



Statement on The Threats against the Judiciary in Malawi

Taking account of the issues raised by both the Law Society of Malawi in their statement of the 1 June 2020 and by the Magistrates and Judges Association of Malawi in their statement of 9 June 2020 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) are extremely concerned with the continued threats to the independence of the Judiciary of Malawi. We are particularly alarmed by the pronouncements by the President especially in the State of the Nation Address published on 4 June 2020 which followed the decision of the Supreme Court to uphold the decision of the Court of Appeal annulling the Presidential elections held in May 2019 and ordered the holding of new elections to be held within the 150 days deadline. The President's statement, in suggesting a failure of judicial responsibility on the part of the Courts in their determination of the Presidential Election Case, constituted an improper attack on the independent exercise of judicial powers.

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 and if there are uncorroborated and unfounded accusations against the Judiciary. A democratic State based on 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.

By virtue of its membership of the Commonwealth, Malawi 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. Any measure or threat that is seen as eroding the authority, independence and integrity of the judiciary, is extremely disturbing.

The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government (2003) state: *'Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity' 'Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution.'*

We would urge all parties in Malawi to respect the authority of the judiciary and ensure that due process is followed in line with the Malawi constitution and its international obligations.

9 June 2020

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

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