

**THE ETHICS AND ANTI-CORRUPTION COMMISSION**

**THE FOURTH QUARTERLY REPORT FOR THE YEAR 2013  
COVERING THE PERIOD  
1<sup>ST</sup> OCTOBER, 2013 TO 31<sup>ST</sup> DECEMBER, 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 Fourth Quarter of the year 2013 and is for the period commencing 1<sup>st</sup> October, 2013 to 31<sup>st</sup> December, 2013.

## 1. EACC/INQ/26/2013

**Inquiry into allegations that the Independent Electoral and Boundaries Commission (IEBC) irregularly awarded the tender for the supply of Solar Lanterns to a private company.**

Investigations established that the procurement of solar lanterns was done together with several other materials that were required by IEBC in preparation for the March, 2013 General Elections. Investigations further established that after the tenderers submitted their bids and they were subsequently opened, the tender price in respect of the successful bidder was irregularly changed before evaluation thus giving the said bidder undue advantage over other prospective bidders. The changing of the bid price was done in collusion between officials of IEBC and the successful bidder. The evidence obtained disclosed offences of conspiracy, forgery and breach of public procurement laws and regulations against the IEBC officers and those of the private company that was awarded the tender for the supply of the solar lanterns.

A Report was compiled and forwarded to the Director of Public Prosecutions on 2<sup>nd</sup> October, 2013 recommending that the IEBC officials and the Directors of the private company be charged jointly with the offences of conspiracy to commit an offence of corruption contrary to section 47(A) (3) of the Anti- Corruption and Economic Crimes Act, 2003 and colluding to change a tender document contrary to section 42 (1) of the Public Procurement and Disposal Act. It was further recommended that the IEBC officials be charged with careless failure to comply with the law relating to procurement contrary to section 45(2) (b) of the ACECA and the directors of the private company with the offence of forgery contrary to section 349 and an alternative charge of uttering a false document contrary to section 353 of the Penal Code.

On 28<sup>th</sup> October, 2013, the DPP accepted the recommendation for prosecution.

## 2. EACC/FI/INQ/33/2013

**Inquiry into allegations that the Independent Electoral and Boundaries Commission (IEBC) irregularly awarded the tender for the supply of Electronic Voter Identification Kits (EVID) and accessories to a private company.**

Investigations established that the procurement for the EVID was done together with several other materials that were required by IEBC in preparation for the March, 2013 General Elections. Investigations further established that the hand held devices that were to be supplied as per the tender technical specifications and award were irregularly changed thus leading to the supply of lap tops instead of the hand held devices provided for in the contract signed between

IEBC and the successful tenderer. Investigations further revealed that the said changes to the devices that were supplied were effected without the approval of the Tender Committee as required under the Public Procurement and Disposal Act and Regulations. The evidence obtained disclosed offences of abuse of office and breach of public procurement laws and regulations against the IEBC officers and those of the private company. A Report was compiled and forwarded to the DPP recommending the prosecution of several officials of IEBC on the 4<sup>th</sup> October, 2013.

On 28<sup>th</sup> October, 2013, the DPP accepted the recommendation for prosecution.

### **3. EACC/FI/INQ/40/2013**

**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. 202, 161, 187.50 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. 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 mandated the management to ensure that the scheme was successful. It was expected that in identifying the service providers for the scheme, NHIF would advertise for interested bidders. Investigations however established that there was no procurement done for the said medical scheme. Instead, NHIF hand picked two service providers and awarded them the contract to provide medical care for civil servants and the members of the disciplined forces without following due procurement process. 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. 202, 161, 187.50, 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 11<sup>th</sup> October, 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. It was further recommended that the Directors of the service provider be charged with obtaining money by false pretences.

On 28<sup>th</sup> October, 2013, the DPP accepted the recommendation for prosecution.

#### **4. KACC/F1/INQ/25/2011**

**Inquiry into allegations that Kitutu Chache Constituency Development Fund (CDF) irregularly used public funds to purchase sugar worth Kshs.137, 058, 429.80/= for internally displaced persons from Chemelil Sugar Company Limited and withheld value added tax amounting to Kshs. 18, 461, 196/= which was never remitted to the Kenya Revenue Authority**

The investigations established that Kitutu Chache CDF through its Member of Parliament applied for and was issued with a Tax Withholding Certificate. Pursuant to this appointment, the MP wrote a request to Chemilil Sugar Company for the purchase of sugar for internally displaced persons. Investigations further established that the purchase did not materialize since the Kitutu Chache CDF Committee did not approve the intended purchase. Documents obtained from the sugar factory purported to indicate that Kitutu Chache CDF had purchased sugar worth Kshs. 132,859,110. However, investigations revealed that Kitutu Chache CDF did not purchase any sugar. Instead, businessmen purchased the sugar through an agent using the account of Kitutu Chache CDF at the factory and the agent attached the Withholding VAT Certificates purporting that Kitutu Chache, being a tax withholding agent had withheld a sum of Kshs. 21,250,628 as VAT for the sugar purchased.

The evidence obtained therefore revealed that although there was purchase of sugar from Chemelil Sugar Company, no money from Kitutu Chache CDF kitty money was used. However, it was established that documents belonging to Kitutu Chache Constituency Development Fund (CDF) were used by the suspects to acquire the sugar at a price less Value Added Tax. The VAT which amounted to Kshs. 21, 250, 628/= were never remitted to the Kenya Revenue

Authority as required by the law.

A Report was compiled and forwarded to the DPP on 17<sup>th</sup> December, 2013, recommending that the MP for Kitutu Chache Constituency and the agent who purchased the sugar jointly be charged with the offence of conspiracy to commit an economic crime contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003, that the MP be charged with Abuse of Office contrary to section 46 and the agent with the offence of fraudulent acquisition of public property contrary to section 45 (1) (a) of the Anti- Corruption and Economic Crimes Act, 2003.

On 31<sup>st</sup> December, 2013, the DPP accepted the recommendation for prosecution.

#### **5. EACC/ELD/F1/INQ/03/2011**

##### **Inquiry into allegations that officials from the Municipal Council of Kabarnet and Ministry of Lands colluded to irregularly allocate public land number Baringo/Kapropita 483 to private individuals**

Investigations established that the subject parcel of land belonged to the County Council of Baringo. Investigations further established that in spite of this land being public land and not available for alienation, it was irregularly subdivided and allocated to private individuals. In addition, no consent to transfer the land was obtained from the Minister for Local Government as required. The irregular allocation was facilitated by the Town Clerk of the Council, the District Land Registrar and a Councillor who was the chairman of the Town Planning Housing and Works Committee even with the knowledge that the land was public land.

A report was prepared and forwarded to DPP on 18<sup>th</sup> November, 2013 with recommendation that all the Officers involved be charged with the offences of unlawful disposal of public property contrary to section 45(1) (b) failure to comply with applicable guidelines relating to disposal of public property contrary to section 45 (2) (b) and abuse of office contrary to section 46 of the Anti- Corruption and Economic Crimes Act, 2003.

On 23<sup>rd</sup> December, 2013, the DPP accepted the recommendation for prosecution.

## 6. KACC/AT/INQ/21/2011-F1

### **Inquiry into allegations that a private construction company, with intent to defraud the Government, submitted two claims totalling to Kshs. 13, 648, 622.41 to the Ministry of Finance**

The investigation established that in the year 2005, a private company submitted two claims to the Government's Pending Bills Committee which arose from projects undertaken by the company in Vihiga District. The Committee recommended that the company be paid a sum of Kshs. 100 million as full and final settlement of the claim. The company accepted the money and was duly paid. The Directors of the company also executed agreements for the discharge of claims against the Government to the effect that the payment received was in full and final settlement of the claims for the projects.

However, in the year 2010, the said company wrote to the Ministry of Finance claiming for the payment of Kshs. 13.5 billion for the same projects in respect of which full payment had been received and acknowledged.

By re-opening claims for which the company had already received payment, the Commission was of the opinion that the company intended to defraud the Government.

A report was compiled and forwarded to Director of Public Prosecutions on 6<sup>th</sup> December, 2013 with recommendation that the Director of the company be charged with the offence of attempt to commit an offence of corruption contrary to section 47 A (1) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

On 31<sup>st</sup> December 2013, the DPP accepted the recommendation for prosecution.

## 7. EACC/NYI/FI/INQ/07/2012

### **Inquiry into allegations of embezzlement of funds and irregularities in the procurement of works for routine repair and maintenance of roads by the Municipal Council of Chuka**

Investigations established that in the 2009/2010 Financial Year, the Municipal Council of Chuka received Kshs. 4,734,577 from the Kenya Roads Board to cater for routine repair and maintenance of roads within the Municipality. Five roads were earmarked for the repairs and tenders advertised. Investigations established that the tenders were opened, evaluated and awarded to the successful bidders. Investigations further established that the contractors carried

out the works under the supervision of the Council Works Officer and Council Engineer.

Investigations however revealed that the procurement process for the works was riddled with irregularities in that the successful contracting companies were neither the lowest bidders nor did they comply with the law governing procurement as to competence. Investigations established that the companies awarded the contracts were not qualified. The evidence obtained revealed an elaborate scheme to defraud the Municipal Council of Chuka of the funds set aside for the maintenance of the roads.

A report was compiled and forwarded to the Director of Public Prosecutions on 19<sup>th</sup> November, 2013 with a recommendation that the suspects namely; the Acting Town Clerk and Municipal Engineer, Chuka Municipal Council be charged jointly with the directors of the various companies contracted to carry out the works with the offence of conspiracy to commit an offence of corruption contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003.

On 31<sup>st</sup> December, 2013 the DPP accepted the recommendation for prosecution.

## **8. EACC/FI/INQ/21/2013**

### **Inquiry into allegations of irregular procurement of a private medical provider by NHIF to provide outpatient medical services to NHIF members under a Pilot Scheme**

The evidence obtained revealed that after NHIF decided to extend outpatient medical services to its members, it was resolved that health providers be identified. In this regard, investigations established that NHIF advertised an Expression of Interest and responses were received from several health providers. Investigations further established that after evaluation of proposals, NHIF identified appropriate providers. The successful bidders were therefore engaged by NHIF to provide outpatient medical services to NHIF members through their four health outlets in Nairobi.

Investigations further established that due procurement process was followed in engaging these providers and no irregularities were established. The evidence obtained further revealed that the health providers engaged under the Outpatient Pilot Scheme adequately offered services and were duly paid the contract sum. No culpability was established on the part of any of the officers involved in the implementation of the Out Patient Pilot Scheme.

A report was compiled and forwarded to the Director of Public Prosecutions on



28<sup>th</sup> October, 2013, recommending the closure of the file.

The DPP accepted the recommendation for closure of the inquiry file.

## **9. EACC/FI/INQ/35/2013**

### **Inquiry into allegations of failure to comply with procurement procedures in the disposal of a Mercedes Benz by the Insurance Regulatory Authority (IRA)**

Investigations established that in December, 2009, a Circular was issued by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service on the implementation of a Government Transport Policy stipulating that senior officials in Government were only allowed to have official vehicles with an engine capacity not exceeding 1800cc. Investigations further established that prior to this circular being issued the Insurance Regulatory Authority had acquired a Mercedes Benz. Although its engine capacity was within the allowed limit, IRA decided to dispose it off and use the proceeds to buy a Passat for the CEO.

Investigations established that the process of disposal was initiated and bids invited through advertisement. After receiving the bids, IRA observed that the highest bid was below the reserve price. A re-advertisement was done and the highest price offered was Kshs. 4 million. The Tender Committee approved the sale to the said bidder. Investigations however established that, the CEO as the accounting Officer, was of the opinion that the price of Kshs. 4 million was way below the market price and he thus decided that the vehicle be retained by IRA and thus the sale did not materialize. No irregularities were established with regard to the intended disposal. In addition, the action of the CEO as the accounting Officer was not arbitrary since it was his responsibility to ensure that IRA got value for money from the sale of the vehicle. No culpability was established on the part of IRA officials to warrant any action against them.

A report was compiled and forwarded to Director of Public Prosecutions on 30<sup>th</sup> September, 2013 with recommendation that the inquiry file be closed.

On 3<sup>rd</sup> October, the DPP accepted the recommendation for closure of the inquiry file.

## **10. EACC/F1/INQ/39/2012**

### **Inquiry into allegations that a Senior Immigration Officer was extorting money from aliens who were seeking Passports, Visas and Work Permits**

Investigations established that an Inter-Ministerial Committee on citizenship and work permits in the Immigration Department is charged with the responsibility of determining whether applicants satisfy the requirements for being issued with work permits, visas and passports. Investigations further established that whereas it was alleged that the Senior Immigration Officer was extorting money to issue work permits, visas and passports to aliens, no such evidence was revealed. In addition members of the Citizen Advisory Committee confirmed that the officer did not influence the decisions of the Committee. Investigations also established that the officer alleged to be collecting bribes was not a member of the Vetting Committee. The evidence obtained neither disclosed any impropriety on the part of the officer nor linked him with any wrong doing.

A report was compiled and forwarded to Director of Public Prosecutions on 4<sup>th</sup> December, 2013 with a recommendation that the inquiry file be closed.

On 30<sup>th</sup> December, 2013 the DPP accepted the recommendation for closure of the inquiry file.

## **11. EACC/F1/INQ/55/2013**

### **Inquiry into allegations of irregularities in the procurement of hotel facilities for a luncheon for the Insurance Regulatory Authority (IRA) Board**

The investigation established that it was an annual activity by the IRA Board to hold a luncheon in which meeting the Board and the management would take stock of the achievements of IRA discuss the projected activities for the next year. Investigations established that a budget to hold the 2011 annual luncheon was approved and procurement for a venue commenced. A hotel was identified for the event. However, investigations established that the approval for the identified venue was not sought from the IRA Procurement Committee as required under the Public Procurement and Disposal Act. Investigations established that this lapse occurred when the officers responsible for ensuring that the Procurement Committee met to give approval were away from office. Whereas there was this breach, there was no evidence of fraud in the procurement of the hotel and no loss of public funds. The Commission was therefore of the view that a prosecution would not be sustained in the circumstances. Nonetheless, this breach pointed towards lack of proper systems at the IRA.

A report was compiled and forwarded to the Director of Public Prosecutions on 2<sup>nd</sup> December, 2013 with recommendation that the inquiry file be closed and that IRA be advised to put its procurement systems in order.

On 30<sup>th</sup> December, 2013, the DPP accepted the recommendation for closure of the inquiry file.

## **12. NAIROBI ACC. NO.10/2013**

### **Inquiry into allegations of corruption against an Assistant Commissioner, Domestic Tax Department at the Kenya Revenue Authority (KRA)**

The investigations established that the suspect who is an Assistant Commissioner, KRA corruptly solicited for a benefit of 57, 000 USD (Kshs. 5 million) from the complainant as an inducement to forbear charging the complainant with an offence of failure to submit self-assessment returns to KRA. The suspect also received a benefit from the complainant.

A Report was compiled and forwarded to the Director of Public Prosecutions on 28<sup>th</sup> October, 2013 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 23<sup>rd</sup> December, 2013, the DPP accepted the recommendation for prosecution.

## **13. CR.141/336/2013**

### **Inquiry into allegations of corruption against a Police Constable based at the Nairobi Area Traffic Police Headquarters**

The investigation established that the suspect corruptly solicited for a benefit from the complainant as an inducement to facilitate the signing of a Kenya Revenue Authority Form necessary for application for a PSV licence. The suspect also received a benefit from the complainant.

A Report was compiled and forwarded to the DPP on 2<sup>nd</sup> October, 2013 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 3<sup>rd</sup> October, 2013 the DPP accepted the recommendation for prosecution.

#### **14. EACC/INQ/9/2013**

**Inquiry into allegations that an Immigration Officer at Nyayo House corruptly solicited for a benefit of Kshs. 20,000/= from the complainant as an inducement to facilitate the processing of a passport for her son and Dual Citizenship.**

The investigation established that the suspect solicited for a bribe. The suspect also received a benefit of Kshs. 20,000 from the complainant. The Commission was of the opinion that the evidence obtained was sufficient to sustain the charges of corruption against the suspect. However, the complainant in the matter who is a resident of and works in Sweden indicated that she would not be available during the trial as she is in full employment in Sweden. She also indicated that she did not wish to proceed with the case. On the basis of this indication by the complainant, the prosecution of the suspect would not be sustained.

The basis of this recommendation in lieu of prosecution was that the complainant who made the complaint in her statement was categorical that she did not wish to proceed with the case. She is a resident of Sweden on full time employment and therefore she indicated that she will not be available during the trial. Her son who was also present during the time of solicitation and receipt of the benefit also lives abroad and did not record a statement. Without the evidence of the complainant, the prosecution would not have been sustained.

A Report was compiled and forwarded to the Director of Public Prosecutions on 23<sup>rd</sup> October, 2013 recommending that instead of prosecution, administrative action be taken against the suspect.

On 12<sup>th</sup> November, 2013, the DPP accepted the recommendation for administrative action.

#### **15. EACC/KSM/OPS/INQ/5/2012**

**Inquiry into allegations of corruption against the acting District Commissioner, Borabu District in Nyamira County and an Administration Police Officer attached to the same office**

The investigations established that the suspects corruptly offered and gave a benefit of Kshs. 40,000 to Military Officers who were conducting recruitment of officers to the Kenya Defence Forces at Menyanya High School in Nyamira County.

A report was compiled and forwarded to Director of Public Prosecutions on 18<sup>th</sup> November, 2013 with the recommendation that two suspects be charged with the offences of corruptly offering and giving a benefit contrary to section 39 (3) (b) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 and conspiracy to commit an offence of corruption contrary to section 47A of the Anti- Corruption and Economic Crimes Act, 2003.

On 6<sup>th</sup> January, 2014, the DPP returned the file and advised that further investigations be undertaken.

#### **16. KACC CR. 801/4272/2013 KERICHO ACC.2/2013**

##### **Inquiry into allegations of corruption against the District Health Officer, Bureti and the District Works Officer, Sotik**

The investigation established that the suspects corruptly solicited for a benefit of Kshs. 50,000 and Kshs. 30,000 respectively from the complainant as an inducement to facilitate the payment of a retention fee of Kshs. 364, 843.55/= in respect of a project that the complainant had completed at Siomo Model Health Centre. The suspects also received a benefit from the complainant.

A Report was compiled and forwarded to the Director of Public Prosecutions on 17<sup>th</sup> December, 2013 recommending that the two suspects be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39 (3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

On 30<sup>th</sup> December, 2013, the DPP accepted the recommendation for prosecution.

#### **17. EACC/MSA/RPD/INQ/03/2013**

##### **Inquiry into allegations of corruption against officials of a production company in Mombasa**

The investigation established that the suspects corruptly solicited for a benefit of Kshs. 40,000 from the complainant as an inducement to facilitate the release of a suspect who had been arrested for infringement on music copyright. The suspects also received a benefit from the complainant.

A Report was compiled and forwarded to the Director of Public Prosecutions on 22<sup>nd</sup> November, 2013 recommending that the two suspects be charged with the offences of corruptly soliciting for and receiving a benefit contrary to section 39

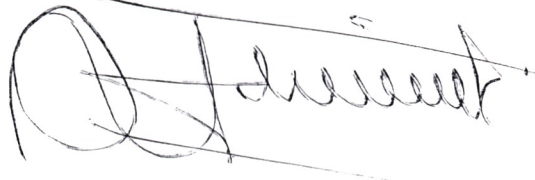
(3) (a) as read with section 48 (1) of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

On 23<sup>rd</sup> December, 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	<b>17</b>
No. of files recommended for prosecution	<b>12</b>
No. of files recommended for administrative or other action	<b>1</b>
No. of files recommended for closure	<b>4</b>
No. of files recommended for prosecution and the cases are already lodged before Court	<b>7</b>
No. of files where recommendation to prosecute accepted	<b>11</b>
No. of files where recommendation for administrative or other action accepted	<b>1</b>
No. of files where recommendation for closure accepted	<b>4</b>
No. of files returned for further investigations	<b>1</b>
No. of files where recommendation to prosecute not accepted	<b>0</b>
No. of files where recommendation for administrative or other action not accepted	<b>0</b>
No. of files where closure not accepted	<b>0</b>
No. of files awaiting Director of Public Prosecution's action	<b>0</b>

DATED AT NAIROBI THIS 5<sup>th</sup> DAY OF February 2014



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