

*paper laid by  
Leader of Majority  
on 16/7/2014  
@Gumbi*

PARLIAMENT  
OF KENYA  
LIBRARY

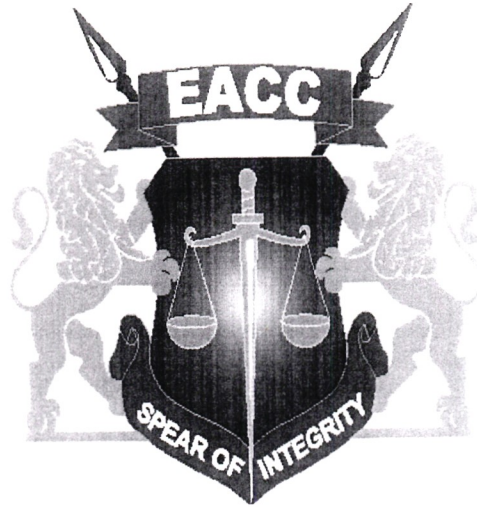


TABLE OFFICE  
S/No.....  
16 JUL 2014  
Sign.....  
PAPER LAID

**THE ETHICS AND ANTI-CORRUPTION COMMISSION**

*Volume  
15*

**THE FIRST QUARTERLY REPORT FOR THE YEAR 2014  
COVERING THE PERIOD  
1<sup>ST</sup> JANUARY, 2014 TO 31<sup>ST</sup> MARCH, 2014**

## **PREAMBLE**

The Ethics and Anti-Corruption Commission is required under section 36 of the Anti-Corruption and Economic Crimes Act, 2003, to prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions under Section 35 of the Anti-Corruption and Economic Crimes Act, 2003 as read with Section 11(1) (d) of the Ethics and Anti-Corruption Commission Act, 2011.

Section 36 provides that:

1. The Commission shall prepare quarterly reports setting out the number of reports made to the Director of Public Prosecutions under section 35 and such other statistical information relating to those reports, as the Commission considers appropriate.
2. A quarterly report shall indicate if a recommendation of the Commission to prosecute a person for corruption or economic crime was not accepted.
3. The Commission shall give a copy of each quarterly report to the Attorney General.
4. The Attorney General shall lay a copy of each quarterly report before the National Assembly.
5. The Commission shall cause each quarterly report to be published in the Gazette.

This report is therefore made pursuant to section 36 of the Anti-Corruption and Economic Crimes Act, 2003. The report covers the First Quarter of the year 2014 and is for the period commencing 1<sup>st</sup> January, 2014 to 31<sup>st</sup> March, 2014.

**1. EACC/FI/INQ/25/2013**

**Inquiry into alleged irregular procurement of an Integrated Security Management Systems (ISMS) by the Central Bank of Kenya**

The investigation revealed that Central Bank of Kenya used the International Competitive Tender method to procure the installation of an Integrated Security Management Systems (ISMS) in the bank. The total budget for the project was Kshs. 800 million. Following the advertisement, Central Bank received six bids, which were evaluated in accordance with the Procurement Regulations. The Evaluation Committee recommended the award of the tender to the lowest evaluated responsive bidder. Investigations further established that the Tender Committee declined to award the tender to the lowest bidder and directed that the Evaluation Committee conduct further evaluations. Upon carrying out a second evaluation, the Evaluation Committee settled on the same bidder. The Tender Committee rejected the recommendations of the Evaluation Committee and cancelled the tender.

Investigations further revealed that when the bidder recommended for the award learnt about the cancellation, they filed a Request for Review with the Public Procurement Administration Review Board (PPARB). The PPARB ruled in favour of the said bidder and ordered the Central Bank to award the contract to the bidder recommended by the Evaluation Committee. The Central Bank's Legal Adviser advised the Bank to appeal against the decision of the PPARB. However, the bank instead chose to award the contract to the bidder recommended by the Evaluation Committee and pursuant to the decision of the PPARB.

A Report was compiled and forwarded to the Director of Public Prosecutions on 3<sup>rd</sup> January, 2014 recommending the prosecution of the Central Bank Governor for the offences of wilful failure to comply with the law relating to procurement contrary to section 45(2) (b) and attempt to commit an offence of corruption contrary to section 47A of the as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 10<sup>th</sup> January 2014, the Director of Public Prosecutions accepted the recommendation for prosecution of the Governor of Central Bank, but with the offence of abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act.

## **2. KACC/FI/INQ/177/2010**

### **Inquiry into allegations of fraud/tax evasion by the County Council of Turkana**

Investigations established that various companies purchased goods worth Kshs. 2.8 million and used forged Tax Withholding Certificates to retain taxes amounting Kshs. 0.46 million. While purchasing the goods, they presented themselves as agents of the Turkana County Council. The goods were either purchased in the names of the suspects and or business names/companies owned by them. The Tax Withholding Certificates were purportedly used to show that the Council had been allowed by the Kenya Revenue Authority to withhold taxes whenever it purchases goods. It was established that the suspects used forged documents to fraudulently retain taxes which they never remitted to the Kenya Revenue Authority as required by the law.

A Report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> January, 2014 recommending the prosecution of the suspects for the offences of fraudulent failure to pay taxes contrary to Section 45 (1) (d) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 24<sup>th</sup> February, 2014, the Director of Public Prosecutions returned the file and advised that further investigations be carried out before giving a final decision in the matter.

## **3. EACC/FI/INQ/43/2013**

### **Inquiry into allegations of abuse against public officers attached to Laikipia Lands Registry**

The Commission carried out investigations upon receipt of allegations that public land identified as plot numbers Laikipia/Daiga Umande Block 4/495, 498, 499 and 811 had been irregularly allocated to private individuals and titles duly issued. Investigations revealed that Lands Officers based at the Laikipia Lands Registry irregularly alienated the six public plots and allocated them to the private individuals while knowing that the plots had been set aside for public utility. The plots had been set aside for public utilities which included polytechnic, schools, water point and dispensary.

A Report was compiled and forwarded to the Director of Public Prosecutions on 18<sup>th</sup> February, 2014 with recommendations that the suspects be charged with the offences of breach of public trust and abuse of office as provided for under section 127 of the Penal Code and section 46 as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003 respectively.

On 18<sup>th</sup> March 2014, the Director of Public Prosecutions accepted the recommendation for prosecution.

#### **4. EACC/NYI/FI/INQ/08/2013**

##### **Inquiry into allegations of abuse of office against the Nyeri County Governor**

Investigations established that immediately after being sworn in, the Nyeri County Governor used his three personal cars while discharging his official duties yet he had been allocated two government vehicles. Despite the fact that all the said three vehicles were being fueled by the County Government of Nyeri, the Governor went ahead and lodged a mileage claim amounting to Kshs. 1.3 million, which amount was paid.

A report was compiled and forwarded to the Director of Public Prosecutions on 13<sup>th</sup> March, 2014 recommending the prosecution of the Governor and four other officers at the Nyeri County Office who were involved in the processing of the mileage payment. On 31<sup>st</sup> March, 2014, the Director of Public Prosecutions returned the file and advised that further investigations be carried out before giving a final decision in the matter.

#### **5. KACC/FI/INQ/25/2011**

##### **Inquiry into allegations of irregular allocation of public land to a private company by a former Minister in the Ministry of Lands**

Investigations revealed that a parcel of land known as Nyandarua/Njabini/530 was allocated to a Training Centre under the Ministry of Agriculture in the year 1962. In the year 2005, the then Minister for Lands and Housing, without following the laid down procedures, approved the irregular allocation of 25 acres from the said parcel of land to a private company. Investigations further revealed that the company upon getting the title document went ahead to sub-divide the land into six equal portions and used the title deeds as security for a loan facility amounting to

Kshs. 86.5 million. Investigations also established that the former Minister was a Director in the Company to which he irregularly allocated the public land.

A report was compiled and forwarded to the Director of Public Prosecutions on 28<sup>th</sup> January, 2014 recommending the prosecution of the former Minister and the then Director of Land Adjudication and Settlement for the offences of abuse of office contrary to section 46 and fraudulent disposal of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003; and breach of trust by a person employed in the public service contrary to section 128 of the Penal Code.

On 12<sup>th</sup> March 2014, the DPP accepted the recommendation for prosecution.

## **6. EACC/ELD/FI/INQ/08/2012**

### **Inquiry into allegations of irregular procurement of a bus by the Principal of Moi Girls High School, Eldoret at a cost of Kshs. 11.45 million**

The investigations established that the Parents Teachers Association (PTA) of Moi Girls High School during its annual meeting held on 6<sup>th</sup> November 2010 approved the purchase of a 62-67 seater school bus as part of projects for the year 2011. Despite the School Bus Sub-Committee having identified a company that would have sold a bus to the school at the lowest price, the Principal went ahead and awarded the contract to a supplier who had quoted the highest price of Kshs. 11.45 million. This was done unilaterally without involving the school's Tender Committee and in breach of the public procurement procedures and regulations. Investigations also established that the Principal and the School Accountant approved the release of funds for the bus that was irregularly purchased

A report was compiled and forwarded to the Director of Public Prosecutions on 13<sup>th</sup> February, 2014 recommending the prosecution of the school Principal and Accountant for the offences of abuse of office contrary to section 46 and failure to comply with the law relating to public procurement procedures contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, 2003.

On 13<sup>th</sup> March, 2014, the DPP accepted the recommendation for prosecution.

## **7. EACC/FI/INQ/51/2013**

### **Inquiry into allegations that the Eldoret South Constituency Development Fund Tender Committee irregularly awarded a tender for the construction of the Kamuyu-Ndungulu road project to a private company**

Investigations established that in the financial year 2010/2011, the Eldoret South Constituency Development Committee (CDFC) prioritized the rehabilitation of several roads including the Kamuyu-Ndungulu road. The National CDF Board approved the project and allocated a sum of Kshs. 2.5 million. The Eldoret South Constituency Development Fund Committee, through an open tendering process, awarded the contract for the construction of the road to a private company. Investigations revealed that the tendering process was done in accordance with the provisions of the Public Procurement and Disposals Act, 2005. No culpability was established on the part of the officials of the CDFC

A report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> February, 2014 recommending for the closure of the file.

On 10<sup>th</sup> March, 2014, the DPP accepted the recommendation for closure.

## **8. EACC/MSA/PI/003/2013**

### **Inquiry into allegations that the Managing Director, Mombasa Water Supply and Sanitation Company Limited fraudulently obtained a benefit of Kshs. 124, 750/= from the Company**

The Investigations established that the Managing Director received an invitation to attend 13<sup>th</sup> African Utility Week in South Africa. To facilitate travelling and accommodation, an imprest amounting to Kshs. 277, 750/= was processed and paid to her. On returning from the trip, the she surrendered the imprest but was not able to account for Kshs. 76, 500/= being the unsupported expenditure.

A report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> February, 2014 recommending for the closure of the file.

On 24<sup>th</sup> March, 2014, the DPP accepted the recommendation for closure.

## **9. EACC/GSA/FI/INQ/5/2011**

### **Inquiry into allegations of misappropriation and mismanagement of public funds; and flouting of procurement rules and regulations by the officers of the County Council of Garissa during the extension of the council's offices**

The investigation established that in the year 2008, the officials of the County Council of Garissa resolved to expand their offices after experiencing shortage of working space. Investigations revealed that the then Council Clerk and all members of the Tender and Evaluation Committees flouted procurement regulations in the procurement of services for the extension of the Council's office. However, the evidence gathered was not sufficient to prove criminal charges against them. This was due to the fact that some of those indicated to have attended the Tender Committee and Tender Evaluation Committee meetings denied doing so. Further, the original contract document, the Tender Opening Committee Attendance Register and the duly signed minutes of the Tender Committee meetings of 9<sup>th</sup> March, 2009 and 13<sup>th</sup> March, 2009 could not be traced despite effort made.

A report was compiled to the Director of Public Prosecutions on the 26<sup>th</sup> February, 2014 recommending that administrative action be taken against the officers involved.

On 25<sup>th</sup> March, 2014, the DPP accepted the recommendation for administrative action.

## **10. EACC/FI/INQ/29/2013**

### **Inquiry into allegations of irregularities in the recruitment of Principal Secretaries by the Public Service Commission**

Investigations established that the Public Service Commission (PSC) advertised for the position of Principal Secretaries indicating all the necessary qualifications. The Commission used the said requirements/qualifications in short listing, interviewing and recommending for the appointment by the President of several candidates. Investigations further revealed that the qualifications for the position of Principal Secretary were not specified in law nor was the procedure to be followed by the PSC in discharging its mandate under Article 153 (3) of the Constitution and the Public



Service Commission Act. The PSC therefore devised its own method. No culpability was established on the part of the Commission to warrant any criminal charges against the Chairperson, Commissioners and any employee of the PSC.

A report was compiled and forwarded to the Director of Public Prosecutions on 21<sup>st</sup> January, 2014 recommending for the closure of the inquiry file.

On 28<sup>th</sup> March, 2014, the Director of Public Prosecutions accepted the recommendation for closure. He further concurred with the Commission's proposal that the procedure to be followed by the PSC in discharging its mandate should be defined and specified in law; and the Leadership and Integrity Act should be amended to provide for offences and penalties for violation of the provisions of the Act.

### **11. EACC/FI/INQ/43/2013**

#### **Inquiry into allegations of procurement irregularities in the award of a tender for the construction of movable exhibition stands by the Kenya Tourism Board (KTB)**

The investigations established that in the year 2012, the Kenya Tourism Board set aside funds for the construction of movable exhibition stands for international exhibition events that normally take place between November and March every year. The two exhibitions were the International Tourism Bourse (ITB) held in Berlin and the World Travel Market (WTM) trade fair held in London, UK. In the financial year 2013/2014, the sum of Euros 660, 000 was allocated for the project. The Board intended to replace old exhibition stands which were procured in the 2008. The Board awarded the contract to a private company through Open International Tender at a cost of Euro 620, 000. The investigations established that the tendering process was carried out in accordance with the provisions of the Public Procurement and Disposals Act, 2005. No culpability was established on any employee of the Board in regard to the said procurement.

A report was compiled and forwarded to the Director of Public Prosecutions on 18<sup>th</sup> February, 2014 recommending for the closure of the file.

On 1<sup>st</sup> April, 2014, the Director of Public Prosecutions accepted the recommendation for closure of the inquiry file.

## **12. EACC/INQ/6/2013**

### **Inquiry into allegations of corruption against members of Embu County Assembly Vetting Panel for the position of County Executive members**

The allegation received by the Commission was that the members of the Embu County Assembly Vetting Panel were soliciting bribes from applicants so as to be considered favourably for employment positions in the County Executive. Investigations did not reveal any act of corruption by the members of Vetting Panel as alleged.

A report was compiled and forwarded to the Director of Public Prosecutions on 26<sup>th</sup> February, 2014 recommending the closure of the inquiry file.

On 9<sup>th</sup> May, 2014, the DPP accepted the recommendation for closure.

## **13. CR.021/105/2013 ACC. NO. 4/2013**

### **Inquiry into allegations of corruption against an employee of the Kenya Power and Lighting Company.**

The investigations established that the suspect, who is a Craftsman at the Kenya Power and Lighting Company corruptly solicited for a benefit of Kshs.200,000/= and Kshs.150,000/= respectively on different dates from the complainant as an inducement not to disconnect power to the complainant's premises. Investigations further established receipt of a benefit.

A Report was compiled and forwarded to the Director of Public Prosecutions on 13<sup>th</sup> February, 2014 with recommendations 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.

On 18<sup>th</sup> March 2014, the DPP accepted the recommendation for prosecution.

## **14. CR.122/493/2013 NAIROBI ACC. NO. 20/2013**

### **Inquiry into allegations of corruption against an employee of the Nairobi Technical Training Institute.**

The investigations established that the suspect, who is a Supervisor at the Nairobi Technical Institute corruptly solicited for a benefit of Kshs.3,000/= and Kshs.10,500 respectively on different dates from the complainant as an inducement to receive organic chemicals from the complainant on behalf of the Institute; and to also facilitate the processing of payment for the chemicals delivered. Investigations also established receipt of a benefit

A report was compiled and forwarded to the Director of Public Prosecutions on 21<sup>st</sup> January, 2014 with recommendations 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.

On 11<sup>th</sup> March, 2014, the DPP accepted the recommendation for prosecution.

#### **15. EACC CR. 145/274/2013 CF. NYERI ACC. NO. 4/2013**

##### **Inquiry into allegations of corruption against a Manager working with the Kenya Industrial Estates**

The evidence gathered established that on 11<sup>th</sup> September 2013, the suspect demanded from the complainant a benefit of Kshs. 150, 000/= so as to approve a loan application lodged by the said complainant. The complainant had applied for a loan of Kshs. 14 million to enable him purchase stone-crushing machines. The suspect was arrested and charged with the offences of soliciting for and receiving a benefit contrary to section 39(3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act No.3 of 2003.

A report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> March, 2014 with the recommendation that the case be prosecuted to its logical conclusion.

On 17<sup>th</sup> March 2014, the DPP accepted the recommendation for prosecution.

#### **16. CR.145/273/2013 ACC. NO. 21/2013**

##### **Inquiry into allegations of corruption against a Traffic Police Officer based at Nairobi Area County Traffic headquarters**

The investigations revealed that the suspect corruptly solicited for a benefit of Kshs.5, 000/= and Kshs.3, 000 respectively on different dates from the complainant as an inducement to forbear charging the complainant with traffic offences.

A report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> March, 2014 with recommendations 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.

On 1<sup>st</sup> April, 2014, the DPP accepted the recommendation for prosecution.

#### **17. CR.661/203/2013 ACC. NO. 6/2013**

##### **Inquiry into allegations of abuse of office against the Head of Treasury, Migori County**

The investigations established that the suspect corruptly solicited for a benefit of Kshs.250, 000/= from the complainant as an inducement to process the payment of money due to the complainant from the County after an Industrial Court award. The investigations also established the receipt of a benefit by the suspect.


A report was compiled and forwarded to the Director of Public Prosecutions on 21<sup>st</sup> March, 2014 recommending that the suspect be charged with the offences of corruptly soliciting for and receiving a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 12<sup>th</sup> May, 2014, the DPP accepted the recommendation for prosecution.

**STATISTICAL SUMMARY OF FILES FORWARDED TO  
THE DIRECTOR OF PUBLIC PROSECUTIONS**

Total No. of files forwarded to the Director of Public Prosecutions	<b>17</b>
No. of files recommended for prosecution	<b>11</b>
No. of files recommended for administrative or other action	<b>1</b>
No. of files recommended for closure	<b>5</b>
No. of files recommended for prosecution and the cases are already lodged before Court	<b>8</b>
No. of files where recommendation to prosecute accepted	<b>9</b>
No. of files where recommendation for administrative or other action accepted	<b>1</b>
No. of files where recommendation for closure accepted	<b>5</b>
No. of files returned for further investigations	<b>2</b>
No. of files where recommendation to prosecute not accepted	<b>0</b>
No. of files where recommendation for administrative or other action not accepted	<b>0</b>
No. of files where closure not accepted	<b>0</b>
No. of files awaiting Director of Public Prosecution's action	<b>0</b>

DATED AT NAIROBI THIS *19<sup>TH</sup>* DAY OF *MAY* 2014

  
**HALAKHE D. WAQO, ACI Arb**  
**SECRETARY / CHIEF EXECUTIVE OFFICER**