

# **THE COMMISSION ON ADMINISTRATIVE JUSTICE** ANNUAL REPORT 2013



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## ABBREVIATIONS AND ACRONYMS

AOMA	African Ombudsman and Mediators Association
AORC	African Ombudsman Research Centre
ASK	Agricultural Society of Kenya
CAJ	Commission on Administrative Justice
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission
ICT	Information, Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IEC	Information, Education and Communication
IOI	International Ombudsman Institute
IPCRM	Integrated Public Complaints Referral Mechanism
JSC	Judicial Service Commission
KICD	Kenya Institute of Curriculum Development
KIE	Kenya Institute of Education
KNCHR	Kenya National Commission on Human Rights
KRA	Kenya Revenue Authority
MDA	Ministries, Departments and Agencies
MOU	Memorandum of Understanding
NCAJ	National Council for the Administration of Justice
NCIC	National Cohesion and Integration Commission
NLC	National Land Commission
PCSC	Public Complaints Standing Committee
TSC	Teachers Service Commission
UNDP	United Nations Development Programme

## STATEMENT FROM THE CHAIRPERSON

I have the pleasure to once again present the Annual Report of the Commission on Administrative Justice in line with Article 254 of the Constitution and Section 53 of the Commission on Administrative Justice Act, 2011. This is the Second Annual Report issued under my stewardship of the Commission, and covers the 12 months' period between January and December 2012.

The Commission, also known as the Office of the Ombudsman, is an independent Commission established by the Commission on Administrative Justice Act, pursuant to Article 59(4) of the Constitution. The primary mandate of the Commission is to address all forms of maladministration, promote good governance and efficient public service delivery through effective complaints handling and dispute resolution in Kenya. Towards this end, the Commission investigates instances of abuse of power, unreasonable delay, discourtesy, misbehaviour, incompetence, ineptitude, manifest injustice, unfair treatment and unresponsive conduct by public institutions and public officers.

The year 2013 was a defining period for the Commission. It was the period when the Commission made great strides in discharging its mandate. This was mainly achieved through institutional strengthening, enhancement of complaints management and collaboration with other institutions. In particular, the Commission developed its first Strategic Framework which outlines the key priority areas, strategies and activities for the Commission from 2013 to 2016. Similarly, the Commission developed and gazetted its Regulations in accordance with section 56 of the Act to fully operationalise the Commission and enable it to implement various aspects of its mandate. Pursuant to this, the Commission adopted a robust approach to resolution of complaints in the public sector through mediation, negotiation and conciliation.

In order to enhance its capacity, the Commission successfully recruited the second batch of staff to strengthen the Secretariat and also enhanced the infrastructure development which enabled it to delink from the Office of the Deputy President (formerly Office of the Prime Minister) by relocating to an independent and more accessible office in Westlands, and also establish two branch offices in Mombasa and Kisumu.

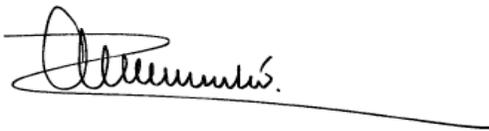
At the international level, the Commission powerfully engaged with Ombudsman Institutions on matters of administrative justice and good governance. This was achieved through successful admission to the International Ombudsman Institute, and participation in activities of the African Ombudsman and Mediators Association and the African Ombudsman Research Centre. As part of this engagement, the Commission successfully held the first ever Regional Colloquium of African Ombudsmen in Nairobi in September 2013 that discussed ways of enriching the quality and effectiveness of the work of the Ombudsman in Africa.

The impact of these activities is manifested in the exponential increment in the number of complaints and contacts handled by the Commission in the reporting period which rose

from 4,062 in 2012 to 18,257 in 2013. Similarly, the rate of resolution of complaints and contacts rose from 34 percent in 2012 to 62 percent in 2013. In addition, the activities have created unprecedented consciousness in the public sector on service delivery and good governance. The citizenry is now more than ever before aware of the right to good public administration and is demanding transparency, accountability and responsiveness from public institutions and officers.

In spite of the foregoing, the Commission encountered institutional and operational challenges in the execution of its mandate. Some of the challenges included budgetary constraints, limited presence countrywide, insufficient statutory framework, low staff capacity and impunity in the public sector. The foregoing notwithstanding, the Commission has adopted a number of strategies aimed at overcoming the challenges. Part of these strategies include the leverage on technology to increase accessibility and efficiency, increased sourcing of resources from donors and partners, enhancement of public sector reforms through complaints handling, use of alternative disputes resolution methods, awareness creation through outreach programmes and partnership with county governments and other stakeholders and

Evidently, the Commission has lived its slogan '*Hata Mnyonge ana Haki*' by curving a niche as the advocate and defender of the public. As we move forward, we have chosen to adopt a simplified version of explaining our mandate by simply stating that "we fight impunity in Public Office." I, therefore, urge all Kenyans to partner with the Commission in its endeavour to create responsiveness and servant hood in public offices in the Country.



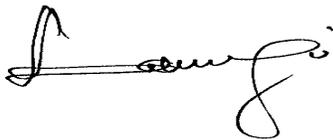
CMMR. OTIENDE AMOLLO, EBS  
CHAIRPERSON OF THE COMMISSION

## FOREWORD

The Commission on Administrative Justice is delighted to present its Second Annual Report since inception. The presentation of the Report marks a defining moment in the administrative justice landscape in Kenya. It details the activities of the Commission during the year 2013, achievements, challenges and the way forward. Further, the Report documents the progress made in the implementation of the mandate of the Commission and highlights opportunities for collaboration with stakeholders.

In order to effectively discharge its mandate, the Commission laid a sound foundation which enabled it to make tremendous progress. This was mainly achieved through strengthening of the Secretariat, infrastructure development, and focused and innovative approaches to complaints management and promotion of good governance and constitutionalism. The progress would not have been possible without the unrelenting support and guidance of the Commissioners who continued to provide strategic direction and leadership, and the commitment and teamwork of the Secretariat.

I wish to thank the Commissioners and staff for their commitment and discipline that enabled the Commission to set the pace in matters of administrative justice and good governance. Similarly, I wish to acknowledge the support provided by various stakeholders during the reporting period. In particular, I wish to thank the Government and the United Nations Development Programme for the budgetary support that enabled the Commission to actualize its mandate. The Commission is committed to realizing its vision and mission, and continuously collaborate with other stakeholders in enforcing administrative justice and promoting constitutional values and principles.



LEONARD NGALUMA  
COMMISSION SECRETARY

## EXECUTIVE SUMMARY

This is the second Annual Report of the Commission on Administrative Justice (Office of the Ombudsman) since establishment in November 2011. The Commission is established under Article 59 (4) of the Constitution and the Commission on Administrative Justice Act, 2011. It has the status and powers of a Commission established under Chapter Fifteen of the Constitution.

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. Further, the Commission has a quasi-judicial mandate to deal with maladministration through conciliation, mediation and negotiation where appropriate.

### **A. Tackling Maladministration in the Public Sector**

#### **i. Complaints Handling**

Complaints handling remains one of the main strategies the Commission employs to address maladministration with the aim of nurturing a public service that upholds fairness, responsiveness, accountability and efficiency. During the period under review, the Commission handled a total of 18,257 complaints – lodged directly with the Commission and those handled under the Commission’s performance contracting obligation.

The prominent service issues in the new complaints received during the reporting period are unresponsive official conduct at 21.2 percent, delay at 17.9 percent, administrative injustice at 14.2 percent, unfair treatment at 12.9 percent and abuse of power at 10.9 percent. With respect to institutions, most of the complaints were directed against the National Police Service (12.82%), Ministry of Lands, Housing and Urban Development (9.8%), Ministry of Interior and Co-ordination of National Government ((9.18%), and the Judiciary (7.43%).

The increase in the number of cases reported in 2013 is attributable to a combination of factors including enhanced visibility and strengthened role of the Commission in the National Government performance contracting process.

The increase in the number of complaints is also attributable to increased interactions with the public, occasioned by opening of branch offices in Mombasa and Kisumu; outreach programmes such as the county visits; and availability of new spaces such as the Huduma Centre and Sema Piga Ripoti initiative, an electronic-based integrated public complaints referral mechanism involving six oversight institutions.

#### **ii. Investigations**

The Commission has adopted systemic investigations as a key approach of enhancing

responsiveness and accountability in the public sector. This relates to issues that are inherent in the structure, system, procedures and processes in an institution that affect service delivery, with the aim of identifying the underlying weaknesses and recommending redress mechanisms to improve service delivery. Notably, the Commission conducted investigations into the systemic issues inherent in the issuance of vital documents – birth and death certificates, passports, permits, passes, and national identity cards and citizenship. The need to undertake the investigation was necessitated by the significant number of complaints lodged by members of the public on the issuance of the documents by the Department of Civil Registration, National Registration Bureau and the Department of Immigration Services. The investigation also involved the Provincial Administration, which plays a key role in the process of issuing vital documents.

The investigation revealed a range of issues that affect service delivery in the concerned offices including delays, corruption, lack of awareness about the application procedures and requirements for vital documents, which in turn affects the timely processing and issuance of the documents. Other issues included weak and ineffective complaints-handling mechanisms, inaccessibility of the offices in some counties due to their vastness and lack of transport to the towns where the offices are located, and absenteeism by key officers.

The recommendations made included proposals for improvement of infrastructure in the Departments, including acquisition of equipment and facilities, and full implementation of the Integrated Population Registration System to minimise the possibilities of fraud and irregular or multiple issuance of vital documents. This would also create inter-departmental networking and inter-linkages thereby decentralizing the services and enhancing accessibility and efficiency. The Commission also recommended strict enforcement of the mandatory registration of births and issuance of certificates to minimise instances of non-registration and irregular or illegal issuance of other vital documents such as IDs and passports. Further, the Commission recommended the establishment of a one-stop shop for the Departments dealing with the issuance of vital documents, which could be decentralised to the divisional levels in some counties to enhance accessibility.

### **iii. Citation Register for Unresponsive and Malfeasant Public Officers**

In the course of implementing its mandate, the Commission encountered many cases of unresponsive officers, resulting to undue delays in resolution of complaints lodged. In order to address these concerns, the Commission established a citation register for unresponsive public institutions and public officers, which is in line with its strategy of sanctioning unresponsive public officers under the Strategic Objective One of ‘enhancing responsiveness and effectiveness in the public sector.’ The Commission developed parameters for determining unresponsiveness of public institutions and public officers which included the following:

- Failure to respond to inquiries by the Commission on complaints
- Blatant refusal to accept the jurisdiction of the Commission

- Failure to implement any determination or Report of the Commission without any reasonable cause
- Public officers determined to have improperly conducted themselves after due investigations by the Commission
- Failure to respect summonses issued by the Commission
- Public officers determined by the court to have been guilty of abuse of office and in respect of whom no appeal has been successfully lodged or determined.

#### **iv. Building Complaints Handling Capacity in the Public Sector**

Being an important stakeholder in public service delivery, the Commission continued building and strengthening complaints-handling capacity in line with Section 8 (e) of the Act. In this respect, the Commission trained 2,267 public officers.

The Commission also developed new guidelines for assessment and ranking of public institutions. A total of 225 public institutions submitted all their four quarterly reports on complaints-handling, which were subsequently assessed and certified based on their levels of compliance. 140 institutions failed to comply with Commission the indicator requirements and were, therefore, not issued with compliance certificates.

During the reporting period, the Commission provided technical support to public institutions in establishing internal mechanisms for handling complaints. Through this, a number of institutions now have working complaints handling structures and feedback mechanisms. As a result, members of the public are now able to lodge complaints directly with the concerned institutions and get timely remedies. Public officers have also come to appreciate complaints as an important form of feedback that enables them to build client loyalty, and have provided a basis for evaluating service delivery.

#### **v. Public Awareness and Advocacy**

The Commission scaled up outreach programmes in 2013 to enhance awareness on the mandate of the Commission, and to address the challenge of accessibility, limited awareness on the mandate of the Commission, and lack of adequate resources to devolve into the counties. These include county visits – an initiative that takes the Office of the Ombudsman to the people – and Agricultural Society of Kenya Show. The Commission also leveraged on the media to advance education and advocacy. The Commission, for instance, launched its social network platform with a view to generating and share knowledge. The objective was to harness the power of interactive media to promote attitudinal and behavioural change in both the citizenry and public servants to the end that there would be greater efficiency, courtesy and accountability. These engagements led to increased levels of awareness on the functions of the Commission and complaints lodged.

## **vi. Promoting Constitutionalism and Good Governance in the Public Sector**

The Commission employed a multi-faceted approach focusing on a number of strategies, which included advisory opinions and recommendations, alternative dispute-resolution methods, and elections monitoring and observation. The Commission issued eight advisory opinions on various matters relating to administrative justice, and was involved in public interest litigation matters, key among them, a petition (*Nairobi Petition No. 284 of 2012, Commission on Administrative Justice vs. Attorney-General*) seeking to impugn the constitutionality of Sections 14, 16 and 23 of the Supreme Court Act, and the attendant Rules 17, 41, 42 and 43 of the Supreme Court Rules, 2011 in which the Commission's position was upheld.

In line with its complementary role in relation to leadership and integrity, the Commission undertook a number of activities to promote ethical leadership and integrity by public officers. The Commission, for instance, played a role in vetting of judges and magistrates, and serving police officers.

One key activity the Commission implemented in this respect is the monitoring and observation of the 2013 General Elections, which focused on the use of public resources in the electioneering process, particularly on the campaigns by political parties and candidates. More specifically, the monitoring focused on use of public vehicles, aircrafts and equipment, use of public facilities such as offices, involvement of public officers in political activities and conditioning of public services on pledges to vote for certain parties or candidates.

## **vii. Partnerships, Collaborations and Linkages**

In order to enhance its capacity and expand its network base, the Commission cultivated partnerships with local and international institutions to promote administrative justice and good governance. Through this, the Commission participated in a number of conferences, workshops, seminars and meetings, and presented papers on various topical issues relating to administrative justice.

During the period under review, the Commission participated in a number of activities which included the Forum of Chairpersons of Constitution Commissions and Holders of Independent Offices, Annual Conference for Constitutional Commissions and Independent Offices, and a regional colloquium of African Ombudsmen the Commission organised and hosted in Nairobi in September 2013.

## **B. CHALLENGES**

Despite the milestones realised under the reporting period, the Commission continues to face a number of challenges that affect its work in varying degrees.

### **i). Impunity**

Failure of institutions and public officers to respond to inquiries by the Commission

remains the biggest obstacles to quick resolution of complaints. This is one of the manifestations of impunity in the public service, and the attitude towards reforms by public officers. Whereas the Commission strives to inquire about and resolve complaints without undue delays, this factor continues to affect the resolution rate.

## **ii). Budgetary Constraints**

The administrative oversight function of the Commission is broad and encompasses the entire public service. The increase in the number of complaints has not resulted to an increase in budgetary allocation. This brings to the fore the question of institutional capacity which is getting overstretched by the increasing number of people seeking its services. The financial outlay was inadequate for the Commission's activities, and the staffing level was too low to cope with the increased demand for the Commission's services.

In spite of the fact that the Commission had budgeted for 438 million shillings in the 2013/2014 fiscal year, it only got an allocation of 274 million shillings. Under this only 31 percent was meant to cater for operations

## **iii). Decentralisation**

The Commission is under the law, obligated to decentralize its services to all parts of the country for ease access. Failure by the members of the public to access its services may result to waning of public confidence in not only the Office of the Ombudsman, but other reform institutions as well. Presently, the Commission has two branch offices in Kisumu and Mombasa in addition to its offices in Nairobi.

The Commission has come up with novel ways of enhancing accessibility of the Office notwithstanding the budgetary constraints. It is important to note that ease of access of the Ombudsman - the custodian of the citizens' right to administrative justice - need to be fully realised. The Government needs to allocate more resources to ensure all Kenyans access services of the Commission as guaranteed by law. Further, it is necessary that all effort is mustered to ensure public sector reforms are realised during this reform phase in the history of our nation lest the public becomes indifferent and eventually disillusioned.

## **iv). Insufficient Statutory Framework**

Considering the level of impunity in the country, it is desirable and logical that the legal framework should be sufficient to deal with the same. The present legal framework is satisfactory, but insufficient in terms of enforcement of the findings and determinations of the Commission. Non-compliance with the decisions of the Commission ought to attract penal sanctions against the specific state or public officers. This will improve public service delivery and redress malfeasance in public offices.

## **C. LOOKING AHEAD: 2014 AND BEYOND**

The Commission will continue to execute its mandate as it seeks to become an effective overseer of responsiveness and servant-hood in public offices in Kenya. In the year

2014, the Commission seeks to:-

- Leverage on technology to increase accessibility and efficiency in complaints handling through use of toll free numbers; social media and other platforms such as the Integrated Public Complaints Referral Mechanism, the Huduma initiative and improvement of the ICT infrastructure at the Commission.
- Contribute to public service reforms through complaints handling; investigations on systemic issues; strengthening partnerships with Ministries, Departments and Government Agencies; and trainings to improve complaints handling capacity of public institutions as well as audits (spot checks) to assessing compliance levels.
- Participate in litigation on matters of public interest in the public administration sphere.
- To devolve its services to the counties through partnership with county governments.
- Escalate awareness and advocacy programmes and activities to create understanding of the Commission's work. This will be achieved through conducting county visits and other outreach programmes including television shows, radio shows, advertisements and simplified IEC materials.
- Employ alternative dispute resolution methods in relation to complaints and public administration.
- To focus on public inquiries as a strategic way of handling complaints. The commission will isolate possible complaints for public inquiries as guided by the Act.
- To closely work with the Ethics and Anti-Corruption Commission in relation to the complementary mandate on leadership and integrity.
- To adopt a new slogan in order to simplify its mandate to the public. The slogan 'we fight impunity' was adopted as the simple way of explaining what the Commission does.
- To reposition itself on its expanded jurisdiction as contemplated by various legislation.
- To redefine its relationship with regional and international institution such as the African Ombudsman and Mediation Association and the International Ombudsman Institute respectively.
- To build a closer working relationship with both the National Assembly and the Senate including the relevant House Committees of both Houses of Parliament.

## 1.0 HISTORY, MANDATE AND STRUCTURE

### 1.1 INTRODUCTION

This section details the historical origin of the concept of Ombudsman globally and in Kenya. It also covers mandate, powers, establishment, and structure of the Commission.

### 1.2 OMBUDSMAN: HISTORICAL CONCEPT

The word 'Ombudsman' is derived from a Swedish word meaning agent or representative of the people. The evolution of the Ombudsman institution can be traced to the Greek cities of Sparta and Athens when Efore and Euthynoi oversaw the activities of Government employees and Municipal activities between 700 BC and 500 BC. This was later adopted by the Roman Empire where an equivalent institution was created around 300 BC to protect and defend fundamental rights. In China, during the Han Dynasty from 3 BC to 220 AD, the Emperor assigned a civil employee, the Yan, to exercise a systematic and permanent control of the imperial administration and its civilian employees. He also received petitions from the public for administrative injustices. These earlier 'Ombudsmen,' however, had limited functions and powers.

The Ombudsman institution as we know it today can be traced to the Ombudsman in Sweden when the Justitie Ombudsman was created in 1809 as a representative of Parliament to control the observance of the law by courts and government employees. The Ombudsman was empowered to take action against those who committed illegal acts or failed to do what was expected of them. The Ombudsman also acted as a protector of peoples' rights. The success of the Ombudsman in Sweden led to the establishment of similar institutions across the world with Finland adopting it in 1919, Norway in 1952, Denmark in 1953, New Zealand in 1962, Guyana in 1966, the United Kingdom in 1967 and Tanzania in 1968.

Presently, Ombudsman institutions have been established in at least 150 countries even though they have been christened differently. For example, the Ombudsman institution is known as the 'Public Protector' in South Africa, the 'Comptroller of the State' in Israel, the 'Supplier of Justice' in Portugal, the 'Mediator' in France, 'Civic Defender' in Italy, the 'Parliamentary Commissioner' in the United Kingdom and the 'Defender of the People' in Spain among others.

The Ombudsman institutions are important instruments for ensuring accountability in public administration. The Institution brings all the elements of good governance such as transparency, objectivity, efficiency, accountability, economy and human touch. By striking at the root of maladministration, the Ombudsman promotes good governance thereby improving the delivery of public services.

### **1.3 THE RISE OF THE AFRICAN OMBUDSMAN INSTITUTION**

The growth of the Ombudsman in Africa has been exponential, particularly, in the last three decades. This was precipitated by Constitutional changes aimed at enhancing democratic governance. The establishment of the Ombudsman in Tanzania in 1968 marked the beginning of the spread of the Institution in the continent. 37 countries have since established the Office. Further, the African Ombudsman and Mediators Association (AOMA) has been established as a continental umbrella body for the African Ombudsman institutions.

The gains made by the various African Ombudsman institutions has been attributed to a number of factors, including mode of establishment, scope of jurisdiction, appointment, facilitation, independence and political environment.

Despite the foregoing, the development of the Ombudsman has not been rosy; very few countries have been able to tackle the central challenges facing the Ombudsman. In a number of African countries, the Ombudsman has not been appropriately anchored within the legal system and the structure of the state which has hindered their effectiveness.

### **1.4 HISTORY OF THE OMBUDSMAN IN KENYA**

The establishment of the Office of the Ombudsman in Kenya can be traced back to 1971 when the Commission of Inquiry (Public Service Structure and Remuneration Commission), commonly known as the Ndegwa Commission, recommended that the office be established. This was primarily borne out of the need to address poor service delivery in the public sector occasioned by endemic systemic failures and, poor work ethic. The recommendation to establish the Office was however not implemented.

It was not until 2007 that the President established the standing committee on public complaints (PCSC) vide Gazette Notice Number 5826 of June 2007 as a Department within the Ministry of Justice, National Cohesion and Constitutional Affairs. The core mandate of the committee was to receive, inquire into, address and deal with complaints against public officers and public institutions concerning maladministration. However, PCSC body lacked essential characteristics of the Office of an Ombudsman due to the nature of its establishment.

### **1.5 ESTABLISHMENT OF THE COMMISSION**

The Commission Administrative Justice also referred to as the Office of the Ombudsman is established by the Commission on Administrative Justice Act (No. 23 of 2011) pursuant to Article 59(4) of the Constitution. Article 59 (4) of the Constitution empowers Parliament to enact such legislation that may restructure the Kenya National Human Rights and Equality Commission into two or more separate Commissions. Pursuant to this provision, Parliament created three separate Commissions which included the Commission on Administrative Justice, the Kenya National Commission on Human Rights

and the National Gender and Equality Commission. The Commission is, therefore, a Constitutional Commission within the meaning of Chapter 15 of the Constitution and the successor Commission to PCSC. The Commission is comprised of three Commissioners and a Secretariat headed by the Commission Secretary.

## **1.6 MANDATE OF THE COMMISSION**

The mandate of the Commission is to enforce administrative justice in the public sector by addressing maladministration through effective complaints handling and alternative dispute resolution. In addition, the Commission has a constitutional mandate to safeguard public interest by promoting constitutionalism, securing the observance of democratic values and principles, and protecting the sovereignty of the people of Kenya.

The Commission's mandate covers all State and Public Offices and Officers, under both National and County government. We investigate, on our own motion, or upon complaint, any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged to be prejudicial or improper, or to result in any impropriety or prejudice. In sum, the Commission's mandate encompasses the traditional role of the Ombudsman as known the world over, with unique additional responsibilities.

The Commission draws its mandate from the constitution, the Act and Regulations, and relevant Government policy document. The mandate of the Commission is summarized below:

### **1. Maladministration**

Maladministration is the proper province of any Ombudsman. In our context, it includes service failure, delay, inaction, inefficiency, ineptitude, discourtesy, incompetence and unresponsiveness.

### **2. Administrative Injustice**

The Commission is mandated to inquire into allegations of administrative injustice, which includes an act, or decisions carried out in the Public Service or a failure to act when necessary. The Constitutional requirement of fair administrative action includes expeditious, efficient, procedurally fair action, and an entitlement to written reasons for such action. The Commission steps in to ensure compliance by Public Officers.

### **3. Misconduct and Integrity Issues**

The Commission investigates improper conduct, abuse of power and misbehavior in the Public Service. Thus, the Commission has a complimentary mandate to ensure compliance with the integrity requirements in the law by public Officers.

#### **4. Persons in Custody**

The Commission is mandated to receive correspondence from any person in custody (prison, remand or mental Institution) in confidence and under seal. Working with the relevant organs, the Commission engages on to remedy concerns raised by such persons, including conditions of living and administrative injustices within the facilities.

#### **5. Advisory Opinions and Recommendations**

The Commission provides Advisory Opinions or proposals on improvement of public administration and makes recommendations on legal, policy or administrative measures to address the specific concerns. These may be published or confidential, and covers offices and processes in National and County governments.

#### **6. Training Government Officials**

The Commission trains National and County government Officials, in Ministries, Institutions and Departments on effective methods of handling complaints in-house. Additionally, we assist the County and National governments, and independent state institutions to set-up Complaints Handling facilities.

#### **7. Performance Contracting**

Resolution of public complaints is an indicator in performance contracting. Public institutions submit quarterly reports detailing complaints received and action taken. Based on these, and resolution of complaints raised through us, the Commission rates each institution and issues a certificate showing performance in percentage, which guides the overall national rating of the Institution.

#### **8. Mediation and Conciliation**

The Commission is mandated to work with different public institutions to promote alternative dispute resolution through mediation, conciliation or negotiation on matters affecting public administration.

#### **9. Special Rights**

Apart from the complimentary duty to secure protection and promotion of human rights and freedoms in public administration, the Commission serves to promote access to information held by the state, and compliance with Minority and marginalized groups rights in context of public service.

#### **10. Implementing Recommendations of Commissions and Task Forces**

Noting the failure to act, including by a Cabinet Secretary, constitutes administrative inaction, the Commissions steps in to follow-up implementation of Recommendations by Commissions of Inquiry, Task Forces or other Agencies including necessary policy or

legislative amendments.

## **11. Supplementing Parliamentary Oversight**

Aware that Parliamentarians often receive complaints from constituents, the Commission is mandated to receive complaints from a member of the National Assembly on behalf of those aggrieved. Additionally, the Senate or the National Assembly, as a whole or through a Committee, may request the Commission to investigate any matter and report back in furtherance of their oversight role.

## **12. Shared Role on Constitutionalism**

As with other Constitutional Commissions, we serve to protect the sovereignty of the people by ensuring all state organs observe the principles of democracy, the constitutional values and respect the supremacy of the Constitution.

## **13. Undertaking systemic Audits in Public Institutions where we receive an unusual number of complaints, on request of Parliament.**

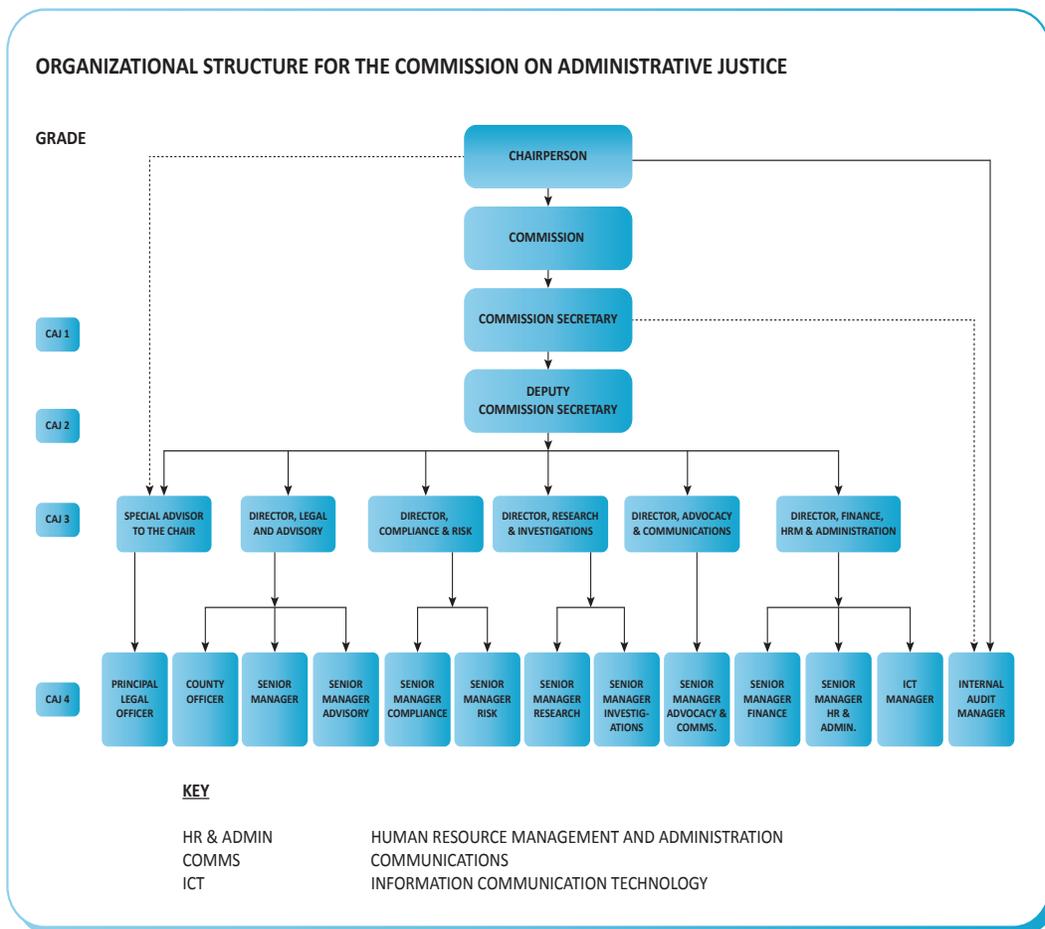
## **14. Undertaking Public Inquiries where the matter involves a large population; and the nature of the complaint requires a public hearing or the Commission determines.**

### **1.6.1 ACHIEVING THE MANDATE**

- i. The bulk of work done by the Commission comes through complaints from the public, which are resolved through correspondence, mediation, investigation or adjudication in appropriate cases.
- ii. The Commission will undertake systemic Investigations where the complaint is rampant and widespread or serious and far-reaching.
- iii. We undertake litigation in appropriate cases by initiating or joining on-going cases, either as a party, as amicus curiae or interested party.
- iv. Where deemed appropriate, we issue public or confidential Advisories on matters affecting public administration.
- v. An unannounced check on government offices across the country has been used to routinely gauge public officers' responsiveness. These culminate in meetings with the public and officers at the station, and a follow-up report.
- vi. Reporting, through special, bi-annual and Annual Reports to Parliament is the means of keeping us accountable to the people through Parliament. Several such reports issue each year.

## 1.7 STRUCTURE OF COMMISSION

The Commission comprises the Commissioners, and staff members categorized in six key Directorates, spread across various offices in Kenya.



## 1.8 VISION, MISSION AND CORE VALUES

### 1.8.1 Vision

To be an effective overseer of responsiveness and servant-hood in public offices at national and county levels.

### 1.8.2 Mission

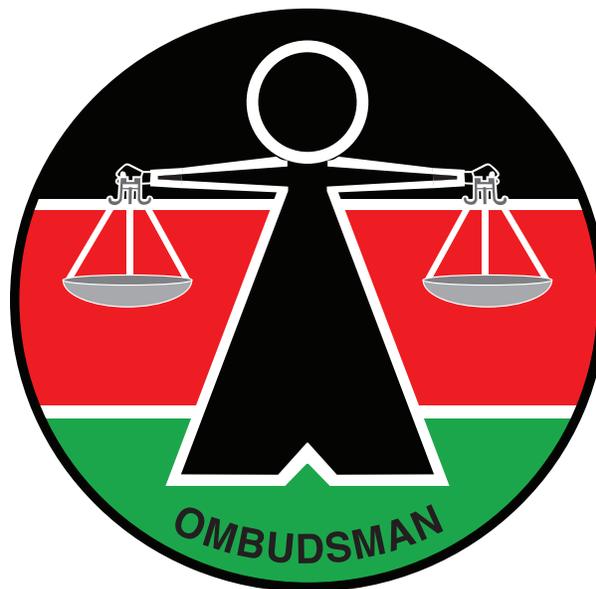
To enforce administrative justice and promote constitutional values by addressing maladministration through effective complaints handling and dispute resolution.

### 1.8.3 Core Values

Values are an integral part of an organization's culture and create a sense of identity, belonging and purpose. The following are core values of the Commission:

- *Fairness*: The quality of treating people with equality in a way that is reasonable. It includes courtesy, impartiality, justice and equity.
- *Accountability*: The obligation of a public officer or public institution to act with integrity, account for activities, accept responsibility for them and disclose results in a transparent manner.
- *Diversity*: The commitment to recognize and appreciate individual uniqueness such as age, cognitive style, culture, disability (mental, learning, physical), economic background, education, ethnicity, gender, geographic background, language, marital status, physical appearance, political affiliation, race or religious beliefs. Diversity refers to acceptance, respect and recognition of individual differences.

## 1.9 LOGO OF THE COMMISSION



The Commission's Logo captures four essential features:

The background depicts the colours of the flag of Kenya. Nothing perhaps represents unity and patriotism of Kenyans more than the flag. Thus, the flag stands for sovereignty. Our logo, therefore, captures the sovereignty of the people of Kenya for whom the Commission was established.

Astride the flag is Mwananchi, the enduring personification of the ordinary citizens.

The citizens, irrespective of gender, are central to the work of the Commission. A responsive and accountable public service is the right of Mwananchi, and the Office of the Ombudsman is mandated to enforce it.

The Scale of Justice has since time immemorial represented the objectivity and neutrality of justice as balanced between competing claims. The “Administrative Justice” mandate of the Commission requires careful balancing of competing rights, as viewed from the Mwananchi’s (citizen’s) perspective. In other words, “Mwananchi’s Justice”, hence Mwananchi is shown balancing the scale of justice.

The Logo is circumscribed in one perfect “O”, representing the word ‘Ombudsman’.

All over the world, the office of the Ombudsman, as originally developed in Scandinavian countries, deals with maladministration in all its forms, from the highest ranked public officer (head of government), to the lowest level officers. Accordingly, the easiest way to understand the work of the Commission is to understand the workings of the office of the Ombudsman in various jurisdictions.

## 2.0 TACKLING MALADMINISTRATION IN THE PUBLIC SECTOR

### 2.1 INTRODUCTION

The primary responsibility of the Commission is the traditional role of the Ombudsman as known in many countries. This is expressly captured under Article 59(2)(h)&(k) of the Constitution and Section 8(a-d) of the Act which mandate the Commission to deal with maladministration in the Public Sector. Towards this end, the Commission is empowered to receive, inquire and investigate instances of maladministration such as unreasonable delay, administrative injustice, discourtesy or misconduct, incompetence or ineptitude, misbehaviour in public administration, improper or prejudicial conduct, manifest injustice, abuse of power, unlawful, oppressive, unfair treatment or unresponsive official conduct and failure to adhere to the constitutional principles that all sovereign authority of the state is drawn from the people.

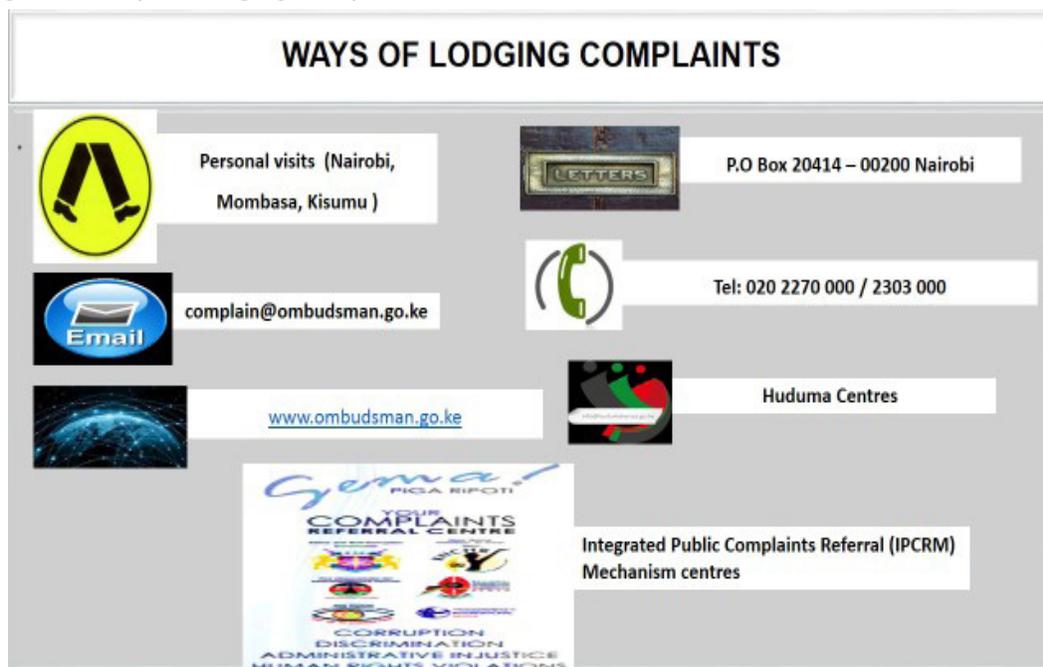
The overall goal of the Commission in this regard is to nurture a public service that upholds fairness, responsiveness, accountability, efficiency. The primary redress mechanism employed by the Commission in addressing maladministration in Kenya is through complaints handling. In performing this function, the Commission provides oversight across the entire public sector, acting as a check on processes, systems and procedures.

### 2.2 COMPLAINTS HANDLING

#### 2.2.1 Lodging a Complaint

A complaint may be lodged at the Commission's offices or at such place or places as the commission may from time to time designate. A complaint may be lodged by an aggrieved person or by a person acting on their behalf or by any other person authorized by law. Complaints may also be instituted by the commission on its own initiative or by an anonymous person. A complaint may be received in writing-letter, email e.t.c - telephone or referrals from other agencies.

Figure 1: Ways of Lodging Complaints to the Commission



The languages of communication are the two national/official languages namely, English and Swahili. However in the event a complainant cannot communicate in the said languages, he or she may lodge a complaint in his preferred language for which the Commission engages an interpreter. It is worth noting that the Commission does not charge any fee in processing and determining complaints, and observes the principles of natural justice so as to uphold high levels of fairness.

Below is the Commission’s complaints handling process. It is however important to note that a complaint must not necessarily go through all levels. A complaint may be resolved at any stage depending on its circumstances.

### Level I

- Complainant fills in a Complaint Form
- Complaint is assessed for admissibility.
- If admissible, CAJ commences inquiries and updates the complainant.
- If inadmissible, Complainant is advised accordingly and/or referred to appropriate agencies.
- If a response is not received from the respondent after 14 working days, CAJ sends a first reminder giving the respondent 7 days to comply.
- If no response is received after this, a final reminder of 7 days is sent.

- If there is still no response after the 7 days, the Respondent is issued with a 14-day notice to show cause and thereafter if still unresponsive he/she is summoned.

## **Level II**

- Proceed to determine the complaint in the absence of the Respondent.
- Institute legal proceedings against the Respondent.
- Cite the respondent as an unresponsive State or Public Office or Officer, and/or declare such State or Public Officer to be unfit to serve in the Public Service.

## **Level III**

In resolving a complaint, the Commission may:

- Conduct investigations.
- Demand and obtain information or documents.
- Conduct an inquiry.
- Undertake mediation, negotiation or conciliation.
- Conduct a hearing.
- Invite or summon any person or persons to attend the Commission.
- Obtain warrants of arrest for breach of any summons or orders of the Commission.
- Obtain orders from the Court authorizing Searches or Seizures.

## **Level IV**

The Commission may:

- Make a formal determination that the Respondent is in breach of the Constitution, the Commission on Administrative Justice Act 2011 or any other legislation
- Declare the Respondent to be a person ineligible to hold a public office.
- Enter the name of the Respondent in the Commission's Citation
- Register which shall be signed and sealed by the Chairperson and shall include the nature of the complaint and the determination made.

## Level V

In resolving the Complaint, the Commission may:-

- Recommend an appropriate remedy including compensation.
- Recommend the removal of the Respondent from public office.
- Issue a formal caution or warning to the Respondent.
- Publish the action taken in the Commission's Statutory Report.

### 2.3 CASES HANDLED IN PERSPECTIVE

During the period under review, the Commission handled a total of 15,593 new cases and 2,664 complaints carried over from the previous reporting period totaling to 18,257. The breakdown is as presented in the table below.

Table 1: Summary of statistics of cases handled

DESCRIPTION	NUMBER
Complaints where formal inquiries commenced	3,266
Contacts & inquiries (on-spot resolution)	3,131
Complaints handled under the Commission's performance contracting obligation.	9,196
Sub-total for new cases in 2013	15,593
Complaints from previous reporting period	2,664
Total cases handled	18,257
Total cases resolved	11,253
Total cases carried forward to the next reporting period (ongoing cases)	7004
Average monthly cases received	1,299

The increase in the number of complaints and contacts in 2013 is attributable to a combination of factors including enhanced visibility and strengthened role of the Commission in the national government performance contracting process.

Figure 2: Cases Handled by CAJ

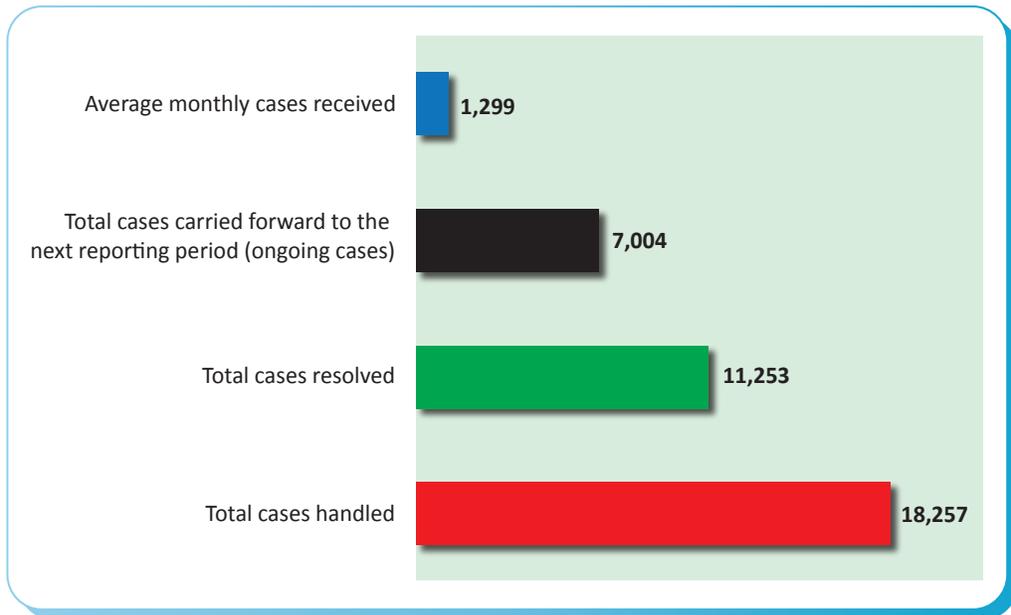
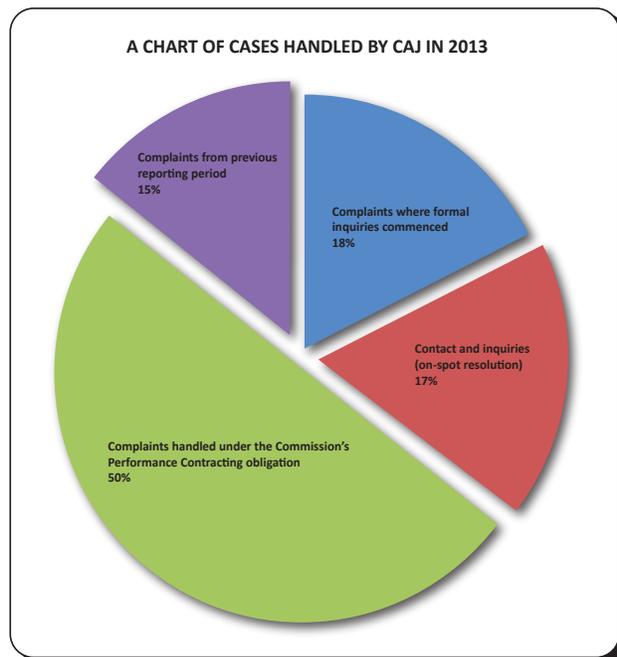


Figure 3: Cases Handled by CAJ



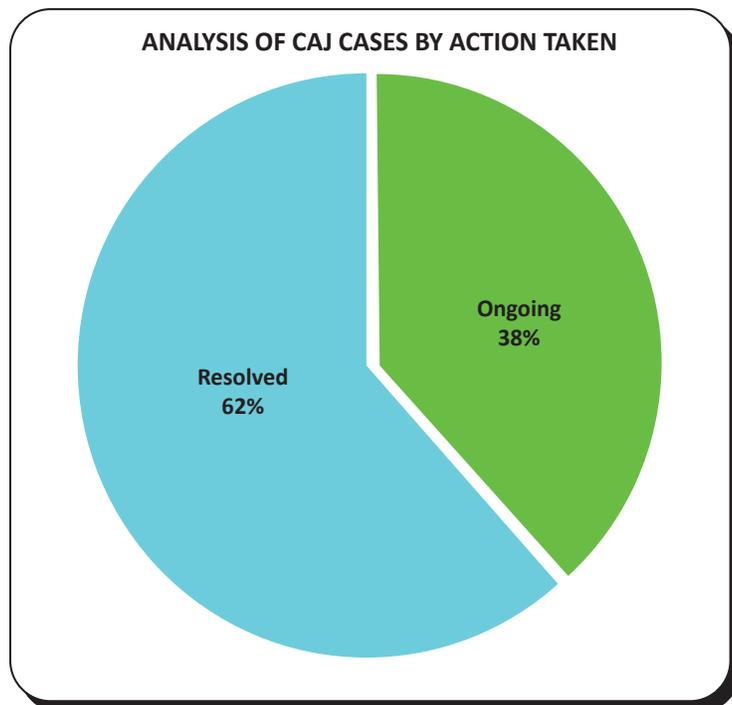
### 2.3.1 ANALYSIS OF CASES RECEIVED BY ACTION TAKEN

During the period under review, the Commission through various channels received complaints, enquiries and contacts. The resolution rate was as shown in the Table below.

Table 2: Summary of cases by action taken

Description	Total No.	No. Resolved
Complaints where formal inquiries commenced + ongoing complaints	5,930	730
Contacts & inquiries handled - (on-spot resolution)	3,131	3,131
Complaints handled under the Commission's Performance Contracting obligation.	9,196	7,392
Total cases resolved	18,257	11,253
Cases carried forward to the next reporting period	7,004	

Figure 4: Analysis of Cases by Action Taken



### 2.3.2 ANALYSIS OF CASES LODGED AGAINST GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

The new cases handled during the reporting period involved a wide range of public institutions and private entities. The Table below provides synopsis of the number of new complaints handled against various Government Ministries, Departments and Agencies

Figure 5: Percentage of New Cases Handled Against Public Institutions – Category A

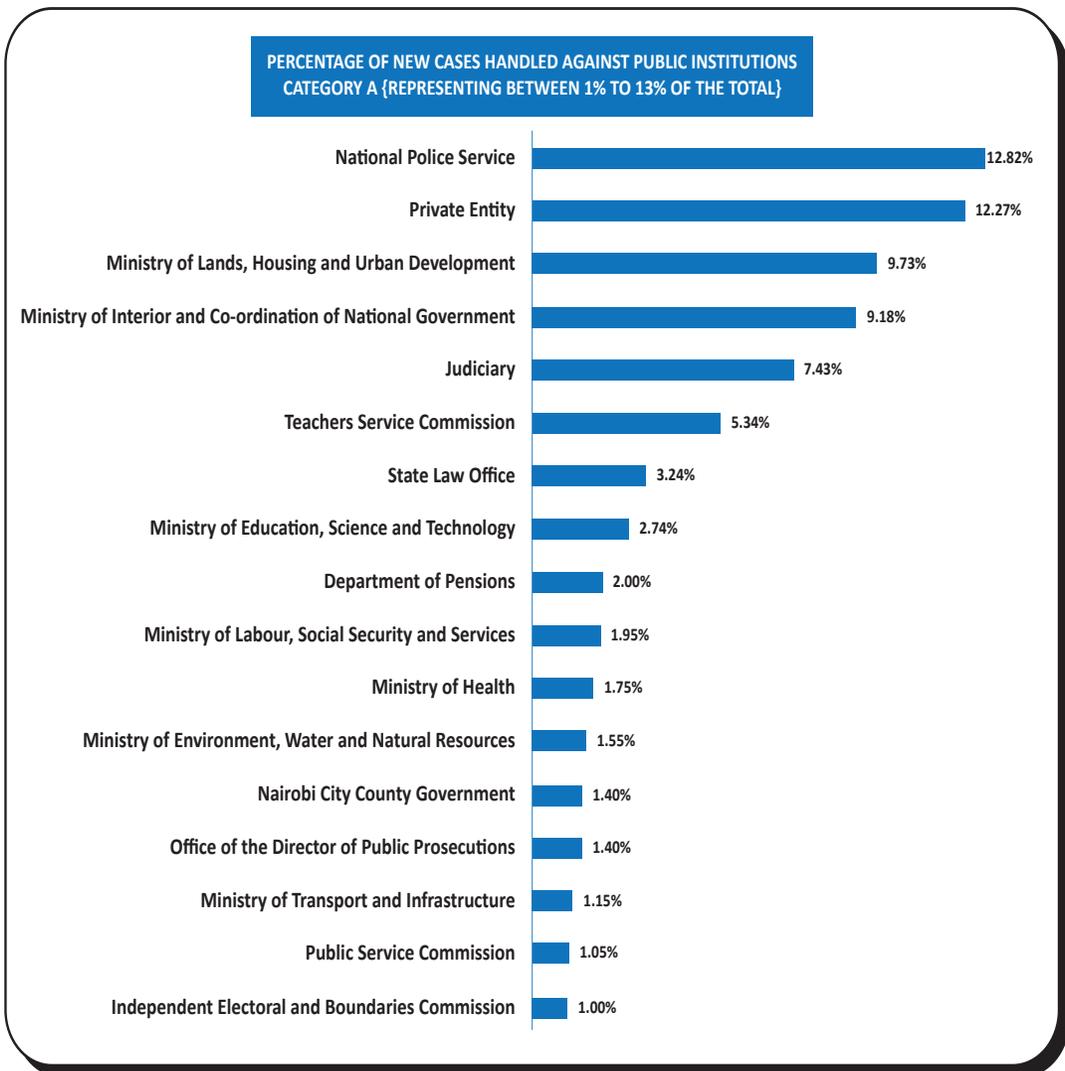


Figure 6: Percentage of New Cases Handled Against Public Institutions – Category B

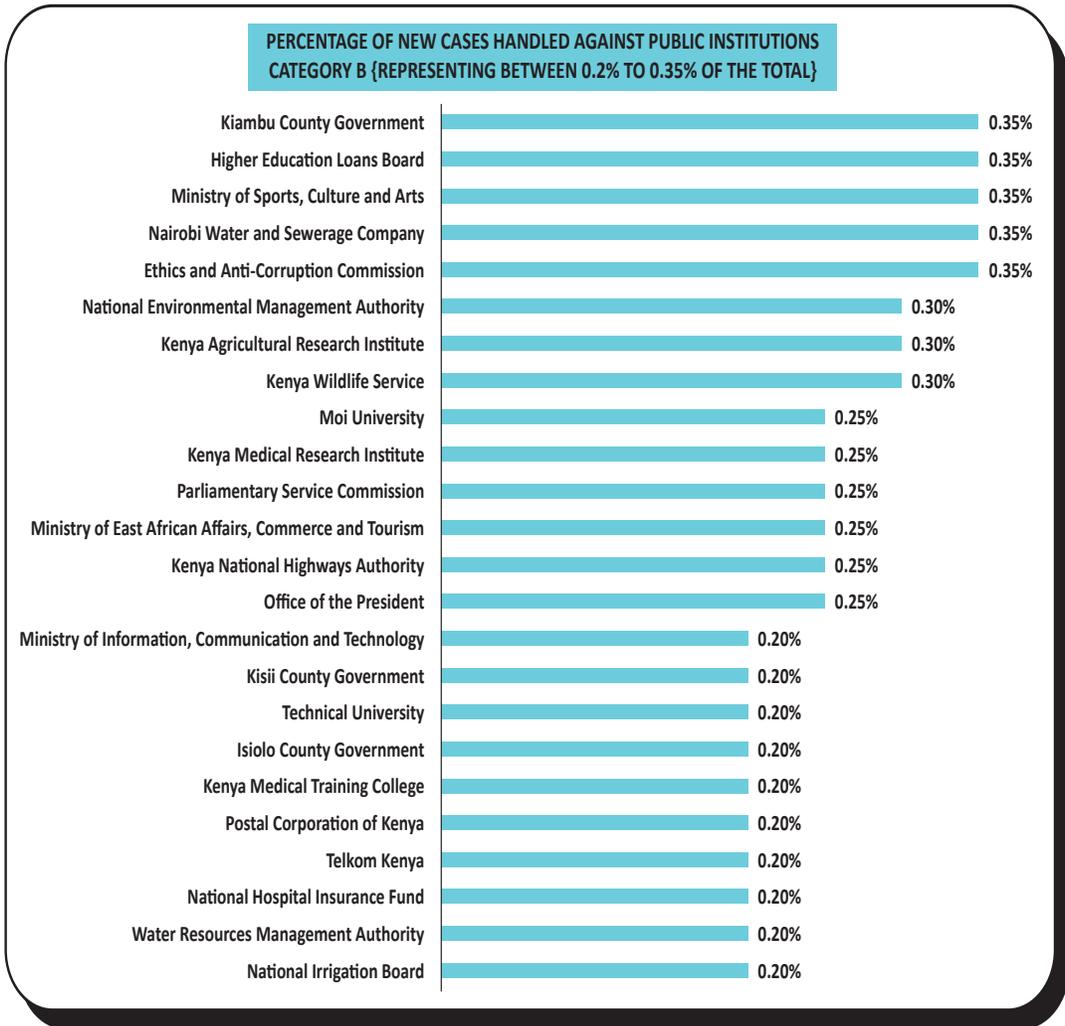
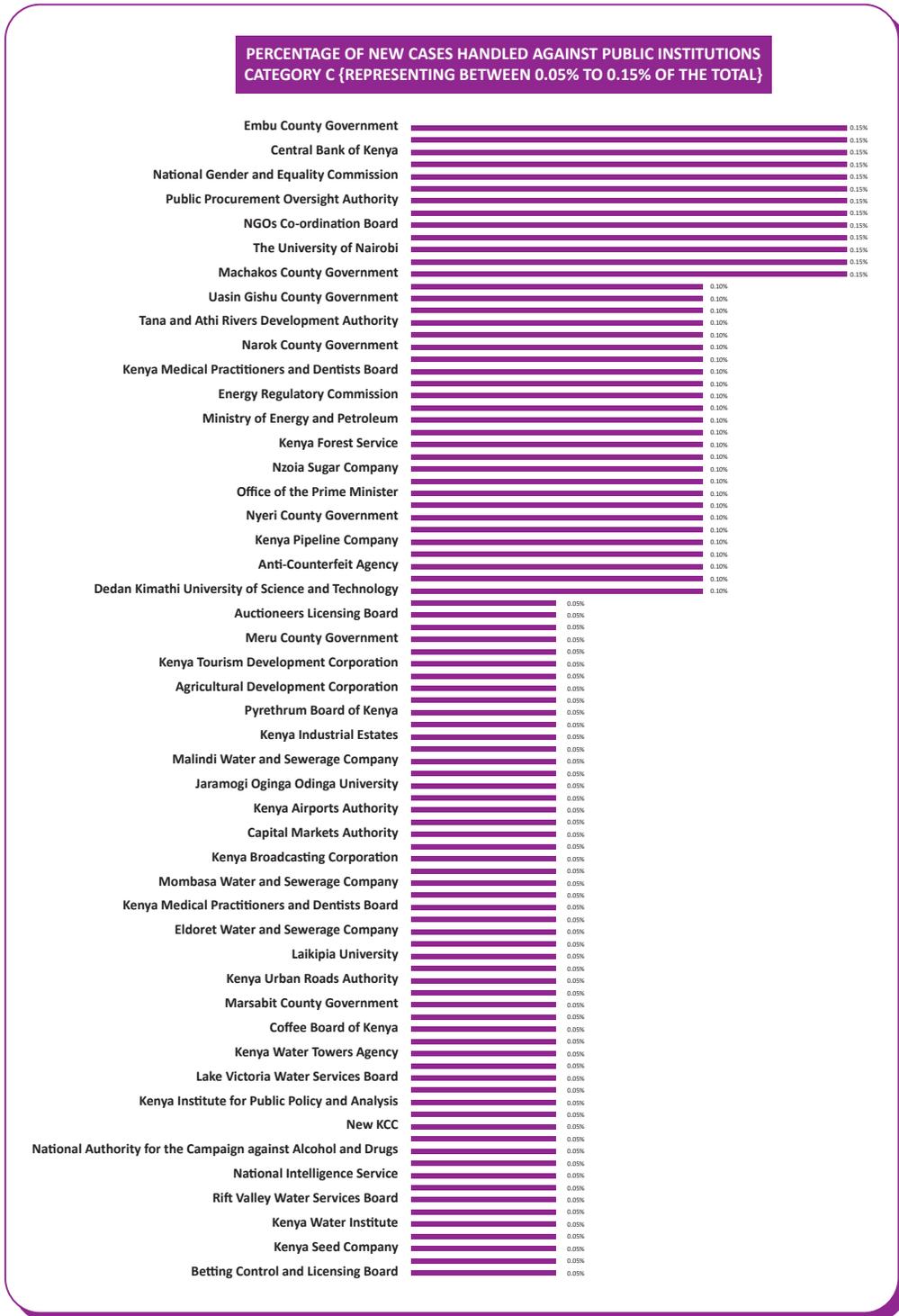


Figure 7: Percentage of New Cases Handled Against Public Institutions – Category C



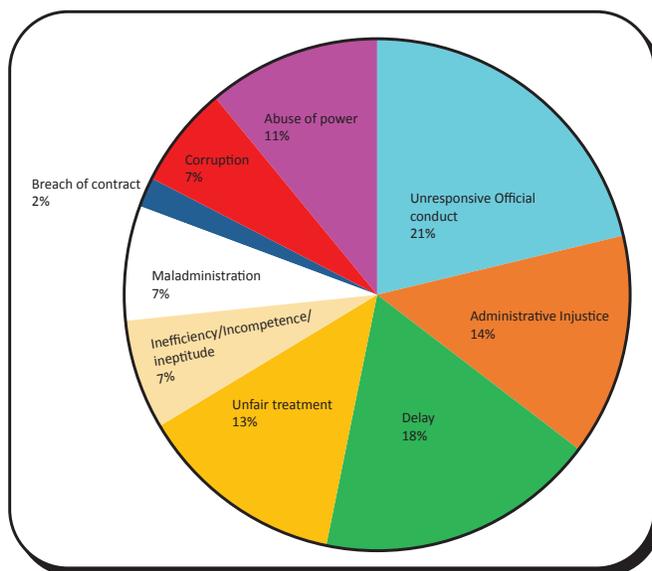
### 2.3.4 ANALYSIS OF CASES RECEIVED BY SERVICE ISSUES

The Table below provides a summary of the categorization of new cases handled by the Commission during the period under review.

Table 3: Categorization of new complaints handled by service issue

SERVICE ISSUE	PERCENTAGE
Unresponsive official conduct	21.2%
Delay	17.9%
Administrative injustice	14.2%
Unfair treatment	12.9%
Abuse of power	10.9%
Maladministration	7.5%
Inefficiency/Incompetence/Ineptitude	7.1%
Corruption	6.6%
Breach of contract	1.7%
Total	100%

Figure 8: New Cases Handled by Service Issue



## 2.4 INTERGRATED PUBLIC COMPLAINTS REFERRAL MECHANISM

The Commission continued to play an important role in the Integrated Public Complaints Referral Mechanism (IPCRM) which is an electronic based complaints referral system. IPCRM was aimed at enhancing the accessibility and capacity of the Commission's complaints handling and also strengthen the partnership amongst the relevant institutions. Besides the Commission, the other institutions involved in the process include the Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, Transparency International – Kenya and the National Anti-Corruption Campaign Steering Committee. During the reporting period, the Commission received 73 complaints through IPCRM and also attended strategic meetings in Wajir, Kisumu, Nairobi, Nyeri and Eldoret for the launch of IPCRM.

## 2.5 CASES FROM BRANCH OFFICES

In line with its Strategic Framework, 2013 – 2016, the Commission opened two branch offices in Kisumu and Mombasa in May and October 2013 respectively. This was aimed at decentralizing the services of the Commission to the counties thereby enabling the public to easily access its services. In addition, it provided an opportunity to Commission to partner with the County Governments in enhancing service delivery and public administration in general. Through the offices, the Commission received a total of 666 complaints and also interacted with the stakeholders in the counties at various fora on matters of public administration

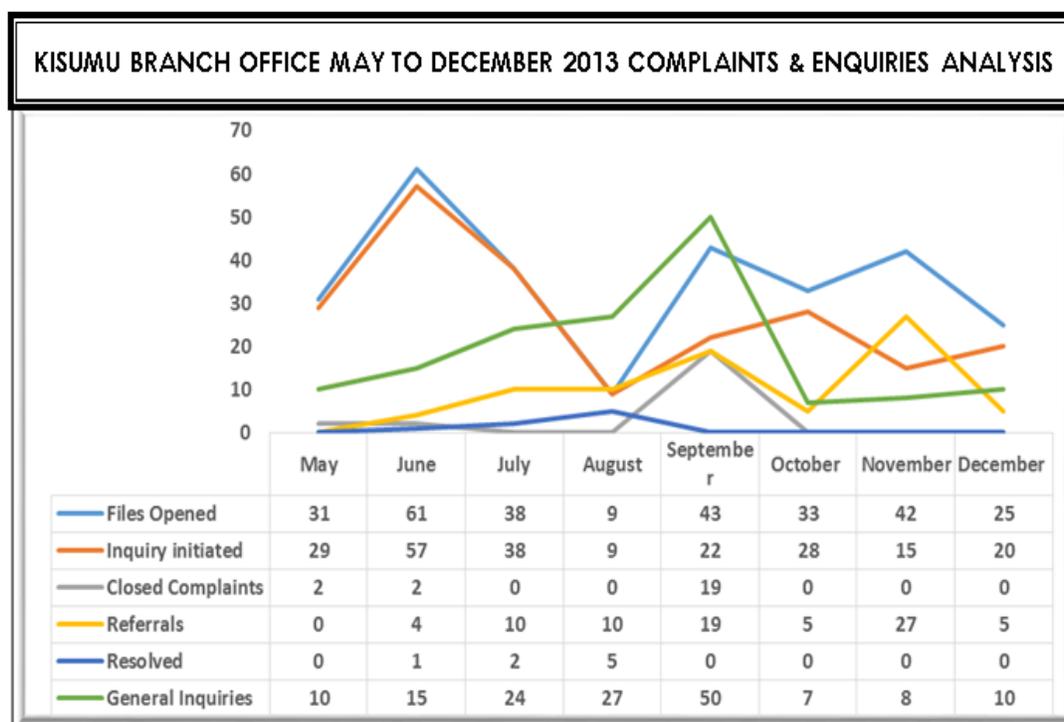
## 2.5.1 KISUMU BRANCH OFFICE

The Kisumu Branch Office received a total of 282 complaints from 3rd May 2013 to 31st December 2013. The number of complaints and contacts was bolstered by the Commission's participation in a number of outreach.

Table 4: Complaints handled through Kisumu Branch Office

No	Month	Inquiry initiated	Closed Complaints	Referrals	Resolved	General Inquiries
1.	May	29	2	0	0	10
2.	June	57	2	4	1	15
3.	July	38	0	10	2	24
4.	August	9	0	10	5	27
5.	September	22	19	19	0	50
6.	October	28	0	5	0	7
7.	November	15	0	27	0	8
8.	December	20	0	5	0	10

Figure 9: Kisumu Branch Office – Complaints and Enquiries



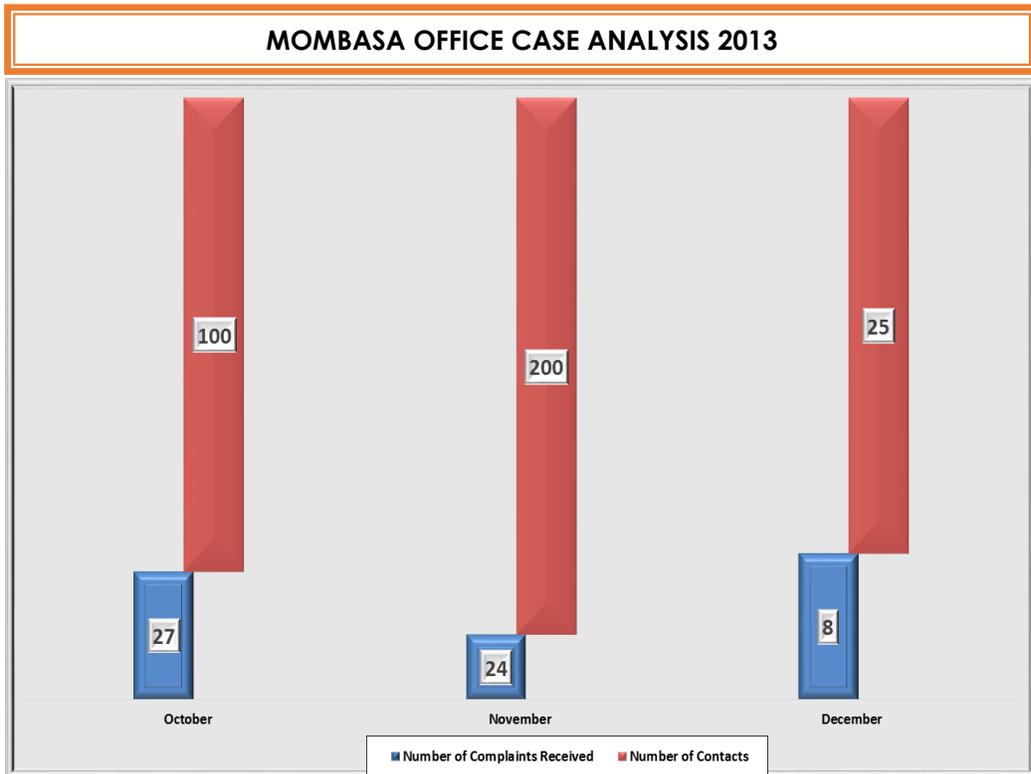
## 2.5.2 MOMBASA BRANCH OFFICE

The Mombasa Branch Office handled a total of 284 complaints and contacts during the period of opening in October to December 2013. The high number of complaints and contacts made within the short period was due to the Commission’s participation in outreach activities in Mombasa, Kwale and Kilifi Counties. The table below shows the complaints and contacts made during the reporting period by the Mombasa Branch Office.

Table 5: Complaints handled through Mombasa Office

Month	Number of Received Complaints	Number of Contacts
October	27	100
November	24	200
December	8	25

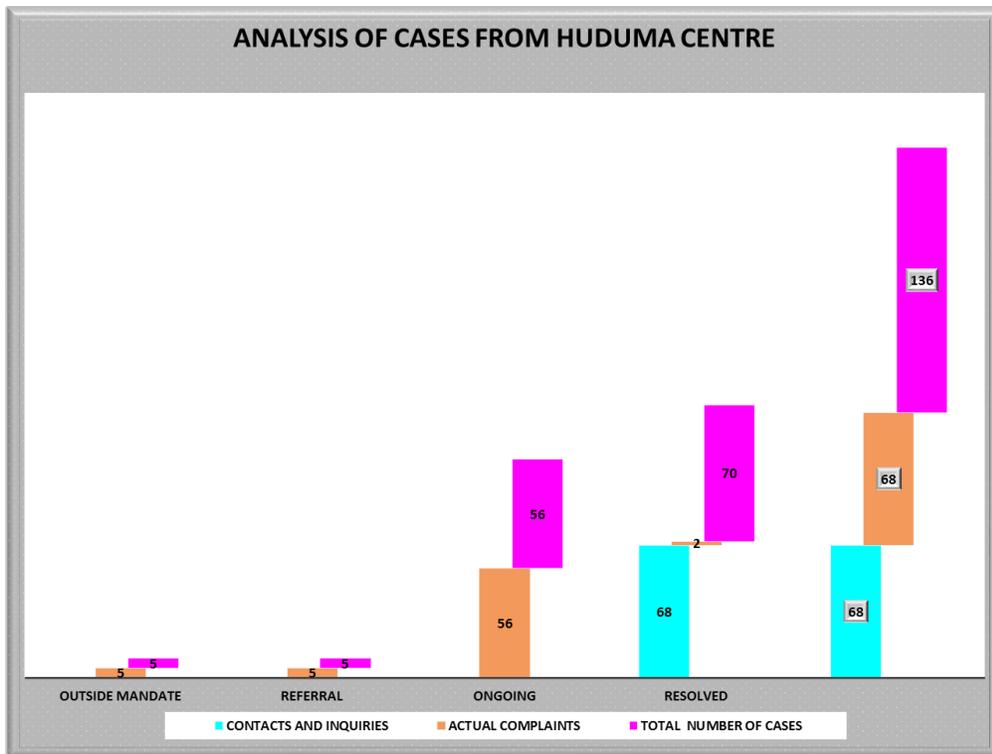
Figure 10: Mombasa Branch Office – Complaints and Inquiries



## 2.6 CASES FROM HUDUMA CENTRE

In October 2013, the Government established the first ever 'Huduma Centre' in Kenya, a concept of one stop shop citizen service delivery, which brings together government services under one roof. The main objective of the concept was to provide a platform to the citizens in one location thereby enhancing accessibility and convenience, customer service, and increased efficiency and service delivery turnaround times. Accordingly, the first Huduma Centre was launched at the Teleposta Towers in Nairobi in October 2013 by His Excellency the President, with the Commission being one of the two oversight bodies with service desks at the Centre. The Huduma Centres will be established in all the counties in Kenya as a way of enhancing accessibility and efficiency. The concept focuses on services that have the most direct impact on citizens such as issuance of national identity cards, driving licenses, birth and death certificates, tax inquiries, registration of business names, land registration and management, and issues on the National Social Security Fund and the National Hospital Insurance Fund among others. During the period under review, the Commission handled 136 complaints and contacts through the Huduma Centre.

Figure 11: Analysis of Cases Handled from Huduma Centre





*The Vice Chairperson, Dr. Regina Mwatha, explains a point to the Chief of Staff and Head of Public Service, Mr. Joseph Kinyua, during the launch of Huduma Centre in Nairobi on 7th November 2013.*

## **2.7 SUCCESS STORIES AND SAMPLE CASES HANDLED**

### **2.4.1 SUCCESS STORIES**

#### **CASE 1: CAJ/POL/015/1514/2012**

The complainant alleged that the police had failed to take action in a case reported to them on 17th August 2008. In particular, the complainant alleged that he was assaulted by a Cabinet Minister when he went to his home to collect Kshs. 16,600 owed to him by the Minister. He alleged that as a result of the assault, he lost his upper teeth and fractured his left leg from the ankle.

The complainant reported the matter at the Manyala Police Patrol Base under OB. No. 3/17/08/2008 and made follow-ups, but no action was taken. In addition, the police did not provide any reason for the failure to act or respond to the inquiries by the complainant and other organizations that he had approached for intervention.

Upon receiving the complaint from the complainant, the Commission successfully intervened by making inquiries to the Office of the Director of Public Prosecutions. The matter was subsequently investigated and the suspect charged in Principal Magistrates' Court in Butere (Criminal Case No. 122 of 2013) with the offence of assault causing grievous bodily harm.

**CASE 2: CAJ/KRA/000/374/2012**

The Commission successfully mediated a dispute between a complainant and the former employer, Kenya Revenue Authority (KRA) following his summary dismissal by the Authority on 23rd July 1998. The complainant had admitted losing some funds while working for KRA as a clerical officer, but attributed the loss to lack of concentration due to his ailment and death of one of his siblings. He was subsequently charged in court, but was acquitted under section 215 of the Criminal Procedure Code on 16th November 2000. The complainant appealed twice against his dismissal on the grounds that he had been acquitted by the court, but the appeals were rejected on 4th June 2004 on the basis that KRA had lost confidence in him. He thereafter lodged a complaint with the Commission on 4th February 2012 when his second appeal was rejected by KRA. The Commission took up the matter which culminated in a mediation meeting on 24th July 2013 which resolved that the complainant's dismissal would be changed to termination in the Authority's interest; he would be paid three months' salary in lieu of notice; and that he would be paid for his outstanding leave days.

**CASE 3: CAJ/KRA/000/41/7/12**

The complainant, a person with disability, lodged a complaint with the Commission seeking its intervention in an application for duty exemption on a car she had imported for her personal use. She alleged that her fear was caused by her unsuccessful application for exemption in 2009 for another car that she had imported. She alleged that her physical condition was such that she was unable to travel on Public Service Vehicle, and that the failure by KRA to grant her exemption did not take her physical condition and her need for a special means of transport. She stated that she had complied with the law and furnished KRA with all the necessary documents.

Upon receipt of the complaint, the Commission made an inquiry to KRA and successfully intervened in having the exemption granted and the complainant proceeded to clear the car. However, the exemption was granted on condition that the vehicle would be not be used or disposed of in a manner inconsistent with the exemption.

#### **CASE 4: CAJ/NOC/021/7/1/12**

A complaint was lodged with the Commission alleging unfair administrative action by the National Oil Corporation of Kenya in relation to the disciplinary procedure and action against the complainant. In particular, the complainant alleged that he had been unfairly and irregularly interdicted without due regard to the relevant law and the Corporation's Human Resource Policy and Procedure Manual. Further, it was alleged that the Corporation had failed to implement the recommendations of the Disciplinary Committee that investigated the allegations against the complainant and submitted its report on 31st August 2012, and instead kept on making unlawful and irregular extensions of his suspension.

Upon receipt of the complaint, the Commission initiated inquiries with the National Oil Corporation. Based on the correspondence, the Commission concluded that the complainant had indeed been treated unfairly and that the Corporation had failed to implement the recommendations of the Disciplinary Committee thereby delaying the resolution of the matter. Through the intervention of the Commission, the complainant was reinstated to his position and paid his salary arrears for the period of the suspension.

#### **CASE 5: CAJ/AG/001/525/13.VOL 1**

The Complainant was an orphan who had missed to be registered to sit for the Kenya Certificate of Secondary Examination in the year 2012 due to lack of a birth certificate. This forced him to repeat the said class in 2013. Despite this he still faced the same problem and he could not manage to get a birth certificate since he did not have his parent's identification documents. The deadline for registration was fast approaching and the complainant could not get the documents needed. The complainant had grown up in a children's home since childhood and had been taken in his teenage years from the home by a distant relative. Upon complaining to the Commission, the matter was explained to the department of civil registration and the birth certificate was granted to him expeditiously. This enabled him to register for examinations and he sat the same in December 2013.

**CASE 6: CAJ/M.IMM/003/90/2013**

The Commission received a complaint against the Ministry of State for Immigration and Registration of Persons for delaying to process an application for replacement of a passport. The complainant alleged she had travelled from Canada to Kenya for a replacement of her passport since it had ran out of pages and the process of replacement in Canada would have taken four months while in Kenya the processing period was four days as per the Guidelines of the Department of Immigration. She alleged that she subsequently applied for the replacement on 17th May 2013 and was informed to collect it on 21st May 2013. However, on 21st May 2013, when she went to collect the passport, she was told that it was not ready for collection and requested to return on the following day, 22nd May 2013. Once again, the passport was not ready when went to collect it on 22nd May 2013.

As a result of the delay, the complainant lodged a complaint with the Commission seeking urgent intervention to have the passport processed. She informed the Commission that she had relied on the information on the website of the Department of Immigration which stated that the period for processing an application for replacement of a passport was four days. She further stated that as a result of the information, she booked for a return flight to Canada on 24th May 2013 and provided the information to the Department.

Upon receipt of the complaint, the Commission urgently intervened on the same day and the complainant was issued with the passport and was able to travel to Canada as scheduled.

**CASE 7: CAJ/PEN/000/463/2013**

The complainant alleged delay in the payment of pension belonging to her late husband since the 2011. She stated that her husband died in August 2008, as a civil servant pensioner. She indicated that a cheque of Kshs. 433,257 as the outstanding pension was sent to her previous account which had been closed for dormancy. This led to the cheque being returned to the Department of Pension's Office in Nairobi pending further directions. Further, she alleged that she later changed her pay point and instructed the Department of Pensions to transfer the money to her new account. She alleged that despite her instructions, the Department of Pensions failed to pay the outstanding amount of Kshs. 433,257. She thereafter sought the assistance of the Commission in the matter. The Commission initiated an inquiry and the complainant was paid the pension amounting to Kshs. 433,257.00.

### **CASE 8: CAJ/M.IMM/003/51/2012**

The Complainant came to the commission and lodged a complaint against the then Ministry of Immigration and Registration of Persons. She alleged that on 22nd May 2012 she made an application for renewal of her Class "L" Permit since her permit was to expire on 20th June 2012. She required the Permit as she was scheduled to travel urgently for medical treatment. The Immigration department had not renewed the Permit two and a half months after her application. She further alleged that she had followed up on the matter severally without receiving any response from the Immigration department but had been informed by several officers within the Ministry that her file was missing. What aggravated the situation apart from the frustration of the non renewal was the fact that the complainant was unwell and needed medical attention outside the country. Upon intervention the complainant was granted the permit.

### **CASE 9: PCSC/015/692/09**

The complainant alleged that he was unfairly dismissed from service for driving the Motor Vehicle Registration Number GKA 140A, Toyota Hiace, on his way back to the TPU Headquarters with a punctured tyre on 28th of February 2008. He alleged that he deliberately drove the punctured vehicle because he was unable to change the tyre alone and that it was late in the night and it was risky to change the tyre in those circumstances. On the 21st of April 2008, he was dismissed from service. He went to court to challenge the dismissal and was acquitted, and upon the intervention of the Commission, he was reinstated.

### **CASE 10: PCSC/NCC/005/193/VOL.I**

The complainant alleged that the City Council of Nairobi, as it then was, had agreed to lease to him a parcel of land known as Plot No. 38 Huruma at a cost of Kshs. 100,000. He made all the payments including the land rates, but his efforts to get a lease had been frustrated. Upon the intervention of the Commission, the complainant was issued with a lease of the plot.

**CASE 11: CAJ/M.COOP/025/53/2010**

The complainant alleged overpayment of a loan that he had taken from Mwalimu Co-operative Society. The complainant alleged that the loan amount was Kshs. 180,000 yet the Society had deducted Kshs. 450,000 from him. He further alleged that the Teachers Service Commission had remitted some monies on his behalf, but the same had not been factored by the Society. Upon the intervention of the Commission, the complainant received a refund of the overpayment he had made.

**CASE 12: CAJ/KENHA/006/36/2013**

The complainant, aged over 80 years, lodged a complaint with the Commission received a complaint against the Kenya National Highways Authority for delay in making compensation for his plot, KISUMU/KANYAKWAR "A"/1552. He alleged that the land had been compulsorily acquired by the Government under Gazette Notice Numbers 8753 and 8754 of 23rd July 2010 for the construction of the Kisumu Bypass-Kericho-Mau Summit Road. Further, he alleged that he had furnished the Authority with all the requisite documents and even visited their offices in Kisumu and Nairobi. However, the Authority failed to make payment and respond to the inquiries. Upon receipt of the Complaint, the Commission made an inquiry to the Authority and the complainant was paid compensation of Kshs. 221,317 for the land.

### **CASE 13: PCSC/AG/001/311/09**

A complaint was lodged with the Commission against the Public Trustee within the Office of the Attorney-General. The complainant alleged that the Public Trustee had failed to pay the death gratuity of the deceased relative amounting to Kshs. 376,117.50. He alleged that the delay and unresponsiveness was unfair since the letters of administration and other requisite documents had been submitted to the Office of the Public Trustee. In particular, it was alleged that the Public Trustee in Kakamega acted unfairly and abused power by withholding the gratuity of the estate of the deceased after receiving the money from the Department of Pensions on 20th January 2009. In addition, the Office failed to notify the father of the deceased who had been registered as the next of kin. It was further alleged that the father of the deceased, who was 85 years old, had visited the Kakamega Public Trustee Office on several occasions, but there were no positive response or information about the matter. The Commission, upon receipt of the complaint successfully intervened and the complainant was paid the death gratuity.

### **CASE 14: CAJ/KPUC/013/280/2012**

A complaint was lodged against the Kenya Polytechnic University College, as it then was (now Technical University), by a complainant who alleged unfair treatment and administrative injustice in his suspension from the College in July 2010. In particular, the complainant alleged unfair administrative action by the College by suspending and subsequently having him charged in court with an offence he did not commit (Criminal Case No. 1308/2010). He alleged that despite being acquitted by the court on 12th January 2012, the University College failed to reinstate him to his position. The Commission intervened, upon receiving the complaint, and the University College initiated an internal administrative action in line with its Rules and Regulations. Consequently, the Disciplinary Committee considered the matter and found him not culpable. He was accordingly reinstated to his position.

### **CASE 15: PCSC/KRC/004/100/2012**

The Commission received a complaint against the Registrar of Trade Unions alleging delay, unresponsive official conduct and abuse of power in a matter where the Aviation and Allied Workers Union had allegedly failed to pay the complainant his salary and allowances for two years amounting to Kshs. 1.9 million. The complainant further stated that the action by the Registrar amounted to unfair administrative action since he earlier agreed to take action against the Union. Upon receipt of the complaint, the Commission made inquiries to the Registrar of Trade Unions and the complainant was paid his salary and allowances.

**CASE 16: CAJ/KRC/004/100/2012**

The Commission received a complaint from 83 former employees of the Kenya Railways Corporation who alleged delay and unresponsive conduct by the Kenya Railways Staff Retirement Benefits Scheme. In particular, they alleged that the Scheme had failed to pay them the retirement gratuity in accordance with the Rules which provided for payment within 30 days upon retirement from service. Further, they alleged that the Scheme had failed to respond to their inquiries on the issue since their retirement in July 2011. Upon receipt of the Complaint, the Commission initiated inquiries and the complainants were paid their gratuities and lump sum dues by the Scheme. Further, the Commission was informed that the delay in paying the dues had been occasioned by the liquidity constraints facing the Scheme at that time.

**CASE 17: CAJ/M.H.EDU/013/374/2012**

The complainant lodged a complaint with the Commission alleging unfair treatment by Egerton University. He alleged that he had been unfairly and unprocedurally suspended by the University for an offence for which he was not culpable. Further, the complainant alleged that the suspension letter did not particularize the offence against him and that he was not accorded an opportunity to be heard before his suspension. In addition, he alleged that his salary had been stopped contrary to the Policy of the University of providing half salary to staff on suspension. The complainant also alleged that the dismissal was unprocedural insofar as it was not done in line with the University's administrative structure and that he was given three days to respond to a notice to show cause instead of seven days provided for in the Rules and Regulations. He also alleged that there was no communication from the University for over four months after appearing before the Disciplinary Committee. The matter was successfully handled and the complainant was reinstated to his position.

### **CASE 19: PCSC/PADM/015/241/08**

A complaint was lodged with the Commission against the defunct Ministry of State for Provincial Administration and Internal Security for delay, unfair treatment and unresponsiveness. The Complainant, a police officer, had particularly alleged that he had been unfairly dismissed from work and that the Ministry had delayed to determine his appeal since August 2006. He alleged that he was dismissed from service in 2005 on the ground of absconding duty, despite him being on sick off and informing his supervisor about his condition. He also alleged that the Officer in-charge of the Station had granted time to recover from the illness and report when his condition improved. Further, he alleged that no investigations or inquiries were made, and he was not accorded an opportunity to be heard. Upon receipt of the complaint, the Commission successfully intervened and the complainant was reinstated to his position.

### **CASE 20: CAJ/TA/L.GOV/005/433/13/VOL,I**

The Commission successfully intervened in a complaint lodged by the Ethics and Anti-Corruption Commission against the defunct Ministry of Local Government for failing to take administrative action against Mr. Felix Gitari Mbiuki, a former Town Clerk at the Municipal Council of Thika, after he was charged with a corruption offence. Further, the Commission was informed that Mr. Mbiuki was instead deployed to Tharaka Nithi County as part of the Interim County Transition Team. It was also alleged that Mr. Mbiuki had been charged in the Anti-Corruption Court in Nyeri on 12th September 2012 on three counts of Economic Crime (CR. 261/515/2012; CF. ACC.5/2012) and ought to have been suspended from the date of the charge in line with section 62(1) of the Anti-Corruption and Economic Crimes Act. The Ministry was alleged to have failed to take administrative action despite being formally informed by EACC. The intervention of the Commission led to the withdrawal of Mr. Mbiuki's appointment as part of the Interim County Team for Tharaka Nithi County.

### **CASE 21: CAJ/PADM/015/1335/2012**

The Commission received a complaint against the District Commissioner, Nyamira North District, alleging that he had unlawfully and unfairly withheld the complainant's letter of appointment as an Assistant Chief. The complainant further alleged that she had performed well in the interviews and an appointment letter dispatched to her through the District Commissioner. However, she alleged that the letter was not issued to her despite her several follow-ups. Further, she alleged that the action was part of the scheme to deny her the position and requested the Commission to intervene. Upon intervention of the Commission, the complainant was issued with the appointment letter and subsequently reported to her office.

**CASE 22: CAJ/015/1698/31**

The complainant alleged that she had reported a matter at the Industrial Area Police Station against two people who had obtained from her falsely obtained a sum of Kshs. 855,000 from her. She further alleged that one of the suspects was charged in court and the other had charges dropped. It was further alleged that the Nairobi Deputy Provincial Criminal Investigation Officer ordered the Industrial Area District Criminal Investigation Officer to drop all the charges unconditionally and further wrote a letter to the court seeking to terminate the proceedings without even involving the complainant. Upon inquiry by the Commission the decision of the Deputy Criminal Provincial Investigation Officer was rescinded and the complainant was subsequently refunded her money.

**CASE 23: CAJ/PCK/00123/64/13**

The complainant alleged the Postal Corporation of Kenya had unlawfully dismissed him from service. His allegations were that his immediate supervisor had differences with him which resulted in his transfer to Moyale Post Office and later dismissal. It was also alleged that the differences were attributed to the fact that he was a member of a trade union which did not go down well with his superior. The complainant's appeal against dismissal was overruled and the dismissal upheld by the Postmaster General. The Commission inquired into the matter and it was found that there was malice that culminated in the complainant's dismissal, and he was subsequently reinstated.

**CASE 24: CAJ/CID/015/1720/13**

The complaint was against a private security company which had been an employer of the complainant. It was alleged that upon termination of his service, the Company withheld his National Identity Card for no good reason despite his various attempts. The complainant's efforts to have the matter resolved by other agencies failed whereupon he sought the Commission's intervention. Despite the matter not being within the Commission's scope since it was against a private company, the complainant was referred to the Director of Criminal Investigations since it amounted to a criminal offence. He was able to get back his Identity Card.

### **CASE 25: CAJ/ACC/001/409/2011**

The complaint was against the Advocates Complaints Commission which is an office within the State Law Office. The complainant alleged delay in resolving a complaint against a private firm of Advocates which had not settled a sum of money due to him. The money was the proceeds of an auction conducted pursuant to a court order which was overseen by the Law Firm. Upon non-settlement by the Law Firm of the dues of the auction, he reported the matter to the Advocates Complaints Commission which later complained against for having delayed in resolving the same. The Commission inquired into the matter and the complainant was paid his money.

### **CASE 26: CAJ/AG/001/127/08**

The complaint arose out of a criminal case in which it was alleged that a State Counsel who had the conduct of the matter had unprocedurally and without justification terminated the criminal proceedings against two accused persons. It was alleged that there was connivance between the State Counsel and the accused persons which resulted in the termination of the cases. Upon the intervention of the Commission, the two persons were charged afresh and administrative action taken against the State Counsel.

### **CASE 27: CAJ/M.LAN/022/576/12**

This was a complaint against the Nakuru Lands Registry alleging delay in the issuance of a title deed for the complainant's land. The complainant alleged that despite the fact that he had submitted all the relevant documents and paid the requisite fees, the Registry had still not issued him with his title deed and was giving insufficient reasons for the delay. The matter was inquired into by the Commission and he was issued with the title deed expeditiously.

**CASE 28: CAJ/M.INFO/023/44/2011**

This was a complaint from a former employee of the Postal Corporation of Kenya whose allegations were that he was dismissed unlawfully from the Corporation. His complaint was that he was not accorded a fair hearing and that the proceedings were fraught with bias from people who had personal differences with him. He alleged that the charges against him were untrue and meant only to end his service with the Corporation. The Commission engaged the Corporation and made inquiries into the surrounding circumstances of his dismissal. The Corporation's internal Disciplinary Appeals Committee, upon the Commission's inquiries, held deliberations on the matter and reinstated the complainant to the service of the Corporation. He reported for duty in December 2013 and was deployed.

**CASE 29: CAJ/CBK/000/407/2012**

This was a complaint where the complainant sought to have his title deed given back by the Deposit Protection Fund which had held it for a period of seventeen years. There had been litigation in court between the complainant and the Central Bank of Kenya which civil case had been decided in favour of the complainant and an appeal by the Central bank dismissed for want of prosecution. Nonetheless, the issue was the return of the title deed to the complainant and as it later emerged, the Deposit Protection Fund had misplaced the title deed. This prompted the complainant to seek another title deed and compensation from the Central Bank. In as much as the Commission agreed that the issue of compensation might not arise, the Central Bank was advised to swear an affidavit giving the circumstances of the loss and undertake to pay any charges required to procure another title. The same was done and the matter settled.

**CASE 30: CAJ/PE/040/141/2013**

This was a complaint by a prisoner who alleged that, through fraudulent means and forgery, some people had procured letters of administration in a succession cause of the estate of his late father. He alleged that his signature and that of his other relatives had been forged and the letters of administration obtained without their knowledge or consent. Resultantly, the "administrators" of the estate were now enjoying proceeds from the estate of the deceased to the exclusion of himself and others. He, therefore, sought help from the Commission to first have criminal proceedings instituted against the suspects and the letters revoked. He also sought the proceeds obtained from the estate granted to him and other beneficiaries of the father's estate. The Commission intervened and the matter was resolved.

### **CASE 31: CAJ/M.FIN/000/452/2012**

In this matter, the complainant alleged that he had been dismissed from service in 2004 by the Central Bank of Kenya on allegations of corruption. He stated that he had been arraigned in court on charges of abuse of office, but he was cleared of all charges in the 2012. He further alleged that pursuant to his acquittal and clearance of all the charges, he made efforts to have the matter addressed and reinstatement to service, but there had been no response from the Ministry of Finance. He, therefore, sought the intervention of the Commission for his reinstatement to service. The Commission intervened and the complainant was reinstated to service.

### **CASE 32: CAJ/NGEC/018/42/13/VOL.I**

The Commission received a letter from the National Gender and Equality Commission alleging that the National Aids Control Council had put an advert in the Daily Nation of 18th October, 2013 for the position of the Director of the Council. One of the requirements for the position was that a person should be aged between 40 and 55 years. The Commission took up the matter and pointed out that the requirement was unconstitutional as it discriminated on the basis of age contrary to Article 27(4) of the Constitution. Based on the intervention of the Commission, the National Aids Control Council put up a corrigendum in both the daily newspapers removing the age requirement.

## 2.4.2 SAMPLE CASES

The table below represents a sample of different complaints handled by the Commission for the period under review.

Table 6: Sample of complaints handled by the Commission

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/M. IMM/003/90/2013	Ministry of Immigration	Delay	A Complaint against the Department of Immigration on delay in the replacement of her passport (A994940). She was to secure her passport and travel to Canada in two days' time.	Inquiry Initiated and the complainant was able to get her passport replaced and she travelled.
	CAJ/015/1698/13	National Police Service	Abuse of Office	A Complaint alleging that she reported a criminal offence at Industrial Area Police Station against two persons for obtaining Kshs. 850,000/= from her but the Deputy Provincial Criminal Investigations Officer Nairobi ordered the OCPD of the said police station to drop the charges against the two persons unconditionally without according her a hearing.	An Inquiry was conducted and the instructions of the Deputy Provincial Criminal Investigations Officer were rescinded.
	CAJ/KSM/M. AGR/014/4/13	Kenya Agricultural Research Institute	Unfair Treatment	A Complaint alleging bias arising from failure by the respondent to promote him to the position of Technical Assistant in spite of undertaking a one year training course on Rural Dairy Management in July 1998-April 1999. On the other hand, some employees with similar or lesser qualifications had allegedly been promoted.	Resolved as the Complainant was promoted to the post of Technical Assistant.
	CAJ/P. ADM/015/241/08	Provincial Administration	Administrative Injustice	An allegation that the complainant was unfairly dismissed from the Police Service and that his appeal against dismissal had not been considered by the Service.	The Commission initiated an inquiry and the complainant was reinstated to his position.
	CAJ/AG/ 001/127/08	Office of the Attorney General	Misbehaviour in Public Administration and Improper Conduct	An allegation that the State Counsel in Criminal Case Number 38 of 2008, Republic vs. Cecilia Mwelu Kyalo and 2 others had conducted himself in a questionable manner by terminating the criminal case against the accused persons.	The Commission initiated an inquiry and the accused persons were charged afresh and administrative action taken against Counsel.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/AG/001/361/09	Office of the Attorney General	Misbehaviour in Public Administration and Improper Conduct	An allegation that a public prosecutor had colluded with the accused persons in criminal case No. 1022 of 2008, Republic vs. David Maina Njoroge & 2 others to stall the proceedings.	The Commission initiated an inquiry and a new prosecutor was appointed, and the matter heard and determined.
	CAJ/CIVIL/ 10/VOL.1	Office of the Attorney General	Unfair Treatment	A complaint that the Office of the Attorney-General had failed to settle Kshs. 115,200 awarded to the complainant by the High Court in Kisumu Civil Suit No.50 of 98 Yermiah & Another Vs. Attorney General	The Commission initiated an inquiry and the award was settled.
	CAJ/POL/015/931/09	National Police Service	Oppressive Conduct	An allegation police attached to Nairobi Area Traffic Department had failed to release the complainant's vehicle Registration Number KAS 155G which they had towed to their Yard for no good reason.	The Commission initiated an inquiry and the vehicle was released to the complainant upon payment of towing charges
	CAJ/JUD/001/448/12	Judiciary	Inefficiency	An allegation that the Judiciary (Kisii Court) had failed to compensate the complainant for the loss of camera and other items that had been used as exhibits in a criminal case determined by the court.	The Commission initiated an inquiry and the complainant was compensated Kshs. 45,000 for the lost items
	CAJ/M. LAN/022/567/12	Ministry of Land, Housing and Urban Development	Delay and Unresponsive Official Conduct	An allegation that the Nakuru Lands Registry had delayed to issue a title deed for land parcel No. Nakuru/ Kirengero/372 despite meeting all the requirements and making follow-ups.	The Commission initiated an inquiry and a title deed was issued.
	CAJ/KRC/004/100/12	Kenya Railways Corporation	Delay and Unresponsive Official Conduct	A complaint that the Kenya Railways Corporation had delayed to pay the lump sum benefits for their former employees who had retired. Further, it was alleged that KRC was unresponsive to the correspondence made by the complainants.	The Commission initiated an inquiry and the money was paid to the retirees.
	CAJ/M. IMM/003/51/2012	Ministry of Immigration and Registration of Persons	Unresponsive Official Conduct	An allegation that the Department of Immigration Services had delayed to renew the complainant's Class L permit despite meeting all the requirements.	The Commission initiated an inquiry and the permit was issued

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/AG/001/608/12	Office of the Attorney General	Unresponsive Official Conduct	A complaint that the Office of the Registrar-General had delayed to issue a business certificate for Spot Security Services despite all the requirements being met by the complainant.	the Commission initiated an inquiry and the certificate was issued.
	CAJ/NOC/021/71/12	National Oil Corporation of Kenya	Administrative Injustice	A complaint that the National Oil Corporation of Kenya had unfairly interdicted the complainant without due regard to the relevant law and the Corporation's Human Resource Manual. It was further alleged that the Corporation had failed to follow the recommendations of a Committee that investigated the allegations against the complainant.	The Commission initiated an inquiry and the complainant was reinstated to his position.
	CAJ/M. IMM/003/52/2012	Ministry of Immigration and Registration of Persons	Delay	A complaint that the Department of Registration of Persons Bureau had delayed in replacing the complainant's lost National Identity Card.	The Commission initiated an inquiry and the ID was issued.
	CAJ/KRA/000/417/12	Kenya Revenue Authority	Unfair Treatment	An allegation that Kenya Revenue Authority had failed to grant the Complainant exemption from paying duty based on his physical condition, for a car he had imported.	The Commission initiated an inquiry and the exemption was granted
	CAJ/AG/000/311/09	Office of the Attorney General	Unfair Treatment	A complaint that the Public Trustee in Kakamega had failed to pay the death gratuity amounting to Kshs. 376, 117.50.	The Commission initiated an inquiry and the death gratuity was paid in full.
	CAJ/AG/001/179/09	Office of the Attorney General	Administrative Injustice	A complaint that the Office of the Attorney-General had failed to remit Kshs. 93,000 that had been awarded to the complainant by the Mombasa Senior Resident Magistrate's Court in Civil Case No. 730 of 1993, Habib Omar Vs. Attorney General & Emirates Textile Manufacturing	The Commission initiated an inquiry and the amount owed was paid in full.
	CAJ/L.GOV/005/4/08	City Council of Nairobi	Administrative Injustice and Delay	An allegation that the City Council of Nairobi had failed to reinstate the complainant to his position and pay salary for the duration of suspension contrary to the recommendations of the Staff Committee Meeting held on 13th July 2007 that he be reinstated.	The Commission initiated an inquiry and the complainant was reinstated to his position

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/M. ENV/010/20/09	Ministry of Environment and Natural Resources	Delay	An allegation of non-payment of dues by the Ministry of Environment and Natural Resources for the work done by the complainant in the Kazi kwa Vijana initiative in Dandora Estate.	The Commission initiated an inquiry and the Complainants were paid their dues
	PCSC/M. COOP/025/15/2009	Mweru Coffee Factory	Maladministration	A complaint by the Mweru coffee factory stakeholders that their coffee parchments were stolen between 22nd and 23rd June 2008 and the factory management took 10 days to inform them of the incident. Further, the management did not take any action against the employees who were suspected of the theft but continued keeping them in employment at the factory.	Successfully resolved- the stakeholders had been compensated and the workers were held accountable for their actions.
	CAJ/P. ADM/015/266/08	Provincial Administration	Administrative Injustice	An allegation that the Provincial Administration in Maragua District had unreasonably and unfairly closed down the Ichagaki Centre AP Post in 2008 and redeployed the officers elsewhere.	The Commission initiated an inquiry and the AP Post was re-opened and new officers posted
	CAJ/M. AGR/014/85/12	Kenya Agricultural Research Institute	Administrative Injustice	An allegation that the Director of the Kenya Agricultural Research Institute had failed to forward the complainant's appeal against his transfer from Kibos Station to Alupe Station.	The Commission initiated an inquiry the matter was looked into and the complainant redeployed to Kakamega which was favorable to him.
	PCSC/M. IMM/001/003/35/10	Public Service Commission	Administrative Injustice	An allegation that the Public Service Commission had failed to reinstate the complainant to his position following his acquittal by the court.	The Commission initiated an inquiry and the complainant was reinstated to his position
	CAJ/AG/001/275/09	Office of the Attorney General	Administrative Injustice	A complaint that the Office of the Registrar-General had declined to register a Company known as Special Force Security Surveillance, whose application had been made by the complainant.	The Commission initiated an inquiry and the Company was registered.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ NCC/005/178/10	Nairobi Water and Sewerage Company	Unfair Treatment	An allegation that the Nairobi Water and Sewerage Company continued to send the complainant water bills for a house that she had vacated a long before, and further that the Company had failed to rectify the anomaly despite follow-ups on the same.	The Commission initiated an inquiry and the matter was resolved.
	CAJ/NCC/347/2012	City Council of Nairobi	Administrative Injustice	An allegation that the complainant's late mother who worked for the City Council of Nairobi was never paid the soap and uniform allowance amounting to Kshs. 20,000.	The Commission initiated an inquiry and the dependants were paid the allowance
	CAJ/KSM/ KPLC/021/1/13	Kenya Power & Lighting Company	Administrative Injustice	A complaint alleging unfair electricity charges which had led to disconnection of their power supply thereby affecting their operations of water supply in Uyoma Siaya County.	The matter was resolved after a mediation meeting was held and the parties reached an agreement
	PCSC/ AG/001/399/11	Office of the Attorney General	Unfair Treatment	A complaint that the Public Trustee in Kakamega had failed to pay the death gratuity for the complainant's deceased husband amounting to Kshs. 242, 484.60.	The Commission initiated an inquiry and the death gratuity was paid in full.
	CAJ/KSM/M. LAB/017/1/13	Ministry of Labour	Delay	A Complaint alleging delay by the Kisumu County Labour Officer to resolve his complaint for payment of his terminal dues.	The inquiry file was closed upon payment of the dues to the complainant which he duly acknowledged in writing
	CAJ/KSM/ AG/001/1/13	Public Trustee Kakamega	Manifest Injustice	A Complaint alleging non payment of pension benefits on account of Hilda Nyota Hosea (Deceased) which had been released by the Pensions Department to the Public Trustee Kakamega.	Upon inquiry, the complainant was paid by the Public Trustee Kakamega.
	CAJ/PA.DM/015/1301	Ministry of Interior and Co-ordination of National Government	Delay and Unresponsive Official Conduct	Allegations of delay in effecting appointment of Mr. James Mukubio Kibwithia as Assisitant chief of Karama location, Karama Division in Tigani West District since February 2012.	Initiated inquiries and the complainant was appointed to the position.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ KRA/000/374/2012	Kenya Revenue Authority	Unresponsive Official Conduct	Allegations by the complainant that he was dismissed from the Kenya Revenue Authority sometime in April 1998 on grounds of gross misconduct thereby losing all his terminal benefits.	An inquiry was initiated and mediation conducted. The dismissal was lifted to termination of service and the complainant paid three months' salary in lieu of notice
	CAJ/MSA/ NGO/076/1/13	NGO Co-ordinations Board	Delay	A Complainant alleging that she had been trying to obtain a certificate of registration for an NGO known as Friends for Life Foundation since early 2013 after having tendered all the requisite documents but in vain.	The Commission intervened and the Complainant was issued with the certificate.
	CAJ/KSM/M. AGR/014/5/13	Kenya Agricultural Research Institute	Unfair Treatment	A complaint alleging unfair treatment in promotion to the post of Technical Assistant II. Individuals with the similar qualifications or lower qualifications to her's were promoted.	Resolved as the complainant was promoted to the post of Technical Assistant.
	CAJ/KSM/ JUD/001/7/13	Judiciary	Delay	A complaint alleging delay in the determination of Winam SRMCC 325 of 2008.	Resolved as the ruling to the case was delivered in June 2013 and she was updated accordingly.
	CAJ/KSM/M. LAB/017/4/13	National Social Security Fund	Delay	A complaint alleging delay by the National Social Security Fund to pay his dues which he was paying while in employment at Model Securities Limited. His NSSF Number is 041891147	Resolved as he was paid all his dues through his bank.
	CAJ/KSM/ POL/015/13/13	National Police Service	Unresponsive Official Conduct	A complaint alleging that the OCS Kondele Police Station, Kisumu County is abetting crime in the area due to the increased insecurity in the area.	Resolved as a new OCS was posted to the said station and this has led to a decline in insecurity in the area
	CAJ/ POL/015/1538/13/ VOL.1	National Police Service	Inefficiency	A complaint alleging that he was assaulted by persons well known to him. He reported the incident to K'ogelo Police Station in Siaya County but the Police had failed to take action to have the said persons arrested.	Upon inquiry, the accused persons were arrested and charged in Criminal Case No. 134 of 2013, police file No. 638/07/2013.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ POL/015/1532/2013	National Police Service	Inefficiency	A Complaint alleging failure by the police to adequately investigate a matter where the complainant had bought a motor vehicle from a private individual for Kshs 250,000 but he suspected there was fraud on the part of the seller when this motor vehicle was repossessed by the owner.	Inquiry file closed since the seller was subsequently arrested and charged.
	CAJ/P. ADM/015/1610/2013	Ministry of Provincial Administration & Internal Security	Delay	An allegation regarding failure by the Area Chief, Sang'alo Location Nandi County, to provide a certified list of beneficiaries to enable a Succession Cause No. 489 of 2008 proceed.	The matter was resolved as the Area Chief duly provided the list as well as other supporting documentation
	CAJ/IEBC/056/234	Independent Elections and Boundaries Commission	Unresponsive Official Conduct	An allegation that he requested the respondent on several occasions to remove his name from the register of Mkenya Solidarity Party without success.	The matter was resolved, File closed.
	CAJ/ POL/015/1543/2013	National Police Service	Unresponsive Official Conduct	A complaint that the OCS, Shauri Moyo Police Station had refused to give the complainant the charge sheet of the charges against his son who had been charged in Traffic Case No. 6346 of 2012.	The Commission intervened and the complainant was issued with the charge sheet.
	CAJ\KRC\004\116\13	Kenya Railways Corporation	Delay	A complaint that Kenya Railways Corporation had delayed to release the complainant's late husband Fredrick Karimi Gathogo dues since 2007 despite several follow-ups.	Inquiry initiated and the dues were released to the complainant.
	CAJ/ POL/015/1570/2013	National Police Service	Unresponsive Official Conduct	A complaint that the police had failed to on a complaint reported to Molo Police Station and recorded as OB No. 15/24/12 following an invasion of the complainant's premises on 22nd October 2012 invaded on by several persons in the company of armed Police Officers.	The Commission intervened and the suspects were arrested and arraigned in court.
	CAJ/JUD/001/537/13	Judiciary	Delay	A complaint of delay by the Judiciary to hear an Industrial Cause No. 1312 of 2012, Paul Onyango Odhiambo Vs Kaluworks Limited	Matter referred to the Judiciary Ombudsperson and the matter was fixed for hearing.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ JUD/001/553/13/ VOL.1	Judiciary	Inefficiency and Maladministration	An allegation that the case file for Republic vs Francis Njoroge Githu HCCR No. 22 of 2011 went missing in the Mombasa High Court Registry and further that the trial was being conducted by a student intern acting as the State Counsel.	The matter was referred to the Judiciary Ombudsperson and a new file was reconstructed. In addition, a new State Counsel was assigned to the case.
	CAJ/PCK/0123/64/13	Postal Corporation of Kenya	Unfair Treatment	A complaint that Postal Corporation of Kenya had unfairly dismissed the complainant from work. The complainant alleged that the dismissal was due to the personal differences between the Controlling Officer in Meru County and Regional Human Resource Officer Central Region.	The Commission initiated an inquiry and the complainant was reinstated to his position.
	CAJ/AG/001/525/13. VOL 1	Department of Civil Registration	Unfair Treatment	A complaint that the Civil Registration Department, Nairobi County, had failed to issue the complainant, a student at Jamhuri High School in Nairobi, with a birth certificate for failure to bring his parents national IDs. The complainant was an orphan who had missed exams the previous year for lack of a birth certificate.	The Commission intervened and the Complainant was issued with a birth certificate.
	CAJ/M. IMM/003/91/13/ VOL.1	Registration of Persons Bureau	Delay	An allegation that the Registrar of Persons, Kariokor Centre, had failed to issue a National Identity Card to the complainant's daughter Rahma Hanif, since 2011.	Initiated an inquiry and the ID was issued.
	CAJ/ KENHA/006/36/2013	Kenya National Highway Authority	Delay	A complaint that the Kenya National Highway Authority had delayed in compensating the complainant Kshs. 221,317 following the acquisition of his plot No. Kisumu/  Kanyakwar 'A'/1552 for the construction of Kisumu Bypass.	Initiated an inquiry and the complainant was paid the money.
	CAJ/M. LAN/022/668/2013	Ministry of Lands, Housing and Urban Development	Delay	An allegation that the Land Registrar of Kibwezi District Land Registry had delayed to process the complainant's application for the sub-division of his Plot No. 953 in Makuyuni Adjudication Section in Kibwezi District since April 2009.	The Commission initiated inquiries and the matter is ongoing.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/P. ADM/015/1604/2013	Ministry of State for Internal Security and Provincial Administration	Abuse of Power	A complaint against the Assistant Chief of Karangatha Sub-Location, Nyakio Location, Nyandarua County that he was using his office to unlawfully evict the complainants from their land, Plot No. 4, that they inherited from their mother.	Initiated inquiries and the matter is ongoing
	CAJ/M. LAN/022/657/2013	Ministry of Lands, Housing and Urban Development	Inefficiency	A complaint of inefficiency in the delivery of services at the Embu Land Registry. It was alleged that valuation would take as long as one month and officers were rarely in the office.	Initiated an inquiry and the matter is ongoing
	CAJ/P. ADM/015/1547/2013	Ministry of State for Provincial Administration & Ministry of Lands	Abuse of Office	A complaint that Nakuru District Land Settlement Officer together with the Chief of Kamara Location in Nakuru County had colluded to have Plot No. 321 in Kamara/Chesupeno irregularly transferred to Morris Kipkoech Chepkwony while the owner Rebecca Kwabuga Atuya (deceased) was admitted in hospital. The complainant further alleged that he had raised the issue with the officers, but they had taken no action.	Initiated an inquiry and the matter is ongoing
	CAJ/ POL/015/1514/2013	National Police Service	Delay and Unresponsive Official Conduct	An allegation that the Kasarani DCIO had failed to act on a complaint of fraud reported to them as OB No. 36/29/08/2011. It was further alleged that the Investigating Officer had been provided with all the necessary information and documents.	Initiated an inquiry and the matter is ongoing
	CAJ/KWS/010/66/13	Kenya Wildlife Service	Abuse of Power	A complaint that Mr. Maurice Baraza Otunga, a Senior Officer at the Kenya Wildlife Service eloped with the complainant's wife. Further, it was alleged that the said officer used his office to intimidate the complainant by sending his official driver to shoot him.	The complainant advised to report to the Police first for action.

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ POL/015/1694/2013	National Police Service	Unresponsive Official Conduct	A complaint that the Police at Sultan Hamud Police Station failed to investigate a report that was made to it and recorded as OB 27/13/5/2011. A further report on the same incident was made to the Divisional Criminal Investigations Officer at Makueni who had failed to take any action against the perpetrators.	Initiated an inquiry and the matter is ongoing
	Anonymous CAJ/ POL/015/1579/2013	National Police Service	Maladministration	An allegation that there was a ghost officer known as PC Pius Tum, 52570 in Eldoret Police Station and had been acting as an officer for the last 6 year with the knowledge of the OCS and the OCPD.	Matter had been addressed to the National Police Service Commission.
	CAJ/ AG/001/709/2013	Attorney General	Delay and Administrative Injustice	A complaint that the Attorney General had failed to remit a decretal sum of Kshs. 8,845,405.14 that the complainant was awarded in Nairobi Misc. Application No. 1185 of 2003 despite the same being served upon him on 11th June 2012.	Initiated inquiry which is ongoing.
	CAJ/M. LAN/022/720/13	Ministry of Land, Housing and Urban Development	Unresponsive Official Conduct	A complaint against the District Land Adjudication & Settlement Officer in Igembe District for failing to furnish the complainant with a copy of the old Demarcation Map of 1993 for Parcel No. 775 (formerly 225) to enable him lodge a claim with the relevant authorities.	Initiated an inquiry which is ongoing
	CAJ/M. LAN/022/728/13	Ministry of Land, Housing and Urban Development	Unlawful Official Conduct	An allegation that the Land Registrar, Nyahururu had failed to transfer to the Complainant Land Parcel No. Nyahururu/Oloragwi/ 1693 and 1694 as ordered by the Court in Nairobi Civil Suit No. 2761 of 1994.	Initiated an inquiry which is ongoing
	CAJ/HELB /013/385/2013	Higher Education Loans Board.	Unfair Treatment	A complaint that HELB had refused to issue the complainant with a Clearance Certificate to enable him run for an elective post in the General Elections in March 2013.	The complaint lacked merit as the complainant had not serviced the HELB loan.
	CAJ/LI/8/7/2013	State Officer	Abuse of Power & Unlawful Official Conduct	A complaint that Hon. George Muchai had violated the law by holding two public offices and drawing benefits from them; as a Member of Parliament for Kikuyu Constituency and as the Vice-Chairperson of the National Industrial Training Authority	Initiated an inquiry which is ongoing

No.	FILE REF. NO.	RESPONDENT	CLASSIFICATION OF COMPLAINT	SUMMARY OF COMPLAINT	REMEDIAL ACTION
	CAJ/ PSC/016/53/2013	Public Service Commission	Maladministration	A complaint that the Public Service Commission had failed to appoint officers to vacant positions in the Kenya Prisons Service as had been recommended by the Madoka Report. The positions included the Deputy Commissioner General of Prisons and 32 senior positions. It was further alleged that the inaction had led to stagnation within the Service.	Initiated an inquiry which is ongoing
	CAJ/CBK/000/502/13	Central Bank of Kenya	Abuse of Power	A complaint that the Central Bank of Kenya had abused power by failing to print new currency in line with the new Constitution. It was further alleged that CBK had printed currency and backdated them to 16th July 2010.	Initiated an inquiry which is ongoing
	CAJ/AG/001/542/13	Ministry of Interior and Co-ordination of National Government	Delay	A complaint that the Ministry of Interior had delayed to settle an award by the High Court in favour of the complainant in Nairobi HCCC No. 845/03, Otieno Mak'Onyango vs Attorney-General and Daniel T. Arap Moi, that was awarded on 15th June 2013.	Initiated an inquiry which is ongoing
	Anonymous  CAJ/PAR/045/5/13/ VOL.1	Parliament	Criminal Act	A Complaint alleging that Hon. Maina Kamanda, MP forged academic certificates purportedly issued by the Jomo Kenyatta University of Agriculture and Technology for the purpose of obtaining nomination in the last General election of 4th March 2013.	Initiated inquiry which is still ongoing.

## 2.8 SAMPLE LETTERS OF APPRECIATION

022/753  
14 OCT 2013  
STRATTA  
NOAH DAVID KORROMBOI,  
P.O. BOX 52-00242,  
KITENGELA  
15th OCTOBER, 2013

Mobile no, 0722699990.

Ref; CAJ/M.LAN/0221753/13-WT

MS. SAADIA A. MOHAMED,  
OGW OFFICE OF THE  
OMBUDSMAN,  
6th FLOOR HARAMBEE AVENUE,  
PO BOX 20414,  
NAIROBI-00200

Dear Madam,

**RE: ILLEGAL FRAUDULENT TRANSFER OF LAND PARCEL  
KAJIADO/KAPUTIELNORTH/3272. LETTER DATED 02/09/2013**

Forwarded herewith is a copy of a letter date 14th October 2013 addressed to me by Mr. J. K. KOSKEI the Land Registrar Kajiado, in reference to the above mentioned subject.

Mr. J. K. Koskei in his capacity as the Land Registrar Kajiado did his own investigations on the issue above and his deduction and conclusion are given in the attached copy of his letter.

I am forwarding to you this information development in case a discrepancy arises lean still come to your noble office for further assistance.

It is my humble wish to thank you and your office for every effort and action taken in writing and personnel in bringing this victory of justice. Thanks again.

Yours truly,



NOAH DAVID KORROMBOI

## MINISTRY OF LANDS



Tele/mail: "landcom" Kajiado Telephone:  
Kajiado 21272\_ 0202511963  
When replying use;

Land Registry Department  
P.O. Box 78-01100  
KAJIADO  
14th October, 2013

KJD/LND/ADM/200NOL.1/85

NOAH DAVID KOROMPOI P.  
P.O. BOX, 52-00242  
KITENGELA

**RE: KAJIADO/KAPUTIEI-NORTH/3272**

The above matters refers,

After through scrutiny of your Title deed, as well as records in this office, I have established that, the ownership still vest in your Name and any purported transfer to any other third party namely Lucy wambui kangethe and Abigael Atieno is fraudulent.

I have subsequently cancelled the prior entries and reinstated the initial entry

  
J. K. KOSKEI  
DISTICT LAND REGISTRAR  
KAJIADO



Janet Aluoch  
P.O Box  
Nairobi

Chairman,  
Commission on Administrative Justice  
P.O Box  
Nairobi

Dear Sir,

**YOUR ASSISTANCE IN GETTING BACK MY CHILD**

I want to thank you for the assistance you gave me to get back my child, Jared Odhiambo Ochola who had been detained by a lady called Irene who resides in Umoja Innercore .

When you wrote to the OCPD a letter on 6th September 2013, I was called by the lady on 9th September 2013 who told me to go and pick my child and stop harassing her.

I am happy now that I have my child back.

Thank you,  
J<sup>o</sup>/4-  
Janet Aluoch



MINISTRY OF AGRICULTURE, LIVESTOCK & FISHERIES DEVELOPMENT .

[STATE DEPARTMENT OF AGRICULTURE]

Telephone: 0722 385 246  
E-Mail: daosuba@yahoo.com  
When replying please quote;

Sub County Agricultural Officer,  
Suba Sub County,  
P.O. Box 59 4 0308,  
SINDO.  
16 October, 2013.

REF: MOA/DAOSBA/WH/RPTS/4NOL. I/072

The Commission for the Administrative Justice,  
"Office of the Ombudsman",  
Deputy President Office 20414-00200,  
NAIROBI.

RE: COMPLAINT AGAINST THE OFFICER IN CHARGE, MINISTRY OF ROADS, KISH.

I acknowledge receipt of your letter, reference CAJ/M.ROA/006/38/13/VOL. 1-WT, of 8/10/2013 on the above subject.

I begin by most sincerely thanking your office for the action taken and the office of Transport and Infrastructure for their action(s) and responses. The main aim for my complaint was to help contribute to improvement of accountability and respect to customers of whatever nature seeking service in government offices. I have gone through the responses given and am satisfied with the action taken by the relevant office in the Ministry of Roads.

I once again give my appreciation to your office and would pray that the matter be laid to rest as I am satisfied with the actions outlined in the letter reference, ME/PER/2005021108/51 of 26/04/2013 .

George O. Ombani  
Sub County Agricultural Officer,  
SUBA SUB COUNTY.

MR. CHRISTOPHER L'OUMA  
CHRIST THE KING CATHOLIC CHURCH  
P.O BOX 1684  
KITALE  
2ND NOVEMBER 2013

CHAIRPERSON  
COMMISSION ON ADMINISTRATIVE JUSTICE  
"OFFICE OF THE OMBUDSMAN"

Dear Sir,

**RE: APPRECIATION (YOUR REF: PCS/EDU/013/148/09 -AOL)**

I acknowledge your work on the matter regarding my complaint lodged against Principal of Boma Secondary School with PCSC November 2009 . It is to my satisfaction that since then he was transferred from the said school.

I also acknowledge your follow-up letter of the matter and concern on 31st July 2013 and 23rd October 2013.

Thank you very much.

Yours truly,



CHRISTOPHER L'OUMA

020/1452

(

**David Onyonka**  
P.O.Box 14794-00800  
Nairobi, Kenya  
Tel: 020 4452279 Fax: 020 4452280  
dlonyonka@yahoo.co m

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8th October 2013

The Commission on  
Administration of  
Justice  
P. O. Box 20414 - 00200  
Nairobi

Att: Edward Okello

**RE: COMPLAINT REGARDING FAILURE TO BE REINSTATED UPON ACQUITTAL**

Please refer to your letter ref No; PCSC/M.FIN/ 452/2012-AOL dated 22 July 2013.

I wish to let you know that's I was re instated into the service during the month of May 2013 and have been waiting for a posting. I have now been posted the Ministry of Mining with effect from October 2013.

I wish to thank you for your efforts in ensuring justice is done.

Yours sincerely



David Onyonka



APC DENNIS BETT,  
P/P No 88070631,  
P.O BOX 744  
LITEIN.  
9<sup>TH</sup> OCTOBER 2013.

To  
THE COMMISSION ON ADMINISTRATIVE JUSTICE,  
OFFICE OF THE OMBUDSMAN,

Dear Sir/Madam,

MY POSITION OR OPINION REGARDING APPEAL AGAINST DISMISSAL

I am very pleased to inform you that I have been reinstated by the government through the effort of your office and I have no complain at all, in fact I am fully satisfied.

As soon as I received the reinstatement letter from the Permanent Secretary for internal Security by then on 13<sup>TH</sup> MAY 2010 I went back to the AP Force and remain at APIC for eight months thereafter I was posted to Muranga camp but currently I am stationed at sub-county Bureti. I am going to attach documents showing my reinstatement.

I want to register my appreciation to the Chairperson of the Commission and all other staff who participated either directly or indirectly toward my reinstatement. I also wish to inform you again that I have got sworn and promised to abide by the laws governing police officers and ready to defend and protect the lives and property of the Kenyans within the border.

Yours faithfully

APC Dennis Bett P/P No 88070631  
Mobile no 0714 282 142

JAMHURI HIGH SCHOOL,  
P.O. BOX 40584-00100,  
NAIROBI.  
2<sup>nd</sup> MAY 2013.

To office of the Ombudsman,  
P.O. BOX 20414-00200,  
NAIROBI.

Dear sir

RE: THANK YOU FOR ASSISTING ME TO GET MY  
BIRTHCERTIFICATE

I would like to take this opportunity to  
thank the office of the Ombudsman for the assistance that  
offered to me to ensure that I get my birthcertificate  
so that I can register for my KCSE.

I tried many including my relatives but they refused you  
are the only people who acted like my parents.

Since I do not have parents who can support me I live with  
my old grandmother I had to make sure that I look for people  
who can help me and I found you who played the role.

I appreciate a lot for your service that you offered to  
me. Am also looking forward in future for your support.  
May God bless you all.

Yours sincere,  
  
Kataka John S

## **2.9 SYSTEMIC INVESTIGATIONS AND RESEARCH**

### **2.9.1 INTRODUCTION**

The Commission is empowered under Article 59(2)(h-k) of the Constitution and section 8(a-c) of the Act to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government in regards to abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

One of the strategies adopted by the Commission to realize this mandate is the conduct of investigations on systemic issues to enhance responsiveness and accountability in the public sector. Systemic investigations relate to issues that are inherent in the structure, system, procedures and processes in an institution which affect service delivery. The investigations seek to identify the underlying weaknesses and recommend redress mechanisms to improve service delivery. The Commission also conducts investigations on complaints received by it on suo motu basis. Pursuant to this strategy, the Commission conducted investigations on the following systemic issues.

#### **INVESTIGATION 1: SYSTEMIC ISSUES IN THE ISSUANCE OF VITAL DOCUMENTS**

The Commission conducted investigations into the systemic issues inherent in the issuance of vital documents (birth and death certificates, passports, permits, passes, national identity card and citizenship) by the various State Departments. The investigations were informed by the significant number of complaints lodged by the public on the issuance of the documents by the Department of Civil Registration, National Registration Bureau and the Department of Immigration Services. The investigations also involved the Provincial Administration who have a key role in the process of issuing vital documents.

#### **FINDINGS OF THE INVESTIGATIONS**

The main findings of the investigations were as follows:

- i) The issuance of vital documents was characterized by delays, corruption and inefficiency.
- ii) There was lack of awareness about the application procedures and requirements for vital documents which ultimately affected the timely processing and issuance of the documents.
- iii) The complaints handling mechanisms within the Departments were weak and ineffective – there were instances of delay or inaction on complaints lodged by the public.
- iv) Inaccessibility of the offices in some counties due to their vastness and lack of transport to the towns where the offices are located

- v) There was widespread cases of lateness and absenteeism involving the officers in the Departments, which affected service delivery
- vi) There were instances of bribery, absenteeism and unresponsiveness by the Provincial Administrators in the delivery of services relating to issuance of vital documents.
- vii) The Departments faced challenges of inadequate resources and working facilities, inadequate office space, low remuneration and deployment of staff in wrong sections without due regard to qualifications and competencies.

## RECOMMENDATIONS

The following are some of the main recommendations of the investigations.

- i) There is need to improve infrastructure in the Departments, including acquisition of equipment and facilities, and full implementation of the Integrated Population Registration System to minimize the possibilities of fraud and irregular or multiple issuance of vital documents. This would also create inter-departmental networking and inter-linkages thereby decentralizing the services and enhancing accessibility and efficiency.
- ii) The Government should enforce mandatory registration of births and issuance of certificates to minimize instances of non-registration and irregular or illegal issuance of other vital documents such as IDs and passports.
- iii) There is need to establish a one stop shop for the Departments dealing with the issuance of vital documents. This could be decentralized to the divisional levels in some counties to enhance accessibility.
- iv) There is need for strict enforcement of the law, including taking disciplinary action against officers found culpable of corruption and other malpractices, and individuals who act as 'brokers' in the issuance of the vital documents.
- v) There is need to enhance and build the capacity of the Departments to deliver services such as through hiring, training and implementation of appropriate staff welfare programmes.
- vi) The Departments should ensure strict supervision of staff through regular inspections, auditing, vetting and monitoring.
- vii) There is need to intensify civic education to the public on the importance and requirements for issuance of vital documents importance.
- viii) The complaints handling mechanisms within the Departments should be reactivated to ensure prompt and effective resolution of complaints from the public.

## INVESTIGATION 2: ALLEGED ABUSE OF POWER BY THE DIRECTOR, KENYA INSTITUTE OF EDUCATION

The Commission conducted investigations into allegations of mismanagement and abuse of power at the Kenya Institute of Education (now the Kenya Institute of Curriculum Development). The complaint, which was lodged anonymously, raised nine allegations against Dr. Maria Nzomo, Director of KIE, including abuse of power in relation to drilling of a borehole; malpractices relating to the 2006 Book Evaluation Team's accommodation; misuse of reserve account funds; and nepotism and favouritism through the recruitment of relatives.

The investigations by the Commission into the allegations found five of the allegations as satisfactorily responded to by the Director of KIE. On the other hand, four of the allegations were substantiated by the investigations.

### FINDINGS AND RECOMMENDATIONS

The findings and recommendations on the four areas were as follows:

#### **a) Allegation of malpractices relating to the accommodation of the 2006 Book Evaluation Team**

The Commission found that there was no evidence confirming that the Director of KIE had received one million shillings from the Sun N Sand Hotel in order to transfer the Book Evaluators from Hotel Le Soilel. However, the investigations revealed that there was no proper maintenance of records and accounts in the exercise contrary to the law. The investigations also revealed that the Director of KIE had usurped the powers of the Tender Committee in awarding the contract to Mombasa Beach Hotel which was the second lowest bidder when Hotel Le Soilel indicated its inability to accommodate the 120 participants.

The Commission recommended as follows:

- *The Kenya National Audit Office should carry out an audit of the books and accounts of KIE to ascertain the actual payment made to Mombasa Beach Hotel, as no evidence was submitted to establish the 50 percent payment by KIE.*
- *The KIE Management should adhere and observe the principles of financial management under Chapter Twelve of the Constitution and the Public Finance Management Act, and to this end keep proper records and books of accounts, and ensure transparency, accountability and participation in all aspects of management.*
- *KIE should strictly comply with the Public Procurement and Disposal Act, 2005 in relation to due diligence and internal procurement mechanisms to ensure and transparency and competition in the process.*

## **b) Allegation of Abuse of Office, Nepotism and Favouritism**

The investigations revealed that the Director had selectively and unprocedurally recruited her siblings (Mrs. Mercy Kaembe Mwangi – Sister and Mr. Charles Mwambia Anampiu – Brother) at KIE without due regard to section 12(1,3-6) of the Public Officer Ethics Act, 2003, and section GI of the Rules of Conduct under the Public Officer's Code of Regulations, 2006.

Further, the investigations revealed that Mrs. Mwangi and Mr. Anampiu gave misleading information to the Commission by denying their relationship with the Director of KIE.

The Commission recommended that:

- *The Director should write a letter of apology to the Chairman of KIE on the irregular recruitment of relatives at the Institute and failing to disclose conflict of interest in the recruitment process.*
- *The KIC Council should retire both Mrs. Mwangi and Mr. Anampiu in public interest as their recruitment was irregular and improper.*
- *Mr. Anampiu be prosecuted under section 52 of the Commission on Administrative Justice Act for giving false and misleading information to the Commission on his relationship with the Director.*
- *In future, KIE should ensure ethnic and regional balance of its staffing in line with Article 10 and 232 of the Constitution.*

## **c) Allegation of Bribery in the issuance of Tender to Drill a Borehole**

The investigations found that the tender for the drilling of a borehole was done in line with the Public Procurement and Disposal Act. It also found no evidence to support the allegation that the Director had received a bribe to issue a Local Purchase Order. However, in relation to the allegation, the Commission found that the Water Resources Management Authority often 'cut and pasted' the contents of the previous permits while processing new ones thereby making errors on the face of the permits.

- *The Commission recommended that the Water Resources Management Authority should ensure proper documentation in the processing and renewal of permits.*

## **d) Allegation of Depletion of the Reserve Account**

The Commission found that whereas there was no evidence that the Director had benefited from the Reserve Accounts, there were malpractices in the management of the accounts. In particular, there was lack of proper records on the roll-overs for the fixed deposit accounts and the progression on each fixed deposit account as it was rolled-over upon maturity was not known thereby creating uncertainty on the accrued interests. It was also found that the accounts had been opened without the express consent of KIE

Council as required by law. The Commission, therefore, recommended as follows:

The Kenya National Audit Office should carry out an audit on all fixed deposit accounts held by KIE to ascertain the management of the accounts

The Director should comply with the law by seeking authorization of KIE Council to invest in fixed deposit accounts and regularly disclosing all bank accounts to the Council.

### **e) Unresponsive and unlawful Official Conduct and Discourtesy**

During the investigations, the Commission noted that Mr. John Kimotho, Senior Deputy Director for Media and Extension Services, demonstrated utter discourtesy to the investigators, and further disregarded requests for information. The conduct of Mr. Kimotho amounted to unresponsive official conduct and discourtesy, which are actionable under the Constitution and the Commission on Administrative Justice Act.

- *Accordingly, the Commission recommended that the KIE Council cautions Mr. Kimotho for his conduct.*

It was also established that the Director had sought to intimidate the staff who might have reported the matter to the Commission. This was done through the invitation of Senior Officers from the Criminal Investigations Department 'to establish the authors of the malicious letters and the motive behind their circulation.' This act, in itself, amounted to improper and unlawful conduct and abuse of power by the Director.

The Commission also noted that the KIE Council had failed to initiate the process of recruiting a Director of the KICD as required by sections 14 and 15 of the Kenya Institute of Curriculum Development Act, 2013 which came into operation in February 2013 - over 12 months to date.

- *Accordingly, the Commission recommended that the KIE Council should immediately initiate the process of recruiting a new Director of KICD as required by the law.*

## **INVESTIGATION 3: ALLEGED TORTURE AND DEATH OF AN INMATE AT KERICHO MAIN PRISON**

The Commission launched investigations into the allegations of torture and subsequent death of a Rwandese in-mate, Cyiza Desire, at the Kericho GK Main Prison in July 2013. According to the allegations, the in-mate had been tortured by prison officers at the facility.

### **FINDINGS AND RECOMMENDATIONS**

#### **FINDINGS**

The findings of the investigations were as follows:

- i. There was no confirmation or disapproval of the allegations of torture. According to

the pathologists' report, the cause of the death was pneumonia.

- ii. The officers had breached their duty of care by delaying to respond, offer or facilitate prompt medical attention to the deceased on the night of 4th July 2013.
- iii. There was no official motor vehicle at the Prison on the night of 4th July 2013, when the deceased was critically ill, and the officers had to get a taxi cab to take him to hospital.
- iv. Senior Sergeant Panaito Onyango and Joseph Cheruiyot Kiprotich (driver) misleading and false information to the Commission by knowingly stating that the deceased was taken to hospital in the official prison vehicle, Registration Number GK A349S, while in fact he was taken to hospital using a taxi.
- v. There were reports of torture, inhuman and degrading treatment at the facility. This was supported by a report that four in-mates had been victimized by detaining them in isolation for recording statements with the police

## RECOMMENDATIONS

The Commission, therefore, recommended the following:

- i. The National Police Service should conclusively and promptly investigate the matter and take appropriate action based on the findings.
- ii. Senior Sergeant Panaito Onyango and Joseph Cheruiyot Kiprotich should be prosecuted under Section 52 of the Commission on Administrative Justice Act for giving false and misleading information to the Commission.
- iii. The Commissioner-General of Prison should investigate the allegations of unavailability of the official prison vehicle at Kericho Main Prison on the material day of the incident, and also allegations of torture and degrading treatment at the facility.
- iv. The Kenya Prisons Service should improve the documentation of particulars of inmates upon being committed to the prisons to ensure easy communication with their next of kin in the event of emergencies.
- v. The officers at the Kericho GK Main Prison should be trained on human rights and the basic minimum standards on the treatment of prisoners.

## INVESTIGATION 4: RIOMA BUS ACCIDENT

The Commission launched investigations into the accident involving Rioma Secondary School Bus in Marani Division of Kisii County. In particular, the Commission sought to investigate whether the accident was caused by issues of inefficiency, incompetence and other forms of omission or commission by the concerned public officers. The investigations focused on, *inter alia*, the alleged nepotism and irregular hiring of the driver of the ill-fated Bus, incompetence of the driver, overloading, un-roadworthiness and speeding of

the Bus, unresponsiveness of the traffic police and compensation for the injured and the next of kin of those who died in the accident.

## **FINDINGS AND RECOMMENDATIONS**

### **FINDINGS**

The main findings of the investigations were the following:

- i. The recruitment process of the driver of the ill-fated Bus was unprocedural.
- ii. The driver of the Bus was inexperienced and incompetent to drive it since he did not have authentic endorsement for Class 'A' on his Driving License.
- iii. Six schools had hired the Bus to transport the students to the games. Few lives would have been lost if each school had hired its own transport or there was compliance with the laid down Regulations.
- iv. There was lack of proper mechanisms to monitor the organization, funding and implementation of co-curricular activities. In addition, the School Management and District Education Officers did not follow the laid down procedures that require the collection of funds to be approved by the Education Cabinet Secretary in line with the Basic Education Act, 2013.
- v. Tambacha Secondary School had acted unlawfully and unethically by hiring non-students to compete for them in the football competition.
- vi. The Government Vehicle Inspection Unit was not decentralized hence its operations were limited in terms of accessibility and effectiveness.

### **RECOMMENDATIONS**

Based on the findings, the Commission recommended that:

- i. The Ministry of Education should ensure the establishment of County Education Boards in accordance with the Basic Education Act to manage education affairs at the devolved levels. The Ministry should also increase funding for co-curricular activities.
- ii. The Ministry of Education should take action against the Marani District Quality Assurance and Standards Officer for failing to observe the Transportation Safety Rules under the Safety Manual while flagging off the overloaded Rioma Secondary School Bus.
- iii. The Teachers Service Commission should take action against the principals of Rioma Secondary School and Tambacha Secondary School for misusing the school vehicle and involving non-students in co-curricular activities for their schools respectively.

- iv. The School Principals, Boards of Managements and District Education Boards should follow Regulations and seek approval to collect funds from parents in accordance with the Basic Education Act.
- v. The Government Vehicle Check Unit should consider effective decentralization of motor vehicle inspection services countrywide.
- vi. The National Police Service should investigate and take action against the driver of the ill-fated Bus for forging the endorsement of Class 'A' stamp on his Driving License.
- vii. The National Transport and Safety Authority should undertake an investigation into the systemic and human factors that contribute to road accidents with a view to making recommendations on control and management of road accidents Kenya.

### **INVESTIGATION 5: ALLEGED INACTION BY POLICE FROM KAYOLE AND SOWETO POLICE STATIONS**

The Commission launched investigations into allegations by Ms. Fatuma Bakari that Kayole Police Station had failed to take action in a case of defilement of her 14 year old daughter reported to them on 23<sup>rd</sup> August 2011. The minor was examined at the Nairobi Women Hospital which revealed that she had been sexually assaulted.

Further, Ms. Bakari alleged that she reported a subsequent kidnapping of the same minor at the Soweto Police Station on 12<sup>th</sup> September 2011, but no action was taken by the police.

## **FINDINGS AND RECOMMENDATIONS**

### **FINDINGS**

The investigations of the allegations revealed the following:

- i. A report of defilement was reported at Kayole Police Station on 23<sup>rd</sup> August 2011 at 7.30 p.m. and recorded vide OB No. 78/23/08/2011, but the police failed to take action on the matter.
- ii. The police from the then Kayole Officer Commanding Police Division, Mr. Moses Lubisia, the Kayole Officer Commanding Station, Mr. Wilson Cheruiyot, and the Investigating Officer, Ruth Maithya, failed in their duties and exhibited unresponsiveness and inefficiency in handling the matter.
- iii. A complaint of kidnapping was reported at Soweto Police Station on 12<sup>th</sup> September 2011 and recorded vide OB No. 29/12/9/2011. The suspect was arrested and arraigned in court with the offence of creating disturbance on 25<sup>th</sup> October 2011. However, he absconded the Court and a warrant of arrest was issued against him. In spite of this, the police failed to execute the warrant on the allegation that he could not be traced. The failure to execute the warrant resulted in the charges being

withdrawn under section 87(a) of the Criminal Procedure Code on 27th March 2012.

- iv. There was negligence by the Investigating Officer, Cpl. Samuel Mwadime in carrying out his duties since he booked the suspect for a lesser offence of creating disturbance and also misplaced all the statements he had recorded in the matter. In addition, he went on leave after being assigned the matter thereby contributing to the delay in finalizing it.
- v. Chief Inspector Julius Mwamrizi erred in instructing the investigating officers to change the charges from kidnapping to creating disturbance. Accordingly, he acted in contravention of Chapter 2(10)(iii) of the Force Standing orders which requires the Officer Commanding Station to ensure that complaints received are properly recorded and investigated.

## **RECOMMENDATIONS**

Based on the above findings, the Commission recommended the following:

- i. The National Police Service Commission should take disciplinary action against the responsible officers for negligence and failing to act on the complaints. Further, action should be taken against the then Officer Commanding Soweto Police Station, Mr. Julius Mwamrizi, presently stationed at Londiani Police Station in Kericho County, for negligence and abuse of power by ordering the investigating officer to prefer a lesser charge of creating disturbance instead of kidnapping against the suspect.
- ii. The Nairobi County Police Commander should assign another team of investigators to promptly and conclusively investigate the matter and take appropriate action based on the findings.
- iii. The Inspector General of Police should develop guidelines and timeframes for investigations to ensure that investigating officers expeditiously conclude the investigations on matters reported to them.

## **INVESTIGATION 6: ALLEGATIONS OF ENCROACHMENT ON THE LAND FOR MACHAKOS GK PRISON AND OTHER RELATED MATTERS**

The Commission conducted investigations into the allegations of encroachment on the land belonging to Machakos G.K. Prison by private developers. The investigations also focused on the alleged non-payment of prisoners for the work done, and failure to allow them to bask in the sun by the Prison Authority.

## FINDINGS AND RECOMMENDATIONS

The main findings of the Commission were the following:

### i. Alleged Encroachment into the Prison's Land

- a) The land belonging to Machakos GK Prison had been encroached into by private developers who had constructed permanent buildings and rented out to some of the prison officers.
- b) On 26th November 2010, the Government vide Gazette Notice Number 15573 revoked the title deeds issued to private developers within the facility. However, the affected private developers went to court, Machakos High Court Miscellaneous Application No. 130 of 2011, to challenge the revocation, and the case is pending before the court.
- c) The Kenya Anti-Corruption Commission, as it then was, filed a civil case No. 33 of 2008 at the Machakos High Court for nullification of the letter of allotment of Plot Number 20 (Machakos Municipality Block 1/609), and the case was later transferred to Milimani Law Court in Nairobi.

Accordingly, the Commission recommended that:

- *The hearing and determination of Civil Suit No. 33 of 2008 pending before Milimani Law Court be fast tracked.*
- *The National Land Commission should conduct nationwide inquiry on the land owned by the Kenya Prison Service and initiate the process of recovering the irregularly acquired land*

### ii. Non-Payment of Prisoners

The Commission found that prisoners were no longer paid for the work done while in prison. Moreover, the prescribed rate of 10 cents daily was too low to meet the threshold of equal pay for equal work done. Accordingly, the Commission recommended as follows:

- *The Ministry of Interior and Co-ordination of National Government should consider reviewing the payment to prisoners for work done in accordance with section 74(1) (i) of the Prisons Act and sections 19 and 20 of the Prison Rules.*
- *The Commissioner General of Prisons should ensure that prisoners are paid for work done.*
- *A Special Fund be established and funded from the revenue generated from the sale of the products of the Prison Industries. The Fund should be managed by the Kenya Prison Service and should be used to pay prisoners for the work done.*

### iii. Failure to allow Prisoners to bask in the sun

The Commission did not get evidence to support allegations that prisoners were denied time to bask in the sun. However, the Commission noted that the facility was originally designed for 300 male prisoners although it presently accommodates about 850 prisoners. Consequently, the Commission recommended that;

- *The male facility should be extended to cater for the additional prisoners. This involves construction of new facilities to decongest the existing ones.*
- *The Kenya Prisons Service should accord prisoners ample time outdoors since incarceration for 23 hours daily is repugnant to Article 51(1) of the Constitution.*

### iv. Products of the Kenya Prisons Service and income generated

- a) The investigations revealed that the Machakos Prison Industry realized Seven million shillings (Kshs. 7,000,000) in 2013 from the sale of industry products out of which they received only two hundred and fifty thousand shillings (Kshs. 250,000) as operational cost and the rest submitted to the National Treasury through the Prison Headquarters.
- b) The Prison Industries produce high quality furniture and related products

The Commission, therefore, recommended as follows:

- *There should be a Government Policy that all Public Bodies purchase furniture and related wares from the Prisons Industries at competitive market rates.*
- *A Special Fund should be made out of the income generated from the sale of the products of Prisons Industries to primarily pay for work done by the prisoners. The Fund should be administered by the Kenya Prison Service.*

## 2.10 UNRESPONSIVE AND MALFEASANT PUBLIC OFFICERS

Pursuant to its mandate of addressing maladministration in the public sector, the Commission established a citation register for unresponsive public institutions and public officers. This was in line with its strategy of sanctioning unresponsive public officers under the Strategic Objective 1 of 'enhancing responsiveness and effectiveness in the public sector.'

The Commission developed parameters for determining unresponsiveness of public institutions and public officers which included the following:

- Failure to respond to inquiries by the Commission on complaints
- Blatant refusal to accept the jurisdiction of the Commission
- Failure to implement any determination or Report of the Commission without any

reasonable cause

- Public officers determined to have improperly conducted themselves after due investigations by the Commission
- Failure to respect summonses issued by the Commission
- Public officers determined by the court to have been guilty of abuse of office and in respect of whom no appeal has been successfully lodged or determined.

Towards this end, the Commission cited the following public officers as unresponsive and malfeasant.

No.	NAME OF PUBLIC OFFICER	REASON FOR CITATION
1.	Professor Peter Erastus Kinyanjui (Chairman, Kenya Institute of Curriculum Development)	<ul style="list-style-type: none"><li>• Administrative responsibility for non-implementation of adverse findings against the Director/Chief Executive Officer of the Kenya Institute of Curriculum Development (KICD).</li><li>• Failure to guide and give leadership to KICD Council on its obligation to implement the findings and recommendations of the Commission</li></ul>
2.	Professor Peter Erastus Kinyanjui and KICD Council	<ul style="list-style-type: none"><li>• Failure to implement adverse findings by the Commission against the named officers of KICD.</li><li>• Failure to initiate the recruitment process for a new Director in accordance with sections 14 and 15 of the Kenya Institute of Curriculum Development Act, 2013, 13 months after the commencement of the Act.</li></ul>
3.	John Kimotho (Staff, KICD)	<ul style="list-style-type: none"><li>• Unresponsive conduct and discourtesy to CAJ investigators</li></ul>
4.	Charles Mwambia Anampiu (Staff, KICD)	<ul style="list-style-type: none"><li>• Improper conduct by willfully giving written false information to CAJ investigators on his relationship with the KICD Director, Dr. Lydia Nzomo</li></ul>
5.	Hon. John Kariuki Ndirangu (Member of Parliament, Embakasi Central)	<ul style="list-style-type: none"><li>• Abuse of power by virtue of having been convicted of abuse of office in Nairobi Anti-Corruption Criminal Case No. 25 of 2002, Republic versus John Kariuki Ndirangu and Another in respect whereof no appeal has been lodged or determined to the contrary.</li></ul>
6.	Joseph Omwoma Mariera (Driver, Rioma Secondary School - Kisii)	<ul style="list-style-type: none"><li>• Improper conduct by misleading the Board of Rioma Secondary School that he lawfully held Class A endorsement on his driving license well knowing that he did not.</li></ul>

## 3.0 BUILDING COMPLAINTS HANDLING CAPACITY IN THE PUBLIC SECTOR

### 3.1 INTRODUCTION

The Commission is mandated to set up and strengthen the complaints handling capacity in the public sector. To this end, the Commission plays a critical role in developing capacity of public officers and institutions in national and county governments. Specifically, the Commission is a lead agency in performance contracting system, in this regard MDAs are certified and rated on compliance with the set guidelines on resolution of public complaint indicator. Further the Commission endeavored to strengthen the capacity of public institutions through provision of technical support in areas such as development of service delivery charters and internal complaint procedures.

This section of the Report will highlight key achievements of the Commission in relation to this mandate.

### 3.2 BUILDING AND STRENGTHENING COMPLAINTS HANDLING CAPACITY

The Office of Ombudsman is an important stakeholder in public service delivery. Section 8e requires the Commission to facilitate the establishment and capacity building on complaint handling in the public sector. In this respect, the Commission implemented a number of activities in the public sector during the reporting period. Notably, the Commission developed new guidelines for assessment and ranking of public institutions, certified and ranked public institutions and trained public officers.

#### 3.2.1 IMPLEMENTING PERFORMANCE CONTRACTING OBLIGATIONS

Since 2003, the Government has initiated a number of reform strategies to improve service delivery in the public sector. Significantly, was the inclusion of Resolution of Public Complaints Indicator in the performance contract system and the adoption of Kenya Vision 2030, which lays emphasis on good governance and service delivery.

The Commission monitors the implementation of resolution of public complaints indicator by MDAs. The indicator requires all public institutions to promptly address and resolve public complaints lodged with and against them. In this respect, MDAs are obligated to establish mechanisms of working with the Commission to address complaints they have received. Besides, the Commission monitors the implementation of the indicator through the assessment and certification of public institutions based on established parameters.

During the period under review, the Commission developed new guidelines for implementing the indicator, in line with the 10th edition National Government Performance Contracting guidelines and CAJ Regulations. In addition, the Commission

trained 2267 public officers, particularly those in charge of handling complaints.

### **3.2.2 RESOLUTION OF PUBLIC COMPLAINTS INDICATOR GUIDELINES**

The Commission developed the Guidelines for implementing the resolution of public complaints indicator in the performance contracts for financial year 2013/2014. The development was aimed at aligning existing guidelines for implementing the indicator, resolution of public complaints in line with the 10th edition of the Performance Contracting Guidelines and CAJ Regulations.

The Guidelines, provides for:

- a) Establishment of complaints-handling and management infrastructure, and submission of information to the Commission in the prescribed format;
- b) Development of complaints handling procedures
- c) Reporting on capacity development for complaints handling officers and staff
- d) Report on creation of awareness on the complaints handling system and citizen service delivery charters.
- e) Reporting on resolution of complaints received.

It is worthwhile to note that, under the new Guidelines, Public institutions are obligated to resolve complaints within twenty one working days of receipt The Guidelines have been widely shared with public institutions and available on the Commissions website.

### **3.2.3 TRAINING OF PUBLIC OFFICERS**

The Commission has an oversight role over public institutions in relation to redress mechanisms which include, development and implementation of service delivery charters and establishment of effective complaints handling management infrastructure. In this respect, the Commission trained 2267 public officers from MDAs across the country on Effective Complaints Handling methods as well as Resolution of Public Complaints Indicator in the National Government Performance Contracting system.

Figure 12: Public Institutions and Officers Trained

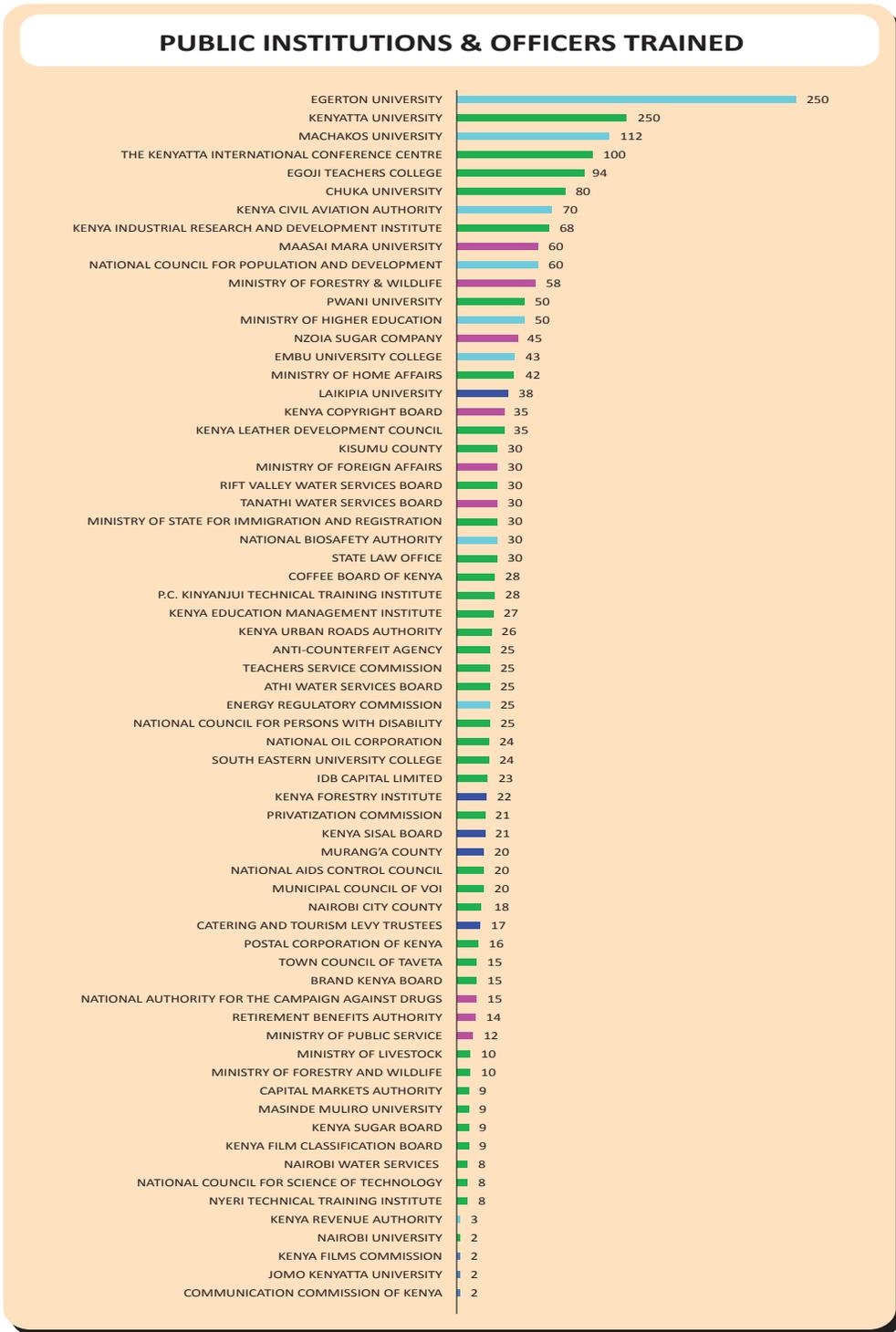
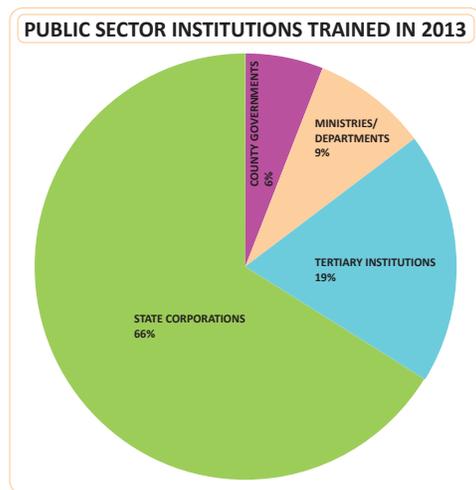


Figure 13: Public Sector Institutions Trained in 2013

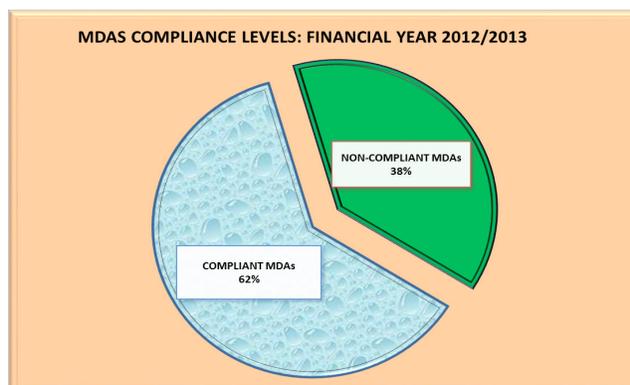


Following the restructuring of Government after the March 4, 2013 general election, Local Authorities were phased out and their functions taken over by county governments. In line with its mandate the Commission engaged a number of county governments particularly on aspects of complaint handling. For instance, the Commission trained officers from Murang'a, Nairobi and Kisumu counties.

### 3.2.4 ASSESSMENT OF COMPLAINTS HANDLING INDICATOR

The Commission received and assessed quarterly reports on complaints handling from public institutions during the reporting. A total of 225 public institutions submitted all their four quarterly reports, which were subsequently assessed and certified based on their levels of compliance. On the other hand, 140 institutions failed to comply with Commission the indicator requirements and were therefore not issued with compliance certificates.

Figure 14: MDAs Compliance Levels (2013)



### 3.2.5 PROVISION OF TECHNICAL SUPPORT

Public institutions exist to deliver services to the public. The mode and effectiveness of service delivery by these institutions greatly impact on socio-economic development and well-being of the nation. It is in the interest of the Commission for the public to have essential information regarding the services offered by public agencies. In this regard, the Commission supports public institutions on the development and implementation of the citizen charters. The main objectives are to ensure the public know:

- Services rendered by a public institution;
- Timelines;
- Customer requirements (documents);
- User charges; and
- Internal (within the institution) and external (Commission on Administrative Justice) redress mechanism



The Commission has since ensured institutions incorporated contact information of the Commission in their citizen charters.

Figure 15: CAJ Training on Complaints Handling

## SERVICE DELIVERY CHARTER

**Purpose**  
This charter communicates our commitment to provide consistent and professional services to our customers. It is a demonstration and a reflection of the Authority's dedication to meeting and exceeding our stakeholders' expectations.

**Mandate**  
Established in 1991 under KAA Act, Cap 395 of the Laws of Kenya with the mandate to:  
Administer, control and manage aerodromes in the country.  
The Authority is committed in attaining the highest standards in service delivery to all stakeholders.

**Company Vision**  
To be the airport System Hub of Choice

**Company Mission**  
To facilitate seamless connectivity through provision of efficient and effective airports facilities and services in an environmentally sustainable manner to exceed stakeholder expectations

**Core Values**

- Customer focus
- Integrity and professionalism
- Teamwork
- Creativity and innovation
- Good corporate governance
- Environmental sustainability
- Corporate social responsibility

OUR COMMITMENT TO SERVICE DELIVERY	
NO	TIMELINE
<b>TO THE AVIATION INDUSTRY</b>	
1. Manage Aerodromes	Continuous
2. Provide Airport Facilities	Continuous
<b>TO THE STAKEHOLDERS AND THE GOVERNMENT</b>	
1. Fulfillment of our mandate	Continuous
2. Compliance with the statutory obligations	Continuous
3. Payments for goods & services	As per the contractual obligations
4. Responding to Correspondence	Within 5 working days
<b>CUSTOMER COMPLAINTS RESOLUTION</b>	
1. Complaint acknowledgement	Within 48 hours
2. Resolution	Within 10 working days

N/B: A Customer can launch a complaint tracking form which may be downloaded from our website, filled and submitted to the officer on duty or emailed to us.

**Customer Obligation**  
The Authority operates under highly regulated international requirement on Safety and Security of airport users and customers are advised to comply.  
Customers are also requested to exercise respect to the service providers.

**Review of Service Charter**  
In acknowledgement of the stakeholders' changing needs and expectations, the charter is subject to regular reviews as and when deemed necessary.

A customer can launch a complaint through e-mail at [jinfo@kaa.go.ke](mailto:jinfo@kaa.go.ke)  
Complaint tracking forms can be downloaded and filled from our website [www.kaa.go.ke](http://www.kaa.go.ke).  
A complaint can also be reported to the officer on duty at the respective station.

**In case the customer feels that the Authority's response is not satisfactory, they can seek redress from the office of Ombudsman using the following contacts:**  
**The Commission Secretary/ CEO**  
**Commission on Administrative Justice**  
**WEST END TOWERS WESTLANDS, P.O. Box**  
**20414- 00200 Nairobi.**  
**TEL: +254020 2270000**  
**Email: [complain@ombudsman.go.ke](mailto:complain@ombudsman.go.ke) Website: <http://www.ombudsman.go.ke>**

**AERODROMES BUSINESS OPERATION HOURS & OFFICE ADMINISTRATION**

Airports	Operational Hours
<b>International Airports</b>	
Jomo Kenyatta	24hrs
Moi	24hrs
Eldoret	0630 to 1930hrs
Kisumu	0630 to 1930hrs
<b>Domestic Airports</b>	
Wilson	0630hrs to 2030hrs
Malindi	0630hrs to 2030hrs
Lokichogio	0630hrs to 1930hrs
Wajir	0630hrs to 1930hrs
<b>Airstrips</b>	
Ukunda, Manda, Kitale, Kakamega, Lodwar	Sunrise to Sunset

**Business hours**  
Administration Office hours: Monday to Friday: 0800hrs to 1300hrs and 1400hrs to 1700hrs except when such days fall on gazetted holidays

The Commission has also provided technical support to public institutions in establishing internal mechanisms for handling complaints. Through this, a number of these institutions now have working complaints handling structures and feedback mechanisms. As a result, members of the public are now able to lodge complaints directly with the concerned institutions and get timely remedies. Public officers have also come to appreciate complaints as an important form of feedback that enables them to build client loyalty, and have provided a basis for evaluating service delivery.

## 4.0 PUBLIC AWARENESS AND ADVOCACY

### 4.1 INTRODUCTION

The Commission has prioritized the use of advocacy and communication as key tools in catalyzing positive change in the public sector in Kenya. The Commission strategically disseminates and manages information and knowledge to change and influence policies and practices with a view to improving the status of administrative justice. The approach aims at contributing to changes in norms, policies and behaviors of both public servants and the public in general which - as the main beneficiary of administrative justice - is expected to provide oversight in management of state affairs. The Commission continues to use a broad set of tools that aim to create and mobilize pressure, sensitize communities and build capacities through a combination of advocacy, networking, social mobilization, training and capacity development efforts.

The Commission engaged in outreach and local level advocacy as a key strategy for change in an environment characterised by administrative injustice, abuse of power, weak governance structures and unresponsiveness. This is in line with Section 8(j) of the Act which mandates the Commission to develop and implement programmes and activities aimed at promoting public awareness on administrative justice. This function is in line with Strategic Objective Three - outlined in the Commission's Strategic Framework of 2013- 2016 - which aims to address the low public awareness on matters of administrative justice.

The activities implemented during the reporting period include outreach programmes in five counties under the county visits programme, and public education during Agricultural Society of Kenya (ASK) Shows, as well as awareness and advocacy through media. During implementation of these activities, the Commission disseminated information through distribution of Information, Education and Communication (IEC) materials with a view to of enhancing public education on the mandate of the Commission. The awareness and advocacy activities focused on achieving enhanced accountability, improved performance and responsiveness within the public service, and increased visibility, accessibility and understanding of the Commission's mandate.

### 4.2 OUTREACH ACTIVITIES

#### 4.2.1 County Visits

The county visits programme is an initiative the Commission took up in late 2012 as a stop-gap measure to address the challenge of accessibility, limited awareness on the mandate of the Commission, and lack of adequate resources to devolve into the counties. The visits were aimed at bringing the Office of the ombudsman closer to the people in order to enable them lodge complaints and seek redress on issues of maladministration in public service. The county visits also sought to increase awareness

among public servants and the public on issues relating to administrative justice with a view to promoting compliance with Act, as well as empowering the public to demand efficient and responsive public service.

During the period under review, the Commission visited five counties, namely:

- a) Kiambu
- b) Embu
- c) Narok
- d) Kericho
- e) Isiolo

The objectives of the visits were to:

- i. Publicize the Commission and its functions;
- ii. Receive complaints;
- iii. Assess service delivery standards in public institutions; and
- iv. Create grassroots networks.

In order to realise these objectives, the Commission held public forums and meetings with different interest groups, undertook spot checks on various public institutions, set up complaints desks and held meetings with various stakeholders. The Commission also leveraged on publicity through media for optimal impact.

A key component of the county visits programme is the spot checks. The spot checks were conducted on selected public institutions during the county visits to determine the standards of service delivery. Some of the public institutions where the spot checks were conducted included the Judiciary, Ministry of Lands, District Hospitals, Police Stations, Immigration Department and Registration of Persons Offices among others. The Commission observed challenges in punctuality, adherence to service charters, courtesy and responsiveness in many of the public institutions. Based on the observations, the Commission developed intervention mechanisms to address the challenges.

The programme made apparent the challenges that afflict service delivery in the public sector and revealed the status of administrative justice in the counties. The experience revealed that despite efforts to reform the public sector, a number of challenges are yet to be surmounted, key among them:

- Lack of grievance redress mechanisms;
- Lack of efficient feedback mechanisms;
- Poor infrastructure (particularly evident in the police service); and

- Limited knowledge on the services offered by public institutions.

A number of successes were realised through the programme. To begin with, the visits enhanced public awareness on the role of the Commission. The Commission's brand was also bolstered through media coverage of the visits and corresponding emerging issues. Additionally, the visits enabled 57 people to lodge complaints with the Commission, and facilitated establishment of contacts with 635 persons. Besides, the visits created an opportunity for members of the public to interact with public servants.

The spot checks undertaken and the subsequent feedback provided by citizens was a wake-up call to public servants to be more diligent in their work. The visits also enabled the Commission to identify systemic issues for follow-up. Three main systemic issues were identified, namely;

- a) Mismanagement of land transactions and custody of documents;
- b) Delay in processing of pensions and benefits; and
- c) Bureaucracies and delays in acquisition of identification documents.

The information gathered from the Counties informed programming at the Commission. Besides generating information for research, the county visits fed into the work of the Commission with respect to performance contracting. Additionally, the Commission developed public education content which was disseminated through various avenues.



*Mr. Yuvinalis Angima, CAJ Director for Legal and Advisory Services makes a presentation during the Kericho County visit*

A report on the findings titled County Visits Report on Awareness Creation 2012-2013 was published and distributed to the relevant agencies for action.



*The Commission launches the Report on the County Visits at its offices in Nairobi*



*The Chairperson, Mr. Otiende Amollo, Vice-Chairperson, Dr. Regina Mwatha (Right) and Commissioner Saadia Mohamed, display a copy of the Report during its launch in Nairobi*

## 4.2.2 ASK Shows

The Agricultural Society of Kenya (ASK) Shows are a useful platform for public education. Although one of the main aims of the shows are to provide forums for exchange of agricultural and agribusiness information, the platform has expanded to incorporate other sectors whose activities impact on agriculture. In fact, while the focus is agriculture and whereas all exhibitors align their messages to promote its growth, ASK shows have the most diverse of audiences. Kenyans of all walks of lives attend the shows making them an important outreach platform. The Commission participated in the Western Kenya Branch Show (Kakamega), and the Nairobi International Trade Fair.



*School children sing outside the CAJ stand at the ASK Show Ground in Kakamega*

The aim of CAJ's participation in the trade fairs was to create awareness on the mandate of the Commission and receive complaints.

## SAMPLE CASE

One of the Kenyans who filed a complaint with the Commission during the Western Branch Show is an 87 year old man who asked CAJ to intervene in a land matter that had been pending for over 47 years. The complainant asked the Ombudsman to investigate public officers that delayed and denied him justice on a land dispute that he filed in 1966. He accused successive Kakamega Land Registrars and surveyors of colluding to defraud him of 11.5 hectares of land irregularly allocated to an alleged well-connected neighbour in Lugari.



*A complainant presents his case to staff of CAJ at the ASK Show Ground in Kakamega*

He said they had acquired the piece of land through the Lands and Settlement Scheme in 1966. He told the Commission that the case had been conducted and heard by administrators from sub-chief levels, district officers, district commissioners, and district land officers, surveyors, Agricultural Officers, land tribunal and eventually the high court.

The complainant who was armed with the correspondences dating back to 1966 said he had over the years done the rounds in various lands offices hoping to resolve the matter to no avail.

### 4.2.3 Outcomes

- Increased awareness on the mandate of CAJ, and information on accessibility of the Commission through interactions at the shows, and media coverage of the events.
- The Commission received 48 complaints and established contacts with 948 persons.
- The shows provided a platform for forging partnerships and advancing the work of the Commission.

A representative from Nzoia Sugar Company, for instance, made follow-ups with the Commission to establish ways in which the company could be supported to enhance their complaints handling capacity. The Commission has since undertaken a training at the institution.

## 4.3 MEDIA EDUCATION AND ADVOCACY

During the period under review, the Commission implemented a number of media education and advocacy strategies aimed at creating awareness on administrative justice. These included media appearances, press statements and conferences. The activities were shaped around key events and issues of strategic importance in order to bolster the message and realise optimal impact.

The Commission participated in news and talk shows in all the main TV stations – NTV, Citizen TV, K24 and KBC – to publicise the office and its jurisdiction, the branch offices of the Commission, and specific advocacy matters. Key issues were also covered in the print media. Below are some of the instances when media advocacy was employed:

- The Constitutional Commissions and Independent Offices under the auspices of the Chairs’ Forum convened by CAJ dealt with various issues of national importance including preparedness for the 2013 General Elections, and appointments to key public offices.
- The Commission widely publicised its participation in the electioneering process, and a report it published on the elections monitoring and observation. The report was an indictment of a number of key offices that abused public resources during the electioneering period.
- The Commission also publicised the County Visits Report on Awareness Creation which revealed the status of administrative justice in the counties.

The Commission publicised advisory opinions with the view to piling pressure for adoption and to elicit public debate. Some of the advisories included opinion on the appointment of Members of the Teachers Service Commission, the National Land Commission, and the Kenya National Commission on Human Rights; opinion on the Constitution of Kenya (Amendment Bill) 2013, opinion on the relationship between the National Government, County Governments and County Commissioners; and opinion on the dispute between the National Assembly and the Judiciary.

The Commission also employed media to advance the leadership and integrity agenda. The Commission publicised a list of past and serving public officers deemed unfit to hold public office. Whereas the recommendations may not have been adopted, the move did generate debate, and errant public officers are now aware their eligibility to hold office will be questioned.

During the reporting period, the Commission launched its social network platform with a view to generate and share knowledge. The objective was to harness the power of interactive media to promote attitudinal and behavioural change in both the citizenry and public servants to the end that there will be greater efficiency, courtesy and accountability. Through Facebook page, Ombudsman Kenya, and Twitter handle, @Kenyas Ombudsman, the Commission has enhanced interactive communication and public engagement. In 2013, the Commission received 20 complaints through the platform. A number of people also tracked the progress of the matters already lodged with the Commission using the platform.

## 5.0 PROMOTING CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE PUBLIC SECTOR

### 5.1 INTRODUCTION

This section details the achievements of the Commission in promoting constitutionalism and good governance during the reporting period. The Commission employed a multi-faceted approach focusing on a number of strategies which included advisory opinions and recommendations, alternative dispute resolution methods, public interest litigation and elections monitoring and observation.

### 5.2 ROLE OF THE COMMISSION IN CONSTITUTIONALISM AND GOOD GOVERNANCE

The Commission, like other Constitutional Commissions, is mandated under Article 249 of the Constitution to safeguard public interest by protecting the sovereignty of the people, securing the observance of democratic values and principles by State Organs and promoting constitutionalism. These functions have been broadened under Articles 59(2)(h-k) and 252 of the Constitution as well as Section 8 of the Act. The Commission, therefore, has an oversight role in the governance process which supports the traditional arms of Government as known under the Westminster Model. In this regard, the Commission occupies a special place in the governance process. In particular, the Commission plays an important role in ensuring transparent governance, ethical leadership, good public administration and respect for human rights.

### 5.3 ADVISORY OPINIONS AND RECOMMENDATIONS

Section 8(h) of the Act mandates the Commission to provide advisory opinions or proposals on the improvement of public administration including review of legislation, codes of conduct, processes and procedures. In furtherance of this function, the Commission issued eight advisory opinions and recommendations to public institutions on a number of pertinent issues. The advisory opinions were widely disseminated in the media. The following are some of the advisories issued by the Commission during the reporting period.

#### 5.3.1 Advisory Opinion on the Constitution of Kenya (Amendment Bill), 2013

The Commission issued an advisory opinion to the National Assembly and the Senate on the proposed amendment to Article 260 of the Constitution that had sought to remove Members of Parliament, Members of County Assemblies, and Judges and Magistrates from the list of designated State Officers. The Commission considered the implications of the proposed amendment and stated that it would be an affront to the constitutional

provisions on leadership and integrity. Further, the Commission found that the proposed amendment would create an absurdity whereby the National Assembly, Senate and Judiciary, as state organs, would be constituted by non-state officers. The Commission also found that the proposed amendment would allow Members of Parliament to determine their remuneration. In addition, the amendment would remove the said State Officers from the jurisdiction of several Constitutional Commissions hence weakening accountability mechanisms. Based on the foregoing, the Commission advised as follows:

- a) In the design of the Constitution, the terms State, State Office, State Officer and State Organ are carefully defined and applied in such intricate manner, that to seek to amend the definition of State Officer without amending the other related terms would not only be impossible, but would fundamentally alter the structure, design and integrity of the entire Constitution.
- b) To the extent that the terminology State Organ is entrenched in Article 6, while the foundations of Chapter Six principles are captured in Article 10(2)(c) of the Constitution, an amendment that seeks to reduce the threshold of integrity, accountability and good governance in State Officers is one that would require a referendum in accordance with Article 255(1)(d) of the Constitution.
- c) In seeking to obliterate the essential independent jurisdiction of the Salaries and Remuneration Commission, the amendment would require a referendum as it would interfere with the independence of the Salaries and Remuneration Commission under Article 255(1)(d) of the Constitution.
- d) The amendment would erode the roles and functions of independent institutions meant to regulate the National and County Governments, thereby creating a threat to statehood.

### **5.3.2 Advisory Opinion on the Appointment of Members of the Teachers Service Commission**

The Commission issued an advisory opinion to the President on the failure to appoint the Chairperson and Members of the Teachers Service Commission (TSC). The Commission noted that the failure to make the appointments posed a danger to public administration in the education sector as the operations of TSC were likely to be crippled. The Commission advised the President that the proper procedure was to nominate suitable candidates from the list forwarded to him earlier for as long as they had not been disapproved by Parliament. The President eventually appointed two members to TSC in accordance with the advisory, and the decision of the Court relating to the appointments.

### **5.3.3 Advisory Opinion on the Appointment of Members of the National Land Commission**

The Commission issued an advisory opinion to the President and the Prime Minister on the failure to appoint Members of the National Land Commission (NLC). In particular,

the Commission was concerned that there was continued delay despite the conclusion of the matters before court (Nairobi HCCC Nos. 266 of 2012, 373 of 2012 and 426 of 2012). While highlighting the critical mandate of NLC, the Commission noted that the delay constituted a breach of the Constitution and was an obstacle to the speedy realisation of land reforms. Accordingly, the Commission advised the President and the Prime Minister to appoint the Chairperson and Members of NLC in line with the Constitution and the National Land Commission Act as a matter of urgency. The President eventually appointed members to NLC in accordance with the advisory, and the decision of the Court relating to the appointments.

### **5.3.4 Advisory Opinion on the Appointment of Members of the Kenya National Commission on Human Rights**

The Commission issued an advisory opinion to the President on the failure to appoint the Chairperson and Members of the Kenya National Commission on Human Rights (KNCHR) despite the names of the nominees having been forwarded for appointment, and the matters pending before the court having been concluded (Nairobi High Court Petition No. 385 of 2012). The Commission stressed the importance of KNCHR in the protection and promotion of human rights and advised the President to speed up the appointments to avoid further legal and operational challenges.

### **5.3.5 Advisory Opinion on the Relationship between the National Government, County Governments and County Commissioners**

The Commission issued an advisory opinion on the relationship between the national government, county governments and the county commissioners. While noting that Kenya was a unitary state, the Commission stated that Kenya is divided into 47 devolved units whose relationship with the national government ought to be based on consultation and co-operation. To this end, the Commission advised as follows:

- a) The transfer of duties and funds to the county governments should be fast tracked based on the constitutional provisions and the need to facilitate the counties to perform their functions.
- b) There should be a clear and formal process of allocating offices and transfer of assets to county governments. Specifically, it advised that all offices and assets previously held by the defunct Ministry of Local Government through the various local authorities be formally and immediately transferred to the county governments.
- c) The posting of County Commissioners was not in itself objectionable, but their formulation and status raised anxiety. In this regard, the Commission advised for the re-formulation, training of officers and transparent appointment.
- d) The county representatives of the Inspector General should continuously brief the governor and the national government representative at the county on security

matters. In addition, county governments should have a leeway to establish their policing services in line with their mandate as per Article 247 and 4th Schedule of the Constitution.

- e) Whereas secondment of officers to the county governments may have been necessary at the initial stages, once the elections were held, county governments could only be supported to recruit their own staff.
- f) The tone and tempo of the Constitution is to reduce overly formal salutations that distract from the sovereignty of the people and diminish servant leadership. Accordingly, the Commission advised that governors should be saluted as 'Honourables.' It also advised that the National Flag, Emblems and Names Act needed to be amended to allow the governors to fly the national flag on their vehicles.
- g) The dispute resolution framework under the Intergovernmental Relations Act could be strengthened by engaging the Commission on Administrative Justice, an independent arbitrator or mediator, or an intermediary to assist in the resolution of disputes.

### **5.3.6 Advisory Opinion on the Relationship between Administrative Requirements in Public Universities and the Right to Manifest one's Religion**

The Commission issued an advisory opinion on request to Technical University, formerly Kenya Polytechnic University College, on the issues raised by two students admitted to the University. The students had refused to undergo medical check-up, a prerequisite for admission for the course for which they had been admitted, stating that their faith prohibited them from undergoing such medical check-ups. Further, they had sought the waiver of the medical fees of Kshs. 2,000 based on their faith. Having considered the relevant provisions of the Constitution and other laws, the Commission advised the University as follows:

- a) That the University should not make concessions as demanded since the right to religion is not absolute, and the limitation of the right to religion in this instance was reasonable and justifiable as contemplated by Article 24 of the Constitution. The limitation was necessary insofar as it sought the harmonization and co-existence of students at the University.
- b) That the University should expunge all requirements demanding for a compulsory HIV test since they violate the HIV/Aids Prevention and Control Act. However, where courses to be undertaken require compulsory testing, the same should be done in accordance with sections 13 and 14 of the Act.
- c) That where the student has not attained the age of 18 years, a provision should be inserted requiring the consent of the parent and/or the legal guardian of the child for such medical check-ups to be conducted.

### **5.3.7 Advisory Opinion on the Dispute between the National Assembly and the Judiciary**

The Commission issued an advisory opinion to the President on the dispute pitting the National Assembly, and the Judiciary and Judicial Service Commission (JSC). This was prompted by the recommendation of the National Assembly to the President to establish a tribunal to remove six members of JSC in spite of a court order. The Commission advised the President as follows:

- a) That once the National Assembly had considered the petition and forwarded it to the President, the President had no choice but to appoint a tribunal to consider the matter in accordance with Article 251(4)(b) of the Constitution. The issue on whether the National Assembly had erred was a matter to be adjudicated upon by the tribunal.
- b) The six members of JSC to be allowed to continue serving pending the outcome of the work of the tribunal to allow for continuity and prevent the Judiciary from grinding to a halt.
- c) It was improper for the National Assembly to have ignored the orders of the High Court issued in the Nairobi Petition No. 518 of 2013. The disregard of the court orders by the National Assembly set a bad precedent and could result in the breakdown of the rule of law.
- d) It was improper for the six members of JSC to have ignored the summons issued by the Parliamentary Committee on Justice and Legal Affairs since JSC is separate and distinct from the Judiciary, and could therefore not hide under the veil of judicial independence.

### **5.3.8 Advisory Opinion on the decision by the Judicial Service Commission to Suspend the Chief Registrar of the Judiciary pending investigations**

The Commission issued an advisory opinion to the Chief Justice following the decision by JSC to suspend the Chief Registrar of the Judiciary pending investigations. The Commission was concerned that the process might have impugned the right to fair administrative action under Article 47 of the Constitution. The Commission advised that JSC ought to have invited CAJ, Ethics and Anti-Corruption Commission and the Public Procurement Oversight Authority to investigate the issues raised and present the findings for action. This, the Commission noted, would have provided a fair, unbiased and transparent process in keeping with the principles of judicial authority under Article 159 of the Constitution. The Commission further noted that while the Parliamentary Committee on Justice and Legal Affairs was empowered to summon any person to appear before it, it was improper for the Committee to invoke this power against an independent commission in respect of an act done in accordance with the law and in furtherance of its constitutional mandate.

## 5.4 PUBLIC INTEREST LITIGATION

The Commission participated in a number of matters of national importance before the court as a way of promoting public administration. The main aim was to advance constitutionalism and democratic governance in Kenya, particularly, from the administrative justice perspective. Some of the cases are highlighted below.

### 5.4.1 Constitutional Petition No. 284 of 2012

The Commission filed a petition before the High Court (Nairobi Petition No. 284 of 2012, Commission on Administrative Justice vs Attorney-General) seeking to impugn the constitutionality of Sections 14, 16 and 23 of the Supreme Court Act, and the attendant Rules 17, 41, 42 and 43 of the Supreme Court Rules, 2011. In particular, the Commission sought the following declarations:

- i. That section 14(1) of the Act was ultra vires Article 163(3), (4) and (5) of the Constitution to the extent that it arrogated a new or extended jurisdiction to the Supreme Court other than that contemplated under the Constitution.
- ii. That Section 16(1) and (2)(b) of the Act were ultra vires Article 163 of the Constitution to the extent that it expanded the jurisdiction of the Supreme Court to determine appeals where the Court was satisfied that it was in the interest of justice for the Court to hear and determine the proposed appeal or where a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.
- iii. That Section 23(2) of the Act was ultra vires Article 163(2) of the Constitution to the extent that it provided that any two judges of the Supreme Court may act as the court.
- iv. That the consequential provisions of the Supreme Court Rules, namely Rules 17, 41, 42 and 43 were unconstitutional

The Commission argued that although Article 163(9) of the Constitution mandated Parliament to make provisions for the operation of the Supreme Court, this power had to be exercised within the parameters of the Constitution. While acknowledging the earlier decision of the Supreme Court which declared Section 14 of the Act unconstitutional (Samuel Macharia & Another vs Kenya Commercial Bank & 2 Others, Petition No. 2 of 2012), the Commission argued that the attendant Rules of the Supreme Court also had to be found unconstitutional.

The Court considered the submissions and authorities of the Parties and held as follows:

- i. That Section 14 of the Act and Rule 17 of the Supreme Court Rules were unconstitutional as had earlier been declared by the Supreme Court in the Macharia Case (cited above) insofar as it purported to confer special jurisdiction upon the Supreme Court contrary to the express provisions of the Constitution.

- ii. That Section 16(2)(b) of the Act was unconstitutional insofar as it purported to extend the jurisdiction of the Supreme Court to determine appeals where the Court is satisfied that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.
- iii. That Rules 17, 41, 42 and 43 were unconstitutional.
- iv. Regarding Section 23 of the Act, the Court made a compelling argument on its unconstitutionality, but fell short of declaring it as such based on the binding nature of the decisions of the Supreme Court which had earlier determined a similar issue in the case of *Rai vs Rai, Petition No. 4 of 2012*.

#### **5.4.2 Nairobi High Court Application No. 452 of 2012**

The Commission successfully defended itself in a suit filed by John Ndirangu Kariuki, in Republic vs Commission on Administrative Justice and the Independent Electoral and Boundaries Commission ex-parte John Ndirangu Kariuki (Nairobi High Court Application No. 452 of 2012) following the recommendation by the Commission to the Independent Electoral and Boundaries Commission (IEBC) that 35 former and serving public officers, including Mr. Ndirangu were not suitable to run for any elective position. Mr. Ndirangu had sought a judicial review of the recommendation by the Commission, and a prohibition order against IEBC from acting on the recommendation. The Court dismissed the case and reaffirmed the role of the Commission in leadership and integrity matters.

#### **5.4.3 Nairobi High Court Petition No. 408 of 2013**

The Commission filed a constitutional petition, namely: Commission on Administrative Justice versus John Ndirangu Kariuki and the Independent Electoral and Boundaries Commission (Nairobi High Court Petition No. 408 of 2013). In the Petition, the Commission had sought the following orders:

- a) A declaration that Hon. Ndirangu was not qualified as a Member of Parliament under the Constitution and the Elections Act, 2011;
- b) A declaration that in failing to find Hon. Ndirangu unqualified, IEBC was in dereliction of its constitutional and statutory duty; and
- c) A declaration that the election of Hon. Ndirangu as the Member of Parliament for Embakasi Central Constituency in Nairobi was unconstitutional, and null and void.

While invoking its mandate in relation to addressing maladministration, and promoting constitutionalism and good governance, the Commission averred that Hon. Ndirangu was improperly cleared by IEBC to run for the elective position in spite of the express provisions of Article 99(2)(h) and section 24(2)(h) of the Elections Act. This was primarily due to a previous matter in which he had been convicted and sentenced of two counts of abuse of office on 14th January 2004 by the Anti-Corruption Court in Nairobi in ACC

No. 25 of 2002; Republic versus John Ndirangu Kariuki and Another, and subsequently served the sentence without preferring any appeal. The matter is still pending before the court.

#### **5.4.4 Other Public Interest Litigation Matters**

The Commission also participated in other litigation matters of public interest during the reporting period, which included the Kenya National Commission on Human Rights vs the Attorney General, Supreme Court Reference No. 1 of 2012; International Centre for Policy and Conflict vs the Attorney General and 2 Others, Nairobi High Court Civil Case No. 226 of 2013; Judicial Service Commission vs the Speaker of the National Assembly and the Attorney General, Nairobi High Court Petition No. 518 of 2013; Gladys Boss Shollei vs the Judicial Service Commission, Nairobi Industrial Petition Cause No. 39 of 2013 (formerly Nairobi High Court Petition No. 528 of 2013); and Raila Odinga vs the Independent Electoral and Boundaries Commission and 3 Others (In the Matter of Summons against the Chairman of the Law Society of Kenya), Supreme Court Petition No. 5 of 2013. These matters are still pending before the courts.

### **5.5 LEADERSHIP AND INTEGRITY**

The Commission's role in ensuring ethical leadership and integrity by public officers is established under Articles 59(2h-k) and 249 of the Constitution and Section 8 of the Act. This is complementary role in relation to leadership and integrity. Specifically, Article 59(2h) of the Constitution and Section 8(d) of the Act empower the Commission to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice. In addition, the Commission is empowered to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unresponsive official conduct and misbehaviour in public administration. Pursuant to these provisions, the Commission implemented the following activities during the reporting period.

#### **5.5.1 Vetting of Judges and Magistrates**

Pursuant to Section 18(e)(vi) of the Vetting of Judges and Magistrates Act, the Commission provided information concerning 357 Judges and Magistrates who were subject of the vetting under the said Act.

#### **5.5.2 Vetting of serving Police Officers**

The Commission processed a request for information from the National Police Service Commission relating to the vetting of 32 Senior Police Officers who were the first to be vetted. Prior to this, the Commission had participated in the stakeholders' validation workshop on the vetting tool for the serving police officers.

### 5.5.3 Ensuring adherence to the Rule of Law

Pursuant to its mandate in ensuring adherence to the law, the Commission made appropriate interventions, either on complaints by the public or its own initiative, on allegations of breaches of the principles of leadership and integrity. The interventions were undertaken individually and, in some cases, jointly with other oversight institutions to ensure compliance with the Constitution.

## 5.6 PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION METHODS

Pursuant to Article 252 of the Constitution and Section 8(f) of the Act, the Commission initiated Alternative Dispute Resolution methods in certain matters with a view to having amicably settling disputes. This mainly took the form of mediation and conciliation. During the period under review, the Commission conducted mediation and conciliation in seven matters, including the following:

- a) Mediation between the National Land Commission and the Salaries and Remuneration Commission
- b) Mediation between the National Police Service Commission and the Inspector General
- c) Mediation between Kenya Power and Madiany Water and Sanitation Project
- d) Mediation between Benson Opiyo and Kenya Revenue Authority
- e) Mediation on the National Gender and Equality Commission involving Relations and Functions of Commissioners and Secretariat
- f) Mediation on the National Police Service Commission involving Relations and Functions of Commissioners and Secretariat

## 5.7 ELECTION MONITORING AND OBSERVATION

Pursuant to its mandate under Articles 59(2) and 249 of the Constitution and Section 8 of the Act, the Commission developed and implemented a comprehensive programme to monitor and observe the 2013 General Elections. The primary objective of the election monitoring and observation exercise was to monitor the use of public resources in the electioneering process.

In implementing the programme, the Commission partnered with the National Cohesion and Integration Commission (NCIC) and other bodies. To enrich the process, the Commission participated in different meetings with stakeholders such as political parties. The results of the exercise contained in a report titled *Championing Values in Hard Times: Election Monitoring and Observation*, revealed misuse of public resources. The following is a summary of the findings of the three phases of the exercise.

### **5.7.1 Election Monitoring**

The election monitoring by the Commission focused on the use of public resources in the electioneering process, particularly on the campaigns by political parties and candidates. More specifically, the monitoring focused on use of public vehicles, aircrafts and equipment; use of public facilities such as offices; involvement of public officers in political activities; and conditioning of public services on pledges to vote for certain parties or candidates.

The Commission collaborated with NCIC and used their county monitors to complement the efforts by the Commission staff. The results of the monitoring exercise revealed that at least 15 vehicles assigned to

various Government Ministries and Departments had been deployed at various campaign rallies across the country. Among the public institutions whose vehicles were spotted included the Office of the President, Office of the Prime Minister, Office of the Vice-President, Ministry of Planning, National Development and Vision 2030, East African Community and Ministry of Regional Development Authority. There were also allegations of engagement of public officers in partisan politics and other electoral malpractices such as voter bribery.

In view of the findings, the Commission made recommendations to the relevant institutions for action to eliminate abuse of public resources in the election campaigns. The Commission called for the review and strict enforcement of the electoral laws, including enactment of a law on campaign spending.

### **5.7.2 Election Observation**

The Commission successfully applied for accreditation of its staff as election observers by IEBC. This enabled the staff to observe the conduct of elections on 4<sup>th</sup> March 2013 at the various polling stations across the country. The observation revealed a number of findings which included malfunctioning of the Biometric Voter Registration kits in many polling stations which created suspicion of fraud; slow voting process due to missing names in the register; delays in the voting process; and lack of voting facilities in some stations.

Based on the foregoing, the Commission made a raft of recommendations, among them, comprehensive voter education, training of IEBC officers on the electoral process and use of the Biometric Voter Registration machines, and audit of the voters' register to eliminate instances of missing names or misplacement of polling stations.

### **5.7.3 Post-Elections Monitoring**

The Commission conducted a post-election monitoring exercise following announcement of results of the 4<sup>th</sup> March 2013 General Elections. The exercise revealed a colossal spending by public institutions on congratulatory messages to the President and the

Deputy President following their election. The exercise found that at least 70 public institutions spent approximately Kshs. 25,367,672 for such messages in the print media. Further, of the 70 public institutions, 13 spent over Kshs. 500,000 each for the messages. For instance, the Coast Development Authority spent approximately Kshs. 1,162,868, the National Cohesion and Integration Commission spent approximately Kshs. 907,668, the Kenya Plant Health Inspectorate Service approximately Kshs. 906,820, and the National Authority for Campaign Against Alcohol and Drug Abuse approximately Kshs. 539,206.

To address this problem, the Commission recommended to the Auditor General to make follow-ups and cross-check the expenditures by public institutions on congratulatory messages, and take appropriate action in accordance with the law.



The Commission releases the Report of the elections monitoring and observation titled 'Championing Values in Hard Times: Election Monitoring and Observation.' The Report revealed misuse of public resources during the electioneering process in 2013.

## 6.0 PARTNERSHIPS, COLLABORATIONS AND LINKAGES

### 6.1 INTRODUCTION

In order to enhance its capacity and expand its network base, the Commission cultivated partnerships with local and international institutions to promote administrative justice and good governance. Through this, the Commission participated in a number of conferences, workshops, seminars and meetings and presented papers on various topical issues relating to administrative justice. During the period under review, the Commission participated in a number of activities which included the Forum of Chairpersons of Constitution Commissions and Holders of Independent Offices, Annual Conference for Constitutional Commissions and Independent Offices, national and international conferences and workshops and study tours.

### 6.2 FORUM OF CHAIRPERSONS OF CONSTITUTIONAL COMMISSIONS AND HOLDERS OF INDEPENDENT OFFICES

The Commission provided leadership to the Forum of Chairpersons of Constitutional Commissions and holders of Independent Offices, commonly known the Chairs' Forum until August 2013 when the Chairperson of the Commission for the Implementation of the Constitution assumed the chairmanship. The Forum brings together all Constitutional Commissions, Independent Offices and some independent statutory bodies.

During the reporting period, the Commission successfully convened six meetings to deliberate on issues of national importance. Some of the topical issues deliberated upon included police reforms, setting of salaries for state and public officers, election preparedness and support to IEBC, devolution and appointments to KNCHR, TSC and NLC.



*The Chairpersons of Constitutional Commissions and Holders of Independent Offices, under the aegis of the Chairs' Forum, address a press conference in February 2013 on the preparedness for the 4th March 2013 General Elections.*



*The Chairpersons of Constitutional Commissions and Holders of Independent Offices address the press during a meeting to discuss matters of public interest.*

### 6.3 ANNUAL CONFERENCE OF CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

The Commission successfully organized the Second Annual Conference of Constitutional and Statutory Oversight Institutions at the Leisure Lodge and Golf Beach Hotel from 28th to 30th August 2013. The Conference was supported by the United Nations Human Rights Office, United Nations Development Programme (UNDP) and the UN Women. The aim of the Conference was to assess the progress made in the implementation of the Constitution and share successes and challenges in the execution of the respective mandates.

The Conference deliberated on a wide range of issues including devolution, human rights, leadership and integrity, governance and, collaborations and partnerships.



*The Commission Secretary, Mr. Leonard Ngaluma, addresses the Annual Conference of Constitutional Commissions and Independent Offices on 29th August 2013*

## 6.4 NATIONAL COUNCIL FOR THE ADMINISTRATION OF JUSTICE

The Commission continued to participate in the activities of the National Council for the Administration of Justice (NCAJ) headed by the Chief Justice. It draws its membership from institutions in the administration of justice such as the Attorney General, Director of Public Prosecutions, Witness Protection Agency, Inspector General of Police and the Law Reform Commission among others.

During the reporting period, the Commission participated in the quarterly meetings of NCAJ and its Working Group on Land. The aim of the Working Group was to consider the various emerging issues relating to land and make recommendations for consideration by the full NCAJ meeting.

Specifically, the Working Group was tasked to establish the following:

- The framework for regulation of professionals in land matters;
- The regime of renewal of leases; ;
- The digitization of records and processes at the land registries; and
- The complaints and dispute resolution mechanisms.

## 6.5 PARTICIPATION IN LEGISLATIVE DRAFTING AND REVIEW

The Commission, as a critical stakeholder in promoting constitutionalism, gave its input to key legislative bills including the Access to Information Bill and the Data Protection Bill.

## 6.6 SHAPING THE GOVERNANCE AND PUBLIC ADMINISTRATION AGENDA

The Commission participated in a number of trainings and workshops, and made contributions in the subjects of governance and public administration that involved the following groups:

### 1. *County Governments*

- Retreat by the Transition Authority for the Technical Committee on transfer of assets and liabilities held at the Sarova Shaba in Isiolo from 29th July to 1st August 2013
- Consultative Meeting for governors, chairpersons of the County Public Service Boards and the County Assembly Service Boards on the theme 'Human resource during transition period' held at the Kenya School of Monetary Studies on 4th September 2013, and made a presentation on 'Equality standards in human resource management.'

## 2. Legal Profession

- Seminar organised by the Law Society of Kenya on the new land laws held at the Nyali International Beach Hotel on 5<sup>th</sup> April 2013
- Seminars organised by the Law Society of Kenya on 'integrity issues, threshold and state service' for lawyers and made presentations on leadership and integrity. The presentations were made to lawyers during the Continuous Legal Education seminars held in Nakuru, Eldoret and Nairobi.
- Launch of human rights as a compulsory undergraduate course at Laikipia University in Nyahururu on 22<sup>nd</sup> November 2013

## 3. Parliament

- Induction workshop for the Standing Committee on Legal Affairs and Human Rights at the Serena Hotel in Mombasa from 6<sup>th</sup> to 8<sup>th</sup> June 2013
- Induction workshop for the Committee on Implementation of the Constitution at the Simba Lodge in Naivasha on 17<sup>th</sup> June 2013
- Consultative forum of the Transition Authority and the Senate held at the Leisure Golf and Beach Resort in Kwale County from 25<sup>th</sup> to 27<sup>th</sup> October 2013
- Consultative Forum of the Transition Authority and the Senate held at the Leisure Lodge in Kwale County from 25<sup>th</sup> to 27<sup>th</sup> October 2013 on the theme 'Sharing a common understanding of devolution.'

## 6.7 BENCHMARKING WITH OMBUDSMAN INSTITUTIONS

The Commission forged and nurtured partnerships with other ombudsman institutions for purposes of benchmarking and information sharing. The partnerships are important to the Commission since they provide a platform for collaboration, technical assistance and information sharing. Towards this end, the Commission nurtured its collaboration with the Public Protector of South Africa, Ombudsman of Bermuda, Ombudsman of Ontario and the Investigator General of Zambia.

Some of the activities conducted by the Commission in this regard included a study tour to the Ombudsman of Ontario and the Public Protector of South Africa.

## 6.8 MEMORANDA OF UNDERSTANDING WITH OTHER INSTITUTIONS AND JOINT ACTIVITIES

The Commission partnered with local, regional and international organisations to develop ways of working together. To this end, the Commission developed and executed Memoranda of Understanding (MoUs) with the Witness Protection Agency and the Kenya School of Government. Similarly, the Commission commenced the process of developing

MOUs with the Independent Policing Oversight Authority, the Public Protector of South Africa and the African Ombudsman Research Centre in South Africa.

The Commission also participated in the Task Force established by the Director of Public Prosecutions to investigate the murder of the late Sheikh Aboud Rogo Mohammed and other related criminalities following his death in August 2012. The Task Force finalised its work and presented a report to the DPP calling for further investigations.

Similarly, the Commission participated review of the implementation of the United Nations against Corruption by Kenya under the auspices of the National Steering Committee.

## **6.9 ENGAGEMENT WITH REGIONAL AND INTERNATIONAL OMBUDSMAN INSTITUTIONS**

The Commission strengthened its participation in the regional and international ombudsman activities. The regional and international ombudsman institutions were the International Ombudsman Institute, International Ombudsman Association, African Ombudsman and Mediators Association and the African Ombudsman Research Centre.

### **6.9.1 Engagement with the International Ombudsman Institute**

The Commission successfully applied for membership to the International Ombudsman Institute (IOI) and subsequently participated in its activities. The IOI is an independent umbrella body for ombudsman institutions established in 1978 with a membership of 155 from 90 countries worldwide.

The primary objective of IOI is to promote and develop the concept of ombudsmanship, thereby contributing to the respect for human rights, adherence to the rule of law, effective democracy, administrative justice and procedural fairness in public organisations and improving public service and accountability. This is usually achieved through participation in its regional activities; developing and operating development programmes; supporting research; collecting, storing and disseminating information and research database about the ombudsman institutions; and providing scholarships.

The Commission's participation in IOI's activities during the reporting period included an IOI Africa Meeting in Lusaka, Zambia in November 2013 which deliberated on the need for a Constitution and separate by-laws, and the relationship between IOI and the African Ombudsman and Mediators Association (AOMA). During the meeting, the Commission was selected alongside Zambia, Namibia, Cote d'Ivoire and the African Ombudsman Research Centre to study the memorandum of understanding between IOI and AOMA, and the draft IOI Africa Constitution for discussion in the next meeting.

The Commission also participated in the 'Sharpening Your Teeth' training programme in Canada and Zambia in January and November 2013 respectively. The programme focused on honing the skills in investigations, report writing and dissemination of information.

### **6.9.2 Engagement with the African Ombudsman and Mediators Association**

The Commission enhanced its participation in the activities of the AOMA during the period under review. AOMA is an African Union affiliated umbrella organisation for ombudsmen and mediators across Africa with membership from 37 countries, and seeks to pursue issues of interest in the areas of the rule of law, good governance and integrity.

As a way of realising the objectives of AOMA, the Commission successfully held the first ever Regional Colloquium of African Ombudsmen in Nairobi in September 2013 which was attended by representatives of ombudsman institutions from over 20 countries. The Colloquium which was graced by the President of AOMA discussed ways of strengthening the ombudsman institutions in Africa.

### **6.9.3 Engagement with the Africa Ombudsman Research Centre**

The Commission strengthened its role in AOMA activities through engagement with the African Ombudsman Research Centre (AORC). AORC is the research, analysis and training wing of AOMA.

During the period under review, the Commission participated in AORC activities which included a study on comparative analysis of the legal regimes among AOMA members. The research sought to contribute to the development of an enhanced understanding of the strengths and challenges to the ombudsmen as well as the development of normative standards. Further, the Commission visited AORC offices in South Africa and held discussions on issues of mutual interest.

### **6.9.4 Engagement with the International Ombudsman Association**

During the reporting period, the Commission successfully joined the International Ombudsman Association and attended one of their courses on professional development.

## **6.10 REGIONAL COLLOQUIUM OF AFRICAN OMBUDSMEN**

The Commission successfully organised the first Regional Colloquium of African Ombudsmen in Nairobi in September 2013 under the theme Repositioning the Ombudsman: Challenges and Prospects for African Ombudsman Institutions. The main objective of the Colloquium was to discuss ways of enriching the quality and effectiveness of the work of the Ombudsman in Africa.



From Left: Ms. Maria Keating - UNDP County Director, Hon. Prof. Githu Muigai – the Attorney-General of the Republic of Kenya, Commissioner Otiende Amollo – Chairperson of the Commission on Administrative Justice, Hon. Senator Amos Wako – former Attorney-General and Chairman of the Senate Legal Affairs and Human Rights Committee, and Hon. Paulo Tjipilika – the President of AOMA and the Ombudsman of Angola during of the Colloquium of African Ombudsmen at the Kenya School of Monetary Studies in Nairobi on 18th September 2013



A section of the delegates from various African countries listen to the proceedings during the Regional Colloquium of African Ombudsmen on 19th September 2013

The Colloquium brought together a cross section of distinguished governance and constitutional practitioners to discuss topical issues.

Some of the observations of the Colloquium were:

- i. The centrality of the office of the ombudsman was recognised and a desire to establish the office in all African countries expressed. The importance of entrenching the ombudsman in the constitution was emphasized.
- ii. It was noted that public awareness on the mandate of the ombudsman plays a critical role in its success.
- iii. Observed the need continue designing ingenious ways of ensuring its decisions are respected and implemented.
- iv. The roles of the AOMA and AORC were noted and appreciated. The idea of having collaborative meetings or exchange programmes was mooted.

## **6.11 STRATEGIC MEETINGS AND COURTESY CALLS**

The Commission attended strategic meetings with various stakeholders to discuss salient issues and examine ways of collaboration. Notably, the Commission attended a technical meeting by CIC on the working relationship with Constitutional Commissions and Independent Offices. CAJ also attended a meeting with the Kenya Human Rights Commission on the implementation of Communication 276/2003 of the decision of the African Commission on Human and People's Rights. The Commission is presently facilitating the implementation of the decision.

In addition, the Commission established contacts with a number of stakeholders, including with the Deputy President, Speaker of the Senate, and the Inspector General of the National Police Service.

## **6.12 INTERGRATED PUBLIC COMPLAINTS REFERRAL MECHANISM**

The Integrated Public Complaints Referral Mechanism (IPCRM) commonly known as *sema, piga repoti* continues to provide a platform for complaints referral amongst the following institutions: CAJ, EACC, KNCHR, NCIC, Transparency International - Kenya and the National Anti-Corruption Campaign Steering Committee. Following the successes of the pilot phase, the platform was expanded to cover five more counties - Nairobi, Mombasa, Kisumu, Kitale, Nyeri and Wajir. The Commission received 73 complaints through IPCRM during the reporting period.

## 7.0 INSTITUTIONAL CAPACITY BUILDING AND DEVELOPMENT

### 7.1 INTRODUCTION

This section outlines the activities undertaken by the Commission in 2013. The commission seeks to establish a fully capacitated institution in order to realise its mandate. This is in line with strategic objective 5 which seeks to enhance organizational growth and development. Strategic areas of focus include enhancing human resource capacity, strengthening the physical and IT infrastructure, resource mobilization, risk management and monitoring and evaluation. This section outlines the activities undertaken by the Commission to enhance its capacity in terms of human resource, infrastructure and resource utilization.

### 7.2 THE COMMISSION ON ADMINISTRATIVE JUSTICE REGULATIONS 2013

During the period under review the regulations of the Commission were published and gazetted as required by law (The Commission on Administrative Justice regulations 2013). This will bring to life the act and enable the Commission to implement various aspects of its mandate.

### 7.3 HUMAN RESOURCE CAPACITY

#### 7.3.1 Staff Complement

The Commission has an approved staff complement of 333 out of which 46 staff were recruited and 11 members of staff were seconded to the Commission from the Government, 2 recruited by UNDP, and 12 are on internship, bringing the number of staff at present to 71. Most of the current staff members were recruited in the course of the year. During the reporting period three staff member recruited by CAJ and one UN Volunteer exited from the Commission.

Table 5: CAJ staff Level

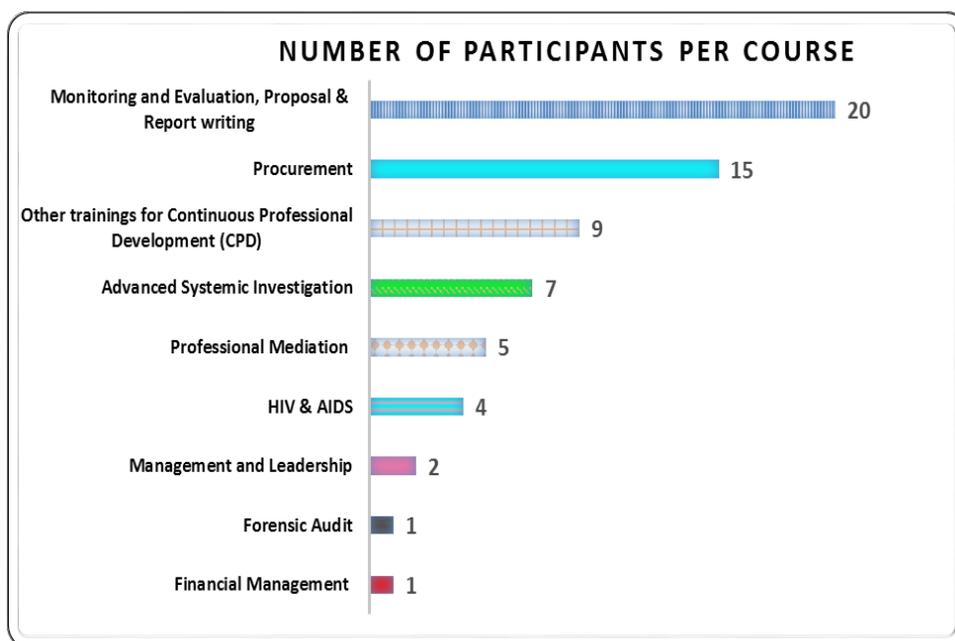
No.	Staff category	Number
1.	Staff directly recruited by CAJ	46
2	Staff seconded to CAJ from other Ministries	11
3	Staff recruited for CAJ by UNDP (UNVs)	2
4	Staff on Internship	12
5.	Staff who exited during the period	4
Total		75

### 7.3.2 Skills and Competency Development

In a bid to boost and sustain efficiency, the Commission facilitated training for CAJ for staff as shown in the chart below.

#### Summary of staff training

Figure 16 Summary of staff training



Additionally, the Commissioners attended training programs so as to sharpen their skills and knowledge during the reporting period. The trainings attended are as follows:

- a) Training Programme for Administrative watchdogs in Ontario, Canada conducted by the Ontario Ombudsman in Canada, Jan 2013.
- b) Foundation of organizational ombudsman practice conducted by International Ombudsman Association in Rome, Italy, June 2013

### 7.4 PHYSICAL INFRASTRUCTURE

The Commission relocated to new offices in Westlands in December 2013. This was occasioned by the need to acquire adequate space to accommodate its personnel. The bigger office space will enable the commission to offer its services better to Wanjiku. The new Office space has room for expansion even as the Commission goes to its full capacity.

In response to the challenge of inaccessibility the Commission opened branch offices in Mombasa and Kisumu. The Commission has also made its services available at

the Huduma Centre which is strategically located within the central business district in Nairobi. The offices are currently fully functional. During the same year the Commission benefited from UNDP support to acquire office equipment to enhance its work environment, including; a number of computers printers, scanners, photocopiers and assorted furniture. UNDP also donated two vehicles to enable Commission undertake field work with ease.

## 7.5 STRATEGIC FRAMEWORK

The Commission developed the first strategic plan – The Strategic Framework of the Commission on Administrative Justice: 2013-2016, which sets out the vision and outlines the priorities for the Commission in light of an evolving operating environment dictated by the transition taking place in the country. It contains immediate, medium and long term strategies that will guide the Commission in executing its mandate.



*CAJ Chairperson, Cmmr. Otiende Amollo (L), former Speaker of the National Assembly, Hon. Kenneth Marende and CAJ Vice Chairperson, Dr. Regina Mwatha during the launch of the CAJ strategic framework in April 2013.*

The Framework is the accountability statement of the Commission, a road-map of what the Commission envisions for Kenya and the measures to realise the vision. It spells out its priorities and guides the Commission to carve its niche by providing a clear road-map of the measures to be implemented to achieve the vision.

## 7.6 ICT INFRASTRUCTURE

The Commission made a deliberate effort to leverage on ICT to enhance efficiency in service delivery. It enhanced its Wide Area Network to branch offices in Kisumu, Mombasa and at the 1st Huduma Centre at General Post Office in Nairobi, thereby extending access to its central complaints' database. Further, the Commission put in place a comprehensive network security system to protect its network from intrusion and the integrity of its information. The Commission is in the process of re-engineering and automating the complaints handling process with the support of GIZ, and creating a digital paperless environment. It also plans to leverage on technologies such as SMS and Toll Free numbers to ensure effective receipt and processing of public complaints.

## 7.7 FINANCIAL RESOURCES

Upon establishment, the Commission carried out a needs assessment to determine the resource outlay required to operationalise its mandate. A budget proposal of KES 750,000,000 was submitted to the Ministry of Finance. The amount covered an elaborate plan to build the Commission's capacity in terms of infrastructure and human resource at the headquarters and branch offices in all the counties. After further consultations with the Treasury, the proposal was revised to KES 588,914,000. However, the Commission was only allocated KES 302,978,200 under the Recurrent Vote. This provision was later revised downwards to KES 216,241,303 in the supplementary estimates, the amount accounted for in this report. The reduction further widened the resource gap between the Commission's needs which stood at KES 285, 935,800 vis-à-vis the proposed KES 588,914,000. This created a challenge to optimal staff establishment, infra-structural development and the establishment of the envisaged branch offices in the 47 counties. It is worth noting that out of the total allocation of KES 216,241,303 provision, 31% went towards actual operations that support the core functions while 32% and 37% were expended on acquisition of non-capital assets and compensation of employees respectively.

While appreciating the resource constraints, the Commission exercised prudent financial management by ensuring compliance with the relevant rules and regulations governing the utilisation of public resources. It further put in place controls that ensured effective financial management that enabled it expend KES 216,214,843.00 out of KES 216,241,303.00 in the review period, which represents a 99% absorption rate.

Apart from the Government funding, the Commission benefited from the support offered by various development partners through direct payments for activities implemented under various programmes amounting to KES 50.6 Million. Under the UNDP project, titled support to the realisation of Human rights and access to justice in Kenya, the Commission implemented a number of activities under various thematic areas including County Visits and Research. A total of KES 21.9 Million was utilised during the reporting period.

Inadequate funding remains a major impediment towards the fulfillment of the Commission's mandate. In order to successfully implement the planned activities outlined in the Strategic Framework, CAJ requires a total of KES 3.8 billion spread across the 4 years covered by the Strategic plan. This translates into an average of KES 1 billion per year. With the huge budget deficit, the planned activities may not be achieved. It is therefore critical to enhance the Commission's budgetary allocations to a more realistic level, to ensure that the much needed services by the public are not curtailed.

## 8.0 CHALLENGES AND WAY FORWARD

### 8.1 CHALLENGES

Despite the milestones realised under the reporting period, the Commission continues to face a number of challenges that affect its work in varying degrees.

#### 8.1.1 Impunity

Failure of institutions and public officers to respond to inquiries by the Commission remains the biggest obstacle to quick resolution of complaints. This is because efficiency in resolving complaints is determined by the timeliness of responses to its inquiries by concerned public officers and institutions. This is one of the manifestations of impunity in the public service, and the attitude towards reforms by public officers. Whereas the Commission strives to inquire and resolve complaints without undue delays, this factor continues to affect the resolution rate.

#### 8.1.2 Budgetary Constraints

The administrative oversight of the Commission is broad and encompasses the entire public service. The increase in the number of complaints has not resulted to an increase in budgetary allocation. This brings to the fore the question of institutional capacity which is getting overstretched with the increasing number of people seeking its services. The financial outlay was inadequate for the Commission's activities, and the staffing level was too low to cope with the increased demand for the Commission's services.

In spite of the fact that the Commission had budgeted for 438 million shillings in the 2013/2014 fiscal year it only got an allocation of 274 million shillings. Under this only 31% was meant to carter for operations.

#### 8.1.3 Decentralization

The Commission is under the law, obligated to decentralize its services to all parts of the country for ease access. Failure by the members of the public to access its services may result to waning of public confidence in not only the Office of the Ombudsman but other reform institutions as well. At present, the Commission has two branch offices in Kisumu and Mombasa in addition to its offices in Nairobi.

The Commission has come up with novel ways of enhancing accessibility of the Office notwithstanding the budgetary constraints. It is important to note that ease of access of the Ombudsman, the custodian of the citizens' right to administrative justice, needs to be fully realised. The Government needs to allocate more resources to ensure all Kenyans access services of the Commission as guaranteed by law. Further, It is necessary that all effort is mustered to ensure public sector reforms are realised during this reform phase in the history of our nation lest the public becomes indifferent and eventually disillusioned.

### 8.1.4 Insufficient Statutory Framework

Considering the level of impunity in the country, it is desirable and logical that the legal framework should be sufficient to deal with the same. The present legal framework is insufficient in terms of enforcement of the determinations and recommendations of the commission. Non-compliance with the decisions of the commission ought to attract penal sanctions against the specific state or public officers. This will improve public service delivery and redress malfeasance in public offices.

## 8.2 LOOKING AHEAD: 2014 AND BEYOND

The Commission will continue to execute its mandate as it seeks to become an effective overseer of responsiveness and servant-hood in public offices in Kenya. In the year 2014 the Commission seeks to:-

- Leverage on technology to increase accessibility and efficiency in complaints handling through use of toll free numbers; social media and other platforms such as IPCRM, the Huduma initiative and improvement of the ICT infrastructure at the Commission.
- Contribute to public service reforms through complaints handling, investigations on systemic issues, strengthening partnerships with Ministries, Departments and Government Agencies, and trainings to improve complaints handling capacity of public institutions as well as audits (spot checks) to assessing compliance levels.
- Participate in litigation on matters of public interest in the public administration sphere.
- To devolve its services to the counties through partnership with county governments.
- Escalate awareness and advocacy programmes and activities to create understanding of the Commission's work. This will be achieved through conducting County visits and other outreach programmes including television shows, radio shows, advertisements and simplified IEC materials
- Employ alternative dispute resolution methods in relation to complaints and public administration
- To focus on public inquiries as a strategic way of handling complaints. The commission will isolate possible complaints for public inquiries as guided by the Commission on Administrative Justice Act, 2011.
- To reach a compromise on the way forward in handling its complementary mandate on integrity issues with EACC. The Commission will be seeking to foster its relationship with EACC.
- To adopt a new slogan in order to simply its mandate to the public. The slogan 'we

*fight impunity'* was adopted as the simple way of explaining what the Commission does.

- To reposition itself on its expanded jurisdiction as contemplated by various legislation.
- To redefine its relationship with Regional and International Institution such as AOMA and IOI respectively.
- To build a closer working relationship with both the National Assembly and the senate including the relevant House Committees of both Houses of Parliament.

# ANNEX 1: CAJ FINANCIAL STATEMENT

REPUBLIC OF KENYA



KENYA NATIONAL AUDIT OFFICE

## REPORT OF THE AUDITOR-GENERAL

ON

**THE FINANCIAL STATEMENTS  
OF COMMISSION ON ADMINISTRATIVE  
JUSTICE FOR THE YEAR ENDED  
30 JUNE 2013**

Chair: Cmmr. Otiende Amollo, EBS.  
V. Chair: Dr. Regina G. Mwachha, MBS.  
Member: Cmmr. Saadia A. Mohamed



THE  
COMMISSION ON ADMINISTRATIVE JUSTICE  
"Office of the Ombudsman"

COMMISSION ON ADMINISTRATIVE JUSTICE

ANNUAL REPORT

RECURRENT APPROPRIATION ACCOUNTS

AND

STATEMENT OF ASSETS AND LIABILITIES FOR PERIOD

ENDED

30 JUNE 2013

# COMMISSION ON ADMINISTRATIVE JUSTICE

## GENERAL INFORMATION

### **Registered Office**

The Deputy Presidents Building

6<sup>th</sup> floor Harambee Avenue

P. O. 20414-00200

NAIROBI – KENYA

Telephone - +254 –20-2270000/2303000/2603765/2441211

Email: [info@ombudsman.go.ke](mailto:info@ombudsman.go.ke)(for general enquiries)

[Complains@ombusman.go.ke](mailto:Complains@ombusman.go.ke)(for complaints)

Website: [www.ombudsman.go.ke](http://www.ombudsman.go.ke)

### **Bankers**

Central Bank of Kenya

P. O. 60000 - 00200

Nairobi – Kenya

### **Independent Auditors**

Auditor General

Kenya National Audit Office

Anniversary towers

P. O. Box 30084

Nairobi –Kenya

# COMMISSION ON ADMINISTRATIVE JUSTICE

## MEMBERS OF THE COMMISSION

NO.	NAME	POSITION
1.	OtiendeAmollo	Chairperson
2.	Dr.ReginaMwatha	Vice Chairperson
3.	SaadiaA. Mohamed	Commissioner
4.	Leonard Ngaluma	Commission Secretary

## SENIOR MANAGEMENT STAFF

NO.	NAME	POSITION
1	Leonard Ngaluma	Commission secretary
2.	Daniel Karomo	Director, Finance, andAdministration
3.	YuvinulisAngima	Director, Legal and Advisory Services
4.	Ismael Maaruf	Director, Compliance and Risk
5.	Micah Nguli	Director, Research and Investigations
6.	Belinda Ochiel	Director, Advocacy and Communications
7.	Edward Okello	Special Advisor to the Chair
8.	Vincent Chahale	Senior Manager, Legal
9.	Neema .K.Mkorori	Finance Manager
10.	Morgan Keya	Chief IT Officer

## COMMISSION ON ADMINISTRATIVE JUSTICE

### INTRODUCTION

The Commission on Administrative Justice (Office of the Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

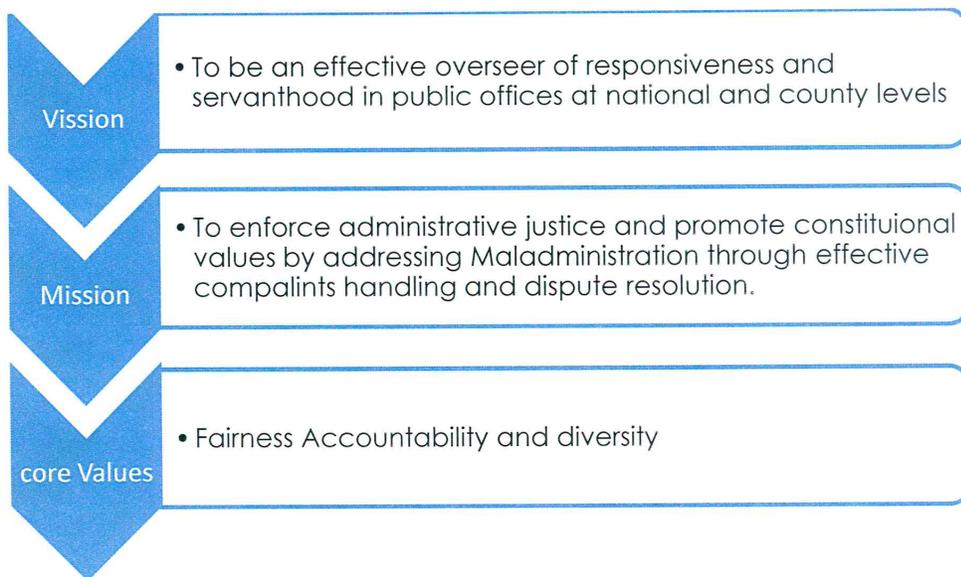
The Commission has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. Further, the Commission has a quasi-judicial mandate to deal with maladministration through conciliation, mediation and negotiation where appropriate.

In the conduct of its functions the Commission has powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

### **Mandate**

The mandate of the Commission is to enforce administrative justice in the public sector by addressing maladministration through effective complaints handling and alternative Disputes resolution. In addition, the Commission has a Constitutional mandate to safeguard public interest by promoting constitutionalism, securing the observance of Democratic values and principles, and protecting the sovereignty of the people of Kenya.

## COMMISSION ON ADMINISTRATIVE JUSTICE



### Key Strategic Objectives

1. To enhance responsiveness and effectiveness in the public sector in Kenya.
2. To strengthen the complaints handling capacity of public sector institutions.
3. To enhance public awareness and participation in matters of administrative Justice.
4. To improve standards of public administration and adherence to the rule of law.
5. To strengthen the capacity of CAJ to deliver on its mandate.

## COMMISSION ON ADMINISTRATIVE JUSTICE

### Strategic programmes

The Commission has been able to utilize the limited resources to implement several programs some of which are listed below

1. An outreach programme to create awareness on administrative justice and the Commission's mandate through county visits,
2. Public interest litigation programme on matters of administrative justice and the rule of law,
3. Integrated Public Complaints Referral Mechanism (IPCRM) which is an electronic based system for referring complaints among various institutions,
4. Initiated, promoted and coordinated collaboration among Constitutional Commissions and Independent Offices in Kenya,
5. Initiated collaborations with key players in the chain of administrative justice and in particular the Judiciary, Kenya Prisons Service and the Independent Policing Oversight Authority (IPOA),
6. Forged partnerships and linkages with foreign ombudsman offices in Finland, Rwanda, Ghana and Canada.

### Key Strategic Priorities

1. Creating public service that is responsive, accountable, efficient and fair in service delivery
2. Enhance public sector capacity to handle complains
3. Equip and educate Kenyans on matters of administrative justice
4. Constitutionalism and good governance in the conduct of state/public affairs.
5. Strengthened capacity of CAJ to deliver its mandate.

## COMMISSION ON ADMINISTRATIVE JUSTICE

### CHAIRMAN'S REPORT

I am delighted to present the Annual Report and Financial Statements for the financial year ended 30 June 2013. This is the first financial report issued under my stewardship of the Commission following my appointment as the chairperson and my two colleagues, Dr. Regina Mwatha and Ms. Saadia Mohamed, as members of the Commission in November 2011.

As you are aware, the Commission is established by the Act pursuant to Article 59(4) of the Constitution. The primary mandate of the Commission is the traditional role of the office of the ombudsman as known and practiced in many countries worldwide.

Having assumed office, we embarked on the process of enhancing complains management at the Commission and strengthening the institutional framework to enable the Commission deliver on its mandate. The Commission re-designed ways and means of lodging complains in order to ensure efficient processing of complains. This led to increased number of complains made to the Commission during the reporting period.

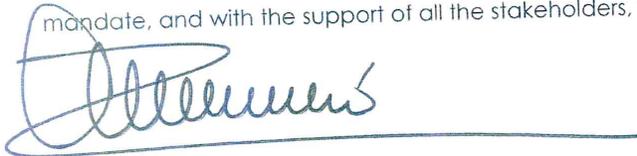
During the period under review, the Commission escalated its activities on complains handling system in the public sector under the performance contracting indicator on resolution of public complains. This was intended to institutionalize complain handling in the public sector and to promote good governance. We also commenced the process of putting structures in place and building capacity to enable the Commission effectively execute its mandate. In addition the Commission initiated and nurtured partnership aimed at deepening co-operation with all public agencies in the promotion of good governance in Kenya.

However in discharge of its mandate, the Commission experienced institutional and operational challenges which included low staff capacity, limited presence, accessibility, lethargy, inefficiency and unresponsiveness in the public sector. Despite the challenges, the Commission has experienced tremendous successes and adopted strategies aimed at overcoming the challenges. Part of these strategies included recruitment of competent



## COMMISSION ON ADMINISTRATIVE JUSTICE

staff, development of strategic framework, acquisition of requisite infrastructural tools and equipment necessary for the execution of the Commissions mandate and initiation and nurturing of partnership with stakeholders. The Commission is determined to deliver on its mandate, and with the support of all the stakeholders, we shall surely succeed



OTIENDE AMOLLO, EBS  
CHAIRMAN

## COMMISSION ON ADMINISTRATIVE JUSTICE

### REPORT OF THE SECRETARY.

During the year (2012/13), the Commission on Administrative Justice (CAJ) was allocated **Kshs.216, 241,303**. It expended **Kshs.216, 214,843** which is **99%** absorption rate, to accomplish the following key achievements among others:-

- i) Facilitation of administrative justice through complaint resolution where **4,062** cases were received out of which **1,398** were resolved and the **2,664** are on-going.
- ii) Established a regional office in Kisumu and the Commission is in the process of establishing another one in Mombasa.
- iii) Provided outreach services and created awareness on administrative justice in **10** counties.
- iv) Training of **2,665** public servants from various Government Ministries, Departments and Agencies on effective complaint handling.
- v) Participated in the establishment of an Integrated Public Complaints Referral Mechanism (IPCRM) bringing together 5 Commissions which include Kenya National Commission on Human Rights; National Cohesion and Integration Commission; Ethics and Anti-Corruption Commission; National Anti-Corruption Campaign Steering committee.
- vi) Operationalising the Secretariat through recruitment of 57 key staff members.

The commission faced a number of challenges mainly arising from the reduction of its budgetary allocations and inadequate staff establishment. The reduction of budgetary allocations adversely affected the full implementation of planned activities and especially the commissions outreach programmes and research on systemic issues that the commission would have undertaken to inform its recommendations on areas of improvement.

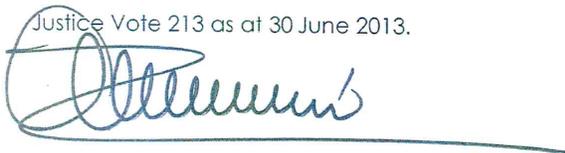
## COMMISSION ON ADMINISTRATIVE JUSTICE

### STATEMENT OF COMMISSION'S RESPONSIBILITY

The Commission accepts responsibility for the maintenance of accounting reports which may be relied upon in preparation of the financial statements as well as adequate systems of internal control.

The Commission further accepts responsibility for the attached Annual accounts which have been prepared in conformity with treasury Circulars, appropriate government financial regulations and procedures and public finance management Act 2012.

The Commission is of the opinion that the attached Appropriations and other financial statements present fairly the financial state of affairs of the Commission on Administrative Justice Vote 213 as at 30 June 2013.



OTIENDE AMOLLO, EBS  
CHAIRMAN

DATE 28/10/2013



LEONARD NGALUMA  
COMMISSION SECRETARY

DATE 28/10/2013

## COMMISSION ON ADMINISTRATIVE JUSTICE

### R213-STATEMENT OF ASSETS AND LIABILITIES AS AT 30 JUNE 2013

ASSETS	2012/2013
	KSHS
Exchequer (under Issue)	11,303.00
Cash	15,157.00
Bank	-
	26,460.00
<b><u>LIABILITIES</u></b>	
GAV	26,460.00
Excess A.I.A	-
	26,460.00



OTIENDE AMOLLO, EBS  
CHAIRMAN

DATE 28/10/2013



LEONARD NGALUMA  
COMMISSION SECRETARY

DATE 28/10/2013

Telephone: +254-20-342330  
Fax: +254-20-311482  
E-Mail: [cag@kenao.go.ke](mailto:cag@kenao.go.ke)  
Website: [www.kenao.go.ke](http://www.kenao.go.ke)

REPUBLIC OF KENYA

P.O. Box 30084-00100  
NAIROBI



## KENYA NATIONAL AUDIT OFFICE

### REPORT OF THE AUDITOR-GENERAL ON COMMISSION ON ADMINISTRATIVE JUSTICE FOR THE YEAR ENDED 30 JUNE 2013

#### REPORT ON THE FINANCIAL STATEMENTS

I have audited the accompanying financial statements of the Commission on Administrative Justice set out on pages 10 to 15, which comprise the recurrent appropriation accounts for vote R213 and statement of assets and liabilities R213 for the year ended 30 June 2013, together with a summary of significant accounting policies and other explanatory notes in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 8 of the Public Audit Act, 2003. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the audit.

#### **Management's Responsibility for the Financial Statements**

The management is responsible for the preparation and fair presentation of these financial statements in accordance with Government Financial Regulations and Procedures and the Public Finance Management Act, 2012 and for such internal control as the management determines is necessary to enable the preparation of financial statements that are free from material misstatements whether due to fraud or error.

The management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 7 of the Public Audit Act, 2003.

#### **Auditor-General's Responsibility**

My responsibility is to express an opinion on these financial statements based on the audit and report in accordance with the provisions of Section 9 of the Public Audit Act, 2003 and submit the audit report in compliance with Article 229(7) of the Constitution of Kenya. The audit was conducted in accordance with International Standards on Auditing. Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

#### **Basis for Qualified Opinion**

##### **Procurement of Goods and Services**

###### **i. Fuel Costs – Kshs.2,539,820**

The Appropriation Account for the year ended 30 June 2013 reflects fuel, oil and lubricants expenditure of Kshs.3,241,459 which includes fuel worth Kshs.2,539,820 whose records including fuel register were not availed for audit verification. Consequently, the propriety of the expenditure of Kshs.2,539,820 could not be confirmed for the year ended 30 June 2013.

###### **ii. Consultancy Services**

The Appropriation Account also reflects other operating expenses of Kshs.8,041,459 which include consulting services amounting to Kshs.595,000 being payment to a consultant for provision of recruitment of staff services. However, the service was single sourced contrary to the requirements of the Public Procurement and Disposal Act, 2005. Further the contract signed by the management with the consultant was not availed for audit review.

In the circumstances it has not been possible to confirm the propriety of the consultancy expenditure of Kshs.595,000 for the year ended 30 June 2013.

#### **Qualified Opinion**

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion paragraph, the financial statements present fairly, in all material respects, the financial position of the Commission as at 30 June 2013

and of its operations for the year then ended in accordance with Government Financial Regulations and Procedures and the Public Finance Management Act, 2012 of the Laws of Kenya.



**Edward R. O. Ouko, CBS**  
**AUDITOR-GENERAL**

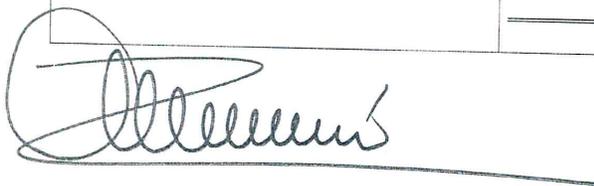
**Nairobi**

**20 November 2013**

## COMMISSION ON ADMINISTRATIVE JUSTICE

### R213-STATEMENT OF ASSETS AND LIABILITIES AS AT 30 JUNE 2013

ASSETS	2012/2013
	<b>KSHS</b>
Exchequer (under Issue)	11,303.00
Cash	15,157.00
Bank	-
	26,460.00
<b><u>LIABILITIES</u></b>	
GAV	26,460.00
Excess A.I.A	-
	26,460.00



OTIENDE AMOLLO, EBS  
CHAIRMAN

DATE 28/10/2013



LEONARD NGALUMA  
COMMISSION SECRETARY

DATE 28/10/2013

## COMMISSION ON ADMINISTRATIVE JUSTICE

### VOTE R213-RECURRENT APPROPRIATION ACCOUNTS FOR THE YEAR ENDED 30 JUNE 2013

ITEM	TITLE AND DETAILS	PRINTED ESTIMATES	SUPPLEMENTARY ESTIMATE	REVISED ESTIMATES	ACTUAL EXPENDITURE	OVER	UNDER
2110100	Basic salaries – Permanent Employees	94,686,000	(45,812,678)	48,873,322	55,955,124	7,081,802	-
2110300	Personal allowances paid as part of salary	38,226,000	(13,722,978)	24,503,022	23,778,018	-	725,004
2210100	Utilities, supplies and services	-	100,000	100,000	68,018	-	31,982
2210200	Communication, supplies and services	6,660,000	(1,966,000)	4,694,000	5,298,922	604,922	-
2210300	Domestic travel and subsistence & other costs	11,900,000	(710,000)	11,190,000	11,114,024	-	75,976
2210400	Foreign travel and subsistence & other costs	11,025,000	(2,205,000)	8,820,000	8,818,430	-	1,570
2210500	Printing, advertising & information supplies	23,240,000	(7,174,000)	16,066,000	17,910,555	1,844,555	-
2210600	Rentals of produced assets	28,500,000	(5,570,000)	22,930,000	19,819,884	-	3,110,116
2210700	Training expenses (including capacity building)	21,650,000	(15,360,000)	6,290,000	6,403,372	113,372	-
2210800	Hospitality supplies and services	6,860,000	(186,000)	6,674,000	7,339,423	665,423	-
2210900	Insurance costs	10,000,000	2,389,225	12,389,225	9,957,380	-	2,431,845
2211100	Office and general supplies and services	6,800,000	(619,240)	6,180,760	5,639,963	-	540,797
2211200	Fuel, oil and lubricants	1,600,000	2,000,000	3,600,000	3,241,015	-	358,985
2211300	Other operating expenses	12,612,000	(3,562,400)	9,049,600	8,041,459	-	1,008,141
2220100	Routine maintenance – vehicles & transport equipment	2,880,000	500,000	3,380,000	3,369,037	-	10,963
2220200	Routine maintenance – other assets	1,050,000	300,000	1,350,000	1,083,560	-	266,440
2640500	Other capital grants and transfers	150,000	0	150,000	18,700	-	131,300
2710100	Government pension and retirement benefits	2,000,000	200,000	2,200,000	1,734,588	-	465,412
3110300	Refurbishment of buildings	9,000,000	6,000,000	15,000,000	14,363,812	-	636,188
3110700	Purchase of vehicles & other transport equipment	8,000,000	858,886	8,858,886	8,858,886	-	-
3111000	Purchase of office furniture & general equipment	6,139,200	2,196,711	3,942,489	3,400,673	-	541,816
	<b>Gross expenditure</b>	<b>302,978,200</b>	<b>86,736,897</b>	<b>216,241,303</b>	<b>216,214,843</b>	<b>10,310,074</b>	<b>10,336,534</b>
	<b>Appropriations in Aid</b>						
1420600	Receipts from sale of incidental goods	-		430,000	430,000	-	-
	<b>Total appropriations in Aid</b>			<b>430,000</b>	<b>430,000</b>		
	<b>Net expenditure – Head 0001</b>	<b>302,978,200</b>	<b>86,736,897</b>	<b>215,811,303</b>	<b>215,784,843</b>	<b>10,310,074</b>	<b>10,336,534</b>

## COMMISSION ON ADMINISTRATIVE JUSTICE

### APPROPRIATION ACCOUNTS FOR THE YEAR ENDED 30 JUNE 2013

VOTE R213 SUMMARY			
	APPROVED ESTIMATES	ACTUAL EXPENDITURE	VARIATIONS
Gross Expenditure	216,241,303.00	216,214,843.00	26,460.00
Less Applied Appropriation in Aid	430,000.00	430,000.00	-
<b>Net Total Votes</b>	<b>215,811,303.00</b>	<b>215,784,843.00</b>	<b>26,460.00</b>

## COMMISSION ON ADMINISTRATIVE JUSTICE

### DETAILS OF APPROPRIATION IN AID RECEIPTS

<u>VOTE 213</u>	APPROVED ESTIMATE	ACTUAL RECEIPTS	VARIATIONS
Total Appropriation in Aid	430,000.00	430,000.00	-

## COMMISSION ON ADMINISTRATIVE JUSTICE

### EXPLANATIONS FOR MATERIAL DIFFERENCE BETWEEN VOTED PROVISION AND ACTUAL EXPENDITURE.

#### 1. VOTE 213 RECURRENT ACCOUNTS

**2110300 Personal Allowances Paid as Part of Salary**

The Over expenditure of Kshs.7, 081,803 was due to reduction of the commissions budget after the second supplementary estimates. This was done after Salaries had been paid.

**2210500 Printing advertising and information supplies and services**

The Over expenditure of Kshs.1, 844,555 was due to reduction of the commissions budget in the revised Estimates after commitments and payments had passed through the system.

**2210600 Rental of produced Assets**

The Under-expenditure of Kshs.3, 110,116 was due to delays in the process of acquiring two regional offices in Kisumu and Mombasa.

**2210900 Insurance Costs**

The Under-expenditure of Kshs.2, 431,845.00 was due to delays in tendering process for the acquisition of motor vehicle insurance policy occasioned the limited human resource capacity at the beginning of the commissions operations.

**2211300 Other Operating Expenses**

The under-expenditure of Kshs.1, 008,141 was due to delay in relocation to the commission's new offices and acquisition of two regional offices in Kisumu and Mombasa which were to consume the cleaning and security guards services.

# COMMISSION ON ADMINISTRATIVE JUSTICE

## 2. STATEMENT OF PENDING BILLS

	<b>MERCHANT NAME</b>	<b>DETAILS OF PAYMENT</b>	<b>AMOUNT</b>
1	Nation Media Group	Provision of Advertisement Services	536,760
2	The star Publication Ltd	Provision of Advertisement Services	526,176
3	Postal corporation of Kenya	Provision of courier Services	65,020
4	Wide range Advertisers	Provision of Advertisement Services	116,000
5	Jubilee Insurance	Provision of Medical services	978,465
	<b>TOTAL</b>		<b>2,222,421</b>

### REASONS FOR PENDING BILLS

The above pending bills were as a result of reduction of the commission's budgets towards the end of the financial year hence reductions in expected exchequer issues.

### 3. This is the first audit of the commission on administrative justice

## ANNEX 2: CAJ REGULATIONS, 2013

Kenya Gazette Supplement No. 54 12th April, 2013

**(Legislative Supplement No. 23)**

### **LEGAL NOTICE NO. 64**

### **THE COMMISSION ON ADMINISTRATIVE JUSTICE ACT**

**(No. 23 of 2011)**

IN EXERCISE of the powers conferred by section 56 of the Commission on Administrative Justice Act, 2011, the Commission on Administrative Justice makes the following Regulations:—

### **THE COMMISSION ON ADMINISTRATIVE JUSTICE REGULATIONS, 2013**

#### **PART I—PRELIMINARY**

1. These Regulations may be cited as the Commission on Administrative Justice Regulations, 2013.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Commission on Administrative Justice Act, 2013;

“admission” means the process by which the eligibility of a complaint to determination by the Commission is done;

“Chairperson” means the Chairperson of the Commission appointed in accordance with section 11 of the Act;

“Commission” means the Commission on Administrative Justice established under section 3 of the Act;

“Commissioner” means a member of the Commission appointed under section 11 of the Act;

“Complainant” means a person or institution alleging breach of any matter under the mandate of the Commission;

“Complaint” means an oral, written or any other communication made or addressed to the Commission or taken up by the Commission against a State Office or State Officer or Public Officer or Public Office;

“hearing” means a sitting of a hearing panel for the purpose of enabling it to reach or

announce a decision on a complaint under adjudication;

“investigation” includes the formal process following a preliminary inquiry or on the Commission’s own motion of establishing the facts in a matter, by an investigator, upon a decision of the Commission;

“mediation” means the process by which the Commission assists a complainant and the respondent to reach a fair settlement regarding the complaint and may include, the process of conciliation or negotiation;

“respondent” means a person or institution against whom or who the complaint is made;

“State office” has the meaning assigned to it under Article 260 of the Constitution; and

“State officer” has the meaning assigned to it under Article 260 of the Constitution.

## **PART II—LODGING AND HANDLING PROCEDURE OF A COMPLAINT**

3. A complaint may be lodged at the offices of the Commission or at such place or places and in such form as the Commission may from time to time determine.

4. A complaint may be lodged by the complainant in person or by a person acting on behalf of the complainant or by any other person authorized by law to act for the complainant, provided that the Commission may admit anonymous complaints.

5. (1) Where the complaint is made orally, or otherwise, or the complainant cannot read or write, the complaint may be reduced to writing by a designated officer of the Commission.

(2) A written complaint shall be in such form as the Commission may determine and shall include –

- (a) the name and contact details of the complainant;
- (b) the particulars of the respondent;
- (c) the substance of the complaint in sufficient detail to enable the Commission to act.

(3) The complainant may attach or provide any documents necessary to support the complaint.

(4) Despite the foregoing, a complaint may be made anonymously, or treated in such a manner as to protect the identity of, or particulars of, the complainant where necessary, as may be directed by the Chairperson.

6. In the determination of complaints under these Regulations, the Commission shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.

7. The Commission shall not charge any fee in the lodging and determination of complaints.

8. (1) Any document required or authorized to be served under these Regulations shall, where practicable, be served personally on the person by delivering or tendering the document to that person.

(2) Where it is not possible to effect personal service, the document may be served in such manner as the Commission may determine.

(3) Any document requiring service under these Regulations shall be served by an officer of the Commission or any other person authorized to do so by the Commission.

9. (1) A Complaint shall, upon being entered into the register under regulation 16, be forwarded to the appropriate Department in the Commission for screening.

(2) The Commission, upon screening the complaint, may-

(a) admit the complaint;

(b) where appropriate, advise the complainant in writing that the matter is not within the mandate of the Commission; or

(c) advise the complainant that the matter lies for determination by another body or institution and refer the same to the said body or institution.

10. Where, in the opinion of the Commission, a complaint does not merit further consideration, it may discontinue further proceedings on the complaint, record its reasons and notify the complainant accordingly.

11. (1) Where a complaint has been discontinued under regulation 10, the complainant may, in writing, appeal to the Chairperson against the discontinuation.

(2) Where an appeal is disallowed, the complaint shall be closed and the appellant notified appropriately.

(3) For purposes of this regulation, a letter under the hand of the Chairperson notifying the complainant of the decision of the Commission shall be considered as notice for the purposes of this regulation.

12. (1) A complainant may, in writing, withdraw a complaint pending before the Commission at any stage during its consideration.

(2) Where a complainant unjustifiably fails or neglects to respond to communication from the Commission within three months from the date of the last communication, the Commission may deem the complaint to have lapsed.

(3) Despite the provisions of paragraphs (1) and (2), the Commission may, in its discretion, proceed to deal with a complaint in the public interest.

(4) Where a complaint has lapsed, the complainant may apply to the Chairperson for re-admission of the complaint and give reasons in support of the application for re-admission to the satisfaction of the Chairperson.

13. (1) Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent or respondents, the Commission may –

- (a) consolidate the complaints; or
- (b) treat one complaint as a test complaint and stay further action on the other complaints pending resolution of the test complaint.

(2) The decision on a test complaint shall apply, *mutatis mutandis*, to all other complaints with which the test complaint was consolidated.

14. The Commission may take judicial notice of facts that are publicly known.

15. Proceedings before the Commission shall be conducted in the English or Swahili languages.

(2) The Commission shall endeavour to ensure that a party who cannot speak or understand the language of proceedings is entitled to the services of an interpreter to be provided by the Commission.

(3) For purposes of paragraph (2), interpretation shall include interpretation for braille, sign-language or such other interpretation as may be deemed necessary.

16. The Commission shall keep a register of complaints in which all complaints shall, upon receipt, be entered.

### **PART III—ADMISSION AND RESOLUTION OF A COMPLAINT**

17. (1) Upon admission of a complaint, the Commission shall draft a communication in form CAJ 1-1 or CAJ 2-1, as applicable, set out in the First Schedule, to the respondent.

(2) Upon the expiry of fourteen working days, if there is no response after receipt, a reminder giving seven days to comply in form CAJ3-1 set out in the Second Schedule shall be communicated to the respondent.

(3) If there is still no response under paragraph (2), a further and final reminder giving seven days to comply in form CAJ3-1 set out in the Second Schedule, shall be sent to the respondent.

(4) If upon the expiry of twenty-eight days there is still no response, the Commission shall issue summons or make such other orders to attend to the respondent in a form to be determined by the Commission.

18. If a respondent fails to respond to the summonses or other orders referred to in regulation 17, the Commission may proceed to –

- (a) determine the complaint in the absence of the respondent;
- (b) institute legal proceedings against the respondent under to section 52 (c) of the Act;
- (c) cite the respondent as an unresponsive State or Public Office or Officer or declare such State or Public Officer to be unfit to serve in the Public Service;
- (d) take appropriate action against the unresponsive State or Public Office or Officer through Performance Contracting; or
- (e) report the respondent in the Commission's Statutory Reports.

19. In resolving a complaint, the Commission may—

- (a) conduct investigations;
- (b) requisite and obtain information or documents;
- (c) conduct an inquiry;
- (d) undertake mediation, negotiation and conciliation;
- (e) constitute a hearing panel;
- (f) invite or summon any person or persons to attend to the Commission;
- (g) obtain warrants of arrest for breach of any summons or orders of the Commission;  
or
- (h) obtain orders from court authorizing search or seizure.

20. After adopting any of the options stated in regulation 19, the Commission may determine the complaint and—

- (a) make a formal determination that the respondent is in breach of the Constitution, the Act or any other legislation;
- (b) declare the respondent to be a person ineligible to hold a state or public office;
- (c) enter the name of the respondent in the Commission's Citation Register which shall be signed and sealed by the Chairperson and which shall include the nature of the complaint and the determination made; or
- (d) make any other adverse finding against the respondent.

21. In determining the complaint, the Commission may—

- (a) recommend an appropriate remedy;
- (b) award appropriate compensation to the complainant;

- (c) recommend the removal of the respondent from State or Public office;
- (d) issue a formal caution or warning to the respondent; or
- (e) publish the action taken in the Commission's Statutory Report.

#### **PART IV—INVESTIGATIONS**

22. (1) Where the complaint has been admitted, or where the commission has taken up a matter on its own initiative, the Chairperson may commission an investigation by an officer of the Commission or any public office or investigation agency.

(2) The investigator may, subject to the direction and control of the Commission—

- (a) issue summonses or requisition information in form to be determined by the Commission;
- (b) administer an Oath or Affirmation;
- (c) requisite any document or information from any person or institution; and
- (d) by order of court, enter into any establishment or premises, conduct inspections or collect documents.

(3) Upon completion of the investigation, the investigator shall prepare a report and submit it to the Chairperson of the Commission.

(4) Upon review of the report, the Commission may—

- (a) conduct a formal hearing;
- (b) undertake a mediation or a conciliation;
- (c) refer the complaint to the appropriate public body for further action; or
- (d) determine the complaint appropriately.

(5) The Commission shall keep a record of each investigation and may publish the findings and recommendations, pursuant to an investigation, and may include these in its Statutory Report.

#### **PART V—MEDIATION, CONCILIATION AND NEGOTIATION**

23. (1) The Commission may, in writing, advise the parties to a complaint that the dispute may be best resolved through mediation and conciliation.

(2) Where both parties to a complaint consent to mediation and conciliation, the Commission shall, in consultation with the parties, fix an appropriate date for a meeting.

(3) The Commission shall issue a mediation notice which shall include—

- (a) the names of the parties to the complaint; and
- (b) the date, time and venue of the mediation meeting.

(4) Upon the issuance of a mediation notice, but before the date of the meeting, the Chairperson shall constitute a mediation panel consisting of at least one Commissioner and such number of other persons as the Chairperson may consider necessary.

24. During the mediation or meeting, the panel appointed under regulation 23(4) may apply such procedures as it may, in the interests of the parties, deem appropriate in the circumstances.

25. (1) At the conclusion of the mediation process, both parties shall sign a mediation and conciliation agreement bearing the common seal of the Commission and signed by the designated Commissioner.

(2) A mediation or conciliation agreement signed under this regulation, shall be deemed to be a determination of the Commission, and shall be enforceable as such.

(3) Despite provisions of this regulation, the Commission may make awards for compensation under this Part.

## **PART VI—COMMISSION HEARINGS**

26. (1) The Commission may conduct a hearing on any complaint or matter under its jurisdiction where it considers desirable or appropriate to do so.

(2) A hearing panel shall consist of such persons as the Chairperson may appoint.

(3) Unless the circumstances otherwise require, for reasons stated, the Commission shall conduct its hearings in public.

27. (1) Upon determination that a complaint should be addressed through a hearing, the Commission shall issue a notice to the concerned parties on the constitution of a hearing panel and require them to enter appearance.

(2) The notice referred to in paragraph (1) shall be in the form to be determined by the Commission and shall include—

- (a) the names of the parties;
- (b) the date, place and time of the hearing;
- (c) the penalty for non-compliance;
- (d) the duration within which appearance is required; and
- (e) a notice that a party may appear in person or with an advocate, representative or intermediary.

(3) An appearance before the hearing panel shall be made within fourteen days from the date of service of the notice to the parties under paragraph (2).

(4) Where a party has entered appearance under to paragraph (3), the Commission shall give directions and fix a hearing date.

(5) For purpose of this regulation, a letter or any other sufficient indication in writing, by a party, informing the Commission that the party shall appear on the date and place of hearing, shall be considered as notice of appearance by that party.

(6) Upon fixing a hearing date, a hearing notice in form to be determined by the Commission, shall be served on all the parties.

28. (1) Where a party to a complaint has been duly served and fails to appear as required, the hearing panel may proceed to hear the respondent and make orders in default of appearance as it may deem fit.

(2) If, on the day fixed for the hearing of a complaint, the respondent appears in answer to the summons but the complainant does not appear, or vice-versa, the hearing panel may, if satisfied that a hearing notice was duly served, proceed to dispense with the complaint on the basis of the evidence before it.

(3) Where a complaint is determined under paragraphs (1) and (2), the party in default may move the Commission to set aside the decision and reinstate the complaint subject to satisfying the Commission that there were satisfactory grounds and reasons for non-attendance at the hearing.

(4) The hearing panel may, upon consideration of the motion under paragraph (3), set aside the decision and fix a new date for the hearing of the complaint with notice to both parties, and upon such terms and conditions as it deems fit.

29. (1) Despite the provisions of this regulation, a hearing panel may adopt a suitable procedure for the purpose of resolving the matter while avoiding unnecessary legal technicalities and formalities.

(2) The parties shall be heard in such order as the hearing panel shall determine and shall be entitled to give evidence, call witnesses, question any witnesses and address the hearing panel both on the evidence and generally on the subject matter of the complaint.

(3) The hearing panel may, at any time, put questions to either party or any witnesses and may, at its discretion, call such additional evidence or expert testimony as it considers necessary.

(4) The hearing panel shall enter an appropriate decision on part or all of the complaint.

(5) The hearing panel may, for sufficient reason, at any time before or after the beginning of the hearing, adjourn the proceedings and in every such case the Commission shall fix a date for further hearing of the complaint.

(6) In the course of the proceedings, the hearing panel may make such preservatory or interim orders, as it may deem fit and just in the circumstances.

(7) Evidence before the hearing panel may be given orally, or if the hearing panel so orders, by affidavit or written statement, but the hearing panel may at any stage require the personal attendance of any witness, deponent or author of a written statement or document.

(8) At any hearing, the hearing panel may, if it is satisfied that it is just and reasonable to do so with no resulting prejudice to the respondent, permit a party to rely on grounds not stated in his complaint, or as the case may be, his reply, and adduce any evidence not initially presented to the Commission.

(9) Evidence before the hearing panel shall be given on oath or affirmation and for that purpose, the hearing panel shall administer such oath or affirmation.

(10) The evidence of the parties and that of each witness shall be recorded by the hearing panel or by any person authorized to do so by the Commission.

30. An advocate who appears for a party at any stage shall be deemed to be that party's advocate throughout the proceedings unless—

(a) the party to the complaint files a written revocation of the advocate's authority with the Commission;

(b) the advocate files a written notice of withdrawal from the matter with the Commission.

31. After concluding the hearing of the matter, the hearing panel shall render a decision reflecting substantive justice.

(2) A decision under paragraph (1) shall be in writing and shall state—

(a) the nature of the complaint;

(b) a summary of the relevant facts and evidence adduced before the panel;

(c) the determination and reasons supporting the panel's decision;

(d) the remedy to which the complaint is entitled; and

(e) the order of the panel necessary to enforce the remedy.

(3) Where the decision of the hearing panel is not given immediately after the hearing of the complaint, the panel shall deliver the decision on notice.

(4) After the decision is rendered, the Commission may correct typographical errors without prejudice to the substance of its findings.

32. (1) The orders made in a decision of the hearing panel shall be extracted, sealed and authenticated as orders of the Commission and shall be signed by the Chairperson.

(2) Orders of the Commission shall be enforced in similar manner as Orders of Court.

33. Parties may obtain a copy of the Commission's decision free of charge.

## **PART VII—MISCELLANEOUS**

34. The Commission may, on its own motion or upon invitation, seek to join legal proceedings in a court of law or judicial tribunal as interested party, interveners or *amicus curiae*, provided that when the Commission is requested to do so it may, upon giving written reasons, decline to be enjoined in such proceedings.

(2) In determining whether to join proceedings as interested parties, interveners or *amicus curiae*, the Commission shall satisfy itself that the issues before the court—

- (a) are matters of broad public interest;
- (b) are matters raising substantial policy implications;
- (c) are matters affecting public administration;
- (d) are matters relating to administrative justice;
- (e) are matters concerning leadership and integrity; or
- (f) are matters of interest to the Commission in light of its mandate.

35. The Commission may from time to time determine any other forms for the better carrying out of the provisions of the Act and these Regulations.

36. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Commission may issue from time to time.

Made on the 8th April, 2013.

### **OTIENDE AMOLLO,**

#### **Chairperson, the Commission on Administrative Justice.**

\* The marginal notes to the Regulations and the forms referred to herein have been excluded from this publication but are available in the original Legal Notice No. 64 of 2013 and also at the Head Office of the Commission at Nairobi.

\*\*TAKE NOTICE that any person who may have any comments on these Regulations may forward them to the Commission Secretary, Commission on Administrative Justice, West End Towers, 2nd Floor, Waiyaki Way, P. O. Box 20414, Nairobi.

## MEMBERS OF THE COMMISSION ON ADMINISTRATIVE JUSTICE



**Chair/Ombudsman**  
**Cmmr. Otiende Amollo,**  
**EBS**



**Vice Chairperson**  
**Cmmr. Dr. Regina Mwatha, MBS**



**Commissioner**  
**Cmmr. Saadia Mohamed, OGW,**  
**MBS**



**Commission Secretary**  
**Mr. Leonard Ngaluma, MBS**