

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



***Hata Mnyonge ana Haki***

**ADVISORY OPINION TO THE PRESIDENT ON DELAY IN APPOINTING A SUBSTANTIVE  
HOLDER OF THE OFFICE OF THE REGISTRAR OF POLITICAL PARTIES**

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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 delay in appointing a substantive holder of the Office of Registrar of Political Parties. In particular, we note that the current holder of the Office, Ms. Lucy Ndung'u has been acting for over Four Years since the enactment of the Political Parties Act, 2011. While we note that the Political Parties Act provided for a transition to the new dispensation, the position of the Registrar was to be filled in accordance with the law without further delay. The “acting capacity” by the then Registrar was a temporary measure and part of the transition process to the new regime under the Act; it was never intended to be perpetual. It is trite law that a person cannot hold office in that capacity *ad infinitum*. The import of the foregoing is

that the position has been vacant since a substantive holder has not been appointed.

Your Excellency, we wish to draw your attention to Section 34(a) and the Seventh Schedule of the Political Parties Act which provide for the procedure for appointment of the Registrar and Assistant Registrars. The Section provides that:

*“...occurrence in the vacancy in the Office of the Registrar of Political Parties or the Assistant Registrar, the President shall, with the approval of the National Assembly, appoint a Selection Committee comprising—*

- a) a Chairperson who shall be nominated by the President*
- b) one person nominated by the Law Society of Kenya;*
- c) one person nominated by the Institute of Certified Public Accountants of Kenya;*
- d) one person nominated by the Association of Professional Societies in East Africa;*
- e) two persons nominated by the political parties represented in the National Assembly according to their proportion of members in the Assembly; and*
- f) two persons nominated by the political parties represented in the Senate according to their proportion of members in the Senate.”*

To this end, the Seventh Schedule stipulates a clear procedure and timeline for nomination by the Selection Committee. In particular, Section 6 of the Seventh Schedule clearly states that:

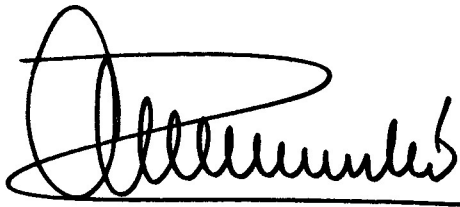
*“Whenever a vacancy arises in the office of Registrar or Assistant Registrar, the President shall, **within twenty-one days of the vacancy**, with the approval of the National Assembly, appoint a Selection Committee consisting of the persons specified in Section 34(1)”*

Once nominated and approved, the Selection Committee is required to competitively appoint a new Registrar by advertising the vacancy within seven (7) days, interview the shortlisted candidates and forward names of three nominees to the President for appointment.

It is clear from the foregoing that the Act envisaged that the position of Registrar of Political Parties would be filled immediately on its enactment owing to the

significant responsibilities bestowed upon the holder of that Office. In this regard, the failure to appoint a substantive Registrar would contravene the express provisions of the Act and create unnecessary legal and political challenges.

In light of this, we humbly advise that the position be declared vacant as a matter of urgency to facilitate the recruitment of a substantive holder in line with Article 10 and 232 of the Constitution. The need for a substantive holder of that Office becomes significant as approach the general elections scheduled for August 2017.

A handwritten signature in black ink, appearing to read 'Otieno Amollo', written in a cursive style. The signature is positioned above a solid horizontal line.

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