

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ANNUAL ANTI-CORRUPTION REPORT

BY

THE DIRECTOR OF PUBLIC PROSECUTIONS

**IN RESPECT OF PROSECUTION OF ANTI-CORRUPTION AND
ECONOMIC CRIME RELATED CASES**

PURSUANT TO THE PROVISIONS OF SECTION 37

OF

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

NO.3 OF 2002

FOR THE PERIOD

1ST JANUARY 2012 TO 31ST DECEMBER 2012

P R E A M B L E

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

The Act further requires that, as provided for under section 37(5) that the stated Annual Report must be laid annually before the National Assembly within the first ten sitting days of the National Assembly following the end of the year to which the report relates. Since the commencement of the Act in 2003, nine (9) such reports have been laid before the National Assembly.

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

During the year under review (2012), the DPP exercised his mandate to direct and prosecute cases submitted to him by EACC and other investigative agencies such as the Criminal Investigations Department and Banking Fraud

Department. In that period, Ethics and Anti- Corruption Commission forwarded Seventy (70) cases. Other investigative agencies also sent cases for consideration and advice.

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

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

- i. Development of the ODPP bill, which was enacted as the Office of the Director of Public Prosecution Act on 3rd January 2013 by Parliament and assented to by H.E the President on 14th January 2013. The Act came into effect on 16th January, 2013. The object of the Act is to give effect to the provisions of Article 157 and 158 and other relevant Articles of the Constitution. The Act provides for the operationalization framework of the ODPP and its functional autonomy.
- ii. The ODPP developed a five-year strategic plan (2011-2015) to guide the operations of the ODPP.
- iii. The ODPP designed and developed the ODPP organizational/ establishment structure, which was approved by the Advisory Board. The structure makes the Anti-corruption division a fully-fledged division to ensure efficient delivery of services to the public and cooperation with stakeholders.
- iv. The ODPP has made a proposal for improvement of terms and conditions of service for its staff to the Salaries and Remuneration Commission.

- v. The ODPP has established an integrated Public Complaints handling mechanism.
- vi. In order to increase the capacity of the office, The ODPP has hired Eighty Two (82) prosecutors to enhance prosecution capacity in the office. The ODPP is undertaking to hire more prosecutors and one hundred and fourteen (114) non - legal staff.
- vii. The ODPP is undertaking continuous training for all the staff In order to enhance capacity of the staff in the ODPP.
- viii. In the spirit of devolution, the ODPP has opened regional offices in Kerugoya, Muranga, Homabay, and Narok in order to take ODPP's services to the grassroots and to cope with the caseload. The ODPP is in the process of opening an office in Turkana and other regions in order to ensure that its services are easily accessible to the Public.
- ix. In a bid to professionalize prosecution services, the ODPP is finalizing the absorption of police prosecutors into the ODPP office.

Inter-Agency Cooperation and Collaboration

- i. The Office of the Director of Public Prosecutions is one of a number of agencies working within the criminal justice system. It is essential to the work of this Office that we continuously strive to enhance relationships develop initiatives to improve delivery of service. On a day-to-day basis, the Office of the ODPP works with a number of investigative agencies from whom we receive investigation files. The vast majority of these files subject of this report are submitted to this office by the EACC. We therefore work closely with EACC in the area of legal developments and capacity building. During 2012 staff from ODPP attended and delivered training to members of EACC and ODPP on a variety of topics including; a workshop convened by EACC on "**Leadership and Integrity provisions under the Constitution** , between 20th to 25th August 2012, a joint training on financial investigations and asset recovery was conducted by the Basel Institute of Governance for ODPP and EACC officers. ODPP participated in the 2012 Anti-Corruption Day activity held in Nyeri on 8th December 2012. Similarly, ODDP participated in several National Anti-Corruption Plan activities such as field visits. The officers visited places such as Baringo, Kakamega, Nyeri and Kajiado, where they interacted

with members of the public and sensitized them on the role of DPP in the fight against corruption.

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

- ii. In order to improve the quality of investigations and prosecution of Corruption and Economic Crimes cases, In March 2012, the ODPP and EACC entered into partnership with GIZ for technical assistance, which included enhancing of collaboration mechanisms between our agencies. Since then, ODPP has convened a number of meetings in which addresses issues affecting investigation and prosecution of Corruption and Economic Crimes. In order to explore ways to improve the working relationship between the ODPP and EACC A joint workshop was held between 25th to 28th April 2012 at Naivasha. Both agencies are in the process of implementing the recommendations of the workshop.
- iii. A major step forward was the development of draft guidelines for prosecution of Corruption and Economic Crimes. The guidelines will be launched soon after validation. The guidelines will provide a comprehensive resource for professional staff and will ensure a consistency of approach in dealing with cases.

Additionally, in order to improve the management of files within ODPP and EACC, a consultant was retained to document the ODPP processes and procedures for the purposes of developing an integrated file management system. This will ensure expeditious disposal of cases.

The aim of the ODPP is not only to achieve a situation whereby cases are conducted ethically, professionally, efficiently and timely fashion but also to support and enhance the investigative capacity and efficiency of related agencies.

Further, the ODPP will attract and retain highly quality staff in order to improve performance and effectively play its role in the criminal justice system. Lastly, will not only contribute to the improvement of the Justice system but will also champion initiatives targeted at Law Reform in general and particularly the refinement of the Criminal Justice System.

THE ORGANISATION

Mission

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

Vision

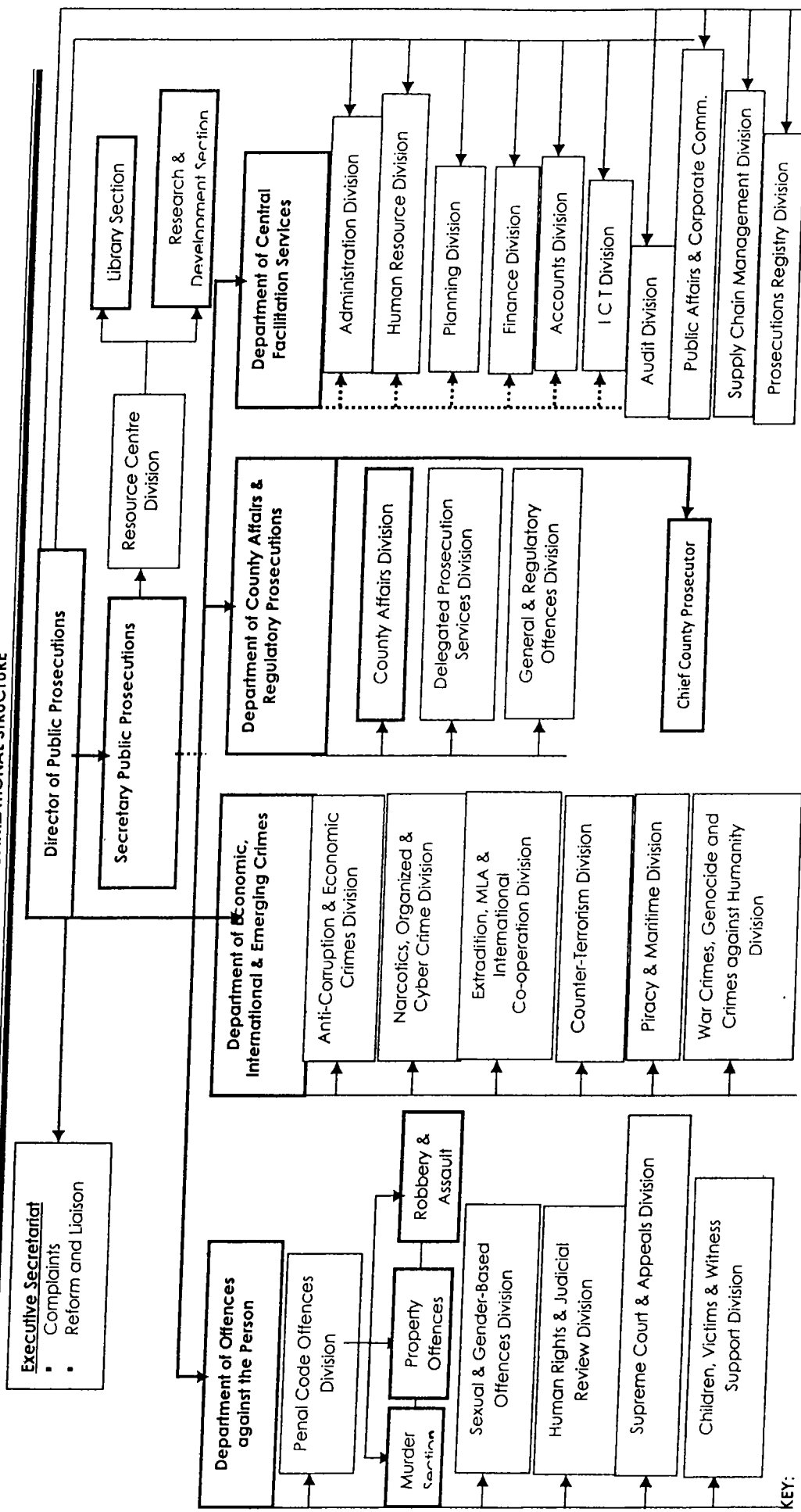
The vision of the Office of the Director of Public Prosecutions is 'To be a highly professional, effective and efficient prosecuting body in Kenya'.

Core Values

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

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

ORGANIZATIONAL STRUCTURE



KEY:
 Administrative Reporting
 _____ Professional/Technical Reporting

(A) FILES SUBMITTED IN THE FIRST (1ST) QUARTER OF THE YEAR- 1ST JANUARY TO 31ST MARCH, 2012

1. KACC/FI/INQ/20/2011

NO. 1 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that officers at the Department of Pensions facilitated the processing of fraudulent pension payments amounting to Kshs.8 million. Investigations established that the Pensions Department received from the Teachers Service Commission documents that captured the personal details of several retirees. The Claims Section of the Pensions Department was required to feed the data received into their system known as the PMIS. Investigations established that the system automatically computes the benefits of the pensioners; and after the computation and the necessary approvals, the system generates a voucher from the data. Investigations also established that it was the role of accountants to prepare, examine, authorize and approve the voucher by counterchecking the details as they appear in the vouchers. Further evidence revealed that the amount of money payable to the retirees appearing in the payment vouchers was inflated by Kshs.1 million. It was established that the officers in the IT Section colluded with the accountants to generate the exaggerated figures. They took advantage of the new system that did not have audit trails to doctor the figures. The accountants who prepared, authorized and examined the vouchers deliberately facilitated the fraud by failing to counter check the figures appearing in the vouchers against those in the personal details submitted by the TSC.

EACC forwarded the file to the Director of Public Prosecutions on 20th March, 2012 with the recommendation that the suspects who are employees of the Pensions Department be charged with the offence of abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that administrative action be taken against one of the Pensions Officers; and that civil proceedings be instituted to recover the overpaid sums of money from the pensioners.

Upon perusal of the file, the DPP found the evidence sufficient to support the proposed charges, directed prosecution to ensue against the suspects, and administrative action to be taken against one of the Pensions Officers and recovery of the overpaid sums of money from the pensioners.

STATUS

The suspects were charged with the offence of abuse of office contrary to Section 46 as read with 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The case is part-heard.

2. KACC/INQ/AT/30/2011-F

NO. 2 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of embezzlement of funds belonging to the Ministry of Medical Services by officials of the said Ministry. Investigations established that senior officials in the Ministry of Medical Services made irregular payments to staff working in the accounts section in the form of unauthorized allowances and to service providers for services either rendered but not at the rates that were being alleged or not rendered at all.

Investigations further revealed that the irregular payments were made in a bid to clear the Ministry's appropriations before the end of the financial year 2010/2011. It was further alleged that a substantial amount of money had been transferred into the personal account of an officer in the accounts department of the said Ministry to facilitate the irregular payments even after the closure of the financial year. Investigations further revealed that the Permanent Secretary and the Deputy Secretary in the Ministry of Medical Services failed to execute their duties diligently and approved expenditure contrary to Government Financial Regulations and signed payment vouchers which were not supported by any claim documents as a consequence of which public funds amounting to Kshs.5,755,555/= were misappropriated.

EACC forwarded the file to the Director of Public Prosecutions on 12th January, 2012 with the recommendation that the Permanent Secretary, Medical Services, be charged with the offence of abuse of office contrary to section 101(1) as read with section 102A

of the Penal Code, and the Deputy Secretary, Principal Accounts Controller and Accountant 1 be charged with the offences of wilful failure to comply with the law relating to procurement contrary to section 45 (2) (b) and Abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act, 2003; In addition the Principal Accounts Controller and Accountant 1 be charged with; fraud by persons employed in the Public Service contrary to Section 127 (1) as read with section 127 (2) of the Penal Code and the offence of knowingly using a false document to one's principal contrary to section 41(2) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. It was further recommended that civil proceedings be instituted against the Principal Accounts Controller and the Accountant 1 to recover the huge sums of public funds deposited in their bank accounts.

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

STATUS

The suspects were charged with the above named charges. The case is part- heard in court.

3. KACC/ELD/FI/INQ/02/2011

NO. 3 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of irregular award of a road works tender worth Kshs.5,200,000 by the Kenya Rural Roads Authority (KeRRA) to a company owned by the Member of Parliament for Eldoret South Constituency. Investigations established that Bayete-Chuiyat-Bargeiywa (RAR3) Road in Eldoret South Constituency was one of the roads earmarked for improvement during the Financial Year 2009/10. The improvement entailed culvert installation, heavy grading and spot gravelling estimated at a cost of Kshs.5,371,000/=. The project was approved and budgeted for in the Annual Work Programme of the Kenya Roads Board. It was further established that the procurement process was initiated in January 2010 by the KeRRA officials in Uasin Gishu District, in conjunction with the Eldoret South Constituency Roads Committee as was the procedure and the award was made in April, 2010 to a private contractor in the sum of

Kshs.5,010,040/=. Investigations further established that the works were undertaken and payment made to the contractor. Investigations further confirmed that the contracting company is a limited liability company whose directors are the current Member of Parliament for Eldoret South and her husband. The evidence obtained also revealed various infractions of the law in the procurement process, project implementation and payment.

EACC forwarded the file to the Director of Public Prosecutions on 7th February, 2012 with the recommendation that the Member of Parliament for Eldoret South, her husband and five others be charged with the offence of conspiracy to commit an offence of Economic Crime contrary to section 47A (3) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 and the Regional Manager of Kenya Rural Roads Authority and another be charged with the offence of wilful failure to comply with the law relating to the tendering of contracts contrary to section 45 (2) (b) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003 and the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003.

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

STATUS

The suspects were charged with the offence of conspiracy to commit an offence of Economic Crime contrary to section 47A (3) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 and the Regional Manager of Kenya Rural Roads Authority and another be charged with the offence of wilful failure to comply with the law relating to the tendering of contracts contrary to section 45 (2) (b) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003 and the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003. The case is part-heard in court.

4. KACC/INQ/FI/183/2010

NO. 4 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a construction company was irregularly awarded a Kshs.3.4 million contract to construct the Mau Drift in Mbooni Constituency. Investigations revealed that the Mau Drift project was not one of the CDF projects in Mbooni Constituency approved by the CDF Board. Therefore, no CDF funds were allocated for the said project. Notwithstanding the fact that the Mau Drift project was not approved by the CDF Board, nor any funding provided the area Chief went ahead and engaged a contractor purporting that the award had been made by the Project Management Committee of the said project. He made documents awarding the contract to the contractor purporting that the members of the Project Management Committee had approved and signed the document. Investigations further revealed that on the belief that the project was funded by the CDF, the contractor demanded for payment, which demand was not honoured since the project was not in the code list of approved CDF projects.

EACC forwarded the file to the Director of Public Prosecutions on 14th February, 2012 with the recommendation that the area Chief be charged with the offences of abuse of office contrary to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003 and making a document without authority contrary to section 357 of the Penal Code.

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

STATUS

The suspects were charged with the offences of abuse of office contrary to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003 and making a document without authority contrary to section 357 of the Penal Code. The case is part- heard in court.

5. KACC/FI/INQ/76 (G)/08

NO. 5 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of misappropriation of public funds amounting to Kshs.700,000/= meant for Nabunga Borehole Project by the Constituency Development Committee of Saboti Constituency. Investigations revealed that the aforesaid amount was disbursed to Saboti Constituency by the CDF National Management Board and it was received by the office of the District Development Officer (DDO), Trans Nzoia West District, who is the AIE Holder for the said Constituency's CDF. Investigations further revealed that the payment of Kshs.700,000/= was made to the aforesaid purported officials of Nabunga Borehole Project Management Committee through the Saboti Constituency Development Fund Committee. Investigations further established that the purported officials of Nabunga Borehole withdrew the CDF funds and shared it among themselves for their private use. The Nabunga Borehole was consequently never drilled leading to the loss of the aforesaid public funds. Investigations further revealed that in reality a Project Management Committee for Nabunga Borehole never existed and that the said project was purposefully given to the purported officials of Nabunga Borehole Committee by the former Secretary to repay them for debts allegedly owed to them by the Saboti CDFC and the then Saboti Member of Parliament.

EACC forwarded the file to the Director of Public Prosecutions on 8th February, 2012 with the recommendation that the former secretary of the Saboti Constituency Development Fund Committee and three others be charged with the offences of fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, misappropriation of Constituency Development Funds contrary to section 51 of the Constituency Development Fund Act, 2003 and uttering a false document contrary to section 353 of the Penal Code. It was further recommended that the embezzled CDF funds be recovered from the suspects.

Upon perusal of the file, the Director of Public Prosecutions found that there was sufficient evidence to warrant prosecution of the suspects with the recommended

charges. DPP directed prosecution to ensue and recovery proceedings be instituted against the suspects for the embezzled funds.

STATUS

The suspects were charged with the offences of fraudulent acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, misappropriation of Constituency Development Funds contrary to section 51 of the Constituency Development Fund Act, 2003 and uttering a false document contrary to section 353 of the Penal Code. The case is part- heard in court.

6. KACC/FI/INQ/NO.161/2009

NO. 6 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a Cashier in the Ministry of State for Special Programmes misappropriated a sum of Kshs.2,796,000 intended for Western Kenya Community Driven Development and Flood Mitigation Project (WKCDD/FMP). Investigations established that an imprest of Kshs.2, 796,000/= was approved and paid to one of the employees of the Project. The said imprest was partially utilized in carrying out trainings in technology options in the non-core districts of the WKCDD/FMP. The workshops were carried out simultaneously in five venues. Investigations further revealed that all legitimate payments were made through payment schedules. The employee who received the imprest surrendered the imprest allocated to her including unspent sum of Kshs.485,000/=. Investigations however revealed that the cashier in turn inserted his name in the official payment schedules, and made the surrender as one of the participants in the workshops and paid himself night out allowance. He further prepared false schedules listing names of individuals as having attended the workshops, who did not in fact attend the workshops as purported.

EACC forwarded the file to the Director of Public Prosecutions on 5th March, 2012 with the recommendation that the suspect be charged with the following offences; fraudulent acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003 and forgery

contrary to section 349 of the Penal Code. It was further recommended that the embezzled funds be recovered from the suspects.

Upon perusal of the file, the Director of Public Prosecutions found that there was sufficient evidence to warrant prosecution of the suspects as recommended and directed prosecution to ensue and recovery proceedings be instituted against the suspects for the embezzled funds.

STATUS

The suspects were charged with the following offences; fraudulent acquisition of public property contrary to section 45(1)(a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003 and forgery contrary to section 349 of the Penal Code. The case is part-heard in court.

7. KACC/FI/INQ/22/2011

NO. 7 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of irregular payment of Kshs.4 million by the KEMRI Management to a Law Firm on behalf of 35 former KEMRI staff who had sued KEMRI for wrongful dismissal, as settlement in a case before the Industrial Court. Investigations revealed that following the termination of employment of 35 employees of KEMRI by the KEMRI Board, the affected employees through their Advocates filed a case challenging the termination. Investigations revealed that the Industrial Court found in favour of the employees, and ordered for their reinstatement with no loss of pay. Investigations further revealed that pursuant to a Consent entered between the employees Advocates and KEMRI'S Advocates, the latter was paid Kshs.4,000,000/= as compensation to the employees' in lieu of their being reinstated. However, the consent was later expunged after it was established that the employees had withdrawn the services of their Advocate as at the time that he entered into the consent with KEMRI's Lawyers. Investigations further revealed that the Advocate is still holding on to the money despite the Consent having been expunged from the court record. The investigations also revealed that KEMRI engaged the services of a lawyer to represent it without following the laid down procurement procedures and regulations.

EACC forwarded the file to the Director of Public Prosecutions on 1st March, 2012 with the recommendation that Director of Kenya Medical Research Institute (KEMRI) be charged with the offence of careless failure to comply with the law relating to procurement contrary to Section 45 (2) (b) as read with Section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003. The Commission further recommended that the KEMRI Board Management institute a civil suit against the law firm to recover the sum of Kshs.4,000,000/= it paid it since the Consent which formed the basis for the said payment was set aside by the court.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support the recommended or any other criminal charges and directed that the inquiry file be close.

STATUS

The file was returned to EACC with directions to close.

8. KACC/FI/INQ/20/2010

NO. 8 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of misappropriation of public funds meant for the facilitation of a workshop in the Coast Province by Ministry of Education officials. Investigations established that the acting Director of Secondary and Tertiary Education at the Ministry of Education, obtained the approval of a budget of Kshs.37,466,350/= from the Permanent Secretary (PS) of the Ministry for the purposes of carrying out workshops on instructional materials in Secondary Schools. Investigations further revealed that the Senior Education Officer applied for and received an imprest of Kshs.2,936,000/= for the said workshop that was held in Mombasa and surrendered the same after the workshop. The investigations established that at the time of the surrender of the imprest, the suspect used false documents in an attempt to account for the imprest that she had received.

EACC forwarded the file to the Director of Public Prosecutions on 20th March, 2012 with the recommendation that the Senior Education Officer and Acting Director Secondary

and Tertiary Education be charged with the following offences; fraudulent acquisition of public property contrary to Section 45(1) (a) and knowingly making a false statement to one's principal contrary to Section 41(1) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, fraud by persons employed in the Public Service contrary to Section 127(1) as read with Section 127 (2) and false accounting by a public officer contrary to section 331(1) as read with Section 331(2) of the Penal Code. It was further recommended that the embezzled funds be recovered from the suspects.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that the accused person be charged with the recommended charges and the embezzled funds be recovered from the suspects.

STATUS

The suspects were charged with the offence of fraudulent acquisition of public property contrary to Section 45(1) (a) and knowingly making a false statement to one's principal contrary to Section 41(1) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, fraud by persons employed in the Public Service contrary to Section 127(1) as read with Section 127 (2) and false accounting by a public officer contrary to section 331(1) as read with Section 331(2) of the Penal Code. The case is part-heard in court.

9. KACC MSA/FI/INQ/14/2011

NO. 9 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of breach of Public Procurement Laws and Regulations by the Taveta CDF Tender Committee in the procurement of two tractors, trailer with tipping mechanism, harrows and disc plough. Investigations established that one of the projects that the Taveta CDFC discussed and approved was the Tractor Project under the Agricultural projects category The said Tractor project proposal was submitted to the CDF National Management Board as one of the proposed CDF

projects for the 2008/2009 Financial Year. The Board approved the project and allocated a sum of Kshs.7,537,362 for the same. Investigations revealed that the allocated funds were sent to Taveta CDF account for the implementation of the project. Investigations revealed that whereas the tender for the supply of the equipment was awarded to a company, there were no tender committee minutes approving the list of firms invited to bid. There was also no record of the evaluation committee and the evaluation report. There were also no minutes showing that the Tender Committee had met and awarded the contract to the company that supplied the equipment. These irregularities were in contravention of the Public Procurement and Disposal Act, 2005 and the Regulations there under.

EACC forwarded the file to the Director of Public Prosecutions on 9th March, 2012 with the recommendation that the members of the Taveta Constituency Development Fund, Tender Committee be charged with the offence of willful failure to comply with the law relating to the procurement of goods contrary to section 45(2) (b) read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

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

STATUS

The suspects were charged with the offence of willful failure to comply with the law relating to the procurement of goods contrary to section 45(2) (b) read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. The case is part-heard in court.

10. KACC FI/INQ/01/2011

NO. 10 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of malpractices in the recruitment of lower cadre officers for the Ministry of Education. The investigation established that the recruitment and selection process at the Ministry of Education commenced following the issuance of a Circular by the Permanent Secretary, approving the filling of vacant positions. In

response to the aforementioned circular, the Ministry of Education identified its Human Resource needs and thereafter requested the Treasury for funding and it was granted. The process started by notifying the Public Service Commission of Kenya, PSC (K) of the vacancies which gave the Ministry the go ahead to recruit.

Investigations established that out of a total of 204,620 applications received, candidates were short listed for various posts which were advertised in Daily Nation Newspaper. That the interviewing exercise was conducted by panels under the direction of the Deputy Director, Human Resource Management and the Deputy Secretary at selected venues on diverse dates. That following numerous complaints raised by the public and Members of Parliament over the recruitment process, the Permanent Secretary, Ministry of Education requested the Ministry of State for Public Service to audit the recruitment exercise since there were allegations and questions from both the Parliamentarians and the general public on the recruitment process. The Internal Audit and Vetting reports established that persons who had not been short-listed were interviewed and employed on the strength of requests through letters signed by the Deputy Director, Human Resource Management.

EACC forwarded the file to the Director of Public Prosecutions on 16th January, 2012 with the recommendation that the Ministry of Education be charged with the offence of abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

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

STATUS

The Deputy Director Human Resource Management was charged with the offence of abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. The case is part-heard in court.

11. KACC/FI/INQ/19/2011

NO. 11 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of abuse of office against Tana and Athi River Development Authority (TARDA) and the Ministry of Regional Development officials in the procurement of heavy equipment machinery from three firms for the purposes of the rehabilitation of the Tana Delta Irrigation Project (TDIP).

Investigation established that TARDA came up with a budget which was approved by the Project Steering Committee and Technical Coordinating Committee of the National Stimulus Programme. The TARDA Procurement Department then undertook the process of procurement by placing an advertisement in the media inviting prospective contractors to supply various machineries for the project. However, before the conclusion of the tendering process, the TARDA Tender Committee resolved to change the procurement method and adopted the Direct Procurement method. Several firms responded to the advertisement and the Tender Committee decided to harmonize the rates quoted by all the firms which had tendered for the contract. The Tender Committee resolved to award the tender contracts to firms which would accept the harmonized rates.

Further investigations however revealed that before the Tender Committee could make the award, the contracts were eventually awarded to various firms albeit irregularly, by the Managing Director of TARDA and the Director of Regional Development Ministry of Regional Development without the involvement of the Tender Committee. Investigations further revealed that the machines procured were never inspected before being delivered to site as earlier directed by the Tender Committee.

EACC forwarded the file to the Director of Public Prosecutions on 18th January, 2012 with the recommendation that the Managing Director of TARDA be charged with the offence of wilful failure to comply with the law relating to Procurement of services contrary to section 45 (2) (b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003. Secondly both the Managing Director of TARDA and the Director of Regional Development Ministry of Regional Development be

charged with the offence of abuse of office contrary to Section 46 as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

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

STATUS

The file was referred to EACC with directions to conduct further investigations into the outlined areas. The file was re-submitted and the suspects were charged with the offence of willful failure to comply with the law relating to Procurement of services contrary to section 45 (2) (b) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003. Secondly both the Managing Director of TARDA and the Director of Regional Development Ministry of Regional Development be charged with the offence of abuse of office contrary to Section 46 as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003. On being charged the accused filed an application for judicial review challenging the prosecution, the application is pending before court.

12. KACC/MSA/FI/NQ.18/2010

NO. 12 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a group of people colluded with Ministry of Lands officials to fraudulently make documents in respect of a parcel of land in Diani purporting to be genuine owners of the said parcel of land.

Investigations established that in 1968 the ownership of the parcel of land changed. A road reserve was also excised from the said parcel of land giving rise to registration of two separate titles. Investigations revealed that whereas the buyer of the land ought to have surrendered the original title in order to be issued with another title, this was not done.

EACC forwarded the file to the Director of Public Prosecutions on 31st January, 2012 with the recommendation that the Principal Lands Officer be charged with the offences of

abuse of office contrary to section 101(1) as read with section 102(A) of the Penal Code and uttering false documents contrary to section 353 as read with section 357 of the Penal Code; the employees at the Lands Office in Kwale District be charged with the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003; the Principal Lands Officer and 8 other officers at Ardhi House, Ministry of Lands, Nairobi be charged with the offence of conspiracy to defraud contrary to section 317 of the Penal Code; Eight (8) officers at Ardhi House, in the Ministry of Lands in Nairobi be charged with the offence of obtaining registration by false pretence contrary to section 320 of the Penal Code.

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

STATUS

The Principal Lands Officer was charged with the offences of abuse of office contrary to section 101(1) as read with section 102(A) of the Penal Code and uttering false documents contrary to section 353 as read with section 357 of the Penal Code; the employees at the Lands Office in Kwale District were charged with the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003; the Principal Lands Officer and 8 other officers at Ardhi House, Ministry of Lands, Nairobi were charged with the offence of conspiracy to defraud contrary to section 317 of the Penal Code; And 8 officers at Ardhi House, Ministry of Lands in Nairobi were charged with the offence of obtaining registration by false pretence contrary to section 320 of the Penal Code. The case is part-heard in court.

13. KACC/MSA/FI/INQ.09/2011

NO. 13 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a Clearing and Forwarding Company colluded with Kenya Revenue Authority (KRA) officers to release five forty feet containers without due regard to the laid down Customs procedures.

Investigations established that Verification Officers at Kenya Revenue Authority offices made false entries and reports in respect of several import containers by the clearing agent. Investigations established that the officers purported that they had carried out verification of the goods whereas no such verification had been done and the containers were still at sea.

EACC forwarded the file to the Director of Public Prosecutions on 15th February, 2012 with the recommendation that the Assistant Revenue Officer be charged with the following offences; knowingly giving a false document to one's principal contrary to section 41(2) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act No.3 of 2003 and making a false declaration contrary to section 203 (b) of the East African Community Customs Management Act; the Senior Clerical Officer at Kenya Revenue Authority be charged with making a false declaration contrary to section 203 (b) of the East African Community Customs Management Act.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to support the proposed charges and directed that administrative action be taken against the Kenya Revenue Authority Officers and the clearing agent who had flouted customs procedures.

STATUS

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

14. KACC/FI/INQ/60/2007

NO. 14 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that between 1999 and 2006, Pyrethrum stock weighing 180,859.71 kg and valued at Kshs.1,357,922,000/= was not accounted for at the Pyrethrum Board of Kenya (PBK), and was later written off as a process loss.

Investigations established that the pyrethrum loss was as a result of a myriad of factors which included theft, faulty weighing scales and false weighing of flowers delivered at the factory thus the quantity of flowers delivered differed with what was processed, inefficient plant operations during extraction and refinery stages leading to some loss of

pyrethrum, old age of machines and lack of spares for plant maintenance leading to leakages and spillages during extraction process and damage caused to the extraction plant by fire amongst other causes. Investigations further revealed that with regard to the theft of pyrethrum, the culprits were already dealt with. With regard to the other causes of the loss of pyrethrum, the investigations did not establish any culpability on the part of the officials of the Pyrethrum Board of Kenya to warrant any criminal charges being preferred against them.

EACC forwarded the file to the Director of Public Prosecutions on 20th January, 2012 with the recommendation that the inquiry file be closed. It was further recommended that the Pyrethrum Board of Kenya be advised to source for funds to cater for the modernization of their factory to avert future losses.

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

STATUS

The file was returned to EACC with directions to close.

15. KACC/FI/INQ/149/2010

NO. 15 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that Members of the Central Management Committee of Harambee Sacco Society Limited obtained loans using their allowances as security which was contrary to the Sacco's policy.

Investigations established that indeed the Central Management Committee members received loans against the allowances due to them. These were FOSA loans that were processed through FOSA accounts held by members. Investigations revealed that according to the Sacco FOSA loan policy, the allowances paid to the members of the Central Management Committee could be used as security in extending loan facilities to the members thus the loans were extended to the members of the CMC in keeping

with the Sacco's guidelines, procedures and policy. No culpability was established to warrant any action being taken against the officials.

EACC forwarded the file to the Director of Public Prosecutions on 23rd January, 2012 with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and accepted EACC recommendation to close.

STATUS

The file was returned to EACC with directions to close.

16. KACC/FI/INQ/60B/2007

NO.16 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a fixed deposit investment of Kshs.150 million by Pyrethrum Board of Kenya (PBK) with the National Bank of Kenya (NBK) had not been accounted for by the PBK.

Investigations revealed that the said sum of money was lawfully deposited in a fixed deposit account by Pyrethrum Board of Kenya. Upon maturity of the transaction, the principal sum, together with the interest earned was transferred to the account of the PBK with the Barclays Bank of Kenya, Nakuru Branch and the funds were properly accounted for, hence no evidence of embezzlement established.

EACC forwarded the file to the Director of Public Prosecutions on 26th January, 2012 with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and accepted EACC recommendation to close.

STATUS

The file was returned to EACC with directions to close.

17. KACC/FI/INQ/152/2010

NO. 17 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of fraudulent transfer of Kshs.8.8 million to an account held by an ICT Manager, Harambee Cooperative Sacco by the General Manager and FOSA Manager of the Harambee Cooperative Sacco.

Investigations established that the ICT Manager as an employee and member of the SACCO applied to open a personal savings account in the Front Office Services Activity (FOSA). An Account was opened for him. Back office and FOSA loan files of the suspect from the SACCO and account statements maintained by the SACCO were scrutinized and analysed. The investigations carried out did not reveal any evidence to show that a sum of Kshs. 8.8 million belonging to the Sacco was transferred to any of the accounts maintained by the ICT Manager as alleged. Investigations further revealed that all loans given to the ICT Manager were processed in accordance with the Sacco Loan Regulations.

EACC forwarded the file to the Director of Public Prosecutions on 29th February, 2012 recommending closure.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and accepted EACC recommendation to close.

STATUS

The file was returned to EACC with directions to close.

18. KACC.FI/INQ/150/2010

NO. 18 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of fraudulent purchase of shares worth Kshs.19,950,000/= from Gina Din Corporate Communications SACCO by the Central Management Committee (CMC) of Harambee SACCO.

Investigations established that the Central Management Committee of Harambee Sacco purchased shares from Gina Din Corporate Communications Sacco for the aforementioned sum. Investigations further revealed that the purchase of shares by the Harambee Sacco was not irregular since the necessary procedures laid down by the Sacco's by-laws and the Cooperative Societies Act were complied with. Investigations also established that the CMC disclosed the purchase of the shares in their audited accounts of 2009, which were then tabled in the Annual Delegates Meeting of 2010 and adopted. Harambee SACCO did not suffer any loss from the purchase of shares nor did the investigation establish that there was any personal interest amongst the Central Management Committee members in the transaction. Further, there was no evidence that the Central Management Committee members received any benefit, financial or otherwise from the transaction.

EACC forwarded the file to the Director of Public Prosecutions on 28th March, 2012 recommending the closure of the inquiry file.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge and accepted EACC recommendation to close.

STATUS

The file was returned to EACC with directions to close.

19. KACC CR. 141/903/2011

NO. 19 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that Traffic Police officers stationed at Kikuyu Police Station corruptly solicited for a benefit from the matatu operators while

carrying out their traffic duties. Investigations established that the traffic police officers solicited for and received bribes from the matatu operators. Whereas the solicitation and receipt of a benefit was established, the matatu crew from whom the suspects received the benefit did not record their respective statements for fear of reprisals supposedly from the police. In the circumstances it would not be possible to prove beyond reasonable doubt the offences of corruption against the suspects.

EACC forwarded the file to the Director of Public Prosecutions on 8th March, 2012 with the recommendation that administrative action be taken against the Police Officers by their Principal.

Upon perusal of the file, the Director of Public Prosecutions found that in absence of such crucial witnesses it would not be possible to prove the case against the officers and directed that administrative action be taken against the police officers by their principals.

STATUS

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

20. EACC (KSM) CR.662/136/2011 CF. ACC. KISUMU.563/2011

NO. 21 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that an Executive Officer at the Rongo Law Courts corruptly solicited for a benefit from the complainant as an inducement to facilitate the hearing of a case before the Senior Resident Magistrate Court at Rongo.

Investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Kisumu Anti-Corruption Court with the

offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 18th January, 2012 with the recommendation that the case be prosecuted to its logical conclusion. Upon perusal of the file, the Director of Public Prosecutions found that there was sufficient evidence to support the proposed charges and directed prosecution to ensue.

STATUS

The suspect was charged before the Kisumu Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 200. The case is part-heard in court.

21. KACC (KSM)/CR.623/213/2011 CF. ACC. KISUMU NO.592/2011 NO. 21 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a Police Officer based at Maseno Police Station corruptly solicited for a benefit from the complainant as an inducement to facilitate the return of a power saw that had been confiscated.

Investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Kisumu Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 20th January, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

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

STATUS

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

22. KACC. CR 440/53B/2010 CF. EMBU ACC.7/2010

NO. 22 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that two Radio Reporters based in Machakos corruptly solicited for a benefit from the complainant as an inducement so as to forebear the publication of an alleged damaging report concerning financial mismanagement of funds in a school in which she was the Principal.

Investigation established that the suspect received the benefit. The suspect was arrested and charged before the Embu Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. Upon re-evaluation of the evidence, it was however established that the matter did not fall within the purview of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 22nd February, 2012 with the recommendation that the case be with be forwarded to the CID for appropriate action as it did not fall within EACC'S mandate.

Upon perusal of the file, the Director of Public Prosecutions found that the matter did not fall within the purview of EACC mandate and concurred with EACC recommendation that the matter be referred to the CID for action.

STATUS

The file was forwarded to the Director of Criminal Investigations with directions to conduct investigations and take appropriate action.

**23. KACC CR.141/742/2011-CF MILIMANI ACC. NO.40/2011
NO. 23 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations that a Labour Officer in the Ministry of Labour and Human Resources Development corruptly solicited for a benefit from the complainant as an inducement to facilitate settlement of a labour dispute between the complainant and his former employee, whom the accused had dismissed for alleged theft.

Investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Nairobi Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 22nd February, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the recommended charges and directed that the accused person be charged afresh with another suspect who was initially a witness.

STATUS

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

**24. KACC (NYERI) CR. 255/435/2011 CF. NYERI ACC. NO.7/2011
NO. 24 EACC FIRST QUARTERLY REPORT**

This was an inquiry into allegations that the Deputy OCS, Nairutia Police Station corruptly solicited for a benefit from the complainant as an inducement to release the complainants motorcycles which had been impounded.

Investigation established the solicitation and receipt of the benefit by the suspect. Investigations also revealed that the accused received the benefit in the presence of the OCS.

EACC forwarded the file to the Director of Public Prosecutions on 23rd January, 2012 with the recommendation that the accused be charged with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003; and concealing evidence contrary to Section 66 (1) (c) as read with Section 66 (2) of the ACECA. It was further recommended that administrative action be taken against the OCS, Nairutia Police Station.

Upon perusal of the file, the Director of Public Prosecutions found gaps and deficiencies in the investigations and directed that the case in court be withdrawn under section 87(a) of the CPC and the matter be returned to EACC to cover the outlined areas and resubmit the file once covered.

STATUS

EACC resubmitted the file to DPP and the suspect was charged with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003; and concealing evidence contrary to Section 66 (1) (c) as read with Section 66 (2) of the ACECA. The case is part-heard in court.

25. KACC (ELD) CR.831/881/2011 CF. ACC. NO. ELDORET 6/2011 NO. 25 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations that a Senior Charge Hand Mechanic of Ministry of Roads, Eldoret corruptly solicited for a benefit from the complainant as an inducement to facilitate the issuance of a Suitability Test Certificate without subjecting him to the relevant test.

Investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 27th February, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

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

STATUS

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

26. KACC. CR.151/464/2011 CF. NAIROBI ACC.34/2011 NO. 26 EACC FIRST QUARTERLY REPORT

This was an inquiry into allegations of impersonating of an investigator by two persons who purported to be employees of the Kenya Anti-Corruption Commission.

Investigations established that the two suspects visited the premises of a private company on the 17th August, 2011, and indicated that they wanted to see the Company Director. That the two suspects introduced themselves as officers from the KACC, and had a Kenya Anti-Corruption Commission (KACC) identification badge. The two suspects alleged that the company had employed foreigners without work permits and that the company supplied substandard goods to the

market and mistreated its employees. That after the suspects failed to produce copies of any written complaints, the Administrative Manager became suspicious and reported to the Commission. Investigations further established that the two suspects were not employees of EACC.

The suspects were arrested and charged before the Nairobi Anti- Corruption Court with the offence of impersonating an Investigator. One of the suspects pleaded guilty, was convicted; and sentenced to serve one-year imprisonment.

EACC forwarded the file to the Director of Public Prosecutions on 29th February, 2012 with the recommendation that the case against the other suspect be prosecuted to its logical conclusion.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the preferred charges and directed that the case against the remaining accused proceed to its logical conclusion.

STATUS

The suspects were arrested and charged before the Nairobi Anti- Corruption Court with the offence of impersonating an Investigator. One of the accused person pleaded guilty, was convicted and sentenced to serve one-year imprisonment. The case against the remaining accused is part- heard in court.

(B) FILES SUBMITTED IN THE SECOND (2ND) QUARTER OF THE YEAR 1ST APRIL TO 31ST JUNE 2012

27. KACC FI/INQ/96/2010

NO. 1 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations of procurement irregularities, bid rigging and abuse of office against the Ministry of Information and Communication officials emanating from the procurement of 5,000 acres of land from Malili Ranch Limited at a cost of Kshs.1 billion by the said Ministry for purposes of an ICT park

Investigations established that as part of the national plan of achieving Vision2030, the Ministry of Information and Communication planned to establish an Information Communications and Technology Park (ICT-Park) that would facilitate the development of Business Processing Outsourcing (BPO) sub sector. The establishment of the multi-media ICT-Park was expected to trigger the growth of knowledge-based industries. Investigations further established that the Ministry of Information and Communication which was the executing Ministry of the Government for purposes of the establishment of the said ICT-Park project was then allocated funds for purposes of the acquisition of land. The Ministry went ahead to procure the 5,000 acres of land from Malili Ranch Limited, located along the Athi-River Basin. The investigations revealed that the procurement for the purchase of the land for the ICT Park was not done in conformity with the provisions of the Public Procurement and Disposal Act and the Regulations. The land was obtained through direct procurement instead of open tendering.

EACC forwarded the file to the Director of Public Prosecutions on 2nd April 2012 with the recommendation that the Permanent Secretary in the Ministry of Information and Communication; and the Chief Procurement Officer be charged with the offences of careless failure to comply with the law relating to procurement of goods contrary to section 45(2) (b) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and Abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2005.

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

STATUS

The file was returned to EACC with directions to cover the outlined areas by way of further investigations and resubmit for further directions.

28. KACC/FI/INQ/67/2011

NO. 2 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that the Director General of Kenya National Bureau of Statistics (KNBS) fraudulently awarded a storage contract and authorized payment of a sum of Kshs. 7,390,000 to a non-existing company without following the laid down procurement procedures.

Investigations revealed that KNBS engaged various companies to transport census materials from different regions in the country. Upon realization that the available storage space for the census materials was not enough, KNBS retained one of the companies to provide warehousing space for the materials. Investigations further revealed that an agent of the said company purported to register another company and present it as the same company that had a contract with KNBS. The agent then presented his company as the provider of the warehousing services and used false documents to complete his scheme. Investigations further established that to further the fraud, the agent opened a bank account into which KNBS made a payment of Kshs. 7,390,000. Whereas this payment was made in favour of the agent's company, the company did not provide any warehousing services, since the warehouse that the company's sole director purported belonged to him, belonged to the bona fide company that KNBS had initially awarded the contract. The agent therefore received public funds for services not rendered. Investigation established that in procuring storage space for census materials, the Director General of KNBS and the Procurement Manager failed to comply with the public procurement laws and regulations.

EACC forwarded the file to the Director of Public Prosecutions on 31st May, 2012 with the recommendation that the Director General of the Kenya National Bureau of Statistics and Procurement Manager be charged with the offences of wilful failure to comply with the applicable law relating to the procurement of services contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes, No.3 of 2003; the Director General be charged with the offence of abuse of office contrary to section 46 as read with section 48(1) of the Anti- Corruption and Economic Crimes Act, 2003; and the representative of non- existent company be charged with the offence of fraudulent

acquisition of public property contrary to section 45 (1) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed that the Director General of the Kenya National Bureau of Statistics and Procurement Manager be charged with the offences of willful failure to comply with the applicable law relating to the procurement of services contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes, No.3 of 2003.

STATUS

The Director General of the Kenya National Bureau of Statistics and Procurement Manager were charged with the offences of willful failure to comply with the applicable law relating to the procurement of services contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes, No.3 of 2003. The case is part-heard in court.

29. KACC/FI/INQ/44/2011

NO. 3 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations of irregular procurement of a total of 132,000 metric tons Automotive Gas Oil (AGO) by the National Oil Corporation of Kenya (NOCK).

Investigations established that the need for NOCK to procure Automotive Gas Oil arose after NOCK was awarded a tender for the supply of the same by the Ministry of Energy. Pursuant to the award made to NOCK by the Ministry, NOCK entered into an agreement with a private petroleum company to supply and deliver the AGO. Investigations further revealed that NOCK did not invite any tenders for the supply of AGO. Instead, they used direct procurement to identify a company to supply the AGO. Investigations also established that in spite of NOCK having contracted the petroleum company, the latter did not supply the oil within the contract period. Since the oil was not delivered within the stipulated period, the management of NOCK decided to engage an alternative company to supply the oil, to avert a crisis demand that would have arisen. However, the alternative supplier agreed to supply and deliver the AGO at a much higher cost

than the initial supplier. The investigation also established that NOCK, while engaging the alternative supplier, once again used direct procurement. The investigation established that the method of procurement adopted by NOCK on both occasions was in contravention of the laid down public procurement laws and procedures. It was also established that NOCK made a payment of USD127, 580 to Russian Oil and Gas Manufacturers and Exporters Association (RUOGMEA) in order to be issued with a Purchase Approval Transaction Allocation Code to enable NOCK to import oil products from the Russian Federation. However, in spite of this payment being made from public funds, the intended 132,000 metric tonnes of AGO was not delivered to NOCK.

EACC forwarded the file to the Director of Public Prosecutions on 22 June, 2012 with the recommendation that the Managing Director and Supply Manager, National Oil Corporation of Kenya be charged with the offence of willful failure to comply with the law and applicable procedures relating to procurement contrary to Section 45(2) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003; and that the Managing Director also be charged with the offence of abuse of office contrary to Section 46 as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the sum of USD 127,580 public funds be recovered.

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

STATUS

The file was returned to EACC with directions to cover the areas identified and resubmit upon completion.

30. KACC/INQ/09/2012

NO. 4 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations of theft of public funds amounting to Kshs.4, 389,960 at the Makueni District Treasury, by the District Accountant.

Investigations established that in December 2008, the Makueni District Internal Auditor conducted a routine check of the cash management system within the District Treasury; and he established that unauthorized cash imprests had been paid to the District Accountant and other officers. The auditor also established that the District Accountant had received cash advance in the form of IOUs. He carried out a comprehensive cash management audit, which revealed, among other irregularities, that the cashbook was overdrawn to the tune of Kshs.2, 208,203.70. The investigation further established that the total amount of money unaccounted for by the District Accountant was Kshs.4, 389,960.00.

EACC forwarded the file to the Director of Public Prosecutions on 21 June, 2012 with the recommendation that the District Accountant be charged with the following offences; unlawful acquisition of public property contrary to Section 45(1) (a), willful failure to comply with the applicable procedures and guidelines relating to management of public funds contrary to Section 45(2) (b) and abuse of office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

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

STATUS

The District Accountant was charged with the following offences; unlawful acquisition of public property contrary to Section 45(1) (a), willful failure to comply with the applicable procedures and guidelines relating to management of public funds contrary to Section 45(2) (b) and abuse of office contrary to Section 46 as read with Section 48 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

The case is part-heard in court.

31. KACC/ELD/INQ/FI/1/2011

NO. 5 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that officials of the Eldoret South Constituency Development Fund misappropriated a sum of Kshs.800,000/= meant for the heavy grading of the Nariri-Cheptabach Road, within the Eldoret South Constituency during the 2009-2010 Financial year.

The investigation established that the sum of Kshs.800, 000 was released to the Eldoret South Constituency Development Fund Committee (CDFC) and was intended for the grading of the Nariri-Cheptabach road. However, the funds were not released to the legitimate Project Management Committee that was entitled to receive and use it for the said purpose. Instead, the money was paid to a parallel Project Management Committee and was withdrawn by three officials of the said committee.

The investigations further established that whereas the three officials received the money, the road project was neither implemented nor grading done, although the said officials purported to have paid the money to a contractor. The suspects did not account for the CDF funds received and were therefore culpable for misappropriation of public funds.

EACC forwarded the file to the Director of Public Prosecutions on 25 May, 2012 with the recommendation that the suspects be charged with the offences of fraudulent acquisition of public property contrary to section 45(1) (a) read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, misappropriation of Constituency Development Funds contrary to section 51 of the Constituencies Development Fund Act and uttering a false document contrary to section 353 of the Penal Code.

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

STATUS

The suspects were charged with the offences of fraudulent acquisition of public property contrary to section 45(1) (a) read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, misappropriation of Constituency Development Funds contrary to section 51 of the Constituencies Development Fund Act and uttering a false document contrary to section 353 of the Penal Code. The case is part-heard in court.

32. KACC/INQ/AT/17/2009 (F)

NO. 6 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations of irregular acquisition of land reference Number; Kisumu Municipality/Block7/240 popularly known as 'Taifa Park' valued at Kshs.16, 400,000.00 by private individuals.

The investigation established that the land parcel was originally allocated to the Municipal Council of Kisumu (the Council). The land was later on surveyed as Land Reference number 114/1019 and named 'King George V Park'. The draft deed number IR 18388 was prepared on 12 July, 1961 with a lease term of ninety nine (99) years from 1 March, 1961. Later on 28th September, 1975 the registration of this land was moved from the Registration of Titles Act regime to that of Registered Land Act. The title of the land accordingly changed from L.R Number 114/1019 to Kisumu Municipality/Block 7/240 and the requisite Certificate of Lease issued to the Council on 27 April, 1999. Investigations further revealed that the land was allegedly transferred to and registered in the joint names by the Council with the help of its then Town Clerk; this he did by notifying the relevant Land Registry vide a letter that the Council had approved the said transfer. Investigations further revealed that the Council neither gave the approval for the transfer nor were the necessary consents obtained from the Ministry of Local Government and/or the Commissioner of Lands prior to the disposal of public property. The relevant transfer document was duly registered by a Land Registrar then based at the District Lands office, Kisumu County. The land was later disposed to a private company effectively completing the irregular alienation of this public property.

EACC forwarded the file to the Director of Public Prosecutions on 29th May, 2012 with the recommendations that the then Town Clerk and the District Land Registrar be charged with the following offences; abuse of office contrary to section 46, willful failure to

comply with the law relating to disposal of public property contrary to section 45(2) (b), fraudulent disposal of public property contrary to section 45 (1) (b) and conspiracy to commit an offence of corruption contrary to section 47A as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the beneficiary of the illegally acquired public land be charged with the offence of fraudulent acquisition of public land contrary to section 45(1(a) of the Anti- Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution of the Town Clerk and the District Land Registrar.

STATUS

The Town Clerk and the District Land Registrar were charged with the following offences; abuse of office contrary to section 46, willful failure to comply with the law relating to disposal of public property contrary to section 45(2) (b), fraudulent disposal of public property contrary to section 45 (1) (b) and conspiracy to commit an offence of corruption contrary to section 47A as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the beneficiary of the illegally acquired public land be charged with the offence of fraudulent acquisition of public land contrary to section 45(1(a) of the Anti- Corruption and Economic Crimes Act, 2003. The case is still part-heard in court.

33. KACC/FI/INQ/50/2011

NO. 7 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that the City Council of Nairobi made irregular payments to a Law firm for legal services that were not rendered.

Investigations established that in the years 2008 and 2010, the Council advertised a Tender Notice inviting interested law firms to bid for pre-qualification for provision of legal services during the period 2010-2012. Among the law firms that bid and was eventually pre-qualified was the law firm that is said to have received payments for services not rendered. Investigations established that, the Council through its Director of Legal Affairs

instructed the said Law Firm to defend the Council in two matters filed against the Council in the High Court Nairobi. The Law Firm sent its fee notes to the Council requesting for a payment of Kshs.1.74 million and Kshs. 1,489,000 as instruction fees for defending the council. Investigations further established that the Council issued two payment cheques in favour of the Law firm. Investigations also established that the two cases in respect of which the Council issued the payment cheques are still ongoing and the Court records indicate that the firm has been defending the Council's interests as instructed. The two cheques however have not been released to the firm. The evidence obtained did not reveal that the payments made in favour of the Law Firm were irregular as alleged, and no culpability was established on the part of the Council officials.

EACC forwarded the file to the Director of Public Prosecutions on 20th June, 2012 with the recommendation that the Inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to support the allegations and concurred with EACC that the inquiry filed be closed.

STATUS

The file was returned to EACC with directions to close.

34. KACC/MSA/INQ/FI/2012

NO. 8 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations of abuse of office against the Chief of Waride Location over allocation of plots at a proposed trading centre in Witu Division within Lamu County.

Investigations established that in the year 2005, the District Development Committee, Lamu resolved that plot number 350/351 which was for public utility be utilized for the construction of a market centre. This decision was endorsed in a full Council meeting in February, 2011. Investigations further established that a committee was to be formed to come up with the modalities for developing the market centre. However, before the

said committee was formed, the Chief formed his own committee; and at a meeting held to discuss the criteria for allocation, he insisted that for anyone to qualify for allocation, they would have to pay Kshs. 5,000 and Kshs. 20,000 for a residential and commercial plot respectively. Investigations revealed that the Chief collected money from members of the public but issued no receipts. In spite of the payments, no plots were allocated to the payees. Investigations also established that whereas there was a well grounded suspicion that the Chief had collected the money as alleged from the villagers, the villagers did not volunteer to record their complaints and statements. The evidence obtained therefore did not meet the threshold to prove the allegations of corruption against the Chief beyond reasonable doubt. This notwithstanding, the investigation established that the Chief did not carry out his duties in a manner that would foster public confidence in the integrity of his office.

EACC forwarded the file to the Director of Public Prosecutions on 27th June, 2012 with the recommendation that administrative action be taken against the Chief of Dide Waride Location.

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

STATUS

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

35. KACC CR.141/39/2011 CF NO. NAIROBI ACC.5/2011

NO. 9 EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that officials of the Makadara Constituency Development Fund Committee (CDFC) corruptly solicited for a benefit from the complainant as an inducement for him to approve some irregular payments amounting to Kshs.4.5 million that the suspect s wanted to make from the Makadara CDF kitty for non-existent projects.

The investigation established the solicitation and receipt of the benefit. The suspects

were arrested and charged before the Nairobi Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 11th May, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

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

STATUS

The suspects were arrested and charged before the Nairobi Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The case is part-heard in court

36. KACC/MSA/RP/1/2012

NO. 10. EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that a Public Health Officer II in Mombasa corruptly solicited for a benefit from the complainant as an inducement to forbear charging the complainant's employer with the offence of failing to comply with a Notice issued under the Public Health Act.

Investigations established the solicitation and receipt of the benefit. The suspect was arrested and arraigned before the Mombasa Anti-Corruption Court.

EACC forwarded the file to the Director of Public Prosecutions on 22 May, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

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

STATUS

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

37. KACC/CR.121/172/2010 CF. MAKADARA ACC. NO.2/2010

NO. 11. EACC SECOND QUARTERLY REPORT

This was an inquiry into allegations that a Licensing Officer at the City Council based at the Kayole North Ward corruptly solicited for a benefit from the complainant as an inducement to issue her with a Business Permit Application Form.

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Makadara Anti-Corruption Court with the offences of corruptly soliciting for and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 31st May, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

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

STATUS

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

38. KACC/MSA/INQ/3/2012

NO. 12. EACC 2ND QUARTERLY REPORT

This was an inquiry into allegations that a Drug Inspector with the Pharmacy and Poisons Board, Mombasa corruptly solicited for a benefit from the complainant as an inducement so as to release drugs that had been confiscated by drug inspectors following a raid conducted at her premises. Investigations established the solicitation

and receipt of the benefit. The suspect was arrested and charged after the DPP gave consent.

EACC forwarded the file to the Director of Public Prosecutions on 12 June, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti Corruption and Economic Crimes Act, 2003. Of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed prosecution of the suspect.

STATUS

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

39. KACC/MSA/RP/INQ/4/2012

NO. 13 EACC 2ND QUARTERY REPORT

This was an inquiry into allegations that the Regional Manager, Kenya Industrial Estates (KIE), Mombasa corruptly solicited for a benefit from the complainant as an inducement to facilitate her employment with KIE on permanent terms.

The investigation established the solicitation and receipt of the benefit.

EACC forwarded the file to the Director of Public Prosecutions on 28th June, 2012 with the recommendation that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti Corruption and Economic Crimes Act, 2003.

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

STATUS

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti Corruption

and Economic Crimes Act, 2003. The case is part- heard in court.

(C) FILES SUBMITTED IN THE THIRD QUARTER OF THE YEAR 1ST JULY TO 30TH SEPTEMBER, 2012

**40. KACC/FI/INQ/14/2011
NO.1 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations of bid rigging against Catering and Tourism Development Levy Trustees (CTDLT) officials in the procurement of promotional materials from a private company.

The investigation established that the Catering and Tourist Development Levy Trustee (CTDLT) as part of its annual activities for the 2010-2011 Financial year planned a budget to spend on advertising and publicity. In this regard, procurement for promotional materials was initiated. Investigations further established that the method of procurement chosen by the procuring entity was Requests for Quotations (RFQs) at a value of Kshs. 11,203,450. This value exceeded the threshold provided for use of this particular method under the Public Procurement and Disposal Act, 2005 and the Regulations. Investigations further established that several documents used in this particular procurement were forgeries since companies named as having sent their quotations have confirmed that they did not do so.

It was further established that the RFQ forms and the accompanying confidential business questionnaires that were evaluated had not been submitted by either of the named bidders. Indeed a Report obtained from the Document Examiner confirmed that some of the documents for one of the said companies were authored by the head of the Procurement Department at CTDLT. It was further confirmed that the companies who were purported to have submitted RFQs did not deal with promotional materials which was the subject of the procurement. Investigations also established that only one

company participated in the procurement, and the others used as a front to cover up a flawed procurement process.

EACC forwarded the file to the Director of Public Prosecutions on 6th September, 2012, with the recommendations that the members of the Tender committee of the Catering and Tourism Development Levy Trustees be charged with the offence of careless failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with section 48(1) (a) of the Anti-Corruption and Economic Crimes Act, 2003, and the Head of the Procurement Department at the Catering and Tourism Development Levy Trustees be charged with the offence of making a document without authority contrary to section 357 (a) of the Penal Code.

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

STATUS

The members of the Tender committee of the Catering and Tourism Development Levy Trustees were charged with the offence of careless failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with section 48(1) (a) of the Anti-Corruption and Economic Crimes Act, 2003, and the Head of the Procurement Department at the Catering and Tourism Development Levy Trustees be charged with the offence of making a document without authority contrary to section 357 (a) of the Penal Code. The case is pending in court.

41. KACC/FI/INQ/71/2010

NO.2 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that the Constituency Development Fund Committee (CDFC) for Kaloleni Constituency wrongfully paid a contractor of the Mulungu wa Rero Water Pan Project a sum of Kshs.3,841,250.00 for substandard work.

Investigations established that the Kaloleni Constituency District Fund (KCDF) was allocated Kshs.4,077,703/= for the rehabilitation and expansion of Mulungu Wa Rero water pan (the water pan) in the 2008/2009 Financial Year. Investigations further established that the CDFC obtained designs, drawings and bill of quantities for the project from the District Water Officer. The CDFC Tender Committee resolved to use the restrictive tendering method, and from a list of six pre qualified contractors who tendered, the contract was awarded to the lowest evaluated bidder at the quoted cost of Kshs.3,841,250/=. The investigations further revealed that during the construction of the water pan, some of the works specified in the contract were omitted on the instruction of the Project Manager, who indicated that if those works were carried out, the locals feared that such construction would lead to leakages of the retaining wall, thus weakening it and eventually leading to the collapse of the water pan. Investigations revealed that upon completion of the works on the water pan by the contractor, the Project Manager issued the contractor with the requisite Certificate of Practical Completion of works and payments made. The investigations revealed that there was breach of procurement regulations with regard to the project.

EACC forwarded the file to the Director of Public Prosecutions on 20th July, 2012 with the recommendation that the members of Kaloleni Constituency Development Fund Tender Committee, and the Project Manager be charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

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

STATUS

The members of Kaloleni Constituency Development Fund Tender Committee, and the Project Manager were charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. The matter is pending in court.

42. KACC/FI/INQ/29/2011
NO.3 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of embezzlement of public funds amounting to Kshs.12,980,000/= through fraudulent and irregular cashbook adjustments by a Cashier at the Ministry of Higher Education, Science and Technology.

Investigation established that the Ministry of Higher Education, Science and Technology receives funds from the Government and donors; and these funds are channelled to the Ministry through the Treasury. The investigations further established that on three occasions, the cashier who is the suspect, prepared requisition forms for the withdrawal of Kshs.2.5 million, 2.5 million and 7.98 million respectively from the Ministry's Recurrent account held at Central Bank of Kenya. Upon the receipt of the cash, the suspect did not make any entries in the cashbook to reflect the receipt of the money contrary to the Government Financial Regulations, which requires all cash transactions to be recorded on daily basis. Investigations also revealed that at the close of the financial year in June, 2008, the suspect made cash adjustments on the cashbook showing a cash receipt of Kshs.2.5 million and a payment of Kshs.15.48 million, without any indication as to who had received the payment. The net effect of the two entries was a loss of Kshs.12.98 million and the suspect was unable to account for the same.

EACC forwarded the file to the Director of Public Prosecutions on 1st August, 2012 with the recommendation that the suspect be charged with the offences of unlawful acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public Service contrary to Section 268 (1) as read with Section 280 of the Penal Code.

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

STATUS

The suspect was charged with the offences of unlawful acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public Service contrary to Section 268 (1) as read with Section 280 of the Penal Code. The matter is still pending in court.

43. KACC/FI/INQ/160/2009

NO.4 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of embezzlement of Kshs.2,657,000/= by the Finance Assistant from the World Bank Financed Western Kenya Community Driven Development and Flood Mitigation Project.

Investigation established that the Finance Assistant received the sum of Kshs.2,657,000/= in form of imprest. The money was to cater for the costs of accommodation, transport, food and night out allowances for participants attending workshops on Participatory Integrated Community Development at the Kakamega Golf Hotel and the Mabanga Agricultural Training Centre. That the two workshops proceeded as planned with a total of 116 participants in attendance. The participants confirmed being paid their entitlements. Investigations further established that the Finance Assistant satisfactorily surrendered his imprest through payment vouchers showing that he had spent the entire sum of Kshs.2,657,000/=.

Investigations further revealed that a Revenue officer at Mabanga A.T.C. presented 28 receipts to the Bungoma South District Treasury officer together with a bank deposit slip of Kshs.521,379.30 purporting that the money was received by the said Mabanga A.T.C. from the sale of farm produce and offering training facilities to various Institutions whereas the same was paid by Western Kenya community Driven Development and Flood Mitigation Project.

EACC forwarded the file to the Director of Public Prosecutions on 17th August, 2012 with the recommendation that the Revenue Officer be charged with the offences of wilful failure to comply with the law relating to management of public funds contrary to section 45 (2) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, false accounting by a public officer contrary to section 331 (1) as read with section 331 (2) of the Penal Code and uttering a false document contrary to section 353 as read with section 349 of the Penal Code.

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

STATUS

The Revenue Officer was charged with the offences of wilful failure to comply with the law relating to management of public funds contrary to section 45 (2) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003, false accounting by a public officer contrary to section 331 (1) as read with section 331 (2) of the Penal Code and uttering a false document contrary to section 353 as read with section 349 of the Penal Code. The Case is part-heard before Court.

44. KACC/FI/INQ/90/2011

NO.5 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of failure to comply with the Public Procurement and Disposal Act and Regulations by Kenya Investment Authority (KENINVEST) officials for the Supply, Installation and Commissioning of Hardware and Software.

Investigation established that KENINVEST invited tenders from eligible, qualified and competent bidders possessing the requisite skills, resources and experience for the Supply, Delivery, Installation and Commissioning of Hardware and Software amounting to Kshs. 10 million. Upon evaluation of the bids submitted, the tender was awarded to

the lowest evaluated bidder. Investigations further established that since the price quoted by the successful bidder was above the set budget, the Tender Committee authorized negotiations with the bidder. This was however not permissible under the Procurement Regulations. It was also established that in the course of the negotiations, the technical specifications of the goods to be supplied were altered which in turn affected the original specifications, prices and quality which had been prescribed by the User Department. It was established that the Tender Committee acted in breach of the Public Procurement and Disposal Act and Regulations.

EACC forwarded the file to the Director of Public Prosecutions on 25th July, 2012, with the recommendation that the members of the Tender Committee, KENINVEST be charged with the offence of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003. In view of the several flaws and irregularities identified in the course of the investigations, the EACC proposed to carry out an examination of the systems and procurement procedures at KENINVEST, with a view to advising the public entity on how to streamline its processes to eliminate loopholes that are likely to lead to corruption.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge against the suspects and directed that administrative action be taken against the members of the Tender Committee, in lieu of prosecution. He also concurred that a systems examination be carried out at KENINVEST.

STATUS

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

45. KACC FI/INQ/117/2009

NO.6 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of corruption against a Clerical Officer attached to the Pensions Department, Ministry of Finance.

Investigation established that sometime in the month of June, 2009, a pensioner received her monthly pension that was inflated by the sum of Kshs. 50,000. The overpayment was occasioned by the migration from the old manual system to the new electronic system of computation of pensions at the Pension's Department. Investigations further established that the suspect appears to have been aware of this overpayment, and pestered the pensioner to withdraw the overpayment, and share it with him. The suspect went as far as sending the complainant money via M-Pesa to facilitate her journey to Nairobi for purposes of sharing the money with the suspect. To confirm that the suspect sent the money to the complainant and communicated with her, a request was made to Safaricom for call data records. However, Safaricom could not provide the information because the transaction and calls had taken place more than six months and the service provider keeps data only for three months from the date of the call or transaction. In the absence of the said confirmation, EACC was of the opinion that the evidence obtained was not sufficient to prove the offence of corruption against the suspect.

EACC forwarded the file to the DPP on 9th July, 2012 with recommendation that administrative action be taken against the suspect for improper conduct.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charge against the suspect and concurred with EACC's recommendation to deal with the matter administratively.

STATUS

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

46. KACC/ INQ/FI/68/ 2011

NO.7 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of misappropriation of Kshs. 1,005,400 by an Assistant Director, Quality Assurance and Standards, Ministry of Education.

Investigations established that the Ministry of Education decided to conduct workshops for Quality Assurance Officers in the Nyanza and Western Provinces. The suspect was

appointed as the coordinator for the workshops, which were held in two phases. Investigations further established that in that regard, she was also authorized to apply for, and receive an imprest of Kshs. 1,000, 500 to cater for reimbursement for facilitators and participants attending the workshops. The investigations also revealed that upon completion of the workshop, the suspect surrendered the imprest, but used false documents in a bid to account for the imprest. She attached payment schedules that bore names of persons who did not attend the workshops. As a result, the suspect could not account for a sum of Kshs. 39,000. The investigation also established that a former Director of Quality Assurance and Standards received a sum of Kshs. 52,000 whereas he did not facilitate at the workshops.

EACC found that whereas the evidence disclosed offences of deceiving principal and false accounting, it was deemed appropriate that administrative action be taken against the suspect, and the former director of Quality Assurance and Standards, including the recovery of the money, in lieu of prosecution. The justification for this is that, Regulation **5.6.5** of the Government Financial Regulations provides that where an imprest holder fails to account for the imprest received, then the Accounting Officer is mandated to recover the money from the defaulting officer. In addition to such recovery, the Accounting Officer is also enjoined to take appropriate disciplinary action against the officer concerned for abuse of the imprest.

EACC forwarded the file to the Director of Public Prosecutions on 25th July, 2012 with recommendations that administrative action be taken against the suspect and her supervisor, and the sums misappropriated be recovered by the Permanent Secretary Ministry of Education.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support any criminal charges against the suspects and concurred with EACC's recommendation to deal with the matter administratively and EACC to recover the sums of money misappropriated by the suspects.

STATUS

The file was returned to EACC with directions to deal administratively and recover the sums misappropriated.

47. KACC/INQ/AT/65/2008 NO.8 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of irregular alienation of public land within Eldoret Municipal Council next to Eldoret State Lodge (Block 8/87).

Investigation established that the land parcel number Eldoret Municipality Block 8/87 belonged to the Government of Kenya. The land was leased to the Municipal Council of Eldoret for a period of 99 years. Further investigations established that Eldoret State Lodge comprised of land parcel Eldoret Municipality Block 8/61. The area occupied by the State Lodge was later expanded to include a portion of land parcel number Eldoret Municipality 8/87. Investigations also revealed that Block 8/87 was sub-divided into fourteen portions after letters of allotment were issued to private persons and companies. Since the land in question was government land, the pre-requisite procedure for its subdivision and disposal ought to have been adhered to. Moreover, the land was set aside for public use and therefore not available for alienation. The investigation established that the appropriate procedure was not complied with, and therefore the issuance of allotment letters was irregular. It was also established that the purported sub-divisions encroached on Eldoret State Lodge.

EACC forwarded the file to the Director of Public Prosecutions on 2nd August, 2012 with the recommendations that the fourteen (14) letters of allotment issued in respect of land parcel Eldoret Block 8/87, and the subsequent subdivisions to create Block 8/773-783 be cancelled, and a title be issued in the name of the Government of Kenya to guard against future encroachment.

On 10th September 2012, the Director of Public Prosecutions accepted the recommendation for cancellation of letters of allotment and further directed that certain pending issues be investigated. The issues were addressed and the file-resubmitted to the DPP on 2nd October 2012.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to support criminal charges and directed that civil proceedings be instituted for recovery of the parcels of land that were irregularly alienated.

STATUS

The file was returned to EACC with directions to institute civil proceedings for recovery of the parcels of land.

48. EACC/MSA/FI/INQ/5/2012

NO.9 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of tax evasion in the disposal of Crane Number MC 51 by the Kenya Ports Authority (KPA).

Investigations established that sometime in 2011, a crane namely MC 51 sank in the Dockyard of KPA. The crane was declared unserviceable and hence listed as one of those items that KPA would dispose of. A tender was advertised for the disposal of the crane together with other items. The successful tenderer had bid at a price of Kshs.3,501,000 for the crane VAT inclusive. Upon payment of the said sum, the buyer removed the crane from the port. Whereas the allegations made were to the effect that the buyer of the crane had failed to pay the requisite taxes, investigation further established that under the Customs External Tariff Schedule obtained, Cranes and fork lifts are zero rated and thus do not attract any duty. Therefore, the buyer was not required to pay any additional taxes save for the VAT which was inclusive of the purchase price of Kshs.3,501,000. It was established that due process was followed in the disposal, and subsequent sale of the crane and no irregularities were noted. The evidence obtained did not establish any culpability either on the part of KPA officials or on the part of the person who purchased the crane in question to warrant any action to be taken against them.

EACC forwarded the file to the Director of Public Prosecutions on 9th August, 2012 with the recommendation that the inquiry file be closed with no further action.

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

STATUS

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

49. KACC/AT/INQ/26/2009 – NO.10 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that the Nandi County Council acting Treasurer had between 2003 and 2011 accumulated wealth that is not commensurate with his known source of income.

Investigations established that the acting Treasurer of Nandi County Council owned several parcels of land within Nandi Hills and Eldoret Townships, motor vehicles, tractors, shares in three companies and cash in various banks. Investigations further established that the Acting Treasurer gave a satisfactory account of how he acquired the numerous assets. The explanation was supported by several documents obtained as well as from witnesses.

EACC forwarded the file to the Director of Public Prosecutions on 15th August, 2012 with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to support any criminal charge against the suspect and accepted EACC's recommendation to close the file.

STATUS

The file was returned to EACC with directions to close.

**50. KACC/MSA/FI/7/2012
NO.11 EACC THIRD QUARTERLY REPORT**

This was an inquiry into allegations that government officers based in Lamu County namely; the District Surveyor, District Physical Planner, Land Adjudication and Settlement Officer and District Lands Registrar, allocated land to themselves and to non-indigenous/non-residents in the proposed Ras Kitau Settlement Scheme (within Manda Island).

Investigations established that the Ras Kitau Land was un-alienated Government Land and the squatters who had been living there for several years, in a bid to formalize their occupation of the land, applied to the Government through their local political leaders, to be considered for allocation of the land and ultimately issued ownership documents. In response, the Government through the District Settler Selection Committee (DSSC), chaired by the County Commissioner for the Lamu County initiated the process of identifying the number of squatters and the corresponding nature of settlement on that land. Investigations further established that a list of the squatters was compiled. However, it was noted that the said settlement did not take care of public utilities such as schools, hospitals, mosques, roads, cemeteries, etc. The DSSC therefore carried out fresh survey and came up with a final list of the proposed beneficiaries and their respective allocations as appearing on the ground, and provisions for public utilities as per the advisory plan. By the Gazette Notice of 17/09/2010 number 11190 issued pursuant to section 19 of Physical Planning Act, any person interested or affected by advisory plan was given sixty days to make their representations or objections in respect of the process. Since there were no objections raised to that plan within the period given, the plan was forwarded to the Director of Physical Planning who certified it and thereafter it was approved by the Minister for Lands.

EACC forwarded the file to the Director of Public Prosecutions on 20th September 2012 with the recommendation that the file be closed with no further action.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to support any criminal charge and accepted EACC's recommendation to close the file.

STATUS

The file was returned to EACC with directions to close.

51. KACC/GSA/FI/INQ/8/2011 NO.12 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations of abuse of office by officers from the ministry of gender, children and social services in the allocation of funds meant for orphans and vulnerable children (OVCs) within Madogo division.

Investigations established that after the Department of Children rolled out a programme known as Cash Transfer for Orphans and Vulnerable Children (*hereinafter referred to as CT-OVC*), it was implemented in several districts within the country. One of the benefiting districts was Bura in which eligible households in all its divisions that included Madogo Division benefited from the cash transfer programme. Investigations revealed that the Children's Department carried out a targeting process to identify those persons who would benefit. The key criterion used was to identify those households that had, or were taking care of orphans and vulnerable children. Investigations revealed that out of 213 targeted households, 150 of them received cash under the Cash transfer programme. This was after a validation process was carried out.

It was further established that due process as outlined in the Operations Manual was followed in the implementation of the CT-OVC programme in Madogo Division. The evidence obtained did not establish that some of the persons who received cash under the programme were undeserving or not eligible as alleged. No culpability was established against the officers who were involved in the implementation of the CT-OVC in Madogo Division. There was no evidence of embezzlement of the funds disbursed under the CT-OVC programme.

EACC forwarded the file to the Director of Public Prosecutions on 24th September, 2012, with recommendations that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to support any criminal charge and accepted EACC's recommendation to close the file.

STATUS

The file was returned to EACC with directions to close.

52. KACC/ELD/INQ/7/2012

NO.13 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that a Station Accountant, Department of Land Settlement and Adjudication, Kakamega corruptly solicited for a benefit from the complainant as an inducement to release a discharge certificate and processing of title deeds in respect of a plot in Kakamega.

Investigation established the solicitation and receipt of the benefit. The suspect was arrested and released on bond awaiting arraignment before the Eldoret Anti-Corruption Court upon the DPP granting consent to prosecute him.

The file was forwarded to the Director of Public Prosecutions on 12th July, 2012 with the recommendation that the suspect be charged with the offences corruptly soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

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

STATUS

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

53. KACC CR.152/69/2012

NO.14 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that two National Hospital Insurance Fund officers attached to Industrial Area Branch, corruptly solicited for and received a benefit from the Manager of a private company as an inducement to have a prosecution against the company, pending before Makadara Law Courts, withdrawn.

Investigation established the solicitation and receipt of the benefit. The suspects were arrested and released pending finalisation of the investigations, and the consent from the DPP to prosecute.

EACC forwarded the file to the Director of Public Prosecutions on 31st July, 2012 with the recommendation that the suspects be charged with the offences corruptly soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

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

STATUS

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

54. EACC/MSA/INQ/9/2012

NO.15 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that a Police Officer based at Kilifi Police Station corruptly solicited for, and received a benefit from the complainant as an inducement to forbear charging him with an alleged offence of being in possession of fake currency notes.

Investigation established the solicitation and receipt of the benefit. The suspect were arrested and charged before the Mombasa Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

EACC forwarded the file to the Director of Public Prosecutions on 6th August, 2012 with the recommendation that the case be prosecuted to its logical conclusion.

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

STATUS

The suspect was charged before the Mombasa Anti-Corruption Court with the offences of soliciting and receiving a benefit contrary to section 39(3) (a) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003. The Case is part-heard before Court.

55. KACC/CR.141/70/2012 NO.16 EACC THIRD QUARTERLY REPORT

This was an inquiry into allegations that a Kerugoya/Kutus Municipal Council Askari corruptly solicited for a benefit from the complainant as a protection fee for his matatu business.

Investigations did not establish the solicitation of the benefit as alleged by the complainant. Investigations further established that the complainant did not disclose the full facts of the case in his report to the EACC. The evidence obtained did not establish that the suspect corruptly solicited for and received a benefit as alleged.

EACC forwarded the file to the Director of Public Prosecutions on 6th September, 2012 with the recommendation that the file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was insufficient to support any criminal charge and accepted EACC's recommendation to close the file.

STATUS

The file was returned to EACC with directions to close.

(D) FILES SUBMITTED IN THE FOURTH (4TH) QUARTER OF THE YEAR 1ST OCTOBER 2012

31ST DECEMBER 2012

56. KACC/INQ/NYR/04/2012

NO. 1. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations of abuse of office, Conflict of Interest, bid rigging and irregular procurement of goods and services by officials of Kenya Rural Roads Authority (KERRA) Meru Regional office and members of Igembe South Constituency Roads Tender Committee in respect of a contract described as 22% Road Maintenance Levy Fund (RMLF) Financial Year 2011 – 2012. The investigation revealed that in the year 2010, the Kenya Rural Roads Authority (KeRRA) Meru Regional office prepared work plans for roads to be constructed within Igembe South Constituency in the 2011/2012 financial year. The work plans were approved by the Constituency Roads Committee and later forwarded to Kenya Rural Roads Authority (KeRRA) headquarters for funding. After funding was received, KeRRA Meru Regional Office floated a tender to pre-qualified contractors under the 22% Road Maintenance Levy Fund (RMLF). The tender was advertised through notices and the tender documents contained specifications as prepared by the Roads Engineer. A total of 40 companies tendered for the contract.

Investigations further revealed that the tenders were evaluated by the Tender Evaluation Committee, which submitted a report to the Tender Committee. Upon receipt of the evaluation report which included the recommendations by the Evaluation Committee, the Tender Committee altered the recommendations. Investigations established that the

final award of the contracts made by the Tender Committee for the various road projects did not therefore reflect what was recommended by the Tender Evaluation Committee. These alterations were made contrary to the requirements of the provisions of the Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

Investigations further established that the Igembe South Constituency Manager who was also the Chairman of the Constituency Roads Tender Committee chaired the Tender Committee in which the irregular awards were made. He also presented bid documents in respect of one of the tenderers which were false. The process of procurement and award of the above contracts under the 22% Road Maintenance Levy Fund was flawed and not in accordance with the provisions of the aforesaid Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspects be charged with the offences of abuse of office contrary to Section 46 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 and wilful failure to comply with the law relating to procurement contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003.

Upon perusal of the file, the Director of Public Prosecutions found that the evidence was sufficient to support the proposed charges subject to statements of two witnesses being included in the Inquiry file and directed that the prosecution of the suspects do commence on the proposed charges.

STATUS

The suspects were charged with the offences of abuse of office contrary to Section 46 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 and wilful failure to comply with the law relating to procurement contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. The case is pending before court.

57. KACC/FI/INQ/97/2010

NO. 2. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into an Allegation of Irregular Procurement of Contractors for the Construction of Ten (10) Box Culverts along Hola – Garsen Road (B8) by the Ministry Of Roads (MOR) Officials On Behalf Of Ministry Of Youth Affairs and Sports (MOYAS) and National Youth Service (NYS).

The investigations revealed that the Ministries of Youth Affairs and Sports (MOYAS) and that of Roads (MOR) conducted a tour of Garsen-Hola-Garissa Road that was under construction funded by MOYAS. They noted that there was need to construct box culverts at some sections of that Road. It was agreed that the MOR provide technical services and procure for the works. The tender for those works was accordingly advertised. A number of companies responded and submitted their bids. The Tender Evaluation Committee proceeded to evaluate the submitted bids on the basis of the specifications in the tender documents and made their recommendations.

The successful contractors were notified of the results of the tender process and offers sent to them. Thereafter contracts were signed between MOYAS and the contractors. The contractors were then authorized to commence the construction of the subject culverts. The Investigations further established that up on completion for the works in terms of the contract, the contractors were paid on the basis of interim payment certificates. However, queries were later on raised over the works and some of the payments. An audit team was consequently appointed to assess the works executed vis a vis the payments made. The team's findings were that the works were executed according to the specifications given in the tender documents and contract. The team therefore recommended that there was need for the final accounts to be done for purposes of settlement of the contractors' respective claims.

Further investigations established that the contractors, MOR and MOYAS' representatives and the audit team were all in agreement that the sum expended by MOYAS was for works carried out and completed satisfactorily. There was no evidence to show that payments were made for works not done or not done satisfactorily.

That a Tender Notice was placed in the Standard Newspaper only once instead of at least twice as required by the Public Procurement Regulations. Further, this advertisement was not posted at any conspicuous place reserved for this purpose in the premises of the procuring entity, MOYAS so as to allow for wider publicity for the advert. Investigations also established that the award of the tender was given to the second lowest bidder and not the lowest bidder. The Tender Committee also substituted the proposals by the Tender Evaluation Committee which they had no capacity to do.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offences of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003 and an alternative Count of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act, 2003.

Upon perusal of the file, the Director of Public Prosecutions found the evidence insufficient to support the recommended charges and directed that the case be dealt with administratively against members of the Ministerial Tender Committee.

STATUS

The file was returned to EACC with directions to take administrative action against the members of the ministerial tender committee.

58. KACC/AT/INQ/36/2009 (F)

NO. 3. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations of fraudulent disposal of public property within Kisumu Municipality – Kisumu Block 8/148

The investigation established that in 1966, the Municipal Council of Kisumu purchased land parcel number Kisumu Municipality Block 8/148 from its original registered owners. The evidence gathered revealed that in 2007, a former Town Clerk, Kisumu Municipal Council swore an affidavit submitted to the District Land Registrar, purporting that the original Certificate of Lease was lost, and there was need for a replacement. Investigations further revealed that the Town Clerk wrote to the Registrar purporting that

at a Full Council meeting, the Council had approved an application for transfer of the said parcel of land to a private individual. However, further investigations established that the said transferee was non-existent and there was no Council meeting held to approve the purported transfer. The instructions by the Town Clerk were thus intended to facilitate the irregular transfer of the Council land to a private developer. Investigations established that the council land was consequently transferred to the private developer. The entire process culminating to the transfer was irregular and fraudulent.

That a former Town Clerk, Kisumu Municipal Council, a former District Land Registrar, the current registered owner of the parcel of land, her associate and the advocate who facilitated the transfer were all involved in the irregular transfer of the public land and are therefore culpable.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspects be charged with the following offences; (a) Conspiracy to commit an offence of corruption contrary to Section 47 (A) of the Anti-Corruption and Economic Crimes Act, 2003, (b) Fraudulent disposal of public property contrary to Section 45 (1) (b), (c) Fraudulent acquisition of public property contrary to section 45 (1) (a), (d) Willful failure to comply with the law relating to disposal of public property contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, (e) Conspiracy to defraud the public contrary to Section 317 and (e) Obtaining registration by false pretence contrary to Section 320 of the Penal Code. In addition, the Commission has initiated civil proceedings for the recovery of the land.

Upon perusal of the file, the Director of Public Prosecutions found the evidence sufficient to support the proposed charges and directed that the prosecution of the suspects do commence on the proposed charges. He further directed that administrative action be taken against, the Migori District Deputy Lands Registrar.

STATUS

The above named suspects were charged with the offence of (a) Conspiracy to commit an offence of corruption contrary to Section 47 (A) of the Anti-Corruption and Economic Crimes Act, 2003, (b) Fraudulent disposal of public property contrary to

Section 45 (1) (b), (c) Fraudulent acquisition of public property contrary to section 45 (1) (a), (d) Wilful failure to comply with the law relating to disposal of public property contrary to Section 45 (2) (b) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003, (e) Conspiracy to defraud the public contrary to Section 317 and (e) Obtaining registration by false pretence contrary to Section 320 of the Penal Code. The case is part-heard before court.

59. KACC INQ/FI/34/2011

NO. 4. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations of conflict of interest against the Procurement Officer Pumwani Maternity Hospital.

The investigation established that sometime in November 2010, Pumwani Maternity Hospital sent quotations to various suppliers for the supply and delivery of suction machine bottles and surgical materials. The Procurement Officer at the hospital was involved in the preparation of the quotations. Investigations established that this procurement officer was connected to one of the companies receiving the quotations by virtue of being a director thereof. Whereas the suspect was involved in sending out quotations to various bidders and even participated in the Procurement Committee meeting that awarded the contract for the supply of the goods, he failed to disclose his interest in the beneficiary company. The company also received part payment for the delivery of the goods which payment was made vide a cheque paid into the company's bank account at Kenya Commercial Bank, to which the suspect was a signatory.

It was further established that the value of the surgical materials was Kshs. 1,224,000 which amount was way beyond the maximum threshold that the Procurement Committee could adjudicate upon. The award should have been adjudicated upon by the Tender Committee.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offence of failing to disclose a private interest to

one's principal contrary to Section 42 (1) (a) and (b) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, 2003.

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

STATUS

The Procurement Officer was charged with the offence of failing to disclose a private interest to one's principal contrary to Section 42 (1) (a) and (b) as read with Section 48 (1) of the Anti-corruption and Economic Crimes Act, 2003.

60. KACC/ CR. 141/70 /2012

NO. 5. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that the former Registrar of Titles Mombasa, fraudulently transferred parcel No. 419/MN/VI to a person who was not the owner.

The investigation established that the bona fide registered owner of the land in question had purchased the land from its original owner in 1994, and it was duly transferred to him.

However, sometime in 2010, he learnt that his land was being sold by a person who was claiming ownership. A search in the Lands Office revealed that the land had been transferred to the person purporting to sell it in 2004.

Investigations established that the original entries and documents that were in support of the evidence of how the second transfer was effected were missing from the Lands office. It was also suspected that the entry showing that the land had been transferred to the person purporting to sell it was a forgery. However, in the absence of the relevant documents, it was not possible to carry out a forensic examination to ascertain who was involved in the forgery. The investigation did not establish that the Registrar of Titles was involved in the contested fraudulent transfer of the land to warrant any action against him.

There is also a civil suit filed by the complainant that is still pending.

EACC forwarded the file to the Director of Public Prosecution with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to support the allegations and directed that the inquiry filed be closed.

STATUS

The file was returned to EACC with directions to close.

61. KACC/GSA/FI/INQ/P1-2

NO. 6. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations of alleged irregular disposal of unserviceable and obsolete stores and equipment belonging to Ijara District Hospital.

The investigation established that a decision to dispose of unserviceable and idle public assets in the hospitals in the North Eastern Province was made as early as 2006 after a directive was issued by the Provincial Medical Officer to all District Medical Officers of Health in the Province. One of the concerned hospitals was Ijara District Hospital. An inventory of all idle assets at the said hospital was prepared. The items included four motor vehicles, four motor cycles, a generator and a photocopier. Investigations further established that after the items were inspected by the Mechanical Officer, they were boarded and approval was given by the PS Ministry of Medical Services to dispose them off. Upon this approval being granted, a Tender Notice was advertised in the Daily Nation for the sale of the items. The tenders were opened and the District Tender Committee deliberated on the several bids that had been received in respect of the boarded items. The Committee recommended that awards be made to the highest and most responsive bidders.

Investigations also established that the successful buyers were notified and they made payments for the respective items. The payment was sent to the Ministry of Health Headquarters and the Ijara District Hospital released the sold items. Investigations did not

disclose any breach of procurement regulations or conflict of interest by persons who were involved in the procurement and disposal process as alleged. It was clear that the due process of procurement and disposal was followed.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the file be closed.

Upon perusal of the file, the Director of Public Prosecutions found that there was no sufficient evidence to support the allegations and accepted EACC recommendations to have the file closed.

STATUS

The file was returned to EACC with directions to close.

62. KACC CR. 437/434/2012

NO. 7. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that an employee of the Ministry of Lands stationed at Kisii Lands Office corruptly solicited for a benefit from the complainant as an inducement to facilitate the processing of title deeds in respect of a parcel of land in Kitutu Central that the complainant had purchased.

The investigation established the solicitation and receipt of a benefit. The suspect was arrested and released on bond pending the decision of the Director of Public Prosecution.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti Corruption and Economic Crimes Act, 2003.

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

STATUS

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

63. KACC/MSA/RP/INQ/7/2012

NO. 8. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations of offering a bribe to a Police Officer by a candidate sitting a driving test in Mombasa.

The investigation did not establish the offer of the benefit as alleged. The evidence obtained was not sufficient to sustain a prosecution.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the file be closed.

Upon perusal of the file, the Director of Public Prosecutions found no evidence to support any criminal charge and accepted EACC recommendations to close the file.

STATUS

The file was returned to EACC with directions to close.

64. KACC/MSA/FI/INQ/06/2012

NO. 9. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that Kenya Revenue Authority Customs Officials based in Mombasa corruptly solicited for a benefit from the complainant as an inducement to release duty free, an imported motor vehicle allegedly belonging to a returning Kenyan resident from the United Kingdom.

Investigations established that a Mercedes Benz was shipped into the country, and the consignee approached a clearing agent seeking advice on how he could be exempted from paying duty for the vehicle since it was for a Kenyan citizen who was returning from abroad.

The consignee indicated that the vehicle belonged to his son who was returning from the United Kingdom. Investigations revealed that ordinarily, vehicles for returning residents are exempt from duty so long as due process has been complied with. Investigations further revealed that after the consignee was informed that the vehicle documents should read the names of the returning resident (his son), he and another person presented the documents relating to the vehicle together with the purported returning resident's passport to Kenya Revenue Authority (KRA). The KRA officials however insisted that the returning resident must present himself before the Customs officer for them to ascertain that he was indeed a returning resident as alleged.

Further investigations also established that the consignee and the person could not produce the returning resident. Instead, they presented to the Customs Officer, a forged passport purporting that the returning resident was in the country while indeed he was still abroad. They did this in an attempt to evade paying the taxes due for the vehicle in question.

The investigations did not find any evidence to substantiate the claims by the said consignee that KRA officers had solicited for a benefit from him as an inducement to clear the vehicle duty free. Instead, the evidence obtained showed that the consignee who is the suspect and the person attempted to commit an economic crime of evading payment of duty in respect of the Mercedes Benz. The two suspects also gave false information to KRA officers that the purported owner of the vehicle was back in the country whereas he was not.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspects be charged with the offences of attempt to commit an economic crime contrary to section 47 A(1) of the Anti-Corruption and Economic Crimes Act, 2003, giving false information to a person employed in the public service contrary to section 129(a) and forgery contrary to section 347(a) of the Penal Code, and an alternative count of uttering a false document contrary to section 353 of the Penal Code.

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

STATUS

The suspects were charged with the offences of attempt to commit an economic crime contrary to section 47 A(1)of the Anti- Corruption and Economic Crimes Act, 2003, giving false information to a person employed in the public service contrary to section 129(a) and forgery contrary to section 347(a) of the Penal Code, and an alternative count of uttering a false document contrary to section 353 of the Penal Code. The case is pending before court.

65. KACC/MSA/RP/INQ.6/2012

NO. 10. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that a Clerical Officer, Teachers Service Commission Kaloleni, Kilifi County corruptly solicited for a benefit from the complainant as an inducement to assist him to be employed as a P1 teacher by the Teachers Service Commission.

The investigations established the solicitation and receipt of a benefit the suspect was arrested.

EACC forwarded the file to the Director of Public Prosecutions on with the recommendation that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti Corruption and Economic Crimes Act, 2003.

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

STATUS

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

66. KACC/PI/INQ/129/10

NO. 11. EACC FOURTH QUARTERLY REPORT

This was a Preliminary investigations into allegations of embezzlement by officials of Ministry of Health; of donor funds given to a non -governmental organization under the Global Fund project.

The investigation established that the complainant's organization, submitted a proposal for funding to the Global Fund sometime in the year 2002. The investigation did not establish that the complainant organization's proposal was successful. Whereas the complainant alleged that his organization received an award of US dollars 37,440 and 210,000 respectively from the Global Fund, the investigations established that the complainant's organization never submitted a proposal for funding in rounds two and four of the Global Fund malaria budget. Therefore, the organization was neither evaluated for approval by the Global Fund, nor was any agreement for funding signed. Investigations further established that according to a report by an audit firm which was the Financial Management Agent engaged for Kenya for purposes of the Global Fund the complainant's organization was not on the list of NGOs which benefited from rounds two and four of the Global Fund Malaria disbursements. The same report also showed that the organization was not on the list of NGOs that signed the project grant agreement for rounds two and four. The organization therefore could not have benefitted from any disbursements from the Global Fund as alleged.

The allegations by the complainant that the Ministry of Health officials embezzled funds allocated to his organization by the Global Fund were found not to be tenable. There was no culpability established on the part of the Ministry of Health officials who were concerned with the disbursement of funds issued under the Global Fund.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the inquiry file be closed.

Upon perusal of the file, the Director of Public Prosecutions found no evidence to support any criminal charge and accepted EACC recommendations to close the file.

STATUS

The file was returned to EACC with directions to close.

67. KACC/KSM/OPS/INQ/03/2012

NO. 12. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that a Senior Probation Officer, Kisumu East District, Kisumu county corruptly solicited for a benefit from the complainant as an inducement to write and submit a favourable probation report to the High Court to facilitate the release of the complainant's son from prison on probation.

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and released on bond pending the decision of the Director of Public Prosecution.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

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

STATUS

The suspect was charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

68. KACC/ INQ/5/2012

NO. 13. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that a Revenue Officer and a Debt Manager at Kenya Revenue Authority corruptly solicited for a benefit from the complainant as an inducement to correct omissions made in the statements of account in respect of a company in which the complainant was the Chief Accountant.

The investigation established the solicitation and receipt of a benefit by the suspect. The file was forwarded to the Director of Public Prosecutions on 30th November 2012, with the recommendation that the suspects be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic crimes Act, 2003.

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

STATUS

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

69. KACC/FI/INQ/9/2012

NO. 14. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that an Administrative Officer at the Ministry of Local Government, Nkubu County Council Office corruptly solicited for a benefit from the complainant as an inducement to allocate him a stall at the Jua kali sheds within Nkubu Township.

The investigation established the solicitation and receipt of a benefit by the suspect the suspect was arrested.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

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

STATUS

The suspect was charged with the offence of corruptly soliciting for and receiving a

benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The case is pending before court.

70. KACC/MSA/INQ/PR/05/2012

NO. 15. EACC FOURTH QUARTERLY REPORT

This was an Inquiry into allegations that a Court Clerk at the Mombasa Law Courts corruptly solicited for a benefit from the complainant as an inducement to provide the complainant with regular updates in respect of a case pending before the court in which the complainant was a party.

The investigation established the solicitation of a benefit in which there was sufficient evidence to sustain prosecution.

EACC forwarded the file to the Director of Public Prosecutions with the recommendation that the suspect be charged with the offence of corruptly soliciting for a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

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

STATUS

The suspect was charged with the offence of corruptly soliciting for a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003. The Case is part-heard before Court.

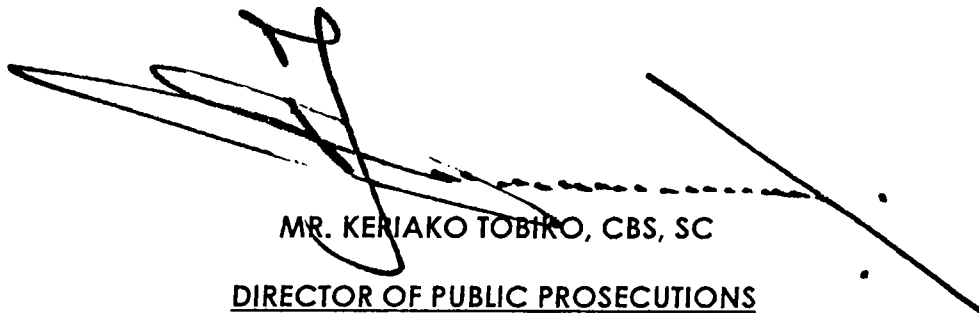
1.7 STATISTICAL SUMMARY OF CASES FORWARDED TO THE DIRECTOR OF PUBLIC PROSECUTIONS BY EACC BETWEEN 1ST JANUARY 2012-31ST DECEMBER 2012 AND ACTION TAKEN

S/No.	PARTICULARS OF CASES	NUMBER
1.	INVESTIGATION FILES SUBMITTED BY EACC TO THE DIRECTOR OF PUBLIC PROSECUTIONS/DPP FROM EACC FROM 1 ST JANUARY 2011 – 31 ST DECEMBER 2012	70
2.	FILES WHERE DPP DIRECTED PROSECUTION TO ENSUE	43
3.	FILES WHERE DPP DIRECTED FURTHER INVESTIGATIONS	5
4.	FILES WHERE DPP DIRECTED ADMINISTRATIVE OR OTHER DEPARTMENTAL ACTION	7
5.	FILES WHERE DPP DIRECTED CLOSURE	15
6.	FILES AWAITING DPP'S DIRECTIONS	NIL
	TOTAL	70

1.8 ABBREVIATIONS

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

Dated at Nairobi this 6TH day of MAY, 2013


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