

OPEN LETTER TO THE JUDICIARY OF THE REPUBLIC OF KENYA

On Threats to Individual and Institutional Independence of the Judiciary

Nairobi, 1st October 2017

Hon. Justice David Maraga,
The Chief Justice and President of the Supreme Court of Kenya,
Supreme Court Building
Nairobi

Dear Chief Justice,

We write to you collectively as a body of jurists and deeply concerned citizenry of the Republic of Kenya.

As membership organization, the Kenyan Section of the International Commission of Jurists (ICJ Kenya) strives to promote the rule of law, justice and democracy in Kenya and the region. We are an institution that strongly and actively seeks to promote and defend the independence of the judiciary in Kenya.

We have noted with great concern at the persistent pattern of attacks against individual judges and the institution of the judiciary, which attacks have been exacerbated by the decision of the Supreme Court that annulled the August 8, 2017 presidential elections. We are equally and deeply perturbed by the public personalized attacks against the justices of the Supreme Court given vent through mainstream media as well as negative profiling of judges, judicial officers and staff on social media platforms. Even more alarming were the threats from the Presidency on a number of occasions and in public spaces that his government, upon winning in the fresh elections, would 'deal with the rogue judges and the Supreme Court'.

We have also noted with further concern at the legislative attempts undermine the independence of the judiciary through introduction of amendments to election related laws. It is our considered opinion that this initiative by the National Assembly is not grounded on principles of the rule of law and constitutionalism.

We reiterate and assert that the constitutional provisions on judicial authority and independence expressly dictate that 'in exercise of judicial authority, the judiciary shall not be subject to the control or direction of any person or authority'.

The Executive and Parliament must be reminded, which we hereby do, that the constitutional guarantees of judicial independence are non-derogable and are recognized by international and regional standards and norms. Specifically, the United Nations Basic Principles on the Independence of the Judiciary, to which Kenya is a signatory among the community of nations, the Principles provide inter alia:

- The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
- The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

As Jurists, we note with appreciation the initiative by the Judicial Service Commission (JSC) to respond to the attacks on the Judiciary in a number of occasions as part of its mandate of promoting the independence and accountability of the Judiciary, notably:

- The statement dated 19th September 2017 noting the increased aggression in attacks on the judges and the judiciary post the 1st September judgment on the Presidential election petition:** This letter drew an important distinction between positive criticism of the judiciary and outright intimidation of individual judges and the judiciary. This letter also cautioned against intimidation of judges and judicial officers readying to determine the 339 petitions filed in other courts across the country. More importantly the JSC reiterated its support to judicial independence and its devotion to protect the constitution and the rule of law.
- The statement dated 2nd August 2017 specifically addressing itself to attacks of the judiciary by political leaders:** This letter chronicles the outright attacks by politicians from both sides of the divide in the form of threats, intimidation and blackmail dating back to December 2016 and a call for politicians to cease from such intimidations. It further draws attention to judicial processes that include avenues of recourse which politicians should utilize as opposed to hurling insults and threats for decisions made by judges and judicial officers. Vitaly, the letter reiterates judiciary preparedness to hear and determine all election related disputes without fear or favour.

The above statements and responses are indicative of the gravity of the attacks targeting at the Judiciary and the even the greater urgency on the need to protect and safeguard the independence of the institution.

We remind the Executive and the Legislature that it is their duty to respect and observe the independence of the Judiciary. Any inappropriate or unwarranted interference with the judicial process, shall be strongly defended on behalf of the people of Kenya.

ICJ Kenya strongly opposes and condemns-- and will continue to oppose and condemn --any attempts to weaken the institutions of the judiciary, threats to its independence and the personal security and safety of the judicial officers. As such **we will:**

- Defend the independence of the judiciary in Kenya including due process safe guards and constitutional guarantees of Judges and magistrates;**
- Support and speak out on the personal attacks of judicial officers on the basis of the decisions they have rendered; we reiterate that any complaints against a Judge should follow due process safeguard and fair trial standards;**
- Safeguard the constitutional gains and constitutional guarantees that promote the role of the judiciary;**

In conclusion, ICJ Kenya urges and encourages you, Chief Justice, the JSC, judicial officers and judicial staff to remain steadfast and true to your oath of office in protecting and defending the Constitution of Kenya to which, we pledge and will continue to offer our support as a body of Jurists.

Yours faithfully,



Samwel Mohochi,
Executive Director