited Prosecutorial independence	Formulate a legal framework for operationalization of ODPP.  Development of ODPP structure and staff establishment

		<p>Development of ODPP Strategic Plan</p> <p>Review and revise key prosecutorial instruments.</p>
2	Weak legal and institutional framework	To spearhead review and improvement of the criminal laws.
3	Inadequate organizational capacity	<p>Attract and retain high quality staff.</p> <p>Staff competency development</p> <p>Monitoring staff performance</p> <p>Provide office space, equipment and transport</p> <p>Resource mobilization</p>
4	Over reliance on manual systems	<p>Develop ICT infrastructure to support automation of processes.</p> <p>Collaboration with other agencies on data sharing and management</p> <p>Pursue ISO certification</p>
5	Weak inter-agency collaboration	Develop standard operating procedures (SOPs) on the inter-agency

		co-operation.
6	Delay of prosecution services	<p>To professionalize prosecution services.</p> <p>Develop standards for giving advice on legal matters. Giving quality and professional legal advice.(outcome of cases)</p> <p>Decentralize prosecution services to all counties.</p> <p>To develop standardized complaints and compliments handling mechanisms</p>
7	Negative public perception	<p>Brand ODPP strengthen the public affairs and corporate communication office.</p> <p>Create public and stakeholder awareness</p> <p>Establish a framework to strengthen ODPP organizational culture.</p>
8	Poor facilitation of victims & witnesses	Develop a victim and witness support policy
9	Submission of poorly investigated cases	<p>Collaborate in crime investigation</p> <p>Vetting of cases</p>

		Lobby to empower the investigation agency.
10	Inadequate mainstreaming of cross-cutting issues	<p>Institutionalize guidelines and policies to combat corruption, HIV/Aids, Alcohol and Drug abuse.</p> <p>Institutionalize policies to support gender and persons with special needs into ODPP operation.</p>

### 2.3 Organization Structure

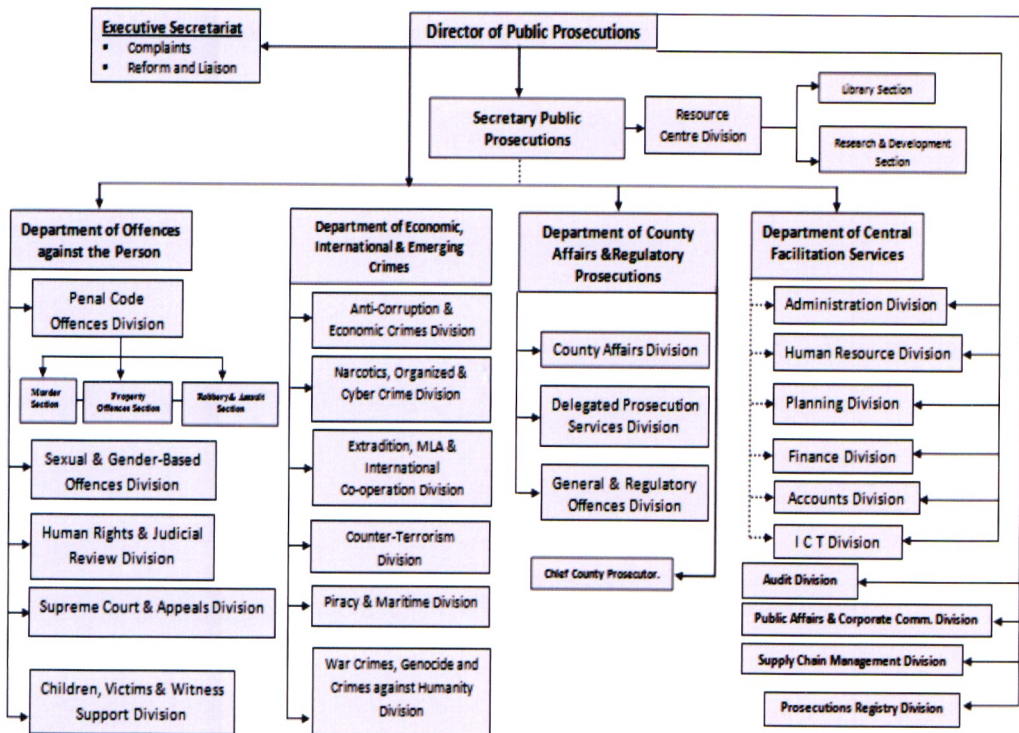
1. To ensure consistent delivery of services to the public and co-operation with stakeholders it became imperative to develop an organizational structure for the ODPP informed by a comprehensive workforce/workload analysis and bench marking with contemporary international best practices.
2. The new structure for the ODPP created underneath the DPP, the office of the Secretary, Public Prosecutions and four broad thematic Departments namely:

Offences Against the Person,  
 Economic International and Emerging Crimes,  
 County Affairs and Regulatory Prosecutions, and  
 Central Facilitation Services.

Each of these departments is headed by a Deputy Director.

3. In each of the Departments, there are Divisions, Sections and Units dealing with various areas of specialization.
4. Further explanation of the structure is shown by the organogram in Figure 1

Figure 1: ODPF Organization Structure



KEY	
	Administrative Reporting
	Professional/Technical Reporting

## **2.4 Advisory Board**

1. The ODPP Act 2013 set up an Advisory Board whose principle functions are to advise the Office on recruitment and appointment of staff, promotions, discipline and any other matter that may be referred to it by the DPP.
2. Members of the Board are the Principal Secretary (PS) responsible for matters relating to the Public Service, DPP, Attorney General, PS responsible for the National Treasury, Chief Registrar of the Judiciary, Chairperson LSK, Chairperson KNCHR and Inspector General.

## **2.5 Other Committees**

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

### **i) 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.

### **ii) Tender Committee**

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

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

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

### **iv) 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.

### **v) Training Committee**

The Training Committee was established to handle all matters relating to the training needs of ODPP staff.

### **vi) Technical HODs Committee**

This committee is based at the headquarters and comprises heads of department and various heads of key sections and divisions. Its role is to fast track reform issues by ensuring implementation of decisions made by the Leadership and Management of other Committees.

### **vii) Adhoc Committees**

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

## **2.6 Benchmarking visits**

1. 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.
2. 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.
3. 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.

## **2.7 Staffing**

1. The ODPP is committed to ensuring that highly efficient and effective staff serves the public. It aspires to be a value-led organization that is independent, fair and observes human rights.
2. The Office strives for excellence, working as one team to provide service delivery to the public with responsible use of taxpayers'

money. This is why it recognizes the need to build a strong and professional workforce through a people-centred focus.

### **2.7.1 Staffing on de-linking**

1. At the time when ODPP was under the SLO the authorized staffing level was **four hundred and fifty three (453)** comprising **one hundred and thirty two (132)** legal staff and **three hundred and twenty one (321)** central facilitation staff. However on operationalization, the Office had an in-post staffing of **seventy three (73)** Prosecution Counsel and **one hundred and twelve (112)** support staff. There was therefore a deficit of **fifty nine (59)** legal staff and **two hundred and nine (209)** support staff respectively.
2. The delinking of the ODPP from the SLO on 1st July 2011 saw the Office commence operations with bare minimum staff. The staff posted to the Office on delinking served both at the headquarters and **thirteen (13)** field stations then in existence. The Office had no central facilitation division and a significant number of prosecutions were handled by Police Prosecutors to whom the AG had delegated prosecutorial powers under section 26 of the repealed constitution and section 85 of the Criminal Procedure Code.

### **2.7.2 Rationalization of Staff**

1. To facilitate the full functioning of the Office workforce/workload analysis was conducted in 2011 which indicated the optimal staffing requirements 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 **nine hundred and twenty seven (927)** Prosecution Counsel and **three hundred and seventy (370)** Central Facilitation Services for effective service delivery.

2. In proposing optimal staffing levels for the ODPP, other additional criteria were considered as follows:

Workforce/caseload analysis

Skills requirements

Rapid expansion of the Judiciary

Number of Police Divisions

Article 50 of the Constitution 2010.

### **2.7.3 Posting/deployment of Staff**

1. The SLO supported the operationalization of the ODPP by posting temporary CFS staff to assist in start-up activities such as Accounts, Human resources, finance and administration.
2. Subsequently the Public Service Commission (PSC) deployed CFS staff to fill the substantive positions within the ODPP namely:

Administration,

Accounts,

Finance,

Human Resource Management,

Human Resource Development,

Internal Audit,  
 Communications,  
 Planning,  
 Procurement, and  
 Informational and Communication Technology (ICT)

**2.7.4 Current Staffing Levels**

1. At present ODPP staffing levels are less than **50%** of the optimal level indicated in the staffing level reviews. This is despite recruitments being carried out and staff being posted from the wider public service. This scenario indicates that the ODPP's capacity to deliver its mandate remains inadequate. This was supported by the workload/workforce and SWOT analyses both of which indicated the need for additional prosecutors and CFS staff.
2. The current scenario is provided by the analysis below:

Table 2: Current Staff Scenario

Staff Category	Inpost	Required	Deficit
Prosecution Counsel	169	927	453
Police prosecutors	305		
Central Facilitation Services Staff	188	370	182
<b>Total</b>	<b>662</b>	<b>1297</b>	<b>635</b>

**Note:** Although police prosecutors are currently not part of ODPP staff, they have been included in the analysis above since the 927 is the determined number of prosecutors undertaking the core prosecution function.

### **2.7.5 Recruitment**

1. To meet the optimal staffing levels the Office embarked on a major recruitment drive. This recruitment process is on-going and is being implemented in phases.
2. Initially, the Office sought authorization and concurrence of both the Ministry of State for Public Service and the Treasury to recruit various cadres of staff from the job market, which approval was granted. The approval allowed the recruitment of **one hundred and thirty (130)** prosecution counsel and **thirty seven (37)** CFS staff annually to fill the deficit.
3. So far, the ODPP has managed to recruit a total of **eighty seven (87)** Prosecution **sixty five (65)** CFS staff and is in the process of recruiting an additional **one hundred and eighty (180)** legal staff and **eighty eight (88)** CFS staff.
4. 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.

### **2.7.6 Resourcing and Development**

1. 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 which Prosecution Counsel require to be trained on.

2. In the financial year 2011/2012 the Office set aside **18.2 million** to be utilized on training and capacity building. The ODPP carried out a Training Needs Assessment (TNA) for staff country wide, recognizing that a well-capacitated ODPP would ensure quality service delivery to the public.
3. In the period under review, the Office achieved the following key milestones:

Established the Human Resource Development Division;  
Conducted a training needs assessment exercise;  
Developed pupillage/attachment guidelines;  
Sponsored several staff for their post-graduate degree courses; and  
Undertook several relevant trainings at group and individual level.



*Commonwealth Secretariat Training for Investigators & Prosecutors*

4. Several trainings, both individual and group were undertaken during the period under review as part of the ODPP's capacity building initiatives. Individual trainings included postgraduate, higher diploma, diploma and certificate courses, most of which were ODPP sponsored. A number of our staff were privileged to benefit from international scholarships. The general outlook of the individual trainings so far undertaken is indicated in the table below:

Table 3: Individual Training Programmes

Type of training	No of officers	On going	No. Concluded
Masters	23	17	6
Higher Diploma	12	6	6
Diploma	23	15	8
Certificate	41	0	41
<b>TOTAL</b>	<b>99</b>	<b>38</b>	<b>61</b>

5. The group trainings undertaken during the reporting period benefitted largely from the support of our partners including:

The United Nations Office On Drugs and Crime (UNODC),  
 The United Nations Office of the High Commissioner for Human Rights (UN-OHCHR),  
 The Commonwealth Secretariat,  
 The United States Department of Justice/Overseas Prosecutorial Development and Assistance Training (USDOJ/OPDAT),  
 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)  
 The Foreign Commonwealth Office (FCO),  
 The International Justice Mission (IJM),

The Institute For Security Studies (ISS),

6. Other group trainings were the joint initiatives between the Office and other government departments. The areas of group training and the numbers of officers trained are captured in the table below:

Table 4: Group Training Conducted During the Period

<b>Training Programme</b>	<b>Officers Trained</b>
Counter Terrorism	35
Sexual and Gender Based Violence (SGBV)	35
Anti-Money Laundering and Mutual Legal Assistance	30
Human Rights in the Administration Of Justice	30
Trial Advocacy	29
International Criminal Justice	19
Fraud Investigation	18
Hate Speech	5
Cybercrime	3
Public Relations & Customer Care	13

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

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

2. In an effort to attract and retain qualified staff for continuous and effective service delivery and also raise employee satisfaction, a proposal for terms and conditions of service for ODPP staff was developed during the period under review. The proposals were submitted to the **Salaries and Remuneration Commission (SRC)** for consideration.

**2.9** There is currently an approved interim package paid to the staff as a stopgap measure pending consideration of the proposed terms and conditions of service by the SRC.

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



*The DPP attending a stakeholder's review workshop on the prosecutorial policy documents*

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

2. Prior to July 2011, the Directorate of Public Prosecutions under the State Law Office operated with the following policy documents:

**The State Law Office Strategic Plan (2008-2012)**

**The National Prosecution Policy, 2007 and**

**The Code of Conduct for Public Prosecutors, 2007.**

These documents were inherited by the ODPP.

3. To align these documents with the Constitution 2010, they were reviewed and revised during the reporting period, culminating in:

**The ODPP's 1<sup>st</sup> Strategic Plan (2011-2015)**

**The Revised National Prosecution Policy 2013 and**

**The Revised Code of Conduct and Ethics for Prosecutors, 2013.**

4. Other internal policy documents have since been developed by the Office in the period under review to guide its operations.

These are:

**The ODPP's Organizational/Establishment Structure Manual, 2012;**

**The ODPP's Communication Strategy, 2012;**

**The ODPP's Career Progression Guidelines, 2012;**

**The ODPP's Human Resource Manual, 2012;**

**The ODPP's ICT Strategy Framework, 2013;**

**The ODPP's Status Report on Processes and Procedures, 2013;**

**The ODPP's General Prosecution Guidelines, 2013;**

**The ODPP's Anti-Corruption Prosecution Guidelines, 2013;**

**The ODPP's Sexual and Gender Based-Violence Prosecution Guidelines, 2013; and  
The ODPP's Guidelines for Taking over and Consolidating Delegated Prosecutions, 2013**

**2.9.1 Revised National Prosecution Policy, 2013**

1. The revised National Prosecution Policy was made to align the previous prosecution policy with the Constitution of 2010.
2. This policy provides a framework for prosecutors to: conscientiously exercise the decision to charge, ensure the observance of all human rights of arrested accused and detained persons during the trial process and the redress of complaints. It also establishes strategies for the care of victims of crime and cooperation with other law enforcement agencies both nationally and internationally.

**2.9.2 Revised Code of Conduct and Ethics for Prosecutors, 2013**

1. The Code of Conduct and Ethics for Prosecutors was reviewed and revised to reflect the ethical and accountability requirements for all prosecutors as envisaged in the Constitution of 2010.
2. In particular the new Code now incorporates the Constitutional Code of Conduct and Ethics for state and public officers under Article 10, Chapter Six (6) and article 232 and the General Leadership and Integrity Code under part II of the Leadership and Integrity Act, 2012.

3. The Office will submit the Code of Conduct and Ethics for Prosecutors to the Ethics and Anti-Corruption Commission [EACC] as required in section 39 of the Leadership and Integrity Act.

### **2.9.3 ODPP's Organizational/Establishment Structure Manual, 2012**

The manual provides a status analysis of the staffing needs of the ODPP at the time of delinking, a rationale for the new staffing norm of the ODPP and elaborates on the new organizational and establishment structure adopted by the ODPP.

### **2.9.4 ODPP's Communication Strategy, 2012**

The Communication Strategy details the communication gaps and needs of the ODPP and provides for strategies to be employed in redressing them. The public relations and corporate communication division is in charge of implementing the Communication Strategy.

### **2.9.5 ODPP's Career Progression Guidelines, 2012**

The Career Progression Guidelines provide the job description, qualifications and promotional requirements for every position within the Office.

### **2.9.6 ODPP's Human Resource Manual, 2012**

The Human Resource Manual provides for the general management of staff on issues ranging from discipline, leave, dress code, among others and is the equivalent of the Code of Regulations of staff of the public service.

### **2.9.7 Document on ODPP's Terms and Conditions of Service Proposals**

The document provides for the proposed improved terms and conditions of service for all cadres within the ODPP.

### **2.9.8 ODPP's 1st ICT Strategy Framework Report (2013-2017), 2013**

The ODPP is keen to leverage on ICT in its operations to maximize efficiency. The ICT strategy framework is the first four year plan on how the ODPP will apply ICT in its operations.

It details the ICT gaps and needs of the Office and the ICT infrastructural and software plans, particularly for ensuring that the Office has an automated case management system.

### **2.9.9 ODPP's Status Report on Processes and Procedures, 2013**

During the reporting period, the Office with the support of GIZ undertook a comprehensive review of the status of the current ODPP processes and procedures, with a view to ascertaining the modalities of optimization. The Report is informing on-going reforms on case management, budgetary requirements and allocation of funds within the office

### **2.9.10 ODPP's General Prosecution Guidelines, 2013**

The General Prosecution Guidelines elaborate on the National Prosecution Policy, offering detailed guidance to prosecutors on all areas of prosecution and procedure. It is an important handbook, particularly for new prosecutors.

### **2.9.11 ODPP's Anti-Corruption Prosecution Guidelines, 2013**

1. The Anti-corruption prosecution guidelines are the first thematic prosecution guidelines to be developed by the Office. This underscores the Office's commitment to improve its capacity in prosecuting corruption and economic crimes, which have hindered the realization of Kenya's developmental goals.
2. The guidelines provide detailed guidance to all prosecutors on how to prosecute corruption and economic crimes and they complement the **EACC's Anti-Corruption Investigation Guidelines, 2013**. The two documents were jointly developed by the ODPP and EACC.

### **2.9.12 ODPP's Sexual and Gender Based-Violence (SGBV) Prosecution Guidelines, 2013**

The SGBV prosecution guidelines offer detailed guidance on prosecuting SGBV cases, which have remained high in the country.

### **2.9.13 ODPP's Guidelines for Taking over and Consolidating Delegated Prosecutions, 2013**

The Constitution of 2010 and the ODPP Act 2013, give the ODPP the primary mandate of prosecutions within the Country, as part of the architecture of the country's new justice system.

The office has developed guidelines for taking over prosecutions from the Police Prosecutors as the ODPP continues to expand its presence in all court stations. It has also developed standard operating procedures to be adhered to by all agencies exercising delegated powers of prosecution in their regulatory field.

## 2.10 ODPP Strategic Plan 2011-2015

- 1 During the reporting period, the ODPP developed a Strategic Plan 2011-2015 in order to provide strategic focus and a roadmap towards the fulfilment of its vision and achievement of the national agenda. Arising from the policy priorities, the Plan identified the following **ten (10)** strategic issues to be addressed during the five year period:

Limited prosecutorial independence;  
Weak legal and institutional framework;  
Inadequate organizational capacity;  
Over-reliance on manual systems;  
Weak inter-agency collaboration;  
Delay of prosecution services;  
Negative public perception;  
Poor facilitation of victims and witnesses;  
Submission of poorly investigated cases; and  
Inadequate mainstreaming of cross-cutting issues.

- 2 The development of the Strategic Plan underwent a public and consultative process which involved internal and external stakeholder review, and validation.
- 3 The Plan identifies various interventions necessary for the redress of the strategic issues identified above. It requires **Kshs. 19 Billion** to implement, with an annual cost of **Kshs. 5.2 Billion**. The Plan has been published and is in use.

- 4 Beyond the development of the Plan, the first series of annual work plans to implement the strategic Plan were developed both at the departmental and divisional levels. The annual work plans set the pace for undertaking performance appraisal to ensure employee accountability for their workingline with the planned targets. This was done to establish a monitoring and evaluation mechanism.



*Director of Administration Mr. Elijah Nduati handing over new vehicles for ODPP County offices*

## **2.11 Professionalization of Prosecution Services**

### **2.11.1 Overview**

With the establishment of the independent ODPP there was a need to ensure a high level of efficiency and effectiveness in the discharge of the prosecution function in a professional manner. To that end, the ODPP undertook a number of activities during the review period. The activities include:-

## **2.11.2 Establishment and Operationalization of Specialized Thematic Divisions and Sections**

1. The reporting period saw the development of a new organisational structure based on clearly defined thematic areas. The new structure established three technical departments to cater for the varied thematic areas of prosecution, namely: the Department of Offences against the Person, the Department on Economic, International and Emerging Crimes, and the Department of County Affairs and Regulatory Prosecutions. The departments are further divided into specialized divisions and sections.
2. A department of Central Facilitation Services was also established to provide administrative support to the technical departments, as well as other Office operations.

### **a) 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. This department contributed immensely in the promotion of the bill of rights and the prosecution of numerous constitutional petitions and judicial review applications during the reporting period.

### **b) Department of Economic International and Emerging Crimes**

1. The department is responsible for prosecution of corruption and economic crimes, narcotics, organized crime, money laundering,

piracy and terrorism cases. It also handles mutual legal assistance and extradition requests.

2. 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.

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

1. 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.
2. 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.

#### **2.11.3 Absorption of Police Prosecutors**

1. For the longest while and due to staff constraints within the ODPP, the office has relied on police prosecutors to carryout prosecutions in the magistrates' courts. As a matter of fact, a large percentage of prosecutions in Kenya continue to be

handled by police prosecutors who are individually gazetted and undertake prosecutions through delegated authority.

2. Currently, there are **three hundred and five (305)** police prosecutors who undertake prosecutions countrywide. These prosecutors are however not wholly answerable and accountable to the DPP since they fall under the National Police Service. This structural weakness was further recognized by the Ransley Taskforce on Police Reforms that recommended among others, the professionalization of prosecution services.
3. The Ransley Taskforce Report was supported by the Police Reforms Implementation Committee (PRIC), which recommended an audit of all police prosecutors to determine their competence, suitability and willingness to be absorbed into the ODPP.
4. The audit was carried out with the support of UNODC leading to the individual gazetting of police prosecutors through various gazette notices.
5. Subsequently, the DPP established a Multi-Agency Taskforce to advise on modalities for the absorption of police prosecutors to the ODPP. One hundred and ninety five (195) Police Prosecutors have expressed their willingness to join ODPP. The recommendations of the taskforce are under consideration.
6. During the period under review, the ODPP continued with general capacity building, training, payment of monthly extraneous

allowances as approved by SRC, sensitization on key policy documents, and basic material support of the police prosecutors

#### 2.11.4 Gazettement of Other Public Prosecutors

1. The ODPP does not prosecute all cases. Due to capacity constraints, the DPP has where expedient, delegated his prosecutorial powers to institutions, which are charged with implementing particular legislations that create specialized offences.
2. Other than police prosecutors, the DPP has to date gazetted officers from **thirteen (13)** institutions to undertake prosecutions on his behalf under their institution's legislation. For the period under review the ODPP has gazetted **two hundred and fifty four (254)** prosecutors.
3. Below is a breakdown of the gazettelement of such prosecutors during the period under review:

Table 5: number of prosecutors gazetted

NO.	INSTITUTIONS	NUMBER OF GAZETTED OFFICERS (Prosecutors)
1.	Ministry of Labour	98
2.	Ministry of State for Immigration and Registration of Persons	33
3.	Ministry of Gender, Children and Social Services	20
4.	Water Resources Management Authority	19
5.	Anti- Counterfeit Agency	18
6.	Higher Education Loans Board	13
7.	Kenya Revenue Authority	11

8.	Ministry of Energy	9
9.	Kenya Forestry Services	6
10.	Kenya Bureau of Standard	6
11.	Copyright Board	5
12.	Kenya Wildlife Service	3
13	National Environmental Management Authority (NEMA)	13
<b>TOTAL</b>		<b>254</b>

4. Due to the prevalence of SGBV cases, the DPP also gazetted prosecutors from various key civil society organizations (CSO) to assist in the prosecution in such cases. A total of 18 prosecutors, all advocates of the High Court of Kenya, were thus gazetted on **10<sup>th</sup> October 2012** to support the ODPP in this respect as indicated in the table below:

Table 6: number of special SGBV prosecutors gazetted

Organization	No. of prosecutors gazetted
CRADLE	13
IJM	1
Federation of Women Lawyers, Kenya (FIDA-K)	4

## 2.12 Establishment of an Integrated Public Complaints Handling Mechanism

1. A major achievement during the reporting period was the establishment of an integrated Complaints and Compliments Section. The Section was established in November 2011 to ensure

speedy and prompt attention and response to inquiries and complaints relating to the ODPP mandate.

2. The reporting period also saw the development of an automated complaints handling system.
3. The complaints and compliments section processed a total of **one thousand six hundred and eighty five (1685)** complaints received during the review period. **Two hundred and forty eight (248)** of these complaints were resolved and the ODPP made **one hundred and fifty three (153)** referrals of complaints to the relevant action agencies. Of the total complaints registered **nine hundred and eighty four (984)** complaints necessitated further inquiry, investigations and action.

### **2.13 Decentralization of Prosecution Services**

1. 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.



*Courtesy call by DPP to the Governor of Machakos County  
Dr. Alfred Mutua*

2. During the reporting period, decentralization of prosecution services was identified as one of the urgent activities for the 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.
3. During this period, the ODPP upgraded the following **sixteen (16)** field offices to fully-fledged county offices namely:
  - i) Mombasa
  - ii) Embu
  - iii) Machakos
  - iv) Malindi
  - v) Meru
  - vi) Nyeri
  - vii) Kakamega
  - viii) Kisumu
  - ix) Busia
  - x) Nakuru
  - xi) Garissa
  - xii) Kericho
  - xiii) Kisii
  - xiv) Kitale
  - xv) Eldoret
  - xvi) Bungoma

4. In addition the ODPP opened the following **thirteen (13)** new county offices namely:

- |              |                |
|--------------|----------------|
| i) Wajir     | viii) Kerugoya |
| ii) Lodwar   | ix) Homabay    |
| iii) Narok   | x) Murang'a    |
| iv) Kajiado  | xi) Isiolo     |
| v) Voi       | xii) Nyahururu |
| vi) Marsabit | xiii) Thika    |
| vii) Bomet   |                |

5. The offices listed above account for 29 of the 47 county offices that the ODPP intends to open.

6. The establishment of the county offices involved acquisition of office space, deployment of staff and procurement of furniture and equipment. The decentralization process also involved:

- Re-vamping existing office space through the acquisition of additional office space,
- Deploying additional staff,
- Providing library and research facilities, and
- Refurbishing as well as providing the necessary furniture and equipment.



*The previous registry in the HQ of the ODPP*



*The new look registry after refurbishment*

7. 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.

## **2.14 Promotion Of Inter-Agency Collaboration And Cooperation**

### **2.14.1 International Cooperation**



*Mrs. Dorcas Oduor, Deputy DPP, presents a token of appreciation to Amb. Robert Godec, during the annual Prosecutors Colloquium December 2012*

1. With advances in technology and globalization, crime has become increasingly complex, multifaceted and transnational. It is no longer the preserve of national jurisdictions.

2. Any efforts to effectively confront it must therefore be underpinned by robust cooperation at the international level. Such efforts must of necessity include mutual legal assistance between and amongst jurisdictions.
3. During the period under review, the ODPP continued to engage itself in the international sphere through membership in the regional and international associations namely:

The International Association of Prosecutors (IAP),  
The Africa Prosecutors' Association (APA),  
The East African Association of Prosecutors (EAAP),and

4. The ODPP not only participated actively in the activities of these organizations, but also conducted bilateral informal engagements with other member National Prosecuting Authorities.
5. The ODPP is in the process of considering membership of two other institutions, namely:

The International Association of Penal Law, and  
The Forum for International Criminal Justice.

#### **2.14.2 Partnership with Development Partners and the Civil Society**

1. During the reporting period, the Office also engaged with a number of development partners and civil society organizations, whose aims and objectives coalesced around the prosecution mandate.
2. These partners were instrumental in supporting some of our key reform initiatives, including development of training manuals and

prosecution guidelines in thematic areas, review and revision of the key prosecutorial documents, training and capacity building, amongst others.



*A consultation session with development partners*

3. Our development partners during the reporting period included: GIZ, USDOJ, UNODC, FCO, UNOHCH and the Commonwealth Secretariat.
4. The Office robustly engaged with numerous civil society organizations, notably: Institute for Security Studies, International Justice Mission, Law Society of Kenya, FIDA-K, ICJ (Kenya Chapter) and Constant Gardener Trust.

### 2.14.3 Multi-Agency Taskforces

#### a) Post-Election Violence Taskforce

1. One of the major highlights during the reporting period was the initiative to conclude the pending unresolved cases of the 2007/2008 post-election violence.
2. Towards this end, the DPP established a multi-agency taskforce comprising the defunct Ministry Of Justice, National Cohesion and Constitutional Affairs, SLO, CID, Witness Protection Agency, and the ODPP. The taskforce received **4,586** of the **6,443** case files opened by the police. During the review period the taskforce reviewed and processed **4,413** case files. Of all the case files opened by the police, 1201 cases were filed in court, **590** of which have been concluded as follows; 191 convictions, **274** acquittals and 125 withdrawn for various reasons. There are still 61 cases pending determination before court.

#### b) Taskforce on the murder of Sheikh Aboud Rogo

During the review period, the DPP established a multi-agency task force to determine the circumstances surrounding the killing of Muslim cleric Aboud Rogo. The Taskforce consisted of the National Police Service, Independent Police Oversight Authority, Kenya National Commission on Human Rights, Commission on Administrative Justice, Law Society of Kenya and the ODPP.

The period under review also saw the DPP constitute a multi-agency task team to review the investigation dockets submitted by the police on

two murder cases, namely the murder of **Erastus Kirui Chemorei** and **Alexander Monson**.

#### **2.14.4 Prosecution- Guided Investigation Model**

1. International best practice for an effective criminal justice system requires a significant level of cooperation between investigation and prosecutorial authorities. Crime cannot be fought meaningfully without effective cooperation and collaboration between and among law enforcement agencies.
2. During the review period, the Office increased its engagement with The National Police Service, the Ethics and Anti-Corruption Commission (EACC) and other criminal investigative agencies to provide guidance during the investigation of major cases. Some examples of matters handled in this manner during the period under review are:

The extradition case involving **Samuel Gichuru** and **Chris Okemo**.

The questionable procurement of election material by the IEBC following the March 2013 general elections, Investigations surrounding the death of **Mercy Keino**, a university student.

Investigations surrounding the sudden death of **Hon. Mutula Kilonzo**.

The questionable death of British national **Alexander Monson** while in police custody.

The murder of GSU officer **Erastus Kirui Chemorei**.

3. Further, the ODPP recognizing the prevalence of poaching and other wildlife crimes and their effect on the country's socio-economic wellbeing established a wildlife crimes taskforce to focus on assisting KWS to effectively address wildlife crimes.
4. The prosecution-guided investigation model is a key tool in ensuring that crime, which keeps evolving and mutating into more complex forms is effectively dealt with using a multi-sectoral approach. This prosecution-guided model of investigations has now been given statutory backing by the ODPP Act.

#### **2.14.2 Public engagement**



*The DPP fielding questions from members of the press during a county visit*

1. Robust public engagement is one of the strategic objectives of the ODPP. To this end, the DPP has conducted public visits in 21 out of the 29 counties in which the ODPP has offices. During these

visits the DPP met with national government officials, County Administration, members of the public and the media.

2. As part of its public engagement and its increasing access of services to the public the ODPP set up a complaints and compliments section. It has also invested in the development of Information, Education and Communication (IEC) materials as part of its awareness creation and rebranding efforts. It also participated in various public forums including, Agricultural Shows of Kenya and the Judiciary weeks.

## **2.15 Harnessing ICT at the ODPP**

1. The ODPP began without much in terms of ICT infrastructure and capacity. The Office had no Internet connectivity and still lacks LAN and WAN systems. Further, it lacked and still lacks a streamlined and automated case management and other automated business systems.
2. During the development of the Strategic Plan, the Office identified the overreliance on manual systems, which are ineffective, as one of the ten strategic issues that should be addressed.
3. In responding to this challenge, the Strategic Plan sets as strategic objectives, the embracing of ICT in ODPP operations and data sharing with other relevant agencies.
4. To realize the above strategic objectives, the Office with the support of the CGT developed an ICT strategy framework to

guide it; in addressing the ICT gaps it faces, and 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 and it will cost Ksh. 800 million over the next 4 years to ensure that ODPP's current ICT gaps are addressed.

5. To implement the framework, the Office has set up a committee on case management to steer the development of a streamlined and automated case management system as well as overall institutional business processes optimization, which will include automation of certain services.
6. During the reporting period, the Office also procured and distributed computers, printers, scanners, servers and other relevant ICT equipment such that all the officers who require such equipment no longer share them, as was the case in the past. This has ensured that the Office has the ICT infrastructural platform for increased leveraging on ICT and automation of ODPP processes.
7. The Office, with the support of CGT, 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 soon. 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 and administrative interventions.

8. The Office was able to get access to and use the government's fibre optic network (GCCN) thus ensuring that it has reliable Internet connectivity. Internet connectivity is, however, not available in the county offices and this gap is being addressed by availing the requisite Internet modems and airtime. Going forward, the Office's access to GCCN will help it in its quest of fully automating its operations country-wide.
9. The Office has also developed an interactive website, where key information, activities, operations and documents are available.



## CHAPTER THREE: **DELIVERY ON THE CORE MANDATE**

### **2.15 Overview**

1. The services provided by the ODPP as mandated by the Constitution include; general prosecution services, advising investigation agencies, and handling complaints instituted by the public and other agencies.
2. During the period under review, prosecution services were offered by prosecution counsel in 29 established county offices where Courts of Appeal and High Courts are situated, while the rest of the prosecutions within the country continued to be handled by police prosecutors. This has been in line with the expansion strategy aimed at increasing access to justice for all Kenyans. It is instructive to note, however, that the expansion of the county offices has been progressive, rising from 17 offices at the time of delinking to the current position.
3. The main indicator for service delivery in the ODPP is the number of matters referred, registered and processed by the Office. The categories of matters handled include criminal trials, appeals and

applications, legal advice, complaints management and processing of Mutual Legal Assistance (MLA) requests.

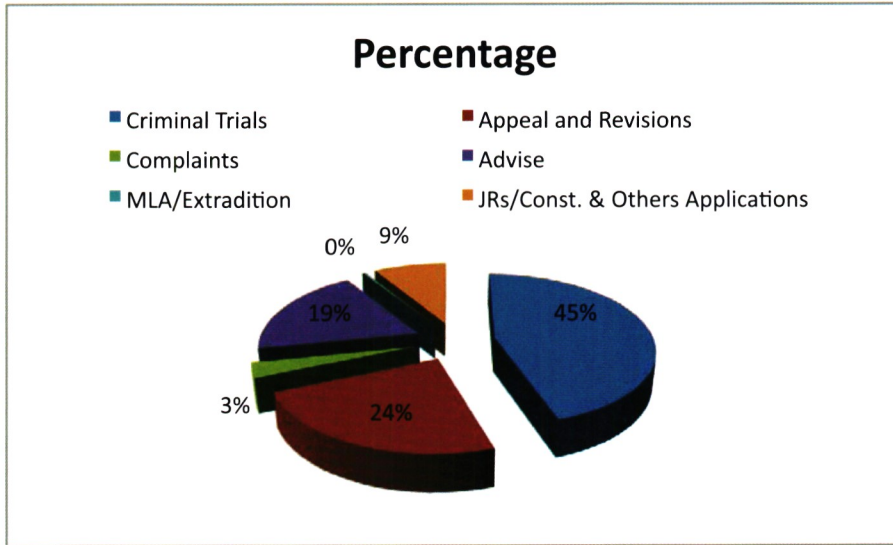
4. The reporting period marked the Office's first attempt at comprehensively collating and analysing statistics on matters handled. This was largely due to the pre-existing gross capacity constraints and overreliance on manual systems. Data for the previous years is therefore not reflected; hence the current scenario assumes the baseline of case statistics for the purpose of this reporting by the ODPP.
5. The data presented below relates to matters/cases handled by prosecution counsel and police prosecutors, both in the superior courts and the magistrates' courts. *A small percentage of prosecutions country-wide handled through delegated prosecutorial authorities have not been incorporated.*

## **2.16 Trends of matters/cases handled**

### **2.16.1 Matters received & registered**

The bulk of matters registered and processed by the Office during the reporting period were criminal trials at **45%**. Appeals and revisions represent **23.7%** while advice files made up for **19%**. Judicial reviews/Constitutional applications contributed to **8.7%** of the registered matters, while complaints accounted for **3.2%**. Extradition and mutual legal requests were the least accounting for **0.4%** of the total matters received and registered. This is illustrated by the chart below:

Figure 2: Percentage of matters registered



### 2.16.2 Major Criminal Trials

The major criminal trials handled during the reporting period ranged from offences under the Penal Code, Sexual Offences Act, Traffic Act, Narcotic Drugs and Psychotropic Substances Control Act, among others. The general overview of the performance in the major criminal trials is as captured in the table below:

Table 7: Summary of Major Criminal Trials Conducted in Superior Courts and in the Magistracy.

Case type	No registered	No pending	Concluded			Conviction Rate
			Conviction	Acquittal	Withdrawal	
<b>Homicide</b> (i.e. Murder and Manslaughter)	3057	4118	301	133	126	69.3%
<b>Major traffic offences</b>	196	38	139	15	4	90.2%

(i.e. Causing death by dangerous driving, Concealing death by dangerous driving, Driving under influence of alcohol)						
<b>Sexual and Gender based violence offences</b> (i.e. Rape, Defilement, Incest, sexual assault, Human trafficking for sexual exploitation, Child pornography and others)	1453	766	458	178	63	72%
<b>Robbery</b> (Robbery, Robbery with Violence, Car Jacking, Robbery of M/V, Cattle rustling, house, breaking, burglary, other breakings)	3246	1630	1173	415	488	74%
<b>Stealing and Theft</b> (various types)	5184	2773	1305	424	273	75%
<b>Other major offences against the person</b> (i.e.	6160	1976	1626	501	1386	76%

assault, affray, causing disturbance)						
<b>Narcotics related cases</b> (possession, handling, trafficking, usage and cultivating narcotics and other prohibited drugs)	796	285	388	90	39	81%
<b>Criminal damage</b> (i.e. Malicious damage, Arson, Negligent acts and other criminal damage)	1554	665	577	135	184	81%
<b>Economic Crimes (EACC Cases)</b>	142	-	37	63	-	37%
<b>Other Economic Crimes (None EACC Cases)</b>	577	349	115	55	118	67.6%
<b>Piracy</b>	18	3	14	1	0	93%
<b>Other offences</b>	432	213	124	35	60	77%

A less than desirable percentage of matters/cases were dealt with successfully and concluded during the reporting period. This is attributed to:

Lack of capacity to process the cases because the ODPP staffs were very few at the beginning of the review period.

Backlog of cases as result of lack of capacity in the Judiciary

Inadequate capacity in the investigative and other justice agencies including the Police, EACC and the Government chemist.

Despite these challenges, the overall conviction rate for criminal trials stood at **75.4**

Table 8: Summary of Appeals & Applications

Period	Case type	No. registered	No. pending	No. concluded			Success Rate
				Dismissed	Allowed	Withdrawn	
2011/12	Appeals	4727	4494	445	388	243	53.4%
	Constitutional Applications	291	109	41	22	0	65%
	Judicial Review	444	134	99	3	12	97%
	Revisions	1069	572	141	100	55	N/A
	Other Applications	1628	815	121	626	53	N/A
2012/13							
	Appeals	5803	6268	1599	601	193	72%
	Constitutional Applications	474	278	39	137	8	22.2%
	Judicial Review	160	139	26	3	3	90%
	Revisions	738	168	380	44	177	N/A
	Other Applications	1621	424	980	228	145	N/A

Table 9: Summary of advice files to investigative agencies and the police

Period	Category	No received	No processed	No pending	Resolution Rate
2011/12	Advice	6427	6153	247	96%
2012/13		3775	2471	118	66%

Table 10: Summary of Extradition and MLA requests

<b>i) Extradition</b>	
<b>Category 1: Extradition requests made to Kenya by Foreign States</b>	
Requests received from other countries	<b>20</b>
Requests filed in court	<b>18</b>
Requests declined	<b>2</b>
Requests concluded before courts	<b>4</b>
Requests pending before court	<b>14</b>
Requests currently with the Directorate of Criminal Investigations pending arrest of fugitives	<b>10</b>
<b>Category 2: Extradition requests made By Kenya to Foreign States</b>	
Requests sent by Kenya to foreign countries	<b>10</b>
Requests responded to by foreign countries	<b>3</b>
Extradition requests made by Kenya pending before foreign countries	<b>10</b>
<b>ii) Mutual Legal Assistance (MLA)</b>	
<b>Category 1: Requests made to Kenya by Foreign States</b>	
Requests received	Year 2011 <b>57</b> Year 2012 <b>50</b> Year 2013 <b>37</b> Total <b>144</b>
Forwarded to other agencies for action	<b>140</b>
Where no action taken	<b>Nil</b>
Requests being processed at various stages	<b>104</b>
<b>Category 2: Requests made by Kenya to Foreign States</b>	
Requests made by Kenya	<b>12</b>
Requests responded to	<b>6</b>
Requests pending	<b>6</b>
Requests completed	<b>6</b>

**NOTE:**

1. Before a request for Mutual Legal Assistance is granted, the Director of Public Prosecutions must ascertain from the relevant security agents whether:

The information sought by the foreign State is available in Kenya,

Releasing such information to a foreign State might prejudice national security, on-going investigations or prosecutions underway, among other things.

2. Upon receipt of a request for mutual legal assistance from a foreign State, the DPP forwards the same to the relevant investigative or other Government agency for execution.
3. As regards a request for extradition made to Kenya, once the DPP ascertains that it conforms to the relevant legal requirements, the matter is filed in court with a request for a warrant of arrest for the fugitive. Once the warrant of arrest is issued, it is forwarded to the Directorate of Criminal Investigations to enable them arrest the fugitive and present him/her before court for extradition proceedings to ensue.

Table 11: Summary of Piracy cases

Period	No. registered	No. pending	No. concluded			Conviction Rate
			Conviction	Acquittal	Withdrawn	
<b>2006-2013*</b>	18	3	14	1	0	93%

Data on Piracy cases is from 2006 (When DPP's office began prosecuting the cases) due to the special international interest in these cases.

*It is worth noting that a high conviction rate for piracy cases was attained due to high level of cooperation among the investigative agencies both nationally and internationally.*

### **2.16.3 Caseload per ODPP County offices**

The ODPP as part of its strategy to decentralise services to the counties established 13 new county offices bringing its presence to 29 county offices as at the end of the 2012/13 financial year. The remaining county offices totalling to 18 are expected to be opened in the subsequent financial year(s).

### **2.16.4 Economic Crimes Cases**

#### **a) Cases from EACC**

During the period under review, the Director of Public Prosecutions 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 for consideration and advice.

The actions taken on corruption cases received and processed are summarised in Table 12 below:

Table 12: Summary of corruption cases handled in 201/12 & 12/2013

2011/12 Review period						
Action on	By Who	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Cumulative
Forwarded	EACC	27	21	26	13	87
Recommended for prosecution	EACC	23	18	19	11	71
	DPP	23	16	15	9	63
Not Accepted to prosecute	DPP	0	1	2	0	3
Recommended for closure	EACC	4	3	5	1	13
	DPP	3	1	5	1	10
Not Accepted for closure	DPP	1	2	0	0	3
Recommended for Administrative	EACC	0	0	2	1	3
	DPP	0	0	2	1	3
Not accepted for Administrative	DPP	0	0	0	0	0
Recommended for further investiaation	DPP	0	0	1	1	2
2012/13 Review period						
Action on files/cases	By Who	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Cumulative
Forwarded	EACC	16	15	10	14	55
Recommended for prosecution	EACC	8	11	6	7	32
	DPP	7	7	5	7	26
Not Accepted to prosecute	DPP	1	1	0	0	2
Recommended for closure	EACC	5	4	2	4	15
	DPP	5	4	1	3	13
Not Accepted for closure	DPP	2	0	0	1	3
Recommended for Administrative Action	EACC	3	0	2	3	8
	DPP	2	0	2	1	5
Not accepted for Administrative Action	EACC	0	0	0	2	2
Recommended for further investigation	DPP	1	3	2	2	8

2011/12	2012/13
<b>Qtr 1:</b> 1st July-30th Sept 2011	<b>Qtr 1:</b> 1st July-30th sept 2012
<b>Qtr 2:</b> 1st Oct-31st Dec 2011	<b>Qtr 2:</b> 1st Oct-31st Dec 2012
<b>Qtr 3:</b> 1st Jan-31st March 2012	<b>Qtr 3:</b> 1st Jan-31st march 2013
<b>Qtr 4:</b> 1st April-30th Jun 2012	<b>Qtr 4:</b> 1st April-30th Jun 2013

From the table 12, it is clear that during the reporting period a high number of corruption cases forwarded by EACC with recommendation for prosecution were accepted at over **97% in 2011/12 and 94% in 2012/13**. This portrays a high rate of concurrence by the DPP with the recommendations of EACC. A small proportion of cases not accepted for prosecution were referred for further investigation at average of **4%** in the respective years.

The table below shows the number of concluded corruption and economic crime cases for financial years: 2011/2012 and 2012/2013.

Table 13: Concluded Corruption and Economic Crime Cases

	CONVICTIONS		ACQUITTALS	
	FORENSIC	RAPID	FORENSIC	RAPID
2011/2012	9	21	12	38
2012/2013	5	2	7	6
	14	23	19	44

From the above table, it can be deduced that in 2011/2012 there was a high number of acquittals largely attributed to rapid response cases (sting operations) at **76%** of all acquittals. This was as a result of the Court of Appeal decision in **Nicholas Muriuki Kangangi v. Attorney**

**General [Civil Appeal No.331 of 2010]** in which the court set down a precedent of acquitting and dismissing any prosecutions by the EACC in rapid response cases where the Commission had no prior consent to charge from the DPP.

Following the institutionalization of granting prior consent to charge in rapid response cases by the ODPP there has been a marked reduction of acquittals in rapid response cases by **86%** in 2012/2013.

#### **b) Other Economic Crimes**

The ODPP, through Police Prosecutors handled other economic crimes during the reporting period such as: obtaining by false pretense, currency forgery, false accounting, fraud/ forgery offences, soliciting for a bribe, accepting bribe, accepting free gifts, demanding by false pretense and other corruption offences. During the period, **577** of such cases were registered, **349** are pending conclusion in courts, **115** have led to conviction, **55** in acquittals and **118** have been withdrawn. This translates to a **67.6%** conviction rate in those cases.





# CHAPTER FOUR: **CHALLENGES, RECOMMENDATIONS AND CONCLUSION**

## **4.0 Challenges**

While the ODPP made significant milestones during the period under review, it was also confronted with various challenges and constraints. This chapter highlights some of our key challenges and spells out the recommendations we make to our stakeholders on how they could support the ODPP in the professional discharge of the prosecution mandate.

### **4.1 Understaffing**

Our current staffing, which includes police prosecutors that are not fully absorbed into the organization translates to 48% of our optimal prosecution staff requirement. This situation negatively impacts on the ODPP's effective and efficient discharge of the prosecutorial function.

Further, this impacts on the efficiency of the entire justice system and access to justice for Kenyans, as exemplified by the current idle capacity in the Judiciary, mainly due to a shortage of prosecutors.

## **4.2 Excessive Case Load**

Due to the acute shortage of staff at the ODPP and the huge backlog of cases in court, prosecution counsel has had to deal with disproportionate case and workload. The causal effect of this is that there remain inordinate delays in conclusion of cases, contributing to an ineffective justice system.

## **4.3 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 and its fate remains unknown.

## **4.4 Emergence of new forms of crime**

New, complex and emerging crimes such as money laundering, drug and human trafficking, cyber-crime, terrorism, wildlife crimes and maritime piracy require specialized prosecution skills which have to be nurtured through continuous training and skills development. This requires increased budgetary allocation.

## **4.5 Capacity constraints within other criminal justice agencies.**

The criminal justice system is like 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

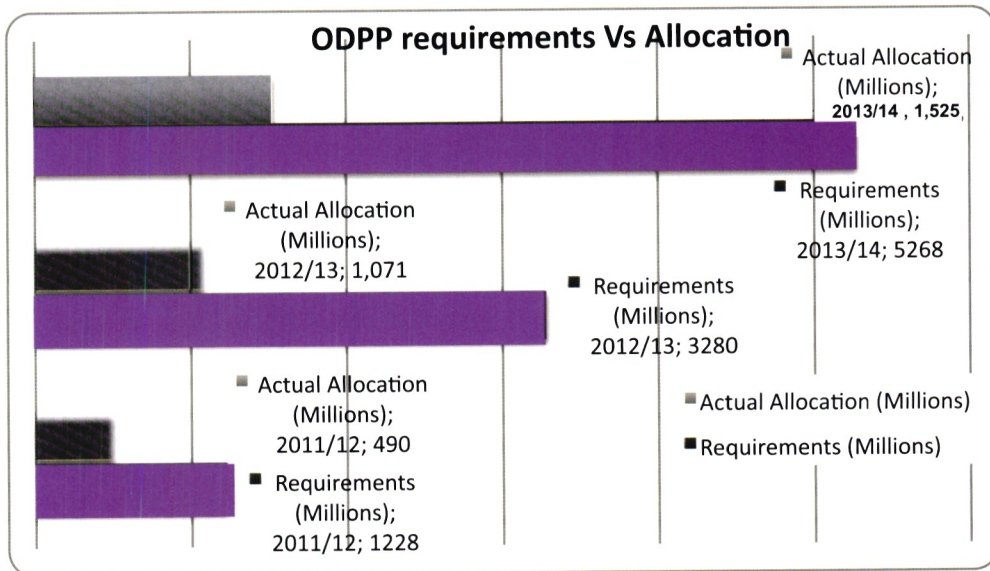
financial and capacity constraints that inevitably affect the efficient delivery of services, especially prosecutions.

#### 4.6 Budgetary Constraints

1. The ODPP suffers acute financial constraints due to inadequate budgetary allocation. This, no doubt, has had great implications on realising the organization's strategic objectives. The perennial underfunding has hampered the ODPP effective participation and contribution within the criminal justice sector.

2. A comparative analysis of the budget submitted and funds released to the ODPP is shown below.

Table 14: Actual allocation vs. Requirement



3. From the figure above, ODPP has received funding amounting to Ksh. 3.086 billion in the last 2 fiscal years, against a requirement of Ksh. 9.776 billion to implement the strategic plan in its initial two years. This represents 31.57% of the required funding for the period.

4. ODPP requires Ksh. 19 billion to fully implement its strategic plan 2011-2015. There is therefore urgent need to enhance funding for successful implementation of the plan to be achieved.

#### **4.6.1 Impact of Underfunding**

The allocation to ODPP has been grossly inadequate and will undermine provision of prosecution services leading to a breakdown in law and order and the rise of insecurity. In particular, the Office has not implemented the following key targets due to underfunding:-

#### **4.6.2 Recruitment of Staff**

The overall staffing shortfall currently stands at 52%, a situation that has negatively impacted on the ODPP's effective and efficient discharge of the prosecutorial function resulting in a backlog of cases.

#### **4.6.3 Modernization and automation of Services**

There is an urgent need to ensure that services are automated and modernized to keep up with technological advancement and increase efficiency in service delivery. The Office had targeted to undertake the following under the ICT Strategy framework: infrastructure foundations, operational effectiveness, information management collaboration, application systems, continuous Improvement, and Maintenance.

#### **4.6.4 Professionalization of prosecution services**

There is an urgent need to professionalize prosecution services and thereby enhance dispensation of Justice in an efficient and effective manner. To achieve this, ODPP intended to undertake the following:

##### **4.6.4.1 Absorption of police prosecutors**

The office had targeted to absorb 228 Police Prosecutors willing to join ODPP from the National Police Service. This could however not be achieved to lack of funding to cater for salaries, operations, and equipping.

##### **4.6.4.2 Establishment of Resource Centre and Library Services**

ODPP planned to establish resource centres and libraries in all county offices to enable prosecutors' access the most recent court decisions due of the increased complexity in traditional crimes and challenges posed by the emerging crime trends.

##### **4.6.4.3 Establishment of Prosecutors Training Institute**

There is currently no institution locally that is offering advanced courses in prosecutorial skills. Obtaining the courses outside the country will be very expensive hence the need to establish an institute for training prosecutors.

#### **4.6.5 Witnesses and Victims Support**

Victims and witnesses who are called to testify are required to receive pre-trial court preparation and familiarization. Such witnesses require

reimbursement for any expense reasonably incurred in attending the place at which the pre-trial interview is held. ODPP has not yet initiated facilitation of its witness during such pre-trials.

#### **4.6.6 Acquisition of a standalone Building for ODPP Headquarters**

ODPP is currently housed in leased offices at the NSSF building. ODPP had planned to acquire a standalone building to house its headquarters. Key considerations include security of both staff and documents. This has however not been achieved due to funding constraints.

#### **4.6.7 Purchase of vehicles**

The devolution of prosecution services to the Counties inevitably requires efficient transportation. The 115 magistrates' court stations cannot be served without adequate transport. The office had targeted to acquire an additional 115 vehicles to cater for prosecutors in Magistrates court stations.

#### **4.7 Inadequate office accommodation, equipment and facilities in both ODPP and Police prosecution offices**

For prosecutors to be effective in the discharge of their functions, they must be adequately facilitated with the necessary facilities and good working environment. The financial resources allocated to date are not able to avail the same. This also hampers ODPP's drive to devolve its services in all counties as constitutionally mandated.

#### **4.8 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. There is need for comprehensive business processes optimization, including automation where necessary.

#### **4.9 Recommendations**

1. The ODPP's prosecution staff deficits should be urgently addressed. The requisite resources should be made available to the Office.
2. To ensure the competitiveness of the ODPP in the job market, there is an urgent need to resolve the outstanding harmonization of the terms and conditions of service for staff with those of comparable institutions like the Judiciary.
3. Overall, the National Assembly should prioritize significantly increasing the budgetary allocation to the ODPP in line with the funding requirements of its strategic plan 2011-2015, which averagely translates to at least **Kshs. 5 billion** each year. In this regard, certain considerations such as addressing one-off expenditures (for example, development projects) require prioritization in the coming fiscal cycle.
4. Related to the above, it is imperative that in funding the justice sector, the complementarity of the role each institution players is not only recognized but also effectively supported. To this end, it is recommended that financial and other capacity gaps of the National Police Service, Government Chemist, the Witness

Protection Agency and the Probation Service, among others, should be simultaneously addressed.

5. To address the over reliance on manual systems which have proven to be ineffective, the Office recommends that a comprehensive business processes optimization exercise should be undertaken, including the development of a streamlined automated case management system. The ODPP ICT strategy framework should be implemented and the **Kshs. 200 Million** shillings averagely required annually in the next four (4) years, should be availed. Further, it is recommended that the GCCN should be urgently rolled out to all Counties to ensure Internet accessibility in our County offices.
6. Various laws urgently require modernization, particularly evidentiary, penal and procedural laws. Moreover, there is a need for new legislations on emerging and complex crimes, which are currently not adequately covered by our laws. There is also the need to study the efficacy and impact of various laws in the criminal justice system and especially, relating to corruption and economic crimes.
7. It is also recommended that modalities of mainstreaming traditional justice mechanisms with the criminal justice arena should be worked out by all stakeholders to give effect to the provisions of Article 159 of the Constitution whose implementation so far has been incoherent.
8. An effective criminal justice system is one that ensures the facilitation and protection of witnesses and victims of crime. There

is an urgent need for the development of a witness and victims of crime support mechanism, including the enactment of the necessary legislation.

9. The need for the ODPP to decentralize its services to the counties, in line with the Constitution cannot be over emphasized. All efforts in support of this drive should not be spared.
10. To be effective, the ODPP is keen to strengthen inter-agency collaboration and cooperation with development partners, the civil society, academy, the media and members of the public. In this regard, the Office welcomes meaningful partnerships and engagements. Additionally, the ODPP hopes that the relevant institutions will welcome and collaborate in relation to the Prosecution-Guided Investigation Model, which is increasingly becoming a relevant and fruitful best practice.

#### **4.10 Conclusion**

The ODPP recognises the key role the government and numerous partners play in contributing to our success. We are confident that with continued support and given our resolve to deliver on our constitutional mandate, we will surmount our challenges and forge ahead despite all odds.



## CHAPTER FIVE:

# FINANCIAL STATEMENTS

## 5. Introduction

Prior to the promulgation of the Constitution, 2010 and the subsequent establishment of an independent ODPP, the prosecutions department's budget was under the SLO vote. For purposes of budgeting, the SLO was under the Governance Justice Law and Order Medium Term Expenditure Framework Sector.

### 5.1 2012/13 Financial year

Section **43 (1)** of the ODPP Act, provides that at least three months before commencement of each financial year, the Office shall cause to be prepared, reviewed, and forwarded to the National Assembly estimates of the revenue and expenditure of the office for that year for tabling and approval in the National Assembly. The Office prepared and forwarded its estimates of expenditure on **28<sup>th</sup> March 2013**

The ODPP submitted resource requirements amounting to **Kshs 5.268 billion** to the National Assembly. However, the Office has only been allocated **Kshs1.525 billion**.

#### **Recurrent Vote**

The allocation under the Recurrent Vote is **Kshs1.388 billion**. Against

#### **Development Vote**

The allocation under the Development Vote is **Kshs 137 million**.

## **5.2 The Year 2011/12 Context in Summary**

1. The ODPP officially became an independent Vote in the financial year 2011/2012 with an initial allocation of Kshs. 355 million. This allocation was increased to Kshs 490 million in the 2011/12 Supplementary Estimates budget. During this period the ODPP did not have a development vote.
2. In the financial year 2012/2013, ODPP was allocated a total of Kshs 972 million. The allocation was Kshs 892 million and Kshs 80 million for the Recurrent and Development votes respectively. The allocation was increased to Kshs 1.26 billion in the 2012/2013 Supplementary estimates. The recurrent vote stood at Kshs 1.2 billion and Development vote at Kshs 61.4 million as the end of the financial year.
3. This represents a year on year growth in overall funding of the ODPP, by 157.14%. Despite this increase, the ODPP's share of the national budget is way below optimal of 0.3 to 1% of the total national budget. In 2011-2013 it was at 0.037% of the national budget and in 2012-2013 it stood at 0.083%.

## **5.3 Expenditure Overview**

Overall expenditure against the budget was above 99% for most expenditure items. There was however under expenditure under personal emoluments due to a delay in the recruitment of staff. There was also under expenditure in the refurbishment of buildings, which was occasioned by delays in procurement. The overall under expenditure for the period was Ksh 72.35million

Table 15: summary of recurrent expenditure against approved estimates 2011/12Fy

	Approved Estimates	Actual	Variance
Recurrent	490.85	418.5	(72.35)
Development	-	-	-
<b>Total</b>	<b>490.85</b>	<b>418.50</b>	<b>(72.35)</b>

#### 5.4 Statement of the Accounting Officer responsibility

**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.

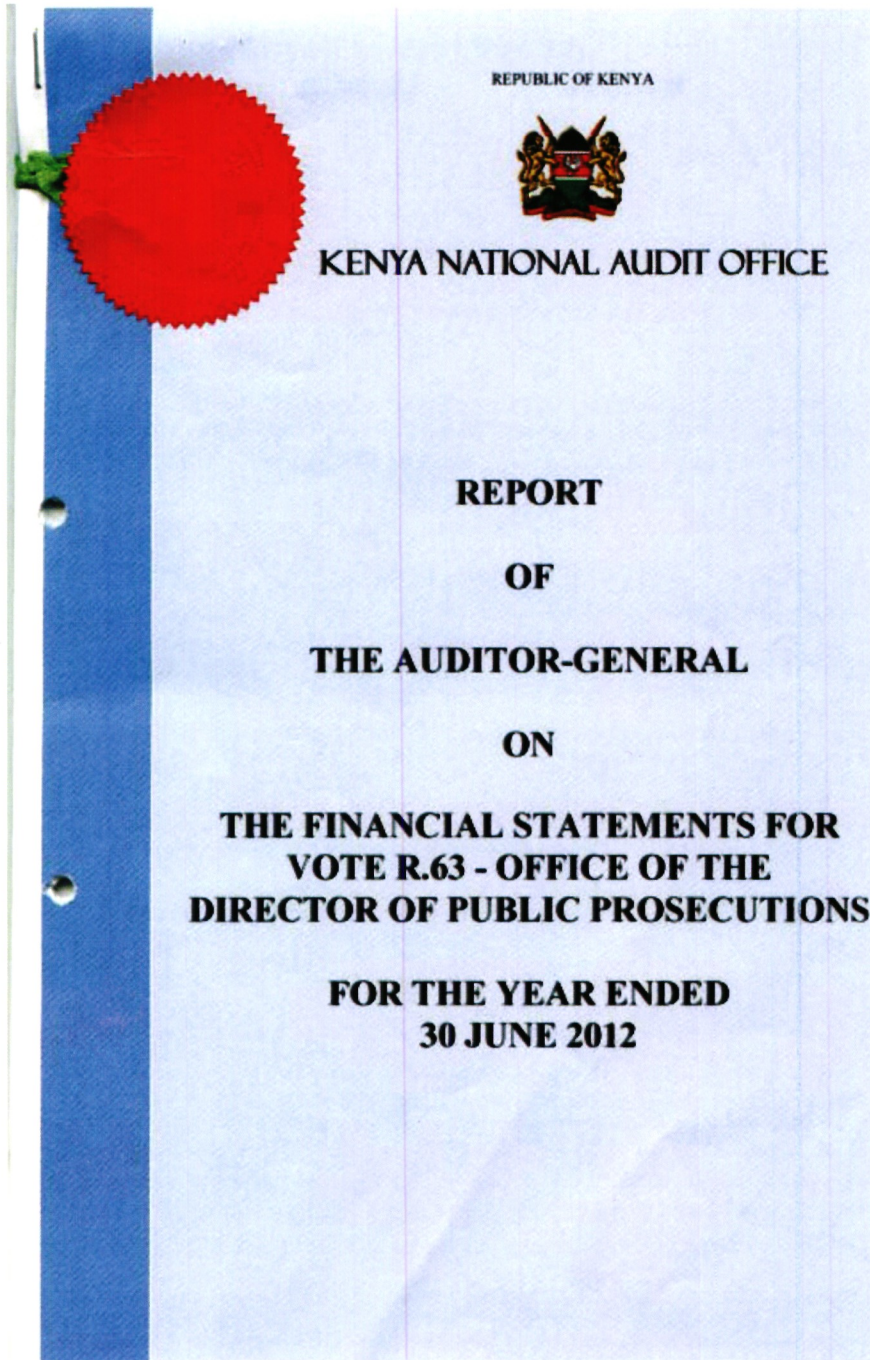
I further accept responsibility for the attached annual accounts which have been prepared in conformity with Treasury directions and appropriate Government Financial Regulations and procedures.

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 63** as at 30<sup>th</sup> June, 2012



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

**5.5 Report to the Auditor General**



REPUBLIC OF KENYA

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NAIROBI



## KENYA NATIONAL AUDIT OFFICE

### **REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS FOR VOTE R.63 - OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE YEAR ENDED 30 JUNE 2012**

I have audited the financial statements for Vote R.63 - Office of the Director of Public Prosecutions, which comprise the Statement of Assets and Liabilities as at 30 June 2012 and the Appropriation Account for the year then ended and 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. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

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

The Accounting Officer, Office of the 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 Sections 4 and 7 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 report in accordance with the provisions of Section 9 of the Public Audit Act, 2003. The audit was conducted in accordance with the 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.

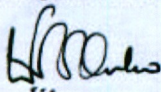
An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or 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 entity'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.

#### **OVERALL AUDIT OPINION**

##### **Unqualified Opinion**

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, 2012 and of its operations for the year then ended in accordance with the Government Financial Regulations and Procedures and the Public Finance Management Act, 2012.



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

**Nairobi**

**05 April, 2013**

The

financial statements include:

Appropriation Accounts

Statement of Assets and Liabilities

Statement of Pending Bills

Table 16: Annual Appropriation Accounts 2011/2012 Financial Year

ITEM	TITLE	REVISED ESTIMATES Kshs.	EXPENDITURE Kshs.	OVER EXPENDITURE Kshs	UNDER EXPENDITURE Kshs
630101	Public Prosecutions Department				
2110100	Basic Salaries- Permanent Employees	92,928,440	90,271,465	-	2,656,975
2110200	Basic Salaries- Temporary Employees	6,000,000	3,904,833	-	2,095,167
2110300	Personal Allowances paid as part of Salary	85,571,560	52,718,406	-	32,853,154
2110400	Personal Allowances paid as Reimbursement	4,500,000	678,700	-	3,821,300
2210100	Utilities, Supplies and Services	1,900,000	1,766,602	-	133,398
2210200	Communication, Supplies and Services	11,300,000	11,129,717	-	170,283
2210300	Domestic Travel and Subsistence, and Other Transportation Costs	34,500,000	33,728,431	-	771,569
2210400	Foreign Travel and Subsistence, and other transportation costs	11,900,000	11,900,000	-	0
2210500	Printing, Advertising and Information Supplies and Services	14,100,000	14,100,000	-	0
2210600	Rentals of Produced Assets	30,000,000	22,898,612	-	7,101,388
2210700	Training Expenses (including capacity	18,200,000	17,672,974	-	527,026

	building)				
2210800	Hospitality Supplies and Services	16,954,000	16,932,162	-	21,838
2211000	Specialised Materials and Supplies	6,100,000	6,083,859	-	16,141
2211100	Office and General Supplies & Services	9,700,000	9,624,279	-	75,721
2211200	Fuel Oil and Lubricants	5,200,000	5,199,081	-	919
2211300	Other Operating Expenses	6,370,000	6,291,788	-	78,212
2220100	Routine Maintenance - Vehicles and Other Transport Equipment	5,500,000	5,331,657	-	168,343
2220200	Routine Maintenance - Other Assets	10,280,000	10,037,271	-	242,729
2710100	Govt. Pension and Retirement Benefits	6,000,000	-	-	6,000,000
3110300	Refurbishment of Buildings	16,000,000	1,977,912	-	14,022,088
3110700	Purchase of Vehicles and Other Transport Equipment	54,000,000	53,140,596	-	859,404
3110800	Overhaul of Vehicles and Other Transport Equipment	100,000	82,316	-	17,684
3111000	Purchase of Office Furniture and General Equipment	43,450,000	42,737,564	-	712,436
3111400	Research, feasibility studies, project preparation & design, project supervision	300,000	290,788	-	9,212
	GROSS	490,854,000	418,499,013	-	72,354,987

	GROSS EXPENDITURE APPROPRIATIONS IN AID:		490,854,000	418,499,013	-	72,354,987
1450100	Receipts not classified elsewhere	(854,000)	(854,000)	-		0
	NET EXPENDITURE		490,000,000	417,645,013	-	72,354,987

Table 17: Statement of Assets and Liabilities

<b>ODPP R63-RECURRENT STATEMENT OF ASSETS AND LIABILITIES AS AT 30<sup>TH</sup> JUNE 2012</b>			
<b>DETAILS</b>	<b>2010/2011</b>	<b>2011/2012</b>	<b>TOTAL</b>
	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>
Advances	-	61,591	61,591
Suspense Accounts	-	-	-
Exchequer Account	-	40,000,000	40,000,000
Temporary Imprest	-	20,000	20,000
PMG Head office Bank A/C	-	30,940,256	30,940,256
PMG Field A/C S	-	1,333,140	1,333,140
<b>TOTAL.....Kshs.</b>	<b>0</b>	<b>72,354,987</b>	<b>72,354,987</b>
<b>LIABILITIES</b>			
<b>DETAILS</b>	<b>2010/2011</b>	<b>2011/2012</b>	<b>TOTAL</b>
	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>
General Account Vote	-	72,354,987	72,354,987
Salary Clearance	-	-	-
Exchequer Account	-	-	-
Appropriation In Aid	-	-	-
<b>TOTAL (Kshs)</b>	<b>0</b>	<b>72,354,987</b>	<b>72,354,987</b>

## 5.6 Footnotes to the Appropriation Account

### i) Personal Emoluments

The under expenditure totalling to **Kshs. 41,426,597/=** resulted from the fact that ODPP was granted authority by the treasury to recruit sixty six (66) prosecution counsels during the financial year 2011/2012. However, this was not possible due to process of recruitment and consultation with the PSC.

### ii) Rentals of Produced Assets( Item 2210600)

The under expenditure of **Kshs.7,101,388/=** was as a result of receiving the supplementary late and the long legal procedures of acquiring the premises thus the funds could not be fully utilized.

### iii) Govt Pension and Retirement Benefits( Item 2710100)

The under expenditure of **Kshs. 6,000,000/=** was as result of having no retired officer in the financial year 2011/2012.

### iv) Refurbishment of Buildings( Item 3111000)

The under expenditure of **Kshs.14,022,028/=** was as a result of receiving the supplementary late and the long procuring procedures hence the funds could not be fully utilized.

Table 18: Statement of Pending Bills

ODPP R63-RECURRENT STATEMENT OF PENDING BILLS AS AT 30 <sup>TH</sup> JUNE 2012			
PAYEE	2010/2011	2011/2012	TOTAL
	Kshs	Kshs	Kshs
Ministry Of Agriculture	-	43,000	43,000
Kenya School Of Monetary Studies	-	221,908	221,908
Granpap Furniture	-	168,000	168,000
<b>Total</b>	<b>0</b>	<b>432,908</b>	<b>432,908</b>

**ANNEX**

**Location of the ODPP Offices**

COUNTY	LOCATION	ADDRESS	CONTACTS
Nairobi	NSSF Building	P.O. Box 30701– 00100 Nairobi	Tel: 020 2732090/2732240 Mobile: 0723202888
Mombasa	Social Security Building,9 <sup>th</sup> floor Nkurumah Road	P.O. Box 82427  Mombasa	Tel: 82427 Fax: 042-2315521
Kakamega	PC's Office, Block A 2 <sup>nd</sup> Floor	P.O. Box 1529  Kakamega	Tel. 056 – 31049 Fax. 056 – 31049
Nakuru	CDN Plaza Ground Floor, Room 17	P.O. Box 1165  Nakuru	Tel: 051-2212555
Nyeri	PC's Office, 3 <sup>rd</sup> Floor	P.O. Box 463  Nyeri	Tel. 061-2030698 – DL 061-2030619 – GL
Kisumu	PC's Office 9 <sup>th</sup> Floor	P.O. Box 1902  Kisumu	Tel. 057-2024620
Kisii	AG`s Office	P.O. Box 1902 – 40100 Kisii	Tel. 057-2024620
Meru	NTARA Place,2 <sup>nd</sup> Floor Government Road Behind Kenya National Library Services	P.O.Box 2377 - 60200  Meru	Tel. 064-32543
Kericho	AFC Building,1 <sup>st</sup> Floor	P.O. Box 1512  Kericho	Tel.052-20056 Fax,052-20056
Trans-Nzoia	District Information Building Moi Avenue	P.O. Box 663  Kitale	Tel.05431273

	1 <sup>st</sup> Floor, Room 6		
Machakos	AGs Office Behind High Court Mbolumalu Road	P.O. Box 1041 Machakos	Tel. 044-21041
Busia	Eco Bank Building 1 <sup>st</sup> Floor	P.O. Box 476 Busia	Tel. 0723-641177
Bungoma	Ifthim Building 2 <sup>nd</sup> Floor	P.O. Box 2058- 50200 Bungoma	Tel. 0770-355066
Uasin-Gishu	KVDA Plaza Next to National Bank 9 <sup>th</sup> Floor	P.O. Box 4024 Uasin-Gishu	Tel. 053-2030044, 22755
COUNTY	LOCATION	ADDRESS	CONTACTS
Garissa	ODPP House, opp. Gawaseco, 200m Off Kismayu Road	P. O. Box 69 Garissa	Tel. 046-210236
Murang'a	Ministry of Lands Building 1 <sup>st</sup> Floor, Rm 109 County Commissioners Place	P.O. Box 931 Muranga	Tel: 060 - 2030400
Kerugoya	Professionals Plaza	P O Box 1224- 10300	Tel.0724-539290
Narok	Information House	P O Box 991-20500	Tel: 050 – 23247
Marsabit	Department of Children House, Next to District Commissioner`s Office	P.O. Box 387 Marsabit	Tel: 020 – 2192632
Wajir	Wajir District Building First Wing, Mandela Road	P O Box 417-70200	Tel: 020-2594873

Bomet	Children's Office, Bomet	P O Box 236 Bomet	Tel: 0710613494
Lodwar	Opposite Lodwar Law Courts	Private Bag Lodwar	Tel: 020-2640008
Kajiado	ODPP Building Next to Law Courts	P O Box 646 Kajiado	Tel: 020 – 2622894
Voi	Magamba Plaza 1 <sup>st</sup> Floor	P O Box 760-80300 Voi	Tel: 020 - 2318016
Thika	Thika Arcade Building, 6 <sup>th</sup> Floor	P.O. Box 6219 - 00100 Thika	Tel.0202309459
Nyahururu	GF Plaza 1 <sup>st</sup> Floor, Kenyatta Avenue	P O Box 1438- 20300 Nyahururu	Tel: 020-2573752
Homabay	Old Treasury Building Behind County Commissioners Office	P O Box 153-40300  Homabay	020 – 2698187
Embu	Faith House	1 <sup>st</sup> Floor	P O Box 1379
Malindi	Malindi Complex, Along Lamu Road	P O Box 5751 – 80200 Malindi	Tel.042-2121259
Kitale	Information Building 1 <sup>st</sup> Floor, Room No.6	P O Box 663 – 30200 Kitale	Tel: 020-2639993



**Main Office**

**Nairobi NSSF Building  
P.O. Box 30701 - 00100  
Tel: 2732090/2732240  
Mobile: 0723 202 888**