

STATEMENT ON REMARKS MADE BY PRESIDENT UHURU KENYATTA ON JUNE 1, 2021, DURING THE MADARAKA DAY CELEBRATIONS AGAINST JUDICIAL INDEPENDENCE

3 JUNE 2021

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) has monitored with regret the deliberate efforts by the President and the Head of State of the Republic of Kenya that are aimed at undermining Judicial independence and authority in Kenya.

As a body of jurists, we were alarmed by the remarks made by His Excellency President Uhuru Kenyatta in his speech delivered on June 1, 2021, during the Madaraka Day celebrations that were directed at the Judiciary.¹ We noted, with concern, the attempt by the President to fault the Judiciary ostensibly on their previous decision to overturn the Presidential Election in 2017 and for the decision in the recently rendered judgment on the Building Bridges Initiative, which found that the President was in gross breach of the Constitution and that the process was a deliberate attempt to usurp the people's exercise of Sovereign Power.²

We posit that the statements were a direct affront on judicial independence and were aimed at threatening and diminishing the status of the Judiciary. ICJ Kenya is further perturbed by the deliberate intention to intimidate Lady Chief Justice Martha Koome present at the celebrations. We wish to state that the remarks by the President and the Head of State were derogatory, given this was a national event.



We wish to recall the ICJ Kenya statement issued on May 21 2021³, where we expressed concerns about the inciteful utterances by the political class that were aimed at undermining judicial decisional independence. This was coupled with a social media campaign that was intended to undermine judicial authority following the High Court judgement on Building Bridges Initiative (BBI).

ICJ Kenya urges the President to exercise restraint and steer the narrative clear from personal and vindictive attacks aimed at discrediting the role of the Judiciary in our democracy and judges' decisional independence, especially when the matter is now before the Court of Appeal. The President must lead from the front by respecting the judicial process to its logical conclusion. The Constitution 2010 and the Judicial Service Act 2011 provide directions on lodging a complaint against a Judicial officer. We wish to remind President Uhuru Kenyatta that the Bangalore Principles of Judicial Conduct and the Commonwealth Latimer House Principles guarantee judicial independence, impartiality, sanctity, and respect for judicial pronouncements. These are central elements of any conception of the rule of law. In addition, judicial officers are charged with protecting citizens' fundamental rights and freedoms and upholding the rule of law and democracy.

1. State address by H.E. Uhuru Kenyatta, CGH, President of the Republic of Kenya and Commander-in-chief of the Kenya Defence Forces during the 58th Anniversary of Madaraka Day on Tuesday 1st June 2021, at Jomo Kenyatta Stadium Kisumu City, available on <https://www.president.go.ke/2021/06/01/state-address-by-h-e-uhuru-kenyatta-cgh-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-kenya-defence-forces-during-the-58th-anniversary-of-madaraka-day-on-tuesday-1st-june-2021-a/>

2. Petition No. E282 of 2020 (Consolidated). Constitutional and Human Rights Division at the High Court of Kenya case; David Ndii and Others vs the Attorney General and Others delivered on 13 May 2021

3. ICJ Kenya Statement on The High Court Judgement on the Building Bridges Initiative and Subsequent Attacks on The Five-Judge Bench, available on <https://icj-kenya.org/wp-content/uploads/2021/05/Statement-on-the-High-Court-Judgement-on-the-Building-Bridges-Initiative-and-subsequent-attacks-on-the-five-judge-bench.pdf>



ICJ Kenya further reminds the President that the Constitution of Kenya 2010 guarantees the independence of the Judiciary and underscores that judicial authority is derived from the people of Kenya. Indeed, the Constitution confers power to the Judiciary to resolve disputes and render judgment per the law. ICJ Kenya urges the President, and other public officers, as a matter of priority, to respect and execute their duty to respect the rule of law and uphold the Constitution. The President should channel his aggrievances through the available appellate avenues. Public utterances which derogate judicial authority erode public trust in the Judiciary to resolve disputes and ultimately leads to anarchy.

As a jurist whose mission is to promote the rule of law, justice, and democracy in Kenya and the region, we call for the following:

1. THAT his Excellency President Uhuru Kenyatta, in keeping with his oath of office;
 - a. To respect and promote constitutionalism and the rule of law,
 - b. To desist from interfering with the independence of the Judiciary and refrain from making public utterances that derogate the authority of the Judiciary;
 - c. To take the lead in respecting judicial processes that promote accountability;
 - d. To adhere to principles of separation of powers.
2. THAT all civil societies working on the rule of law and constitutionalism, including the media;
 - a. To track and document the attacks by the President or any other state/public officers against the Judiciary;
 - b. To stand in solidarity with Judges and Judicial officers in upholding the principles enshrined in the Constitution including the rule of law, democracy and justice.

In conclusion, ICJ Kenya urges and encourages the Chief Justice, the JSC, judicial officers, and judicial staff to remain steadfast and true to their oath of office in protecting and defending the Constitution of Kenya to which, we pledge our continued support as a body of Jurists to defend the independence of the Judiciary in Kenya and the region.

Signed,



Kelvin Mogeni

Chairman