

**INVESTIGATIVE PROCESSES AND PROSECUTORIAL  
STRATEGIES IN THE FIGHT AGAINST CORRUPTION IN KENYA**

**BY**

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**DECLARATION**

This project is my original work and has not been presented for a degree or any other award in any university.

Signed.....Date.....

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This project has been submitted for examination with my approval as the university supervisor.

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## **DEDICATION**

To God who is my strength. Also, to my family members; starting with my wife Magdaline and my mother Priscilla.

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All the Glory is to God.

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## **ABSTRACT**

The approaches in tackling corruption in Kenya have generally remained domiciled in three institutions: The Ethics and Anti-Corruption Commission (EACC), the Office of the Director of Public Prosecution (ODPP) and the Courts. The EACC is the major agency mandated to undertake independent investigations of corruption-related cases while ODPP is mandated to prosecute them. The manner the cases are prosecuted in court determines the outcome which ultimately determines the level of corruption prevalence in the country. EACC has been anchored under the new constitution of Kenya 2010 under article 79 but, corruption is still prevalent in the country. Therefore, the study's objective is to examine the extent to which separation of investigation and prosecution has affected the outcome of Kenya's success in the fight against corruption. Mixed research design was used. Respondents were selected and data was collected across the three institutions. More importantly, the anti-corruption registry records were able to inform the study of how many corruption cases were filed, successfully prosecuted within 2009 and 2014. In analyzing the data using the Statistical Package for Social Sciences (SPSS) trends were statically computed to either confirm the study hypothesis or not. The study concluded that carrying out investigative processes and prosecutorial strategies by EACC and DPP respectively has greatly contributed to meagre success in the fight against corruption in Kenya.

## **ABBREVIATIONS AND ACRONYMS**

ACECA-	Anti-Corruption and Economic Crimes Act
ACPU -	Anti-Corruption Police Unit
CEO-	Chief Executive Officer
DD-	Deputy Director
DLS-	Director of Legal Services
EACC -	Ethics and Anti-Corruption Commission of Kenya
KACA-	Kenya Anti-Corruption Authority
LIA -	Leadership and integrity Act
NACU -	National Anti-Corruption Unit
ODPP -	Office of Director of Public Prosecution
OECD -	Organization for Economic Co-operation and Development
PBC-	Pending Before Court
PPOA -	Public Procurement Oversight and disposal Act
PWC-	PriceWatershouseCoopers
TI-	Transparency International
UNDP-	United Nations Development Program

## **CHAPTER ONE: INTRODUCTION**

### **1.1 Background to the Study**

Worldwide, corruption is termed as a number one problem for countries; both developed and developing (Transparency International, 2014). It negatively affects the political, social, economic and legal well-being of any society. According to the Organization for Economic Co-operation and Development (OECD, 2008), corruption is the misuse of official authority for personal gain. Similarly, the Anti-Corruption and Economic Crimes Act of Kenya (2003) describes corruption as actions that lead to bribery, fraud, and embezzlement/misappropriation of public funds, abuse of office, and breach of trust or any offence of dishonesty.

Globally, different countries have opted for creation of anti-corruption agencies to curb corruption prevalence (Meagher, 2002). Such agencies are bestowed with either investigation or prosecution powers, or both investigation and prosecution powers. Whereas investigation takes the form of collecting relevant information pertaining to one's actions that are deemed corrupt, prosecution on the other hand is based on the legal proceedings within a court setup (Asia Development Bank, 2003). The investigation of corruption-related cases is further described by the Anti-Corruption Network for Eastern Europe and Central Asia (2010) report as an analysis of information and documents of business entities involved in corruption or related to defendants. Noticeably, before prosecution commences, the prosecutor needs to have adequate evidence and information regarding the case obtained from successful investigation reports (Asia Development Bank, 2003).

Research indicates that most countries that rate highly in the fight against corruption have both the investigations and prosecution done by a single agency. Meagher (2002) has noted that, the high rating of countries such as Hong Kong and Singapore in the fight against corruption has been attributed to the single-agency approach put in place in the management of corruption-related cases. The argument is that the single-agency strategy provides key capabilities, responsibilities, and resources under one roof, thus creating a

powerful centralized agency with related discretion and accountability. According to Transparency International corruption perception index 2013, the best fighters against corruption include Denmark, New Zealand, Finland, Sweden, Norway, Singapore, Switzerland Netherlands, Australia and Canada all of which have the investigations and prosecution done by a single agency (Transparency International, 2013). The efficiency of single-agency approach is enhanced by the centralization of information and intelligence on corruption reports, which aids in the coordination of activities, thus reducing problems that often arise in decentralized agency approach Meagher (2002). Similarly, in having a centralized anti-corruption agency, Sweden has strengthened its corruption management strategies by having the National Anti-Corruption Unit (NACU) created in the office of the Prosecutor general in 2003. NACU is entirely independent from the National police and as at 2008 it consisted of five prosecutors, two auditors and two economists (OECD, 2008).

However, countries with multiple-agency approach, where there are separate investigation and prosecution systems, continue to encounter difficulties in prosecuting cases, amid being described as inefficient (OECD, 2010). The multiple-agency approach has been exemplified in the hybrid model adopted by the United States whereby the antitrust division of the U.S department of Justice deals with antitrust violations and simple corruption cases whereas the U.S Attorney General's office investigates and prosecutes mega economic crimes of corruption (Heilbrunn, 2004). These two centres of command with regard to investigating and prosecuting corruption-related cases are said to have contributed to the poor corruption rating of US (Transparent International, 2013). According to Meagher (2002), the multiple-agency strategy is a contrast to the single-agency strategy in the sense that, it symbolizes a less ambitious anti-corruption agency by creating additional agencies with specific anti-corruption responsibilities. In most cases, the fight against corruption is diverted to superiority battles between agencies as performance of fighting corruption is felt in unsuccessful prosecution.

Kenya is a clear example of where investigation and prosecution of corruption cases are handled by separate agencies. The investigation of corruption-related cases is undertaken independently by the Ethics and Anti-Corruption Commission (EACC). After completing the investigations, the EACC forwards them to the Office of Director of Public

Prosecutions (ODPP) to decide whether to prosecute or not. Going by the numbers, given by the EACC annual report 2011/2012 a total of 236 cases were completed and taken for prosecution; of these, only 21 and 43 cases were placed before court for commencement of prosecution in the year 2012/2013 and 2013/2014 respectively. The reports are silent where the rest files went as there is serious disconnect in terms of accountability of files completed and prosecuted. This clearly demonstrates an existing gap. According to the Economic Commission of Africa (2010), factors such as institutional independence, jurisdictional powers, non-cooperation between national authorities and non-state actors hinder institutional mandate achievement to prevent, criminalize, enforce the law, and succeed in fighting corruption. Arguably, Klitgaard 1998) revealed that such a model of independent agencies handling the same issue separately experiences high monopoly, high discretion and low accountability in how they execute their mandates, thus serving as a challenge to the way corruption-related cases are managed within a country. This study thus sought to determine the impact of having the investigative and prosecution process handled by different institutions in the fight against corruption in Kenya.

## **1.2 Statement of the Problem**

Kenya is rated as one of the most corrupt countries in the world. For instance, in 2013 a study by Transparency International ranked Kenya the third most corrupt country in East Africa (Transparency International, 2013). In a more recent survey on the prevalence of economic crimes by PriceWatershouseCoopers (PWC) report of 27<sup>th</sup> February 2016, Kenya was ranked 3<sup>rd</sup> most corrupt country in the world after South Africa and France. In another Transparency International report of 25<sup>th</sup> January 2017, Kenya was ranked the 4<sup>th</sup> most corruption in east Africa (Transparency International, 2017).

The high rate of corruption persists despite the government's effort to fight the vice. According Tungwarara (2015), Kenya has put in place many interventions in the fight against corruption. For example, in 2003 Kenya was among the first countries to sign and ratify United Nations Convention against corruption (UNCAC). In addition, besides Article 79 of the 2010 constitution, Kenya has over seven laws which include: the Ethics and Anti-Corruption Commission Act (EACCA) (2011); Leadership and integrity Act

(2012); the Anti-corruption and Economic Crimes Act (ACECA) (2003); Public procurement and disposal Act (PPDA) (2005); Public procurement Regulations (2006); Witness protection Act (2006); Proceeds of crime and Anti money laundering Act (2009) which address corruption issues.

The continued persistence of corruption in Kenya despite the government's effort has been attributed partly to poor working systems of the institutions concerned. The approach used is one where the EACC does investigations and hands over final report with recommendations for prosecution if any to the office of the ODPP. Thus corruption cases are handled by two separate agencies. The problem with separate agencies is that they may not be well coordinated, one may do their job quite well but the other party may be complacent meaning the end result is very minimal in terms of deterring people from engaging in corruption. For instance, there is no law that requires the EACC to follow up on the files submitted to the ODPP. There is also no legal time frame of how long ODPP should take to review a case. Furthermore, the police who are supposed to do the investigations are rated one of the most corrupt institutions in Kenya (Transparency International, 2013), and therefore they cannot be trusted to assist in the fighting against corruption in Kenya. This study therefore sought to determine how the investigative processes and prosecutorial strategies can be used in the fight against corruption in Kenya with the objective to establish whether investigation and prosecution should be handled by one agency or separated.

### **1.3 Research Questions**

The main research question was to examine the extent to which investigative processes and prosecution strategies impact on the fight against corruption in Kenya?

The study sought to answer the following specific research questions:

- i. To what extent does separation of investigative processes and prosecutorial strategies affect the fight against corruption in Kenya?
- ii. What is the impact of combining investigative processes and prosecutorial strategies on effectiveness and efficiency in the fight against corruption in Kenya?
- iii. What are the challenges of combining or separating investigative processes with prosecutorial strategies in the fight against corruption in Kenya?

### **1.4 Objective of the study**

The study sought to examine the extent to which investigative processes and prosecutorial strategies impacted on the fight against corruption in Kenya.

The specific objectives were:

- i. To examine the effects of separating investigative processes and prosecutorial strategies in the fight against corruption in Kenya.
- ii. To establish whether combining investigative processes and prosecutorial strategies would improve the effectiveness and efficiency in the fight against corruption in Kenya.
- iii. To assess the challenges of combining or separating investigative processes with prosecutorial strategies in the fight against corruption in Kenya.

## **1.5 Justification of the study**

This study sought to establish new information as well as increase organizational awareness on the extent to which the different roles of investigation and prosecution influence in the management of corruption-related cases in Kenya. Information gathered in this study could help the Ethics and Anti-Corruption Commission and the Office of the Director of Public Prosecution focus on their institutional operational reforms, especially on how to ensure that investigation and prosecution of corruption cases is done coherently for success. This study will provide a clear perspective on whether the different roles played by investigating officers and prosecution officers are sufficient enough in reducing corruption cases in Kenya.

At the policy level, information gathered from this study could assist policy makers, relevant stakeholders in fine tuning the amendment of the Anti-Corruption and Economic Crimes Act (ACECA) {Rev.2012} together with the Office of the Director of Public Prosecutions Act (2012). As stipulated in Part IV of ACECA; the functions of Ethics and Anti-Corruption Commission are those of investigating any matter or conduct of a person that raises corruption suspicion among others. However, the Commission is not allowed to prosecute their matters in court despite having a whole directorate of legal services headed by a Director and competent lawyers. This study will demonstrate whether the EACC would increase its effectiveness if they are mandated to prosecute their matters under their jurisdiction; in other words, if it is allowed to do both the investigation and prosecution.

Finally, this study is justified in that, findings would demonstrate whether the EACC is competent to investigate and prosecute corruption-related cases for better results. Although the Commission is mandated by law to carry out independent investigations on corruption-related cases, the study will assist the Commission and policy makers evaluate the very urge to fight corruption by way of law enforcement for posterity in Kenya.

## **1.6 Scope and Limitations.**

The study covered the period 2009 to 2014 because this was the period Ethics and anti-corruption Commission was anchored under Article 79 of the Kenya Constitution 2010



with the hope that imbedding the anti-graft agency in the Constitution would greatly improve on how the vice if combated in Kenya leading to assertive truly independent agency in the fight against corruption in Kenya. The techniques for fighting corruption in terms of investigative processes and prosecutorial strategies used from 2003 up to 2009 and up to 2014 were the same. That meant investigation of corruption was done by one agency while prosecution of the same done by the Attorney General and Director of public of prosecutions respectively with unending surge of corruption in Kenya. Not included in this study is the manner offenses under the Leadership and Integrity Act are investigated and also prosecuted by ODPP as little is known of the ethical cases investigated and prosecuted by the Ethics directorate who are relatively young in the Commission.

The major limitation of the study was obtaining truly unbiased responses from these investigation and prosecution officers. The reason for bias was institutional self-preservation and self-justification in the public eye. It was difficult for some prosecutors to comment on the ODPP prosecution of corruption cases for fear of reprisals from their seniors. Similarly, some of EACC senior officers sampled were non-committal on Commission's work for the same fears. To overcome this, the researcher first sought permission from the Director of Public Prosecutions and the Secretary Ethics and Anti-Corruption Commission of Kenya to conduct the study. Secondly, the researcher sought the respondents consent before participating in the study and assured them that their responses will only be used for academic purposes.

## **1.7 Definition of concept**

**Corruption** – Corruption is the abuse of public power for private benefit or profit (Detzer, 2013). In the context of this study, corruption is the acquisition of money, favors, and other kickbacks for personal benefits. According the ACECA, “corruption” means— (a) an offence under any of the provisions of sections 39 to 44, 46 and 47; (b) bribery; (c) fraud; (d) embezzlement or misappropriation of public funds; (e) abuse of office; (f) breach of trust; or (g) an offence involving dishonesty— (i) in connection with any tax, rate or impost levied under any Act; or (ii) under any written law relating to the elections of persons to public office

**Prosecution** – Prosecution is the process of engaging in a lawsuit, whether civil or criminal (Neubauer & Meinhold, 2013). In the context of this study, prosecution is the legal actions and procedures applied to public officers with corruption allegations. According to Office of Director of Public prosecutions mean any proceedings in respect of any offence including extradition proceedings and any appeal, revision or other proceedings related thereto.

**Investigation** – Investigation is the process of legally gathering evidence of a crime that has been committed or is being committed (Brown, 2001). According to Corruption investigation- practitioners guide, 2013, section 1.3.1, investigation is an inquiry into a complaint, report or information that somebody known or unknown has committed an act or omission specifically prohibited by the law. In the context of this study, investigation is the proper management and cooperation of investigation officers in accessing relevant information for a successful prosecution of corruption cases.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1 Introduction**

This chapter presents what other authors and scholars have said about investigation and prosecution strategies in corruption-related cases from the global level to the local scenario in Kenya. The chapter reviewed literature on: anti-corruption agencies; impact of separation of investigation and prosecution strategies on the fight against corruption; impact of combining investigative and prosecutorial strategies in the fight against corruption; the challenges that would come with either combining or separation these strategies in the war on graft. The chapter also gives the theoretical framework of the study and ends with a presentation of the study hypotheses.

### **2.2 Overview of Anti-Corruption Agencies**

The term corruption has attracted diverse definitions worldwide. According to the OECD (2008), corruption is defined as an abuse of office, whether public or private, for personal gain. It takes a form of misappropriation, embezzlement, bribery, diversion of public property, and obstruction of justice, among others. Heilbrunn (2004) describes administrative procedures such as auditing functions, procurement procedures, expenditure management, and conflicts of interest as major areas where corruption thrives. Public officials within these administrative offices are said to either receive or offer kickbacks in their personal favor or their cronies in crime.

According to (Klitgaard, 1998), combating corruption begins with designing better systems. Overall the objective of anti-corruption agencies is preventing, managing, reducing and finally eradicating corruption whenever possible (Engelbert, 2013). For this objective to be fulfilled, effective and efficient investigations and prosecutions of suspected culprits is imperative. As pointed out by Engelbert (2014), establishing anti-corruption agencies within a country is necessary for streamlining national anti-corruption efforts, investigating reported instances, as well as prosecuting criminal offenders. A report by the UNDP (2005) describes efficient anti-corruption agencies as those mandated to prevent, coordinate, investigate, prosecute, educate and create awareness of corruption-related areas.

Governments have been called upon to develop policies and adopt anti-corruption agencies in response to corruption prevalence. According to Koren (2014), different countries have enforced anti-corruption rules aiming at discouraging and punishing corruption. He further points out that most anti-corruption regulations are guided by international conventions especially to countries that are state parties to United Nations Convention Against Corruption (UNCAC) which came into force in December 2005. Since countries have different practices in handling the anti-corruption regulations and strategies in perfecting the fight against corruption, some have opted for a centralized agency enabled by law and mandate to investigate and prosecute corruption-related cases while others have opted for different entities dealing with investigations alone and another independent entity dealing with prosecution of the corruption related offenses. Others have approached the problem, through collaborative arrangements, for one to investigate and the other to prosecute the cases but in consultation (UNCAC, 2005).

According to Stelfox (2013: 25), investigation is a process of “locating, gathering, and using information to bring offenders to justice by exposing the criminal intent of the suspect.” In relation to criminal corruption-related cases, investigations are basically carried out to prove all the elements of offence committed beyond any reasonable doubt in court. A criminal investigation is an applied science that involves the study of facts, used to identify, locate and prove the guilt of an accused criminal (US law journal, 2014). A full investigation would include searches, interviews, interrogations, evidence collection and preservation for use in prosecution. This means therefore the threshold of carrying out investigations and adducing the same as exhibits/evidence before a court system must be articulated artfully, understanding the particulars of the offence.

Before prosecution process begins, evidence must be located, obtained, and organized in a way that it maximizes its impact on the opinion of the jury when presented before it (Bugliosi, 2000). Prosecution is defined as the “process of engaging in a lawsuit” (Neubauer & Meinhold, 2012: 92). Parties involved are said to present their legal issues, evidence to support their position, and facts that would persuade in the determination of the matter in the best argued direction. The system in Kenya in particular provides that the Office of the Director of Public Prosecutions in cooperation with investigative agencies

and institutions ensures effectiveness of public prosecutions (The Office of the Director of Public Prosecutions Act, 2013: Section 5)

In Kenya, during the old and new constitutional order, corruption has been fought by more than one agency. In the old constitutional order, the investigative agency once done with the investigative processes filed their reports with the Attorney General to carry out the prosecutorial bit. In the new order, corruption is still tackled by multiagency approach where now the anti-corruption agency file their reports with the office of the director of Public prosecutions to review evidence collected by EACC and when convinced its proper or tight recommends prosecution of the suspects. The arrest would be done by EACC and DPP then appoints one of his prosecutors to do the actual prosecution in court. Because only the courts can determine the criminal liability of a suspect, the opportunity to demonstrate how the corruption office was committed rests on ODPP who has just perused the file as opposed to the investigative agency lawyers who had analyzed the evidence collected and has facts of the case on his fingertips. This begging the question is the continued increase of corruption contributed by the separation of the two independent variable? It negates the concept of constitutional investigative independence of EACC as they are never allowed to complete the corruption fighting circle of investigation and prosecution respectively.

### **2.3 Separation of Investigation and Prosecution Strategies**

In, countries such as Kenya whereby its anti-corruption agencies have handled different roles, of investigation and prosecution separately through the roles of the Ethics and Anti-Corruption Commission (EACC) and Office of the Director of Public Prosecution (ODPP) respectively, the institutions continue to suffer of ineffectiveness and incoherence in gathering evidence and adducing it as exhibit before court. Table 2.1 shows a summary of the flow of files forwarded for prosecution. According to the table, in the period 2009 to 2014, a total of 10555 corruption cases were taken up for investigation but only 431 cases were forwarded to ODPP for prosecution. However, out of the 431 cases only a total of 193 were filed in court out of which 79 cases are pending in court and 94 were dismissed and or acquitted. Therefore only 20 cases were determined by conviction. The low

percentage of cases prosecuted raises the question on whether the commission has put together what it takes to ensure all cases are investigated and prosecuted.

**Table 2.1: Summary of Completed Cases by Anti-Corruption Agencies**

<b>Fiscal year</b>	<b>Cases taken over for investigations</b>	<b>Files Forwarded for prosecution</b>	<b>Actual Cases filed in court</b>	<b>PBC</b>	<b>Acquitted /dismissed by court</b>	<b>Convicted by court</b>
<b>2008/09</b>	1270	94	37	3	28	6
<b>2009/10</b>	1281	79	49	13	27	9
<b>2010/11</b>	2448	113	41	19	19	3
<b>2011/12</b>	2183	73	18	9	7	2
<b>2012/13</b>	1423	28	20	14	6	0
<b>2013/14</b>	1950	44	28	21	7	0
<b>TOTALS</b>	<b>10555</b>	<b>431</b>	<b>193</b>	<b>79</b>	<b>94</b>	<b>20</b>

*Source EACC annual reports & ant-corruption court Registry Register*

Like Kenya, Tanzania has separate institutions handling investigations and prosecution. There is the Prevention of Corruption Bureau (PCB) for investigating suspected corruption cases. However, corruption in the country has remained high. For instance, according to the Transparency International corruption perception report of 2013 Tanzania was ranked 100 out of 153 most corrupt countries in the world. According to Hoseah (2008), the inefficiency of the Prevention and Combating of the PCB is attributed to overlapping roles and responsibilities of agencies. According to Chene (2008), many countries face failure in such systems due to lack of resources and independence which when coupled with intertwined interests/stakes result in poor performance in the manner corruption is managed in a jurisdiction. Among others, the UNDP (2005) highlights factors such as weak legal enforcement of laws not geared towards a common goal ending up contributing towards poor performance of these agencies. The study will provide insight on what happens when the investigative processes and prosecutorial strategies are undertaken by two separate agencies. The findings can be used by interested countries to improve their anticorruption agencies.

## **2.4 Investigative processes and Prosecution Strategies under a single agency**

According to an expert seminar on investigation and prosecution of corruption, success in prosecuting corruption cases has been attained because prosecutors have been involved in investigations (OECD, 2011). As pointed out by the United Nation Development Program (2005) report, independence of anti-corruption agencies in matters investigation and prosecution would not only facilitate efficiency, but also would enhance attaining their institutional mandate in fighting corruption without being influenced by corrupt influence in other government departments.

The perception however has been that anti-corruption agencies should have mandates to both investigate and prosecute corruption-related cases. According to the United Nations Handbook (2004), the thinking behind the joint mandate is that the agency would find it easy to develop a case out of their investigations easily than submitting them to a different institution which asks for more evidence depending on the line of approach taken by the prosecutor. The views of the prosecutor instead of being tested with the experience of investigations become directions when indeed it is not the prosecutor to decide the case but the judge. Furthermore, agencies undertaking both investigation and prosecution roles would reduce bureaucracy as well as enhance transparency in their functions.

Critics however have called for cooperation between these agencies to have centralized leadership where all corruption-related issues are directed from (Engelbert, 2014). This does not mean that independency of these agencies amounts to inefficiency, but to an extent, they tend to affect how corruption cases are managed in view of internal and external constraints. However, coordination of the relevant agencies in executing these two important strategies of investigation and prosecution is more efficient in countries such as Denmark, New Zealand Sweden and Singapore, unlike the separated system model observed in Kenya (Transparency International, 2013).

Reports of countries which have empowered a centralized agency to investigate and prosecute corruption-related cases show that there is increased efficiency in how corruption is managed if not eradicated. For instance, Hin (2010) reveals that Singapore's Corrupt

Practices Investigation Bureau (CPIB) has managed to record over 95% conviction rate each year. The outcome is largely attributed by the strong evidence the CPIB obtains during its evidence collection and their ability to demonstrate to court the culpability of both givers and receivers of bribes during the prosecution process. In Croatia, adoption of the anti-corruption agency in Croatia Act of 2001 established five main departments, namely; anti-corruption and public relations department, documentation department, prosecutor's department, international cooperation and joint investigation department, and the secretariat and supporting services, which provide a centralized leadership in managing corruption in that country (Pervan, 2010). The study will fill the gap by determining the advantages of managing investigation processes together with prosecution strategies under one agency.

## **2.5 Challenges that come with Separation or Combination of investigative processes and prosecutorial strategies.**

Major Challenges that come with separation of both investigative processes and prosecutorial strategies include and not limited to; institutional rivalry, loss of functional independence in executing the fight against corruption (Hoseah, 2008), accountability of these agencies for maximum use of public resources appropriated to them in terms of output and general success of the fight of corruption in that multiagency approach of fighting corruption. As observed in Zanzibar, Engelbert (2014) reveals that the Zanzibar Anti-Corruption and Economic Crimes Authority (ZACECA) encounter challenges after completing investigations since they cannot register corruption-related cases in court without a written consent from their Director of Public Prosecutions this pointing to loss of institutional independence. Arguably, he describes the prosecutor's powers and discretion to prosecute being his preserve to decide who will be prosecuted and which file will need further investigations and which has none and therefore need to be closed, thus impacting immensely on the role and achievements of the anti-corruption agency's mandate as set out in law.

Challenges of such a model when both investigative and prosecutorial strategies are combined include the fear that such an agency would be so powerful to prosecute people



at very little provocation or without evidence (Hansard 2012, Parliament of Kenya). Under rules of evidence Chapter 80 laws of Kenya, he who alleges must prove and the requirement is that of prove beyond any reasonable doubt which make it difficult one to concoct evidence which would not stand in Court. To the contrary of what Members of Kenya parliament feared in 2012 when discussing Ethics and Anti-Corruption Act bill No 2012, usually corruption scandals are public information and whenever reported, the responsible body is obliged to investigate and prosecute the culpable as there is no pointing fingers or blame game. The report and action squarely lie with the body and must be seen to investigate and prosecute as per evidence available. Corruption in a country and how the vice impacts on development draw attention of the whole society and any amount of resources can be set apart for its eradication Hin (2010). Roles of investigation and prosecution within anti-corruption agencies have called for collaborations between respective agencies when separated as this have been to bear more fruits.

Another challenge is lack of specification on the expected period of completion of investigation and prosecution of corruption in the EACC Act 2012, DPP Act 2013 or constitutional of Kenya 2010. In Indonesia, for example, the anti-corruption agencies are organized such that after those mandated to carry out investigations are through, they file their reports to prosecuting bodies within 14 days. A follow up by the investigative agency to the prosecuting agency is provided in law to ensure cases meant for prosecution are heard and appraised within 90 days (United Nations Development Program, 2005). This brings to an approximate three and half months to dispose any investigation and prosecution of corruption-related case. This is not the case in Kenya. Neither does the Anti-Corruption and Economic Crimes Act (2003), Ethics Anti-Corruption Commission Act (2012) nor the Office of the Director of Public Prosecution Act (2013) provide for such guideline as to when investigations are to be undertaken and completed as well as the period DPP is supposed to review the recommendations of EACC in order to commence judicial proceedings and expected time frame for judgment or disposal of the case in court. This has contributed to backlogs in all agencies whether in EACC, DPP or anti-corruption courts

Although delays in investigating and prosecuting corruption cases in Kenya are common, it is justified to assess the contributing factors as well as the hindrances in the different roles played by respective anti-corruption agencies and how the two crucial strategies of fighting corruption, that is investigative processes and prosecutorial strategies are utilized in securing success in the fight against corruption in the country. The findings of the study will inform whether it is better to separate or combine the two strategies. The trend realized after analyzing the answers to the questions of study would be used to improve the manner the fight against corruption in Kenya is done. It will also inform policy makers in drafting the best anticorruption policy as envisaged in vision 2030 of Kenya.

## **2.6 Theoretical Framework**

This study will apply contingency theory. According to Eriksson-Zetterquist, Mullern, and Styhre (2011), contingency theory is based on the fact that optimal organization is contingent/dependent upon different internal and external constraints. They further revealed that one style of managing may fit within a specific organization or administrative area but does not guarantee the same effect in other organizations or administrative areas. The main assumptions of contingency theory are: there is no one best way to manage, the design of the organization and its subsystems must fit with the environment, and finally, organizational needs are satisfied when the design and management style is appropriate to the tasks and nature of work group.

The theory underpins this study in that, the environment in which the EACC operates requires different approach in executing its mandate. Rather than the commission, together with the relevant body in charge of prosecuting corruption-related cases, continuing with the same routine of investigating and referring the cases for prosecution; EACC should be mandated to at least be able to register and table evidence of their findings in court, thus ensuring corruption-related cases has time frame and do not take that long to address as well as enhancing transparency in their work. Once the cases have begun, further investigations can be called for, if need arises. Therefore, the assumption that there is no one best way to manage applies. After all prosecution is never closed until the investigating officer closes the case.

Secondly, contingency theory fits the study by proving that the organizational design and its subsystems must fit with the environment. The mandate of the EACC encounters a lot of internal and external pressure to deliver. However, what is important to citizens is the leverage by the Commission to ensure justice is served. Thus, for the EACC to fit in the environment whereby internal pressure for investigators is to carry out prompt investigations and external pressure to ensure justice for all, the Commission should align its roles according to the environment by having a prosecution role, rather than investigation only.

Finally, the contingency theory underpins this study in that, EACC could have achieved its ultimate goal of combating, preventing corruption and economic crime in Kenya had the design as well as its management style matched the tasks. Since the Commission work does not include prosecution DPP comes in with an extremely different approach in dealing with corruption cases hence complication the fight in Kenya. The Commission is expected to address corruption through law enforcement, preventive measures, public education and promotion of ethical standards by ensuring practices of integrity, ethics and societal ethos as in the anti-corruption endeavor. For this to be achieved, their role should align with the expected outcomes (goal), thus enhancing satisfaction of the organizational needs.

## **2.7 Hypothesis**

- H<sub>0</sub> - Investigative processes and prosecutorial strategies undertaken by one agency have no impact on the fight against corruption in Kenya.
- H<sub>1</sub> - Investigative processes and prosecutorial strategies undertaken by one agency have an impact on the fight against corruption in Kenya.

## **CHAPTER THREE: METHODOLOGY**

### **3.1 Introduction**

This chapter discusses the research design, study area and population, sampling procedures, data collection procedures, and data analysis that were used in the study.

### **3.2 Research design**

This study adopted a cross-sectional design which involved auditing the processes followed in investigation and prosecution of corruption cases in Kenya. Collecting data at all points where the case file follow i.e. EACC, DPP and court together with recording the information without manipulating the study environment. The advantage of a cross-sectional study design is that it allows the researcher to experience what it takes to maneuver an agenda along independent constitutional institutions. The study used was both quantitative and qualitative research methods. In the quantitative method floating of questionnaire to the respondents was done to gauge what the practitioners in the sector go through their work career while a structured interview guide for key informants was used for the qualitative method with experts in law enforcement complemented the quantitative method and was summarized using thematic sections.

### **3.3 Study area and Population**

The study area dwelt on three tie operationalization trail of corruption case files namely the Ethics and Anti-Corruption Commission (EACC), the Office of Director of Public Prosecutions and anti-corruption courts. EACC and ODPP are required to publish their outputs and report to parliament every end of financial year while when a case is filed in court become public information and this created the best area in assessing how corruption is reported, investigated and prosecuted in Kenya.

To combat corruption the process involves law enforcement techniques and the targeted population is as shown on Table 3.1 below. A total of 139 officers were targeted out of which 77 were sampled.

**Table 3.1: Population and the sample size**

<b>Department/Commissions/Community groups</b>	<b>Population</b>	<b>Sample Size</b>
Management (Chairperson, Commissioners, CEO& DCEO)	7	2
<b>EACC Directorates</b>	<b>Population</b>	<b>Sample size</b>
Investigations (D& DD)	5	5
Legal Service ( D& DD)	3	3
Preventive Services (D&DD)	3	3
Nine Regional Offices DDs	9	9
Ethics & leadership(D&DD)	2	2
<b>Independent Commissions</b>	<b>Population</b>	<b>Sample Size</b>
CIC Commissioners	9	5
NLC Commissioners	9	5
<b>Judiciary</b>	<b>Population</b>	<b>Sample Size</b>
<b>Judges of High court</b>	5	2
<b>Chief Magistrates</b>	5	3
<b>ODPP( D &amp; Senior Deputy Director , Deputy Directors) Prosecution</b>	5	3
<b>Community Groups</b>	<b>Population</b>	<b>Sample size</b>
Langas ward in Eldoret town (Area Development Committee)	20	15
Matendo water project- Kijja Location- Meru	27	10
Nasra Estate Residence (Zone E)	30	10
<b>Total</b>	139	77

### 3.4 Sampling procedures and sample size

An institutional approach was used to pick the sample. The key respondents were drawn from the operational departments addressing corruption from investigations to prosecution. This study applied purposeful sampling technique to select respondents from the population. As explained in Table 3.1, the sampling was in two groups namely management level for directors, their deputies together with the nine regional heads. Senior investigators/officers key in mega corruption investigations were also sampled where deputy directors were not available. This only happened in Ethics and leadership directorate. A group representing civil society and society opinion shapers richly enriched the study. Two constitutional commissions were sampled but only one responded to the survey. ODPP senior assistant directors and deputy directors were sampled. These mostly

are the officers nominated by the director of public prosecutions to lead high level corruption cases.

As a means of sampling the views of common citizens in the survey, community group leaders being their group's opinion shapers in Eldoret, Meru and Nairobi gave their perception of separation of investigative processes and prosecutorial strategies in the fight against corruption in Kenya to the best of their knowledge and given how these two are implemented currently in the country. The sample consisted of 77 individuals.

### **3.5 Data collection techniques**

The study collected both primary and secondary data. Primary data was collected from respondents using structured questionnaires for the quantitative survey while interviews with key informants/ experts/ academicians were carried out to collect qualitative data. Quantitative data was collected through a questionnaire which was constructed in line with the study objective. Both open-ended and closed-ended questions were used. Questionnaires were self-administered. The interview guide was used to collect qualitative data from the key informants. To tap on their knowledge eight questions were used to exhaustively address the objectives of the study. The guide gave the interviewee room to explain their views on the question asked. Interviews were procured using appointments from the firms and offices of the interviewees.

With the permission of the Chief Registrar of Judiciary, secondary data was lifted from the anticorruption court registry register which formed the basis of asking the questions in order to answer the objectives and the research questions. The data so lifted from court was analyzed using Pearson correlation coefficient to demonstrate the progress/movement of files when filed in court.

### **3.6 Data analysis**

The quantitative data from the questionnaire was coded and analyzed statistically using the Statistical Program for Social Sciences (SPSS) with every question results being presented using percentages, pie charts and Pearson to compute descriptive statistics such as

frequencies, percentages and correlations. On the other hand, information obtained from the qualitative data was analyzed in thematic sections as footnoted. This gave meaning and reaffirmed the objectives of study.

## CHAPTER FOUR: PRESENTATION, ANALYSIS AND INTERPRETATION

### 4.1 Introduction

This chapter presents, analyses and interprets the findings of the study. The chapter is divided into nine sections which are organized according to the study objectives.

### 4.2 Demographic information

The demographic information of occupation and job group scale was used to categorize the respondents. To get a feel of the general representation of the population, the respondents asked to indicate the department they belonged to. The response was as shown in Table 4.1.

**Table 4.1: Department/group**

	<b>Frequency</b>	<b>Percent</b>
EACC Directorates	15	27.3
ODPP Prosecutors	10	18.2
Independent Commissions	3	5.5
Judiciary	9	16.4
Community Groups	18	32.7
<b>Total</b>	<b>55</b>	<b>100.0</b>

Out of a sample of 77 respondents only 55 responded giving it a response rate of 71%. This can be considered adequate since it well above 50%. Out of 55 respondents, 27% represented the EACC Directorates, 18% represented ODPP prosecutors, 6% Independent Commissions, 16% Judiciary, and 33% represented Community Groups.

The EACC respondents included the Directors, Deputy Directors and senior investigators from the Directorate of investigations. The respondents from ODPP ranged from senior principal to senior Assistant Director. From the judiciary, the responses were from High court judges, Supreme Court judges and special Magistrates handling corruption cases. The Independent Commissions was represented by respondents from the Commission for the Implementation of the Constitution (CIC), while Community Groups respondents were from Langas area development committee in Eldoret, Matendo water project members in



Kijja, Meru, and Lion court in Nasra Estate in East- lands Nairobi. Members from the EACC management (CEO, Deputy CEO, Commissioners) and the National Land Commission (NLC) did not respond to the study, thus not represented in the analysis.

#### **4.2.1 Number of Years in the occupation**

The to gauge the expertise of the respondents in matters relating to investigation and prosecution of corruption cases, the respondents were asked to indicate the number of years they had worked in their occupation. The result was as shown in Table 4.2. A majority of the respondents (71%) indicated that they had worked in their respective occupations for more than 5 years, 13% had worked between 2 and 4 years while 16% had worked for less than 2 years. The interpretation is that a majority of the respondents had adequate experience to comment on the subject matter authoritatively.

**Table 4.2 Number of Years in their position**

	<b>Frequency</b>	<b>Percent</b>
Less than Two Years	9	16.4
2 To 4 Years	7	12.7
5 Years and Above	39	70.9
<b>Total</b>	<b>55</b>	<b>100.0</b>

#### **4.3: Awareness of the roles performed by EACC and DPP**

The study sought to determine whether respondents were aware of the specific roles of the EACC and DPP in line with addressing corruption cases in Kenya. As revealed in Table 4.3, 100% of the respondents indicated that they were aware of the mandate of the EACC and DPP in addressing corruption-related cases in Kenya.

**Table 4.3: Awareness of the roles performed by EACC & DPP**

<b>YES</b>		<b>Frequency</b>	<b>Percent</b>
	<b>EACC Roles</b>	55	100.0
<b>DPP Roles</b>	55	100.0	

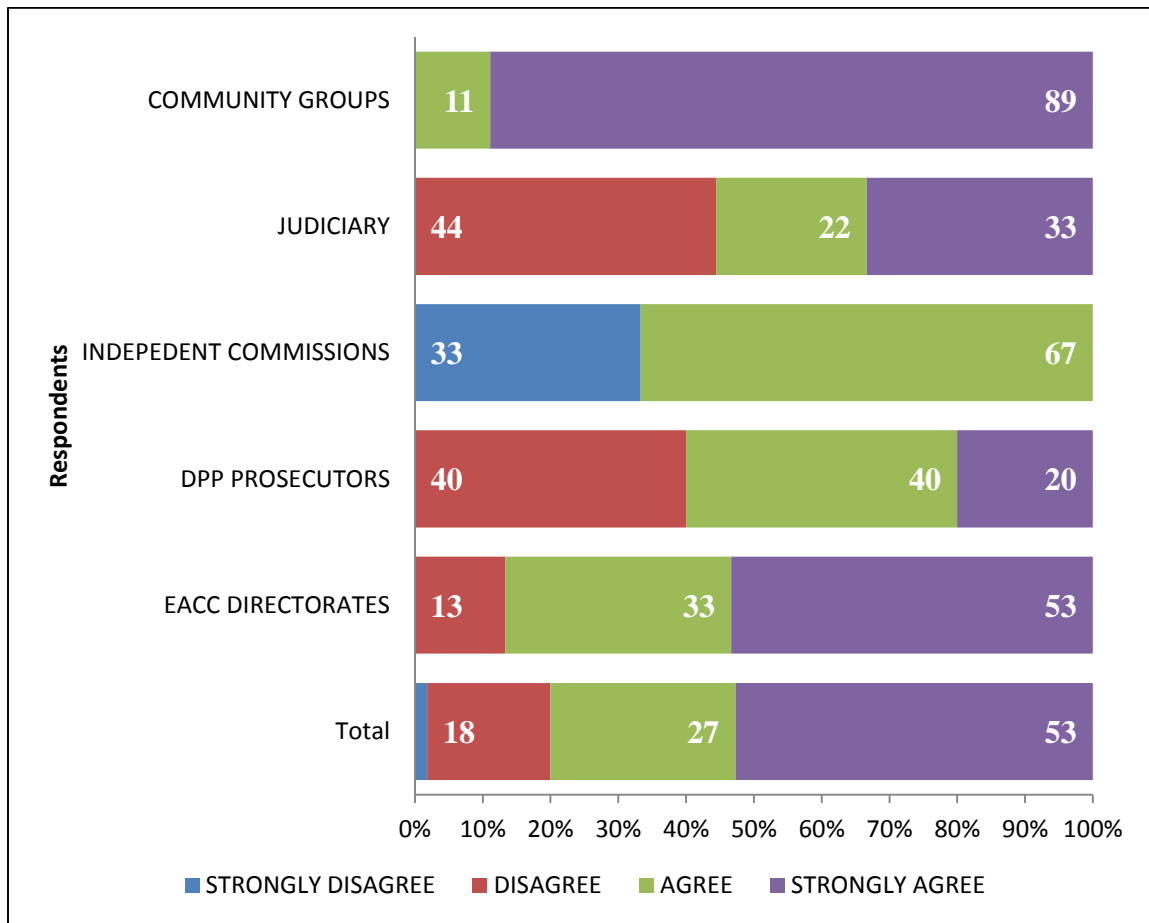
#### **4.4 The Efficacy of the EACC**

To assess the effectiveness of EACC in implementing their mandate in regard to investigation and prosecution of corruption cases, the respondents were asked to rate the extent to which they agreed or disagreed on the institution's capacity to address corruption-related cases. The results are as indicated in Figure 4.1. From the responses, 100% of community groups agree that EACC is sufficient in investigating corruption cases while in Judiciary 55% agree with the question while 44% disagree and 1% strongly disagree that EACC is sufficient in investigating corruption cases in Kenya. Of the Independent commissions, 67% agree while 33% disagree with the statement.

Those who agreed with the efficacy of the EACC attributed it to the adequacy of the commission's laid down mechanisms and machinery to investigate coupled with a well trained and experienced workforce to investigate any matter. However, those who disagreed attributed the commission's ineffectiveness to understaffing of investigators, external interference of their mandate, and biasness in investigating cases. The respondents highly recommended that the EACC should be empowered both legally and financially to enhance their capabilities in investigating corruption-related cases. According to a key informant and a senior counsel,

‘... although there is adequate investigative processes in place at the EACC, however, the human capacity in investigations is low given the number of complaints launched by Kenyans. The EACC being an investigative agency should employ three quarters of their

staff as investigators but currently public education and other directorates take the lion share of resources allocated to the Commission.....”<sup>1</sup>



**Figure 4.1: The extent EACC is sufficient in investigating corruption-related cases**

#### 4.5 The Efficacy of the ODPP

To assess the effectiveness of ODPP in implementing their mandate in regard to prosecution of corruption cases, the respondents were asked to rate the extent to which they agreed or disagreed on the institution’s capacity to prosecute corruption-related cases. The results are as indicated in Figure 4.2. From the responses, a majority (84%) of community groups disagree while only 17% of the respondents agree that ODPP is sufficient in prosecuting

<sup>1</sup> Interview with senior counsel conducted in his offices in Chiromo on 8/6/2016 at 10.25 am.

corruption cases. In the Judiciary, 89% disagree that ODPP is sufficient in prosecuting corruption cases while 11% agree that ODPP is sufficient in prosecuting corruption cases. Of the Independent Commissions 66% disagree that the ODPP is sufficient in prosecuting corruption cases while 33% disagree and 1% strongly agree with the statement. In the ODPP, 60 % disagree that they are sufficient in prosecuting while 40 % agree that they are. In the EACC 20% disagree that ODPP is sufficient in prosecuting corruption related cases while 47% agree and 33 % strongly agree with the statement. In total 46% of all the respondents disagree, 16% strongly disagree while 27% agree and only 11% strongly agree that ODPP is sufficient in prosecuting corruption cases.

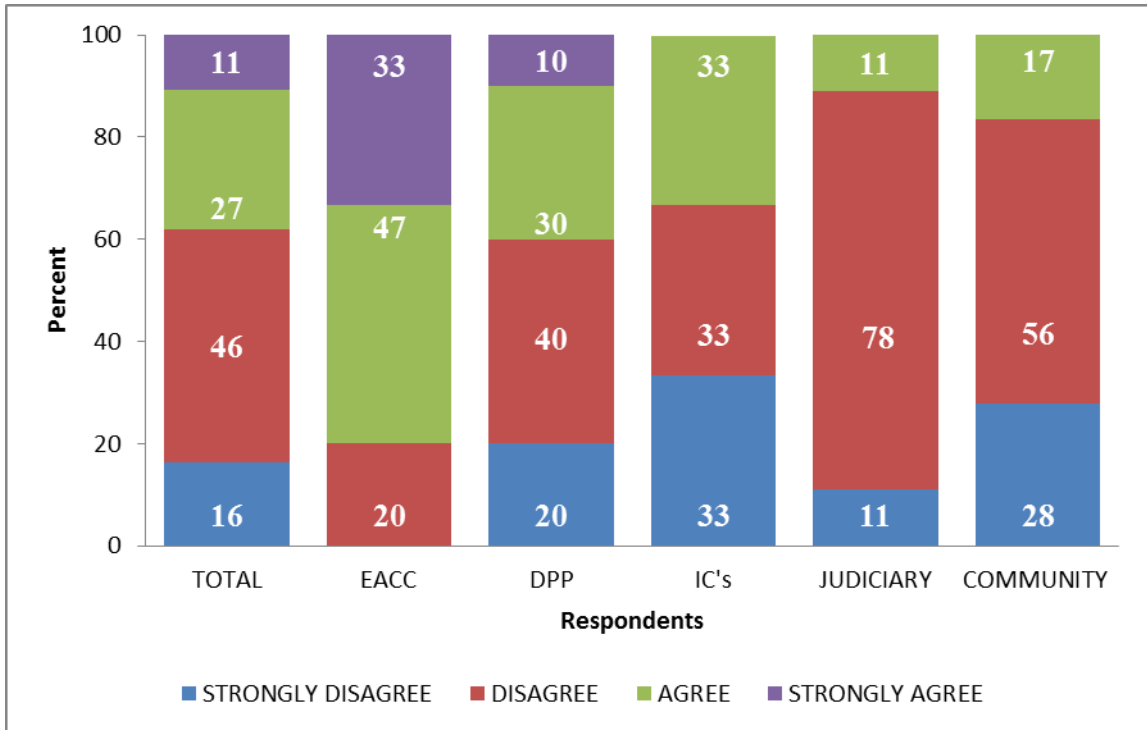
Explanations among those who agreed were almost similar to EACC in that, the prosecutors of corruption-related cases within the ODPP draw their powers as enshrined in the Kenyan Constitution (2010) and the ODPP Act of 2013. They contend that their human capacity is high as the ODPP has office and prosecutors across all counties. However, respondents attributed their unsatisfactory to ODPP's efficacy to political interference, inability of prosecutors to adduce evidence adequately due to the fact that they are not directly involved in the very formative stages of the file particularly those involving economic crimes; this often slows the judicial processes leading acquittals and discharges where the accused get the benefit of doubt.

According to a key informant from Kenya school of law and a former anticorruption head, "...<sup>2</sup>.I hold the view that EACC should have prosecutorial powers so that it is a one stop shop. The argument that it will become a monster is without merit. The evidence adduced would be tested by the court of law and conviction would be based on the weight of the evidence. They prosecute with enthusiasm because sometimes you send a file to a prosecutor who does not understand how it started; they just bangle. Regarding performance, it will be the burden of a prosecutor employed by the EACC to put much effort to achieve his/her targets. This way the case will be properly tracked and argued

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<sup>2</sup> Interview with head of Kenya school of law Principal Prof. PLO Lumumba on 11/6/2016 at his offices in Karen at 3.00pm

zealously in court hence convincing court that an offence had been committed in view of the available evidence. Production of evidence in court is as technical as the investigation itself. . . . .As we stand, the ODPP have very inexperienced prosecutors who do not measure the caliber of seasoned lawyers hired by the accused. Corruption is mostly financial and until these resources are removed from the accused through civil recovery or asset recovery agency the accused will always use them to buy their way out. . . .’<sup>2</sup>



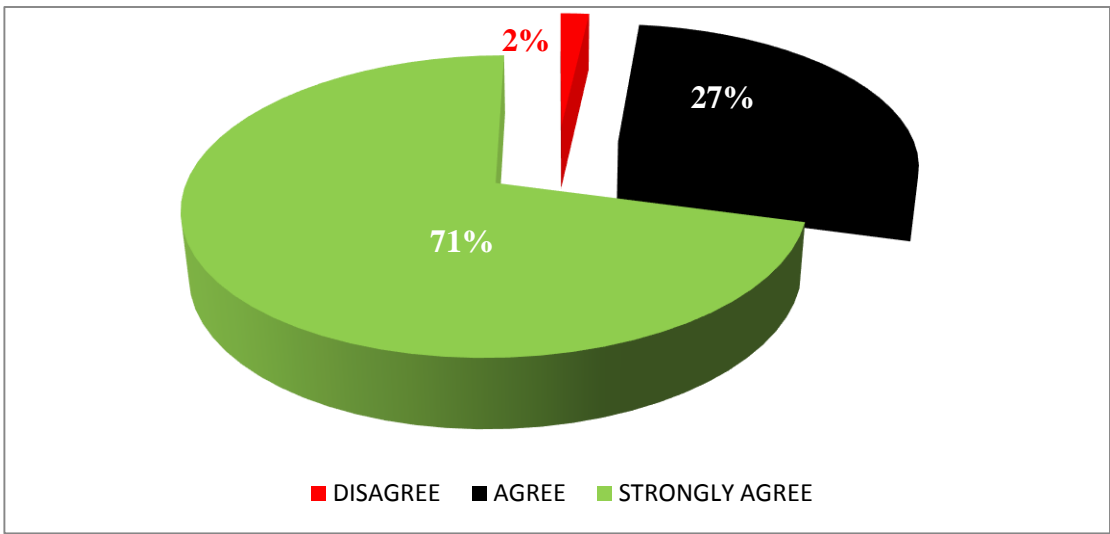
**Figure 4.2: The extent ODPP is sufficient in prosecuting corruption-related cases**

#### **4.6 The Efficacy of a joint mandate of the EACC and the ODPP**

To determine whether a a single anti-corruption agency would be a better option for fighting corruption in Kenya, the responded were asked to indicate the extent to which they agreed that a a joint mandate of the EACC and the ODPP would improve on how corruption related cases are addressed in Kenya. The results are as indicated in Figure 4.3. A majority (71%) of the respondents strongly agreed, 27% simply agreed while 2% strongly disagreed that a joint mandate of the EACC and the ODPP would improve on how corruption related cases are addressed in Kenya. The reason of asking this question was because of hardline

positions where the head of prosecution is on record saying that he will not cede the powers to EACC to prosecute their cases.

Those supporting a single agency argued that joint roles of the EACC and the ODPP would: enhance prompt evidence gathering; centralize unit of command thus avoid misunderstanding and external influence, thus fostering cooperation; do away with the blame game which slows down the processes especially in court processes. However, those who were against the joint roles of EACC and the ODPP maintained that the institutions are distinct and play different roles.



**Figure 4.3: Joint mandate of the EACC and the DPP**

#### **4.7 Ways in which the EACC and the ODPP can improve the fight against Corruption in Kenya**

The study sought to establish ways in which EACC and ODPP can improve the fight against Corruption in Kenya. In this regard, the respondents were asked to indicate the extent to which they agree or disagree with following statements: the extent EACC is sufficient in investigating corruption-related cases; the extent ODPP is sufficient in prosecuting corruption-related cases; and the Efficacy of a joint mandate of the EACC and the ODPP. The aim was to determine whether there would be improved efficiency if: EACC and the ODPP worked in collaboration and to what extent this would address

corruption in Kenya; time taken to investigate and prosecute corruption-related cases would reduce significantly if investigative process and prosecution roles are jointly performed; EACC would address corruption prevalence in Kenya if empowered to prosecute completed cases; there should be a central leadership to facilitate investigation and prosecution of corruption-related cases in Kenya; and the current independent structure of the EACC and the DPP does not facilitate easiness in the way corruption is handled in Kenya. The results are as shown in Figure 4.4.

To determine whether EACC will adequately address corruption if empowered to prosecute its corruption cases, findings are as follows: all (100%) of community respondents strongly agree that EACC would adequately address corruption in Kenya if empowered to prosecute; in the Judiciary, 67% of respondents strongly agree, 22% disagree while 11% strongly disagree with the statement; in independent commission, 67% agree, 33% strongly agree while 10% disagree; among the ODPP respondents, 60% agree, 30% strongly agree while 10% disagree; among the EACC respondents, 87% strongly agree, 7% agree while 7% disagree. In total 75% of all the respondents strongly agree, 16% agree while 7% and 2% disagree and strongly disagree respectively. The reason this question was asked because in Table 2.1 the total number of files filed in ant-corruption court in five years is 193 and those dismissed/acquitted are 94.

According to a key informant from directorate of legal services a big number of prosecutors handling anti-corruption cases are newly employed from Kenya School of law, unexperienced in matters corruption. He claimed that

“...<sup>3</sup>..... most of them are new in practice and many had not even grasped the contents of ACECA. Mostly when the exposure come is when the prosecutor sees ACECA in court when prosecuting a corruption case. The Number of cases for prosecution are

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<sup>3 3</sup> Interview with director of legal services conducted in his office on 4/7/2016 .at 11.00am

increasing as compared to work force, the few Prosecutors are not only doing corruption cases....’’<sup>3</sup>

According to a Key informant senior counsel and former chairman and president of Law Society of Kenya ‘‘<sup>4</sup>.... to some extent ODPP is influenced by people with interests. This is where there is a major problem in the justice chain....’’

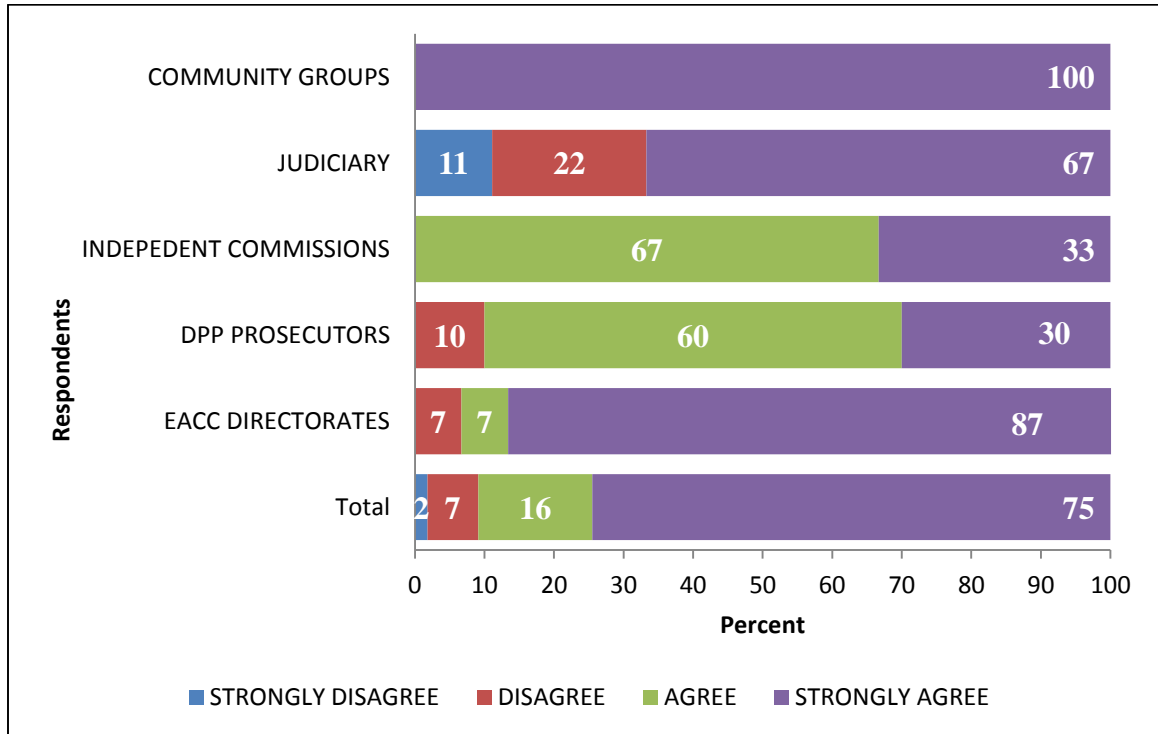


Figure 4.4: EACC will adequately address corruption if empowered to prosecute

#### 4.8. Time to investigate and prosecute will reduce if EACC & DPP roles are joined

To the question as to whether time taken to investigate and prosecute corruption cases will reduce if the investigative processes and prosecutorial strategies are combined, the results are as indicated in Figure 4.5. Among the Community respondents 56% strongly agree and 44% agree that time will reduce to investigate and prosecute. In Judiciary , 33% strongly

<sup>4 4</sup> Interview with senior counsel conducted in his office at Hazina towers on 6/7/2016 at 4.10 pm



agree, 56% agree only 11% disagree. Among the Independent Commissions respondents, 33% strongly agree, 33% agree while 33% strongly disagree and 1% disagree respectively. Among the EACC 53% strongly agree and 40% agree while 7% disagree. This question was asked because from Table 2.1, in the period of study a total of 10,555 cases were taken up for investigations and only 431 files were forwarded to DPP for prosecution. Figure 4.5 reveals that out of a total 55 respondents, 49% strongly agreed, 46% agreed with the statement while only 2% and 4% strongly disagreed and disagreed with the statement respectively.

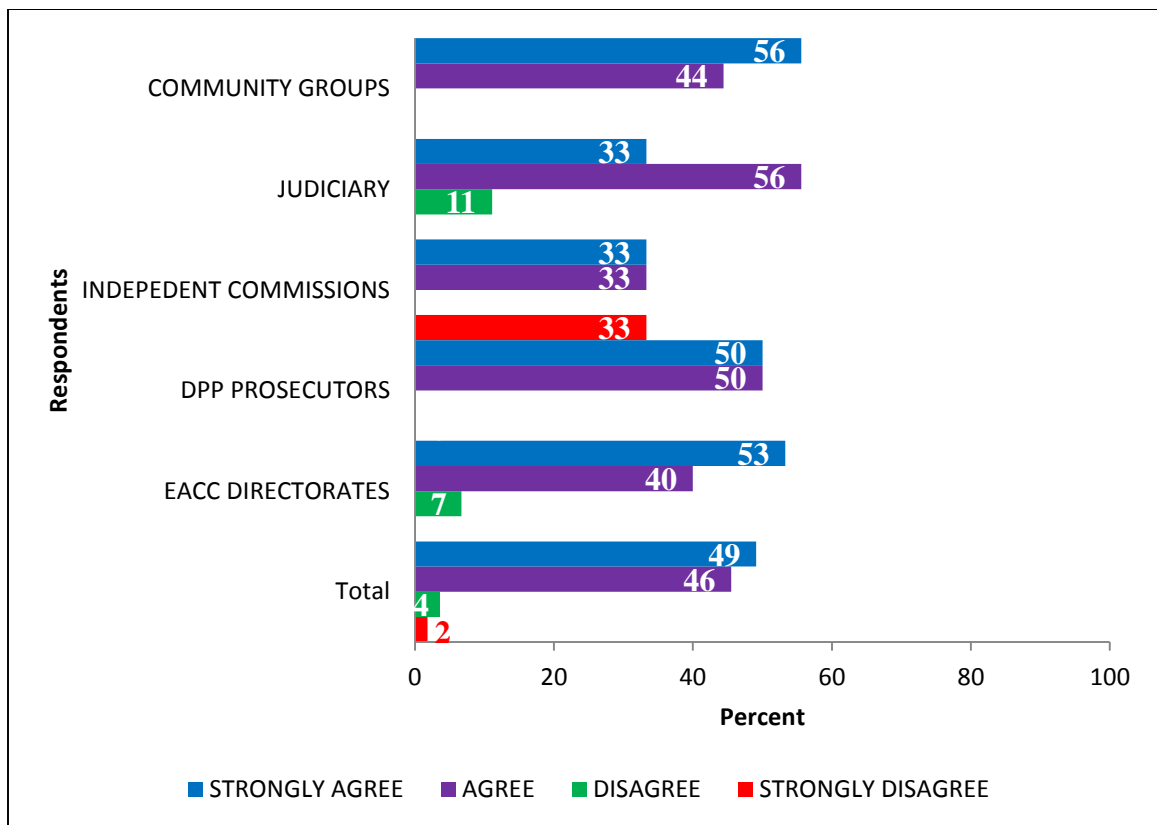
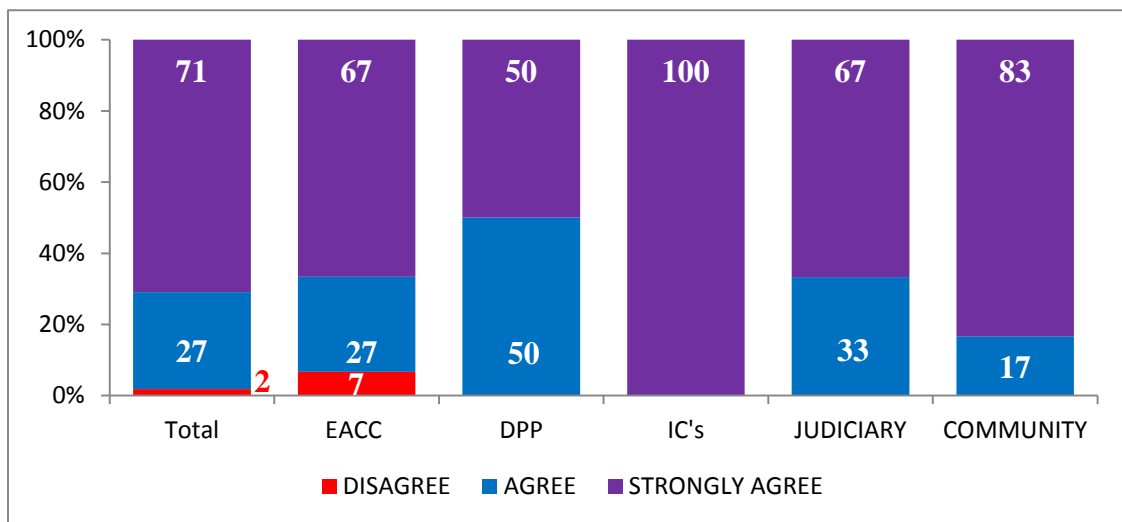


Figure 4.5: Time to investigate and prosecute will reduce if EACC & DPP roles are joined

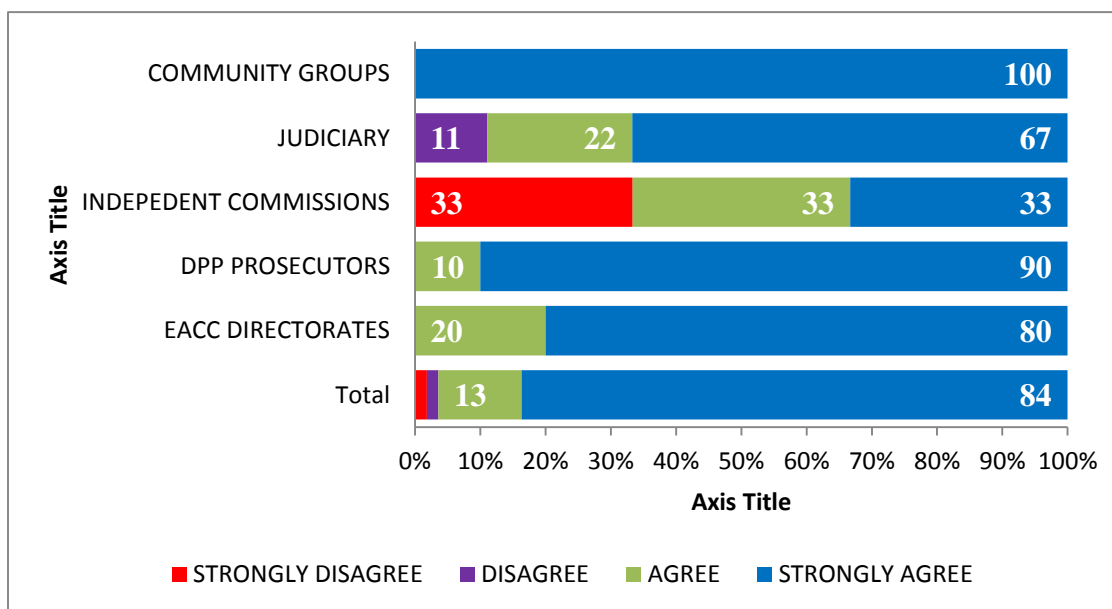
**4.9: Efficiency will improve if EACC and DPP mandate are collaborated**

To the question as to whether whether efficiency will improve if EACC and DPP mandates are collaborated in addressing corruption in Kenya, the results are as indicated in Figure 4.6. Among the Community respondents, a majority (83%) strongly agreed and 17% agreed with the statement. In the Judiciary, 67% strongly agreed and 33% agreed. Among the Independent commissions, all (100%) strongly agree. In the ODPP, 50% strongly agree

and 50% agree respectively. In the EACC, 67 % strongly agreed while 27% agreed and 7% disagree with the statement. The question was asked because in Table 2.1 despite the fact that 431 files were forwarded to DPP for prosecution only 193 files in five years were actually filed in court, 73 of these are pending before court while 94 cases have been dismissed/aquitted and only 20 cases were convicted. Figure 4.6 illustrates that in total a majority of the respondents (71%) strongly agreed, 27% agreed with the statement while only 2% of the respondents dis agreed with the statement.

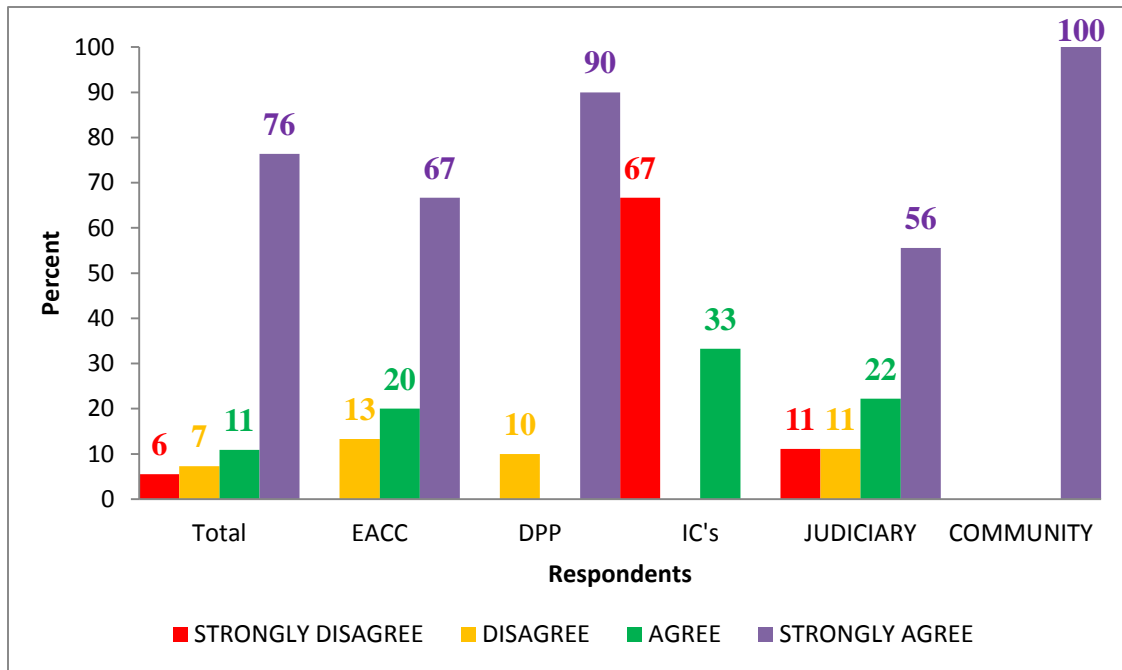


**Figure 4.6: Efficiency will improve if EACC and DPP mandate are collaborated**



**Figure 4.7: Kenya should adopt a combined agency approach for investigation and Prosecution**

In response to the question as to whether Kenya should adopt a combined agency approach for investigation and prosecution of corruption-related cases, the results are as indicated in Figure 4.7. All (100%) of the Community groups strongly agreed with the statement. In the Judiciary 67% of the respondents strongly agreed with the statement, 33% agree while 11% strongly disagreed with the statement. Among the Independent Commissions 33% of the respondents strongly agreed, 33% agreed while 33% strongly disagreed and 1% disagreed with the statement. In total 84% of the respondents strongly agreed, 13% agreed while 2% and 1% strongly disagreed and disagreed respectively on the move to adopt a centralized agency for Kenya.



**Figure 4.8: The independent structure of EACC and DPP will not end corruption**

In response to the question as to whether maintaining the current independent status of carrying out investigative processes in EACC and prosecutorial strategies in ODPP is capable of addressing corruption in Kenya, the results are as indicated in Figure 4.8. All (100%) of the Community groups respondents strongly agreed that having the two institutions separated will not help address corruption problem in Kenya. Among the Judiciary respondents, 56% strongly agreed, 22% agreed while 11% disagree and 11% strongly disagreeing respectively. Among the Independent commissions respondents, 33% agree while 67% strongly disagree. A majority (90%) of the ODDP respondents strongly agree while 10% disagree with the statement. Among the EACC respondents, 67% strongly agree, 20% agree and 13% disagree with the statement. The reason of asking the question is because despite such measures corruption is persisting. From the findings above, a total of 76% of the respondents strongly agree, 11% agree while 7% disagree when 6% strongly disagreed that having separate ant-corruption institution will effectively address corruption in Kenya .

To determine the file movement from EACC to DPP and then Court, the researcher combined the information from the annual reports of EACC (2009 to 2014) and those in

the anti-corruption court registry for the same period as shown on Table 2.1. To assess how corruption files move along the justice system chain, the data was analyzed using the Pearson correlation and the results are as indicated on Table 4.4 below. The reason why such analysis was deemed vital was to answer the media blame game between EACC and DPP where EACC is constantly giving the number of files they have submitted to DPP as per section 35 of ACECA. To counter such claim then ODPP calls the media and give the number of files he has reviewed and returned to EACC for action. This can only be derailing the fight corruption in Kenya.

Data collected from anti-corruption court registry was analyzed using Pearson correlation as below.

Table: 4.4 Pearson correlation on anti-corruption court registry

<b>Fiscal year</b>	<b>Cases taken over for investigations</b>	<b>Files Forwarded for prosecution</b>	<b>Actual Cases filed in court</b>	<b>PBC</b>	<b>Acquitted /dismissed by court</b>	<b>Convicted by court</b>
<b>2008/</b>	1270	94	37	3	28	6
<b>2009/10</b>	1281	79	49	13	27	9
<b>2010/11</b>	2448	113	41	19	19	3
<b>2011/12</b>	2183	73	18	9	7	2
<b>2012/13</b>	1423	28	20	14	6	0
<b>2013/14</b>	1950	44	28	21	7	0

Source: EACC annual reports and Nairobi anti-corruption court Registry

**Table: 4.5 Correlation Analysis on Corruption related cases in Kenya**

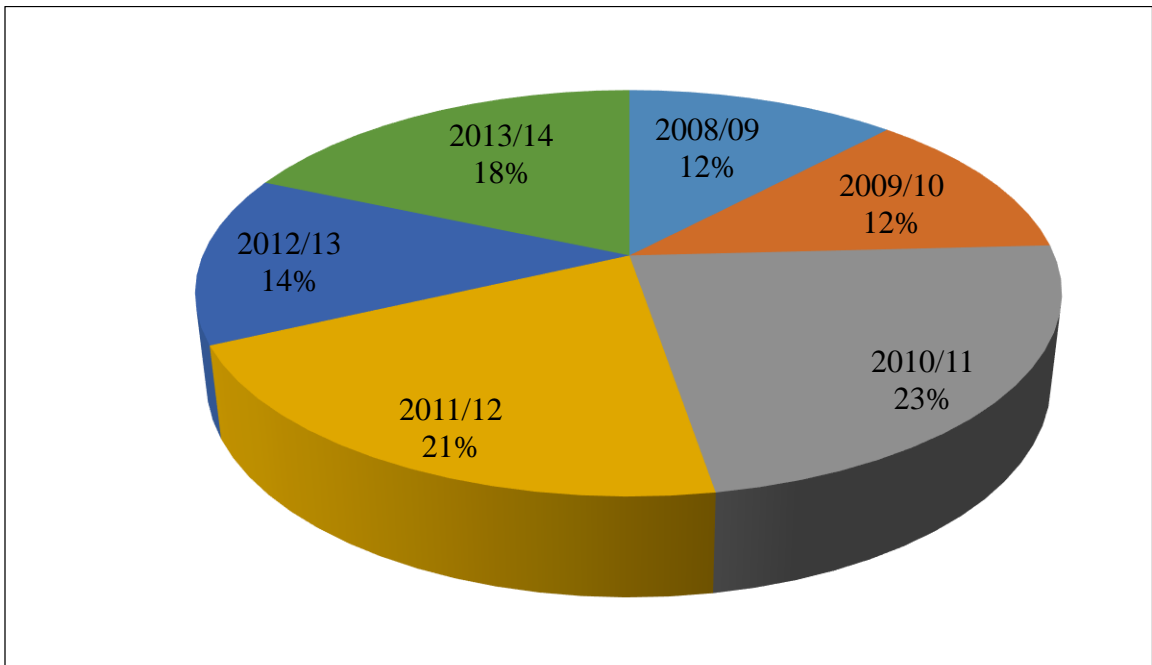
		<b>Investigated cases</b>	<b>Prosecution cases</b>	<b>Files in court</b>	<b>Convicted</b>
<b>Investigated cases</b>	<b>Pearson Correlation</b>	1	0.303	-0.228	-0.482
	<b>Sig. (2-tailed)</b>		0.559	0.664	0.333
	<b>N</b>	6	6	6	6
<b>Prosecution cases</b>	<b>Pearson Correlation</b>		1	0.636	0.578
	<b>Sig. (2-tailed)</b>			0.175	0.229
	<b>N</b>		6	6	6
<b>Files in court</b>	<b>Pearson Correlation</b>		1	.819*	
	<b>Sig. (2-tailed)</b>				0.046
	<b>N</b>			6	6
<b>Convicted</b>	<b>Pearson Correlation</b>			1	
	<b>Sig. (2-tailed)</b>				
	<b>N</b>				6

Note in Table 4.5 above, Correlation is significant at the 0.05 level (2-tailed). The correlation analyses reveal significantly positive contribution based on corruption procedures in Kenya. Based on the findings, there is a strong positive correlation ( $V = .303$ ,  $p = .559$ ) between the number of investigated files and those forwarded for prosecution. The finding can be interpreted that the more the files for investigations are opened, the more they are investigated and forwarded for prosecution. Contrary, the number of files on corruption cases investigated has a strong negative correlation ( $V = -.228$ ,  $p = .664$ ) on number of cases files in court and a weak correlation ( $V = -.482$ ,  $p = .333$ ) on the number of cases convicted. This finding could be interpreted in that, despite the number of corruption related cases being investigated, a few get their way to the courts and out of that, less cases are convicted.

On the second correlation, the findings in Table 4.5 show that the number of corruption related files forwarded for prosecution have weak positive correlation to the number of cases filed in court ( $V = .636$ ,  $p = .175$ ) and the number of cases convicted ( $V = .578$ ,  $p = .229$ ). This is an indication that the number of cases filed in court is still low despite more

files being forwarded for prosecution, thus impacting negatively on the rate of convictions. This is however not to mean that the prosecution institution is reluctant, but rather there could be other factors beside that could explain the situation. In most cases, explanations are based on insufficient evidence or lack of witnesses to biff up the cases.

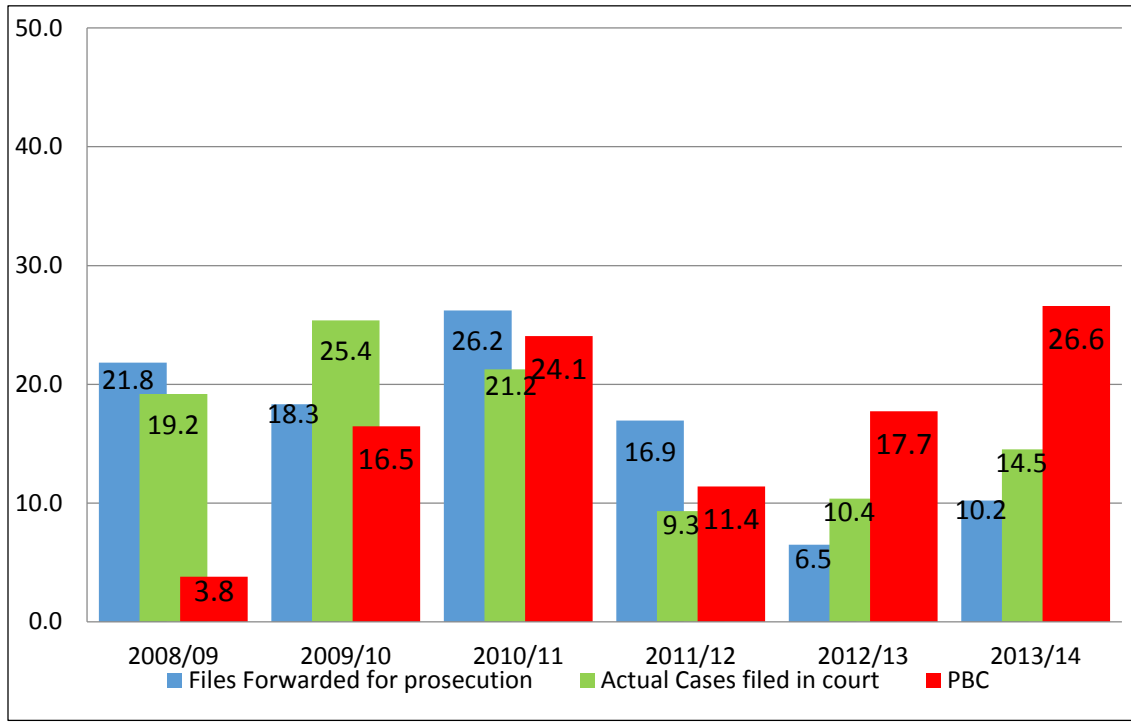
Finally, Table 4.5 illustrate a weak positive relationship between files in court and the number of cases convicted ( $V = .819, p = .046$ ). The explanation for this situation may borrow from similar issues of lack of adequate evidence and witnesses which always affects the outcomes of the court decisions; rather than conviction to go through, suspects are set free on the basis of lack of ‘enough’ evidence.



**Figure 4.9: Reported Cases for Investigations across the Years**

As illustrated in Figure 4.9, the number of corruption related cases have varied across the years. During the financial year 2010/11, 23% of the cases were registered to the anti-corruption agencies for investigations. However, the number reduced steadily to 18% in 2013/14, though an increase compared to the previous financial year. The fluctuating rate of corruption related cases registered is an indication that corruption still prevails within

the country. Moreover, the findings could indicate that containing corruption is a problem in Kenya since the numbers rise and fall unpredictably.



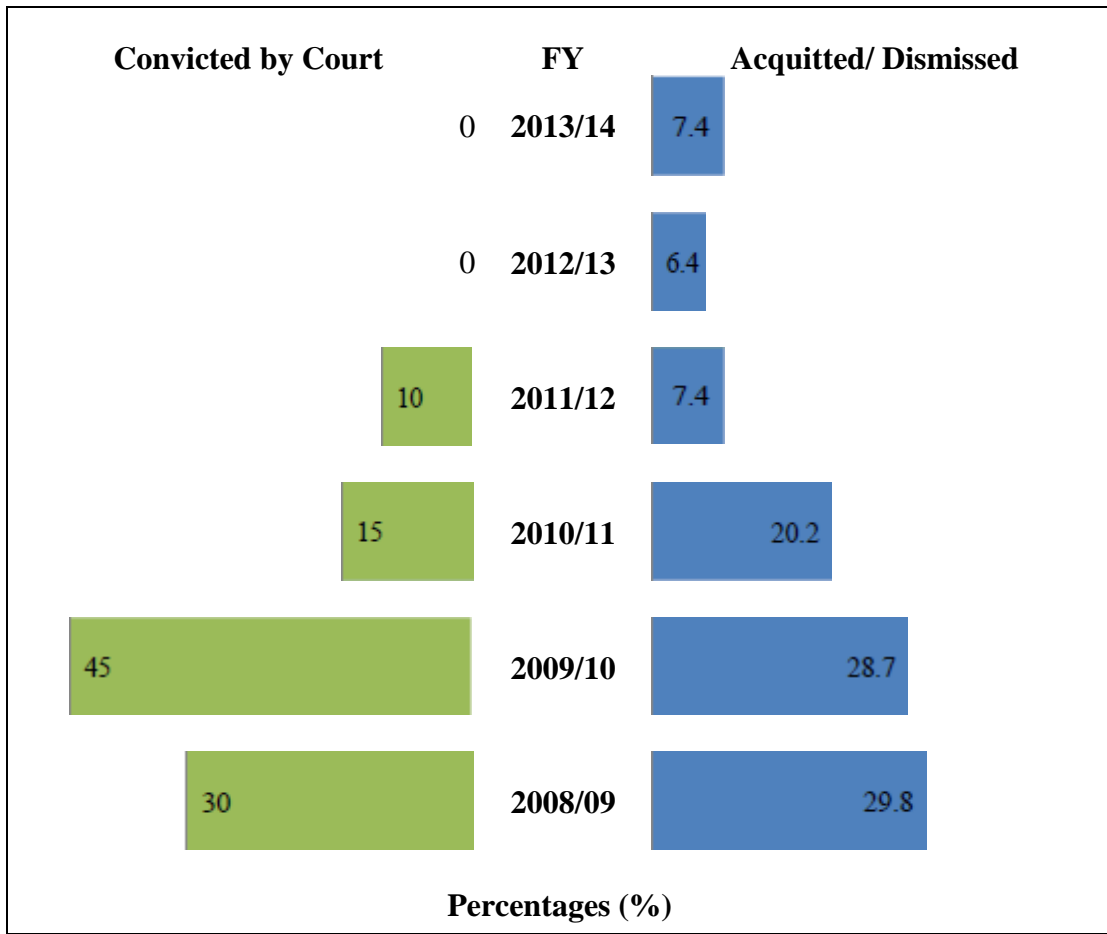
**Figure 4.10: Corruption Related File Movements**

Study findings in Figure 4.10 illustrate that the number of corruption related cases pending before the court (PBC) have tripled from 3.8% in 2008 to 26.6% in 2014. On the other hand, the number of cases filed in court have decreased since 2009 (25.4%) compared to 2014 (14.5%) and have remained slightly higher than the number of cases forwarded for prosecution in 2012 and 2013. On prosecution, the numbers of files forwarded have reduced steadily from 21.8% in 2008 to 10.2% in 2014.

The finding is a clear indication that there is a mismatch on how corruption cases are handled in Kenya. From the entry point, it is expected that cases gets to prosecution stage with all the necessary information and evidence having been reviewed by DPP and lawyers of EACC during evidence analysis to avoid delays in the hearing of cases. The fact that DPP has not defended the cases exhaustively defense counsels get an opportunity to adjourn the matter. Witnesses get tired, hostile and abscond the hearing of cases leading to



cases pending before court. This could explain the increase number of corruption related cases pending in courts.



**Figure: 4.11 Cases Convicted and Acquitted/Dismissed by Court from 2008 to 2014**

To determine why many corruption cases are dismissed in court, the researcher compared the dismissal of cases and conviction and results are as indicated in Figure 4.11 above, it is revealed that the number of convicted corruption related cases and those acquitted/dismissed have reduced significantly from 2008 to 2014. This is however not to indicate that the rate of corruption cases has reduced across the country, but a demonstration of how challenging it becomes for corruption cases being finalized in view of the weight of evidence needed. In 2009, 45% of the cases were convicted, recording the highest conviction record between 2008 and 2012. However, in 2013 and 2014, none of the cases have been concluded up to determination stage (0%).

On the other hand, 29.8% and 28.7% of the cases determined between 2008 and 2010 were acquitted/ dismissed due to a number of reasons. This could explain the reasons behind low number of convicted cases over the years. Despite dismissal, the rate of cases acquitted has reduced to 7.4%. Although this is contrary to the number of cases convicted, the findings could explain challenges in the justice chain of corruption cases in Kenya. It is the duty EACC to bring witnesses and that of DPP to lead them in court. It is the leading witnesses in court that convinces the judges to find that an economic offense had been committed or not.

## **CHAPTER FIVE: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS**

### **5.1 Introduction**

This chapter presents the summary of the study, conclusions, recommendations and areas for further research.

### **5.2 Summary of the study**

This study aimed to find out the extent to which separation of investigative processes and prosecutorial strategies has impacted on the fight against corruption in Kenya. The success of the fight indicator was how many cases have been convicted. Moreover, the study sought to examine the effects of separating investigation and prosecution strategies in the fight against corruption, to test whether combining investigation processes and prosecution strategies would improve the efficiency in fighting corruption, and finally to assess the challenges that comes with decentralization and centralization of the Anti-Corruption Agencies.

From the literature review, it is evident that managing corruption depends on how investigation and prosecution of corruption-related cases are undertaken. Whereas investigation takes the form of collecting relevant information pertaining to actions that are deemed corrupt, prosecution on the other hand is based on the legal proceedings within a court setup. Across the world, corruption has been termed as a number one problem for countries with actions that lead to bribery, fraud, and embezzlement/misappropriation of public funds, abuse of office, breach of trust or any offence of dishonesty characterizing the norm. Many studies done in western countries have shown that corruption is best addressed if the vice is handled from a single command because it is a process.

In addressing corruption, different countries have opted for creation of anti-corruption agencies to curb corruption prevalence. Such Agencies are bestowed with either investigation or prosecution powers (multiple-agency approach), or both investigation and prosecution powers (single-agency approach). In Kenya, the Ethics and Anti-Corruption Commission (EACC) is the major agency mandated to undertake independent

investigations of corruption-related cases while the Office of Director of Public Prosecutions (ODPP) is mandated to decide whether to prosecute or not. However, corruption is still prevalent in the country. Therefore, the study's objective to examine the extent to which separation of investigation and prosecution has affected Kenya's success in the fight against corruption.

### **5.2.1 Study findings**

From the findings it clear that both the EACC and ODPP have a clear understanding of their mandate. A majority of the participants agreed that the EACC's investigative processes and DPP's prosecutorial strategies should be merged together so as to increase collaboration in addressing corruption in Kenya. This would eliminate institutional monopoly, discretion due to interests, and increase accountability. However, issues such as resource allocation, human capacity, and financial facilitation were among factors that respondents recommended for EACC; while for DPP, there was need to avoid external influence, need to work closely with investigators, and the need to ensure the evidence gathered is watertight for credible defense during court process.

It was further established that the efficiency of the EACC and the ODPP would be improved if the two institutions worked in collaboration; time taken to investigate and prosecute corruption-related cases would reduce significantly if investigation and prosecution roles are jointly performed; the EACC would address corruption prevalence in Kenya if empowered to prosecute completed corruption-related cases; there is need for a central leadership point to facilitate investigation and prosecution of corruption-related cases in Kenya, and finally the current independent structure of the EACC and DPP does not facilitate easiness in the way corruption is handled in Kenya.

In trying to answer the question as to why corruption has continued to persist despite using a lot of resources, most of the interviewees cited political interference in the fight against corruption in Kenya. In explaining the assertion, they cited the latest list of shame read by the President in Parliament calling on senior government officers to step aside until investigations were concluded by the EACC. Despite being a bold move by the president,

not much has been concluded. Rather it was turned into politics and the suspects went back to their community cocoons claiming that the purge against corruption was aimed at ‘finishing’ some communities. The situation was aggravated by the Eng. Kamau’s; the former Cabinet Secretary Ministry of Transport and infrastructure ruling that all cases done by the EACC during the period the Commission had shortage of quorum of commissioners were null and void. The ruling did a blow to the efforts of EACC in fighting corruption. On whether Parliament had hindered the fight against corruption by not actualizing Article 157(12), over three quarters of the interviewees agreed with the question as giving the commission powers to prosecute their cases would greatly improve its efficiency.

### **5.3 Conclusions**

The study on the extent to which separation of investigative processes and prosecutorial strategies has impacted gravely on the fight against corruption in Kenya revealed that corruption would be well managed if the separate roles of the EACC and the DPP are enjoined. With high levels of awareness of the mandate EACC and DPP plays in relation to corruption, it was suggested that efficacy in reducing corruption prevalence can be achieved by merging the investigation and prosecution roles. Ideally, EACC and DPP working together would enhance collaboration and reduce procedures that derail serving justice. Arguably, the separate entities encounter challenges which in the long run, affect the way corruption is managed in Kenya. It can therefore be deduced that, the existing challenges faced by the EACC and DPP separately slows down the war on corruption especially in processes involved, increases avenues for external interferences, and brings about blame game on evidence gathered and court processes.

A combination of investigation and prosecution roles was highly supported by respondents in this study. It was obvious that enjoining the EACC and DPP roles would increase collaboration in investigating and prosecuting cases, which was found to be lacking and affecting the processes. Moreover, it was agreed that as a country, Kenya should adopt a centralized agency approach which has a central unit of command. This model would ensure that only one head, in control of both investigation and prosecutions of corruption-related cases, calls the shots.

Challenges that come with decentralization and centralization of the Anti-Corruption Agencies were also elaborated in this study. With the decentralized agencies in Kenya, respondents highly felt that separation of the EACC and DPP is not sufficient in addressing corruption in Kenya. Factors such as lack of cooperation, monopoly in decision making, blame game, and long court processes were described as hindrance within a decentralized anti-corruption agency. On the other hand, centralized agencies were supported to be the best approach; however, respondents identified lengthy legal provisions to change the constitution as the major challenge that may be encountered.

The findings support the guiding theory used in this study. First, the study illustrates how addressing corruption-related cases take different forms to achieve zero rating of corruption in the country, thus supporting the 'no one best way to manage.' Secondly, the study established the need of reorganizing their structures and procedures to ensure that factors that affect investigation and prosecutions are well managed, hence, fit the environment they exist in. Finally, the findings support contingency theory in that, the management style of the EACC and DPP was highly recommended to be reorganized so as to have a centralized leadership point which would enhance cooperation of the different tasks.

#### **5.4 Recommendations**

Based on the findings of the study, the following are recommended: -

- i. From the efficacy of EACC and ODPP, teaming up investigators and prosecutors for better results seem to be the overriding statement. To do this it is recommended that ODPP seconds prosecutors to EACC so as to concentrate on the corruption cases being pursued in court.
- ii. The study established that EACC must encounter challenges of capacity and independence. To address this, it is recommended three quarters of EACC staff should mainly be investigators. The Commissioners should be in charge of the commission as they have tenure of office anchored in the constitution as opposed to the secretariat who can be easily intimidated by politicians and hence affecting the fight against corruption in Kenya.

- iii. There were claims that the ODPP employs inexperienced prosecutors who lack the ability to adduce evidence in court adequately. Based on this revelation, it is recommended that all prosecutors being assigned corruption cases, must be trained exhaustively on how to handle corruption cases.
- iv. On whether EACC should be given powers to prosecute corruption cases, the study recommends that parliament must actualize article 157(12) by legislating to give EACC exclusive powers to prosecute their investigated cases. This would ensure accountability on all corruption issues rest with it rather than blame games whenever the fight is scattered between investigation and prosecution processes.
- v. Finally, it is highly recommended that policy makers ensure EACC is in every county as Kenya has devolved power and resources so also corruption has followed the resources in counties.

## **5.5 Suggestions for further studies**

Based on the findings in this study, further research on the following can be conducted: -

- i. A study to assess the efficacy of EACC and ODPP working groups on the time frame taken to complete corruption-related case through the justice chain.
- ii. A study to assess who is most suited to head a joint group for investigators and prosecutors and who should they report to whether the in-charge should be alternate between the EACC and ODPP.

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## **APPENDIX I: Letter of Introduction**

Dear Respondent,

My name is M'Mutiga Wilfred Gituma a student at Nairobi University, currently pursuing a Master's degree in Public Administration. I am conducting a research on the **“Effectiveness of investigation and prosecution strategies under one command in the fight against corruption.”** You have been identified as a respondent in this study. Kindly provide the information that has been requested. Any information given will be used for this study only and will be treated with utmost confidentiality.

Thank you.

**APPENDIX II: Questionnaire for Respondents**

**Section A: General information (tick where appropriate)**

1. Which department do you represent?

	Management (Chairperson, Commissioner, CEO or D/CEO)
	EACC Directorates
	Independent Commissions
	Religious Organizations

2. How many years have you been in this position?

	Less than 2 Years
	2 – 4 Years
	5 Years and above

3. Are you aware of the role of the Ethics and Anti-Corruption Commission (EACC) in addressing corruption-related cases in Kenya?

No ( )    Yes ( )

4. Are you aware of the role of the Director of Public Prosecutions (DPP) in addressing corruption-related cases in Kenya?

No ( )    Yes ( )

**Section B: In the sections below, indicate whether you Strongly Disagree, Disagree, Agree, or Strongly Agree (tick where appropriate)**

5. In view of the mandate of the EACC, to what extent do you agree that the EACC is sufficient in investigating corruption-related cases?

Strongly Disagree ( )    Disagree ( )    Agree ( )    Strongly Agree ( )

Expound your

response\_\_\_\_\_

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6. In view of the mandate of the DPP, to what extent do you agree that the DPP is sufficient in prosecuting corruption-related cases?

Strongly Disagree ( )    Disagree ( )    Agree ( )    Strongly Agree ( )

Expound your

response\_\_\_\_\_

7. In view of EACC and DPP mandate, do agree that a joint role for both EACC and DPP would increase how corruption-related cases are addressed in Kenya?

Strongly Disagree ( )    Disagree ( )    Agree ( )    Strongly Agree ( )

Expound your response\_\_\_\_\_

**Section C: In the sections below, tick whether you Strongly Disagree (SD), Disagree (D), Agree (A), or Strongly Agree (SA) with the following statements**

No.	Statements	SD	D	A	SA
1.	EACC would address corruption prevalence in Kenya if empowered to prosecute completed cases				
2.	Time taken to investigate and prosecute corruption-related cases would reduce significantly if investigation and prosecution roles are jointly performed				
3.	There would be improved efficiency if EACC and DPP work in collaboration to address corruption in Kenya				
4.	There should be a central leadership to facilitate investigation and prosecution of corruption-related cases in Kenya				
5.	The current independent structure of the EACC and DPP does not facilitate easiness in the way corruption is handled in Kenya				

**APPENDIX III Interviewee guide**

**Q1.** Kenya has been fighting corruption for so long now since the enactment of Prevention of corruption Act of 1956, yet we don't seem to be reducing the vice despite even anchoring EACC in the constitution under Art. 79. What is wrong?

**Q2** The National anti-corruption plan was developed after 2003 to guide the fight against corruption before the launch of KACC strategic plan 2006 to 2009. How come much of this National plan has not been implemented regarding the enforcement of anti-corruption legislations?

**Q3** Comment on the adequacy of investigative processes of corruption performed by EACC?

**Q4** Comment on the adequacy of prosecution of corruption performed by ODPP?

**Q5.** Do you think combining the investigative processes of corruption with their prosecution would improve their execution in the fight against corruption in Kenya?

**Q6.** What in your view is the biggest hindrance in the fight against corruption when it comes to its investigation and prosecution in Kenya?

**Q7.** Do you think Parliament has hindered the fight against corruption by not actualizing Article 157 (12) of our constitution stating inter alia that “Parliament may legislate to give prosecutorial powers to any other body other than the DPP” to give Kenya a prosecutor led corruption investigations?

Please explain

**Q8** why don't we have a National anti-corruption strategy in Kenya this far?

***THE END***

