



THE ETHICS AND ANTI-CORRUPTION COMMISSION

**THE THIRD QUARTERLY REPORT FOR THE YEAR 2013
COVERING THE PERIOD
1ST JULY, 2013 TO 30TH SEPTEMBER, 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 Third Quarter of the year 2013 and is for the period commencing 1stJuly, 2013 to 30thSeptember, 2013.

1. EACC/FI/INQ/18/2012

Inquiry into allegations of irregular procurement of a private medical Centre by THE National Hospital Insurance Fund (NHIF) for the provision of Outpatient Medical Cover under the Civil Servants and Disciplined Services Medical Scheme leading to irregular payment of Kshs. 116,935,000 for services not rendered or not adequately rendered.

The investigations established that sometime in 2011, the Government through the Ministry of State for Public Service (MSPS) decided to provide medical cover to civil servants and members of the disciplined forces. Pursuant to this the MSPS entered into negotiations and subsequently a contract with the NHIF was entered into. NHIF was to roll out the scheme on behalf of the Ministry. The Ministry released funds to NHIF for payment to service providers who would be contracted to provide the medical services.

Investigations further revealed that the NHIF Board approved the scheme and advised the management to ensure that the scheme was implemented in accordance with the Government Circular. It was expected that in identifying the service providers for the scheme, NHIF would advertise for interested service providers to submit their bids. Investigations however established that there was no Procurement done for the said medical scheme. Instead, NHIF unilaterally picked two service providers without following the laid down procurement procedures and awarded them the contract to provide medical care for civil servants and the members of the disciplined forces. In addition, NHIF did not comply with the accreditation guidelines before contracting the service provider. The result of this was that NHIF enlisted the services of the service provider's facilities which were not accredited.

Whereas the service provider contracted by NHIF received the full payment of Kshs. 116, 935, 500, investigations revealed that the provider did not have presence in all the parts of the country where civil servants and disciplined forces members were to access the medical services. Therefore, the medical service provider received payment even for services that were not rendered since they had no facilities in some areas.

A Report was compiled and forwarded to the Director of Public Prosecutions on 1st August, 2013, with recommendations that the former Chief Executive Officer, NHIF, and the Manager, Strategy and Corporate Planning be charged with the offence of wilful failure to comply with the law relating to procurement of services contrary to section 45 (2) (b) of the Anti- Corruption and Economic Crimes Act, the two together with the Assistant Manager, Benefits and Quality Assurance be charged with the offence of abuse of office contrary to section 46 of the Anti-

Corruption and Economic Crimes Act; that the three officers together with the Directors of the service provider be charged with conspiracy to defraud contrary to section 317 of the Penal Code and the General Manager Benefits and Quality Assurance, NHIF be charged with the offence of neglect of official duty contrary to section 128 of the Penal Code.

On 25th September, 2013, the DPP accepted the recommendation for prosecution of all the suspects except the General Manager, Benefits and Quality Assurance.

2. EACC/FI/INQ/22/2013

Inquiry into allegations of misappropriation of Kshs.1,133,500 meant for training programmes in five constituencies in Upper Eastern province by a Senior Research and Policy Officer, Youth Enterprise Development Fund

The investigations revealed that, the officer who is working with the Youth Enterprise Development Fund as a Senior Research and Policy Officer received an imprest of 1,133,500/- to cater for trainings four districts in the Upper Eastern Province. The said imprest was to cater for reimbursement for lunch and transport for participants and facilitation fees for facilitators at the training. Investigations established that the training was conducted. However, investigations further established that out of the total imprest received by the officer, he misappropriated a sum of Kshs. 608,678/=. He also surrendered the imprest using false documents in an attempt to account for the money.

A Report was compiled and forwarded to the Director of Public Prosecutions on 5th August, 2013 with recommendations that the suspect 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, Abuse of office contrary to section 46 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003 and False Accounting by a public officer contrary to section 331(1) and (2) of the penal code. It was further recommendation that the Civil Litigation and Asset Tracing Department of the Commission institutes recovery proceedings in respect of the money of Kshs. 608,678 which the accused fraudulently acquired.

On 27th August, 2013, the DPP accepted the recommendation for prosecution and civil recovery.

3. KACC/FI/INQ/88/2008

Inquiry into allegations of irregular extension of Service Contract, by officials of KenGen to Great Wall Drilling Company Ltd of China for drilling of 15 production wells at Olkaria Domes

The investigation revealed that KenGen advertised for the provision of drilling services for six geothermal wells at Olkaria Domes in April 2006. Following the advertisement, KenGen received 3 bids and the Evaluation Committee settled on the lowest evaluated responsive bidder. The recommendation was placed before the Tender Committee which awarded the tender for provision of drilling services for the six geothermal wells to the Chinese Company at their quoted price.

Investigations further established that, it was a term in the Tender document that there was a possibility that the contract between the successful bidder and KenGen there was a possibility for extension of the contract to drill additional wells upon successful drilling of the initial six wells. Pursuant to this clause in the contract, the successful company after drilling the initial six wells was contracted by KenGen to drill additional fifteen wells. The investigations did not reveal that the extension clause in the contract was only intended to benefit the Chinese Company. It was established that all the bidders who participated in this particular tender were aware of the extension clause to drill additional wells. The extension of the contract was also approved by the KenGen Tender Committee. There were no procurement irregularities to warrant or support any criminal charges against the officials of KenGen.

A Report was compiled and forwarded to the Director of Public Prosecutions on 2nd September, 2013, with recommendations for closure of the inquiry file.

On 1st October, 2013, the DPP returned the file and advised that further investigations be undertaken.

4. KACC/FI/INQ/15/2012

Inquiry into allegations of conflict of interest and abuse of office against the Top Management of the National Housing Corporation (NHC) by way of allocating themselves several housing units from Schemes developed by the Corporation

The investigations established that the members of House Allocation Committee (HAC) at NHC irregularly allocated houses developed by NHC to themselves, their friends and relatives. They neither declared their interest during the meetings in which the HAC deliberated on the allocations nor did they disqualify themselves from participating in the allocations that directly favoured them. The investigations established that the said members of the House Allocation Committee were culpable for conflict of interest and abuse of office.

A Report was compiled and forwarded to the Director of Public Prosecutions on 19th September, 2013 with recommendations that former Managing Director, the Company Secretary, the Technical Manager, Chief Estate Officer, Senior Legal Officer and the Finance Officer, all

members of the National Housing Corporation, House Allocation Committee be charged with the offences of Abuse of Office contrary to section 46 of and Conflict of Interest contrary to section 42 of the Anti- Corruption and Economic Crimes Act, 2003.

On 3rd October, 2013, the DPP accepted the recommendation for prosecution.

5. KACC/FI/INQ/43/2011

Inquiry into allegations that an Accountant II in the Ministry of Education misappropriated a sum of Kshs.3,666,178.00 which was meant for the facilitation of workshops for Primary School Teachers at Migori Teachers Training College.

Investigations established that a workshop for primary school teachers in western Kenya facilitated by the Ministry of Education was held at Migori Teachers Training College. Investigations further established that a sum of Kshs.3,684,000/= was approved for this exercise. Investigations also established that the said money was given to the Accountant as imprest to cater for transport reimbursement and for payment for the workshop facilities.

Investigations however revealed that part of the imprest in the sum of Kshs. 63,000 was misappropriated by the officer assigned the task of paying reimbursements to the workshop participants. In an attempt to account for the imprest, the suspect used forged payment schedules.

A report was compiled and forwarded to the Director of Public Prosecutions on 23rd September, 2013 recommending that the suspect, an Assistant Director Quality Assurance and Standards in the Ministry of Education be charged with the offences of Fraudulent acquisition of public property contrary to section 45 (1) (a), Abuse of office contrary to Section 46 and Deceiving principal contrary to section 41 of the Anti- Corruption and Economic Crimes Act, 2003. It was further recommended that civil proceedings be instituted against the suspect to recover the sum embezzled.

On 1st October, 2013, the DPP accepted the recommendation for prosecution.

6. EACC/GSA/FI/INQ/7/2011

Inquiry into allegations that land belonging to Garissa Municipal Council namely Garissa Township BlockII/96 was fraudulently leased out to a private person to the detriment of the Government and people of Kenya

The investigations established that the land was allocated to a private person and a Certificate of Lease registered on 30/6/1997 was issued to him. Whereas the allegation made was that the land was part of a road reserve of the Thika-Garissa road and therefore not available for alienation, investigations established that the land was outside the road reserve area, described as the area inside the 30 metres width on either side of the road. Investigations however established that although the land was outside the road reserve area, it was still part of Government land. Therefore for any allocation to take effect, the process of alienation of Government land was applicable.

Investigations further established that the due process of alienation of public land as prescribed under the Government Land Act (Now repealed) was not followed in allocating this particular parcel of land to the private person.

A Report was compiled and forwarded to the Director of Public Prosecutions on 19th July, 2013 recommending that the Civil Litigation and Asset Recovery Department of the Commission demands from the allottee of the said land, the surrender of the title and in default civil recovery proceedings be instituted.

On 21st August, 2013, the DPP returned the file and advised that further investigations be undertaken.

7. CR.INQ. FILE NO.7/2013

Inquiry into allegations of corruption against an Assistant Chief, Lenana sub-Location

The investigations commenced after a report was made to the Commission that the suspect,, who is an Assistant Chief, Lenana Sub-Location had solicited for a a benefit from members of a Self Help Group in Lenana as an inducement so as to allow the group to continue operating a car wash along Ngong Road. Since none of the complainants who reported the solicitation was involved in the investigations, one of the officers of the Commission posed as the Chairman of the Self Help Group. The suspect solicited for a benefit of Kshs.20,000/= which he later reduced to Kshsl.15,000/= from the officer. He also received a benefit from the said officer. In view of the fact that the person who made the report against the suspect did not record a statement and was not involved in the investigation, the Commission was of the opinion that the evidence would not be sufficient to sustain corruption charges against the suspect.

A Report was compiled and forwarded to the Director of Public Prosecutions on 20th September

2013 with recommendations that administrative action be taken against the suspect since he had used his office to improperly enrich himself in contravention of the provisions of section 11(1) of the Public Officer Ethics Act.

On 1st October, 2013, the DPP accepted the recommendation for administrative action.

8. CR.141/284/2013

Inquiry into allegations of corruption against a Police Officer based at the Ruiru Criminal Investigations Department office

The investigations established that the suspect, who is a Police Officer attached to Ruiru Criminal Investigations Divisional Police Headquarters corruptly solicited for a benefit of Kshs.30,000/= and Kshs.20,000 respectively on different dates from the complainant as an inducement to forbear charging him with an offence of obtaining money by false pretences. Investigations further established that the officer received a benefit.

A Report was compiled and forwarded to the DPP on 30th August 2013 with recommendations 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 and that he should therefore be prosecuted accordingly.

On 2nd October, 2013, the DPP accepted the recommendation for prosecution.

9. EACC/MSA/RP/INQ/2/2013

Inquiry into allegations of corruption against an Inspector, National Hospital Insurance fund, Mombasa Branch

The investigations established that the accused who is an employee of National Hospital Insurance Fund, Mombasa Branch corruptly solicited and received from the complainant a benefit of Kshs.150,000/= as an inducement to forbear charging the complainant with the offence of failure to remit employee NHIF contributions.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22nd August, 2013, with the recommendations that the accused be charged with the offence of corruptly soliciting for and receiving a benefit.

On 25th September, 2013, the DPP accepted the recommendation for prosecution.

10. EACC/KSM/OPS/INQ/1/2012

Inquiry into allegations that a Police Officer based at Kilgoris Divisional Criminal Investigations Office corruptly solicited for a benefit of Kshs.20,000/= from the complainant as an inducement so as to forbear charging him with the offences of dealing in illegal firearms and poaching.

Investigations did not manifestly indicate the solicitation of a benefit by the officer to sustain any corruption charges against him.

A report was compiled and forwarded to the Director of Public Prosecutions on 16th July, 2013 with recommendations that, due to lack of evidence to sustain any criminal charges, the file be closed.

On 3rd September, 2013, the DPP accepted the recommendation for closure. He however further advised that the matter be referred to the Inspector General of Police for appropriate administrative action to be taken against the Police Officer.

11. EACC/INQ/3/2013

Inquiry into allegations of corruption against a Senior Assistant Programme Director, Public Sector Reforms and Performance Contracting Department, Office of the Prime Minister

The investigation established that the suspect who was an employee in the Office of the Prime Minister identified a hotel in Embu to host a training for trainers in a programme organized by the Department of Public Sector Reforms and Performance Contracting and which was sponsored by the United Nations Development Programme (UNDP). Investigations further established that the officer in cahoots with an employee of the hotel hatched a plan to get a 10% commission from the hotel once UNDP made payments. In this regard, the officer received a sum of Kshs.76,600/= from the Hotel as a commission for facilitating the procurement of the hotel. Investigations also established that after the matter reached the office of the Permanent Secretary, the officer refunded back the entire sum to the hotel cashier.

The Commission was of the opinion that the officer's conduct went against the tenets of the provisions of the Public Officers Ethics Act, 2003 which requires a public officer to carry out his duties in a manner that maintains public confidence in the integrity of his public office.

A Report was compiled and forwarded to the Director of Public Prosecutions on 7th August, 2013 with recommendations that administrative action be taken against the accused for acting contrary to Section 11 of the Public Officers and Ethics Act, 2003.

On 5th September, 2013, the DPP accepted the recommendation for administrative action.

12. CR.141/297/2013

Inquiry into allegations of corruption against the Member of Parliament for Kasarani Constituency

The investigations established that the Member of Parliament corruptly solicited from the complainant a benefit of Kshs.100,000/= as an inducement to facilitate payment of Kshs.3,342,716.77 to the complainant for a CDF project which the complaint's company had been awarded and completed at Baba Ndogo Secondary School.

A Report was compiled and forwarded to the Director of Public Prosecutions on 30th July, 2013, with the recommendations that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 48 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 12th August, 2013, the DPP accepted the recommendation for prosecution.

13. CR 760/434/2013

Inquiry into allegations of corruption against three Police Officers attached to the Anti-Narcotic Drugs Police Unit, Nakuru.

The investigations established that the suspects corruptly solicited for a benefit from the complainant as an inducement to forbear charging her with unspecified charges and to offer protection for her business. The suspects were arrested and charged before the Nakuru Anti-Corruption Court.

A report was compiled and forwarded to the Director of Public Prosecutions on 22nd July, 2013 with recommendations that the suspect be charged with the offence of corruptly soliciting for and receiving a benefit contrary to section 48 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 6th August, 2013, the DPP accepted the recommendation for prosecution.

14. CR 764/243/2013

Inquiry into allegations that a Police Officer attached to Kinangop Police Station corruptly solicited for a benefit from the complainant as an inducement to forbear charging him with the offence of murder.

The investigations revealed that the suspect, corruptly solicited for and received a benefit of Kshs.20, 000/= from the complainant. He was arrested and charged before the Nakuru Anti-Corruption Court.

A Report was compiled and forwarded to the Director of Public Prosecutions on 16th July 2013 with recommendations 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 6th August, 2013, the DPP accepted the recommendation for prosecution.

15. EACC/OP/INQ/NYR/1/2013

Inquiry into allegations that the Officer in Charge of Laare Police Station corruptly solicited for a benefit of Kshs. 10,000 from the complainant as an inducement to facilitate the conduct of investigations into his complaint of malicious damage to church property.

The investigations established that the suspect solicited for a benefit from the complainant. He however did not receive the benefit during the investigations. He was arrested and charged before the Meru Anti-Corruption Court.

A Report was compiled and forwarded to the DPP on 9th July 2013 with recommendations that the suspect be charged with the offences of corruptly soliciting for and agreeing to receive a benefit under section 39 (3) (a) as read with Section 48 (1) of the Anti- Corruption and Economic Crimes Act, 2003.

On 5th August, 2013, 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	15
No. of files recommended for prosecution	10
No. of files recommended for administrative or other action	3
No. of files recommended for closure	2
No. of files recommended for prosecution and the cases are already lodged before Court	8
No. of files where recommendation to prosecute accepted	10
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	1
No. of files where closure not accepted	1
No. of files awaiting Director of Public Prosecution's action	0

DATED AT NAIROBI THIS

DAY OF

2013

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