

**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
**“OFFICE OF THE OMBUDSMAN”**



***Hata Mnyonge ana Haki***

**ADVISORY OPINION TO THE PRESIDENT ON THE APPOINTMENT OF DIRECTORS TO  
THE CENTRAL BANK OF KENYA**

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Your Excellency, as you are aware 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, and 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, our attention has been drawn to the information in the media relating to the appointment of the Directors to the Central Bank of Kenya. In particular, our attention has been drawn to the inordinate delay in appointing the Directors since the expiry of the term of the immediate former directors in March 2015. While we note that the Chairman of the Board of Director, Mr. Mohammed Nyaoga, was appointed on 19<sup>th</sup> June 2015, the absence of Directors for over one year has meant that the Board cannot carry out its duties as required by the Central Bank of Kenya Act thus inhibiting the operations of the Bank.

Your Excellency, we wish to draw your attention to Section 11(2) of the Central Bank of Kenya Act, which provides for the procedure for appointment of the Board of Directors. The Section provides that:

*“The directors appointed under paragraph (d) of subsection (1) shall be appointed by the President with the approval of Parliament and shall hold office for a period of four years but shall be eligible for re-appointment for one further term of four years”*

Further, Section 12(1) states that “the Chairperson **shall** convene meetings of the Board not less than **once in every two months**” while Section 12(2) provides that “a quorum for any meeting of the Board shall be the Chairperson, the Governor and **three directors.**”

Your Excellency, the above cited provisions expressly vest the appointment of the Directors of the Bank in your Office. In addition, they provide for meetings of the Board to be held once in every two months with the quorum of at Five members, including at least three Directors. The upshot of the foregoing is that no meetings of the Board have been held since March 2015 which expressly contravene the above cited provisions of the Act. Ultimately, it means that the Board has been unable to carry out its functions in line with the law due to the absence of the Directors.

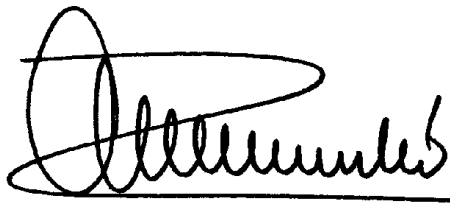
Your Excellency, the effect of the above foregoing cannot be understated due to the susceptibility of constitutional and legal challenges that may arise for any decision taken by the Bank in the absence of the Board. Specifically, the challenge may arise in the context of Article 231(4) of the Constitution on the printing of new currency which remains suspended due to the absence of the Directors. Similarly, the Board has been unable to discharge its policy and strategic functions in relation to the fulfilment of the mission of the Bank. For instance, issues relating to the stability of the financial sector are usually carried out by the Board whose absence means that the Bank cannot effectively monitor the financial sector.

Your Excellency, in recent times the role of Central Bank in economic development has become more critical. Moreover, substantial risks and negative consequences associated with improper banking practices have also been unearthed since the appointment of the current Governor of the Bank. In light of this, the regulator must be at the forefront of good corporate

governance. Simply put, the supervisory role of the Central Bank of Kenya cannot operate efficiently in the absence of good corporate governance.

We cannot overstate the likely implications of an inadequate and non-functional Board on the economy of the country. It is, therefore, important to examine the oversight functions of the Board, including *“keeping under constant review the performance of the Governor in discharging the responsibility of that office.”* This is a check-and-balance relationship that drives the effectiveness of the Bank.

In light of the above, we humbly request you to appoint the Directors of the Bank as a matter of urgency in accordance with the Central Bank of Kenya Act to enable the Bank carry out its functions effectively.

A handwritten signature in black ink, appearing to read 'Otieno Amollo', written over a horizontal line.

**DR. OTIENDE AMOLLO, EBS**  
**CHAIRPERSON OF THE COMMISSION**