



THE ETHICS AND ANTI-CORRUPTION COMMISSION



**THE SECOND QUARTERLY REPORT FOR THE YEAR 2015
COVERING THE PERIOD
1ST APRIL TO 30TH JUNE, 2015**

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 Second Quarter of the year 2014, and is for the period commencing 1st April, 2015 to 30th June, 2015.

INVESTIGATION REPORTS COVERING THE PERIOD 1ST APRIL TO 30TH JUNE, 2015

1. EACC/FI/INQ/100/2014

Inquiry into allegations that the Kisumu County Speaker and Kisumu County Assembly Service Board irregularly contracted an agent at a cost of Kshs.15,400,000.00 to facilitate the travel for 70 Members of the County Assembly(MCAs) and Members of County Staff to Singapore, Israel and China

Investigations established that the procurement of the private agent by the Kisumu County Assembly Board to facilitate conferences in three destinations was irregular. There was no due regard to the public procurement regulations and the said agent was engaged without due competition. The method of procurement the County Assembly Service Board used was irregular, and further the Board usurped the mandate of the Tender Committee to make the award of the contract to the said agent. Investigations further established that the Kisumu Assembly Speaker received money from the said agent which was an inducement for the said irregular award.

A Report was compiled and forwarded to the Director of Public Prosecutions on 10th April, 2015 recommending that the Members of the Kisumu County Assembly Service Board be charged jointly with the offence of willful 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. It was further recommended that the Speaker of the Kisumu County Assembly, her husband and the directors of the private agent be charged with the offence of conspiracy contrary to section 317 of the Penal Code.

On 7th May 2015 the DPP accepted the recommendation for prosecution.

2. EACC/FI/INQ/103/2014

Inquiry into allegations of alleged misappropriation of Kshs.15.9 million grant by the Ministry of Industrialization to Export Processing Zone Authority (EPZA).

Investigations established that EPZA procured the services of a consultant to undertake the design, bid evaluation and construction supervisor of works at the Athi River. Investigations further established that due regard to the requirement of the Public Procurement and Disposal Act, 2005 (PPDA) and Regulations were observed in the said procurement. The consultant performed the contract satisfactorily and payments were duly made. The investigation did not establish any culpability on the part of the officers involved in the procurement to warrant any criminal prosecution or other action against them.

A Report was compiled and forwarded to the Director of Public Prosecutions on 20th April, 2015 recommending the closure of the inquiry file.

On 10th April, 2015 the DPP accepted the recommendation for closure.

3. EACC/FI/INQ/32/2012

Inquiry into allegations of irregularities in awarding NSSF Tender No.04/2010-2012 for the Design, Supply, Installation and Commissioning of appropriate Electronic Surveillance System – Closed Circuit Television (CCTV) & Restricted Access Control Systems to Micro City Computers Ltd at a tender sum of Kshs.244,825,708

Investigations established that after the need for CCTV cameras was identified, NSSF commenced procurement proceedings. Due process which included approval by the Board, Development of Tender Documents, Advertisements, Invitation for tender, sale of tender documents, Opening of Tenders by a Committee, Evaluation by a Committee and Notification of Award was complied with. The proposals (Financial and Technical) were submitted and were found to meet the threshold. Investigations further established although an award was made to the successful bidder, the contract was not concluded hence the legal contractual relationship was not established. The proceedings were terminated at the point when the Managing Trustee wrote to the successful bidder relaying the information of inability to proceed with the project due to budgetary constraints.

A Report was compiled and forwarded to Director of Public Prosecutions on 20th April, 2015 with recommendation that the inquiry file be closed.

On 8th May 2015 the DPP accepted advised that further investigations be carried out.

4. EACC/GSA/FI/INQ/9/2014

Inquiry into allegations that the Deputy County Commissioner and the District Clerk misappropriated relief food meant for the needy and vulnerable people of Garissa Sub County

Investigations established that the suspects colluded to acquire relief food meant for the needy and vulnerable people of Garissa Sub-County. They both prepared the list of beneficiaries in which they knowingly included names of non-existent groups of persons as beneficiaries. The Sub-County Relief Food Distribution Committee believing the list contained genuine beneficiaries approved it. The Deputy County Commissioner and the District Clerk prepared food permits and S11 forms for collection of the relief food, using

an unauthorized Government vehicle collected food and took it to the Deputy County Commissioner's office and failed to distribute it as required.

A Report was compiled and forwarded to Director of Public Prosecutions on 27th April, 2015 with recommendation that the Deputy County Commissioner and the District Clerk at the County Government 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.

On 7th May 2015 the DPP accepted the recommendation for prosecution.

✓ 5. **EACC/FI/INQ/63/2013**

○ **Inquiry into allegations that the Acting Chief Executive officer of the Youth Enterprise Development Fund (YEDF) chaired a Committee that approved Procurement of Hatcheries worth Kshs.200 million and further signed an addendum for payment knowing very well that these were not approved by the Board**

Investigations established that the Acting CEO of the Youth Enterprise Development Fund Board (YEDF) approved the purchase of hatcheries worth Kshs. 200 million whereas the said purchase had not been approved by the YEDF Board. Investigations established that the Board only discovered about the said procurement when the contract with supplier of the hatcheries had already been executed by the Chief Executive Officer. Investigations further established that, the first installment of the advance payment was made to the supplier without the company submitting the advance payment bond as per the terms of contract hence exposing the Fund to great risk. Investigations also revealed that the CEO sourced storage facilities for the hatcheries without following the requisite procurement procedures.

○ A Report was compiled and forwarded to Director of Public Prosecutions on 7th May, 2015 with recommendation that the Chief Executive Officer be charged 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 No. 3 of 2003 and engaging in a project without prior planning contrary to section 45(2) as read together with section 48 of the Anti-Corruption and Economic Crimes Act Cap 65 Laws of Kenya.

On 11th May 2015, the DPP accepted the recommendation for prosecution.

6. EACC/MSA/FI/INQ/03/2014

An inquiry into allegations of irregular purchase of Kilifi Governor's Residential House, by the Kilifi County Government at Kshs.168,000,000 during the Financial Year 2013/2014

Investigations established that due regard to the requirements of the PPDA, 2005 and Regulations thereto were observed in the procurement of the Kilifi Governor's residential house. There was no quantifiable monetary loss incurred by the procuring entity when procuring the Kilifi Governor's House. Further investigations established that the two independent valuations done on the same property returned a value indicating that the price offered by the owners of the premises was reasonable. The evidence obtained also did not establish that the officers involved in the procurement process were culpable, for any wrong doing.

A Report was compiled and forwarded to Director of Public Prosecutions on 7th May, 2015 with recommendation that the inquiry file be closed.

On 14th May, 2015, the DPP accepted the recommendation for closure. In addition, he advised that administrative action be taken against the procurement officers involved in the purchase of the Governor's residence.

7. EACC/FI/INQ NO.51/2014

An inquiry into allegations of irregular purchasing of 15 pre-used vehicles, Subaru Outback Motor Vehicles and 1 Toyota Land Cruiser for the Machakos County Executive Members through Single Sourcing and that they were during the Financial Year 2013/2014

Investigations established that the process of procurement was done by the office of the Governor and not the user department, which is the Ministry of Transport, Roads and Infrastructure. The Interim Tender Committee (ITC) contravened the law by endorsing the use of direct procurement for procuring the subject vehicles thus not ensuring that there was fair competition and that the prices at which the said vehicles were acquired was with the prevailing market rates. Further, the ITC endorsed the award of this tender to M/s Extreme Autos Limited through unlawful procurement method. Investigations further revealed that there was no market survey that was carried out and the supplier was handpicked. Investigations further established that the vehicles were never inspected before delivery and the delivery dates are not clearly indicated. The generation of the LPO was irregular since it was done way after the vehicles had been delivered and the payments by the finance officers were highly inconsistent.

A Report was compiled and forwarded to Director of Public Prosecutions on 11th May 2015 with recommendation that the suspects namely; the Assistant Director of Youth

training at the Ministry of Education Science and Technology, the Interim Head of Supply Chain Management of Machakos County Government, the Chief of Staff for Machakos County Government, the Acting Director of Administration and Planning in the department of Health and Emergency Services, a Senior ICT Officer working with the Ministry of Devolution in the Directorate of Personnel Management (PSTD), the County Secretary for Machakos County Government be charged jointly with the offence of willful 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, and the Governor of Machakos County Government 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 18th May 2015, the DPP accepted the recommendation for prosecution of all the County officials culpable for the irregularities. In regard to the Governor, the DPP advised that the matter should await the determination of the petition filed by the Governor in the High Court where orders were given barring any action against him.

8. ✓ EACC/FI/INQ/117/2014

An inquiry into allegations of full payment by Turkana County Government for work not done in respect of rehabilitation of Kaputir-Loyapat-Kainuk Road.

Investigations established that the process of procurement was fully followed up to the point of the award of contract for the rehabilitation of the aforementioned road which involved gravelling and grading. However, the gravelling of the road was not done yet the contractor received the full payment of the sum of Kshs.9,023,711 thereby benefiting for work not done. The contractor through the Manager whose role was to negotiate contracts raised invoices which were paid promptly by the County Treasury vide three (3) interim payment certificates. Investigations established that the payments were made based on false completion certificates prepared by the suspects purporting that gravelling of the road had been completed whereas no works were done.

A report was compiled and forwarded to Director of Public Prosecutions on 12th May, 2015 with recommendation that the County Executive Ministry of Roads, Transport, Housing and Public Works, Turkana County Government be charged with offences of Willful failure to comply with the law relating to the procurement contrary to Section 45(2) (b) and 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 other suspects be charged with the offence of fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) and (2) of the Anti-Corruption and Economic Crimes Act, 2003. The Superintendent of Roads in the Ministry of Roads, Transport, Housing and Public Works be charged with the offence of fraudulent acquisition of public property contrary to section 45(1) (a) as read with section 48(1) and (2) of the Anti-Corruption and

Economic Crimes Act, 2003. The County Executive Ministry of Roads, Transport, Housing and Public Works, Turkana County Government and the Superintendent of Roads in the Ministry of Roads, Transport, Housing and Public Works be charged with the offence of knowingly giving a misleading document to one's principal contrary to section 41(2) as read with section 48(1) and (2) of the Anti-Corruption and Economic Crimes Act, 2003.

On 15th May, 2015, the DPP accepted the recommendation for prosecution.

9. EACC/FI/INQ/45/2013

Inquiry into allegation of irregular withdrawal of Kshs.3,000,000 (Three million shillings) on 18th December, 2012 from KCB Account Number 1134443684, Kitengela Branch, held by Kenya Meat Commission, a State Corporation

Investigations established that the Company Secretary accompanied the Managing Commissioner and the Chief Accountant to Kitengela Branch to carry out a transaction to pay certain debtors. It was established that the three, together with one person, who is not a subject to investigations, were nominated as the signatories to the said account. Investigations further established that the sum of Kshs. 3 million was withdrawn in the name of the Company Secretary because the Managing Commissioner did not have his National ID on him at that time and that immediately the funds were withdrawn the same were handed over to the Managing Commissioner in the presence of the Chief Accountant within the precincts of the Banking Hall. Investigations established that the money withdrawn was not accounted for.

A Report was compiled and forwarded to the Director of Public Prosecutions on 13th May, 2015 recommending that the suspects be charged with the offences of Abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act, 2003, Unlawfully acquiring public property contrary to section 45(1) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003; and Conspiracy to commit and offence of corruption contrary to section 47A (3) of the Anti- Corruption and Economic Crimes Act, 2003.

On 18th May, 2015, the DPP accepted the recommendation for prosecution.

✓ 13. EACC/KSM/INQ/FI/04/2014

Inquiry into allegations that Nyamira County Assembly irregularly procured and awarded Medical Insurance Covers for Members of County Assembly through single sourcing and at an inflated rate of Kshs.30 million

Investigations established that the procurement for provision of medical cover was done through a Request for Quotations and no tenders were floated. The procedure used did not comply with the Procurement Law and Regulations as the amount involved called for an open tendering process and not Request for Quotation; and the Tender Committee in breach of the Public Procurement and Disposal Act awarded the contract. Investigations further revealed that there was no Inspection and Acceptance Committee contrary to the provisions of the Public Procurement and Disposal Regulations, 2006. Investigations established that no Local Service Order was issued to the service providers awarded the contract.

A Report was compiled and forwarded to the Director of Public Prosecutions on 15th May, 2015 with recommendation that members of the Nyamira County Assembly Tender Committee be charged with the offence of Careless failure to comply with applicable procedures and guidelines relating to procurement and tendering of contracts contrary to section 45 (2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003. The Acting Clerk and the Principal Finance Officer be charged jointly with the offence of willful failure to comply with the applicable procedures and guidelines relating to management of funds contrary to section 45(2) (b) as read with section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003. Separately the Principal Finance Officer be charged with the offence of fraudulently making payment from public revenue contrary to section 45(2) (a) (iii) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 20th May, 2015, the DPP accepted the recommendation for prosecution.

✓ 14. EACC/FI/INQ/01/2013

Inquiry into alleged loss of public funds in the project of tarmacking of the Kamukuywa-Kaptama-Kapsokwony-Sirisia Road

Investigations established that the project was advertised on the print media on 10th January, 2007. Investigations also established that the tender had attracted four (4) applicants who were all present during the pre-bid sit visit conducted on 12th February, 2007. Investigations established that after due procurement process, the contract was awarded to the successful tenderer at a contract sum of Kshs.2,699,623,837.35 for the construction to bitumen standards of Kamukuywa-Kaptama-Kapsokwony-Sirisia

(D285/D265) roads. The Committee's decision was communicated to the user department – Chief Engineer Roads on 13th April, 2007 and the successful and unsuccessful bidders were notified of the award whereby the successful bidder promptly accepted the offer. However, at the commencement of works on the road, the Resident Engineer proposed a redesigning of the project on the ground that the consultant who had done the designing had failed to take into account certain parameters. The Cabinet Secretary for Roads who was the Permanent Secretary, Ministry of Roads and Public Works signed a Memorandum of Understanding between his Ministry and a Construction Company that the Resident Engineer was to, in effect re-design the project, which he did. This decision taken ignored the fact that the design that had previously been done and for which the Government paid Kshs.33 million, a fact well within the knowledge of the suspect. The re-designing was to cost the Government additional costs which were not factored in for the project.

Investigations further established the Resident Engineer in charge of the project informed the Ministerial Tender Committee that the re-designing would not have any cost implications, a fact he knew was misleading. The Evidence obtained revealed that the suspects were culpable for abuse of office.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22nd May, 2015 recommending that the suspects, the then Permanent Secretary, Ministry of Roads, the Chief Engineer, Roads and the Resident Engineer, Kamukuywa-Kaptama-Kapsokwony-Sirisia road be charged jointly with the offence of Abuse of office contrary to section 101 as read with section 102A of the Penal Code, whereas the Chief Engineer, Roads be charged with the offence of giving a false document to a principal contrary to section 41 as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act.

On 28th May 2015 the DPP accepted the recommendation for prosecution.

15. EACC/FI/INQ/063/2015

Inquiry into allegations of irregular leasing of Kenya Veterinary Vaccine Production Institute (KEVEVAPI) Land at Tigoni in Limuru

The investigation established that KEVEVAPI received a letter from a farmer requesting to be allowed to clear and do farming on a portion of KEVEVAPI land in Limuru. A similar request was received from Kenya Agricultural Research Institute (KARI), proposing that they be allowed to use 20 acres of the land for a potato research. The Committee then recommended that the requests be considered and approved by the Full Board of Directors. Evidence obtained revealed that a letter of offer granting the request was given to the farmer and he entered into a contract with the Institute. The letter was given by the Managing Director and Head of Procurement before the requisite approval was given by the Board.

Whereas it was alleged that the Cabinet Secretary for Agriculture was the one who had leased the land from KEVEVAPI, investigations revealed that he was not involved nor did he influence the approval given to the private farmer to lease the land.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22nd May, 2015 recommending that the Managing Director be charged with the offence of abuse of office contrary to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes, 2003. It was further recommended that the Managing Director and the Head of Supply Chain Management be charged jointly with the offence of willful failure to comply with the law or applicable procedures and guidelines relating to procurement, contrary to section 45 (2) (b) as read with section 48(1) of the Anti-Corruption and Economic Crimes, 2003.

On 28th May 2015 the DPP accepted the recommendation for prosecution.

16. EACC/NYERI/FI/INQ/1/2014

Inquiry into allegations that the Embu County Secretary and three other County Officials awarded contracts for the Rehabilitation of the Embu Municipal Stadium without following the applicable procurement procedures

Investigations established that the procurement process in regard to the rehabilitation of the Embu Stadium and construction of a perimeter wall was flawed. The direct procurement of the contractor was not approved by the Tender Committee. Investigations further established that no tenders were invited and some of the contractors who purportedly bid for the two projects confirmed that they did not bid an indication that the bids were not genuine documents. There was no tender opening exercise in this procurement and the contractor engaged by the Embu County was not in the approved list of pre-qualified contractors for the County and the Evaluation Committee that evaluated the bids was not properly constituted as only two persons evaluated the bids instead of the three provided for in the Public Procurement and Disposal Act.

Investigations further established that the award of the contract for the rehabilitation of the Embu Stadium was irregularly made by the County Secretary; who also tried to implore upon the members of the Tender Committee and other county officials to tamper with documents.

A Report was compiled and forwarded to the Director of Public Prosecutions on 21st May, 2015 recommending that the suspects be charged with the offence of Conspiracy to Commit an offence of economic crime contrary to section 47A as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003, the County Secretary Embu County Government 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 willful failure to comply with the law relating to procurement contrary to section 45 (2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003.

On 2nd June 2015 the DPP accepted the recommendation for prosecution.

17. EACC/FI/INQ/50/2014

Inquiry into allegations that Multi Media University (MMU) irregularly awarded the contract for reroofing to Multimedia Hotel for Kshs.10,030,770.= without following Public Procurement and Disposal Act 2005 and the 2006 regulations

Investigations established that the proposal for works was presented to the Tender Committee meeting where the request was accepted and approved but subject to the management's approval of the project proposal. The Committee also approved use of 2009/2010 pre-qualified list of suppliers in addition to responsive bidders who participated in the Tender for the Perimeter Fence and the Gymnasium which were through the Open Tendering method. It was agreed that that Tender uses the Restricted Tendering method so as to enhance competitiveness in the bidding. As such the Tender Committee in this case did not go wrong when they used the prequalified six suppliers for the Tender for the Perimeter and Gymnasium as the Open Tender method was used to identify them during prequalification. In addition the Tender Committee used the four prequalified suppliers in this service that qualified in the year 2009/2010 thus making a total of ten suppliers. This was to fulfill the provisions of section 53(3) of the PPDR. The Clerk of Works confirmed that the work was done to his satisfaction and as per the Bill of Quantities (BQs and the contract. AS such the PPSA 2005 and PPDR 2006 were not flouted. The Hotel was reroofed and work done.

A Report was compiled and forwarded to the Director of Public Prosecutions on 25th May, 2015 recommending that the inquiry file be closed.

On 19th June 2015 the DPP accepted the recommendations for closure of the inquiry file.

18. EACC/MSA/FI/INQ/06/2013

Inquiry into allegations of irregular withdrawal of Kshs.1.6 million from Lamu West CDF Project Management Committee account allocated for construction of a cattle dip

Investigations established that the Cattle Dip Project in Lamu West was approved by the Lamu West CDF Committee and a sum of Kshs.2,000,000/- was approved for the project. The same was cleared and authorized by the CDF Fund Accounts Manager who prepared a voucher instructing the Lamu District Accountant to prepare a cheque of Kshs.2 million

in favour of the construction of the Cattle Dip, which cheque was later deposited in Kenya Commercial Bank (KCB). Investigations established that since the funds in the said account had still not been utilized and the Personal Assistant to the Lamu West Constituency Member of Parliament approached the Project Management Committee Members with a view to borrow Kshs.1,675,000/= from the project's account to be transferred to the CDF office account.

Investigations established that a promise was made by the Personal Assistant that the said amount would be reimbursed once the funds were allocated and sent to the Lamu CDF office from the National Assembly. Investigations further revealed that it is clear that Lamu Constituency Fund Committee Members and Cattle Dip Project Management Committee members had schemed to transfer the said funds from the PMC account without due procedure. It is also clear that the Accounts Manager and the Treasurer facilitated the said transfer. The Accounts Manager confirms that after the unwarranted transfer of funds, the same were in custody of the CDF Committee Treasurer. Investigations further established that Kshs.1,005,000/- was transferred from the Lamu West Constituency office account to a Bookshop, a business name registered in the name of the Member of Parliament's wife from the Lamu West Constituency office account. The MP is also a signatory of the Bookshop's bank account. The investigations established that the MP used the said Kshs.1,005,000/- for his own personal use.

A Report was compiled and forwarded to the Director of Public Prosecutions on 27th May 2015 recommending that the Lamu West Constituency Fund Committee Members and the Co-operative Cattle Dip Project Management Committee Members be charged jointly with offences of conspiracy to commit an offence of Economic Crime contrary to Section 47A as read with Section 48 of the Anti-Corruption and Economic Crimes Act, 2003, irregular re-allocation of allocated funds within the Constituency Development Fund contrary to Section 30 of the Constituencies Development Act No.3 of 2013 and misappropriation of Constituency Development Funds Contrary to Section 48 of the Constituencies Development Fund Act No.3 of 2013. It was further recommended that the Member of Parliament of Lamu West Constituency 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 2nd June 2015 the DPP accepted the recommendation for prosecution.

19. EACC/FI/INQ/52/2015

Inquiry into allegations of Financial, Human Resource Management and Procurement irregularities in the Narok County Government

Investigations established that the Narok County Council Government had entered into an agreement with Equity Bank Limited for provision of Revenue Collection Services using the pre-paid Smart Card system which agreement was terminated following a

disagreement. The termination of the agreement was contested in court vide High Court of Kenya at Nairobi Milimani, Civil Case No.266 of 2013 and a decision was entered in favour of Narok County Government and the matter was referred to arbitration. Investigations established that due process was followed in the procurement of automation of revenue collection services by the Narok County Government. Investigations further established that the revenue collected from the Mara Triangle is deposited into the County Revenue KCB Narok Branch, and neither the Governor of the County Government nor any other County official are directors and signatories of the accounts of the County Government and Mara Conservancy.

A Report was compiled and forwarded to the Director of Prosecutions on 4th June, 2015 recommending that the inquiry file be closed for lack of evidence to support any prosecution or any other action.

On 10th June 2015 the DPP returned the file for further investigations.

20. EACC/FI/INQ/234/2014

Inquiry into allegations of use of funds exceeding approved budget by the County Assembly against the Makueni County Governor and His Executive Committee for the purchase of a milk plant for the Kikima Dairy

Investigations established that the provisions of the Public Procurement and Disposal Act as far as the procurement of the project is concerned were not strictly followed. Investigations established that the negotiations between the County Government and the winning bidder were entered into and subsequently a contract price of Kshs.5,950,000 was agreed upon even before the tender had been awarded and a notification of the award given.

Investigations further established that the Tender Committee purported to award the contract to the winning bidder even though a proper evaluation of the tender had not been carried out in accordance with the Public Procurement and Disposal Regulations. The evidence obtained established that the County Secretary and the members of the Makueni County Government Tender Committee were culpable for the infractions of the procurement law and regulations.

A Report was compiled and forwarded to the Director of Public Prosecutions on 28th May, 2015 recommending that the employees of the Makueni County Government and Members of the Tender Committee be charged with the offences of conspiracy to commit an Economic Crimes contrary to section 47A, Willful failure to comply with the law relating to the Procurement contrary to section 45(2) (b) and Knowingly giving a misleading document to one's principal contrary to section 41 (2) as read with section 48 (1) and (2) of the Anti-Corruption and Economic Crimes Act, 2003. I was further recommended that the Acting County Secretary be charged with the offences of Abuse of office contrary to

section 46 and willful failure to comply with the law relating to the Procurement contrary to section 45(2) (b) as read together with section 48 of the Anti-Corruption and Economic Crimes Act, 2003.

On 10th June 2015 the DPP accepted the recommendation for prosecution.

21. EACC/FI/INQ/61/2015

Inquiry into allegations of irregular award of secret allocation of permits to import sugar against Cabinet Secretary in the Ministry of Agriculture, Livestock and Fisheries

Investigations established that the Kenya Sugar Board Directorate which is mandated to issue licenses, for purposes of accountability established an ad-hoc Regulation and Compliance Committee to consider applications for issuance of permits to import sugar. Investigations established that after the said committee approved the issuance of several permits, an official of the Sugar Directorate would then issue permits as recommended. Investigations established that the Cabinet Secretary in the Ministry of Agriculture, Livestock and Fisheries has no role in such decision making; and thus did not issue any irregular sugar import permits as alleged. Investigations however revealed that there are lapses in the issuance of sugar import permits owing to absence of Regulations.

The investigations did not establish any culpability on the part of the Cabinet Secretary.

A Report was compiled and forwarded to the Director of Prosecutions on 4th June, 2015 recommending that the inquiry file be closed. The Commission however recommended that there is need for the Ministry of Agriculture, Livestock and Fisheries to liaise with the Office of the Attorney General to formulate watertight regulations either under the **Crops Act** or **Agriculture Fisheries and Food Authority Act** to guide the process of issuance of the permits.

On 10th June 2015 the DPP accepted the recommendation for closure of the inquiry file.

22. EACC/FI/INQ/45/2015

Inquiry into allegations of corruption against the Cabinet Secretary, Ministry of Energy and the Nairobi Senator in a tender award at Kenya Pipeline Company (KPC)

Investigations established that the existing KPC Line 1 pipeline was commissioned in 1978 or thereabouts, and since then regular intelligent pigging is carried out to assess the condition of the pipeline. In the course of one such pigging, it was decided that it was not economically viable to continue using the pipeline because of the high cost of maintenance. Following this decision, the KPC management and the Board decided that

it was necessary to replace it with a new pipeline. A decision was made to procure a consultant to carry out design of a new pipeline to cater for demand up to year 2044, prepare tender documents for procurement of a contractor and supervise the implementation of the project.

Investigations revealed that a consultant to do the aforementioned was procured through competitive bidding and a contract signed in mid 2012. The consultant carried out the design which was reviewed and approved by KPC on the basis of which they prepared tender documents for the procurement of a contractor. Investigations established that due process was complied with in the procurement of a contractor who was awarded the tender at a contract price of USD 484,502,886.40. The evidence obtained also revealed that the Public Procurement Administrative Review Board after hearing complaints in regard to the procurement process gave the same a clean bill of health and allowed the procuring entity to enter into contract with successful bidders. The contract was signed on 1st July, 2014 after several court cases. The evidence did not establish any acts of corruption by the Cabinet Secretary and the Senator to warrant any action against them.

A Report was compiled and forwarded to the Director of Public Prosecutions on 4th June 2015 recommending that the file be closed with no further action.

On 10th June 2015, the DPP accepted the recommendation for closure of the inquiry file. The DPP however advised that investigations be carried out in respect of the allegation that the Cabinet Secretary, Ministry of Energy and the Managing Director, Kenya Power and Lighting Company Limited have been receiving bribes in the award of several tenders.

23. EACC/FI/INQ/40/2015

Inquiry into allegations of irregular award of a contract award to a Clearing and Forwarding Company by the Cabinet Secretary for Transport and Infrastructure

Investigations established that sometime in 2012, the Government of Kenya and the China Road and Bridge Corporation (CRBC) entered into a contract for the construction of the Standard Gauge Railway (SGR). The contract with CRBC was a turnkey contract in which CRBC was contracted as an engineering, procurement and construction (EPC) contractor. CRBC was at liberty to procure their own labour and contractors and other services which included Investigations further revealed that some of the contractors engaged by CRBC included Clearing and Forwarding Agents to clear goods for the construction. Investigations established that the Cabinet Secretary and the Ministry of Roads did not have any control over CRBC in regard to the above function. The investigations did not establish that established that the aforementioned Clearing and Forwarding Company was engaged by CRBC. The evidence obtained did not also reveal that the Cabinet Secretary was related to the said company.

A Report was compiled and forwarded to the Director of Prosecutions on 4th June 2015 recommending that the inquiry file be closed.

On 10th June 2015 the DPP accepted the recommendation for closure.

24. ✓ EACC/FI/INQ/110/2014

Inquiry into allegations that top Government Officials, Members of Parliament and State/Public Officers were beneficiaries of Public Land Parcel No. L.R. 3586/3 IR 31187 with double allocation to Horatius Da Gama Rose M/s Muchanga Investment Ltd and Jos Konzolo of M/s Telesource.Com Ltd

Investigations established that the subject property was owned by a private person, and was later transferred to other persons upon demise of the initial owner. The said transfer was effected by the bank which was the administrator of the estate of the original owner.

Investigations further established that in unclear circumstances, the land was again transferred to another person who the investigations have established had long died at the time of the alleged said transfer. The evidence obtained revealed that the bona fide owners decided to subdivide the land in several plots with an intention of disposing them off. However, this owner later recalled the said subdivision and indicated that they wanted the land as one block. However, in again unclear circumstances and with the connivance of officials from the Lands office, the land was transferred to another company. This was effected through fraud and conspiracy and use of false documents.

When the investigations commenced, the Ministry of Lands and the Cabinet Secretary being the custodian of all land documents and information failed to give a clear position as to who the legitimate owner of the subject parcel of land was. The Cabinet Secretary openly interfered with the investigation by instructing her officers not to cooperate with the Commission, which necessitated the issuance of summons to Ministry officials to appear before the Commission. The Officers were under instructions not hand over documents relating to the parcel of land and not to record statements without the express permission of the Cabinet Secretary. The Cabinet Secretary acted in a manner contrary to her trust as the Cabinet Secretary; subversive to the constitution, to the great prejudice to the cause of law and justice.

A Report was compiled and forwarded to the Director of Public Prosecutions on 10th June, 2015 recommending that the Chief Registrar, Deputy Chief Land Registrar, Senior Deputy Director of Survey and Registrar of Titles be charged jointly with the offences of conspiracy to defraud contrary to section 317 of the Penal Code, breach of trust by a person employed in the public service contrary to section 127 of the Penal Code and concealing deeds contrary to section 288 of the Penal code and concealing evidence under section 66(1) (c) as read with section 66 (2) of the Anti-Corruption and Economic

Crimes Act. It was further recommended that the Director of the Company that currently also holds a title deed in regard to the subject land and his lawyer and the company be charged with the offence of conspiracy to defraud contrary to section 317 of the Penal Code, obtaining registration by false pretence contrary to section 320 of the Penal Code and uttering false documents contrary to section 353 of the Penal Code. The Cabinet Secretary Ministry of Lands, Housing and Urban Development be charged with the offence of obstruction contrary to section 66(1) (a) as read with section 66(2) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003.

On 17th June 2015 the DPP accepted the recommendation for prosecution.

25. EACC/FI/INQ/107/14

Inquiry into allegations that the County Government of Trans-Nzoia irregularly acquired Vipul House in Kitale at an exorbitant cost of Kshs.500 million on the pretext that the said building would be used as the Kitale Referral Hospital

The investigations established that pursuant to the County Tender Committee meeting of 3rd June, 2014, that approved the purchase of the building, the County Government of Trans-Nzoia wrote to the owners of the property informing them of the award. An agreement was drawn between the vendor and the County Government and a deposit of 105 million was paid to the vendor. The County Government used direct procurement in procuring the said building. They however failed to inform the Public Procurement Oversight Authority of the decision to use direct procurement method within the stipulated period which was a minor infraction.

A Report was compiled and forwarded to the Director of Public Prosecutions on 9th June, 2015 recommending that the file be closed with no further action.

On 17th June 2015 the DPP advised that further investigations be carried out in the matter.

26. EACC/MSA/FI/INQ/18/2014

Inquiry into allegations that the Ganze Member of Parliament and the Constituency Development Funds Manager jointly with others misappropriated funds from the CDF Account through purported Constituency Development Fund projects in the Financial Year 2013/2014 and conferring benefits for themselves and causing loss of public funds amounting to Kshs. 45 million.

Investigations established that although Ganze CDFC sought approval from the CDF Board for the implementation of the various projects in Ganze Constituency, these projects were not implemented. Investigations established that the Ganze MP in collusion

with other officials of the CDF approved several payments to various contractors for projects that were non-existent. Investigations further established that several documents were falsified in a bid to justify and authenticate the said payments which were not approved by the CDFC members. These included minutes of tender Committee minutes which were not held and payment vouchers. Investigations also established that there were no tenders advertised for the purported projects in respect of which payments were made.

Investigations further established that after payments were made to the several contractors and suppliers, some of the money received was paid back to the MP for Ganze, the Fund manager and other officials. The money was paid out through the bank and Mpesa transactions. The contractors and suppliers also received and retained the CDF funds whereas they had not rendered any services, supplied any goods or done any works to warrant received of public funds.

Investigations established that the Constituency Development Fund Manager, the Accounts Clerk, The Member of Parliament for Ganze Constituency and the Supply Chain Manager at Ganze jointly with contractors and suppliers actively participated in the embezzlement and misappropriation of funds and assets of the Ganze Constituency Development Fund causing loss of public funds and resources.

A Report was compiled and forwarded to the Director of Public Prosecutions on 10th June, 2015 recommending that the employees of the Ganze Constituency Development Fund be charged jointly with the offences of conspiracy to commit an offence of Economic Crimes contrary to section 47A, the Fund Manager, Accounts Clerk and the Supply Chain Manager be charged jointly with the offences of knowingly giving a misleading document to one's principal contrary to section 41 (2) engaging in a project without prior planning contrary to section 45 (2) (c) fraudulently making payments from public revenue contrary to section 45 (2) (b) as read with section 48 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003, breach of trust by a person employed in the public service contrary to section 127 of the Penal Code and fraudulent false accounting by a clerk or servant employed in the Public Service contrary to section 330 (b) of the Penal Code.

It was further recommended that the Ganze Member of Parliament, Fund Manager, Accounts Clerk and the Supply Chain Manager be charged jointly with the offences of abuse of office contrary to section 46, failure to comply with the law/applicable procedures and guidelines relating to procurement and tendering of contracts or incurring of expenditures contrary to section 45(2) (b) and failure to comply with the law/applicable procedures and guidelines relating to management of funds or incurring expenditures contrary to section 198 (b) as read with section 199 of the Public Finance Management Act, 2012; the Ganze Member of Parliament, the Fund Manager, Accounts Clerk, the Supply Chain Manager and the Kilifi County Government Economist be charged jointly with the offence of misappropriation of Constituency Development Funds contrary to section 48 of the Constituencies Development Fund Act No.3 of 2013.

On 15th June 2015 the DPP accepted the recommendation for prosecution. He however advised that the various contractors and suppliers also be charged with fraudulent acquisition of public property contrary to section 45(1) (a) of the Anti-Corruption and Economic Crimes Act, 2003.

27. EACC/FI/INQ/46/2015

Inquiry into allegations that the Managing Director of the National Water Conservation and Pipeline Corporation (NWCP) irregularly procured the structural cabling of NWCP Headquarters office block as well as employed unqualified staff members

Investigations revealed that the construction and completion of the NWCP Headquarters Office Block was provided for in its procurement Plan for the Financial Year 2012-2013. Investigations established that after the contract was awarded for the construction of the main Corporation Headquarters Office Block, it was later discovered that there was need to sub-contract for the installation of structural cabling in the same building. Investigations established that the tendering for the said additional works was carried out within the provisions of the Public Procurement and Disposal Act; and the contract awarded to the lowest evaluated bidder.

With regard to the employment of unqualified employees by the Managing Director, NWCP, investigations established that the said employees had genuine certificates. There were no irregularities in their employment.

A Report was compiled and forwarded to the Director of Prosecutions on 24th June, 2015 recommending that the inquiry file be closed.

On 1st July 2015 the DPP advised that further investigations be carried out in the matter.

28. EACC/NYR/FI/INQ/01/2015

Inquiry into allegations of irregular procurement of Technical Audit Services from a consultant by the County Government of Nyeri

Investigations established that the consultant engaged by the Nyeri County to carry out the technical audit services was not a pre-qualified consultant for the year 2014/2015. Investigations further established that the Chief Executive Member (CEM) for Roads and Infrastructure unilaterally hand-picked and invited the consultant to undertake the consultancy works yet the procurement process had not commenced. It is clear that the suspect breached procurement rules by failing to obtain the requisite approval to use restricted tendering from the Tender Committee before he wrote to the consultant inviting them to undertake the Consultancy Audit services. Investigations further established that

the Tender Committee did not approve the award of the contract to the consultant. Investigations further established that in spite of the procurement of the aforementioned contractor being flawed, the CEC Finance authorized payment to the consultant.

A Report was compiled and forwarded to the Director of Prosecutions on 19th June, 2015 recommending that the County Executive Secretary, Land, Housing and Infrastructure Development, County Executive Secretary – Finance and Economic Planning and the Chief of Staff jointly be charged with the offences of Willful failure to comply with the law or applicable procedures and guidelines relating to procurement, contrary to section 45 (2) (b) as read with section 48(1) (a) of the Anti-Corruption and Economic Crimes, 2003 and Abuse of office contrary to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes, 2003.

On 1st July 2015 the DPP accepted the recommendation for prosecution.

29. EACC/GSA/FI/INQ/01/2015

Inquiry into alleged irregular leasing ambulance services by Garissa County Government from Emergency Plus (E-Plus) Medical Services Ltd, a Company owned by the Kenya Red Cross

Investigations established that after the need arose for the purchase of ambulances by the Garissa County Government, a tender was advertised for interested persons to sell ambulances. Investigations however revealed that before the completion of the procurement process, the Governor of Garissa and other County Officials engaged negotiations with E-Plus Medical Services Limited, a company affiliated to the Kenya Red Cross for the lease of ambulance services. This was a departure from the initial process which envisaged purchase of ambulances. The hire of ambulance services from the said company was not budgeted for nor approved by the County Assembly.

Investigations further established that the open tendering process for the purchase of ambulances was thus shelved and E-PLUS Medical Services was directly procured to lease ambulance services to the Garissa County Government. The Governor of Garissa and other County officials negotiated and signed a contract for the lease of ambulance services at a monthly cost of Kshs. 600,000 per ambulance for six ambulances. There was no budgetary allocation for this engagement, the Supplementary budget for the County was passed two months after the County Government had already entered into a contract with the Kenya Red Cross and the latter had already billed the County for services rendered in March and April, 2014. Investigations further established that the Tender Committee of the Garissa County purported to award the contract to E-PLUS after purporting to evaluate bids from several ambulance providers. These other providers were categorical that they did not place any bids to lease ambulance services to the County. The purported award by the Tender Committee was thus a sham and a means to justify the contract with E-PLUS Medical Services Limited. It was also established that

in engaging the said company no due regard was made to the prevailing market prices to confirm whether the payments made to the company were within the market prices.

A Report was compiled and forwarded to the Director of Public Prosecutions on 25th June, 2015 recommending that Governor of Garissa County Government be charged with the offences of Abuse of office contrary to section 46 and Careless failure to comply with the law relating to management of public funds contrary to section 45(2) (b) as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003; The Members of the Garissa County Government Tender Committee be charged with the offence of Willful failure to comply with the law relating to procurement contrary to section 45(2) (b) as read together with section 48 of the Anti-Corruption and Economic Crimes Act, 2003. It was further recommended that the Chief officer of Health, Garissa County Government be charged with the offence of Engaging in a project without prior planning contrary to section 45(2) (c) as read with section 548 of the Anti-Corruption and Economic Crimes Act, 2003.

30. EACC/EL/INQ/8/2014

Inquiry into allegations that current Governor of Murang'a swore a false declaration in the self-declaration form set out in the First Schedule under the Leadership and Integrity Act, 2012 (LIA) and submitted the same to the Ethics and Anti-Corruption Commission on 11th December, 2012

Investigations established that the Governor, personally filled and signed the self-declaration form dated 11th December, 2012 under oath and submitted the same to the Ethics and Anti-Corruption Commission on the 11th December, 2012. In the said declaration, the suspect affirmed that he had not been convicted of any criminal offence a fact he knew was false. Investigations established that he had been convicted and sentenced to pay a fine of Kshs.400,000/= in default to serve six months in prison in criminal case no.2322 of 2010 at the Makadara Chief Magistrates Court on 3/8/2012.

A Report was compiled and forwarded to Director of Public Prosecutions on 20th April, 2015 with recommendation that the suspect be charged with the offences of False declaration contrary to Section 11 of the Oaths and Statutory Declarations Act and Providing false information to the Ethics and Anti-Corruption Commission contrary to Section 46 (1) (b) of the Leadership and Integrity Act, 2012 as read with Section 46 (2) of the same Act.

On 11th May, 2015, the DPP accepted the recommendation for prosecution.

31. ✓ EACC/EL/INQ/1/2015

Inquiry into allegations of breach of Chapter Six of the Constitution of Kenya and the provisions of the Ethics and Integrity Act, 2013 by the MP Nandi Hills and nominated MP at the Gilgil Weigh Bridge

Investigations established that the MP Nandi Hills and a nominated MP at the Gilgil Weighbridge in Gilgil Sub-County within Nakuru, jointly intimidated the Duty Manager, by invoking the name of the President and other Senior Government Officials with the intention of causing him to release a motor vehicle Registration No. KHMA 005A which had been impounded for violation of the Provisions of Section 12 (1) of the Kenya Roads Act. Investigations further established that the MP Nandi Hills created disturbance by repeatedly shouting and uttering abusive words to the officers manning the weighbridge demanding the release of the truck.

○ A report was compiled and forwarded to Director of Public Prosecutions on 4th May, 2015 recommending that the MP for Nandi be charged with the offence of creating disturbance in a manner likely to cause a breach of the peace contrary to Section 95(1) (b) of the Penal Code and the two be jointly charged with offences of incitement to disobedience of the law contrary to Section 96 (c) of the Penal Code and intimidation contrary to section 228 (1) of the Penal Code.

On 11th May, 2015, the DPP accepted the recommendation for prosecution, and further advised that the matter be referred to the National Assembly for disciplinary action against the two suspects.

32. EACC/OPS/INQ/11/2013

Inquiry into alleged financial impropriety at the National Police Service Commission

○ Investigations established that when the need arose for the National Police Service to lease office space, the Commissioners commenced a search for suitable premises. This was contrary to the provisions of the Public Procurement and Disposal Act and Regulations which places the responsibility on the Tender Committee. The NPSC directly procured the lease of the premises contrary to due procedure. Investigations further established that the National Police Service Commission also directly procured a contractor to partition the said leased premises. Investigations also established that persons who bid for the partitioning works used the documents of a company in which they were not directors or officers.

A Report was compiled and forwarded to Director of Public Prosecutions on 7th May, 2015 with recommendation that (i). The Chairman, Commissioners and Chief Executive Officer (NPSC), and the County Works Officer and Chief Superintendent be charged jointly with

the offence of willful 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. (ii). The persons who bid for the partitioning works be charged jointly with the offence of fraudulent acquisition of public benefit contrary to section 45 (1) (a) of the Anti-Corruption and Economic Crimes Act, 2003 and Engaging in fraudulent practice in procurement proceedings contrary to section 41 (1) and (4) as read with section 137 (1) (b) of Public Procurement and Disposal Act, 2005.

On 15th May 2015 the DPP declined the recommendation for prosecution of the NPSC Commissioners and CEO. He advised that administrative action be taken against the officers from the Public Works for breaching the procurement rules.

33. EACC/OPS/INQ/16/2013

Inquiry into allegations of corruption against a Revenue Collector at the County Council of Olkejuado

The investigation established that the suspect corruptly solicited for a benefit of Kshs.30,000/= from the complainant as an inducement to settle a land dispute between the complainant, a church minister and a businessman at Namanga. Investigations established that the suspect solicited for a benefit and sent his agents to collect the bribe on his behalf. However, at the time of the arrest of the suspects, two of them concealed the trap money.

A Report was compiled and forwarded to the Director of Public Prosecutions on 13th May, 2015 recommending that the suspect be charged with the offences 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 No. 3 of 2003. The other two suspects be charged with the offences of concealing evidence contrary to section 66 (1) (c) as read with section 66 (2) of the Anti-Corruption and Economic Crimes Act, No.3 of 2003.

On 19th May, 2015, the DPP accepted the recommendation for prosecution.

34. EACC/AT/INQ/17/2015

Inquiry into allegation that a former Minister for Transport, used his office to acquire a Kenya Railways House that had been set aside for purchase by former employees of the Corporation

Investigations established that house number K8 Kileleshwa is leased to an employee who works with the Ministry of Interior and National Coordination and that he has been living in the same house from 2008. Investigations established that the said lessee has entered into a tenancy agreement with Kenya Railways Corporation since 2014. The

occupant applied to lease the house and the procedure for renting was complied with. There is no evidence that the former Minister in any way influenced the said transaction by virtue of being the Minister for Transport, or used his office to deprive Kenya Railways Corporation staff of a house belonging to the Corporation as alleged. It was confirmed that he does not appear in the Corporation's records in regard to the houses.

A report was compiled and forwarded to Director of Public Prosecutions on 14th May, 2015 with a recommendation that the inquiry file be closed.

On 18th May, 2015, the DPP accepted the recommendation for closure.

✓ **35. CR.211/20/2015 CF THIKA ACC.690/2015**

○ **An inquiry into allegations of corruption against a Registration Clerk at the Births and Deaths Registration Office in Githunguri Sub-County**

The investigation established that the suspect corruptly solicited for a benefit of Kshs. 2,000/= from the complainant as an inducement to facilitate the processing of Birth Certificate application forms. Investigations established the solicitation and receipt of a benefit.

A Report was compiled and forwarded to the Director of Public Prosecutions on 13th May, 2015, recommending that the case against the suspect proceed to its logical conclusion.

On 19th June, 2015, the DPP accepted the recommendation for prosecution.

36. EACC/AT/INQ/20/2015

○ **Inquiry into allegations of irregular allocation of parcel of Land IRN (L.R.8934/10) at Maraboi Trading Center to a former Minister for Lands.**

Investigations established that the term for the lease of the parcel of land which was initially allocated to the family of the former Minister expired and no person expressed interest in the said parcel of land IRN (L.R.8934/10) at Maraboi Trading Center. The parcel of land was free for allotment to any applicant who expressed interest including the former Minister and he therefore applied for allotment. The allotment was transparent having gone through the County Council of Kipsigis Sub-Committee of Works, Town Planning and Markets Committee held on 18th November, 2008 in whose jurisdiction it was located. No irregularities were established in the said allocation of the land and neither the former Minister nor any of the officers involved in the allocation were culpable.

A Report was compiled and forwarded to the Director of Public Prosecutions on 19th May, 2015 with recommendation that the inquiry file be closed.

On 25th May 2015 the DPP accepted the recommendation for closure of the inquiry file.

37. EACC/AT/INQ/15/2015

An inquiry into allegations that the Former Secretary to the Cabinet used his office to irregularly acquire a Kenya Railways Corporation's House set aside for purchase by Former Employees of the said Corporation

Investigations established that former Secretary to the Cabinet leased a house from the Kenya Railways Corporation. The house is situated within Kileleshwa. Investigations further established that the Secretary entered into a two year Tenancy Agreement with Kenya Railways in 2009 and since then he has been paying rent which qualifies him as a tenant and not the owner of the said house. The evidence further reveals that the suspect refurbished the house without the permission of the Corporation due to the Corporation's inability to observe its obligations of ensuring timely maintenance and repairs of the house to make it habitable. This notwithstanding, the renovation has enabled the Corporation to fetch rent equivalent to that paid for similar KR houses in that area which is a beneficial to the Corporation. The investigation did not establish that the Secretary used his office to have the house leased to him nor did he acquire the house as alleged.

A Report was compiled and forwarded to the Director of Public Prosecutions on 20th May, 2015 with recommendation that the inquiry file be closed.

On 25th May 2015 the DPP accepted the recommendation for closure of the inquiry file.

38. EACC/OPS/INQ/NYR/1/2015

Inquiry into allegations of corruption against a Medical Doctor working at the Meru Level 5 Teaching and Referral Hospital.

The investigations established that the suspect who is a Medical Doctor, Meru Level 5 corruptly solicited for a benefit of Kshs.25,000.00/= from the complainant as an inducement to supervise an exhumation and perform a postmortem of the body of her deceased son.

Investigations established the solicitation and receipt of a benefit.

A Report was compiled and forwarded to the Director of Public Prosecutions on 21st May, 2015 recommending 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, No. 3 of 2003.

On 17th June 2015 the DPP accepted the recommendation for prosecution.

39. CR/021/9/2015 CF MOMBASA ACC. NO. 1/2015

Inquiry into allegations of corruption against an Assistant Director of Medical Services in the Health Services Department of Mombasa County Government

The investigations established that the suspect who is an Assistant Director of Medical Services in the Health Services Department of Mombasa County Government corruptly solicited for a benefit of Kshs.1,000/= from the complainant as an inducement in order to complete a P3 form for the complainant.

Investigations established the solicitation and receipt of a benefit by the suspect.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22nd May, 2015 recommending 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, No. 3 of 2003.

On 19th June 2015 the DPP accepted the recommendation for prosecution.

40. EACC/MSA/PI/005/2015

Inquiry into allegations that the Cabinet Secretary, Ministry of Lands, Housing and Urban Development conspired with valuers working in her Ministry and the alleged owner and vendor of Plot Number Mombasa MN/1/397 (Waitiki Farm) to inflate the cost of the said plot earmarked for purchase by the Government

Investigations established that the property Mombasa/Mainland North/1/397 belongs to Kencent Holdings Ltd. It is situated at Northern side of Mombasa County in Shanzu area famously known as Kwa Mbulo and measures approximately 86.84 acres. The said property was bought through a public auction way back on 10th November, 2006 in consideration of the sum of Kshs.43,945,000/- . Investigations established that squatters trespassed on the said land. Since it was becoming increasingly impossible for the bona fide owner of the land to occupy the same, the Government offered to purchase the land to settle the squatters.

Further investigations revealed that the proposal for the sale of the said property to the government was agreed upon by the Cabinet Secretary. An offer to sale the said property was tabled to her for consideration of the sum of Kshs.20,000,000/- per acre. Thereafter, the Cabinet Secretary held a meeting with the Ministerial Tender Committee to deliberate on the issue of purchasing the said property and the Committee approved the purchase of the said properties at the Government Valuation price. Investigations established that negotiations with the owner went on with the Cabinet Secretary and were subsequently escalated to the Office of the President. She then held several meetings with the owner to negotiate on the said offer.

The owner was offered Kshs.1,000,000,000/- but he declined for the reasons that the same was on the lower side way beyond the offer in the valuation. Investigations further established that the Cabinet Secretary, Ministry of Lands and Urban Development made a request for allocation of 2 billion from the Agricultural Settlement Fund for purposes of the purchase of Waitiki Farm at Kshs.1,000,000,000/- but property LR Number Mainland North 1/397 was kept pending for consideration. An additional sum of Kshs.1.1 billion was approved for the settlement Fund Trustees to enable the Ministry of Lands, Housing and Urban Development to acquire land for settlement of squatters.

The evidence did not establish that the offer price for the land was inflated nor was any collusion established between the Cabinet Secretary, the valuers and the owners of the subject property. There was no culpability established on the part of the Cabinet Secretary, Ministry of Lands and Urban Development and the owner of the Waitiki Farm, to warrant any action against them.

A Report was compiled and forwarded to Director of Public Prosecutions on 22nd May, 2015 with a recommendation that the inquiry file be closed.

On 28th May 2015 the DPP accepted the recommendation for closure of the inquiry file.

41. EACC/EL/4/2015

Inquiry into allegations of irregular appointments of Members to the National Social Security Fund Board by Cabinet Secretary for Labour

Investigations established that Cabinet Secretary for Labour appointed members to the Board of Trustees of the NSSF whereas they held positions in public office. This was contrary to the provisions of the NSSF Act contravening the provisions and regulations of the Act and the Constitution. The Cabinet Secretary alleged that he was not aware that the appointees were public officers.

A Report was compiled and forwarded to the Director of Public Prosecutions on 25th May, 2015 recommending that the Cabinet Secretary for Labour 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 28th May 2015 the DPP did not accept the recommendation for prosecution. He advised that the inquiry file be closed.

42. EACC/AT/INQ/12/2012

Inquiry into allegations of abuse of office and failure by the Management of Kenya Airport Authority to comply with the provisions of Public Procurement and Disposal Act, 2005 and Regulations, 2006 together with other statutory provisions in the procurement of proposed Greenfield Terminal Project, Tender Number: KAA-ES/JKIA/658-DB

Investigations established that Kenya Airports Authority (KAA) in the year 2011 identified the need to expand the Jomo Kenyatta International Airport (JKIA) terminal so as to meet the demands of passenger increase, safety and other security related issues. KAA Board of Directors (BOD) approved the construction of the green-field passenger terminal complex and associated works as JKIA at a budget of USD 499,730,725.40. KAA commenced the necessary procurement process and finally awarded the tender to an Engineering Group Company in joint venture with an International Engineering Corporation. However, the KAA BOD resolved in a Board meeting to terminate the procurement process mainly because the Ministries of Finance and Transport had not given their respective concurrence for the process. The winning bidder got wind of the termination and filed a reference at the Public Procurement Administrative Review Board (PPARB) challenging the decision. PPARB finally ruled in favour of the winning bidder directing KAA to sign the contract for the subject project within twenty eight days of that decision. Investigations further revealed that the Tender Committee on 27/7/2012 cancelled the tender process before the delivery of PPARB ruling and the signing of the contract. The said Tender Committee action accorded will with section 36 of PPDA which entitles a procuring entity to cancel a procurement process at any time before the signing of a contract. That means all those infractions are of no legal effect. All those responsible for the impugned processes and decisions suffer no criminal culpability.

A Report was compiled and forwarded to the Director of Public Prosecutions on 25th May, 2015 with the recommendation that the inquiry file be closed with no further action.

On 2nd June 2015 the DPP accepted the recommendation for closure.

✓ **43. EACC/EL/INQ/02/2015**

Inquiry into allegation of Breach of Chapter Six of the Constitution and Provisions of the Leadership and Integrity Act 2012 against the Senator of Nairobi County

Investigations established that on 26th December, 2014, a truck registration number KBY 259P was ferrying water passed through the Mtwapa Weigh Bridge. The said truck was ferrying water to the residence of the Senator of Nairobi County. At the Weigh Bridge the truck was weighed and found to have exceeded the axle load by 6440 kg. The driver of the truck was instructed to park the aside. It was at that juncture that the Senator stormed the Weigh Bridge demanding that the truck be released. He threatened the officers on duty at the Weigh Bridge. After making a lot of noise, the suspect was seen making several calls and later the officers were instructed to release the truck by an Engineer of the Kenya National Highways Authority (KenHa). There is sufficient evidence that the suspect created disturbance in a manner likely to cause a breach of the peace, intimidation and incitement to disobedience of the law and that his conduct contravened Chapter Six of the Constitution to warrant action by the Speaker of the Senate.

A Report was compiled and forwarded to the Director of Public Prosecutions on 25th May, 2015 recommending that the matter be referred to the Directorate of Criminal Investigations. Secondly, with regard to breach of Chapter Six of the Constitution, the Commission recommended that the Senate, being the responsible Commission take appropriate administrative action against the suspect.

On 28th May 2015 the DPP accepted the recommendations by EACC.

✓ **44. CR.811/919/2014, ACC.6/2014**

Inquiry into allegations of corruption against a Prosecutor at Kitale Law Courts

The investigation established that the suspect corruptly solicited for a benefit of Kshs.60,000/- as an inducement so as not to object an application for bail terms in relation to four members of staff of a Co-operative Society who had been arrested and charged with an offence of Conspiracy to defraud to Section 317 of the Penal Code.

Investigations established the solicitation and receipt of a benefit by the suspect.

A Report was compiled and forwarded to the Director of Public Prosecutions on 28th May, 2015 recommending 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, No.3 of 2003.

On 10th July 2015 the DPP accepted the recommendation for prosecution.

45. **CR.148/6/2015 CF. NAIROBI ACC/5/2015**

Inquiry into allegations of corruption against a Labour Inspection Officer based at the Sub-County Labour Office in Industrial Area – Nairobi

The investigation established that the suspect corruptly solicited for a benefit of Kshs.100,000/= so as to forbear the complainant from depositing Kshs.1,980,412/=-, being the total amount of money that his employees were allegedly underpaid. The investigations established the solicitation and receipt of a benefit.

A Report was compiled and forwarded to the Director of Public Prosecutions on 28th May, 2015 recommending 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, No.3 of 2003.

On 13th July 2015 the DPP accepted the recommendation for prosecution.

46. **EACC CR.148/7/2015 CF. ACC NAIROBI NO.06/15**

Inquiry into allegations of corruption against a Technician at the Nairobi City Water and Sewerage Company

The investigations established that the suspect who is a Technician, Nairobi City Water and Sewerage Company corruptly solicited for a benefit of Kshs. 30,000/- as an inducement to facilitate the connection of a sewer line in the complainant's premises. Investigations established that the suspect also received a benefit.

A Report was compiled and forwarded to the Director of Prosecutions on 5th June, 2015 recommending that the case against the suspect proceeds to its logical conclusion.

On 19th June 2015 the DPP accepted the recommendation for prosecution.

47. **CR.933/40/201/ CF NO.813/14**

Inquiry into allegations of corruption against a Senior Support Staff at Bunyala District Education Office

The investigation established that the suspect corruptly solicited for a benefit of Kshs.15,000/- from the complainant as an inducement to facilitate employment of the complainant's wife as a P1 teacher. Investigations established the solicitation and receipt of a benefit.

A Report was compiled and forwarded to the Director of Prosecutions on 17th June, 2015, recommending 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, No.3 of 2003.

On 25th July 2015 the DPP accepted the recommendation for prosecution.

✓ **48. CR.242/13/2015 NYERI ACC. NO.1/2015**

Inquiry into allegations of corruption against the Chief of Kahutha Location

The investigation established that the suspect solicited for a benefit of Kshs.7,000/- from the complainant as an inducement so as to release confiscated planks of timber back to the complainant and to forbear reporting him to the Kenya Forest Service for illegal logging. Investigations established that the suspect received a benefit.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22nd June, 2015 recommending 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, No.3 of 2003.

On 14th July 2015 the DPP accepted the recommendation for prosecution.

49. EACC/INQ/14/2015

Inquiry into allegations of corruption against the Senator for Siaya County in the matter of Property LR.1870/1/217 in Westlands Nairobi

Investigations established that the property LR.1870/1/217 was registered in the name of a private owner sometime in 2006. The land ceased to be public land when the City Council of Nairobi allocated the same to a private Company. With regard to the bribery allegations against the Senator, investigations did not establish that the Senator for Siaya County was involved in acts of corruption in regard to the transactions involving the subject land. There was no culpability established on the part of the Senator to warrant any action against him.

A Report was compiled and forwarded to the Director of Public Prosecutions on 23rd June, 2015, recommending that the inquiry file be closed.

On 1st July 2015 the DPP accepted the recommendation for closure of the inquiry file.

50. INQUIRY NO.10/2013

Inquiry into allegations of corruption against officers of the Anti-Counterfeit Agency in the manner in which Exhibits were disposed of in respect of a Criminal Case before the Principal Magistrate's Court, Winam – Kisumu

Investigations established that the Anti-Counterfeit Agency preferred charges of counterfeit against a hardware dealer in Kisumu. The said case was however withdrawn after the complainant in the case reached an out of court settlement with the persons charged. Whereas the Court did not make an order that the goods in question be released to the owner of the hardware, the Deputy Director Enforcement, Prosecution and Legal Services, at the Anti-Counterfeit Agency released the goods. He failed to observe the provisions of Section 27 and 28 of Anti-Counterfeit Act, 2008 in disposing off exhibits in question.

A Report was compiled and forwarded to Director of Public Prosecutions on 23rd April, 2015 with recommendation that the Deputy Director Enforcement, Prosecution and Legal Services 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.

On 18th June, 2015, the DPP advised that further investigations be carried out.

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

Total No. of files forwarded to the Director of Public Prosecutions	50
No. of files recommended for prosecution	32
No. of files recommended for administrative or other action	3
No. of files recommended for closure	15
No. of files recommended for prosecution and the cases are already lodged before Court	
No. of files where recommendation to prosecute accepted	31
No. of files where recommendation for administrative or other action accepted	3
No. of files where recommendation for closure accepted	9
No. of files returned for further investigations	4
No. of files where recommendation to prosecute not accepted	1
No. of files where recommendation for administrative or other action not accepted	0
No. of files where closure not accepted	2
No. of files awaiting Director of Public Prosecution's action	0

DATED AT NAIROBI THIS 20th DAY OF August 2015



HALAKHE D. WAQO, ACI Arb

SECRETARY/CHIEF EXECUTIVE OFFICER