

7th February 2018

PRESS STATEMENT

DISREGARD OF COURT ORDERS BY PUBLIC OFFICIALS

The Kenya Section of the International Commission of Jurists (ICJ Kenya) condemns in the strongest terms possible, the increasing and blatant disregard of Court Orders by the State and its agents which have characterized recent events in the country.

As a body of Jurists, we have closely observed a government that perceives and understands itself to be above the law. As Jurists, we categorically denounce these actions and urge the people of Kenya not to sit back and watch as the government, which is under obligation to respect the courts, operate in a manner that paints high levels of impunity in our governance system. The disobedience of court orders is a breach of state obligation to respect the independence of the Judiciary and Judicial authority.

We stand in solidarity with all judicial officers that have and continue to demonstrate fidelity to the law and urge them not to relent especially where state and public officers demonstrate contempt for non-adherence to court orders.

The notable events include but are not limited to:-

1. **Disregard of court orders to turn on the transmission on the Nation TV, KTN and Citizen.** On the 30th January 2018, the Communications Authority of Kenya, (CAK), switched off the transmissions of three media houses. In response to this curtailment of Media Freedom and expression, ICJ Kenya released a statement dated **29th January 2018** that condemned this action. Although the Nation and KTN have since been put back on air, Citizen TV and Inooro TV remain shut. We wish to reiterate our earlier position that the actions of turning off media broadcast is a grave violation of the Media Freedoms and the right to access information, as guaranteed in the Bill of Rights.
2. **The disregard of a series of court orders issued by Justice Kimaru in respect of Miguna Miguna.** On, Monday, February 5, 2018, High Court Judge Luka Kimaru ordered the Inspector General of Police, the Director of Public Prosecutions and the Director of Criminal Investigations to present Miguna Miguna in Court by 2pm. By 9.00am yesterday, the security agents had failed to comply with the order leading to the conclusion by Justice Kimaru that the state organs were in contempt of court.
3. **Blatant contravention of Article 49 and 50 of the Constitution of Kenya.** The intimidation and manner of arrest, movement of arrested persons, incommunicado detention and denial of legal representation cumulatively amount to cruel, degrading and inhuman treatment. Irrespective of one's political inclinations, the rights of the individual are not suspended at the whims of the State. These fundamental rights are intended to balance state power and cannot abrogated.

We wish to remind the government, state officers and public officers that judicial authority is derived from the people of Kenya as provided under Articles 159 (1) of the Constitution of Kenya. Judicial officers have served as true guardians of the Constitution and have on several instances raised the alarm at the increasing disregard of its orders by the Executive and Legislature.

We wish to further remind the government that the Executive is obligated to obey court orders. This is neither a privilege nor a choice. The disobedience of court orders undermines peace, security and economic development. It is expected that where one does not agree with a court order, the reasonable and justifiable cause of action is to appeal. In these instances, ICJ Kenya has not seen any evidenced attempts by the government to appeal recent court decisions. The government willful disregard of Court Orders is in contempt of the Court and any subsequent acts are illegal, invalid and cannot effect any change in the rights and liabilities of others including the acts of deporting of Miguna Miguna to Canada. We sadly observe that the purported revocation of citizenship of Mr. Miguna Miguna during pendency of judicial proceedings raises serious constitutional issues. Further, this demonstrates the contemptuous conduct by the Executive that cannot and shall not be allowed to persist.

The manner in which the security agents have aided and abetted Executive action is unjustifiable. ICJ Kenya wishes to question the reconstruction and transformative agenda of the Security sector. The national security organs are required to serve and in their actions, should be guided by the principles espoused in the Constitution of Kenya as provided under Article 238(2) (b) on ‘utmost’ respect for the rule of law, democracy, human rights and fundamental freedoms. The events that have unfolded in respect of the Advocate, Miguna Miguna, expose the absence of these values and non-adherence by the security sector.

The people of Kenya fought hard to ensure that the democratic system of governance is premised on constitutionalism and the rule of law. Many lives were lost and sacrifices made in order to ensure Kenyans enjoy their guaranteed fundamental rights and freedoms. ICJ Kenya shall not relent in speaking out against state action and excesses. Constitutionalism is not about blind or robotic adherence to, or enforcement of laws no matter how retrogressive they might be and the constitution, places little trust in the presidency; this is evident in Article 135, which requires a “decision of the President in the performance of any function of the President under this Constitution shall be in writing and shall bear the seal and signature of the President.” The effect of Article 135 is that any decision of the president that is not in writing is illegal.

We wish to remind all state officers and public officers that the corporate veil under which the act can be lifted with individualized consequences including declarations of unsuitability to continue holding or ever holding public positions in Kenya.

In conclusion, we demand:

1. That the President of the Republic of Kenya takes personal responsibility and refrains his agents from disobeying court orders through issuing written Executive Orders;
2. That all state officers and public officers forthwith desist from complying with oral, verbal and/or informal Executive Orders and insist that all Executive orders must be in writing;
3. That all related judicial proceedings are heard and determined to their logical conclusion;

4. That state officers and public officers acting on superior orders should be held personally liable for contempt of court orders;
5. That all the court orders issued must be complied forthwith.

ICJ Kenya will continue to monitor these developments and related human rights violations with a view to safeguarding constitutional gains and fundamental freedoms.

Signed

A handwritten signature in blue ink, appearing to be 'K. Mogeni', written in a cursive style.

Mr. Kelvin Mogeni
Chairperson
ICJ Kenya