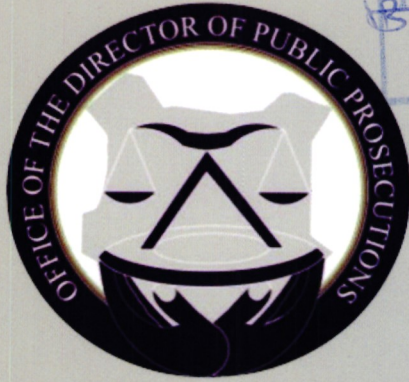


Paper Laid by the  
Leader of the Majority  
Party, Hon Aden Duale,  
MP on 12-04-18



OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS

# Third Annual Report 2014/2015





# HIGHLIGHTS

## Access to Justice

- Presence in all 117 court stations
- Processed 98% of public complaints received

## Enhancement of Institutional Reform and Restructuring

- Increase of prosecutors by 141%
- Initiated terminal review of 1st Strategic Plan and development of 2nd Strategic Plan.
- Established five new thematic divisions/sections/units

## Professionalization of Prosecution Services

- 100% taking over of prosecutions
- Established centralized case intake mechanisms
- 88% of prosecution counsel trained in trial advocacy

## Automation and Modernization

- Road map to automation and system design developed
- New manual case management system developed
- Revamped ODPP website

## Strengthening and Promotion of Collaboration and Interagency Cooperation

- Employment of the prosecutor-guided investigations model in Anglo-Leasing cases and other high profile matters.

## Law Reform

- Contributed in 12 Policy and Legislative initiatives.

## Witness and Victim Facilitation

- Contributed to the development of the *Victim Protection Act 2014* and participated in its implementation Board.



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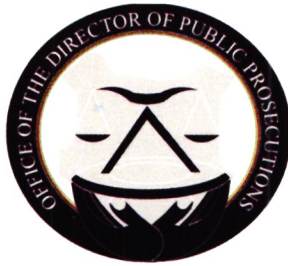
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## **ACCOUNTABILITY STATEMENT**

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This Report is presented to Parliament and the President pursuant to the provisions of articles 10(2)(c), 35, 232(1)(f) of the Constitution of Kenya and Section 7 of the Office of the Director of Public Prosecutions Act, 2013



### **Our Vision**

---

An independent Prosecution Authority providing efficient, effective, fair and just prosecution services for the people of Kenya.

### **Our Mission**

---

To serve the public by providing quality, impartial and timely prosecution anchored on the values and principles enshrined in the Constitution.

### **Our Core Values**

---

Respect and promotion of Human Rights and the Rule of Law  
Integrity and Ethics  
Professionalism  
Fairness and Impartiality  
Teamwork

**OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS**

# **Third Annual Report 2014/2015**





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## LIST OF ACRONYMS AND ABBREVIATIONS

ACECA	Anti-Corruption and Economic Crimes Act, 2003
AG	Attorney General
AIE	Authority to Incur Expenditure
ANAW	Africa Network for Animal Welfare
AP	Administration Police of Kenya
APA	Africa Prosecutors Association
CBK	Central Bank of Kenya
CBM	Cash Based Method
CDF	Constituency Development Fund
CFS	Central Facilitation Services
CFT	Counter Financing of Terrorism
CITES	Convention on International Trade in Endangered Species
COA	Court of Appeal
COVAW-K	Coalition on Violence Against Women, Kenya
CPA	Certified Public Accountants
CUCs	Court Users Committees
DCI	Directorate of Criminal Investigations
DPM	Directorate of Personnel Management
DPP	Director of Public Prosecutions
EAAP	East African Association of Prosecutors
EACC	Ethics and Anti-Corruption Commission
ELC	Environment and Land Court
ESAAMLG	East and Southern African Anti-money Laundering Group
ESAMI	East and Southern Management Institute



FGM	Female Genital Mutilation
FIDA-K	Federation of Women Lawyers, Kenya
FY	Financial Year
GAAP	Generally Accepted Accounting Principles
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Agency for International Cooperation)
HC	High Court of Kenya
HRD	Human Resource Development
HRM	Human Resource Management
IAP	International Association of Prosecutors
IAPL	International Association of Penal Law
ICJ	International Commission of Jurist
ICT	Information and Communication Technology
IGAD	Intergovernmental Authority on Development
IICFIP	International Institute of Certified Forensic Investigation Professionals
IJM	International Justice Mission
IMLU	Independent Medico Legal Unit
IOFMC	Indian Ocean Forum on Maritime Crime
IPOA	Independent Policing Oversight Authority
IPSAS	International Public Sector Accounting Standards
ISP	Internet Service Provider
ISS	Institute for Security Studies
IT	Information Technology
JTI	Judiciary Training Institute
KE-CIRT/CC	Kenya Computer Incident Response Team/Coordination Center
KES	Kenya Shillings
KFS	Kenya Forest Service
KLR	Kenya Law Reform
KNCHR	Kenya National Commission on Human Rights
KPLC	Kenya Power and Lighting Company
KRA	Kenya Revenue Authority
KWS	Kenya Wildlife Service
LAN	Local Area Network
LSK	Law Society of Kenya
MLA	Mutual Legal Assistance
MTEF	Medium Term Expenditure Framework
NACADA	National Campaign Against Drug Abuse





NCAJ	National Council on the Administration of Justice
NCIA	National Cohesion and Integration Act, 2008
NEMA	National Environmental Management Authority
NPS	National Police Service
ODPP	Office of the Director of Public Prosecutions
PTI	Prosecutors Training Institute
SC	Senior Counsel
SCoK	Supreme Court of Kenya
SGBV	Sexual and Gender-Based Violence
SOA	Sexual Offences Act, 2006
SOP	Standard Operating Procedures
SPP	Secretary, Public Prosecutions
UK-FCO	United Kingdom's Foreign and Commonwealth Office
UNCAC	United Nations Convention against Corruption
UNIDIR	United Nations Institute for Disarmament Research
UNODC	United Nations Office on Drugs and Crime
USDOJ	United States Department of Justice
WAN	Wide Area Network
WCMA	Wildlife Conservation and Management Act, 2014
WPA	Witness Protection Agency



## EXECUTIVE MANAGEMENT



**Keriako Tobiko CBS, SC**  
Director of Public Prosecutions



**Nicholas Mutuku**  
Ag. Deputy Director  
Offences Against the Person



**Dorcas Oduor OGW**  
Deputy Director Economic,  
International and Emerging Crimes



**Elijah T. Nduati, MBS**  
Secretary, Public Prosecutions



**Jacob Ondari**  
Deputy Director  
County Affairs and Regulatory  
Prosecutions



## FOREWORD

I am honored to present the Third Annual Report of the Office of the Director of Public Prosecutions (ODPP) to the President and Parliament for the period 1<sup>st</sup> July, 2014 to 30<sup>th</sup> June, 2015.

This Report is prepared as a commitment to accountability and transparency to the people of Kenya in the discharge of the high calling bestowed upon my Office. It is foremost a fulfillment of our Constitutional and Statutory obligations.

During the period, the ODPP achieved a number of milestones in its transformational journey towards realization of its vision and mission, and indeed in contributing meaningfully to the country's development agenda as envisaged in the *Vision 2030*.

During the period which also marks half my term as the DPP, I am glad to report that the ODPP continued to attain qualitative and quantitative increase in prosecutorial efficiency and capacity. We achieved an overall conviction rate of **89.4%** as compared to **82%** in **2013-2014** and **75%** in **2011-2013**, indicating a steady improvement over the last **4 years**. The Office further decentralized its prosecutorial services to all the **117** court stations in the country, thus enhancing access to justice. Another key highlight in the financial year 2014/15 is the increase of the ODPP staff complement from **671** to **933**. Staff have been deployed to the County levels where they execute and support the prosecution mandate.

As part of the institutional restructuring and reform initiatives, the Office has finalized the development of key foundational prosecutorial policy documents to ensure efficient processes and procedures. The Office also continued to create specialized thematic divisions/sections and units to better respond to new and emerging crimes.

Additionally, the ODPP upped its efforts of taking over charging decisions in all courts by ensuring the presence of prosecution counsel at all levels of the Court systems. This was done alongside centralized case-intake mechanisms to ensure that only those cases that meet the required threshold of prosecution are registered in court.

Further, in recognition of the diversity and complexity of crime, the Office invested in capacity enhancement programmes for its staff in various thematic areas, thus improving the quality of prosecutions.

The ODPP concluded the second phase of an ambitious project of developing of an automated and integrated case management system, which entails Business Process Optimization (BPO). It also revamped its website to make it more interactive and deepened public engagement through our robust social media platforms.

The importance of the Office in policy and legislative development in the criminal justice sector cannot be overemphasized. Towards this end, ODPP substantially contributed to the development and review of key legislation and policy such as; the *Security Law (Amendment Act)*, *Court of Appeal Administration Bill* and the *High Court Administration Bill*, as well as the *Bail and Bond Policy Guidelines*, the *Sentencing Policy*



and the *Illicit Trade Manual*. It is hoped that these efforts will contribute to greater cohesion and effective administration of justice.

As noted in our second annual report, the ODPP is committed to ensuring that the increase in our staff complement will positively impact the quality of our services to the Kenyan public. In this regard, the Office particularly remains bold in playing its role to fairly, effectively and efficiently combat corruption and economic crimes bedeviling our society. This has been best exemplified in our independent, consistent and firm approach to the handling of the *Anglo-leasing Cases*, as well as, the ongoing "*List of Shame*" *Corruption Cases*. We have strongly employed the *Prosecution-Guided Investigation Model*, Inter-agency collaboration and international legal cooperation to enable us take these major cases to Court. As an Institution, we undertake to continue to discharge our mandate faithfully and in a non-partisan manner as required in law and guard the public interest and need to avoid the abuse of the legal process, without fear or favor.

As expected, the exercise of our mandate continued to face a number of key challenges, which despite the odds are surmountable. We are appreciative of the efforts and goodwill by the National Government and Parliament of facilitating the Office with necessary financial and other resources. This has no doubt contributed to our aforesaid achievements, thus far. We are hopeful that the goodwill will continue to subsist in the years to come.

Lastly, we are in the process of terminal review of our Strategic Plan 2011-2015 and development of a new and bold plan to guide us into our second strategic plan period, 2016-2020. It is our sincere hope that this process will steer us in realizing our focus and delivering on the high expectations of the Public on our role in society.

**KERIAKO TOBIKO CBS, SC**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

## ACKNOWLEDGEMENTS

I express our collective gratitude to the Director of Public Prosecutions Mr. Keriako Tobiko, for his able and visionary leadership. In the same breath I recognize the important role played by the Advisory Board in ensuring the ongoing operationalization of the Office.

Allow me to commend all staff of the ODPP for their hard work and commitment which contributed to the gains documented in this Report.

I also take this opportunity to appreciate the efforts and investment of each individual development partner who supported the various projects and activities of the ODPP.

In summation, I thank each and every member of the ODPP Annual Report and Editorial Team, namely; *Rodah Ogoma, Walter Oselu, Joseph Riungu, Gikui Gichuhi, Stephen Karuga, Eunice Oloo, Katto Wambua, Samita Mang`ali, George Wambua, Musa Sere and Andrew Osundwa*. Their commitment and sacrifice indeed ensured the production of this Report.

**ELIJAH T. NDUATI MBS**

**SECRETARY, PUBLIC PROSECUTIONS**





## EXECUTIVE SUMMARY

This Annual Report covers the period between 1<sup>st</sup> July, 2014 and 30<sup>th</sup> June, 2015. It is submitted to Parliament and the President pursuant to the provisions of Articles 10(2) (c), 35, 232(1)(f) and 254 of the Constitution, as well as, Section 7 of the ODPP Act, 2013.

The report draws attention to what has been a rewarding year in which there were significant gains across the Office of the Director of Public Prosecutions. The report is divided into five chapters.

**Chapter One** introduces the reader to the ODPP and it gives a detailed snapshot of who we are, what we do, our mandate, an overview of the criminal justice process, our organizational structure and departmental functions.

**Chapter Two** extensively details the various milestones made in the year in the seven key strategic areas, that is; enhancement of access to justice, institutional reform and restructuring, professionalization of prosecution services, automation and modernization of ODPP processes and procedures, promotion of inter-agency collaboration and international legal cooperation, strengthening of necessary policy and legislative frameworks, and facilitation of witnesses and victims of crime.

**Chapter Three** focuses on the institution's performance on its core mandate ranging from trials, appeals and revisions, the processing of advice and complaints files to the handling of extradition proceedings and mutual legal assistance requests. Key statistical highlights on the same have been provided, top among these being that; convictions were achieved

in **89.4 %** of matters concluded. This reflects the effective use of public funds to prosecute crime. Also highlighted is performance on serious and emerging crimes, as well as, performance by ODPP County Offices. The Chapter ends with an interesting presentation of key select decisions in notable cases rendered by the Courts during the year, together with high profile cases registered by the Prosecution, whose outcomes are yet to be delivered.

**Chapter Four** elaborates on the fiscal state of ODPP during the year under review. It offers detailed financial analysis on budgetary allocations, expenditure from varied perspectives and a list of capital projects undertaken in the year. Also attached are the audited and unaudited financial statements for the year 2013/14 and 2014/15 respectively.

**Chapter Five** highlights the challenges and constraints that confront the Office in the effective and efficient discharge of its mandate. It also proposes recommendations to the identified challenges and constraints.

We hope that this Report will offer detailed insights to readers on the strategic focus and performance of the ODPP and stimulate constructive public discourse on the state of the criminal justice sector and refocus our collective will towards improvement of criminal prosecutions in Kenya.

**PUBLIC OFFICERS SHOULD TREAT  
THEIR COLLEAGUES AND THE PUBLIC  
WITH COURTESY AND RESPECT**



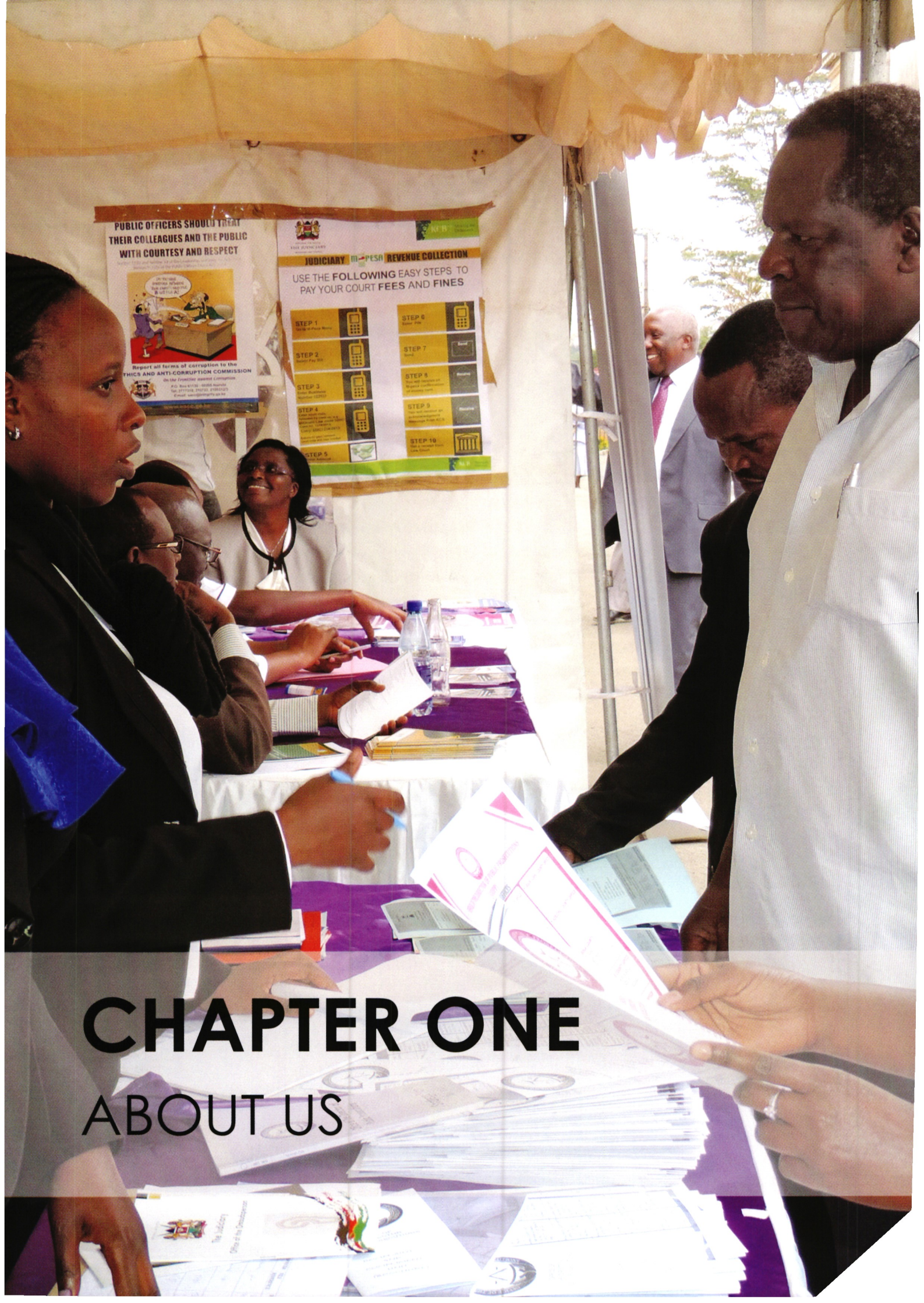
Report all forms of corruption to the  
**ETHICS AND ANTI-CORRUPTION COMMISSION**  
in the Republic of Kenya  
P.O. Box 41150 - 00100 Nairobi  
Tel: 2717024, 27022, 4781612/3  
Email: [acc@acc.go.ke](mailto:acc@acc.go.ke)

**JUDICIARY m-PESA REVENUE COLLECTION**  
USE THE FOLLOWING EASY STEPS TO  
PAY YOUR COURT FEES AND FINES

<b>STEP 1</b> Visit the Court		<b>STEP 6</b> Enter PIN	
<b>STEP 2</b> Select Fee		<b>STEP 7</b> Send	
<b>STEP 3</b> Enter Amount		<b>STEP 8</b> Wait for confirmation	
<b>STEP 4</b> Confirm Payment		<b>STEP 9</b> You will receive an SMS confirmation	
<b>STEP 5</b> Payment Successful		<b>STEP 10</b> You will receive a receipt	

# CHAPTER ONE

## ABOUT US





### 1.1 Who we are:

The ODPP is the National Prosecuting Authority in Kenya and acts independently in criminal cases investigated by the National Police Service and other investigative agencies. However, the Director of Public Prosecutions (DPP) is required to be accountable to the Public by presenting an annual report to Parliament and the President on the performance of the ODPP.

The ODPP has a presence in all the 47 counties in Kenya, with its headquarters in Nairobi. Chief County Prosecutors (CCP) head ODPP County Offices which are responsible for working with the Courts and the investigative agencies to provide high quality prosecution services in their jurisdiction. Nationally, the ODPP prosecutors deal with a wide range of cases both in the Superior and Subordinate Courts.

### 1.2 What We Do

The mandate of the DPP is provided in Article 157 of the Constitution and further stated in the *Office of the Director of Public Prosecutions Act, 2013*. This includes; exercising state powers of prosecution, directing investigations, offering criminal legal opinion to government ministries and departments, processing extradition and mutual legal requests from both within and outside Kenya and to facilitating witness protection and victims participation in criminal justice. The ODPP Act provides a clear framework through which the said mandate is to be discharged. The Prosecution function is exercised on behalf of the people of Kenya.

Specifically, the Office;

- Decides which cases referred by the various investigative agencies should be prosecuted,
- Determines the appropriate charges to be

preferred in all cases,

- Directs and advises investigative agencies at various stages during investigations,
- Prepares and presents cases in court; and
- Provides information, assistance and support to victims and prosecution witnesses.

This role is informed by the National Prosecution Policy and the Code of Conduct and Ethics for Public Prosecutors which govern the exercise of prosecutorial discretion and conduct. While exercising the prosecutorial mandate, ODPP safeguards; the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. ODPP strives to provide quality, impartial and timely services in a manner that is professional, efficient, just and fair.

### 1.3 Our Powers and Role

The Constitution and the ODPP Act also set out the powers of the DPP, which are to:

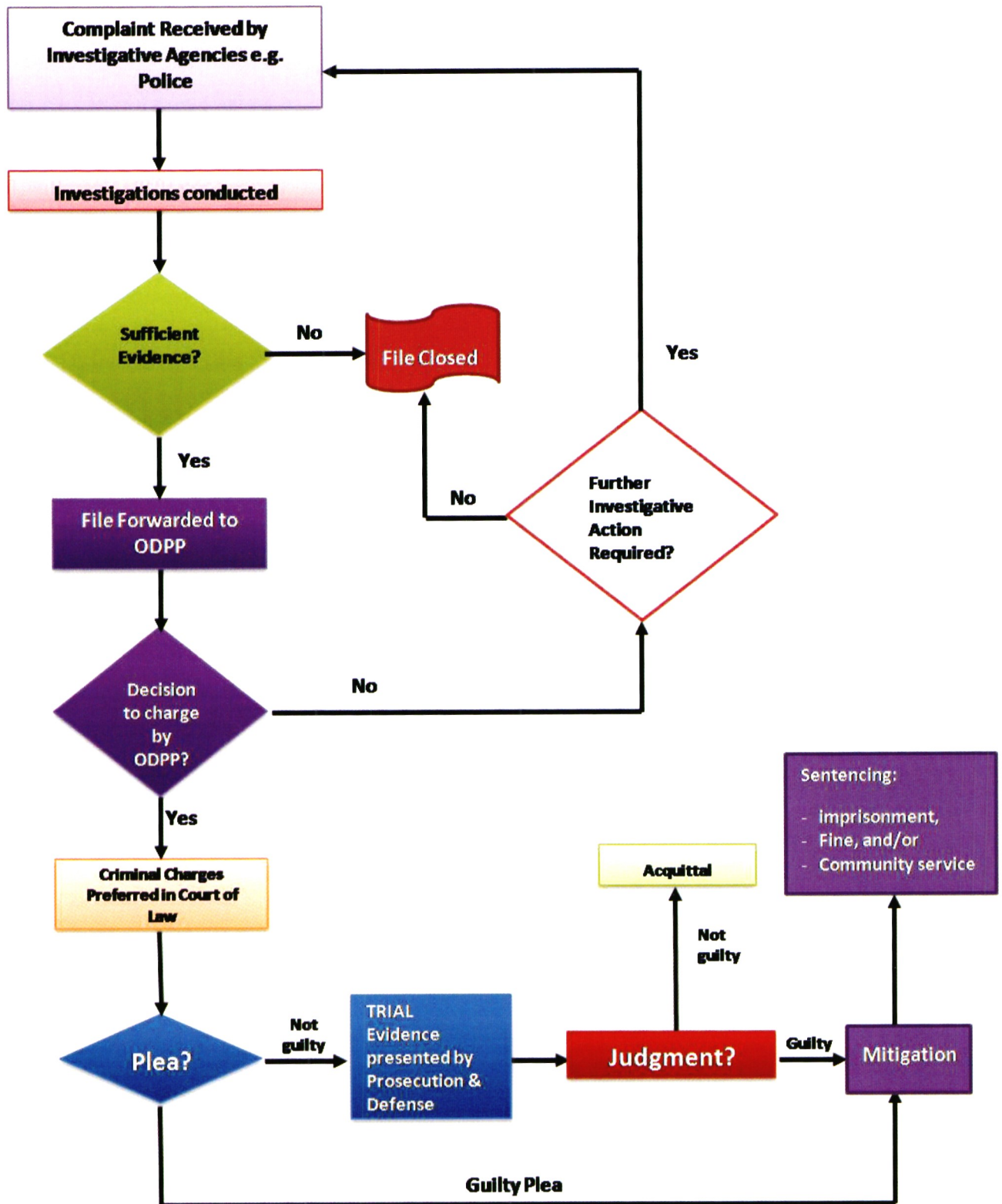
- a. Direct the Inspector-General of the National Police Service (NPS) or any other investigative body to investigate any information or allegation of criminal conduct; and
- b. Institute, take over and continue or discontinue, with the leave of court, criminal proceedings against any person, before any court, other than a court martial, in respect of any offence alleged to have been committed.

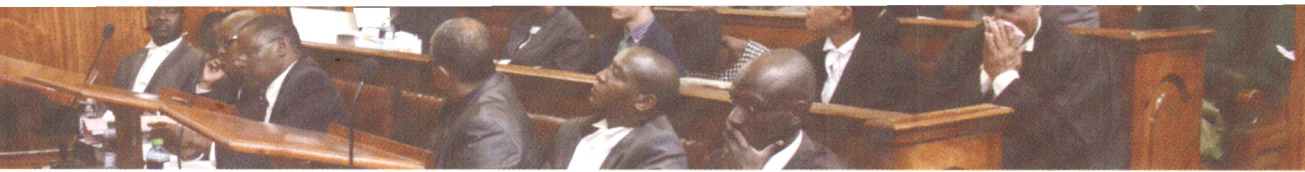
### 1.4 Criminal Justice Process

The diagram below shows a basic flow of the criminal justice process in Kenya the same is not exhaustive:



Figure 1: Justice System Flow Chart





## 1.5. Organizational Structure

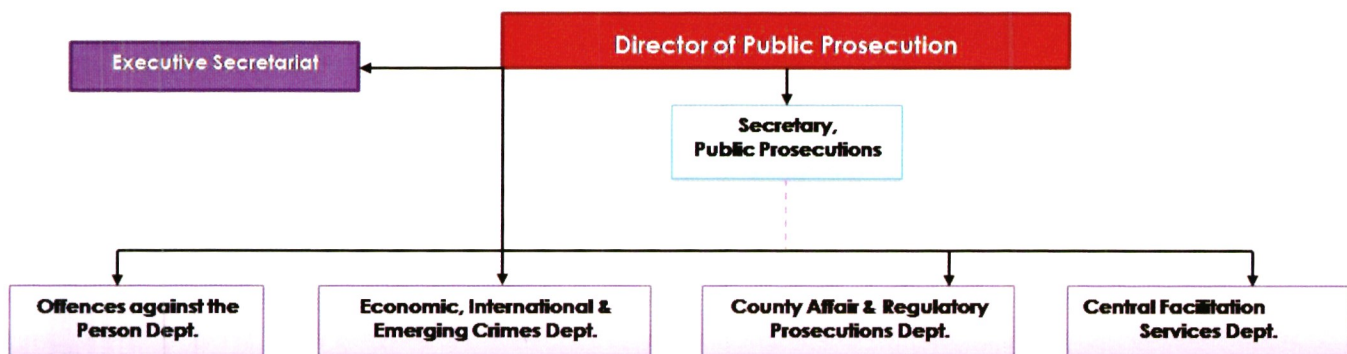
At management level, the ODPP operates through a central facilitation and three prosecutorial departments. Each of the prosecutorial departments is headed by a Deputy Director of Public Prosecutions with vast experience in prosecution while the central facilitation services department is headed by a Senior Assistant Director of Administration. The Departmental heads assist the DPP in the day to day management of their departments under the supervision of the Secretary, Public Prosecutions who is the *de facto* Deputy to the DPP.

There is an Executive Secretariat attached to the

DPP which serves to provide general administrative support, as well as, focused research and advice on policy and strategy issues. The Secretariat also handles files and mail screening and is responsible for the ODPP Reforms and Liaison and Complaints & Compliments Sections.

Internally, there is a High Level Leadership Committee that oversees; the general implementation of the Strategic Plan and is responsible for policy decision making, monitoring of the institutional work plan, budgetary allocations and expenditure. The Committee is chaired by the DPP and comprises of the SPP, heads of Departments and the Executive Secretariat Coordinator.

Figure 2:- ODPP Senior Management Organogram



## 1.6. Departmental Functions

The four departments discharge their functions through the various thematic divisions, sections and units as set out here below:

### 1) Department of Offences against the Person

- **Penal Code Offences Division:** Prosecutes offences of murder, property, robbery and assault and advises the government and other agencies on related

issues.

- **Children, Victims and Witness Support Division:** Handles prosecutions in respect of children and provides support for victims and witnesses.
- **Supreme Court and Appeals Division:** Handles prosecutions in respect to criminal appeals before the appellate courts.



- **Human Rights and Judicial Review Division:** Prosecutes in respect to human rights matters, constitutional and judicial review applications.
- **Sexual and Gender-Based Offences Division:** Handles prosecutions in respect of Sexual and Gender based Violence (SGBV).
- **Counter-Terrorism Division:** Handles prosecutions in respect of terrorism and related crimes.
- **Piracy and Maritime Offences Division:** Prosecutes matters relating to international cooperation on piracy and maritime legal matters.
- **War Crimes, Genocide and Crimes against Humanity Divisions:** Handles matters relating to War Crimes, Genocide and Crimes against Humanity.
- **Land, Environment and Related Crimes Division:** handles matters that related to land, the environment and wildlife.
- **Anti-Money Laundering Division:** handles matters relating to money laundering offenses.

## 2) Department of Economic International and Emerging Crimes

- **Anti-Corruption and Economic Crimes Division:** prosecutes matters of corruption, abuse of office, serious fraud and other related crimes
- **Narcotics, Organized and Cyber Crime Division:** handles organized crime, technology-based crime and cases of trafficking in drugs.
- **Extradition, MLA and International Co-operation Division:** Handles matters on international cooperation, Extradition and Mutual Legal Assistance.

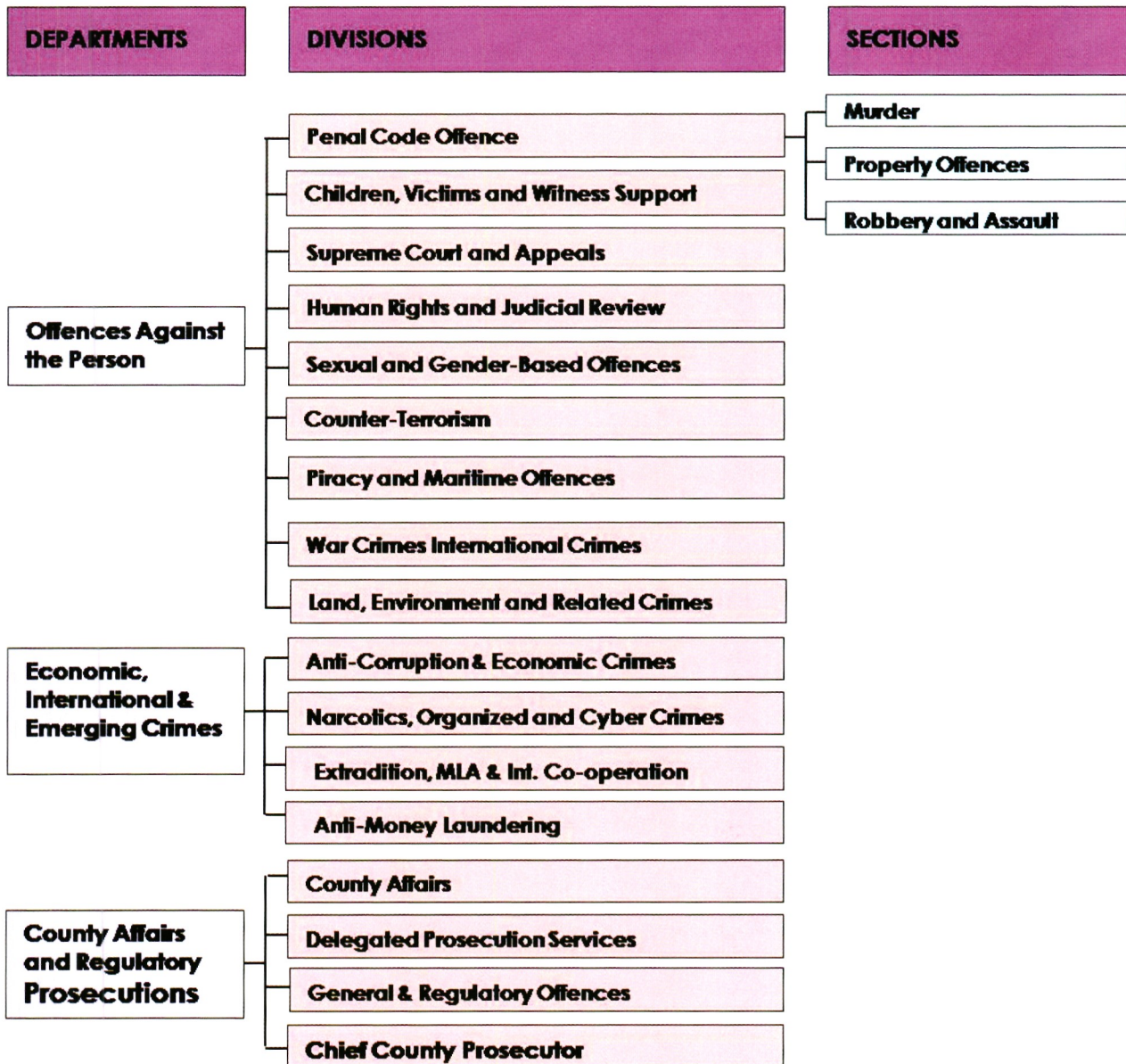
## 3) County Affairs and Regulatory Prosecutions Department

- **County Affairs Division:** Supervises the ODPP County Offices.
- **Delegated Prosecution Services Division:** supervises agencies exercising delegated powers of the DPP, including ensuring the agencies adhere to approved policies and guidelines
- **General and Regulatory Offences Division:** Handles prosecutions in respect to general and regulatory offences such as elections, environment, natural resources, social security, transportation and other statutory offences.



The diagram below is the structure of the three technical departments of the ODPP:

Figure 3: Organization Structure, Technical Departments



4) The Central Facilitation Department:

- **Administration Division:** Provides telephonic, registry, office space, transport and other services.
- **Human Resource Management Division:** Develops and implements human resource and administrative policies and strategies.

- **Human Resource Development Division:** develops and implements capacity building initiatives.
- **Planning Division:** Undertakes strategic planning, performance contracting, budgeting, monitoring and evaluation activities.

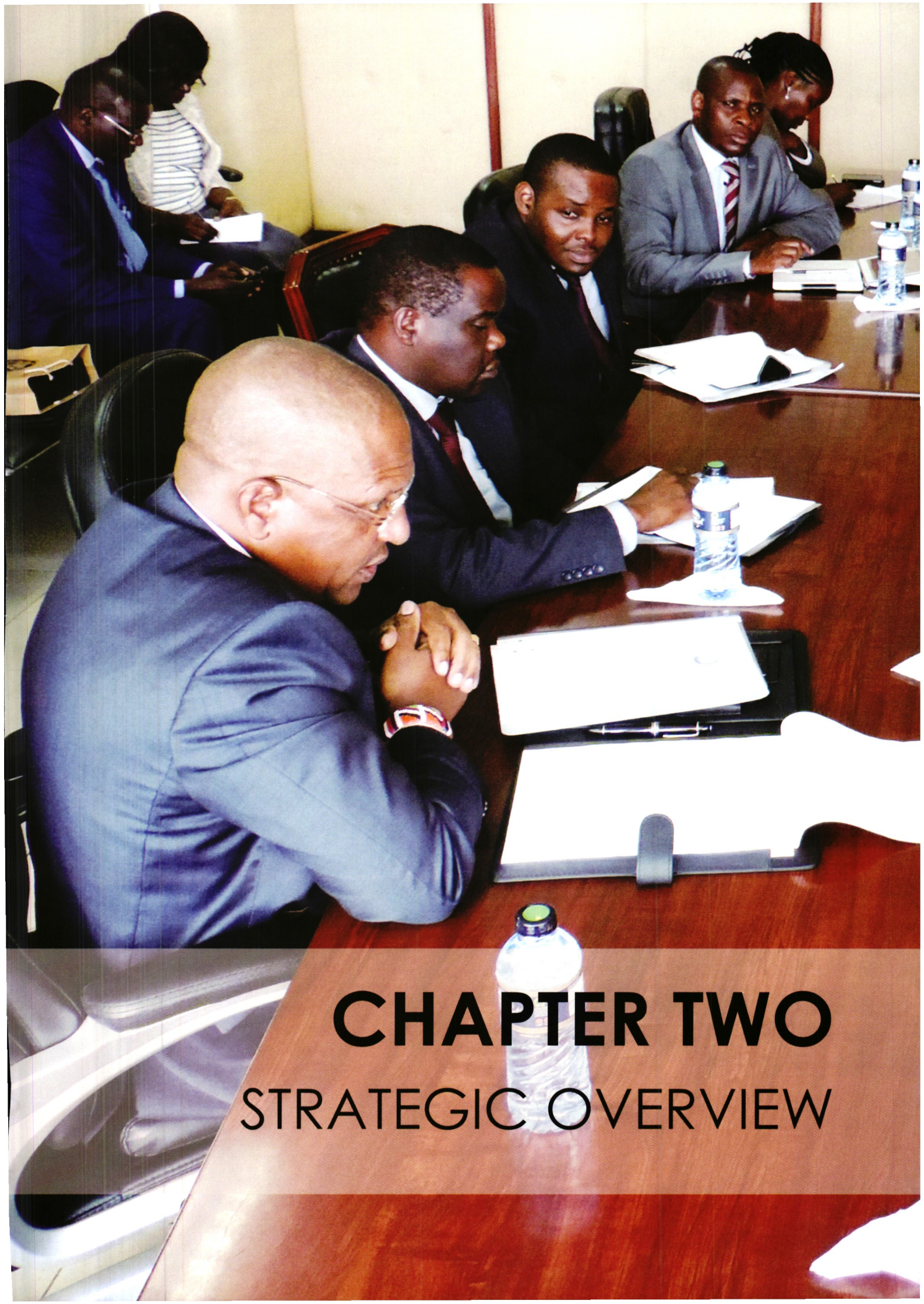
- **Finance Division:** Develops and implements financial management policies, systems and procedures aimed at improving financial reporting and accounting;
- **Accounts Division:** Accounts for all monies received and expended.
- **ICT Division:** Responsible for modernizing network infrastructure, upgrading and maintaining the standard operating environment for information technology services.
- **Audit Division:** Conducts audit of systems, processes and procedures and advises the DPP on compliance with government financial regulations.
- **Public Affairs and Corporate Communications:** Develops and implements the ODPP Communication Strategy.
- **Supply Chain Management Division:** Prepares and implements the Procurement Plan.
- **Prosecution Registry:** Responsible for documentation and records management.
- **Resource Centre:** Responsible for library and research.

The diagram below illustrates the structure of the Central Facilitation Department of the ODPP:

**Figure 4: Organization Structure, Central Facilitation**



During the reporting period, the Office commenced the process of review of its organizational structure to address the strategic challenges experienced in the implementation of the current strategic plan and also, to optimally operationalize the implementation of the 2<sup>nd</sup> ODPP Strategic Plan.



# **CHAPTER TWO**

## **STRATEGIC OVERVIEW**



## 2.1 Introduction: Strategic Objectives of the ODPP

The 1<sup>st</sup> Strategic Plan of the ODPP which was developed in 2011 to cover the strategic period of 2011-2015 was informed by a workforce-workload analysis. The analysis was conducted by consultants from the *Public Service Commission* and preceded the development of the Plan. The Strategic Plan largely aimed at setting up an organizational framework for the Office and provided a roadmap for operationalization of the Office in line with *Kenya's Vision 2030*. This was further complemented by the enactment of the *Office of the Director of Public Prosecutions Act, 2013*.

The Strategic Plan sets out the Office's core values, as well as, its vision and mission.

The following **10 strategic issues** were identified during the process for the Office to resolve in the strategic period:-

1. Limited prosecutorial independence.
2. Weak legal and institutional framework.
3. Inadequate organizational capacity.
4. Over reliance on manual systems.
5. Weak inter-agency collaboration.
6. Delay of prosecution services.
7. Negative public perception.
8. Poor facilitation of victims and witnesses.

9. Submission of poorly investigated cases.
10. Inadequate mainstreaming of cross-cutting issues.

The Plan further set out the following **7 strategic objectives** to redress the above identified strategic issues and to serve as the focus for the ODPP to achieve excellence in delivering prosecution services during the plan period:-

1. Enhance access to justice.
2. Enhance institutional reforms and restructuring.
3. Professionalize prosecution services.
4. Automate and modernize ODPP processes and procedures.
5. Strengthen and promote inter-agency collaboration and International Cooperation.
6. Strengthen legislative and policy framework.
7. Facilitate and support witnesses and victims of crime.

It is instructive to note that the life of the current strategic plan is fast coming to an end and the office has commenced the terminal review process alongside commencement of the development of the next strategic plan.

This chapter explores ODPP's performance with regard to its strategic objectives as set out above during the reporting period.



## 2.2 STRATEGIC OBJECTIVE 1

### Enhance Access to Justice



*Ms. Catherine Mwaniki (second left), Head of Murder Section listening to views from prison remandees*

#### 2.2.1 Introduction

Adherence to the rule of law and the protection of fundamental rights and freedoms as guaranteed in the Constitution, are the hallmarks of a functional justice system. They require effectiveness, efficiency and access to justice as key pointers for their successful realization. Access to justice is therefore an important aspect of the implementation of, not only the government's blue print- The Vision 2030, but also the Constitution and is thus, critical to ODPP's fulfillment of its mandate.

#### 2.2.2 Role of the ODPP in ensuring Access to Justice

During the reporting period, the ODPP undertook and implemented the following activities as part of its role in enhancing access to justice;

##### (i) Decentralization of prosecution services

The Office now has a presence in all the **47 Counties** of the Republic, as well as, in all the sub-counties where court stations exist. This has

enhanced provision of prosecution services across the country, as envisaged in Article 6(3) of the Constitution and Section 14 of the ODPP Act, which provide that the Office shall ensure reasonable access to its services in all parts of the Republic.

##### (ii) Public complaints handling mechanism

A Complaints and Compliments Section which undertakes registration, follow-up and resolution of public complaints continued to receive and handle complaints from members of the public. This has helped promote accountability and transparency in the discharge of the prosecution mandate, providing a platform for review of prosecutorial decisions which is a crucial component of access to justice.

The ODPP Complaints and Compliments Section has, since inception in January 2012, been able to process **9943** public complaints.



During the year under review, the ODPP was able to sponsor officers for customer care skills training, alongside a tailor-made psycho-social training to equip officers in the Customer Care Unit and the Complaints and Compliments Sections with skills to better attend to the ODPP clients. The Section was further revamped through deployment of more staff to respond efficiently and effectively to the increasing number of complaints received.

skills for the performance of their duties.

With regard to professionalization, the ODPP was able to fully take over prosecutions in all courts in the country and has also initiated the process of taking over the decision to charge which was largely exercised by the police.

The Office further concluded the process of review of the National Prosecution Policy and the Code of Conduct and Ethics for Public Prosecutors, which are critical policy documents that provide guidance on handling

of the decision to charge and the professional conduct of Public Prosecutors. The reporting period also saw the Office conclude the development of General Prosecution Guidelines – a useful tool for prosecutors, to make reference to in the day to day execution of their mandate.

#### **(iv) Fight against corruption**

ODPP remains conscious of its role in the fight against corruption and the fact that corruption inhibits access to justice. During the year under review, the Office actively engaged in various activities in this regard. The ODPP developed and disseminated Anti-corruption Prosecution Guidelines for Prosecutors to guide in the handling of corruption cases. Senior officers underwent sensitization on compliance with integrity provisions under the law, conducted by Officers from EACC. The Office also co-hosted an international UNCAC implementation country review team in the month of April 2015.



*A Prosecution Counsel attending to a member of public during the Annual Judicial Service Week (iii)*

#### **Capacity development and professionalization of services**

To respond to the increasing sophistication of crime, prosecutors continued to receive specialized training in various thematic areas. Capacity building attracted a lot of support from ODPP partners, and the Office was able to reasonably equip its officers despite budgetary constraints experienced. Newly recruited prosecutors underwent trial advocacy training to equip them with basic



Additionally, joint bi-monthly inter-agency anti-corruption forums continue to be held, whereat strategy on the handling of both investigation and prosecution of corruption matters is discussed. Several Anti-corruption sensitization workshops and trainings for prosecutors and investigators were also held during the period under review.

The DPP also dedicated a specialized pool of senior prosecutors to review, brief and guide investigators in the compilation of requisite evidence in all Anglo-Leasing and the 'List of Shame' cases submitted to the Office for expedient action. The ODPP's processing of these matters exemplifies the continued deployment of the prosecution guided investigation model in complex cases.

#### **(v) Infrastructural revamping of the ODPP**

During the reporting period the decentralization efforts of the Office, saw the equipping of newly opened sub-county offices. Towards this end,

some of the offices received furniture, reference books and equipment. As part of the ODPP's efforts to avail the necessary basic tools of work to its staff, existing offices were refurbished and the process of acquiring additional office space continued.

#### **(vi) Public engagement and media use**

The Office actively maintained its social media platforms on *Twitter* and *Facebook* with a fast growing following of over **20,000** users, some of whom, like media houses and top bloggers, have vast national and global audience. Further, the ODPP Public Communications Division continued to receive the support required to keep the public informed of the activities of the Office. In addition the ODPP Website was revamped with a view to making it more interactive to members of the public. ODPP also participated in annual judicial service week and undertook prison visit with a view to informing decongestion strategies.

## **2.3 STRATEGIC OBJECTIVE 2**

### **Institutional Reform and Restructuring**

#### **2.3.1 Introduction**

The ODPP undertook significant restructuring processes to improve service delivery, as well as, prudent management of both human and fiscal resources. The reform and restructuring process involved the enhancement of various specialized units within the Office, alongside development of oversight mechanisms to ensure adherence to the core values and mission of the Office. Further, this process involved measures to enhance staff retention, career progression and staff welfare.

#### **(i) Specialized divisions, sections and units**

During the reporting period, the Office enhanced the role of specialization of prosecution by expanding existing divisions, sections and units and establishing new

ones, such as; Anti-Money Laundering Division, Land, Environment and Related Crimes Division and Crime Data Collection & Analysis Unit.

#### **(ii) Human resource management and staff welfare**

The ODPP aspires to attract and retain staff with key competencies in the job market. The following is an analysis of the staffing, recruitment, disability and retention levels.

#### **(a) Staffing levels**

As at 30th June 2015, the ODPP had a staff compliment of 933 against an optimal level of 1297; comprising 612 prosecution counsel and 321 central facilitation staff.



The current deficit is 315 prosecution counsel and 39 central facilitation staff. ODPP staffing levels increased by 39% during the reporting year.

The current in-post for female staff stands at **56%** while that of male is at **44%** as shown in the table below:-

**Table 1: Current In-Post of Staff**

ODPP GRADING	JOB GROUP	MALE	FEMALE
2	T	1	
3	S	1	1
4	R	22	8
5	Q	12	8
6	P	14	4
7	N	11	16
8	M	36	30
9	L	52	100
10	K	135	244
11	J	9	27
12	H	14	21
13	G	17	16
14	F	41	22
15	E	6	4
16	D	39	22
<b>Total</b>		<b>410</b>	<b>523</b>

**(b) Disability levels**

The ODPP acknowledges the importance of having a diverse workforce that reflects the constitutional requirements of equal opportunity for all in the job market. As at June 2015 the ODPP had 10 officers living with disability which represents 1.1% of the total staff complement.

**(c) Recruitment levels**

In the reporting period the ODPP recruited **420** new staff of whom **61.2%** were female and **38.8%** were male. Of the **420** recruited staff, **85%** were prosecution counsel and **15%** were central facilitation staff. Female prosecutors accounted for **65.4 %** of the prosecution counsel recruited, while **39.3%** of the central facilitation staff recruited were female.

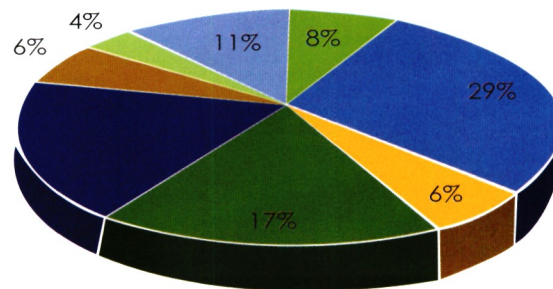
**(d) Retention profile**

In the reporting period **52** staff left the ODPP for a variety of reasons. This accounts for an attrition of **5.6%** of the entire staff complement. **4.6%** of the staff complement left cited the comparative disadvantage of the ODPP in the job market. Below is a detailed attrition profile.



*DPP and senior management staff after welcoming new staff recruited in 2014/15*

**Figure 5: Staff Attrition Profile**



- Death
- Retirement
- Termination
- Dismissal-Gross misconduct
- Reisgantion
- Transfer To Other Public Service Departments
- Desertion
- Release Back To Ministry

### (e) Professional skills development

ODPP is committed to improving professional skills of its officers through tailored training, coaching and mentorship. During the year under review, trainings and professional development opportunities were offered on a wide range of topics. Trainings were delivered by internal and external facilitators and benefited officers from partner agencies, including the National Police Service, Kenya Wildlife Service, Kenya Revenue Authority, Kenya Airports Authority, NEMA, and Judiciary, amongst others.

The Table below illustrates the group trainings undertaken during the reporting period.

**Table 2: Group Trainings**

TRAININGS PROGRAMME	NO OF OFFICERS	SPONSOR
Induction Seminar	61	ODPP
Induction & Trial Advocacy Program	543	ODPP/GIZ/IJM
Strategic Leadership Development Program	12	ODPP
Senior Management Course	53	ODPP
Supervisory Course For Office Assistants	14	ODPP
Procurement & Financial Management For Field AIE Holders	66	ODPP
Sensitization-Handling Of Government Records	183	ODPP
Proficiency Training- Clerks	10	ODPP
Complex Crime Transactions Involving Laundering Of Criminal Proceeds	11	DOJ
Wildlife	58	ODPP/UNODC/BHC/ANAW
Cyber Crime	27	ODPP/UNODC
Terrorism	28	ODPP/DOJ/IGAD
Sexual Gender Based Violence/Trafficking In Persons	49	ODPP

In addition, the ODPP supported individual training programs at advanced levels for a number of its staff. These trainings were funded both internally and externally as illustrated below:-

**Table 3: Sponsored Trainings**

Course	No	Sponsor
Masters	3	ODPP
Masters	2	China & Zimbabwe (scholarships)
Supervisory course for secretaries	1	ODPP
Higher Diploma for secretaries	1	ODPP
Security and Defence Studies	1	Scholarship
ESAMI	4	ODPP
Secretarial Management	1	ODPP
Project and Programme Management	1	ODPP
Executive Secretaries	2	ODPP
Refresher course for Drivers	2	ODPP
Gender and Disability Mainstreaming	3	ODPP



*Senior Prosecutors from ODPP at the National Advocacy Centre in Columbia, South Carolina benchmarking on the establishment of a Prosecutors' Training Institute*

The Office also developed a proposal for the establishment of a Prosecutors Training Institute (PTI) following wide consultations and benchmarking. This will inform further discussions regarding the actual establishment of the Institute.

**(f) Staff welfare**

Building employee resilience and providing a conducive working environment are recognized as critical factors for staff welfare and retention in ODPP. During the reporting period, the ODPP instituted

programs aimed at integrating the principles of workplace diversity such as respect, dignity, equity, fairness, diversity and balance.

The ODPP began the process of sourcing a group life cover for all staff. In addition, the ODPP initiated a process of development of a recruitment and retention policy. Similarly, arrangements are underway to introduce a medical scheme and a group personal accident policy for staff.



## 2.4 STRATEGIC OBJECTIVE 3

### Professionalization of Prosecution Services

#### 2.4.1 Introduction

The ODPP is committed to the highest ethical and professional standards in prosecution. To achieve this objective it developed general and thematic policies and guidelines which are informed by its vision and core values. The policies and guidelines are:

1. National Prosecution Policy
2. Code of Conduct and Ethics for Public Prosecutors
3. General Prosecution Guidelines
4. Corruption and Economic Crimes Prosecution Guidelines

The policies and guidelines are aimed at assisting and providing direction for prosecutors in the conduct of prosecution.

#### 2.4.2 Implementation of prosecution policy framework

During the reporting period the ODPP finalized the development and review of the key prosecutorial policy documents listed above. The Office is currently in the process of sensitization and dissemination of the said policy documents. In addition, to improve the quality, efficiency and effectiveness of prosecution, particularly in specialized areas, the Office has so far gazetted **254** prosecutors from **sixteen agencies** to exercise delegated prosecutorial powers.

#### 2.4.3 Quality-assurance mechanism of prosecutions

##### (i) Screening of cases

The decision whether or not to charge is the most important step in the prosecution process. It entails a two-stage test; Evidential Test and Public Interest Test. A prosecutor must first of all objectively assess the totality of the evidence and

be satisfied that the evidence establishes a realistic prospect of conviction. Thereafter, the prosecutor must be satisfied that prosecution of the case will serve the public interest. There is also a continuing obligation on a prosecutor to assess the evidence as the matter proceeds. The Office developed case screening and review tools which were piloted in Meru, Nairobi and Voi stations.

##### (ii) Taking over prosecution in the magistrates' courts

Following a vigorous recruitment drive, the Office has taken over control of prosecutions from the police in all the **117** court stations in the country. Consequently, the overall conviction rate is steadily rising and currently stands at **89.4%** up from **82%** in the previous reporting period.

##### (iii) Delegated prosecutions

The ODPP moved to enhance its supervisory role on the agencies that exercise delegated prosecution powers through setting up of a database on all agencies and individual prosecutors exercising delegated prosecutorial powers. During the reporting period, the ODPP successfully held six workshops to sensitize prosecutors from National Environment Management Authority, Ministry of Health, Kenya Bureau of Standards, National Social Security Fund, Kenya Revenue Authority and Kenya Wildlife Service on the prosecution policy documents. Such trainings serve to promote inter-agency cooperation and collaboration.



#### **(iv) Capacity building**

The ODPP has been undertaking a massive recruitment drive of staff. Consequently, during the period under review the Office delivered a two week induction and trial advocacy training which resulted in an unprecedented **543** prosecution counsel (**88%** of the total number of prosecution counsel) being trained.

#### **2.5.1 Introduction**

Tremendous strides towards automation of ODPP's case and mail management systems and



*The third cohort of the 2014/2015 trial advocacy training programme at Kenya School of Government*







## 2.5 STRATEGIC OBJECTIVE 4

### Automate and Modernize ODPP Processes and Procedures

modernization of ODPP's ICT environment were made in FY 2014/15, specifically, the following milestones were achieved and concluded:

- a. Design of a manual case and mail management system,
- b. IT Roadmap towards automation of the new system (including development of system specifications),
- c. Upgraded the ODPP website; and
- d. Scaled up the connectivity of ODPP offices through a LAN system.

#### 2.5.2 Implementation of ICT institutional strategy

ODPP developed in 2013, an **ICT Strategy Framework [2013-2018]** to guide its implementation of the key strategic objective of automation and modernization of ODPP processes and procedures. The ICT Strategy Framework calls for a multi-pronged approach, involving:

- continuous upgrade of the ICT infrastructure by establishing LAN/WAN systems,
- business process optimization of ODPP case-file and mail management processes and recruitment of competent personnel, and
- training of staff on any ICT-related changes within the Office.

As part of implementing this strategy, the Office supplied the staff with the necessary computers, modems, scanners, printers and servers. Indeed, the computer to staff ratio increased to an average of 1:3.

The ODPP successfully undertook Phase II of the Case-file and Mail Management System Development Project and continued to; enhance capacity for the use of the automated complaints system, increase LAN and Internet connectivity to over half of the 47 County Offices, and recruited qualified ICT staff in 2014/15.

#### 2.5.3 ICT Infrastructure development

ODPP invested its ICT vote towards increasing LAN and internet connectivity to over half of the County Offices. The Office reviewed and updated its website which enhanced provision of useful and accessible information resources to the public.

#### 2.5.4 Business Process Optimization

During the reporting period, **Phase II of the Case Management System Development Project ("To-Be" Phase)** was completed. The new system design is aimed at optimizing ODPP's processes and procedures. In this regard, the following were formulated:

- A Final Report of Phase II of the Case Management System Development Project,
- Detailed New Case-File/Mail Management System Manuals and Process Maps,
- A costed ODPP IT Roadmap towards Automation of the new Processes,
- A Project Implementation Plan (for both work-flow processes and automation), and
- A Change Management Strategy.

## 2.6 STRATEGIC OBJECTIVE 5

### Promote Inter-Agency Cooperation and International Collaboration

#### 2.6.1 Introduction

ODPP operates within the larger criminal justice system which has various investigative agencies, the Judiciary, as well as non-state actors. Effective stakeholder engagement is therefore vital in resolving the bottlenecks within the justice chain which impact on ODPP's service delivery. It is for this reason that ODPP's Strategic Plan [2011-2015] identifies the promotion of inter-agency and international collaboration as a key strategic objective. Below are some details of key stakeholder engagements by ODPP in the year under review with state and non-state agencies, international agencies, networks and other forums.

#### 2.6.2 Inter-Agency Collaborations

into the core mandate of the ODPP. The Office strives to build mutually cooperative relationships with each of these vital partners. For instance, there has been continued employment of the prosecution-guided investigation model in complex or high profile cases investigated by the NPS, EACC, IPOA and KWS. These include the following:-

- High profile terrorism cases (including **Mpeketoni, Mandera** and **Garissa** terror attacks)
- Murders/suspicious deaths of high public interest (including the deaths of Homa-Bay Senator Otieno Kajwang, Hon. George Muchai and Mr. Fidel Odinga)
- Corruption and other Economic Crimes in the National and County Governments investigated by EACC (Including the **Anglo-leasing cases** and the **"176 List of Shame" Cases**),
- Major local and international narcotics and wildlife trophy intercepts,
- Tracking and arrest of fugitives, such as, a major wildlife trafficking kingpin and fugitive in Tanzania
- Police accountability cases investigated by IPOA, including the Lang'ata Primary School tear-gassing incident.

Further, as part of the collaboration efforts with various agencies, the ODPP developed Standard Operating Procedures (SOPs) and reference manuals for capacity building. This included the Rapid Reference Guides "Points to Prove" on wildlife and terrorism crimes. Sensitization on the same is ongoing.



From left to right: CJ Dr. Willy Mutunga, AG Prof. Githu Muigai and DPP Keriako Tobiko during the launch of Bail and Bond Policy guidelines

#### (i) Investigative Agencies

Kenya has an array of institutions charged with investigating general crime, complex/specialized areas of crime, and regulatory offences. The work of these agencies, such as the NPS, EACC, KWS, IPOA, KNCHR, KFS, KRA, Immigration Department and CAK feeds

ODPP also worked with the NPS and CAK in the investigation of 76 Chinese nationals operating a cyber-crime syndicate in Kenya. Additionally, a working Memorandum of Understanding to define operational details in Police Accountability cases with IPOA was entered into.

During the review period, ODPP officials paid courtesy calls on some partner agencies including DCI Narcotics and Cybercrime task-teams and NACADA. The DPP also hosted a number of these agencies at his office which paid courtesy calls to enhance collaboration, such as the KNCHR, IPOA, NCA, NEMA, KWS, KPLC, alongside various County Governments.

#### **(ii) Judiciary**

The Judiciary remained a vital partner in ensuring justice for crimes committed and 2014/15 saw the strengthening of the working relationship with the courts. ODPP continued to participate in Court Users Committees across the country, by voicing concerns and seeking solutions in the interest of administration of justice. The Office also partnered with the Judiciary in various capacity building efforts organized jointly with the Judicial Training Institute, particularly in combating wildlife crimes, which included the development of a training curriculum for investigators, prosecutors and judicial officers. The ODPP also participated in various legislative initiatives by the Judiciary.

Further, the DPP paid a courtesy visit to the Chief Justice and the Chief Registrar of the Judiciary following which an agreement was arrived at to include office space for prosecution counsel within future court buildings.

#### **(iii) Witness Protection Agency**

ODPP continues to work closely with the Witness Protection Agency to secure vulnerable and threatened witnesses. The Office continued to have Prosecution Counsel serve as desk officers for WPA, who ensure protection orders are sought as and when it is necessary. There is continued collaboration with the WPA to sensitize prosecutors on the protection of witnesses. ODPP also participated in the development of Court Rules on Witness Protection.

#### **(iv) Law Society of Kenya**

LSK is the professional body for advocates who are an integral part of the criminal justice system and ODPP continues to foster cordial relations with it. ODPP processes complaints by individual advocates and LSK in relation to threats to advocates in the course of their work.

#### **(v) National Council on Administration of Justice**

The ODPP is a key member of the NCAJ which is a unique policy and coordination organ for the entire Justice System. During the year under review, ODPP participated in various NCAJ initiatives including the development of Bail and Bond Policy Guidelines, the Sentencing Policy, and an Illicit Trade Manual. The ODPP is also part of the Active Case Management initiative whose center-piece is to introduce in all criminal proceedings, a pre-trial conference aimed at prudent allocation of court time.

#### **(vi) Cyber-crime state partners**

These include the CAK, Ministry for ICT,

CBK, the Banking Industry, ISPs and Mobile communication firms, various independent developers and consumer groups. The ODPP is focused on being responsive to emerging forms of crime, including cyber-crimes which are on the rise, and have particularly hit hard the financial sector. To redress this ODPP initiated the drafting of a **Cyber-Crime Bill, 2014** which is being subjected to stakeholder engagement. The ODPP has also set up a Cyber-Crime Section and is enhancing its training of Prosecutors in this area, which included attendance of a UNIDIR Regional Conference on Cyber-Security and a UNODC training of 40 Prosecutors. The Office is also represented at the National Kenya Computer Incident Response Team Coordination Center (National KE-CIRT/CC) whose mandate is to coordinate, response and manage cyber security incidents nationally and to collaborate with relevant actors locally, regionally and internationally.

#### **(vii) Anti-Narcotics state partners**

Kenya is a front-line state in combating drug trafficking through the "southern route" among Indian Ocean Rim states. In the year under review, the law enforcement, ODPP and defense forces, as well as, International troops patrolling the high seas in the Indian Ocean stepped up local and international collaboration efforts to intercept drug trafficking into Kenya.

ODPP's Anti-Narcotics Section held

discussions with 7 relevant state agencies to enhance collaboration and set-out standard operating procedures. The Section is closely working with the NPS Anti-Narcotics Unit and its 16-man vetted unit supported by the US Drug and Enforcement Agency in investigating and prosecuting high narcotics impact cases.

#### **(viii) Anti-FGM state partners**

The ODPP robustly took up the challenge of prosecuting FGM cases and sensitizing affected communities through the Anti-FGM Unit. 2014/15 saw an unprecedented number of FGM cases prosecuted including, preferring murder charges to FGM perpetrators in cases where the victims died as a result of undergoing FGM. Several public officials were also charged for willfully condoning FGM activities in their jurisdictions. ODPP worked with the Anti-FGM Board and civil society to mount a high profile and successful public sensitization campaign. As part of this campaign ODPP set-up and launched a **Hotline Number (0770610505)**



*Ms. Christine Nanjala, Head of ODPP's Anti-FGM Unit presenting a copy of the Anti-FGM Act to a County Commissioner during ODPP's Anti-FGM Campaign*

to facilitate the receiving of information from communities and civil society on FGM activities and liaison with investigators.

### 2.6.3 Non-State Partnerships

ODPP received support towards its capacity enhancement efforts from various International and Foreign agencies as below:-

#### (i) German Agency for International Cooperation (GIZ)

GIZ continued to strongly support ODPP's good governance efforts through support of the monthly ODPP-EACC Collaboration Forums which strategize on investigations and prosecutions. In addition, GIZ supported the production of key prosecutorial policy documents. The ODPP also received support from GIZ in Phase II of the Case-file and Mail Management System Development Project, as well as, customer care and mediation training of officers in the Complaints Section. Further, GIZ supported capacity building efforts including the trial advocacy training programme for 543 prosecution counsel and the training of end-users on the Automated Complaints Systems.

#### (ii) United States Department of Justice (USDOJ)

The USDOJ supported ODPP's capacity building efforts through facilitation of ODPP trainings on Anti-Terrorism, Trial Advocacy, and Anti-Money Laundering/ CFT. In partnership with the Whitehouse

Security Governance Initiative, USDOJ also supported ODPP in benchmarking on issues of professional skills development, case management systems and prosecution of terrorism cases through a US study tour attended by nine senior Prosecutors.

#### (iii) United Nations Office on Drug and Crime (UNDOC)

The UNODC worked with ODPP in training 40 Prosecution Counsel on Cyber-Crime and also facilitated the participation of ODPP Prosecutors in three regional forums on Wildlife Crimes, Anti-Narcotics and Anti-Trafficking in Persons. UNODC is also supporting the ODPP's Wildlife



*An ODPP team of Senior Prosecutors at the White House during a study visit organized by USDOJ.*

Crimes Section's ongoing sensitization of investigators, prosecutors and judicial officers using the Wildlife Crimes Rapid Reference Guide. The ODPP is a key implementation agency of the new Container-Control Programme supported by UNODC, aimed at investigating and prosecuting high impact wildlife trafficking cases by undertaking intercepts in all Kenya's ports of entry.



**(iv) United Kingdom-Foreign and Commonwealth Office (UK-FCO)**

The UK-FCO provided support towards the production of Anti-Terrorism and Wildlife Crimes Rapid Reference Guides and Standard Operating Procedures. They also supported sensitization of investigators, prosecutors and judicial officers on the same, in addition to general capacity building of newly recruited counsel through offering instruction in trial advocacy skills.

**(v) International Justice Mission (IJM)**

IJM's collaborative partnership in 2014/15 was essential to the successful training of 543 Prosecution Counsel in ODPP's flagship initiative for professional development, that is, Trial Advocacy Programme. They also gave technical support to the piloting of documented screening of case files in Meru, Nairobi and Taita-Taveta Counties.

**(vi) Institute of Security Studies (ISS)**

ISS facilitated the training of investigators, prosecutors and judicial officers on counter-terrorism, international crimes and use of mutual legal assistance processes.

**(vii) WAYAMO**

WAYAMO worked with ODPP to train and expose Prosecutors to the workings of international criminal justice processes. They also sponsored a consultative forum for state agencies involved in combatting Wildlife Crimes.

**(viii) African Network for Animal Welfare (ANAW)**

ANAW working under the umbrella body of Kenyans United Against Poaching (KUAPO) supported ODPP and the Judiciary in the production of a curriculum for investigation, prosecution and adjudication of Wildlife Crimes. They also sponsored numerous

trainings for all criminal justice agencies on wildlife crimes, including marine resources, alongside the drafting of amendments to the Wildlife Conservation and Management Act, 2013.

**(ix) COVAW, FIDA, CRADLE,**

ODPP's SGBV Division worked with the above NGOs, among others on various SGBV cases, including the successful trial of the "justice for LIZ Case".

**(x) Independent Medico-Legal Unit (IMLU)**

ODPP continued to work with IMLU on the Prevention of Torture Bill and the National Coroners Service Bill all of which are still under consideration.

**2.6.4 International Legal Cooperation**

ODPP continues to invest in improving international mutual legal cooperation. The International Cooperation and Mutual Legal Assistance Division worked on proposals to amend the Mutual Legal Assistance Act, the Extradition laws and trained its officers on various technical aspects of international legal cooperation. The Division also worked on responses to Status Agreements & MoUs between GOK and various countries.

ODPP also hosted the UNCAC review team on implementation of UNCAC provisions in Kenya. The Office also provided information on the number of homicides and SGBV cases to UNODC to inform their periodic reports. Further, the Office provided information to USDOJ for the annual US State Department Trafficking in Persons Report and the USDOJ reports on Anti-Money Laundering/CFT and Anti-Narcotics.

**2.6.5 International Networks**

ODPP remains an active member and participant of important criminal justice organizations and forums,

including the IAP, APA, and EAAP. In addition, ODPP in 2014/15 became a member of the International Association of Penal Law (IAPL) and the Indian Ocean Forum on Maritime Crime (IOFMC).

ODPP attended the 19<sup>th</sup> Annual General Meeting of the International Association of Prosecutors (IAP) which was themed on "Good Prosecution Practice; learning from each other". The ODPP also participated in the 9<sup>th</sup> Annual Africa Prosecutors Association (AAP) Conference and AGM which was focused on Anti-Terrorism and SGBV.

A major development was the election of the DPP Kenya as the President of East Africa Association of Prosecutors (EAAP) which is an association of National Prosecution Authorities from six East African states namely Uganda, Tanzania, Rwanda, Burundi, Kenya and the newly admitted South Sudan.

ODPP was also represented at the 16<sup>th</sup> International Congress on Penal Law (themed on information society and penal law). ODPP also attended the IOFMC thematic forums on Trafficking in Persons, Wildlife Crimes and Narcotics Trafficking in the Eastern Africa and Indian Ocean Regions.

In addition, ODPP attended a number of

international conferences as part of discharging Kenya's state obligations, as well as, to enhance international criminal partnerships and learn the best practices in thematic areas of prosecutions.

The ODPP was part of a number of Kenyan delegations, including; Kenya's review by the UN Human Rights Council under the Universal Periodic Review Mechanism, the Assembly of State Parties to the Rome Statute, the 13<sup>th</sup> UN Criminal Justice Congress and the Annual Meeting of the UN Commission on Crime Prevention and Criminal Justice.

Further, the Office participated in the inaugural World Congress on Juvenile Justice hosted by the Swiss Federal Department of Foreign Affairs in collaboration with the Swiss Federal Office of Justice and the NGO-Terre Des Hommes.

Additionally, ODPP took part in a number of international trainings including a UNIDIR Regional Forum on Cyber-crime and a USDOJ sponsored Regional Training Workshop on Cyber-Crime. ODPP attended two IGAD sponsored anti-terrorism forum and trainings.



## 2.7 STRATEGIC OBJECTIVE 6

### Strengthen Policy and Legislative Framework

#### 2.7.1 Introduction

To tackle some institutional or structural weaknesses in prosecutorial service delivery and those bedeviling the wider criminal justice systems, it is often necessary to improve applicable policy and legislative frameworks. In its efforts to contribute to and improve policy and legislative frameworks, the ODPP made a number of strides.

#### 2.7.2 Internal policy developments

The ODPP reviewed, developed and commenced a number of its internal policy and operational instruments including;

- the Revised National Prosecution Policy,
- the Revised Code of Ethics and Conduct for Public Prosecutors,
- General Prosecution Guidelines,
- Prosecution Guidelines on Economic Crimes.
- Prosecution guidelines on SGBV and Trafficking in Persons.
- Standard Operating Procedures on Wildlife Crimes.
- Standard Operating Procedures on Terrorism Offences.
- Standard Operating Procedures on Anti-FGM Offences.
- Standard Operating Procedures on Hate-Speech Offences.
- Compendium on prosecution of International Crimes and a Piracy and Other Maritime Crimes.

The Office also piloted the screening of case files and documentation of the *decision to charge* as part of operationalization of the revised National Prosecution Policy.

#### 2.7.3 Formulation of criminal justice sector policies

ODPP contributed to the development and implementation of a number of criminal justice sector policies and legislative initiatives. For instance, ODPP contributed to the development of the Bail and Bond Policy Guidelines and the Sentencing Policy Guidelines under the NCAJ.

The Office was involved in Inter-agency taskforces including the IDPs Taskforce and the Taskforce to Develop the Court of Appeal and High Court Administration Bills. ODPP also contributed in discussions on the proposed establishment of the High Court Division on International and Organized Crime by Judiciary and the National Organized Crimes Centre by NPS.

#### 2.7.4 Law reform

Apart from sector-wide policy developments, ODPP was involved in various law reform initiatives. This includes the development of the Court of Appeal Bill, High Court Administration Bill, National Coroners Service Bill 2015, and Rules on Witness Protection in Court. The Office also initiated the development of Plea-bargaining Rules and Guidelines, Cybercrime Bill 2014, Wildlife Management & Conservation (Amendment) Bill 2014, Security Laws (Amendment) Act, 2014 and the Victims Protection Act, 2014.





## 2.8 STRATEGIC OBJECTIVE 7

### Facilitation of Witnesses and Victims of Crime

#### **2.8.1 Introduction**

Recent developments in Kenya have seen the enactment of the Victim Protection Act, 2014. This piece of legislation has introduced new dimensions in the criminal justice processes, where the rights of victims have been upheld, including direct participation in trials. Victims of crime are natural persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws. The ODPP is a key player in the realization of the provisions of the Act.

#### **2.8.2 Facilitation of Children, Witness and Victims Division**

In realization of the role of victims in the criminal justice system, the ODPP operationalized the specialized thematic Division on Children, Witness and Victim Support. The Division has proposed modalities for the support of and facilitation of witnesses and victims including, the entering into an MoU with WPA in this regard.

#### **2.8.3 NCAJ Efforts to facilitate Children, Witness and Victims**

NCAJ has a Children's Special Working group which seeks to implement the implementation of the Victims' Protection Act, 2014 and the Protection against Domestic Violence Act, 2015 in relation to children's matters.



# CHAPTER THREE

## PROSECUTION PERFORMANCE

### 3.1 Statistical Highlights

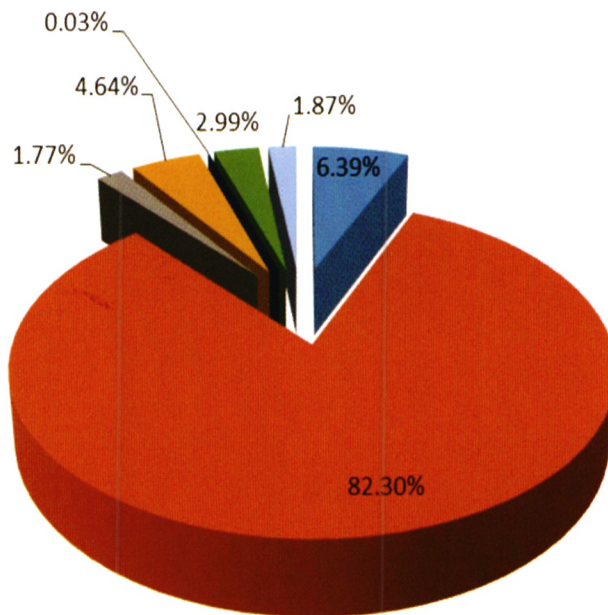
This chapter presents the overall prosecution performance of the ODPP and statistical analysis of cases handled during the reporting period. The chapter also highlights some of the jurisprudential and other notable cases decided.

There was a **55%** increase in the total number of matters handled compared to the previous period which is attributed to the decentralization of prosecution services to all court stations in country and the taking over of the decision to charge by ODPP.

**Table 4: Matters Processed by ODPP**

Matter	Registered	Proportion
Appeals (In Supreme Court, CoA & HC)	11,071	6.39%
Criminal Trial (HC&MC)	147,922	82.30%
Revisions	3,061	1.77%
Applications	8,035	4.64%
Extradition & MLA Requests	55	0.03%
Advice Files	5,179	2.99%
Complaints	3,244	1.87%
<b>Total</b>	<b>178,567</b>	<b>100%</b>

**Figure 6: Proportion of Matters Registered**



- Appeals (In Supreme Court, CoA & HC)
- Criminal Trial (HC&MC)
- Revisions
- Applications
- Extradition & MLA Requests
- Advice Files
- Complaints



The overall trial conviction rate rose to **89.4%** up from **82%** in the previous reporting period. However, the trial conclusion rate dropped to **32.8%** from **47.2%**. It is noted that the ODPP registered a **66%** increase in new trials. The rise in the conviction rate indicates the continued improvement in screening of cases further supported by increased professionalization of prosecutions. On the other hand, the drop in the conclusion rate is informed by the significant rise in cases registered.

**Table 5: Criminal Matters Handled**

Courts	Total Registered	Withdrawn	Conviction	Acquittal	Pending	Conviction Rate	Conclusion Rate
High Court	10,177	102	205	83	9,787	71.18%	3.83%
Magistrate Court	137,745	7628	36230	4243	89,644	89.52%	34.92%
Total	147,922	7,730	36,435	4,326	99,431	89.39%	32.78%

**(i) Appeals**

ODPP registered **29.8%** increase in the number of appeals in **2014/2015** and recorded a success rate of **67.7%** up from **65.2%** in the previous year. This is attributed to the increase in prosecution capacity through recruitment and deployment of additional staff. This resulted in an increase in the appeals conclusion rate to **13%** from **12%** in the previous reporting period. Also provided is a trend analysis of ODPP's performance on appeals from **2011/2012** to date.

**Table 6: Status of Appeals (SCoK, CoA & HC), 2014/2015**

Courts	Case Type	Total Appeals	Dismissed	Allowed	Withdrawn	Pending	Success Rate	Conclusion Rate
SCoK, CoA & HC	Appeals	11,071	680	466	298	9,627	67.73%	13.04%

**Table 7: Trend Analysis of ODPP's performance on appeals from 2011/2012 to 2014/2015**

Case Type	Outcome	2011/2012	2012/2013	2013/2014	2014/2015
Appeals	Pending	4494	6268	7,405	9,627
	Dismissed	445	1599	500	680
	Allowed	388	601	351	466
	Withdrawn	243	193	159	298

**(ii) Applications**

ODPP handles various applications made during the criminal trial process. The applications range from constitutional petitions to bail applications. They may be filed by ODPP, the accused person, or other interested parties. ODPP registered an overall conclusion rate of **15%** and a success rate of **65.1%** in the handling of the various applications.

Below is a presentation of the status of applications made at the Court of Appeal and the High Court.

**Table 8: Applications Handled**

Court	Case Type	No. of Cases	Dismissed	Allowed	Withdrawn	Pending	Success Rate	Conclusion Rate
CoA & HC	Constitutional Applications	804	22	42	11	729	44.00%	9.33%
HC	Judicial Review	1,178	3	9	1	1,165	30.77%	1.10%
	Revisions	3,061	389	225	41	2,406	65.65%	21.40%
	Application for leave out of time	362	69	18	6	269	80.65%	25.69%
	Other Bail Applications	2,630	260	237	81	2,052	59.00%	21.98%
Total Applications		8,035	743	531	140	6,621	62.45%	17.60%
Overall total (Appeals & Applications)		19,106	1,423	997	438	16,248	65.12%	14.96%

**(iii) Criminal trials**

Criminal trials accounted for **82.3%** of the workload handled by ODPP up from **80.1%** recorded during the previous reporting period. Criminal trials are undertaken at the High Court and Magistrates' Courts across the country.

ODPP concluded **32.8%** of the **147,922** cases registered during the reporting period, a drop from **48.2%**. This is due to a **66%** increase in total number of criminal trials registered in the year, the majority of which are yet to be concluded.

The indicated rise is informed by increased access to justice resulting from the expansion of both ODPP and the Judiciary. However, the overall conviction rate continues to rise up from **75%** to **89.4%** over the last four years, notably indicative of the impact of professionalization of prosecution services.

**Table 9: Criminal Trials**

Court	Total Registered	Withdrawn	Conviction	Acquittal	Pending	Conviction Rate	Conclusion Rate
High Court	10,177	102	205	83	9,787	71.18%	3.83%
Magistrates' Court	137,745	7628	36230	4243	89,644	89.52%	34.92%
Total	147,922	7,730	36,435	4,326	99,431	89.39%	32.78%

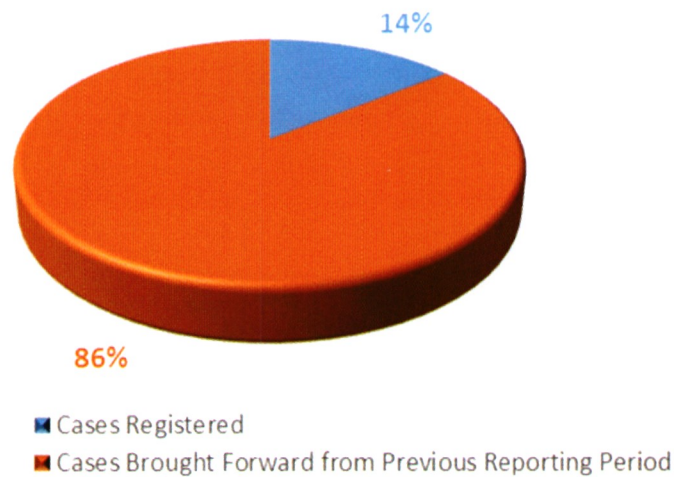
**(a) Trials at the High Court**

During the period under review ODPP registered **1,443** new murder cases which is an **18%** increase compared to previous year. This is due to the increased number of High Court stations across the



country. The new murder cases recorded represent **14%** of the total number of murder cases handled as shown in the figure(7).

**Figure 7: Proportion of Murder Cases Registered during the Period**



Meru, Nyeri and Nairobi Counties registered the highest number of murder cases during the reporting period, whereas Baringo, Makueni and Kajiado Counties recorded the least. Nakuru, Uasin Gishu and Machakos had the highest murder case load. However, Baringo, Nyamira, Makueni, and Kajiado Counties had the lowest murder case load attributable to the High Court stations there having been recently established.

Below is a trend analysis of performance in prosecution of murder cases at the High Court

**Table 10: Trend Analysis from 2011/2012 to 2014/2015**

Murder Cases	2011/2012	2012/2013	2013/2014	2014/2015
Total Cases Registered	2,011	2,581	3,371	10,177
Withdrawn	131	168	79	102
Conviction	63	68	158	205
Acquittal	65	60	44	83
Pending	1,752	2,285	3,090	9,787
Conviction Rate	74.90%	79.73%	84.34%	78.72%
Conclusion Rate	12.88%	11.47%	8.34%	3.83%

### (b) Criminal trials at the Magistrates' Court

The Magistrates' Court handles all criminal trials except murder cases which are prosecuted in the High Court. At the Magistrates' Court level, the ODPP attained an overall trial conviction rate of **89.52%** up from **82%** in the previous year. The conclusion rate dropped to **35%** from **48.7%** in the last reporting period, which is due to a **54%** increase in cases registered at the Magistrates' Courts across the country. It should be noted that the conviction and conclusion rates recorded are informed by a number factors including; case load, types and prevalence of offences in a county, period of existence of the County office and the number of unrepresented accused persons, among others.

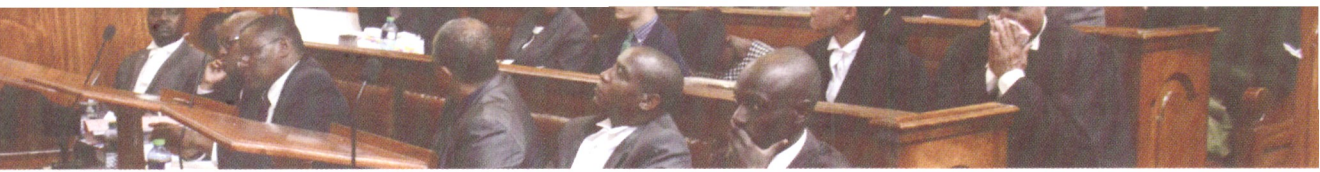
A presentation of distribution of case load and conviction rates in Magistrates' Courts across the 47 Counties is captured in the table below.

**Table 11: Distribution of Caseload in the Magistrates' Court**

County	Total Registered	Withdrawn	Conviction	Acquittal	Pending	Case Load	Conviction Rate	Conclusion Rate
National Summary	137,301	7,628	36,230	4,243	89,200		89.52%	35.03%
Baringo	2,353	267	1,643	53	390	1.71%	96.88%	83.43%
Bomet	2,933	165	1,121	76	1,571	2.14%	93.65%	46.44%
Bungoma	3,988	115	450	86	3,337	2.90%	83.96%	16.32%
Busia	2,723	45	647	59	1,972	1.98%	91.64%	27.58%
Elgeyo Marakwet	2,195	103	1,076	207	809	1.60%	83.87%	63.14%
Embu	1,625	340	136	98	1,051	1.18%	58.12%	35.32%
Garissa	1,583	245	778	211	349	1.15%	78.67%	77.95%
Homa Bay	8,833	1,078	4,150	281	3,324	6.43%	93.66%	62.37%
Isiolo	347	25	64	8	250	0.25%	88.89%	27.95%
Kajiado	2,365	52	781	20	1,512	1.72%	97.50%	36.07%
Kakamega	1,954	14	99	42	1,799	1.42%	70.21%	7.93%
Kericho	1,878	96	914	120	748	1.37%	88.39%	60.17%
Kiambu	6,927	366	1,031	148	5,382	5.05%	87.45%	22.30%
Kilifi	2,163	79	418	13	1,653	1.58%	96.98%	23.58%
Kirinyaga	2,093	153	118	21	1,801	1.52%	84.89%	13.95%
Kisii	2,668	18	69	5	2,576	1.94%	93.24%	3.45%
Kisumu	3,887	102	1,747	131	1,907	2.83%	93.02%	50.94%
Kitui	3,379	92	1,255	150	1,882	2.46%	89.32%	44.30%
Kwale	1,468	145	300	30	993	1.07%	90.91%	32.36%
Laikipia	2,683	377	611	118	1,577	1.95%	83.81%	41.22%
Lamu	961	71	330	74	486	0.70%	81.68%	49.43%
Machakos	3,181	109	1,120	62	1,890	2.32%	94.75%	40.58%
Makueni	2,982	160	974	145	1,703	2.17%	87.04%	42.89%
Mandera	975	71	600	71	233	0.71%	89.42%	76.10%
Marsabit	1,232	132	587	31	482	0.90%	94.98%	60.88%
Meru	9,551	386	1,988	151	7,026	6.96%	92.94%	26.44%
Migori	1,022	4	148	69	801	0.74%	68.20%	21.62%



County	Total Registered	Withdrawn	Conviction	Acquittal	Pending	Case Load	Conviction Rate	Conclusion Rate
Mombasa	4,207	490	1,002	167	2,548	3.06%	85.71%	39.43%
Murang'a	3,803	225	577	139	2,862	2.77%	80.59%	24.74%
Nairobi	22,118	372	3,519	307	17,920	16.11%	91.98%	18.98%
Nakuru	2,812	10	126	2	2,674	2.05%	98.44%	4.91%
Nandi	1,978	47	900	55	976	1.44%	94.24%	50.66%
Narok	3,559	387	2,375	421	376	2.59%	84.94%	89.44%
Nyamira	984	145	39	27	773	0.72%	59.09%	21.44%
Nyandarua	2,593	225	581	172	1,615	1.89%	77.16%	37.72%
Nyeri	2,293	92	615	85	1,501	1.67%	87.86%	34.54%
Samburu	73	7	33	12	21	0.05%	73.33%	71.23%
Siaya	1,852	109	485	28	1,230	1.35%	94.54%	33.59%
Taita Taveta	1,352	12	491	24	825	0.98%	95.34%	38.98%
Tana River	792	49	49	7	687	0.58%	87.50%	13.26%
Tharaka-Nithi	1,129	164	118	36	811	0.82%	76.62%	28.17%
Trans-Nzoia	2,553	39	288	4	2,222	1.86%	98.63%	12.97%
Turkana	416	60	122	25	209	0.30%	82.99%	49.76%
Uasin Gishu	3,711	237	638	100	2,736	2.70%	86.45%	26.27%
Vihiga	1,728	11	519	21	1,177	1.26%	96.11%	31.89%
Wajir	510	95	216	45	154	0.37%	82.76%	69.80%
West Pokot	889	42	382	86	379	0.65%	81.62%	57.37%



(iv) Prosecution of major crimes

ODPP prosecuted major offences including emerging crimes through its County offices and thematic prosecutorial divisions, sections and units. The table below outlines the performance in prosecution of select major offences during 2014/2015.

**Table 12: Performance in Prosecution of select Major Offences**

Case Type	New Cases Registered	Cases Brought Forward	No. of Cases	Withdrawal	Conviction	Acquittal	Pending	Conviction Rate	Conclusion Rate
Homicides	999	869	1,868	81	207	30	1,550	87.34%	17.02%
Sexual And Gender Based Violence Cases	4,588	4,704	9,292	284	561	197	8,250	74.01%	11.21%
Homicides	999	869	1,868	81	207	30	1,550	87.34%	17.02%
Sexual And Gender Based Violence Cases	4,588	4,704	9,292	284	561	197	8,250	74.01%	11.21%
Assaults	15,921	14,157	30,078	2,207	3,992	967	22,912	80.50%	23.82%
Robbery And Extortions	3,326	4,668	7,994	232	623	225	6,914	73.47%	13.51%
Breaking And Related Offences	4,444	4,551	8,995	517	1,208	273	6,997	81.57%	22.21%
Theft And Stealing	10,086	6,971	17,057	1,030	2,236	496	13,295	81.84%	22.06%
Forgery And Frauds	622	227	849	28	113	25	683	81.88%	19.55%
Offences Relating To Drugs	5,801	3,169	8,970	150	3,335	166	5,319	95.26%	40.70%
Traffic Offences	17,541	2,229	19,770	539	11,776	579	6,876	95.31%	65.22%
Malicious Damage	3,521	3,430	6,951	719	1,361	259	4,612	84.01%	33.65%
Corruption And Economic Crimes	2,766	2,476	5,242	196	460	116	4,470	79.86%	14.73%
Wildlife Crimes	158	111	269	3	34	3	229	91.89%	14.87%
Cyber Crime Offences	289	121	410	10	97	2	301	97.98%	26.59%
Human Trafficking Offences	162	65	227	19	84	17	107	83.17%	52.86%
Incitement To Violence And Hate Speech Crimes	45	43	88	5	15	4	64	78.95%	27.27%
Terrorism And Related Offences	331	96	427	18	209	13	187	94.14%	56.21%
Land And Other Environmental Cases	104	27	131	4	27	1	99	96.43%	24.43%



The ODPP in responding to the growing terrorism challenge in Kenya recorded a conviction rate of **94.1%** in terrorism and related offences concluded during the reporting period. It is noteworthy that in this category, the Office recorded the second highest conclusion rate at **56.2%**. Corruption and Economic Crimes had a conclusion rate of **14.4%** due to various factors such as the complexity of proving these crimes, numerous interlocutory applications which served to delay the conclusion of the cases, transfer of magistrates, among others. However, the ODPP recorded a conviction rate of **79.9%** of the combined corruption and economic crime cases investigated by both the National Police Service and EACC. Additionally, during the reporting period, the ODPP has charged in court more than **352** high profile personalities for corruption

or abuse of office as part of the ongoing onslaught on graft in Kenya.

During the reporting period ODPP registered a notable performance in prosecution of wildlife crimes, whose conviction rate stood at **92%**, which is reflective of the impact of law reforms and capacity building efforts undertaken in this area.

**(v) Extradition and Mutual Legal Assistance**

The DPP is the competent authority on extradition and mutual legal assistance (MLA) in criminal matters in Kenya. The Extradition, MLA, and International Cooperation Division at the ODPP processed **26** extraditions and **29** MLA requests. The tables below account for the requests received and made.

**Table 13: Extradition Requests**

<b>Category 1: Extradition requests made to Kenya by Foreign States</b>	
	<b>No.</b>
Requests received from other countries	15
Requests filed in court	14
Requests declined	0
Requests concluded before courts	8
Requests pending before court	8
Requests with the Directorate of Criminal Investigations pending arrest of fugitives	5
<b>Category 2: Extradition requests made By Kenya to Foreign States</b>	
Requests sent by Kenya to foreign countries	11
Requests responded to by foreign countries	4
Extradition requests made by Kenya pending before foreign countries	7



**Table 14: MLA Requests**

<b>Category 1: Requests made to Kenya by Foreign States</b>	
Requests received	20
Forwarded to other agencies for action	8
Where no action taken	0
Requests being processed at various stages	12
<b>Category 2: Requests made by Kenya to Foreign States</b>	
Requests made by Kenya	9
Requests responded to	4
Requests pending	4
Requests completed	1

**(vi) Advice files**

A critical role of the ODPP in the discharge of the prosecution function is to provide advice and direction to the National Police Service and other investigative agencies on the conduct of investigations. This advice is largely offered in response to investigation files submitted for perusal and decision making, and in the course of prosecution guided investigations.

During the year under review the ODPP processed advice files as shown below.

**Table 15: Advice Files Handled**

<b>No. of Advice Files</b>	<b>Advice Files Processed</b>	<b>Pending</b>
5,307	3,999	1,308

**(vii) Public complaints**

The ODPP processed **98%** of public complaints received, **61%** of which related to other state agencies and were outside the mandate of ODPP.

**Table 16: Complaints Handled**

<b>No. of Complaints Received</b>	<b>Complaints Processed</b>	<b>Pending</b>
4,746	4,636	110

**3.2 Legal Developments & Noteworthy Cases 2014-2015**

Below is a brief outline of noteworthy court decisions, rulings, and legal developments during the year under review.

**(i) Wilson N Mwangi & Anor vs Republic (Petition No 8 of 2013 & No 1 of 2014 SCoK Nairobi)**

This case challenges the constitutionality and mandatory nature of the death sentence. It is

currently before the Supreme Court of Kenya on appeal following a Court of Appeal decision upholding the death sentence.

The petitioners were convicted of the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and sentenced to death. The finding in this case, whether for or against the appeal will have significant implications on law reform, and the pending and concluded cases which attract the death sentence.



*Mr. Nderitu (standing) and Mr. Okello (second right) from the ODPP in Supreme Court*

**(ii) Karisa Chengo and 2 Others vs Republic (2015) eKLR**

This matter is on final appeal before the Supreme Court. The primary issue before the Court of Appeal was whether a Judge of the Environment and Land Court has jurisdiction to hear matters reserved for the High Court. The brief facts are that the three accused persons were convicted of the offence of robbery with violence. They appealed to the High Court where the matter was heard by a two judge bench comprising of a Judge of the High Court and a Judge appointed to the Environment and Land Court. Their appeals were dismissed.

Being dissatisfied, the appellants moved to the Court of Appeal arguing that the proceedings of the High Court were a nullity for want of jurisdiction. The Court of Appeal held that the Environment and Land Court despite being of equal status to the High Court does not have similar jurisdiction to the High Court and therefore a judge of the ELC cannot sit and hear matters reserved for the High Court.

**(iii) Republic vs James Omondi alias Castro and 3 others (HCCC NO. 57 of 2008)**

This case is notable for the successful reliance on forensic evidence to arrive at a conviction. Four accused persons were charged with murder and an alternative count of robbery with violence.

The DNA and finger print samples and ballistic evidence were used to place the accused persons at the scene of the crime. Using the doctrine of recent possession, two fire arms recovered in the house of two accused persons were connected to spent to the cartridges found at the scene of crime.

**(iv) Republic vs Dismas Oduor And 5 Others (Criminal Case No. 1924 of 2013) ('The Liz Case')**

This was a highly publicized case of a gang rape and grievous bodily harm in Busia County against a minor. To achieve a successful prosecution, the ODPP undertook a prosecution guided investigation and collaborated with civil society in prosecuting the case. The case was handled by **5** prosecutors - **3** from ODPP and **2** special prosecutors from civil society. The three accused persons who faced trial were convicted on both counts and sentenced to 15 years and 7 years for gang rape and grievous harm respectively.

**(v) Republic vs F.N.M (CMCC No. 13 of 2013, Nairobi)**

This is a case of multiple defilement by a minor whose victims were younger than him. The

subject is HIV positive and as a result, he infected all his victims.

The challenge in handling this matter was

and in particular the DPP's power to direct investigation under Article 157(4) of the Constitution.

The DPP's attempt to have the charge of abduction against the petitioner withdrawn under section 87(a) of the Criminal Procedure Code was challenged by the petitioner who demanded an absolute acquittal. The trial magistrate upheld the objection of the Petitioner on the ground that it amounted to an abuse of prosecutorial discretion.

In the Petition, the High Court held that the DPP is at liberty to withdraw the prosecution and should sufficient evidence

be gathered that satisfies him that a prosecution is warranted, he should be at liberty to proceed against the petitioner. The case emphasized the constitutional power of the DPP as the custodian of the *decision to charge*.

**(vii) Anthony Njenga Mbuti and 5 others vs AG, IGP, DPP and 3 others (2015) eKLR**

The petition arose as a result of the police arresting the petitioners and arraigning them before a Magistrates Court to execute a bond to keep peace pursuant to Sections 43-61A of the CPC. There was no charge preferred against the petitioners who duly executed the peace bonds but were unable to raise the requisite bond amount. This resulted in their detention despite there been no charge preferred against them. Therefore they challenged the constitutionality of the peace bond on grounds that it violated their rights under Articles 27, 28, 29, 49 and 50 of the Constitution.



*Ms. Jacinta Nyamosi (sixth from left), Head of the SGBV Division leading the Prosecution team during a court scene visit in the Busia "Liz" Case*

that the subject could not be remanded in a juvenile remand facility, as he was considered a health risk to other juveniles. As an intervention, the ODPP applied to court to have the subject remanded at the juvenile wing of the Industrial Area Remand and Allocation Prison and ensure that he was provided with medication.

The case highlights the inadequacies of Kenya's penitentiary and remand facilities and the urgent need for their upgrade.

**(vi) Nicholas Muriuki Kingangi vs DPP (Constitutional Petition No 272 of 2014, Nairobi)**

The petition arose following an alleged abduction of the Embu County Assembly Speaker by the Petitioner- a police officer.

The issues canvassed were centered on the exercise of the prosecution mandate

The High Court held that peace bond provisions are arbitrary, discriminatory, and are therefore unconstitutional. Moreover, it was indefensible for the police to use the peace bond process as an alternative to charging, where investigations do not produce sufficient evidence to charge.

**(viii) Gladys Boss Shollei vs the AG and 3 Others (2015) eKLR**

Following numerous media reports the Applicant, the former Chief Registrar of the Judiciary, became apprehensive of her imminent arrest and prosecution for abuse of office and irregular purchase of the Chief Justice's residence.

As a result, she filed an application for anticipatory bail based on **Section 123** of the **CPC** and *Rules 3(3)(a) and 19* of the *Constitution of Kenya (Protection of Fundamental Rights and Freedoms) Practice and Procedure Rules 2013*.

In determining the matter the Court upheld the DPP's contention that the application lacked merit and failed to demonstrate

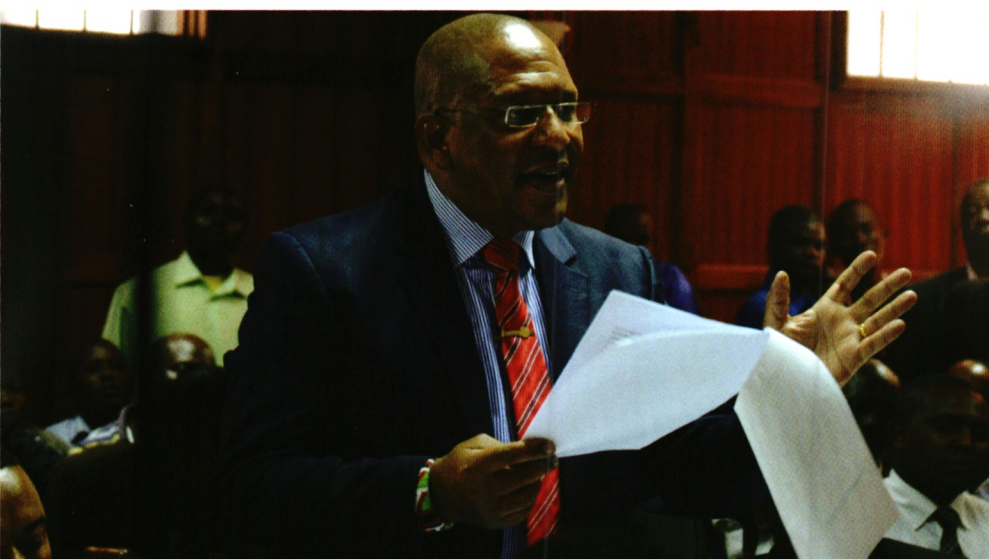
infringement of her right to liberty and was based on mere apprehension. The Judge noted that the Constitution provides that when one is arrested, he is to be presented before a court of law within 24 hours hence no breach of right has been occasioned.

**(ix) CORD and 2 Others vs Republic & Another (Petition No 628 and 630 of 2014)**

During the reporting period, ODPP was involved in development and subsequent litigation relating to the Security Laws (Amendment) Act 2014. A petition was filed challenging the constitutionality of certain provisions in the Amendment Act on grounds including; that the provisions contravened various rights as guaranteed in the Bill of Rights and that the process leading to its enactment violated the Constitution in various respects.

The decision of the court upheld critical amendments to substantive and procedural criminal laws which were robustly defended by the ODPP. Below are some the highlighted provisions;

1. Section 15 of SLAA introduces the new Section 36A to the CPC. The section reiterated the provisions of Article 49(1) (f) and (g) of the Constitution, which deal with the right of an arrested person to be presented before a court of law not later than twenty four hours following his arrest. If a police officer deems that the detention is necessary beyond the constitutional twenty-four hours, then he shall apply for an extension of time for holding the arrested person. The section limits the period of remand to thirty days but allows the police



*The DPP making submissions in the High Court during the hearing of the Security Laws (Amendments) Act Petition (Cord and 2 Others v Republic and Another Petition No 628 and 630 of 2014)*



officer to apply for extension of that period, when the Court must then be satisfied that having regard to the circumstances under which the earlier extension was issued, the request for a new extension is warranted. The aggregate period for holding the arrested person should not exceed 90 days.

2. **Section 69** of SLAA introduces **Section 36A** of the Prevention of Terrorism Act which provides that the national security organs may intercept communication for the purposes of detecting, deterring and disrupting terrorism. **Section 36A** already contained limitations of the right to privacy. The Court held that there were sufficient safeguards to ensure that the process is undertaken under judicial supervision.
3. **Section 21** of SLAA introduced **Section 379A** of the CPC. Under this section, in proceedings under select statutes, where the High

Court in exercise of its original jurisdiction has granted bond or bail to an accused person, the DPP may, as of right, appeal against such a decision to the Court of Appeal and the order may be stayed for a period not exceeding fourteen days pending the filing of an appeal.

4. **Section 31** of SLAA introduced a new **Section 78A** to the Evidence Act. This section concerns admissibility of electronic and digital evidence which may be admitted even in its secondary form. The section expects the "best evidence" to be availed to Court. Therefore secondary evidence would ordinarily now be admissible if a reasonable basis for it is laid in line with the specific safeguards outlined in the section.



arnings

\$ 67,228,166

Dividends  
41%

\$ 13,946,511  
6,504,606  
1,960,477  
7,736,223  
5,825,769  

---

35,973,586  
\$ 31,254,580  
\$ 2,599,566

# CHAPTER FOUR

## FINANCIAL ANALYSIS

FY 2014/15



#### 4.1 Financial Analysis

The source of funding for ODPP is the National Government through the National Treasury by way of the Exchequer issuances for both its Recurrent and Development expenditures. The Treasury has consistently supported the ODPP by enhancing the budgetary allocation over the three years. However, the allocations have not matched the budgetary requirements to fully operationalize the Office and implement its Strategic Plan. ODPP has nonetheless made significant achievements in the realization of its strategic objectives.

The printed estimate for the financial year 2014/15 under the Recurrent and Development Vote was **KES.1.732 billion** and **KES.119 million** respectively. The total budgetary allocation was **KES 1.851 billion** against total expenditure of **KES 1.617 billion** resulting in an overall absorption rate of **87.3%**.

An analysis of the ODPP's budgetary allocations and expenditures over the last two financial years is as discussed below.

##### (i) Analysis of recurrent expenditure

The ODPP's total printed estimates for the recurrent vote increased over the last two fiscal years from **KES 1.010 billion** in 2013/14 to **KES 1.732 billion** in 2014/15, representing a **41%** increase. During the supplementary estimate, the approved recurrent budget increased from **KES 1.732 billion** to **KES 1.794 billion**. The total recurrent expenditure increased from **KES 1.214 billion** in 2013/14 to **KES.1.551 billion** in 2014/15, an increase of **27.7%**. The increment is attributed to recruitment of additional staff and operationalization of ODPP Sub-county offices. The absorption rate for recurrent budget was **86.45%** for FY 2014/15.

**Table 17: Analysis of Recurrent Expenditure FY 2012/13-FY 2014/15 (KES Millions)**

Printed Estimates KES. Millions			Approved Budget KES. Millions			Actual Expenditures KES. Millions		
2012/13	2013/14	2014/15	2012/13	2013/14	2014/15	2012/13	2013/14	2014/15
892	388	1732	1,010	1214	1727	959	1109	1485

##### (ii) Analysis of development expenditure

The ODPP's total approved allocation for the Development vote increased from **KES.87 million** in 2013/14 to **KES.119 million** in 2014/15. This enabled the Office to undertake refurbishment of 25 County Offices.

The development allocation was earmarked for construction, refurbishment and ICT networking and installation. However, the bulk of the development vote was not expended due to lengthy procurement

procedures. A total of **KES.52 million** was therefore surrendered to National Treasury during the supplementary Budget II for FY 2014/15.

During the supplementary Budget for FY 2014/15 the approved development Budget stood at **KES.67 million**. ODPP's actual development expenditure was **KES.65.58 million** representing an absorption rate of **97.8%**.

The development expenditure analysis is presented in the table below;

**Table 18: Analysis of Development Expenditure FY 2012/13-FY 2014/15**

Printed Estimates KES. Millions			Approved Budget KES. Millions			Actual Expenditures KES. Millions		
2012/13	2013/14	2014/15	2012/13	2013/14	2014/15	2012/13	2013/14	2014/15
50	87	119	137	87	67	61	80	66



The Budget is further analyzed into economic classifications, such as compensation to employees, use of goods and services and acquisition of non-financial assets and the proportion of recurrent and development expenditures.

**Table 19: Analysis of Expenditure by Economic Classification**

Economic classification	Printed Estimates KES. Millions			Approved Budget KES. Millions			Actual Expenditures KES. Millions		
	2012/13	2013/14	2014/15	2012/13	2013/14	2014/15	2012/13	2013/14	2014/15
Recurrent Expenditure	892	1388	1732	1,010	1214	1727	959	1109	1485
Compensation of employees	447	743	1109	352	569	1065	348	528	979
Use of goods and services	445	548	572	658	545	617	611	494	468
Other Recurrent	-	97	51	-	100	45	-	87	66
<b>Capital Expenditure/ Development</b>		<b>137</b>	<b>119</b>	<b>61</b>	<b>87</b>	<b>67</b>	<b>58</b>	<b>80</b>	<b>66</b>
Acquisition of Non-financial Assets	-	137	119	61	87	67	58	80	66
<b>Total Expenditure</b>		<b>1525</b>	<b>1851</b>	<b>1071</b>	<b>1301</b>	<b>1794</b>	<b>1017</b>	<b>1146</b>	<b>1551</b>

**Table 20: Analysis of Programme Expenditure FY 2012 /13 –FY 2014/15 (Kshs. Millions) by Sub-programmes**

Analysis of Sub-Programme Expenditure by Economic Classification						
	APPROVED BUDGET			ACTUAL EXPENDITURE		
	2012/13	2013/14	2014/15	2012/13	2013/14	2014/15
<b>Programme 1: Public Prosecution Services</b>						
Sub-Programme: 1 <b>Prosecution of criminal offences</b>		758	1,361		718	1,239
Sub-Programme: 2 <b>Witness and victims of crime services</b>		54	10		45	7
Sub-Programme: 3 <b>Penal and criminal law reforms</b>		160	11		137	9
Sub-Programme: 4 <b>Inter-Agency cooperation</b>		31	46		23	43
Sub-Programme: 5 <b>General administration planning and support services</b>		299	366		224	253
<b>Total Programme</b>	<b>1,071.00</b>	<b>1,301.00</b>	<b>1,794.00</b>	<b>1,017.00</b>	<b>1,146.00</b>	<b>1,551.00</b>
<b>Total Vote</b>	<b>1,071.00</b>	<b>1,301.00</b>	<b>1,794.00</b>	<b>1,017.00</b>	<b>1,146.00</b>	<b>1,551.00</b>



In 2014/15, the ODPP's total budgetary allocation increased from **KES 1.071 billion** in 2012/13 to **KES 1.794 billion** representing **67.5%** over the two year MTEF period. From the above table, prosecution of criminal offences sub-programme had the highest absorption of **KES.1.239 billion**. This is attributed to the sub-programme cutting across the four departments.

### (iii) Capital projects

The ODPP undertook capital projects on refurbishment of offices at a cost of **KES.65.58 million** as shown below.

**Table 21: List of Capital Projects**

<b>Capital Projects</b>	<b>2014/2015</b>
<b>Refurbishment of Non – Residential Buildings (KES)</b>	
Kisumu – Partition of ODPP offices	1,332,256
Muranga - Partition of ODPP offices	2,210,000
Wajir – Construction of Perimeter wall	7,800,000
Homa Bay (Mbita) – Partition of ODPP offices	411,970
Samburu – Partition of ODPP offices	3,965,961
Migori – Partition of ODPP offices	2,555,248
Kisii – Partition of ODPP offices	3,942,095
Tharaka Nithi – Partition of ODPP offices	4,303,430
Makueni – Partition of ODPP offices	832,360
Baringo – Partition of ODPP offices	4,884,733
Ogembo – Partition of ODPP offices	782,937
Turkana – Partition of ODPP offices	139,500
Kilifi – Partition of ODPP offices	6,989,932
Bomet – Partition of ODPP offices	653,517
Siaya – Partition of ODPP offices	1,409,091
Kwale – Partition of ODPP offices	2,000,000
West Pokot – Partition of ODPP offices	5,000,000
Kajiado – Partition of ODPP offices	2,900,000
Malindi – Partition of ODPP offices	1,800,000
Marsabit – Partition of ODPP offices	745,000
Thika – Partition of ODPP offices	2,400,000
Voi – Partition of ODPP offices	2,500,000
Nakuru – Partition of ODPP offices	607,191
Nyamira – Installation of burglar proofing at ODPP office	295,000
Mombasa – Partition of ODPP offices	4,000,000
Renovation at Nairobi City Hall	1,128,745
<b>Total</b>	<b>65,588,966</b>



#### 4.2 Financial statements for the year ending 30th June 2015 presented to the Auditor General

ODPP has started preparing the financial statement for the 2014/15 financial year. The final accounts will be presented to the Auditor General on or before 30<sup>th</sup> September, 2015.

The final accounts will be prepared using appropriate accounting policies in accordance with the Public Finance Management Act 2012, Generally Accepted Accounting Principles (GAAP) and International Public Sector Accounting Standards (IPSAS). The financial statements will include the following:-

- i. Statement of Office of the Director of Public Prosecution management responsibilities
- ii. Statement of receipts and payments
- iii. Statement of assets
- iv. Statement of cash flow
- v. Summary statement of appropriation: recurrent and development combined.

#### 4.3 Audited Financial Statements for the year 2013/14

During the preparation of the second Annual Report, the ODPP had not received the certified statements from the Auditor General. Below are the audited financial statements for 2013/14

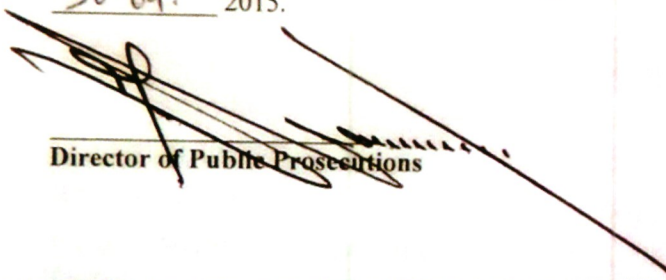
#### Statement of the Accounting Officer Responsibility

*ODPP Reports and Financial Statements for the year ended June 30, 2015*

The Accounting Officer in charge of the ODPP confirms that the Office of the Director of Public Prosecution has complied fully with applicable Government Regulations and the terms of external financing covenants (where applicable), and that the Office of the Director of Public Prosecution's funds received during the year under audit were used for the eligible purposes for which they were intended and were properly accounted for. Further the Accounting Officer confirms that the ODPP's financial statements have been prepared in a form that complies with relevant accounting standards prescribed by the Public Sector Accounting Standards Board of Kenya.

#### Approval of the financial statements

The ODPP's financial statements were approved and signed by the Accounting Officer on 30.09. 2015.

  
Director of Public Prosecutions

  
Principal Accountant



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NAIROBI



### KENYA NATIONAL AUDIT OFFICE

#### REPORT OF THE AUDITOR-GENERAL ON OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE YEAR ENDED 30 JUNE 2014

##### REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of the Office of the Director of Public Prosecutions set out on pages 13 to 31 which comprise the statement of financial assets and liabilities as at 30 June 2014, and the statement of statement of receipts and payments, statement of cash flows for the year then ended, and summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 8 of the Public Audit Act, 2003. I have obtained all the information and explanations, which to the best of my knowledge and belief, were necessary for the purpose of the audit.

##### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Cash Basis) and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

The management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Sections 4 of the Public Audit Act, 2003.

##### **Auditor-General's Responsibility**

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the provisions of Section 9 of the Public Audit, 2003 and submit the audit report in compliance with Article 229(7) of the Constitution of Kenya. The audit was conducted in accordance with International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the



auditor's judgement, including the assessment of the risks of material misstatement of the financial statements whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the statement.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

#### **Basis for Qualified Opinion**

An amount of Kshs.578,733.00 was utilised in the repair of a Government Vehicle – GK A 426N which had been involved in a self-caused accident. However, the driver responsible for the accident was only surcharged Kshs.9,000.00 which was recovered from the officer's salary.

No satisfactory explanation has been given for failure to recover the whole cost of the repairs from the officer.

#### **Qualified Opinion**

In my opinion, except for the effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements present fairly, in all material respects, the financial position of the Office of the Director of Public Prosecutions as at 30 June 2014, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards.

**Edward R. O. Ouko, CBS**  
**AUDITOR-GENERAL**

Nairobi

6 March 2015

# CHAPTER FIVE

## CHALLENGES AND RECOMMENDATIONS





ODPP has and continues to face a number of challenges as highlighted below. This chapter discusses the said challenges and proposes recommendations to address some of them:-

**(i) Low conclusion rate in criminal trials**

While the justice system suffers from accumulated backlog of cases as exhibited by the low case conclusion rate, the ODPP's overall prosecution performance is adversely impacted.

**(ii) Inadequate infrastructural capacity**

While the ODPP has a presence in all counties in Kenya, there is need for infrastructural development of those County Offices. The Office lacks adequate infrastructural capacity in terms of vehicles, legal resources, furniture, equipment and office space, both at the headquarters and the County Offices.

**(iii) Limited capacity to handle emerging crimes**

The ODPP is faced with inadequate specialized skills and knowledge in handling new, emerging and complex forms of crime such as money laundering, cybercrime and other transnational crimes. The need for adequate financial allocation towards programmatic specialized training to Prosecution Counsel cannot be over-emphasized.

**(iv) Archaic Case-file and mail management process and procedures**

Due to lack of adequate resources, ODPP has not been able to effectively put in place an enabling ICT environment to facilitate the Office in automating the new manual case management system. The Office

requires technical and material facilitation for the implementation of phase III of the automated case management project at an estimated cost of KES 400 million.

**(v) Inadequate witness and victim facilitation**

The ODPP faces challenges in conducting pre-trial sessions due to limited resources for pre-trial facilitation of witnesses and victims within the criminal justice system. This results in poor witness preparation, witness fatigue and eventual collapse of otherwise meritorious cases.

**(vi) Inadequate human resource capacity**

The ODPP staff optimal level is 1297 staff, comprising 927 counsel and 360 central facilitation staff. The ODPP has not been able to attain the desired level due to its inability to attract and retain staff. The ODPP needs to improve the terms and conditions of service for its officers in order to remain competitive in the job market particularly within the justice system. Harmonization of terms and conditions of service with the wider justice sector is necessary to ensure increased retention of ODPP staff.

**(vii) Archaic and unresponsive laws**

The current criminal laws are not sufficiently applicable to new and emerging crimes and technological advancements. The existing substantive and procedural criminal laws are archaic and have not had the benefit of substantial law review. There is need for continuous review and revision of key procedural, evidential and substantive criminal laws in order to respond to the complex and ever mutating forms of criminality.



**(viii) Capacity constraints within other criminal justice agencies.**

A number of key agencies within the criminal justice system such as; the National Police Service, and the Government Chemist, suffer acute capacity constraints which inevitably affect the efficient delivery of services by the entire system. For instance, insufficient use of modern investigation techniques due to the lack of a modern National Forensic Crime Laboratory and inadequate forensic investigation skills have greatly hampered the ability of the investigative agencies to investigate complex and emerging crimes. This impacts greatly on the ability of the ODPP to offer effective and efficient prosecution services. There is need to modernize and enhance capacity of investigative agencies so as to improve quality of investigations, and in turn impact positively on the effectiveness of prosecution.

**(ix) Conflict between Alternative Dispute Resolution mechanisms and the formal Court system**

Article 159 of the Constitution provides for the promotion of alternative dispute resolution (ADR) and traditional justice mechanisms (TDMs). Though provided for in the Constitution, there are currently no mechanisms to harmonize the application of ADR/TDMs with the formal justice system in the application of criminal law. There is an urgent need to put in place mechanisms to harmonize ADR/TDMs with the formal justice system and to further embrace diversion and plea bargain provisions as additional approaches in dispute resolution.

**(x) Security and safety of staff**

The handling of serious crimes by prosecutors exposes them to increased threats and insecurity which adversely affects overall performance and retention of staff. In carrying out the mandate, officers are faced with threats from the suspects and criminals during trial and when out on bail and bond. In addition, ODPP offices, both at the headquarters and the Counties are housed in rented insecure premises, thus exposing officers to vulnerable and unsecure conditions. Significant investment in security of ODPP offices and officers should be prioritized.

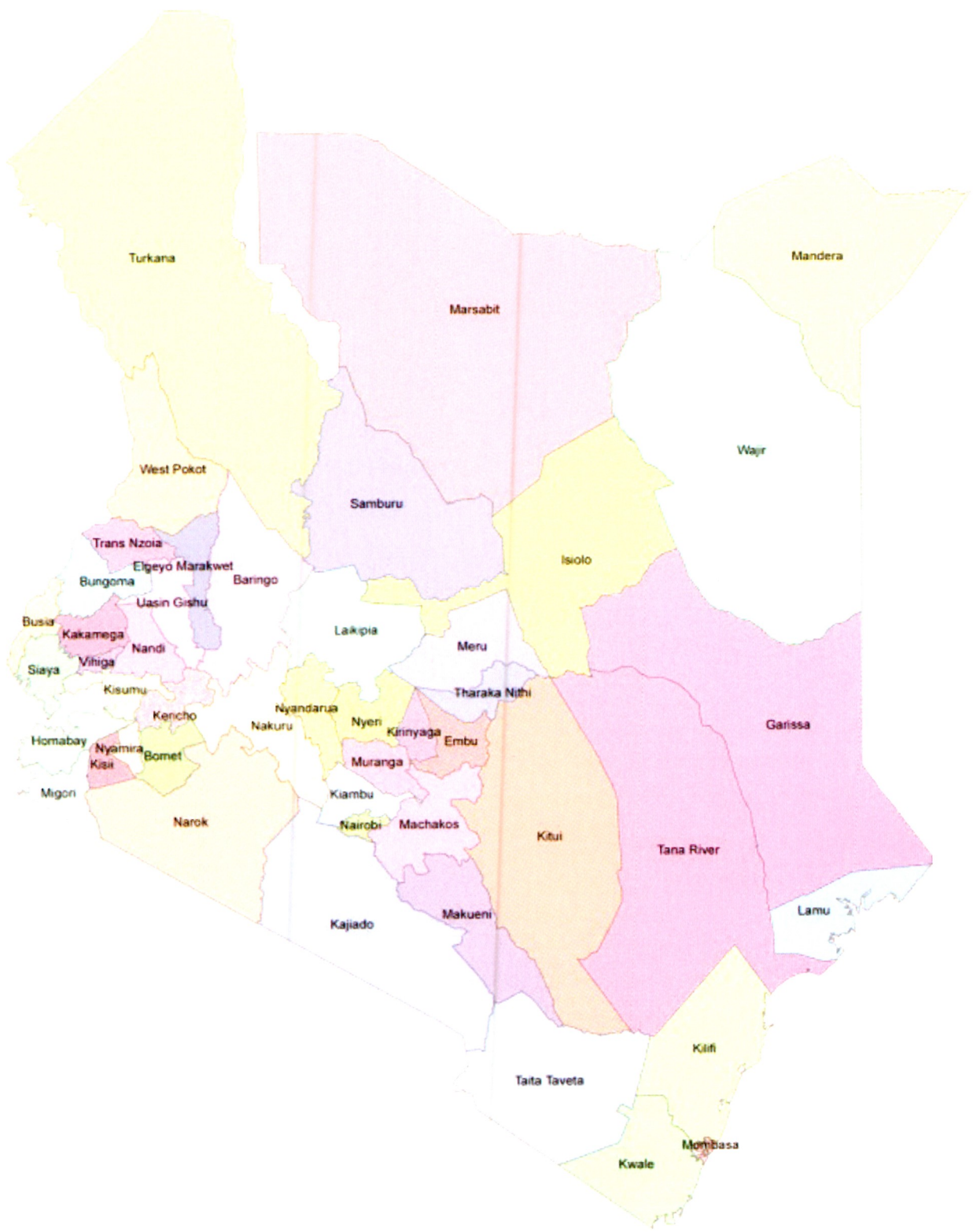
**(xi) Budgetary constraints**

The ODPP experiences acute financial constraints due to inadequate budgetary allocation. This, no doubt, has adverse implications on the effective execution of the ODPP's mandate. A number of planned activities remain pending due to disparity between the requisitions and the actual allocations from the exchequer. There is a serious need for improved budgetary allocations.

Despite the challenges, ODPP is committed to its mission "*to serve the public by providing quality, impartial and timely prosecution serves anchored on the values and principles enshrine in the Constitution*". We look forward to continued support from the government, civil society, development partners and the people of Kenya.



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