

**CHIEF JUSTICE ACCEPTANCE STATEMENT DELIVERED DURING THE OCCASION OF RECEIVING THE ICJ JURIST OF THE YEAR AWARD, 2017**

The Chairman, Council Members, Jurists, Ladies and Gentlemen,

1. I wish to thank the International Commission of Jurists (ICJ)- Kenya Section for honouring me with the **2017 Jurist of the Year Award**. I recognise that in receiving this Award, I join a group of other worthy Kenyans who have preceded me, and who have also made significant contributions in advancing the rule of law in Kenya.
2. I also wish to commend ICJ Kenya, and other civil society organisations, for the very important role they have historically played in our country's democratisation process. The courage and fortitude you have exhibited over the years, selflessly acting in public interest, sometimes at the expense of your lives and freedoms, has been a source of encouragement to many and a basis for national progress. ICJ's continued intervention as an intellectual and political actor in the promotion of the rule of law and constitutionalism remain valid and desirable, especially for a country that is going through a constitutional transition such as ours. The intellectual pedigree that the ICJ brand brings to this process is immense, as well as its convening power and international reach.

Mr. Chairman, Ladies and Gentlemen:

3. The rule of law is the oxygen of any constitutional democracy. It is also the fulcrum upon which successful economies turn and thrive. Indeed, scholarly literature - whether in law, economics, philosophy, political science, or international relations, converge on one important thought: that the rule of law is a central and determinative factor in securing the political stability and economic development of any nation. In fact, those who have studied international conflicts since 1882 have come to the empirical conclusion that no known two democracies have gone to war with each other. This is partly because of the restraining and civilising effect of the rule of law, which functional democracies not only exhibit with vitality, but also cherish with glee. Such is the primacy of the rule of law in our socio-economic and political development.
4. This is the reason that as a country, Kenya needs to develop and nurture a consciousness that promotes and protects the rule of law. We are lucky as a country – and may I say, as a Judiciary, too - that we have a progressive Constitution that should aid and enable institutional and individual conduct that advances rather than undermines the realisation of the rule of law.

5. In its preambular and substantive provisions, the Constitution is unambiguous on the subject. The Preamble recognises ‘aspirations of all Kenyans based on essential values of human rights, equality, freedom, democracy, social justice and *the rule of law*’ [emphasis supplied]. Article 10 (2) (a) further mentions the ‘**rule of law**’ as part of the national values and principles of governance on which the Republic of Kenya is founded. As jurists, you know that these are not merely decorative pronouncements; they sit at the heart of the country’s constitutional and democratic identity.

Mr. Chairman, Ladies and Gentlemen:

6. But again, as jurists, we all know that the textual provisions on the rule of law do not automatically translate into adherence or obedience. The textual-cultural gap in implementing existing Constitutions remains an endemic African governance problem - what the late eminent law scholar, Prof. Walter Hastings Okoth-Ogendo, called the paradox of having constitutions without constitutionalism. As jurists, and even for those of us leaders in government, we need to play a leading role in closing this gap so that our Constitutions can find rootedness in our societies. In the days of yore, we made the argument that the Constitution we inherited at independence were foreign, and that the difficulty in closing the textual-cultural gap was a product of an alien text imposed on an indigenous African population. That is an argument that is no longer tenable as our Constitutions – the so-called second-generation Constitutions in Africa – are autochthonous; they are homegrown.

Mr. Chairman, Ladies and Gentlemen:

7. Let me also disavow an idea that I hear far too often lately: that the Judiciary, in following the rule of law and due process, frustrates the country’s development agenda. Nothing could be further from the truth. We need to understand that the rule of law is not necessarily costless or convenient. The wheels of justice turn slowly but turn they surely do. If government agencies and individuals did all that they intend to do in strict conformity with the law, there would be no need for anyone to approach the courts to intervene. And even if the Courts did through frivolous applications, the courts would decide in favour of those who want to implement projects since they would have followed the law. But to disregard the law in the implementation of a development project, however big, compelling or justified that project is - including abrogation of private or communal property rights - and expect the Judiciary to look the other way not only undermines the rule of law but also threatens the sustainability of those very projects. Development projects founded on an injustice attracts societal hostility and resentment. As the UNDP has demonstrated over time, the real way of measuring development is by looking at the totality of human

development. It is the reason that the Indian Nobel Economics Laureate, Amartya Sen, in his book *Development as Freedom*, notably observed that democracies suffer no famine; that famines are distinctively a phenomenon of dictatorships.

8. Studies around the world have also shown that democracies that have made the rule of law part of their national DNA have faster, consistent and more long-lasting economic growth in comparison to nations that do not take the rule of law seriously. In seeking to inculcate and entrench adherence to the rule of law, the Judiciary seeks to be a critical partner in spurring the economic progress of the nation rather than stifling it.

Mr. Chairman, Ladies and Gentlemen:

9. It is essential that independent institutions in Kenya play their constitutional role in nurturing the rule of law. I know that the country is in a difficult political and economic moment. But it is in precisely such moments that independent institutions must exude their independence, execute their mandates with vigour and professionalism, and give hope to the Kenyan people. Independent institutions were created by the Constitution as a restraining and balancing force to the excesses of the political class. They were created and borne for precisely moments such as these. They therefore need to perform this function robustly for the benefit of the Kenyan people. Thus, when the Constitution is under threat, they must speak up; if the rule of law is under siege, they must be heard; if civil liberties and freedoms are constrained, they must act; if extrajudicial killings are being institutionalised, they must protest it. This is a duty that even ICJ must continue to bear, as it has boldly done historically.
10. I am only acutely aware of the pivotal role that the Judiciary, as an independent arm of government, is expected to play in advancing Kenya's Constitution and the rule of law. As Chief Justice I want to give my commitment to the Kenyan people that the Judiciary will remain steadfast in this regard. It shall be a willing partner in the defence and promotion of individual rights and liberties. It shall not be blind to human rights abuses because that would undermine the institution itself, our humanity and our Constitution. This Award reinforces my resolve to continue leading the Judiciary in the trajectory of independence, professionalism, courage, and defence of the rule of law, human rights, freedom, equality which are part of our national values by dint of our Constitution.
11. With utmost humility, I accept it.
12. Thank you.