OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ANNUAL REPORT HIGHLIGHTS
2017 - 2020
MANDATE
To exercise State powers of prosecution

VISION
A just, fair, independent and responsive prosecution service

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

CLARION CALL
Mashtaka Yenyen Haki na Usawa

CORE VALUES
Transparency, Integrity, Accountability, Professionalism, Independence, Team spirit and innovativeness
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A. Introduction


B. Mandate and Functions of the ODPP

The mandate of the ODPP, as provided under Article 157 of the constitution of Kenya 2010, is to exercise State powers of prosecution of criminal matters and all other aspects incidental thereto. These include:

- Instituting and undertaking criminal proceedings against any person before any court of law other than the court martial in respect to any offence alleged to have been committed by any person;
- Taking over and continuing with any criminal proceedings commenced in any court by any person or authority with the permission of the person or authority; and
- Discontinuing, at any stage before judgment is delivered, any criminal proceedings with the permission of the court.

Further, the ODPP under Article 157 (6) has powers to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector General shall comply with any such direction.

Other functions of the ODPP include:

- to direct and supervise the conduct of criminal and anti-corruption investigations;
- to handle matters relating to Mutual Legal Assistance (MLA);
- to advise Government Ministries, Departments and State Corporations on matters pertaining to the application and development of criminal law;
- to appoint, train and gazette public prosecutors;
- to facilitate victims of crime and witnesses during prosecution; and
- to contribute, develop and implement policy, procedure and law reform.

In ensuring that the Office delivers on its mandate, the DPP has regard to the public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process as enshrined under Article 157 (11) of the Constitution.
C. Strategic Objectives of the ODPP

The strategic focus of the Office during the period covered by this report is guided by the Strategic Plan (SP) 2016-2021 which was developed in 2017 under the then DPP, Keriako Tobiko CBS, SC.

The objectives under the Strategic Plan 2016-2021 were further realigned to fit into the current DPP’s vision of enhancing accountability, transparency, public confidence and quality control. In seeking to achieve these objectives, the current DPP Noordin Haji adopted a three-pronged approach aimed at transforming the ODPP into a service that is more responsive to the needs of the Mwananchi. These are:

**Re-Tooling**, under which the Office has made an effort to strengthen, enhance and grow the existing infrastructure by developing a case management system that is holistic and integrated. The end goal is to have a system that will link the whole criminal justice chain from investigators, prosecutors, the Judiciary and correctional services; and

**Re-Learning**, where the Office seeks to equip its staff with the requisite skills and equipment necessary to deliver on its mandate within a global context. This has been done through the establishment of the Prosecution Training Institute (PTI).

**Re-Casting**, in which the Office envisages a three C approach of collaboration, co-operation and co-ordination to reshape the operations of the Office. The Office is working to create synergies that will work seamlessly to develop an effective, efficient and accountable institution. The ODPP is collaborating with local and international institutions and partners involved in the governance, justice, law and order sectors. The Office seeks to further strengthen and deepen these collaborations;

The Strategic Plan outlines five strategic objectives:

- To deliver quality prosecution services
- To enhance the capacity of the ODPP to deliver its mandate;
- To modernise ODPP processes and procedures;
- To review policies and legal frameworks for public prosecutions;
- To strengthen partnerships and collaborations.
D. PROSECUTION SERVICE DELIVERY

To effectively execute its mandate, the Office has organized its prosecutorial functions into five broad thematic areas: criminal litigation, appeals & applications proceedings, extraditions & MLA processing, advice files briefing, and complaints processing. Interagency co-operation, collaboration and co-ordination are a key considerations while undertaking the above role. The performance of the Office is assessed on six major parameters: caseload1, conviction rate2, success rate3, conclusion rate4, jurisprudential development and prosecution of high impact cases.

Prosecution Summary Statistics

In the reporting period 2019/2020, 2018/2019 and 2017/2018, the total numbers of matters handled (caseload) were 329,485; 313,155; and 337,242 respectively. The conviction rates for the reporting period was 92.58%, 91.03% and 90.2% respectively. Figure 3.1 illustrates the performance outlook on four parameters: caseload, conviction rate, conclusion rate and success rates for the reporting period. Figure 3.1 presents the total number of criminal cases and other matters incidental thereto handled during the reporting period.

Performance outlook during the reporting period

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<td>329,485</td>
<td>313,155</td>
<td>337,242</td>
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<tr>
<td>92.58%</td>
<td>91.3%</td>
<td>90.2%</td>
</tr>
<tr>
<td>52.14%</td>
<td>61.1%</td>
<td>53.2%</td>
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<tr>
<td>Processing of criminal files and matters incidental thereto</td>
<td>Processing of criminal files and matters incidental thereto</td>
<td>Processing of criminal files and matters incidental thereto</td>
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<tr>
<td>30.7% Conviction Rate</td>
<td>35.9% Conviction Rate</td>
<td>29.4% Conviction Rate</td>
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<tr>
<td>Success Rate</td>
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<td>Success Rate</td>
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| 103 cases in 2019 and 116 cases in 2018. This record of conclusion of corruption cases is attributed to the strategies employed by ODPP in the fight against corruption.

The fight against corruption continued to be a key focus area from January 2018 to June 2020. During this period a total of 220 cases were registered in court and prosecution ensued. A total of 26 cases were registered as at 30th June 2020, 78 cases in 2019 and 116 cases in 2018.

A total of 238 cases were concluded, 20 as at 30th June 2020, 103 in 2019, and 115 in 2018. The conviction rate is one of the parameters used to measure performance in the fight against corruption. The Office saw a progressive increase in conviction rate obtained during the above mentioned years to a remarkable rate of 63.16% in the first half of 2020.

The number of cases with convictions were 7, 27, 35, 43 and 45 in 2015, 2016, 2017, 2018 and 2019 respectively. The conviction rates were 30.4%, 46.55%, 37.63%, 47.25% and 47.27% in 2015, 2016, 2017, 2018 and 2019 respectively.
Trends in the conviction rates from 2015 to June 2020

Note: In the Figure, the bar graph illustrates the number of cases finalised with conviction during the respective years whereas the line graph represents conviction rate for corruption cases.

Amounts involved in high impact cases pending before court as at 30th June 2020.

High impact cases are cases involving large sums of money, senior government officials (State and public officers) and/or cases of significant public interest. There was a total of 135 high impact cases involving more than KShs. 224 Billion pending before court as at 30th of June 2020. Atleast 57% of these cases were registered in court between January 2018 and June 2020 while 43% were registered before 2018.

Cases registered from 2018 to June 2020 involved amounts totalling to over KSh. 157 Billion whereas cases registered in 2017 and before involved amounts totalling to KShs. 67 Billion. This is a clear illustration of the concerted effort put by the Office in collaboration with stakeholders in the three years in the fight against graft. The figure below illustrates the amounts involved in high impact cases.

<table>
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<tr>
<th>Year</th>
<th>Cases Registered</th>
<th>Amount(Kshs)</th>
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<tr>
<td>2020</td>
<td>2</td>
<td>1,248,039,308</td>
</tr>
<tr>
<td>2019</td>
<td>26</td>
<td>140,206,729,183</td>
</tr>
<tr>
<td>2018</td>
<td>49</td>
<td>16,203,785,465</td>
</tr>
<tr>
<td>2017 &amp; Previous years</td>
<td>58</td>
<td>67,106,235,183</td>
</tr>
<tr>
<td><strong>SUM. TOTAL</strong></td>
<td><strong>135</strong></td>
<td><strong>224,474,789,139</strong></td>
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Cases involving top government officials

During the period covered by this report, 53 cases involving top government officials were registered. These are as follows:

1. Cabinet Secretaries, Principal Secretaries - (7)
2. Governors & Senior County Officials - (11)
3. Directors, CEOs - (22)
4. Members of Parliament - (7)
5. Deputy County Commissioner & Senior Officials - (1)
6. Members of County Assembly (MCA) - (5)
Further, the Office has established nine regional offices to provide oversight and co-ordinate prosecution services across the country. This will enhance access to justice to Mwananchi hence answering to the clarion call Mashtaka yenye Haki na Usawa.

E. Milestones
The Office set out clearly defined goals and objectives which are outlined in a number of documents and declarations. It is against this that we have achieved our milestones listed below:

1. During the reporting period, the conviction rates increased from 90.2% in 2017/2018 to 92.5% in 2019/2020, for general cases. In corruption cases the conviction rate increased from 37.4% in 2018 to 60% in the first half of 2020. The increase in the conviction rate is as a result of strategies employed by the Office, such as prosecution guided investigations, the use of experts and analysts, the establishment of joint teams, adoption of research, enhanced witness facilitation and protection, utilisation of modern technology, capacity building and improved co-operation and collaboration between agencies.

2. The Office established the Prosecution Training Institute to train and better equip prosecutors and other justice sector actors, the Office further acquired land in Loresho for the PTI in addition to an e-library which is a comprehensive online research tool that allows prosecutors to keep pace with emerging and complex crimes and facilitate a research-oriented approach that the Office has adopted in its operations.

3. The Office reviewed its organisational structure to improve its responsiveness to the emerging trends and also to enhance efficiency and effectiveness in delivery of its mandate. This includes establishment of the following offices and units:
New Established offices and units:

a) Regional offices - this has enhanced service delivery by having administrative power delegated to nine regions with appointed heads to manage and oversee operations.
b) Proceeds of Crime Recovery Unit - one of the strategies implemented by the Office in the fight against corruption is the “follow-the-money” strategy. The Office has operationalized the Proceeds of Crime Recovery Unit to facilitate this strategy where the unit pursues proceeds of crime.
c) Internal Compliance Unit - the Internal Compliance Unit was established to ensure the highest levels of integrity for ODPP members of staff.
d) Inspectorate Unit - establishing an internal department that will ensure quality assurance, best practices and monitoring and evaluation of prosecution services.
e) Victim and Witness Facilitation Unit - the Unit was established to ensure that witnesses are traced, facilitated and prepared for criminal trials.

Modernised ODPP processes and procedures: The ODPP invested in technology to enhance effective delivery of prosecution services. This was done through the adoption of the following:

Case Management System - The system is envisaged to:
- Link the criminal justice chain actors
- Increase efficiency by saving time and costs incurred in service delivery.
- Allow for accurate data collection on convictions, appeals and the number of cases at a given time. This data will also be useful in the short and long-term planning and resource allocation.
- Allow for easy retrieval of information and reduce the instances of lost files.
- Allow for effective and efficient service deliver in urban and remote areas across all nine regions.

Uptake of virtual communication - the Office was quick to embrace the use of technology in its operations and criminal proceedings in Court.

Improved ICT infrastructure - The Office has also installed a Local Area Network (LAN) at the Nairobi Offices to support its ICT infrastructure and facilitate access to information. Further, the Office is in the process of establishing a Wide Area Network (WAN) that will link all ODPP Offices countrywide.

Development of Policies and Legal Framework
During the reporting period, the Office developed a number of policy documents geared towards enhancing accountability, transparency and consistency in the operations of the Office, these include:

THE EXCELLENCE CHARTER

The Office has developed the Excellence Charter which outlines its vision, mission, strategic commitments and activities that can help the
Office realize its mandate and steer it into a vibrant 21st Century Prosecution Service.

The Decision to Charge Guidelines, 2019 - The Decision to Charge Guidelines, 2019 are intended to guide prosecutors on the standards expected of them, their duties in the administration of justice, and what factors should be considered in the exercise of prosecutorial discretion. The Guidelines are expected to ensure transparency and accountability and consequently, build public confidence and trust in the ODPP and the criminal justice system collectively.

Practice Directions on the Delegation of Prosecutorial Powers - The Practice Directions on the Delegation of Prosecutorial Powers has been developed pursuant to Article 157 of the Constitution of Kenya and Section 22 of the ODPP Act, 2013 which allows the Director of Public Prosecutions to delegate any power and assign any duty conferred on him to a subordinate officer. The Directions play an important role in ensuring high quality prosecution services and reducing case backlog.

Diversion Policy and Guidelines - The Diversion Policy, launched in 2019, diverts offenders from the criminal justice system based on certain conditions. These conditions seek to address the harm caused by promoting restorative justice. Diversion can take the form of a simple caution or warning, an apology to the victim, payment for the damages caused or a referral to a structured diversion program.

Plea Bargaining Guidelines and Explanatory notes - The Plea Bargaining Guidelines and Explanatory Notes were developed pursuant to section 137(A-O) of the Criminal Procedure Code (CPC), to guide prosecutors during plea negotiations and to maintain accountability and transparency in the process.
Deferred Prosecution Agreements - A Deferred Prosecution Agreement (DPA) is an agreement between the ODPP and corporate organisations or individuals facing for prosecution for an offence. Deferred Prosecution Agreements provide an alternative to prosecution pursuant to Articles 157 and 159 of the Constitution of Kenya, 2010 and Diversion Guidelines, 2019.

Prosecution Fund
The Prosecution Fund is established under Section 45 of the Office of the Director of Public Prosecutions Act, 2013. The Office developed guidelines for the administration and management of the Fund in order to provide a transparent and accountable framework for the management and operations of the Fund.

Restructuring and Streamlining of Delegated Prosecutions
The Office restructured the operations of delegated prosecutions to reflect its mandate under Article 157 of the Constitution of Kenya.

Acquisition of New Premises for the Headquarters
The ODPP was previously housed at the NSSF building which presented challenges in co-ordination of its operations and the security and well being of the officers.

Improved Transport Facilities for Staff
During the reporting period, the ODPP acquired 36 vehicles to facilitate movement of officers attending mobile courts, thereby enhancing access to justice for the mwananchi in remote areas.

Terms and Conditions of Service
During the reporting period, the Office successfully engaged the Salaries and Remuneration Commission on the improvement of staff salaries and terms of service. This resulted in the approval of a job evaluation exercise that saw an increase in the basic salary by at least 51.26%.

Increase in the human resource capacity: 126 new staff recruited out of 341 projected

Community Engagements and Dialogues
The Office reached out to the public through community dialogues in different parts of the country such as Lamu, Kayole, and Mombasa. This has demystified the ODPP and sensitized the public on vigilance against criminal conduct and access to justice. In addition, the engagements have enabled the Office to identify existing gaps in the criminal justice system. This has informed the development of policies and guidelines that are more responsive to the needs of the Mwananchi.
F. Challenges and Proposed Strategic Actions

The following are some of the challenges experienced by the Office and proposed strategies put in place to address and/or mitigate these challenges:

Management of Records
There is lack of standardisation in the management of records in the ODPP. This makes it difficult to collect data on newly registered cases, ongoing cases and concluded cases.

**Strategic Action:**
The Office is working on centralisation of case file intake and the use of a standardised form that is streamlined across the counties and between the different departments.

Prosecution of complex crimes
Most complex cases filed today entail voluminous materials of evidence. Further, these cases not only require a high level of expertise to prosecute but also demand input from disciplines other than law in order to prepare and prosecute cases effectively.

**Strategic Action:**
Adoption of digital disclosure of evidence in prosecution to ensure that accused persons are served with documents in a timely and cost-effective manner. In addition, there is need to recruit researchers and experts from various fields of expertise such as financial analysts, medical experts, forensic analysts, cyber security experts, procurement experts and technology experts among others.

Enhancement of research capacity
The Office has inadequate research capacity which means that research needs are not effectively carried out. This affects the quality of prosecution as well as formulation of key policy documents.

**Strategic Action:**
Recruit more researchers and equip the PTI with the necessary facilities needed for research initiatives. The Office is considering collaborations with academic institutions in key areas of research that would enhance both the quality of knowledge and prosecution services in the Office.

Inadequate human resource capacity
The Office has 996 employees spread across the country which is way below the required optimum number of 2156 staff.
Strategic Action: Recruitment of additional staff to increase the capacity of the Office to execute its mandate.

Poor terms and conditions of service
High staff turnover within the Office continues to be a challenge primarily due to the unattractive terms and conditions of service. This has forced the Office to carry out frequent recruitment which is not only costly but also time consuming and ultimately detracting from other strategic activities.

Strategic Action: Revision, adoption and implementation of a competitive retention policy coupled with the negotiation of favourable terms and conditions of service in consultation with the Salaries and Remuneration Commission.

Inadequate infrastructural and operational capacity
As the capacity and staffing levels of the Office grows, the existing infrastructural capacity becomes stretched. This has led to insufficient office space, obsolete and poorly functioning equipment, making it difficult for members of staff to undertake their duties in a conducive and efficient environment.

Strategic Action: Negotiate for an enhanced development and operational budgetary allocation from the Exchequer, as well as seek additional funding from development partners.

Prioritization of operational aspects to ensure that key activities can run while ensuring that any budgetary surplus can be channelled towards the lower priority areas.

Public perception
Due to the nature of its mandate, the Office is exposed to negative reviews from the media and the public.

Strategic Action: Enhanced outreach programs to educate the public on ODPP’s mandate and on related laws, guidelines and policies in the criminal justice system.
G. Moving to the Future

Globalisation, emergent complex crimes, a rapidly changing technological and social environment, demand a paradigm shift in the delivery of services by the ODPP.

In seeking to execute its mandate, and to contribute to the realisation of Vision 2030 and the Big Four Agenda, the ODPP has put in place the following strategies:

(i) Implementation of the Excellence Charter
The Office has developed the Excellence Charter to guide its operations and processes in the period 2020-2023. It has six commitments:

- **Independence and Integrity** underscores the ODPP core values to honour its constitutional independence with fidelity and courage and introduces amongst others, the Oath of Independence, the Ombudsman Office with its sub-units, policy directions and guidelines.

- **Lifelong Learning** aims at equipping staff with requisite skills and capabilities necessary to deliver their mandate and to adopt international best practices within the country hence the establishment of the Prosecutions Training Institute (PTI) to provide continuous professional training and education to the members of staff in all aspects.

- **Reshaping Prosecutions** aims at modernizing prosecution by focusing on the fight against corruption, inculcating professionalism, institutionalizing prosecution-guided investigations and achieving excellence in complex litigation and emerging crimes.

- **Leadership** takes cognizance of the fact that leadership exists at all levels of the organisation.

The Office will adopt a Servant Leadership Philosophy, establish a Leadership Bureau, a Thought Leadership Program and Mentoring Initiatives.
Organisational Effectiveness focuses on strategic communication, a responsive organisational structure, robust processes, delivery of quality prosecutions and performance management.

Inter-Agency Networks focuses on reshaping our operations through collaboration with external stakeholders. To this end, the Office shall focus on stakeholder management, donor co-ordination strategies, Mutual Legal Assistance, leadership networks and the justice sector co-operation network.

(ii) Forecasting
Forecasting involves the study of general crime trends and challenges, crime rates for different offences, the number of cases filed periodically by different prosecutors at different levels, the number of criminal cases resolved annually, the prevalence of different crimes and the special characteristics of offenders.

Based on this information, a number of aspects of future crimes can be predicted hence providing an opportunity for the Office to have in place short-and long-term plans geared towards preventing, mitigating and/or handling such crimes. This also allows the Office to allocate resources appropriately.

Futuristic crimes
The ODPP is aware that the nature of crime is changing and becoming more complex. The new kind of cases that the Office has to deal with or will possibly have to deal with in the future require that the Office keeps abreast of trends in crime and adapt to emerging best practices. This can also be achieved by Forecasting as discussed above.

International Organisation for Standardization (ISO) Certification
The ODPP is looking forward to being ISO certified. ISO certification is an international certificate that would aid the ODPP in developing and improving its performance. Attaining ISO certification would demonstrate successful standardisation of the Office’s processes, meeting of statutory and regulatory requirements and delivery of quality services. The establishment of an effective Case Management System should aid in bringing the ODPP’s standards in line with that of the ISO.

Role of Law Reform in taking us to the Future
The ODPP will, as appropriate, recommend to Parliament new laws requiring enactment and areas of current law standing in need of change in order to address emergent challenges and facilitate enhanced service delivery.