



Statement on the public attacks on the Independence of the Judiciary in Kenya

The CMJA, CLA and CLEA (the Associations) are deeply concerned about the recent attacks on the independence of the Judiciary in Kenya including by the President of Kenya. The attacks follow judgments made by the courts in litigation challenging government decisions.

We urge the government of Kenya to respect the authority and independence of the judiciary and ensure that court decisions are respected and complied with and that due process is followed in line with the Kenya's constitution and its international obligations regarding any investigation of judicial officers for alleged corruption.

We support the Statements made by the Hon. Chief Justice, the Judicial Services Commission and the Law Society of Kenya of 2,3 and 4 January 2023.

Chapter I of the Commonwealth (Latimer House) Principles (2003) states: *“Each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.”* The Commonwealth Charter states in Chapter VI that: *“We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.”*

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. A Court is the guardian of justice and the cornerstone of a democratic system based on the rule of law. If the State, an organ of State, or a State official does not abide by Court orders, democracy will be gravely undermined. By virtue of its membership, 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. Any measure on the part of the state authorities which is seen as eroding the authority and independence of the judiciary, is a matter of serious concern.

Whilst we recognise that there should be checks and balances in the relationship between the three organs of state, the CMJA, CLA, CLEA emphasise that any process of investigation must be founded in well-established principles of procedural and other fairness and must be transparent and open and must not be motivated by political or other inappropriate considerations.

The Basic Principles on the Independence of Judges (1985) state: *“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.”*

The Associations urge the government and public authorities of Kenya to respect the rule of law and comply with orders of the courts, cease making public criticism and attacks on the judiciary and ensure that any process of investigation is fair and free from undue influence

11 January 2024

Commonwealth Magistrates’ and Judges’ Association (CMJA)
Commonwealth Legal Education Association (CLEA)
Commonwealth Lawyers Association (CLA)

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.ac

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.comonwealthlawyers.com