

Our Ref: CAJ/AG/001/850/13/VOL.1 - EO

10th September 2013

His Excellency, Hon. Uhuru Muigai Kenyatta, CGH

President and Commander-in-Chief of the Defence Forces
of the Republic of Kenya

State House

NAIROBI

**RE: APPOINTMENT OF COMMISSIONERS TO THE KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS**

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

Your Excellency, this Commission is a Constitutional Commission established under Article 59(4) of the Constitution, and the Commission on Administrative Justice Act, 2011. The Commission is empowered to, among other things, investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government, and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. Additionally, the Commission has a quasi-judicial mandate to deal with maladministration, and to adjudicate on matters relating to administrative justice. Further, and through Advisory Opinions, the Commission is expected to render proposals on improvement of public administration, including review of processes and procedures where appropriate.

Your Excellency, we have received a complaint from the Law Society of Kenya in respect of the appointment of the Chairperson and Members of the Kenya National Commission on Human Rights. The Commission is particularly concerned by the delay in making the said appointments even after the names were forwarded upon conclusion of the Court case regarding the appointments on 16th August 2013.

Your Excellency, we wish to give a brief background of the issue at hand. The Kenya National Commission on Human Rights (KNCHR) is a Constitutional Commission created under Chapter Four and Chapter Fifteen of the Constitution. Pursuant to Article 59(4) of the Constitution, Parliament enacted the Kenya National Commission on Human Rights Act in August 2011 to restructure the Kenya National Human Rights and Equality Commission.

Subsequent to the enactment of the Act, a Selection Panel headed by the Chairman of the Law Society of Kenya was constituted to commence the appointment of the Chairperson and Members of KNCHR. The Selection Panel interviewed the shortlisted candidates in August 2012, and pursuant to section 11(5) of the Act, forwarded the names of eight (8) nominees for the position of Member of KNCHR to His Excellency President Mwai Kibaki, as he then was, for appointment. However, the Selection Panel did not forward the names of the nominees for the position of Chairperson since they were unable to get suitable candidates for the position, and they advised that the position be advertised afresh.

However, the appointment process was temporarily stopped by a Court Order on 3rd September 2012 following a suit filed in the **High Court Petition No. 385 of 2012**. Despite the foregoing, on 28th September 2012, the Court allowed the Selection Panel to proceed with the interviews for appointment of the Chairperson. The Selection Panel proceeded to shortlist and interview candidates for the position of Chairperson, and thereafter forwarded the names of three nominees to the President for appointment on 28th December 2012. Your Excellency, the concern is that no appointment has been made for the position of Chairperson of KNCHR after forwarding of the names of three nominees in December 2012, noting the fact that the appointment of the Chairperson was not barred by the matter before the Court.

Your Excellency, in relation to the appointment of Members of KNCHR, the matter before the Court was eventually determined on 16th August 2013 when the Petition was dismissed thereby paving way for their appointment. The plea, therefore, is the need to make the appointments so as not to pose a danger to public administration in relation to full and effective implementation of the Bill of Rights under Chapter Four of the Constitution.

Your Excellency, we wish to draw your attention to Section 11(6) of the Kenya National Commission on Human Rights Act which is relevant to the issue at

hand, and which outlines the procedure for appointment of the Chairperson and Members of KNCHR once the names of the nominees have been forwarded to the President by the Selection Panel. The said Section provides that the President shall nominate the Chairperson and Four Members of KNCHR within seven (7) days of receipt of the names forwarded by the Panel, and thereafter forward the names to the National Assembly for approval.

Your Excellency, the cited section provides the timeline and clarity to the process of appointment of the Chairperson and Members of KNCHR. It is our humble view that the timeline for the appointment of the Chairperson began running from 28th December 2012 for the above stated statutory period of seven (7) days, after which the name of the nominee would have been forwarded to the National Assembly for approval. On the other hand, the appointment of Members of the KNCHR could only be done after the determination of the suit against the appointment process, which eventually took place on 16th August 2013 with the dismissal of the suit. In this regard, the timeline became operational from 16th August 2013 for the statutory seven (7) days before the names of the four nominees are forwarded to the National Assembly for approval.

Your Excellency, we take note of the important role that KNCHR has been empowered to play in our constitutional dispensation, particularly, in relation to the protection and promotion of human rights. In this regard, we wish to humbly request that the Chairperson and Members of the KNCHR be appointed at the very earliest convenience, to avoid further legal challenges.

Your Excellency, we assure you of our highest regards and commit to every effort to support the Government in its commitment in improving public administration.

Yours Sincerely,

CMMR. OTIENDE AMOLLO, EBS
CHAIRPERSON, COMMISSION ON ADMINISTRATIVE JUSTICE

Our Ref: CAJ/AG/001/850/13/VOL.1 - EO

11th September 2013

Mr. Erick Mutua

Chairman

Law Society of Kenya

Lavington, Opp. Valley Arcade, Gitanga Road

P. O. Box 72219 - 00200

NAIROBI

Dear

**RE: APPOINTMENT OF COMMISSIONERS TO THE KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS**

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We acknowledge receipt of your letter dated 29th August 2013 on the above captioned matter, contents whereof we have noted. We wish to inform you that we have since written to the President concerning the matter, requesting him to appoint the Chairperson and Members of the Kenya National Commission on Human Rights.

We thank you for your continued co-operation and assure you of our highest regards.

Yours Sincerely,

CMMR. OTIENDE AMOLLO, EBS
CHAIR OF THE COMMISSION

Cc:

Mrs. Patricia Nyaundi

Commission Secretary/Chief Executive Officer

Kenya National Commission on Human Rights

CVs Plaza, Kasuku Road, Off Lenana Road

P. O. Box 74359- 00200

NAIROBI