



Statement on The Judiciary of Kenya

Taking account of the issue raised by the Kenya Magistrates' and Judges' Association in their statement of 4 June 2021 and by previous statements made by the Law Society of Kenya, the Commonwealth Magistrates' and Judges' Association (CMJA), The Commonwealth Legal Education Association (CLEA), the Commonwealth Lawyers Association (CLA) and Rechters Voor Rechters (Judges for Judges) deplore the continued disregard for the independence of the Judiciary of Kenya and for court orders issued by the judiciary.

We are concerned with the continued problems the judiciary of Kenya are experiencing in relation to the resources allocated to the judiciary in particular those arising from the delays caused by the non-approval by the President of appointments of judicial officers recommended by the Judicial Services Commission in August 2019 despite the Constitutional Court's judgment in this case of February 2020.

Of further concern is the most recent unlawful rejection by the President of six of the nominees for appointment on the spurious grounds that they allegedly did not meet the required threshold for appointment into the country's superior courts. It is even more worrying that at least two of the rejected judges had recently been part of the High Court bench which had struck down a number of far reaching constitutional amendments that had been proposed in the BBI (Building Bridges Initiative) Bill which would have altered the basic structure of the constitution.

The Constitution of Kenya provides, in Article 166 that:

" (1) The President shall appoint....

.....all other judges, in accordance with the recommendation of the Judicial Service Commission."

The Courts are the guardians of justice, the corner-stone of a democratic system based on the rule of law. Democracy will be gravely undermined if judgments of the courts are not respected. The Judiciary must not be treated like a department of state but as the third arm of democracy on an equal basis as the Executive and the Legislature.

By virtue of its membership of the Commonwealth, Kenya is committed to the shared fundamental values and principles of the Commonwealth, at the core of which are the belief in, and adherence to, democratic principles including respect for the authority of an independent and impartial judiciary.

The Commonwealth Charter states that *"we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice."* The rule of law cannot exist or function if the government and other state authorities ignore their constitutional obligations and fail to abide by court orders or take any measure that erodes the authority, independence, and integrity of the judiciary.

The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (2003) state: *"Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought"*.

The Basic Principles on the Independence of Judges (1985) state that: *“The Independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitutional or the law of the country. It is a duty of all governmental and other institutions to respect and observe the independence of the Judiciary”*.

We urge the President of Kenya to comply with the recommendations of the Judicial Service Commission and thereby to respect the authority of the judiciary and of court orders in line with the Kenyan constitution and with Kenya's international obligations.

7 June 2021

Commonwealth Magistrates’ and Judges’ Association (CMJA)

Commonwealth Legal Education Association (CLEA)

Commonwealth Lawyers Association (CLA)

Rechters voor Rechters (Judges for Judges)

NOTE TO EDITORS:

The **Commonwealth Magistrates’ and Judges’ Association** is a not for profit organisation, registered in the UK, whose aims are to promote judicial independence, advance education in the law, the administration of justice the treatment of offenders and the prevention of crime in the Commonwealth. It brings together judicial officers of all ranks from all parts of Commonwealth and provides a forum for the promotion of the highest judicial standards at all levels. www.cmja.org

The **Commonwealth Legal Education Association** is an international non-profit organisation which fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters and Committees in South Asia, Southern Africa, West Africa, the Caribbean and the UK. www.clea-web.com

The **Commonwealth Lawyers Association** is an international non-profit organisation which exists to promote and maintain the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession, with the highest standards of ethics and integrity, serves the people of the Commonwealth. www.commonwealthlawyers.com

Rechters voor Rechters (Judges for Judges) is an independent and non-political foundation set up by judges to support fellow judges abroad who have run into problems or risk problems on account of their professional practice. These problems are mostly related to (presumed) violation of their professional independence. J4J also concerns itself with judges, who have been discharged for disturbing reasons, have been arrested and imprisoned, put under pressure, are threatened or even assassinated. Website: <http://www.rechtersvoorrechters.nl> or www.judges4judges.nl
Twitter: twitter.com/judges4j