

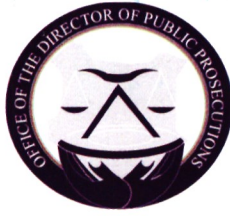


18/4/18



OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS

# Fourth Annual Report 2015 – 2016



## OUR MANDATE

To institute and undertake prosecution of criminal matters and all other aspects incidental thereto

## OUR VISION

A just, fair, independent and quality public prosecution service

## OUR MISSION

To provide an impartial, effective and efficient prosecution service to all Kenyans.

## OUR CORE VALUES

- Transparency
- Integrity
- Accountability;
- Professionalism;
- Independence; and
- Teamwork

OFFICE OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS

**Fourth Annual Report  
For the period**

**1<sup>st</sup> July 2015 – 30<sup>th</sup> June 2016**



# **ACCOUNTABILITY STATEMENT**

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



# Table of Contents

<b>Table of Contents</b> .....	iii
<b>List of Tables</b> .....	iv
<b>List of Figures</b> .....	v
<b>List of Acronyms and Abbreviations</b> .....	vi
<b>FOREWORD</b> .....	xii
<b>ACKNOWLEDGEMENT</b> .....	xiv
<b>CHAPTER ONE: ABOUT US</b> .....	1
1.1 Who We Are .....	2
1.2 What We Do .....	2
1.3 Our Vision: .....	3
1.4 Our Mission: .....	3
1.5 Our Core Values: .....	3
1.6 Powers and Role of the ODPP .....	3
1.7 Criminal Justice Process .....	4
1.8 Organizational Structure .....	6
<b>CHAPTER TWO: PROSECUTION PERFORMANCE</b> .....	8
2.1 Statistical Summary .....	9
2.2 Appeals .....	12
2.3 Applications .....	13
2.4 Criminal Trials .....	14
2.5 Criminal trials at the Magistrates' Court .....	15
2.6 Categories of Crimes .....	19
2.7 The Fight against Corruption .....	23
2.8 Key Interventions in the Fight against Corruption .....	25
2.9 Notable Cases .....	27
<b>CHAPTER THREE: STRATEGIC OVERVIEW</b> .....	39
3.1 Introduction: Strategic Objectives of the ODPP .....	40
3.2 Access to Justice .....	41
3.3 Role of ODPP .....	41
3.4 Facilitation of Witnesses and Victims of Crime .....	42
3.5 Capacity development and professionalization of services .....	42
3.6 Quality-Assurance Mechanism of Prosecutions .....	43
3.7 Delegated Prosecutions .....	43
3.8 Infrastructural revamping of the ODPP .....	43
3.9 Public engagement & communication .....	44
3.10 Institutional Reform and Restructuring .....	44
3.11 Operationalize Article 157 of the Constitution .....	45
3.12 Developing ODPP Structure and Staff Establishment .....	45
3.13 Development of ODPP Strategic Plan .....	45
3.14 Strengthening institutional framework .....	46
3.15 Attracting and Retaining High Quality Staff .....	47
3.16 Enhancing staff competency capacity .....	48
3.17 Creating a Conducive Work Environment .....	49
3.18 Monitoring Staff Performance .....	49
3.19 Resource Mobilization .....	50
3.20 Automation and Modernization of ODPP Processes & Procedures .....	50
3.21 Case Management Project .....	50
3.22 Other Interventions .....	52
3.23 Promotion of Inter-Agency Cooperation and Collaboration ....	52
3.24 To Establish Liaison Offices .....	53
3.25 To Convene and Participate in Inter-Agency Workshops and Meetings .	53
3.26 To Organize Joint Periodic Review Meetings .....	53
3.27 To Develop a Framework for Partnerships Engagement .....	54
3.28 To Participate in International Forums and Associations .....	54
3.29 Formulation of Criminal Justice Sector Policies .....	55
<b>CHAPTER 4: FINANCIAL ANALYSIS</b> .....	56
4.1 Introduction .....	57
4.2 Analysis of recurrent expenditure .....	57
4.3 Analysis of development expenditure .....	58
4.4 Capital Projects .....	60
<b>CHAPTER 5: CHALLENGES AND RECOMMENDATIONS</b> .....	69



# List of Tables

Table 2.1: Matters Processed by ODPP .....	9
Table 2.2: ODPP performance Trends since establishment .....	11
Table 2.3 : Criminal Trials .....	12
Table 2.4: Appeals .....	12
Table 2.5: Trend Analysis Appeals .....	13
Table 2.6: Applications .....	14
Table 2.7: Murder Cases Trend Analysis .....	15
Table 2.8 Cases Handled Per County .....	17
Table 2.8 Criminal Cases Handled Per County in Magistrates' Courts .....	17
Table 2.9: Performance in Homicide Cases in FY 2015/16 .....	20
Table 2.10: Performance in Robberies, Assaults and Property Cases in FY 2015/16 .....	20
Table 2.11: Performance in Cases relating to Alcoholism in FY 2015/16 .....	21
Table 2.12: Performance in Traffic Cases in FY 2015/16 .....	21
Table 2.13: Performance in Incitement to Violence and Hate Speech Cases in FY 2015/16 .....	21
Table 2.14: Performance in Land and Environmental Cases in FY 2015/16 .....	22
Table 2.15: Performance in Sexual and Gender Based Violence Cases in FY 2015/16 .....	22
Table 2.16: Performance in Corruption, Economic and Related Crime Cases in FY 2015/16 .....	23
Table 2.17 Performance in Organized and Transnational Crimes in FY 2015/16 .....	24
Table 2.18 Performance in Corruption and Economic Crimes in FY 2015/16 .....	25
Table 4.1: Analysis of Recurrent Expenditure FY 2013/14-FY2015/16 (KES Millions) .....	64
Table 4.2: Analysis of Development Expenditure FY 2013/14- FY 2015/16 ....	65
Table 4.3: Expenditure by Economic Classification .....	66
Table 4.4: Analysis of Programme Expenditure .....	67
Table 4.5: List of Capital Projects .....	68



# List of Figures

Figure 1.1: Justice System Flow Chart .....	4
Figure 1.2:- ODPP Senior Management Organogram .....	5
Figure 1.3: Composition of Departments .....	6
Figure 2.1: Proportion of Matters handled by ODPP during the FY 2015/16 .....	8
Figure 2.2: ODPP Performance Trends from 2011/13 to 2015/16 .....	9
Figure 2.3: Trend Analysis of Performance in Appeals from FY 2011/12 to FY .....	10
Figure 2.4: Trend Analysis of Murder cases from 2011/12 to 2015/16 .....	13



## List of Acronyms and Abbreviations

ACECA	Anti-Corruption and Economic Crimes Act, 2003
AG	Attorney General
ANAW	Africa Network for Animal Welfare
AP	Administration Police of Kenya
APA	Africa Prosecutors Association
CBM	Cash Based Method
CDF	Constituency Development Fund
CFS	Central Facilitation Services
CID	Criminal Investigations Department, Kenya
CITES	Convention on International Trade in Endangered Species
COA	Court of Appeal
COVAW-K	Coalition on Violence Against Women, Kenya
CPA	Certified Public Accountancy
CUCs	Court Users Committees
DCI	Director of Criminal Investigations
DPP	Director of Public Prosecutions
DPM	Directorate of Personnel Management
EAAP	East African Association of Prosecutors
EACC	Ethics and Anti-Corruption Commission
ESAAMLG	East and Southern African Anti-money Laundering Group
EVID	Electronic Voter Identification
FGM	Female Genital Mutilation
FIDA-K	Federation of Women Lawyers, Kenya
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
IEBC	Independent Electoral and Boundaries Commission, Kenya
ICT	Information Communication Technology

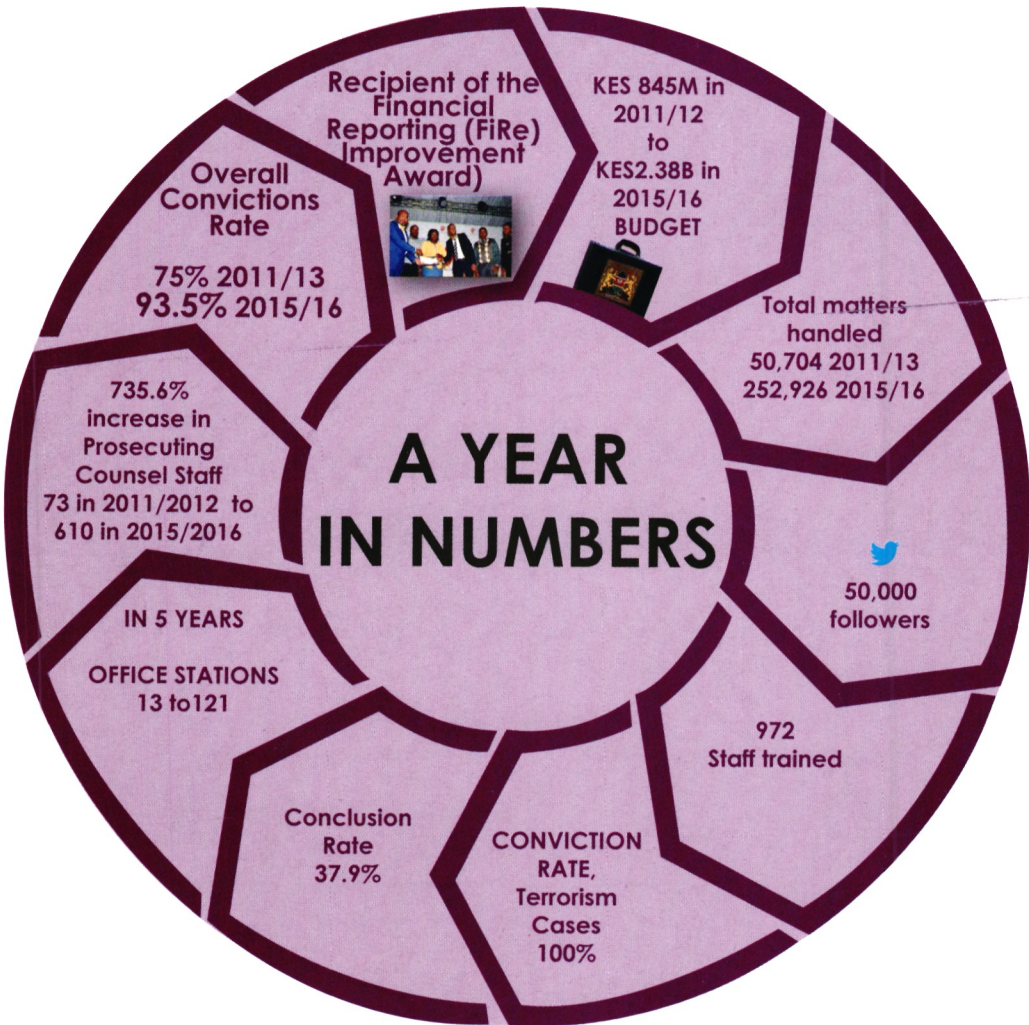


IICFIP	International Institute of Certified Forensic Investigation Professionals
IJM	International Justice Mission
IPOA	Independent Policing Oversight Authority, Kenya
IPSAS	International Public Sector Accounting Standards
IORA	Indian Ocean Rim Association
ISMS	Information Security Management System
ISS	Institute for Security Studies
IVRS	Interactive Voice Response System
JTI	Judiciary Training Institute,
KES	Kenya Shillings
KRA	Kenya Revenue Authority, Kenya
LAN	Local Area Network
LSK	Law Society of Kenya
MLA	Mutual Legal Assistance
MSPS	Ministry of State for Public Service
NCAJ	National Council on the Administration of Justice
NCIA	National Cohesion and Integration Act, 2008
NHC	National Housing Corporation, Kenya
NHIF	National Hospital Insurance Fund, Kenya
NPS	National Police Service, Kenya
NSSF	National Social Security Fund, Kenya
ODPP	Office of the Director of Public Prosecutions
PSC	Public Service Commission
SC	Senior Counsel
SCOK	Subordinate Courts of Kenya
SG	Solicitor General
SGBV	Sexual and Gender-Based Violence
SLDP	Strategic Leadership Development Programme
SLO	State Law Office, Kenya
SMS	Short Message Service
SOA	Sexual Offences Act, 2006
SPP	Secretary, Public Prosecutions
UK-FCO	United Kingdom's Foreign and Commonwealth Office
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime





UNOHCHR	United Nations Office of the High Commissioner on Human Rights
USAID	United States Agency for International Development
USDOJ	United States Department of Justice
USSD	Unstructured Supplementary Service Data
VoIP	Voice over Internet Protocol
WAN	Wide Area Network
WCMA	Wildlife Conservation and Management Act, 2014
WPA	Witness Protection Agency, Kenya





# HIGHLIGHTS

## Performance Measures

The conviction rate has risen from 75% in 2011/13 to 93.5% in 2015/16

The conclusion rate has risen from 32% in 2014/15 to 37.1% in 2015/16

## Prosecution matters handled

The total cases handled rose from 50,704 in 2011/13 to 252,926 in 2015/16

## Awards

The ODPP was the winner of;

- (i) Mr. Keriako Tobiko, (DPP) 2015 Best Public Servant Award by Civil Society
- (ii) The 2015 Public Service Award by Civil Society
- (iii) Financial Reporting Award (FiRe), the most prestigious and coveted award in East Africa.

## East Africa Association of Prosecutors (EAAP)

Mr. Keriako Tobiko, (DPP) elected as the President of EAAP.

## Continuous Career Development

972 Staff benefited from various thematic trainings both locally and internationally.

## Expert Resource Pool

Numerous ODPP staff offered expertise in various areas:-

**Mrs. Dorcas Oduor:** Represented the Country at various fora as an expert on transnational organized crime and money laundering.

**Ms. Emily Kamau:** Government expert on UNCAC peer review mechanism

**Mr. Edwin Okello:** International trainer on counter-terrorism and country expert in the development of the UNODC Digest on Terrorist Cases

**Mr. Alexander Muteti:** Facilitated fora at the Indian Ocean Forum on Maritime Crime (IOFMC) as an expert in maritime law and security,



**Mr. Vincent Monda:** International trainer and expert in prosecution of piracy cases

**Mrs. Lilian Obuo:** International trainer and expert in international and transnational organized Crimes

**Ms. Jacinta Nyamosi:** International trainer and expert on SGBV matters

**Mr. Victor Mule:** Represented the country in various fora as an expert in asset recovery, Extradition and Mutual Legal Assistance.

**Mrs. Rodah Ogoma, Ms. Gikui Gichui and Mr. Katto Wambua:** Spearheaded the development of Wildlife Crime Rapid Reference Guides which are currently being used in Kenya, Tanzania, Ethiopia and Uganda.

### Number of Prosecutors

Kenya has the highest number of prosecutors in East Africa - from 73 in 2011/12 to 610 in 2015/16.

### Visibility

- ❖ The ODPP has a presence in 47 counties and 119 court stations country wide.
- ❖ A following of 50,000 followers on Twitter and Facebook platforms.



# FOREWORD



Fellow Kenyans, I am honoured to present the 2015/16 Office of the Director of Public Prosecutions (ODPP) Annual Report, the fourth of such reports since the establishment of the Office five years ago.

This Report comes at a critical reflective period when we are reviewing the progress and milestones made as we come to the end of our first Strategic Period 2011-2016 whose central focus was operationalization of the Office from an obscure Department in the Attorney General's office to a fully-fledged independent National Prosecution Authority.

To this end, we tasked ourselves to strive for a fair, efficient and effective prosecution service. This birthing phase of the institution has been a remarkable, rarely-told journey full of triumphs and challenges.

This document, in words and figures, offers a candid review of this journey. The Report begins with a chapter giving information about the ODPP, followed by a chapter on prosecution performance with detailed case data analysis and notable cases in 2015/16. These chapters are then followed by an in-depth, yet concise review of what we have achieved in implementing the first Strategic Plan, which is discussed by grouping our strategic objectives to 7 broad areas. The Report then ends with two chapters on financial analysis and an appraisal of ODPP's challenges and recommendations.

Over the last five years, the Office has grown tremendously from only 13 offices in the country to being in all 47 Counties and the 119 Court stations, and from 73 to a strong professional force of 610 Prosecution Counsel (a 736% increase)-the highest of any country in our region.



As a result of this move to professionalize, we have taken full control of the prosecution service with the overall conviction rate steadily rising from 75% to 93.5% in 5 years, while the case conclusion rate has risen by over 5%. These and other notable milestones were achieved despite a total budgetary allocation of KES.7.3 billion against a budget requirement of KES. 18.9 billion required to implement the goals of the first Strategic Plan. This is a mere 38.6% of the budget.

As ODPP moves to its second Strategic Period, whose central theme will be ensuring quality prosecution service, we intend to carry with us the lessons and gains made over the last five years. This report therefore, is not merely an accountability statement as required by our Constitution, but an important resource that I hope will give all its readers an insightful and in-depth view of ODPP's journey towards offering a just, effective and efficient prosecution service to the public.

Keriako Tobiko CBS, SC

**DIRECTOR OF PUBLIC PROSECUTIONS**



# ACKNOWLEDGEMENT



I wish to acknowledge with deep appreciation the immense contribution, dedication, professionalism and courage of all the women and men in the ODPP over the last 5 years. Your output as documented in this and previous ODPP Annual Reports, even under a sub-optimal working environment, has been the center-piece cog of the wheel that is transforming Kenya's prosecution service.

I am also grateful to the ODPP Advisory Board whose work in recruiting the past and current talent to serve in the ODPP has been a critical factor in assisting the Office professionalize its services.

I also thank my colleagues who have served in senior management for their counsel, unwavering support and able leadership in their respective positions.

As an Office, we appreciate the support, both technical and material, that we have received from the Government, development partners and all our stakeholders, which has sustained the growth of the ODPP in its infancy phase.

Lastly, I am pleased to commend the report writing team of Paul Ndemo, Rodah Ogoma, Walter Oselu, Beatrice Omari, Joseph Gitonga, Jacqueline Njagi, Katto Wambua, Eunice Oloo, Musa Sere and Andrew Osundwa, who despite demanding work schedules and competing priorities, sacrificed to ensure timely production of this Report.

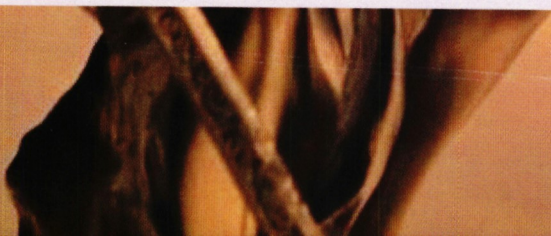
Dorcas Oduor, OGW

**SECRETARY, PUBLIC PROSECUTIONS**



# CHAPTER ONE

## ABOUT US







## 1.1 Who We Are

- 1.1.1 The Office of the Director of Public Prosecutions (ODPP) is the National Prosecuting Authority in Kenya which has been mandated by the Constitution to prosecute all criminal cases investigated by the police and other investigative agencies.
- 1.1.2 The ODPP is headed by the Director of Public Prosecutions (DPP) and has a presence in all the 47 Counties in Kenya, whose distribution compliments the 119 court stations in the Republic. Each ODPP County Office is headed by a Chief County Prosecutor responsible for working with the courts and the investigative agencies to provide high quality prosecution services within their jurisdiction.

## 1.2 What We Do

- 1.2.1 The primary function of the ODPP is the direction and supervision of public prosecutions and related criminal matters.

In particular, the ODPP:

- decides which cases referred by various investigative agencies should be prosecuted;
- advises investigative agencies at various stages of the investigation process;
- prepares and presents cases in court; and
- provides information, assistance and support to victims of crime and prosecution witnesses.

- 1.2.2 In carrying out its primary function, the ODPP is governed by two key policy instruments namely, the National Prosecution Policy and the Code of Conduct for Prosecutors.

- 1.2.3 While exercising the prosecution mandate, the ODPP safeguards 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 and fair.



### **1.3 Our Vision:**

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

### **1.4 Our Mission:**

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

### **1.5 Our Core Values:**

- Respect and promotion of human rights and the rule of law;
- Integrity and Ethics;
- Professionalism;
- Fairness and Impartiality;
- Courtesy and Respect;
- Teamwork.

### **1.6 Powers and Role of the ODPP**

1.6.1 The Constitution and the ODPP Act set out the powers of the DPP. These are:

a) Directing 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) Instituting, taking over and continuing or discontinuing, with the leave of court, criminal proceedings against any person, before any court, other than a court martial.

1.6.1 The Act further gives the DPP powers to direct and guide investigations. In this regard, Prosecutors perform the following key roles:

- providing legal advice to law enforcement agencies, government ministries and departments on all criminal law matters;
- drafting and reviewing charges;



- conducting legal research;
- preparing pleadings and court documentation including exhibits;
- holding pre-trial conferences with witnesses and victims of crimes; and
- Determining alternative mechanisms for resolution of criminal cases.

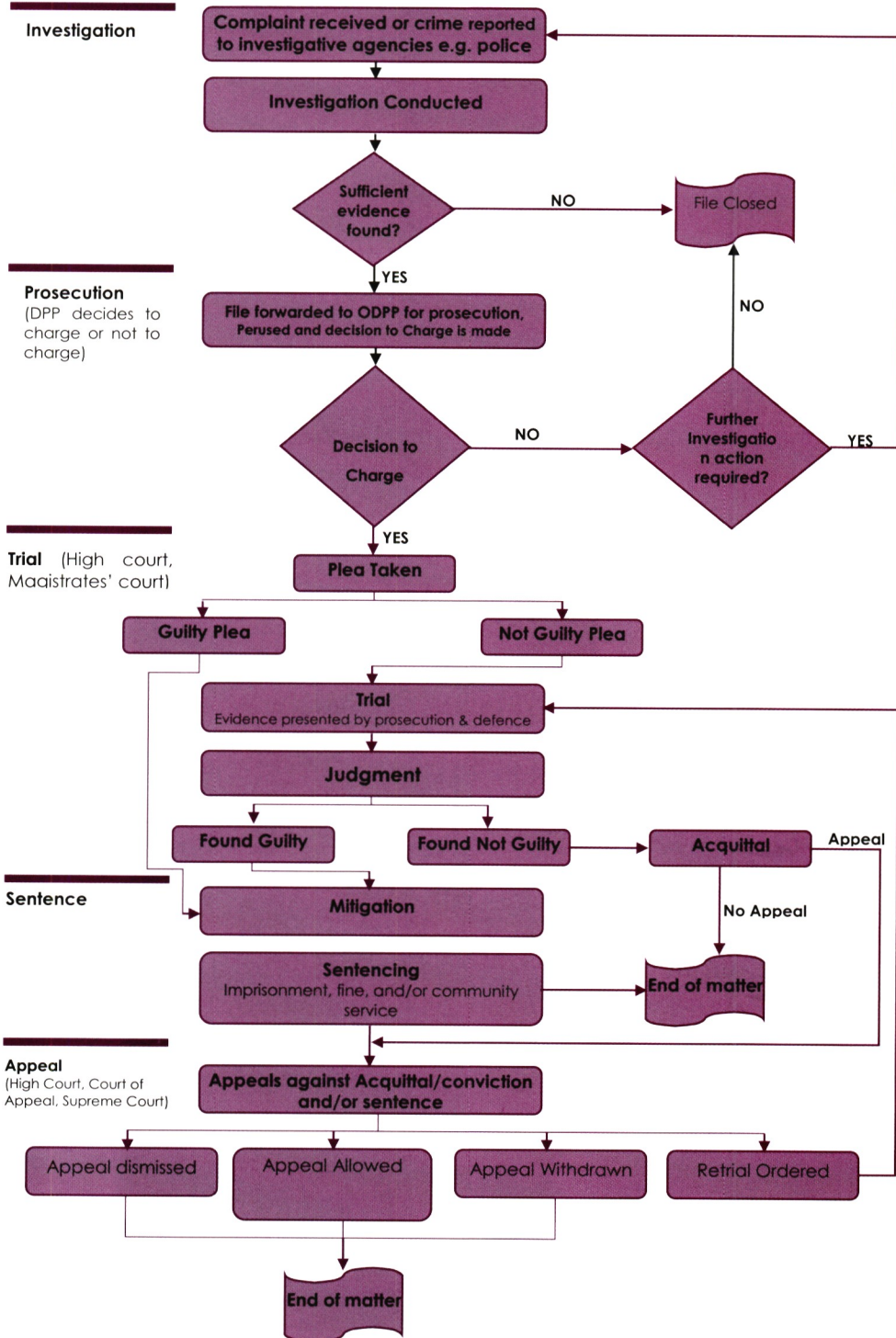
## **1.7 Criminal Justice Process**

1.7.1 The diagram below shows the criminal justice process in Kenya:

Figure 1 is a pictorial mapping on the role of ODPP and other agencies in the criminal justice process



Figure 1.1: Justice System Flow Chart





## 1.8 Organizational Structure

- 1.8.1 ODPP operates through four Departments, namely Central Facilitation Services, Offences against the Person, County Affairs, and International, Emerging and Economic Crime departments. Each of these Departments is headed by a Deputy Director. The Departmental heads assist the DPP in the day to day management of the Office under the supervision of the Secretary, Public Prosecutions who deputizes the DPP.
- 1.8.2 The DPP is served by an Executive Secretariat which provides technical and general administrative support. The Secretariat consists of Reforms and Liaison Section, Complaints & Compliments Section and Crimes Data Analysis Unit.
- 1.8.3 The High Level Leadership Management Committee comprising the DPP as its chair, the SPP, heads of Departments and the Executive Secretariat Coordinator, provides policy direction and overall institutional supervision. Figure 1.2 shows the Management Structure of the ODPP. Figure 1.3 gives a breakdown of the departments with the specific Divisions.



Figure 1.2:- ODP Senior Management Organogram

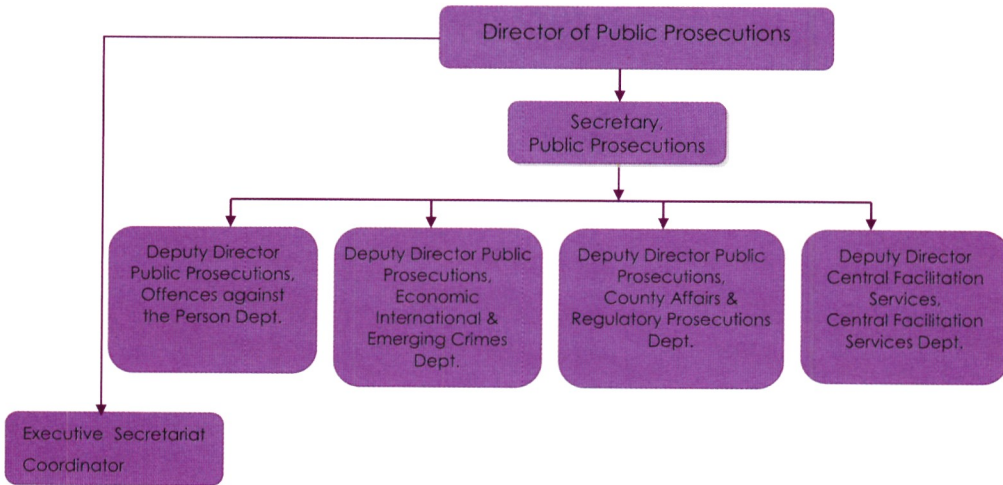


Figure 1.3: Composition of Departments

Department of Offences against the Person	Department of Economic, International & Emerging Crimes	Department of County Affairs & Regulatory Prosecutions	Department of Central Facilitation Services
<p><b>Divisions:</b></p> <ul style="list-style-type: none"> <li>o Penal Code Offences</li> <li>o Children, Victims &amp; Witness Support</li> <li>o Penal Code Offences</li> <li>o Children, Victims &amp; Witness Support</li> <li>o Supreme Court &amp; Appeals</li> <li>o Human Rights &amp; Judicial Review</li> <li>o Sexual &amp; Gender-Based Offences</li> <li>o Land, Environmental &amp; Related Cases</li> <li>o Election Offences</li> <li>o War Crimes International Crimes</li> </ul>	<p><b>Divisions:</b></p> <ul style="list-style-type: none"> <li>o Anti-Corruption</li> <li>o Narcotics, Organized &amp; Cyber Crime</li> <li>o Extradition, MLA &amp; International Co-operation</li> <li>o Counter-Terrorism</li> <li>o Piracy &amp; Maritime Offences</li> </ul>	<p><b>Divisions:</b></p> <ul style="list-style-type: none"> <li>o County Affairs</li> <li>o Delegated Prosecution Services</li> <li>o General &amp; Regulatory Offences</li> </ul>	<p><b>Divisions:</b></p> <ul style="list-style-type: none"> <li>o Administration</li> <li>o Human Resource Management/ Development</li> <li>o Planning</li> <li>o Finance</li> <li>o Accounts</li> <li>o ICT</li> <li>o Audit</li> <li>o Public Affairs &amp; Corporate Communications</li> <li>o Supply Chain Management</li> <li>o Prosecution Registry</li> </ul>



# CHAPTER TWO

## PROSECUTION PERFORMANCE



## 2.1 Statistical Summary

- 2.1.1 This chapter presents the overall prosecution performance of the ODPP and statistical analysis of cases handled in 2015/16. The chapter also highlights notable cases of jurisprudential value.
- 2.1.2 During the 2015/16 ODPP processed a total of 252,358 matters were handled by the ODPP compared to 173161 in 2014/15. This was an increase of 45.7%.
- 2.1.3 This is attributed to the decentralization of prosecution, judicial and law enforcement services across the country. Criminal trials<sup>1</sup> accounted for the highest proportion of matters handled at **84.4%** followed by Applications<sup>2</sup> at **6.6%** while Appeals were **4.6%** as shown in Table 2.1 and graphically presented in Figure 2.1.

**Table 2.1: Matters handled by ODPP during the FY 2015/16**

Types	Numbers <sup>3</sup>	Proportion
Appeals (In Supreme Court, CoA & HC)	11,692	4.63%
Criminal Trial (HC & MC)	212,926	84.37%
Revision	3,729	1.48%
Applications	16,580	6.57%
Extraditions & MLA	78	0.03%
Advice Files	4,423	1.75%
Complaints	2,930	1.16%
<b>Total</b>	<b>252,358</b>	<b>100.00%</b>

\*Numbers refer to newly filed matters and matters carried over from previous years.

<sup>1</sup> Criminal trial refers to hearing of criminal case proceedings in courts of first instance (i.e. High Court and Magistrates' Courts)

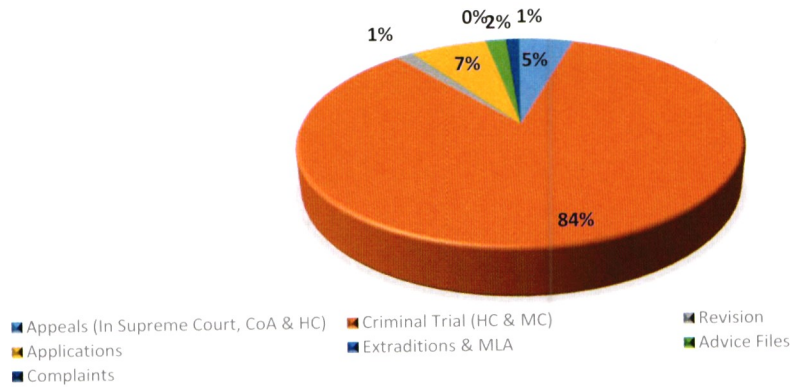
<sup>2</sup> Application refer to ...

<sup>3</sup> Matters handled refers to newly filed matters and matters carried over from previous years.





Figure 2.1: Proportion of Matters handled by ODPP during the FY 2015/16



- 2.1.4 The overall performance of a National Prosecution Authority is often measured on two critical parameters, namely, overall conviction rate<sup>4</sup> and case conclusion rate<sup>5</sup>. The overall trial conviction rate rose to **93.5%** up from **89.4%** in 2014/15. The overall conviction rate has steadily risen from **75%** to **93.5%** over the last five years. The trial conclusion rate also rose to **37.1%** up from **32.8%** during the same period.
- 2.1.5 The rise in the conviction rate indicates the continued improvement in the decision to charge, further supported by increased professionalization of prosecutions. On the other hand, the increase in the conclusion rate reflects a significant reduction in case backlog and overall trial time.

<sup>4</sup> Conviction rate refers to percentage of the number of convictions divided by the total number of convictions and acquittal achieved during a period

<sup>5</sup> Conclusion rate refers to percentage of the number of criminal matters resolved/concluded by way of either a conviction or acquittal within the reporting period, divided by the total number of criminal matters handled during a period.

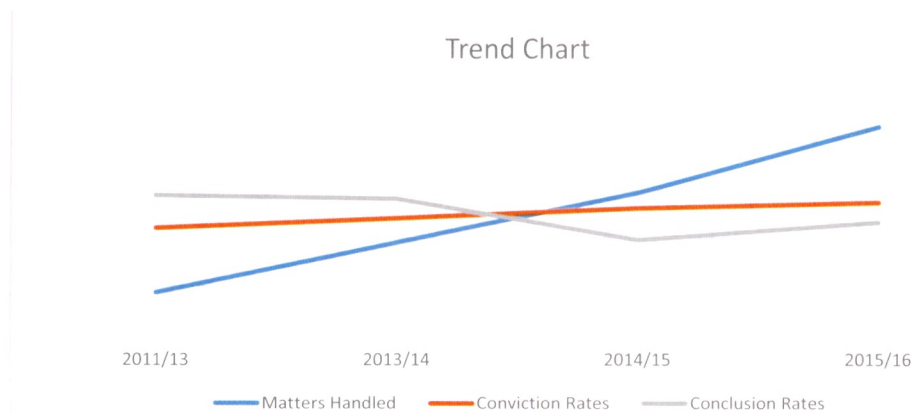


**Table 2.2: ODPP performance Trends from 2011/13 to 2015/16**

Reporting Period	2011/13*	2013/14	2014/15	2015/16
Matters Handled	50,704	111,566	173,161	242,151
Conviction Rates	75%	82%	89.4%	93.5%
Conclusion Rates	48.4%	47.2%	32.8%	37.1%

\*this two year period operates as ODPPs case data baseline at a time when it had a presence in only 29 Counties.

**Figure 2.2: ODPP Performance Trends from 2011/13 to 2015/16**



- 2.1.6 It is noted that the ODPP registered a **26.7%** increase in new trials in FY 2015/16 compared to FY 2014/15, which reflects continued increase in public demand for justice.
- 2.1.7 The bulk of criminal trials were at the Magistrates' Courts at **94.7%** and **5.3%** at the High Court. Pending trials were highest at the Magistrates' Courts at **91.9%** while the High Court had pending trials at **8.1%**.
- 2.1.8 It is important to note that though the High Court primarily handles murder trials, these cases take a disproportionately longer time to conclude. **3.9%** of trials in the High Court were concluded, compared to **39%** of trials in Magistrates' Courts.
- 2.1.9 It is noteworthy that **99.2%** percent of all withdrawals occurred at Magistrates' Courts largely due to the application of Alternative Dispute Resolution (ADR) mechanisms in criminal trials, among other reasons. Trends in criminal trials by court type are provided for in Table 2.3.

**Table 2.3: Trends on Criminal Trials by Court Type in FY 2015/16**

Court	Total Handled	Withdrawal	Conviction	Acquittal	Pending	Conviction Rates	Conclusion Rate	Withdrawal Rate
High Court (murder trials)	11,332	65	250	132	10,885	65.4%	3.9%	0.6%
Magistrates' Court (all other trials)	201,594	8,479	65,683	4,442	122,990	93.7%	39.0%	4.2%
	212,926	8,544	65,933	4,574	133,875	93.5%	37.1%	4%

## 2.2 Appeals

- 2.2.1. Appellate proceedings, be they appeals or revisions, are heard in Superior Courts, namely; High Court, Court of Appeal and the Supreme Court.
- 2.2.2. ODPD registered **3.8%** decrease in the number of appeals in **2015/2016** and recorded a success rate of **52.3%** down from **67.7%** in 2014/15. There was a decrease in the appeals conclusion rate to **8%** from **13%** in the previous reporting period, which accounts for the drop in success rate as reflected in Table 2.4. Also provided is a trend analysis of ODPD's performance on appeals from FY **2011/2012** to FY **2015/16** as shown in Table 2.5 and Figure 2.3.

**Table 2.4: Performance in Appeals in FY 2015/16**

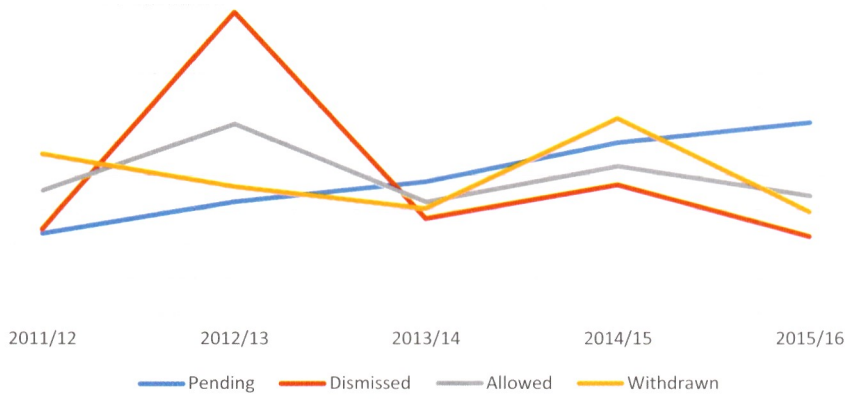
Total Appeals Handled	Dismissed	Allowed	Withdrawn	Pending	Success Rate	Conclusion Rate
11,692	406	371	154	10761	52.3%	8.0%

**Table 2.5: Number of Appeals from FY 2011/12 to FY 2015/16**

Outcome	2011/12	2012/13	2013/14	2014/15	2015/16
Pending	4,494	6,268	7,405	9,627	10,761
Dismissed	445	1599	500	680	406
Allowed	388	601	351	466	371
Withdrawn	243	193	159	298	154



**Figure 2.3: Trend Analysis of Performance in Appeals from FY 2011/12 to FY 2015/16**



### 2.3 Applications

2.3.1. The ODPP handles various applications made during the criminal process in trial and appellate proceedings. The applications include constitutional petitions and bail applications. They are filed by ODPP, the accused person or other interested parties. Table 2.6 is a presentation of the status of applications made at the Court of Appeal and the High Court.



**Table 2.6: Numbers and Trends in Appeals and Applications for FY 2015/16**

Court	Case Type	Cases Handled	Dis-missed	Al-lowed	With-drawn	Pend-ing	Success Rate	Con-clusion Rate
CoA & HC	Appeals	11,692	406	371	154	10,761	52.25%	7.96%
	Constitutional Applications	1,069	50	64	14	941	43.86%	11.97%
HC	Judicial Review	1,254	14	2	6	1,232	87.50%	1.75%
	Revisions	3,729	221	673	22	2,813	24.72%	24.56%
	Other Applications	2,565	42	206	51	2,266	16.94%	11.66%
	Total Application	8,617	327	945	93	7,252	25.71%	15.84%
	Overall Application & Appeals	20,309	733	1,316	247	18,013	35.77%	11.31%

## 2.4 Criminal Trials

This section discusses trials at the High Court and the Magistrates' Courts.

### 2.4.1. Trials at the High Court

During the period under review ODPP registered **1,545** new murder cases which is a **7.1%** increase in FY 2015/16 compared to FY 2014/15. The new murder cases registered account for **13.6%** of the total number of the murder caseload.

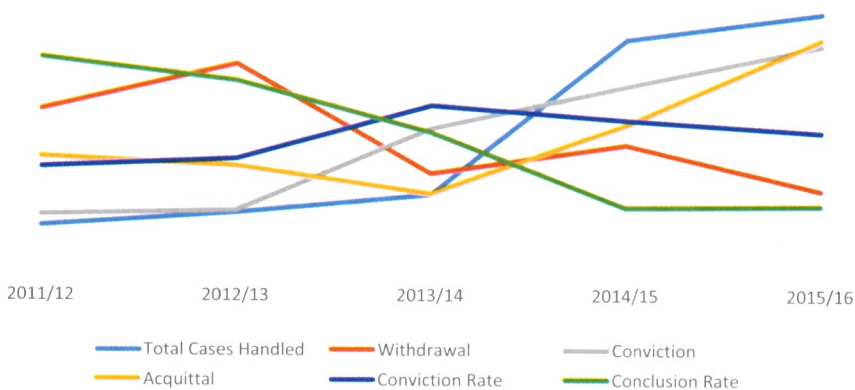
2.4.2. High Court Stations in Machakos, Usain Gishu, Meru, Nairobi, Nakuru, Kisumu Counties respectively handled the highest number of murder cases compared to Taita-Taveta, Marsabit, Bomet, and Tana-River Counties which have new High Court Stations. Table 2.7 presents numbers and trend analysis of performance in prosecution of murder cases at the High Court.



**Table 2.7: Number of Murder Cases and Trend Analysis from FY 2011/12 to FY 2015/16**

Outcome	2011/12	2012/13	2013/14	2014/15	2015/16
Total Cases Handled	2,011	2,581	3,371	10,177	11,332
Withdrawal	131	168	79	102	64
Conviction	63	68	158	205	250
Acquittal	65	60	44	83	132
Conviction Rate	49.2%	53.1%	78.2%	71.2%	<b>65.4%</b>
Conclusion Rate	12.9%	11.5%	8.3%	3.8%	3.9%

**Figure 2.4: Trend Analysis of Murder cases from 2011/12 to 2015/16**



## 2.5 Criminal trials at the Magistrates Court

2.5.1. The Magistrates' Courts handle all criminal trials except murder cases which are prosecuted in the High Court. At this level, ODPP attained an overall trial conviction rate of **93.7%** up from **89.5%** in 2014/15. The trial conclusion rate rose to **37.1%** from **32.8%** in the last reporting period.

2.5.2. 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 or Sub-County offices and the number of unrepresented accused persons, among others. A presentation of criminal cases in Magistrates' Courts per County office is captured in the table 2.8.



**Table 2.8 Criminal Cases Handled Per County in Magistrates' Courts**

County	Cases Handled	Convictions	Acquittals	Withdrawals	Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Work Load Distribution
National Summary	201,594	65,683	4,442	8,479	122,990	93.7%	39.0%	4.21%	100.0%
Baringo	3,606	2,587	89	407	523	96.7%	85.5%	11.28%	1.79%
Bomet	6,354	3,481	84	81	2,708	97.6%	57.4%	1.27%	3.15%
Bungoma	9,964	4,956	186	378	4,444	96.4%	55.4%	3.79%	4.94%
Busia	6,414	2,842	231	147	3,194	92.5%	50.2%	2.29%	3.18%
Elgeyo Marakwet	3,059	1,872	18	158	1,011	99.0%	66.9%	5.16%	1.52%
Embu	1,958	161	90	163	1,544	64.1%	21.1%	8.32%	0.97%
Garissa	1,596	746	19	201	630	97.5%	60.5%	12.59%	0.79%
Homa-Bay	6,270	1,780	108	381	4,001	94.3%	36.2%	6.07%	3.11%
Isiolo	879	390	13	33	443	96.8%	49.6%	3.75%	0.44%
Kajiado	5,143	1,795	26	164	3,158	98.6%	38.6%	3.18%	2.55%
Kakamega	2,935	242	139	308	2,246	63.5%	23.5%	10.49%	1.46%
Kericho	8,280	6,582	148	333	1,217	97.8%	85.3%	4.02%	4.11%
Kiambu	8,635	560	46	119	7,910	92.4%	8.4%	1.37%	4.28%
Kilifi	2,053	253	7	54	1,739	97.3%	15.3%	2.63%	1.02%
Kirinyaga	2,857	144	15	65	2,633	90.6%	7.8%	2.27%	1.42%



County	Cases Handled	Convictions	Acquittals	Withdrawals	Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Work Load Distribution
Kisii	4,401	45	6	31	4,319	88.2%	1.9%	0.7%	2.18%
Kisumu	3,849	1,266	171	84	2,328	88.1%	39.5%	2.18%	1.91%
Kitui	4,017	1,019	21	121	2,856	98.0%	28.9%	3.01%	1.99%
Kwale	2,603	802	2	29	1,770	99.8%	32.0%	1.11%	1.29%
Laikipia	5,128	1,722	178	895	2,333	90.6%	54.5%	17.45%	2.54%
Lamu	930	100	39	20	771	71.9%	17.1%	2.15%	0.46%
Machakos	3,643	742	18	139	2,744	97.6%	24.7%	3.82%	1.81%
Makueni	5,828	2,719	280	334	2,495	90.7%	57.2%	5.73%	2.89%
Mandera	948	452	69	75	352	86.8%	62.9%	7.91%	0.47%
Marsabit	1,690	612	20	142	916	96.8%	45.8%	8.4%	0.84%
Meru	13,525	2,322	323	306	10,574	87.8%	21.8%	2.26%	6.71%
Migori	1,691	449	197	51	994	69.5%	41.2%	3.02%	0.84%
Mombasa	3,772	1,056	214	78	2,424	83.1%	35.7%	2.07%	1.87%
Murang'a	7,777	3,966	162	350	3,299	96.1%	57.6%	4.5%	3.86%
Nairobi	24,875	2,207	189	458	22,021	92.1%	11.5%	1.84%	12.34%
Nakuru	6,012	55	55	90	5,812	50.0%	3.3%	1.5%	2.98%
Nandi	3,303	1,742	33	80	1,448	98.1%	56.2%	2.42%	1.64%
Narok	5,015	4,306	299	213	197	93.5%	96.1%	4.25%	2.49%





County	Cases Handled	Convictions	Acquittals	Withdrawals	Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Work Load Distribution
Nyamira	2,338	1,145	87	172	934	92.9%	60.1%	7.36%	1.16%
Nyan-darua	2,353	302	41	136	1,874	88.0%	20.4%	5.8%	1.17%
Nyeri	2,474	718	19	46	1,691	97.4%	31.6%	1.86%	1.23%
Samburu	272	63	17	78	114	78.8%	58.1%	28.68%	0.13%
Siaya	5,046	2,697	119	415	1,815	95.8%	64.0%	2.13%	2.50%
Taita Taveta	1,879	595		40	1,244	100.0%	33.8%	2.13%	0.93%
Tana River	1,008	203	53	77	675	79.3%	33.0%	7.64%	0.50%
Tharaka Nithi	2,503	978	39	101	1,385	96.2%	44.7%	4.04%	1.24%
Trans-Nzoia	3,285	108	4	50	3,123	96.4%	4.9%	1.52%	1.63%
Turkana	650	440	83	106	21	84.1%	96.8%	16.31%	0.32%
Uasin Gishu	4,524	924	189	428	2,983	83.0%	34.1%	9.46%	2.24%
Vihiga	3,177	1,092	37	81	1,967	96.7%	38.1%	2.55%	1.58%
Wajir	266	71	15	41	139	82.6%	47.7%	15.41%	0.13%
West Pokot	2,809	2,124	112	155	418	95.0%	85.1%	5.52%	1.39%



## 2.6 Categories of Crimes

2.6.1. The ODPP prosecuted various major offences including emerging crimes through its County offices and thematic prosecutorial divisions, sections and units. The tables below outline the performance in prosecution of select offences during FY 2015/2016.

2.6.2. Under homicide<sup>6</sup> cases class type, only murder cases are tried at the High Court level. The rest are handled in Magistrates' Courts. Table 2.9 highlights the performance in Homicide cases in FY 2015/16.

**Table 2.9: Performance in Homicide Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Homicide (HC & MC)	16,572	934	308	291	5039	75.2%	7.5%	1.76%	6.6%

2.6.3. Homicide cases had a conviction rate of 76.2%.

**Table 2.10: Performance in Robberies, Assaults and Property Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Assaults	38,670	4,225	1,152	2,650	30,643	78.6%	20.8%	6.85%	18.2%
Robbery and Extortions	9,190	491	241	206	8,252	67.1%	10.2%	2.24%	4.3%
Property related crimes	28,660	2024	415	999	15,095	83%	64.3%	3.49%	8.7%
Theft and Stealing	23,310	2,705	622	1,347	18,636	81.3%	20.1%	5.78%	10.9%
Total	<b>99,830</b>	<b>9,445</b>	<b>2,430</b>	<b>5,202</b>	<b>72,626</b>	<b>79.54%</b>	<b>17.11%</b>	<b>5.21%</b>	<b>42.10%</b>

<sup>6</sup> Homicide cases refer to offences relating to the unlawful taking of or intent to take human life i.e. murder, manslaughter, attempted murder, infanticide, suicide, procuring abortion offences.



2.6.4 Performance during FY 2015/16 in robbery, assaults and other property related cases is as shown in Table 2.10.

**Table 2.11: Performance in Cases relating to Alcoholism in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Offence relating to Alcoholism	31,574	27,387	406	605	3,176	98.5%	89.9%	1.92%	14.8%

2.6.5 Offences relating to alcoholism during the reporting period had a conviction rate of **98.5%**.

**Table 2.12: Performance in Traffic Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Traffic Offences	28,660	17,041	404	972	10,243	97.7%	64.3%	3.39%	13.5%

2.6.6 ODPP's performance in traffic cases was a **97.7%** conviction rate.

**Table 2.13: Performance in Incitement to Violence and Hate Speech Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Incitement To Violence and Hate Speech Crimes	122	9	2	10	101	81.8%	17.2%	8.2%	0.1%

2.6.7 ODPP achieved a conviction rate of **81.8%** in cases of incitement to violence and hate speech during the FY 2015/16.



**Table 2.14: Performance in Land and Environmental Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Land Fraud and Environmental Cases	352	119	16	18	199	88.1%	43.5%	5.11%	0.2%

2.6.8 Land fraud and Environment cases had a conviction rate of **88.1%**.

**Table 2.15: Performance in Sexual and Gender Based Violence Cases in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Sexual and Gender Based Violence (SGBV) – such as Rape, Defilement & other offences against morality	13,445	1,171	382	468	11,424	75.4%	15.0%	3.48%	6.3%
Female Genital Mutilation (FGM)	121	34	15	10	62	69.4%	48.8%	8.26%	0.1%

2.6.9 SGBV and FGM cases recorded a **75.4%** and **69.4%** conviction rates respectively



**Table 2.16: Performance in Corruption, Economic and Related Crime Cases in FY 2015/16**

The ODPP recorded a conviction rate of **58.1%** in corruption cases investigated by EACC. Economic Crime cases investigated by the DCI recorded conviction rate of **80.4%**. Corruption cases had a conclusion rate of **7.5%** due to various factors

such as the complexity of proving charges, transfer of magistrates and numerous interlocutory applications/ appeals which served to delay the conclusion of these cases. Economic Crime cases had a conclusion rate of 11.1%.

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Corruption (EACC)	439	18	13	2	406	58.1%	7.5%	0.46%	0.2%
Economic Crimes (DCI)	6,537	409	100	219	5,809	80.4%	11.1%	3.35%	3.1%
Forgery and False Pretences and Various Forms Of Fraud	1,245	232	40	47	926	85.3%	25.6%	3.78%	0.6%
<b>Total</b>	<b>8,221</b>	<b>659</b>	<b>153</b>	<b>268</b>	<b>7,141</b>	<b>81.16%</b>	<b>13.14%</b>	<b>3.26%</b>	<b>3.90%</b>

**Table 2.17 Performance in Organized and Transnational Crimes in FY 2015/16.**

2.6.10 During **2015/16**, the ODPP registered a notable performance in prosecution of wildlife crimes, whose conviction rate stood at **86.1%**. Indeed, ODPP's performance in this area has made Kenya, Eastern Africa's leading light against wildlife crime and contributed to an **80%** drop in poaching. The ODPP in responding to the growing terrorism challenge in Kenya recorded a **100%** conviction rate in terrorism and related offences concluded during the reporting period. In narcotics and human trafficking cases ODPP in both class types recorded an impressive **96.3%** conviction rate.



Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Wildlife Crimes	603	136	22	13	432	86.1%	28.4%	2.16%	0.3%
Cyber Crime Offences	438	34	14	22	368	70.8%	16.0%	5.02%	0.2%
Human Trafficking	263	77	3	6	177	96.3%	32.7%	2.28%	0.1%
Narcotics cases	12,172	3,936	151	217	7,868	96.3%	35.4%	1.78%	5.7%
Terrorism Offences	293	19	-	10	264	100.0%	9.9%	3.41%	0.1%
<b>Total</b>	<b>13,769</b>	<b>4,202</b>	<b>190</b>	<b>268</b>	<b>9,109</b>	<b>95.67%</b>	<b>33.84%</b>	<b>1.95%</b>	<b>6.40%</b>

## 2.7 The Fight against Corruption

- 2.7.1.** The fight against corruption and economic crimes was the central focus in the use and deployment of prosecutorial resources in 2015/16. The ODPP's role in this fight is the prosecution of corruption and economic crime cases, and where circumstances warrant, to provide technical advice and assistance to all investigative agencies.
- 2.7.2.** The financial year 2015/16 became the year when the DPP's efforts in this fight begun to bear admittedly small, yet unprecedented results, a trend which is now bound to continue. It is indeed, going to be remembered as the historical turning point in this arduous but necessary fight.
- 2.7.3.** It is in 2015/16, that DPP took to court the highest number of corruption cases, particularly high profile personalities. Never before in the history of our Republic, have so many in all areas of our society, been charged in court, to answer for their corrupt acts or omissions.
- 2.7.4.** A total of **439** corruption cases were handled in court involving **988** individuals and **21** corporate entities. Even though, corruption cases continue to have the lowest case conclusion rate per case type, due to numerous interlocutory applications and appeals by accused persons to delay cases; **7.51%** of those matters were concluded.



**2.7.5.** During this reporting period, for the first time ever, a corruption case begun and was concluded within a year. Further, it is in this year, that Kenya recorded the highest ever corruption conviction rate of **58.1%** including the highest number of convictions in a single year at **18**. Table 2.18 indicates performance in FY 2015/16 on corruption cases investigated by EACC and Economic Crimes investigated by the DCI.

**Table 2.18 Performance in Corruption and Economic Crimes in FY 2015/16**

Case Category	No. of Cases Handled	Convictions	Acquittals	Withdrawals	No. of Cases Pending	Conviction Rate	Conclusion Rate	Withdrawal Rate	Case Load
Corruption (EACC)	439	18	13	2	406	58.1%	7.5%	0.46%	0.2%
Economic Crimes (DCI)	6,537	409	100	219	5,809	80.4%	11.1%	3.35%	3.1%

**2.7.6.** Some of the recent convictions obtained in corruption cases, include:-

**2.7.6.1. Hon. Peris Simam & 6 others**

Found guilty of 9 corruption counts relating to KES. 4.5M and sentenced to pay a total fine of KES. 24.95M and in default 18 years imprisonment.

**2.7.6.2. Nyeri County Officials (John Maina & 2 others)**

Found guilty of breach of procurement law relating to KES. 3.4M and sentenced to a total fine of KES. 23.4M in default 3 years imprisonment.

**2.7.6.3. Senior Education Ministry officials (Concellia Ondieki & another)**

Found guilty of deceiving principal and forgery and sentenced to 2 years imprisonment without an option of a fine.

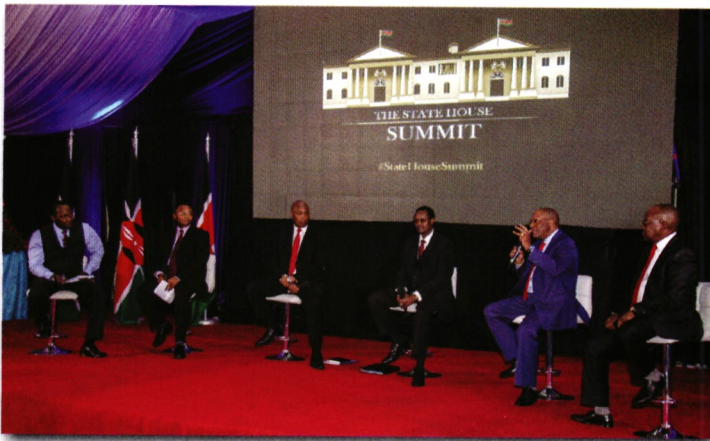
**2.7.6.4. Ministry of Special Programmes (Kizito Baraza)**

Found guilty of fraudulent acquisition of public property and sentenced to a total of 5 years imprisonment and a fine of KES. 60,000.



- 2.7.2.** The ODPP has played its role in combating grand-corruption by, taking to court **98** high profile cases involving **474** persons, the highest ever of such cases in Kenya. The high profile personalities involved include:- **5 Ministers/Cabinet Secretaries, 6 Permanent/Principal Secretaries, 4 Governors, 2 Senators, 9 Members of the National Assembly, 16 Senior County officials, 17 CEOs/Heads of Parastatals, 4 Senior Bank Officials,** among others.
- 2.7.3.** Some of these cases relate to:- **3** Anglo-leasing-Type cases; **3** Triton cases, **3** National Youth Service cases, **3** IEBC 'Chickengate' cases, Youth Enterprise Fund case, Geothermal Development Corporation case, Discount Securities cases, Imperial Bank (Tilley file), **2** Dubai Bank cases, Free Primary Education cases, Kenya Pipeline cases, **2** Nairobi Cemetery cases , **2** Judiciary Procurement cases (CJ's house and Mavoko law courts), Miwani Sugar Estate (Kisumu) case, NACADA case, Kenya Tourism Board case, Malili Ranch cases, among others.
- 2.7.4.** Prosecution performance in corruption cases over the last 5 years covering the current DPP's tenure, has resulted in a **53%** overall conviction rate in **198** cases concluded with **94 Convictions, 82 acquittals** and **22 withdrawals**. This is the best performance recorded in the fight against corruption since independence.

## 2.8 Key Interventions in the Fight against Corruption



*DPP Keriako Tobiko at State House during the Presidential Round-Table on the Fight against Corruption outlining the achievements and challenges in prosecuting graft cases in Kenya.*





- 2.8.1. Beyond ODPPs casework in corruption cases, the Office has pursued other interventions in order to bolster capacity to fight corruption.
- 2.8.2. The Office added personnel in the Anti-Corruption Prosecution Division resulting in **90** vetted Prosecution Counsel handling corruption cases.
- 2.8.3. In addition, ODPP was engaged in intensive anti-corruption training both internal and inter-agency, and nationally and internationally.
- 2.8.4. ODPP also participated in the **new Anti-Corruption Court Users' Committee** in all 47 Counties with the aim of addressing case delays and other challenges.
- 2.8.5. Further, the ODPP was involved in the development of a **National Anti-Corruption Policy and Kenya Integrity Plan** and legislative reforms such as; the amendments to the **Anti-Corruption and Economic Crimes Act, the Public Procurement and Assets Disposal Act, 2015 and Proceeds of Crime and Money Laundering Act, 2012**. It also informed content of new legislations like the **Bribery and Whistleblowers Acts**.
- 2.8.6. Internally, ODPP improved its Anti-corruption mechanisms by establishing a vibrant **Corruption Prevention Committee** and developed **Leadership and Integrity Codes for all its State and Public Officers** as required by the **Leadership and Integrity Act**. ODPP was involved in the celebration of the **International Anti-Corruption Day**, in which the DPP got an opportunity to give a detailed report of some of the achievements realized by the ODPP.
- 2.8.7. Recently, to further improve on the quality of the decision to charge in corruption cases, the DPP established an **Anti-Corruption Case Review Committee** which has since clustered the country into **5 geographical zones** and begun full case reviews of all corruption cases and making appropriate recommendations to the DPP. The team has already finished with review of all **145** ongoing cases in **Nairobi Zone**, with **124** cases cleared to proceed to their logical conclusion and the rest being subject to various interventions.



## 2.9 Notable Cases

This section gives a brief outline of the court decisions, rulings and status of some of the noteworthy cases during the year under review.

### 2.9.1. Disclosure of documents by the prosecution

*Diana Kethi Kilonzo V Republic Crim Appeal (Application) No. 129 of 2016 in the Court of Appeal at Nairobi*

The appellant was charged together with one Geoffrey Ninito Lemiso of 3 counts including Stealing, and in the alternative handling stolen goods and uttering a false document, being a National Voter card. After plea and before commencement of the hearing, the Appellant applied to ODPP to be supplied with certain documents and witness statements. They were directed to the Directorate of Criminal Investigations for the same. The appellant lodged a Notice of Motion seeking orders to compel the DPP to supply these documents and a declaration that the prosecution violated her right to fair trial.

The application was dismissed, and the appellant made an application to the High Court, for revision of that order. This application was also dismissed by the HC, with the judge stating that he was persuaded that the documents which had not been supplied had no bearing on the prosecutor's case and were not in their custody. The appellant then made an appeal to the Court of Appeal against the ruling of the High Court judge, but first of all sought a stay of proceedings in the lower court.

The Court of Appeal found that Rule 5(2)(a) of the Court of Appeal rules was improperly invoked and while applying the findings in **Mary Ngechi Ngethe V The Ag & Another – C.A. Civil Application No. Nai 157 of 2012 (UR)**, that the Court of Appeal has no jurisdiction to grant stay of criminal proceedings pending before the Chief Magistrate's Court under rule 5(2)(a) of the rules.

The Court of Appeal agreed with the findings of the High Court adding that however modern democratic or progressive our Constitution is, it does not envisage compelling any party even if that party has the



awesome power of state to disclose that which it does not have. The application was therefore dismissed. The matter has now been set for hearing at the trial magistrates' court.

**2.9.2. Whether there can an appeal in a guilty but insane determination and the question of indefinite adjournment.**

*J C S v Republic [2016] eKLR*

The High Court had made a special finding under **Section 166** of the **Criminal Procedure Code (CPC)** that the Appellant was 'guilty but insane' of the offence of murder, and ordered her detention at the President's pleasure as she underwent further treatment. A notice of appeal and memorandum of appeal was filed by the appellant's advocate but the appeal was adjourned severally because the Appellant was undergoing treatment at Mathari Hospital. The Court addressed itself to the question whether an appeal lies from a special finding of 'guilty but insane' which is neither a conviction nor an acquittal.

The Court of Appeal indicated that it has jurisdiction to hear an appeal against such a finding, notwithstanding the absence of the accused adding that there is no reason to bar an intending appellant who seeks to question glaring blunders of law and fact which a trial Court may have made. The Court also found that the absence of the accused at the hearing was contemplated by Rule 71 Court of Appeal Rules and owing to the uncertainty of the period of her treatment, an indefinite adjournment of the appeal was unacceptable. The Court ordered that the appeal be fixed for hearing and that her Counsel would argue the appeal on her behalf.



### 2.9.3. **Police accountability**

*Republic V IP Veronica Gitahi & PC Issa Mzee, High Court Mombasa Criminal Appeal No. 41 of 2014 (Muya J) "Kwekwe case"*



*SADPP Mr. Alexander Muteti during his successful prosecution of the high profile police accountability Kwekwe Case.*

In this case, the two accused persons, being police officers were charged with murder, later changed to manslaughter, of 14-year-old girl Kwekwe Mwandaza, sparking countrywide outrage and condemnation of the National Police Service.

The deceased was buried albeit without the requisite post-mortem examination.

Subsequently orders were granted and exhumation and post-mortem was

conducted by the government pathologist assisted by pathologists contracted by Independent Medico-Legal Unit (IMLU).

The post-mortem examination concluded that Kwekwe had died of 'head injuries due to gunshot from a high velocity firearm'.

The Court found the two accused persons culpable while holding among other things that a Police Officer is required to make every effort to avoid the use of firearms especially against children under Rule 3 of the sixth schedule of the National Police Service Act. The accused persons appealed the court's conviction in the Court of Appeal, but the conviction was upheld and the appeal dismissed.

### 2.9.4. **Aggravated domestic violence**

*R vs Mohamed Warmoge Salat, Criminal case no. 10 of 2016*

The accused person in this case was charged with attempted murder contrary to section 220(a) of the Penal Code. This case elicited huge public interest considering that the accused person



and the complainant are married. The accused person stabbed the complainant with a kitchen knife on her cheek, face, wrist, hand and legs.

The knife which stuck on her cheek was termed as delicate requiring further treatment at Kenyatta National Hospital. The assault as stated by the complainant was committed unlawfully and without any provocation. At the conclusion of the case, the court convicted the accused person on 30<sup>th</sup> May 2016 for attempted murder namely contrary to section 220(a) of the Penal Code. The accused was sentenced to 20 years imprisonment without an option of a fine.

#### **2.9.5. *Effect of detailed evidential analysis at the case-to-answer stage where an accused person is put on defense***

*Charles Kipkurui Chepkwony v Republic [2016] eKLR*

The Appellant had been charged with a single count of robbery with violence and two counts of malicious damage to property. The trial Magistrate in finding that a prima facie case had been made out against the appellant, made a ruling which in part read: "Wilson Wanyama Soi (PW1) told the court that the accused led a group of raiders who shot him with an arrow and drove away his cattle.

They also destroyed his houses and goods. PW2, PW3, PW4, PW5 and PW6 all told the court that they saw the accused in the group that stole the cattle and that he was armed with a bow and arrows. They also saw him damaging structures belonging to PW1 and PW5.

The Court found that a case has been made out sufficiently to call upon the accused to make a defence. The court held that the opportunity to defend oneself is an integral part of the fair trial guarantees built into the criminal justice system. When a trial court expresses what appears to be settled and firm views indicative of the accused person's culpability after improperly conducting a deep evidentiary analysis, the appearance of preconception and predetermination is unacceptable and goes to make a travesty of the ensuing defence.



It makes it a hollow ritual because the court seems to have already made up its mind and this strikes at the very heart of the accused person's right to be heard in his own defence and renders the trial a mistrial and a nullity. In conclusion, the court held that a ruling on a case to answer is not the occasion for a detailed analysis of the prosecution case already tendered unless the Court intends to acquit the accused person at that stage. In the result, the conviction and sentence imposed was set aside and a retrial ordered.

#### **2.9.6. Application of ADR in criminal cases**

*R V. Newton Kioko & 7 others Crim Case No. 409/2016 Offence of Conspiracy to commit a felony*

In this case, 8 students from Sunshine secondary school were found with flammables in an attempt to set the school on fire, and were charged with the offence of conspiracy to commit a felony.

The Defense Counsel made an application to have the matter dealt with by way of Alternative Dispute Resolution (ADR) mechanisms between the parents of the subjects and the board of governors. The DPP objected to the application on the grounds that it was a matter of public interest at a time when there was a wave of arson in schools and that such a matter was not eligible for ADR. The trial court however in the end ordered that the matter proceeds for ADR.

The DPP sought and obtained an order quashing this decision. The High Court ordered that the matter proceeds for full hearing as it was not eligible for ADR.

#### **2.9.7. Plea bargaining**

*R. v. Caroline Mbithe Crim Case No. 576/14 Offence of Cruelty*

In this case, an adult (the victim's aunt) assaulted and caused head injuries to a minor living under her care.

The matter was handled by way of plea bargaining. On sentencing the court sentenced the accused to 18 months imprisonment and in addition, ordered her to compensate the victim Kshs. 120,000/-.



The accused appealed on the sentence on the grounds that it was too harsh for a case that she had plea bargained. The High Court dismissed her appeal stating that the sentence from the plea bargain was commensurate to the offence she committed and that the trial court still possessed discretion to sentence even in plea bargaining.

#### **2.9.8. Powers of the Court to terminate a case**

*DPP V Nairobi Chief Magistrate's Court and 3 Others, High Court Revision No. 195 of 2015*

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents were charged with failing to keep a register of transactions contrary to Section 11(1)(b) as read with Section 11(2) of the Trading in Unwrought Precious Metals Act, Cap 305. PW1 presented during cross examination, a circular from the Commissioner of Mines and Geology reflecting the Government's position that there would be no wrong on the persons exempted from keeping records specifically in disclosing the names of persons dealing in gold.

Based on that evidence, the magistrate sought the opinion of the DPP on whether to terminate the case, which opinion was never obtained. The magistrate dismissed the charges and acquitted the accused persons referring to the circular presented by PW1 claiming that the same exonerated the accused persons and the trial would end up in an acquittal. The Applicant herein sought a revision from the High Court of the dismissal by the magistrate of the trial, on the ground that the dismissal was based on a circular issued by a public officer as opposed to the law.

The DPP is conferred with discretionary powers to discontinue at any stage before judgment any criminal proceedings instituted by him (Article 157 (6)(c)). Any premature termination of proceedings had to be instituted by the DPP himself as the same were instituted by him, meaning that the magistrate usurped her powers. The High Court held that courts have no jurisdiction to terminate charges instituted by the DPP and cannot make a determination on an assumption that the likely outcome will be an acquittal. The magistrate should have awaited the DPP's response, failing which she should have proceeded



with the trial and not assumed that all other witnesses would have adduced hopeless evidence. The magistrate would have awaited an application by either party for the termination of the charges and rule on it. Consequently, the orders of the lower court were set aside and the criminal proceedings against the 2nd – 4th Respondents ordered reopened.

### **2.9.9. Independence of ODPP in institution of charges**

*Pauline Adhiambo Raget V DPP & 5 Others (2016) eKLR*

In September 2010 the Petitioner entered into a sale agreement with the Interested Party for the sale of two parcels of land. On the completion date, the Petitioner handed over to the Interested Party the executed transfer forms for both properties and the original title deed of only one of the parcels. On 17th December 2014 the Petitioner accused the Interested Party for breach of the Sale Agreement and rescinded the Agreement.

The Petitioner transferred the two parcels of land to a third party after reporting that the original title deed for one of the parcels had gone missing, sworn an affidavit and caused the District Land Registrar to issue the Petitioner with a new title deed notwithstanding that the Original title deed of the parcel was with Interested Party.

After investigations, the DCI recommended the prosecution of the Petitioner for the offence of giving false information to a person in public service as well as false swearing and forwarded the matter to the DPP for approval thus prompting the Petitioner to move to court alleging that the investigations into alleged criminal conduct on her part, as well as, the intended prosecution, if any, are an abuse of the criminal justice system and a violation of her constitutional rights.

It was held that Courts ought to be reluctant to interfere with the undertakings of other constitutional organs and that it is the sole discretion of the DPP as to whether a criminal case ought to be instituted and finally that It is in the interest of the public that persons accused of criminal conduct are made to face the criminal justice process without hindrance. The petition was dismissed.





### 2.9.10. **The right of victims to participate in criminal proceedings**

*Gideon Mwiti Irea v DPP & 7 Others (2015) eKLR*

The Petitioner was charged in the Magistrates Court with rape, intimidation and assault. He filed a Petition claiming that the 4<sup>th</sup>, 5<sup>th</sup> & 7<sup>th</sup> Respondents had included themselves in the criminal proceedings in violation of his right to a fair trial.

The DPP's position was that the victim was acting in accordance with the law by appointing intermediaries to communicate on her behalf to the Court. The 4<sup>th</sup>, 5<sup>th</sup> & 7<sup>th</sup> Respondents' case was that the victim instructed them to provide legal protection and to safeguard her rights and welfare as a victim.

The Court observed that under **S.4 (2)**, a victim has the right to be given opportunity to be heard and respond before any decision that affects the victim is taken. Further, that participation does not amount to private prosecution. It is limited to safeguarding and protecting the interest of the victim and does not amount to usurping the powers of the DPP to prosecute.

### 2.9.11. **Justice for Liz Case**

*R vs Dismas Owino Oduor & 3 others, Criminal Case no. 1924 of 2013, Busia*



SADPP Ms. Jacinta Nyamosi, SADPP Geoffrey Obiri and PPC Ms. Evelyn Onunga while prosecuting the notable defilement 'Liz' Case.

The accused persons in the above case were charged with several offences including gang rape contrary to section 10 of the Sexual Offences Act. The complainant, a 16 year old girl who was referred to as "Liz" in order to protect her identity, was raped as she returned home from her grandfather's funeral in Busia County in 2013. The perpetrators then dumped her in an open sewer. She suffered



fistula and a spinal injury from the attack and is now confined to a wheelchair. This case stirred up public interest especially after the police 'punished' the suspects by ordering them to cut grass around a police station.

The ODPP in this instance was involved in prosecution-guided investigations with the DCI. The ODPP further collaborated with advocates from FIDA and COVAW in undertaking the prosecutions. At the conclusion of the case, the court convicted the accused persons for two counts of rape contrary to section 10 of the Sexual Offences Act and grievous harm contrary to section 234 of the Penal Code. They were sentenced to a total of 15 years.

#### **2.9.12. Recognition of a medical report in place of a P3 form**

*James Njuguna Gitau V Republic Criminal Appeal NO. 329 OF 2012 (LESIT, KIMARU JJ)*

The Appellant was charged with two counts of robbery with violence contrary to Section 296(2) of the Penal Code and rape contrary to Section 3(1) as read with Section 3(3) of the Sexual Offences Act. He was convicted on both counts of robbery with violence and rape and sentenced to serve life imprisonment and 10 years respectively. In the appeal, the appellant argued that no P3 form was produced in the trial court to support the doctor's evidence that the complainant had been raped. In absence of the documentary evidence, the appellant averred that the trial court erred in convicting him.

The assertion by the Appellant was, that since no P3 form was produced into evidence, then there was no credible medical evidence produced and thus the case had no legal foundation. The court held that the medical report a Doctor which was produced into evidence was sufficient to establish penetration. It was also held that there was no requirement in law that the medical evidence be exclusively contained in a P3 form. Consequently, the appeal against conviction and sentence lacked merit and was dismissed.



### **2.9.13. *Republic V Peris Chepchumba Simam & Others, Eldoret CM, ACC 1 of 2012***

The accused persons, who included former MP Peris Simam, were charged with 10 counts including conspiracy to commit an offence of economic crime namely influencing the award of contract No. UG /2-27 09/10-003 for the routine maintenance and spot improvement of the Bayete-Chuiyat Bargeiywa road in Eldoret South Constituency to KACHUR Holdings Ltd, a company owned by Ms. Simam and that did not qualify for such an award contrary to the PPDA 2005, failing to adhere to tender opening procedure, restricted opening procedures, etc. The subject amount being Kshs. 4.5 Million.

The court found the accused persons guilty on all counts and were sentenced to 18 years imprisonment or pay a collective fine of Kshs. 12.2 Million.

### **2.9.14. *Application of ADR in criminal cases***

*R V Abdulahi Noor Mohamed (alias Arab) (2016) eKLR*

The accused was charged with murder and sought to have the court grant him and the deceased family time to reconcile and settle the matter out of court. DPP opposed the application for an out court settlement as this was a felony.

The Court restated the decision in *Juma Faraji Serenge Alias Juma Hamisi V R (2007) eKLR*, that the real complainant in criminal cases, and especially felonies, is the state. The victims of such crimes are nominal complainants. Further, that any application to withdraw from the case on account of a signed agreement of reconciliation should not be allowed unless the prosecution is involved, which was not the position in the current case. In conclusion the Court found that since that charge against the accused is a felony, reconciliation as a form of settling the proceedings is prohibited.



### 2.9.15. The power of the DPP to institute extradition proceedings

*Samuel Gichuru & Chyrsanthus Okemo V The Attorney General, Director Of Public Prosecutions, Chief Magistrate's Court And Ethics And Anti-Corruption Commission (Interested Party) (2015) eKLR*

The Attorney General of the Island of Jersey wrote a letter requesting Kenya's Attorney General to commence extradition proceedings against the Applicants. While the letter was addressed to the Attorney General of Kenya, the authority to commence the extradition proceedings was in fact given by the Director of Public Prosecution (DPP) and Miscellaneous Application No.9 of 2011 filed in the Chief Magistrates' Court at Nairobi to commence the said proceedings.

The Applicants raised preliminary issues contesting that the DPP had no power to institute extradition proceedings since they were not criminal proceedings but proceedings *sui generis* and raised the issue of lack of fair hearing while requesting that the matter be referred to the High Court for determination of a number of issues they deemed constitutional.

The Magistrate's Court dismissed their application to refer the said issues for determination by the High Court and held that extradition proceedings were criminal in character and that the DPP has the constitutional mandate to institute and undertakes criminal proceedings, and further that the DPP was right in commencing the said proceedings. It was also held that the role of the Court hearing the extradition matter was limited to deciding, on the evidence presented before it in support of the request and on behalf of a fugitive, whether a *prima facie* case to warrant extradition had been made.

The Applicants further moved the High Court by Constitutional Application seeking orders that the orders issued by the Magistrates' Court be set aside, vacated and/or discharged.

Held: The extradition proceedings instituted in the Magistrate's Court are valid as the authority to proceed was issued by the DPP who has the legal authority to institute extradition proceedings. The Court highlighted the need for Parliament and the Kenya Law Reform



Commission to amend the Act and bring it into conformity with the Constitution. The matter was further contested in the Court of Appeal, which decision was upheld.

#### 2.9.16. Authority to investigate individual bank accounts

*Prof. Tom Ojienda T/A Prof. Tom Ojienda & Associates Advocates- Vs- Ethics and Anti- Corruption Commission & 5 Others Petition 122/2015,*

The Petitioner made an application to the High Court seeking a declaration that warrants to investigate his accounts given on 18<sup>th</sup> March 2015 in ***Kibera Chief Magistrate Misc Criminal Appl 168/2015 EACC Vs Standard Chartered Bank*** breached his rights and fundamental freedom under Articles 27, 40, 47, and 50 of the Constitution and further sought a judicial review order to quash the said warrants.

He further sought Mandamus to compel the DPP to direct the Inspector General of the Police to investigate the officers of the EACC who obtained the warrants for perjury, damages and costs of the suit. ODPP filed grounds of opposition to the Petition on 10<sup>th</sup> April 2015 since the investigation file had not yet been forwarded to the DPP pursuant to section 35 of ACECA.

The High Court declared that the warrants to investigate the accounts of the Petitioner given by the trial court breached the Petitioner's rights and fundamental freedom under Articles 47(1), (2), and 50(1) of the Constitution of Kenya and issued an order of Certiorari quashing the said warrants. The other prayers in the Petitions were dismissed. This meant that EACC must give prior notice to an account holder it seeks to investigate or his associates under section 27 and 28 of ACECA prior to filing an application for warrants to investigate the account.

The DPP has filed an appeal on the grounds that the learned judge read section 27 and 28 of ACECA in isolation of section 23 of the said Act which does not require a prior notice and that the judgment is bound to scuttle investigations of bank accounts ought to be interrogated by the Appellate Court.



# CHAPTER THREE

## STRATEGIC OVERVIEW



### 3.1 Introduction: Strategic Objectives of the ODPP

3.1.1 The 1<sup>st</sup> Strategic Plan of the ODPP which was developed in 2011 to cover the strategic period of 2011/15 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 providing 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 vision, mission as well as core values.

3.1.2 The following **10 strategic issues** were identified during the process, for the Office to address 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.

3.1.3 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.

3.1.4 It is noteworthy that a terminal review of this strategic plan has been undertaken and a new strategic plan 2016/21 is being finalized for launching.

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

### **3.2 Access to Justice**

3.2.1 The subject of access to justice is underpinned by the Constitution and the ODPP by virtue of its mandate plays a critical role in ensuring that justice is served to all.

### **3.3 Role of ODPP**

3.3.1 During the financial year 2015/16, the ODPP undertook and implemented the following activities as part as of its role in achieving access to justice:-

3.3.2 Decentralization of Prosecution services

The ODPP has presence in all the **47** Counties and **119** Court Stations in the Republic.

3.3.3 Public Complaints handling mechanism

The Complaints and Compliments Section was established in 2012 with the mandate of handling complaints and compliments from the public. Since its inception, it has handled **11,104** complaints including **1161** complaints handled in the year 2015/16. This is attributed to public awareness of the existence of the Section, its ability to address public complaints and the operationalization of the complaints service charter to guide and enhance the capacity of the team.

3.3.4 During the year under review, the ODPP trained officers within the Section in customer care skills and a tailor-made psycho-social training to equip them with skills to better attend to clients. The Section received additional staff in order to enhance its capacity to respond efficiently and effectively to the increasing number of complaints received.





### 3.4 Facilitation of Witnesses and Victims of Crime

3.4.1 During the reporting period, ODPP continued to implement the



*DDPP Nicholas Mutuku and SADPP Ms. Jacinta Nyamosi at the Kenyatta National Hospital visiting a victim of domestic abuse in preparation of her case.*

provisions of the Victim Protection Act, 2014 by, among others, ensuring that the role of the victims in criminal trials was canvassed and complied with the provisions of the law.

3.4.2 As a member of the Victim Protection Board ODPP also contributed to the development of the draft Victim Rights Charter.

### 3.5 Capacity development and professionalization of services

3.5.1 To respond to the new and emerging crimes and the increase in complexity of criminal law, prosecutors continued to be trained on legal developments both nationally and internationally. Further, newly recruited prosecutors were trained in basic prosecution and advocacy skills for performance of their duties.

3.5.2 In addition to undertaking internal capacity development, the office facilitated Inter agency training programmes in collaboration with partner organizations such as EACC, KWS, NPS, KRA and KNHCR. This period saw 34 individual training programmes in various specialized areas including, SGBV, Terrorism, wildlife crimes, human trafficking and cybercrime. Further, there were 27 group trainings undertaken which resulted in 972 officers being trained, marking the highest number since the Office was established.

3.5.3 The Office has so far gazetted **254** public prosecutors from twenty-four agencies to exercise delegated prosecutorial powers.



### 3.6 Quality-Assurance Mechanism of Prosecutions

3.6.1 To ensure quality in the conduct of prosecutions, ODPP rolled out the case screening tools to all Counties and Court Stations and continued to enhance the case screening process. We are making every effort in line with our national prosecution policy, to ensure that all cases proceeding to court have sufficient evidence to warrant a conviction. There is also a continuing obligation on every prosecutor to keep reviewing the evidence as the matter proceeds so as to satisfy themselves on whether the matter merits prosecution.

### 3.7 Delegated Prosecutions.

3.7.1 Over the strategic plan period, the ODPP ensured continuous enhancement on its supervisory role on the agencies that exercise delegated prosecution powers through training and capacity building. The ODPP continued to monitor their performance during the plan period.



*US Ambassador to Kenya H.E. Robert Godec addressing prosecutors and judicial officers at the launch of the Children's Service Week which significantly reduced case backlog at the Childrens' Court in Nairobi.*

### 3.8 Infrastructural revamping of the ODPP



*ODPP staff led by SADPP Mr. Vincent Monda during the opening of the ODPP Kilifi County Head-Office at Malindi.*

3.8.1 During the period under review, the ODPP ensured massive infrastructural revamping through acquisition of additional office space, refurbishing and equipping of the offices up to the sub-county level. Some of the offices with computers and laptops.



### 3.9 Public engagement & communication

3.9.1 To achieve effective public communication the Office continued to grow its social media platforms on *Twitter* and *Facebook* which have become a fast, popular and trusted source of daily news on new and ongoing cases, directives and ODPP events. So far the office has a following of over 50,000 on **Twitter**.

3.9.2 During the period under review, ODPP participated in the Anti-corruption week, children service week and training on plea bargaining. The office also held media engagement sessions with journalists and bloggers to sensitize them on its mandate.

### 3.10 Institutional Reform and Restructuring

3.10.1 During the first (1<sup>st</sup>) Strategic Period of the ODPP, some of the strategic issues identified included limited prosecutorial independence, weak legal and institutional framework, as well as, inadequate organizational capacity. In this regard, a broad strategic objective of institutional reforms and restructuring was to be implemented through the following strategies:-

- operationalize Article 157 of the Constitution,
- developing ODPP structure and staff establishment,
- development of ODPP Strategic Plan,
- formulate internal policies and frameworks,
- strengthening institutional framework,
- attracting and retaining high quality staff,
- enhancing staff competency capacity,
- creating a conducive work environment,
- monitoring staff performance and
- resource mobilization

3.10.2 The following is a summary of what has been achieved in each of the above strategies.



### 3.11 Operationalize Article 157 of the Constitution

3.11.1 The Office drafted and presented for enactment, the 2013 Office of the Director of Public Prosecutions Act which provides for an elaborate legal and institutional framework for the operations of the ODPP. The Act has proven very useful in criminal litigation on the question of role of the DPP in the criminal process and anchoring the development of the Office.

### 3.12 Developing ODPP Structure and Staff Establishment

3.12.1 An organizational structure was developed and adopted by the Office with the guidance and support of the then Ministry of State for Public Service. It created **3** Prosecutorial Departments and a Central Facilitation Services Department, all headed by Deputy Directors.

3.12.2 The optimal staff compliment for the structure was set at **1297** with **927** Prosecution Counsel and **370** Central Facilitation Service staff. On operationalization of the Office in 2011, the in-post staffing was **73** Prosecution Counsel and **112** Central Facilitation Service staff. At the time there were only **13** field offices alongside the headquarters in Nairobi. The ODPP Act established an ODPP Advisory Board to aid the ODPP in hiring and discipline of staff. The organizational structure is under review to bring it in line with the 2<sup>nd</sup> Strategic Plan of the Office.

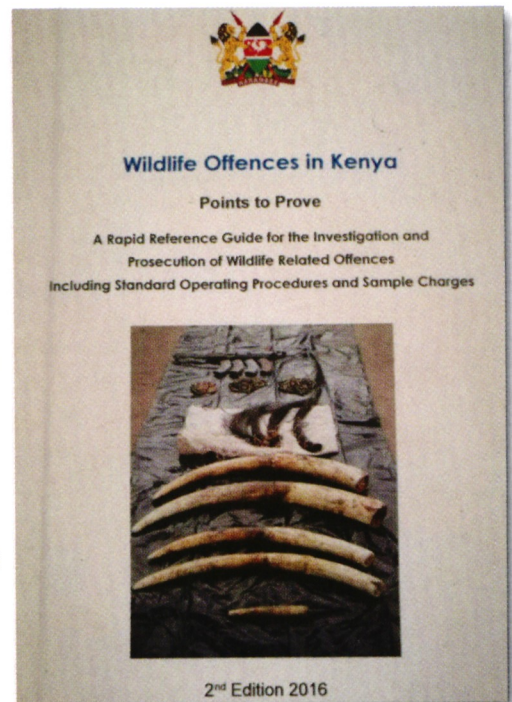
### 3.13 Development of ODPP Strategic Plan

3.13.1 A five year Strategic Plan for the first Strategic Period covering **2011 to 2015** was developed with an overall strategic focus of operationalization of the Office. To address the **10** key strategic issues, the plan earmarked a total implementation budget of **KES.18.89B**, which has now given way to the 2<sup>nd</sup> Strategic Plan whose overarching theme is on **quality prosecution service**.



### 3.13.2 Formulate internal policies and frameworks

As part of the operationalization effort, ODPP developed various critical policy framework documents. They include; the National Prosecution Policy, Code of Conduct for Public Prosecutors, General Prosecution Guidelines and thematic prosecution guidelines on Anti-corruption, SGBV, Terrorism and Wildlife-crime cases. ODPP also developed policies and manuals on ICT, Communication, Human Resource Management, Human Resource Development and Career Progression Guidelines.



*The second edition of the Rapid Reference Guide and Standard Operating Procedures for the investigation and prosecution of wildlife crime (RRG) which has been a useful daily use and training tool for investigators, prosecutors and judicial officers in Kenya.*

### 3.14 Strengthening institutional framework

- 3.14.1 The office has grown its presence by establishing **47** County Offices and all **119** Court Stations in the country. The Office also took over the entire prosecution function by replacing all Police Prosecutors with Prosecution Counsel answerable only to the DPP.
- 3.14.2 The Office strengthened the institutional framework by establishing and populating **29** thematic prosecution Divisions, Sections and Units to encourage professionalization of the service. The Office further established critical committees for, Senior Management, Law Reform, Election Preparedness, Human Resource Advisory, Training, Procurement, Budget Implementation, Corruption Prevention, Anti-Corruption Case Review, Counsel Performance Review, Audit among others.



### 3.15 Attracting and Retaining High Quality Staff

- 3.15.1 Kenya now has the highest number of Prosecutors in the East Africa region, resulting in a diverse, competent and a young workforce. Over the last **five** years the ODPP recruited the highest number of Advocates of any law firm or state organ.
- 3.15.2 The total number of staff has grown from **185** at **2011** to the current **1013** representing a **448%** increase. There has been a remarkable rise in the number of Prosecution Counsel from **73** to **610** during the period representing a **736%** increase. In terms of gender parity, the ODPP fairs well with **558** females (**55%**) and **455** males (**45%**).
- 3.15.3 Female Prosecution Counsel are **354** accounting for **58%** while male Prosecution Counsel are **256** (**42%**). Central Facilitation Services has **204** female (**49%**) and **197** male (**51%**) staff.
- 3.15.4 ODPP's staff in senior management positions (Job groups P-U) are **122** with females being **37** (**36%**) and males **65** (**64%**). Prosecution Counsel in senior management positions are **31** female (**35%**) and **57** male (**65%**). Central Facilitation Service in senior management positions are **6** female (**43%**) and **8** male (**57%**). Currently, the Office has **10** (**0.1%**) staff with disability, **4** (**40%**) female and **6** (**60%**) male.
- 3.15.5 During the year under review, the ODPP recruited **60** new members of staff (**5.9%** of total staff) with **1** being a Prosecutor and **59** Central Facilitation Service staff. Of the new staff, **24** were female (**40%**) and **36** male (**60%**). During the same period, ODPP had a **3.1%** staff attrition rate, with **22** Prosecution Counsel and **9** Central Facilitation Service staff leaving ODPP mainly due to uncompetitive terms of service. **32.2 %** of the staff leaving the ODPP were in senior positions.



### 3.16 Enhancing staff competency capacity

3.16.1 The ODPP continued to build the capacity of its staff to professionalize and improve service delivery through induction, practical on-the-job mentoring and training both locally and abroad. ODPP does this pursuant to a Training Needs Assessment conducted in 2013, annual training projections and implementation of a Prosecutors' Training Curriculum.



*Dorcas Oduor training prosecutors from various County offices on prosecution of corruption and money-laundering.*

- 3.16.2 In order to enhance common understanding and build synergy, the ODPP has adopted the inter-agency approach of training Prosecutors together with other key stakeholders, such as, investigators and judicial officers.
- 3.16.3 The office has built a pool of expertise in various thematic areas through the training of trainers approach to compliment external training expertise.
- 3.16.4 Despite an inadequate fiscal vote for training activities, ODPP has managed to roll out continuous training programs in every relevant field through collaborative partnerships with state agencies, civil society and international partners. An example of the reach of such partnerships during the year under review was a rigorous practical trial advocacy skills training benefitting **545 (89%)** of all Prosecution Counsel.
- 3.16.5 There were **27** group trainings in various thematic areas which benefited **972** staff including a rigorous Anti-Corruption/Money Laundering and Procurement offences training targeting **595** Prosecution Counsel countrywide as part of the Anti-corruption Multi-Agency Team Framework (MAT). Further, the Office trained **105** Prosecution Counsel in Wildlife Crime cases while **72** staff were supported to undertake individual trainings in various Universities in **34** different thematic areas
- 3.16.6 ODPP's training vote during the year was **KES. 80M** and an additional



**KES. 70M** was received during the supplementary budget for the MAT framework. This was complemented by funds for various training programs including regional and international training fora from development partners, such as, the UNODC, GIZ, UNIFEM, USDOJ, UKFCO and various civil society organizations.

- 3.16.7 On internships, the Office attached a total of **38** pupils and **15** interns in various departments, divisions and stations. Through the exercise, the attached pupils and interns gained a wealth of experience, as they were able to practice in a real work environment.

### **3.17 Creating a Conducive Work Environment**

- 3.17.1 The ODPP's working environment, though not optimal due to lack of adequate resources, has continued to improve through provision of equipment and tools such as computers/laptops, printers and scanners, Grey-books, online legal resource and internet.
- 3.17.2 Moreover, staff now have group life and medical insurance covers. The Office is also at an advanced stage in setting up mortgage and car-loan schemes, welfare system and psycho-social support services. Further, the Office is in the process of acquiring more modern and secure office space for its Head-Office and County/Sub-County Offices.

### **3.18 Monitoring Staff Performance**

- 3.18.1 The Office monitors staff performance through the annual staff public service appraisal system (PAS) and the Prosecution Counsel Performance Review Committee which reviews individual performance of Prosecutors where complaints relating to execution of the mandate are raised.
- 3.18.2 Further, in order to ensure targeted learning and improvement, ODPP now employs Pre and Post-tests to all its training activities and recommendations are made to senior management and relevant thematic divisions/sections/units for implementation. The Office is in the process of reviewing its performance management systems.





ODPP led by SPP Ms. Dorcas Oduor after receiving a delegation from the United Kingdom's Crown Prosecution Service to discuss matters of mutual cooperation including prosecution of terrorism cases.

### 3.19 Resource Mobilization

3.19.1 Beyond its allocations from the National Treasury, the ODPP has effectively supplemented its budgetary allocations through robust targeted and thematic resource mobilization plans with development partners. This has managed to plug the fiscal deficits the Office has had in rolling out its intensive capacity building activities during this transitory phase of its growth.

### 3.20 Automation and Modernization of ODPP Processes & Procedures

- 3.20.1 Over the first strategic period, ODPP has worked on its objective to automate and modernize its processes and procedures, by harnessing the transformational aspects of ICT to create a more efficient and effective prosecution service.
- 3.20.2 Central to achieving this goal has been the ongoing case management project, together with other interventions, such as use of **Integrated Financial Management Information System (IFMIS)** for its financial and procurement processes, **Integrated Payroll & Payroll Database (IPPD)** system for its human resource management processes and a **Kingsway car fleet management system**. ODPP also uses the **LexisNexis** online legal research platform as part of its legal resources.

### 3.21 Case Management Project

- 3.21.1 The project began following a GIZ sponsored review of processes and procedures of the *ODPP Economic Crimes Division*, which was escalated to a full review of ODPP case management processes and procedures. This led to the conceptualization of a case management system development project, to be undertaken in **three (3) broad Phases**, discussed below:-



- **PHASE I OF CASE MANAGEMENT SYSTEM DEVELOPMENT PROJECT**

3.21.2 Phase I of the project entailed a comprehensive documentation, review and gap analysis of existing ODPP case management processes and procedures by KPMG and the Basel Institute of Governance. It was established that ODPP processes were overly reliant on manual processes, which were in several instances redundant, duplicitous and ineffective for end to end tracking of case files/mails and performance management.

3.21.3 As a result, a comprehensive documentation and gap analysis was done of case management processes & procedures. It was therefore recommended that an institution-wide process of business process re-engineering and optimization be commenced.

- **PHASE II OF CASE MANAGEMENT SYSTEM DEVELOPMENT PROJECT**

3.21.4 Phase II of the project was a system design phase. It entailed a comprehensive business process re-engineering and optimization of ODPP case management processes and procedures by KPMG, resulting in development of a *New Manual Case Management System and a Roadmap for Automation*.

- **PHASE III OF CASE MANAGEMENT SYSTEM DEVELOPMENT PROJECT**

3.21.5 This is the project implementation phase. The proposed new manual Case Management System and Roadmap to Automation is under implementation focusing on the following four (4) key areas namely; process, people, organization structure and systems.

3.21.6 ODPP has adopted a multi-track Implementation approach of the project, which will result in deliverables on various implementation items simultaneously. Some of the systemic reviews undertaken such as complaints and file/mail distribution system reviews, have already resulted in noticeable service improvements.



### 3.22 Other Interventions

- 3.22.1 ODPP has adopted the modern prosecutorial approach of in-depth thematic case reviews, for instance, on corruption and narcotics cases, and cases involving children. Such reviews have informed policy, administrative and operational interventions.
- 3.22.2 For instance, case reviews involving children in conflict with the law resulted in a successful clearance of the existing case backlog of **137** matters during the Juvenile Justice Service Week. ODPP has also begun a country-wide case review of all existing Anti-corruption and Economic Crime cases grouped in **5** geographical zone clusters. The aim of the review of these ongoing cases is to ensure that the cases are on track and where necessary recommend immediate interventions for DPP's approval. So far, the review team has completed a review of all cases in cluster 1 – **Nairobi Zone**, where its **145** ongoing cases were reviewed.

### 3.23 Promotion of Inter-Agency Cooperation and Collaboration

- 3.23.1 During conceptualizing and rationalization of the ODPP Strategic Plan 2011-2015, one of the strategic issues identified was '*weak inter-agency collaboration*'. The office undertook to tackle this through strengthening and promotion of inter-agency cooperation both nationally and internationally.
- 3.23.2 Towards this end, the following activities were prioritized for implementation during the plan period:
- a.) To establish liaison offices
  - b.) To convene and participate in inter-agency workshops and meetings
  - c.) To organize joint periodic review meetings
  - d.) To develop a framework and standard guide for partnership engagement
  - e.) To participate in international forums and associations
- 3.23.3 This portion discusses our achievements in strengthening and promoting inter-agency cooperation with state and non-state agencies,



international agencies, networks and other forums during the reporting period.

### **3.24 To Establish Liaison Offices**

- 3.24.1 The DPP set up a Reforms and Liaison Section within his office to coordinate issues of cooperation and collaboration with external stakeholders. In the counties, this function is carried out by the chief County Prosecutors. The Section has been able to facilitate partnerships with existing and new stakeholders geared towards both resource mobilization and cooperation in the discharge of the prosecution mandate.
- 3.24.2 Additionally, the DPP set up a Complaints and Compliments section. The section is responsible for the day to day processing of public complaints and receipt and documentation of compliments. The Complaints and Compliments Section is the ODPP's contact to the Integrated Public Complaints Referral Mechanism (IPCRM) which serves as a public complaints referral platform.

### **3.2.5 To Convene and Participate in Inter-Agency Workshops and Meetings**

- 3.25.1 Realizing the chain-link nature of the criminal justice system, ODPP has remained alive to the need to build the capacity among its critical stakeholders. The ODPP has therefore embraced an interagency approach to training and capacity building, through inclusion of both investigators and judicial officers in its workshops and trainings.
- 3.25.2 Moving a step further, the Office has taken part in capacity building programmes at regional and international levels where the ODPP has been called upon to take part either as a participant or a facilitator. Such programmes are conceptualized under the auspices of both NCAJ and the EAAP as well as both National and International Civil Society Organizations.

### **3.26 To Organize Joint Periodic Review Meetings**

- 3.26.1 During the period under review, ODPP was involved in joint review meetings under the NCAJ and MAT frameworks. The focus areas included; juvenile justice, the bail and bond and sentencing policies and case file review, respectively.



### **3.27 To Develop a Framework and Standard Guide for Partnerships Engagement**

- 3.27.1 Institutions charged with investigation mandates such as the NPS, EACC, KWS, IPOA, KNHRC, KFS, KRA, Immigration Department, CAK, among others, carry out a function that is crucial as it feeds into the core mandate of the ODPP.
- 3.27.2 In the spirit of promotion of inter-agency cooperation, ODPP has and continues to employ the prosecutor guided model of investigation as one way of ensuring teamwork and better results in fighting crime. This model is embraced in numerous cases such as corruption, terrorism, wildlife, police accountability as well as high profile cases, amongst others.
- 3.27.3 The ODPP has further issued standard guides and operating procedures to facilitate better engagement. These include; guidelines, SoPs and RRGs on Anti-corruption, Terrorism, SGBV and wildlife crimes.

### **3.28 To Participate in International Forums and Associations**

- 3.28.1 Over the plan period, ODPP has remained an active participant and paid up member of various regional and international professional bodies, including; the International Association of Prosecutors, Africa Prosecutors' Association and the East Africa Association of Prosecutors. The Office has benefitted a great deal from the forums especially in building informal legal assistance networks and learning the best practices and standards.



*ODPP Kenya and ODPP Tanzania prosecutors at the sidelines of the 19th International Association of Prosecutors Annual Conference in Dubai.*



### 3.29 Formulation of Criminal Justice Sector Policies

3.29.1 ODPP has been actively engaged in criminal justice policy development and law reform. During the period under review the Office contributed to the development of the Bail and Bond Policy Guidelines, the Sentencing Policy Guidelines under the NCAJ and the National Adolescent Sexual and Reproductive Health Policy.



*DPP Keriako Tobiko giving an address at the launch of the NCAJ Bail and Bond Policy Guidelines.*

- 3.29.2 The Office was also involved in Inter-agency taskforces and committees, including the National Consultative Coordination Committee on IDPs, Taskforce on Traditional Dispute Resolution Mechanisms, Victims of Crime Board and the Taskforce to Develop the Court of Appeal and High Court Administration Bills.
- 3.29.3 Additionally, ODPP contributed to review and enactment of key legislation including; Victim's Protection Charter by Victim's protection Agency (still in draft form), Witness Protection Rules, 2015, Public Procurement and Assets Disposal, 2015, Bribery Bill, Anti-corruption (Amendment) Laws Bill, Wildlife Conservation and Management Bill, 2016, Anti-doping Act, 2016, Election Offences Act, 2016, Electoral Laws (Amendment) Act, 2016, Cyber-crime Bill, 2016, Land Act, 2016, Access to Information Act, 2016.
- 3.29.4 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.



# Money Matters

## CHAPTER FOUR FINANCIAL ANALYSIS



## 4.1 Introduction

- 4.1.1 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 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 objectives.
- 4.1.2 The printed estimate for the Financial year 2015/16 under the recurrent and Development Vote was **KES.2.384 billion** and **KES.73 million** respectively. The total budgetary allocation was **KES 2.457 billion** against total expenditure of **KES 1.929 billion** resulting in an overall absorption rate of **79%**. Table 3 represents the recurrent budgetary allocation at the beginning of the financial year, the revised budget in the course of the year and actual expenditure for the last three years.

**Table 4.1: Analysis of Recurrent Expenditure FY 2013/14-FY2015/16 (KES Millions)**

Printed Estimate			Approved Budget			Actual Expenditure		
2013/4	2014/5	2015/6	2013/4	2014/5	2015/6	2013/4	2014/5	2015/6
388	1732	1978	1214	1727	2384	1109	1485	1906

## 4.2 Analysis of recurrent expenditure

- 4.2.1 The ODPP's total printed estimates for the recurrent vote increased over the last two financial years from **KES 1.727 billion** in 2014/15 to **KES 2.384 billion** in 2015/16, representing a **72%** increase. During the supplementary estimate for the year under review, the approved recurrent budget increased from KES 1.978 to KES 2.384 billion. The increment is attributed to additional fund of Ksh.406 million allocated under MAT to fast track prosecution cases related to corruption and economic crimes. The absorption rate for the recurrent budget for the FY 2015/16 was **82%**.





### 4.3 Analysis of development expenditure

- 4.3.1 The ODPPs total approved allocation for the development vote increased from **KES.67 million** in 2014/15 to **KES.73 million** in 2015/16. This enabled the office to undertake refurbishment of 5 County Offices and putting of three containerized offices.
- 4.3.2 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. In the period under review, the printed estimate was **KES.254 million**, however, a total of **KES.181 million** was surrendered to the National Treasury during the supplementary Budget II.
- 4.3.3 During the supplementary Budget for FY 2015/16 the approved development Budget stood at **KES.73 million**. ODPP's actual development expenditure was **KES. 26 million** representing an absorption rate of **32%**.
- 4.3.4 The development expenditure analysis is represented in the table below;

**Table 4.2: Analysis of Development Expenditure FY 2013/14- FY 2015/16**

Printed Estimates			Approved Budget			Actual Expenditures		
2013/4	2014/5	2015/6	2013/4	2014/5	2015/6	2013/4	2014/5	2015/6
87	119	254	87	67	73	80	66	26

- 4.3.5 The Budget is further analysed 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 4.3: Expenditure by Economic Classification**

**Programme Expenditure Analysis by Economic Classification**

<b>ANALYSIS OF PROGRAMME EXPENDITURE BY ECONOMIC CLASSIFICATION</b>						
	<b>APPROVED BUDGET</b>			<b>ACTUAL EXPENDITURE</b>		
Economic Classification	2014/15	2015/16	2016/17	2014/15	2015/16	2016/17
<b>PROGRAMME 1: PUBLIC PROSECUTION SERVICES</b>						
<b>Current Expenditure</b>	<b>1,727</b>	<b>2384</b>	<b>1952</b>	<b>1,485</b>	<b>1906</b>	
Compensation of Employees	1,065	1157	1120	979	1108	
Use of Goods and Services	617	1227	832	468	798	
Current Grants and Transfers						
Other Recurrent	45			38		
<b>Capital Expenditure</b>	<b>67</b>	<b>73</b>	<b>98.5</b>	<b>66</b>	<b>23</b>	
Acquisition of Non-Financial Assets	67	73	96	66	23	
Capital Grants to Government Agencies						
Other Development			2.55			
<b>TOTAL PROGRAMME</b>	<b>1,794</b>	<b>2457</b>	<b>2050.5</b>	<b>1,551</b>	<b>1929</b>	
<b>TOTAL VOTE</b>						



**Table 4.4: Analysis of Programme Expenditure FY 2013/14- FY 2015/16 by Sub – Programs:**

<b>ANALYSIS OF SUB-PROGRAMME EXPENDITURE BY ECONOMIC CLASSIFICATION</b>						
	<b>APPROVED BUDGET</b>			<b>ACTUAL EXPENDITURE</b>		
	2013/14	2014/15	2015/16	2013/14	2014/15	2015/16
<b>PROGRAMME 1: Public Prosecution Services</b>						
Sub-Programme: 1 <b>Prosecution of criminal offences</b>	758	1,361	1814	718	1,239	1416
Sub-Programme: 2 <b>Witness and victims of crime services</b>	54	10	9	45	7	6
Sub-Programme: 3 <b>Penal and criminal law reforms</b>	160	11	17	137	9	16
Sub-Programme: 4 <b>Inter-Agency cooperation</b>	31	46	13	23	43	8
Sub-Programme: 5 <b>General administration planning and support services</b>	299	366	529	224	253	459
<b>TOTAL PROGRAMME</b>	<b>1,301.00</b>	<b>1,794.00</b>	<b>2384</b>	<b>1,146.00</b>	<b>1,551.00</b>	<b>1,906</b>
<b>TOTAL VOTE</b>	<b>1,301.00</b>	<b>1,794.00</b>	<b>2384</b>	<b>1,146.00</b>	<b>1,551.00</b>	<b>1,906</b>

4.3.6 From the above table, prosecution of criminal offences sub-Programme had the highest absorption of KES 1.416 billion. This attributed to the sub Programme cutting across the four departments.

#### **4.4 Capital Projects**

4.4.1 The ODPP undertook capital projects on refurbishment of offices and containerization of offices at a cost of **KES 26 million** as shown below.



**Table 4.5: List of Capital Projects**

S/No	Containerization of Offices	Amount (Ksh.)
1	Tononoka	2,500,000
2	Shanzu	2,500,000
S/No	Refurbishment of Offices	Amount (Ksh.)
1	Mombasa	4,703,990
2	Laikipia	813,160
3	Kilgoris	2,140,400
4	Kajiado	4,705,060
5	Kakamega	5,390,802
6	Homabay	773,908
7	Narok	1,500,000
	<b>Total</b>	<b>25,027,320</b>

- 4.4.2 ODPP received unqualified report from the Auditor General for the FY under review. Further, ODPP was the proud recipient of the coveted certificate for the most improved public sector institution in the financial reporting under International Public Sector Accounting Standard (IPSAS)



*ODPP's team led by the Chief Accountant Ms. Rose Baraza receiving the Financial Reporting (FiRe) Award for being one of the most improved public sector entities in financial reporting.*



## Auditor's Statement

*ODPP Reports and Financial Statements  
For the year ended June 30, 2016 (Kshs')*

---

accounting records maintained for the ODPP, which have been relied upon in the preparation of the ODPP's financial statements as well as the adequacy of the systems of internal financial control.

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 30/5/2016 2016.

  
Director of Public Prosecutions

  
Principal Accountant



### **3. STATEMENT OF OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION MANAGEMENT RESPONSIBILITIES**

Section 81 (1) of the Public Finance Management Act, 2012 requires that, at the end of each financial year, the accounting officer for a National Government Office of the Director of Public Prosecution shall prepare financial statements in respect of that Office of the Director of Public Prosecution. Section 81 (3) requires the financial statements so prepared to be in a form that complies with relevant accounting standards as prescribed the Public Sector Accounting Standards Board of Kenya from time to time.

The Accounting Officer in charge of the ODPP is responsible for the preparation and presentation of the office's financial statements, which give a true and fair view of the state of affairs of the ODPP for and as at the end of the financial year (period) ended on June 30, 2016. This responsibility includes: (i) maintaining adequate financial management arrangements and ensuring that these continue to be effective throughout the reporting period; (ii) maintaining proper accounting records, which disclose with reasonable accuracy at any time the financial position of the Office of the Director of Public Prosecution; (iii) designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements, and ensuring that they are free from material misstatements, whether due to error or fraud; (iv) safeguarding the assets of the Office of the Director of Public Prosecution; (v) selecting and applying appropriate accounting policies; and (vi) making accounting estimates that are reasonable in the circumstances.

The Accounting Officer in charge of the ODPP accepts responsibility for the office's financial statements, which have been prepared on the Cash Basis Method of Financial Reporting, using appropriate accounting policies in accordance with International Public Sector Accounting Standards (IPSAS). The Accounting Officer is of the opinion that the Office of the Director of Public Prosecution's financial statements give a true and fair view of the state of ODPP's transactions during the financial year ended June 30, 2015, and of the ODPP's financial position as at that date. The Accounting Officer charge of the ODPP further confirms the completeness of the



#### **4. REPORT OF THE INDEPENDENT AUDITORS ON THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

We have audited the accompanying financial statements of ODPP for the year ended June 30, 2016, which comprise: (i) a statement of receipts and payments; (ii) a statement of financial assets and liabilities; (iii) a statement of comparative budget and actual amounts; (iv) a statement of pending bills as at June 30, 2014; and (v) a summary of significant accounting policies and other explanatory information.

##### **Management's responsibility for the financial statements**

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

##### **Auditors' responsibility**

Our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit in accordance with the International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit 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 auditors' 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 ODPP'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 ODPP's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the



*ODPP Reports and Financial Statements  
For the year ended June 30, 2016 (Kshs')*

---

reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the ODPP as at June 30, 2016, and its receipts and payments, as well as cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

---

**Auditor General**

---

**Date**





## REPUBLIC OF KENYA

Telephone: +254-20-342330  
Fax: +254-20-311482  
E-mail: oag@oagkenya.go.ke  
Website: www.kenao.go.ke

P.O. Box 30084-00100  
NAIROBI



### OFFICE OF THE AUDITOR-GENERAL

#### REPORT OF THE AUDITOR-GENERAL ON OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS FOR THE YEAR ENDED 30 JUNE 2016

---

##### 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 21 to 42, which comprise the statement of assets as at 30 June 2016, and the statement of receipts and payments, statement of cash flows, statement of comparison of budget and actual amounts, summary statement of appropriation: recurrent and development and summary statement of provisionings for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. 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 Section 47 of the Public Audit Act, 2015.

##### **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 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. The audit was conducted in accordance with International Standards of Supreme Audit Institutions. 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

*Report of the Auditor-General on the Financial Statements of Office of the Director of Public Prosecutions for the year ended 30 June 2016*



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 financial statements.

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

#### **Opinion**

In my opinion, the financial statements present fairly, in all material respects, the financial position of Office of the Director of Public Prosecutions as at 30 June 2016, and its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Cash Basis) and comply with the Public Finance Management Act, 2012.

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

**Nairobi**

**14 February 2017**

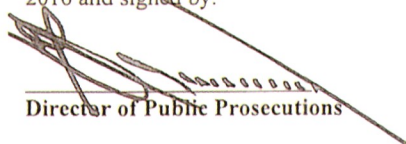


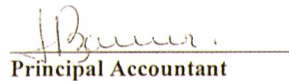
ODPP Reports and Financial Statements  
For the year ended June 30, 2016 (Kshs')

I. STATEMENT OF RECEIPTS AND PAYMENTS

RECEIPTS		2015-2016	2014-2015
Transfers from National Treasury	1	2,013,760,000	1,544,200,000
Domestic Currency and Domestic Deposits			
Other Revenues	2	84,500	114,600
<b>TOTAL REVENUES</b>		<b>2,013,844,500</b>	<b>1,544,314,600</b>
PAYMENTS			
Compensation of Employees	3	1,107,752,262	979,133,977
Use of goods and services	4	798,162,972	468,256,805
Transfers to Other Government Units	5	-	-
Acquisition of Assets	6	108,265,116	103,770,958
Other Expenses	7	-	-
<b>TOTAL PAYMENTS</b>		<b>2,014,180,350</b>	<b>1,551,161,739</b>
<b>SURPLUS/DEFICIT</b>		<b>(335,850)</b>	<b>(6,847,139)</b>

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The ODPP's financial statements were approved on 31<sup>ST</sup> DEC 2016 and signed by:

  
Director of Public Prosecutions

  
Principal Accountant

A silhouette of a person rappelling down a rope against a sunset background. The person is in a dynamic pose, leaning back and holding the rope with both hands. The background is a gradient of orange and yellow, suggesting a sunset or sunrise. The overall image is tilted at an angle.

**CHAPTER FIVE  
CHALLENGES AND  
RECOMMENDATIONS**



## 5.1

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

5.1.1 Low conclusion rate in criminal trials.

The high volume of cases, the lengthy trial process, heavy backlog of cases and the overreliance on manual systems and processes continue to contribute to the low conclusion of cases. There is need for a comprehensive systemic shift and joint strategy to address this challenge.

5.1.2 Archaic and unresponsive laws

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

5.1.3 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 Dispute Resolution Mechanisms (TDRMs). In spite of this, there are currently no mechanisms to harmonize the application of ADR/TDRMs with the formal justice system in the application of criminal law. There is an urgent need to put in place mechanisms to embrace diversion and plea bargain provisions as system and to further embrace diversion and plea bargain provisions as additional approaches in dispute resolution.

5.1.4 Limited capacity to handle emerging crimes

The ODPP is faced with inadequate specialized skills and knowledge in handling new, emerging and complex forms of criminality. The need for adequate financial allocation towards programmatic specialized capacity enhancement for Prosecution Counsel cannot be over-emphasized.



5.1.5 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 invariably 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 investigative agencies to speedily and effectively 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 all law enforcement agencies so as to improve quality of investigations, and in turn impact positively on the effectiveness of prosecution.

5.16 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. There is a dire need for budgetary allocation to support this programme.

5.17 Inadequate infrastructural capacity

While the ODPP has a presence in all counties in Kenya, it is not adequately served with proper infrastructure, there is need for capacitation in terms of vehicles, legal resources, furniture, equipment and office space, both at the headquarters and County Offices.

5.8 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.



#### 5.19 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.

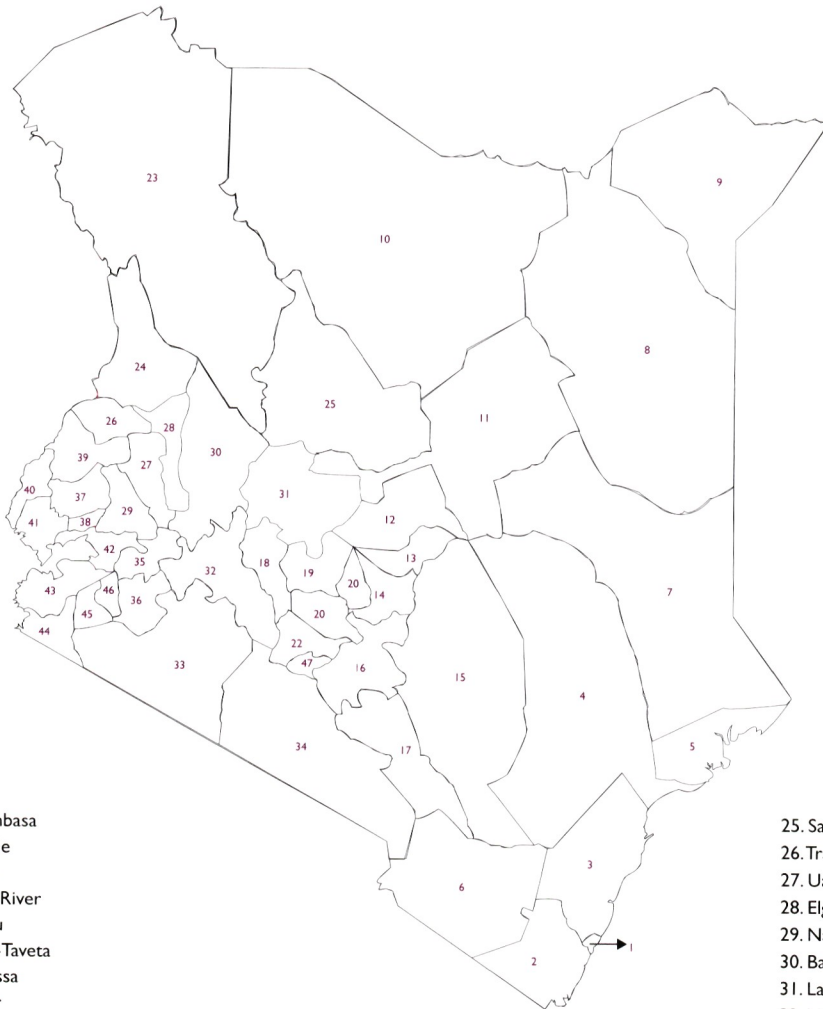
#### 5.1.10 Security and safety of staff

The very nature and operation of the prosecution function exposes ODPP staff to insecurity and threats thus the need to include security modalities in the terms and condition of service.

#### 5.1.10 Budgetary constraints

Inadequate budgetary allocation has had adverse implications on the effective execution of the ODPP's operations and 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 and their harmonization across the justice chain.

5.2 Despite the challenges, ODPP is committed to its mission "*to serve the public by providing quality, impartial and timely prosecution services 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.



1. Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita-Taveta
7. Garissa
8. Wajir
9. Mandera
10. Marsabit
11. Isiolo
12. Meru
13. Tharaka Nithi
14. Embu
15. Kitui
16. Machakos
17. Makueni
18. Nyandarua
19. Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot

25. Samburu
26. Trans Nzoia
27. Uasin Gishu
28. Elgeyo Marakwet
29. Nandi
30. Baringo
31. Laikipia
32. Nakuru
33. Narok
34. Kajiado
35. Kericho
36. Bomet
37. Kakamega
38. Vihiga
39. Bungoma
40. Busia
41. Siaya
42. Kisumu
43. Homa Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi





**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS COUNTY OFFICES**

<p><b>1. MOMBASA COUNTY</b> Commercial Building 4<sup>th</sup> Floor Moi Avenue P.O. Box 80896-80100 <b>Mombasa</b> OFFICE TEL-041-2222211</p>	<p><b>2. KWALE COUNTY</b> Mwanabeyu Plaza P.O BOX 201- 80403 <b>KWALE</b> OFFICE TEL-0770165945</p>	<p><b>3. KILIFI COUNTY</b> Malindi complex building, 1<sup>st</sup> floor P.O BOX 5751-80200 <b>MALINDI</b> OFFICE TELL:042-2121259</p>
<p><b>4. TANA RIVER COUNTY</b> District Commissioner's Office P.O. Box 10-80200 <b>Garsen</b> OFFICE TEL-202-395930</p>	<p><b>5. LAMU COUNTY</b> Bahari House Kenyatta Road P.O. Box 68-80500 <b>Lamu</b> OFFICE TEL-0770892000</p>	<p><b>6. TAITA TAVETA COUNTY</b> Maghamba Plaza P.O. Box 760-80300 <b>Voi</b> OFFICE TEL-0202318016</p>
<p><b>7. GARISSA COUNTY</b> Rt. General Mohamud Plaza, 1<sup>st</sup> Floor P.O. Box 69-70100 <b>Garissa</b> OFFICE TEL-046-2102362</p>	<p><b>8. WAJIR COUNTY</b> District Commissioner's Office P.O. Box 417-70200 <b>Wajir</b></p>	<p><b>9. MANDERA COUNTY</b> County Commissioner's Office P.O BOX 478-70300 <b>MANDERA</b> OFFICE TEL: 0786-605521</p>
<p><b>10. MARSABIT COUNTY</b> Madina House P.O. box 387-60500 OFFICE TEL: 020 2192632</p>	<p><b>11. ISIOLO COUNTY</b> Arthi House P. O. Box 739-60300 <b>Isiolo</b> OFFICE TEL-020-2395001</p>	<p><b>12. MERU COUNTY</b> Ntara Place Building, 2nd floor P.O BOX 2377-60200 <b>MERU</b></p>
<p><b>13. THARAKA -NITHI COUNTY</b> Meru South Coop Sacco Building P.O. Box 791-60400 <b>Chuka</b> OFFICE TEL-0741132938</p>	<p><b>14. EMBU COUNTY</b> Faith House ACK House, 2<sup>nd</sup> floor P.O BOX 2855-60100 <b>EMBU</b> OFFICE TEL:31227</p>	<p><b>15. KITUI COUNTY</b> Nzambani Building P.O. Box 448-90200 <b>Kitui</b> OFFICE TEL-0771258125</p>



<p><b>16. MACHAKOS COUNTY</b> Kiamba Mall P.O Box 1041-90100 <b>MACHAKOS</b> OFFICE TEL: 044-2021041</p>	<p><b>17. MAKUENI COUNTY</b> Soi Plaza, 1<sup>st</sup> Floor P.O. Box 531-90300 <b>Wote</b></p>	<p><b>18. NYANDARUA COUNTY</b> Ministry Of Water &amp; Irrigation Building P.O. Box 321-20318 <b>North Kinangop</b> OFFICE TEL-0202-396060</p>
<p><b>19. NYERI COUNTY</b> Provincial commissioner's office Block 'A', 2<sup>ND</sup> FLOOR P.O BOX 463-10100</p>	<p><b>20. KIRINYAGA COUNTY</b> Professional Plaza, 2<sup>nd</sup> Floor, P.O. Box 1224-10300 <b>KERUGOYA</b> OFFICE TEL 202-695803</p>	<p><b>21. MURANG'A COUNTY</b> Ministry of Lands Building, 1ST FLOOR P.O BOX 931-10200 <b>MURANGA</b> OFFICE TEL: 060-2030400</p>
<p><b>22. KIAMBU COUNTY</b> Thika Arcade, 6<sup>th</sup> Floor P.O. Box 6219-01000 <b>Thika</b> OFFICE TEL-0202309459</p>	<p><b>23. TURKANA COUNTY</b> District Treasury P.O. Box 563-30500 <b>Lodwar</b> OFFICE TEL-020264008</p>	<p><b>24. WEST POKOT COUNTY</b> Paves Plaza 1st Floor, Above Suntec Supermarket <b>Kapenguria</b> OFFICE TEL-202 395932</p>
<p><b>25. SAMBURU COUNTY</b> Siamba plaza, Ground floor P.O BOX 231-20600 <b>MARALAL</b> OFFICE TEL: 202-392727/020-2688339 0772202778/ 0741132944</p>	<p><b>26. THARAKA -NITHI COUNTY</b> Meru South Coop Sacco Building P.O. Box 791-60400 <b>Chuka</b> OFFICE TEL-0741132938</p>	<p><b>27. TRANS NZOIA COUNTY</b> Ndege House 3rd floor P.O BOX 663-30200 <b>KITALE</b> OFFICE TEL: 054-31273</p>
<p><b>28. UASIN GISHU COUNTY</b> K.V.D.A Plaza, 10th floor P.O BOX 10334-30100 <b>ELDORET</b> OFFICE TEL: 053-2031781/053-2060110/0741133020</p>	<p><b>29. ELGEYO- MARAKWET COUNTY</b> AFC Building P.O BOX 578-30700 <b>ITEN</b> OFFICE TEL:208-008291</p>	<p><b>30. NANDI COUNTY</b> Bang'etuny Plaza 4<sup>th</sup> Floor, Equity Street <b>Kapsabet</b> OFFICE TEL-0771596355</p>
<p><b>31. BARINGO COUNTY</b> Talai Plaza P.O. Box 110-30400 <b>Kabarnet</b> OFFICE TEL-0208-008289</p>	<p><b>32. LAIKIPIA COUNTY</b> Pearl place ground floor P.O. Box 1698-10400 <b>Nanyuki</b> OFFICE TEL-0773327570</p>	<p><b>33. NAKURU COUNTY</b> CDN Plaza , Ground &amp; 2<sup>nd</sup> Floor P. O. Box 1165-20100 <b>NAKURU</b> Office Tel-053-8008373</p>



<p><b>34. NAROK COUNTY</b> Information Office, 1<sup>st</sup> Floor P.O. Box 991-20500 <b>Narok</b> OFFICE TEL-050-23247</p>	<p><b>35. KAJIADO COUNTY</b> ODPP Building P.O BOX 646-01100 <b>KAJIANDO</b> OFFICE TEL: 020-2622894</p>	<p><b>36. KERICHO COUNTY</b> AFC Building, 1<sup>st</sup> Floor P.O. Box 1512-20200 <b>Kericho</b> OFFICE TEL-020-2172594</p>
<p><b>37. BOMET COUNTY</b> Roranya premises Building P.O BOX 236-20400 <b>BOMET</b> 020-2194667</p>	<p><b>38. KAKAMEGA COUNTY</b> Patience Plaza, 3<sup>rd</sup> Floor, Kakamega-Mumias Road P.O. Box 1529-50100 <b>Kakamega</b> OFFICE TEL-0771596355</p>	<p><b>39. VIHIGA COUNTY</b> Posta Building P.O. Box 840-50300 <b>Maragoli</b> OFFICE TEL-0775711735</p>
<p><b>40. BUNGOMA COUNTY</b> HIBHO Plaza, 2nd floor P.O BOX 2058-50200 <b>BUNGOMA</b></p>	<p><b>41. BUSIA COUNTY</b> Eco Building, 1<sup>st</sup> Floor P.O. Box 476-50400 <b>Busia</b> OFFICE TEL-0774204446</p>	<p><b>42. SIAYA COUNTY</b> J&amp;J Building P.O. Box 681-40600 <b>Siaya</b> OFFICE TEL-0776016107</p>
<p><b>43. KISUMU COUNTY</b> Huduma center, wing 'A' 7<sup>th</sup> floor P.O BOX 1902-40100 <b>KISUMU</b> OFFICE TEL: 057-2024620</p>	<p><b>44. HOMA BAY COUNTY</b> District treasury Building P.O BOX 153-40300 <b>HOMA BAY</b></p>	<p><b>45. MIGORI COUNTY</b> Devi Mart Building, Plaza 2<sup>nd</sup> Floor P.O BOX 1228-40400 <b>MIGORI</b> OFFICE TEL:020-2348709/ 008290</p>
<p><b>46. KISII COUNTY</b> AG Chamber Building, Ground floor P.O BOX 2470-40200 <b>KISII</b> OFFICE TEL:058-2030331</p>	<p><b>47. NAIROBI COUNTY</b> NSSF BLOCK 'A', 19<sup>th</sup> floor P.O BOX 30701-00100 <b>NAIROBI</b> OFFICE TEL: 020-2732090</p>	



Find us on  
**Facebook**

[www.facebook.com/ODPPKE](http://www.facebook.com/ODPPKE)



Follow us on  
**Twitter**

**@ODPP\_KE**

or visit us on our website

**[www.odpp.go.ke](http://www.odpp.go.ke)**

email:[info@odpp.go.ke](mailto:info@odpp.go.ke)