



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE FIRST QUARTERLY REPORT FOR THE YEAR 2013
COVERING THE PERIOD
1ST JANUARY, 2013 TO 31ST MARCH, 2013**

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 2013 and is for the period commencing 1st January, 2013 to 31st March, 2013.

1. KACC/FI/INQ/29/2011

Inquiry into allegations of irregularities in the procurement of a Chancery and Ambassador's residence for the Kenyan Embassy in Tokyo, Japan

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

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

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

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

On 27th February, 2013, the DPP accepted the recommendation for prosecution.

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

Inquiry into allegations of irregular procurement of motor vehicles and lecture chairs at Kagumo Teachers Training College.

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

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

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

On 26th March, 2013, the DPP returned the file for further investigations.

3. KACC/FI/INQ/33/2011

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

The investigation established that the Ministry of Higher Education, Science and Technology (Ministry) receives funds from the Government and donors; and these funds are channelled to the Ministry through the Treasury. The investigations further established that on various

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

The file was forwarded to the Director of Public Prosecutions on 25th February, 2013 with the recommendation that the suspects namely the cashier, the Chief Accountant and Head of Accounting Unit and the Accounts Assistant, Ministry of Higher Education, Science and Technology be charged with the offences of conspiracy to defraud the public contrary to Section 317 of the Penal Code, fraudulent acquisition of public property contrary to Section 45(1) (a) as read with Section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003, and stealing by a person employed in the Public Service contrary to Section 268 (1) as read with Section 280 of the Penal Code. Further recommendations made were that; administrative action be taken against other officers working in the accounts department in the Ministry who approved the aforementioned requisitions; civil recovery proceedings be instituted for the recovery of the lost public funds amounting to Kshs.16.4 million and a system audit be conducted by the Commission in the Central Bank of Kenya.

On 27th March 2013, the Director of Public Prosecutions accepted the recommendation for prosecution of the suspects; that administrative action be taken against two other officers working in the accounts department in the Ministry; civil recovery proceedings be instituted for the recovery of the lost public funds amounting to Kshs. **16.4 million** and a system audit be conducted in the Ministry of Higher Education, Science and Technology.

4. KACC/CR.141/40/2013

Inquiry into allegations of corruption against a Senior Inspector at the Anti-Counterfeit Agency, Ministry of Industrialization.

It was alleged that the suspect solicited for a benefit of Kshs. 50,000 from the complainant as an inducement to forbear charging him with an offence of being in possession of counterfeit goods.

The investigation established the solicitation and receipt of the benefit. The suspect was arrested and charged before the Milimani 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 file was forwarded to the Director of Public Prosecutions on 18th February, 2013 with the recommendation that the case be prosecuted to its logical conclusion.

The Director of Public Prosecutions accepted the recommendation for prosecution.

5. KACC/FI/INQ/12/2012

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

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

The file was forwarded to the Director of Public Prosecutions on 25th February, 2013, with recommendations that the inquiry file be closed.

On 21st March, 2013 the DPP returned the file for further investigations.

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

Inquiry into allegations of flouting of procurement rules during the tender opening

and evaluation for the construction of classrooms at Madogo Secondary School, Tana North District.

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

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

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

On 21st March 2013, the Director of Public Prosecutions accepted the recommendation for prosecution.

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

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

The investigation established the following facts; that sometime in 1979, KNAC entered into a mortgage housing financing scheme with the Municipal Council of Nanyuki, and loaned the latter

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

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

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

The file was forwarded to the Director of Public Prosecutions on 19th February, 2013, with recommendations that the inquiry file be closed.

On 13th March 2013, the Director of Public Prosecutions accepted the recommendations that the inquiry file be closed.

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

Inquiry into allegations of corruption against County Council of Garissa officers in the procurement for the purchase of furniture for the Council.

The investigation established furniture worth Kshs. 2 million was purchased for the offices of Garissa County Council. Investigations established that the said furniture was unilaterally sourced by the Chairman, Garissa County Council. This was done without the involvement of

the Tender Committee and the furniture was single sourced through direct procurement. This was in contravention of the Public Procurement and Disposal Act 2005. Investigations further established some of the furniture was not supplied to the Council. However, both the Council's Clerk and Treasurer went ahead to approve payments for the furniture despite the fact that procurement laws and regulations were not followed. They also approved payment for goods that were not delivered to the Council.

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

On 8th March, 2013, the DPP accepted the recommendation for prosecution.

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

Inquiry into allegations of wilful failure to comply with the law and guidelines relating to the management of public funds by the Head Teacher of Ukasi Primary School

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

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

On 22nd February, 2013 the Director of Public Prosecutions accepted the recommendation that

the Head teacher be admonished.

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

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

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

The file was forwarded to the Director of Public Prosecutions on 15th January, 2013 with the recommendation that administrative action be taken against the officers of the Council involved.

On 13th March 2013, the Director of Public Prosecutions accepted the recommendations that administrative action be taken against the officers of the Council involved.

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

Total No. of files forwarded to the Director of Public Prosecutions	10
No. of files recommended for prosecution	6
No. of files recommended for administrative or other action	2
No. of files recommended for closure	2
No. of files recommended for prosecution and the cases are already lodged before Court	3
No. of files where recommendation to prosecute accepted	5
No. of files where recommendation for administrative or other action accepted	2
No. of files where recommendation for closure accepted	1
No. of files returned for further investigations	2
No. of files where recommendation to prosecute not accepted	0
No. of files where recommendation for administrative or other action not accepted	0
No. of files where closure not accepted	0
No. of files awaiting Director of Public Prosecution's action	0

DATED AT NAIROBI THIS DAY OF 2013

**HALAKHE D. WAQO, ACIArb
SECRETARY/CHIEF EXECUTIVE OFFICER**