Commonwealth Lawyers Association

Statement in support of the Law Society of Kenya

The Commonwealth Lawyers Association (CLA) has noted with deep concern a Statement to Members issued by the Law Society of Kenya (LSK) on 17th July. The LSK is a well-regarded and courageous Law Society advocating for the interests of its members and for the rule of law.

On many recent occasions the LSK has shown leadership in contentious matters speaking with passion and balance founded on solid legal principles. In its statement of 17th July, the LSK referenced the ongoing collaboration between it and the Judiciary but stated that notwithstanding these engagements "members have continued to report persistent and systemic challenges affecting legal practice and the administration of justice".

The LSK Statement also mentioned concerns over allegations "of corruption, judicial misconduct, abuse of office and unethical conduct by some judicial officers".

The LSK reported that members had experienced persistent registry inefficiencies including delays in processing court documents and release of court funds.

The LSK position was to confirm that its Council remained committed to constructive engagement with the Judiciary "however judicial independence must go hand in hand with accountability, integrity, transparency and responsiveness to legitimate concerns raised by court users and the Bar".

The CLA supports the LSK in its right to both engage with the Judiciary and to hold it to account. The CLA notes that the LSK will be organising some targeted court boycotts as a means of drawing attention to its concerns and ensuring implementation of a number of recommendations in its Statement.

The CLA considers that it is appropriate to remind all those in authority in Kenya of some fundamental principles relating to the independence of the Judiciary, their appointment, the obligations of practitioners, and the requirement for Judicial integrity all of which create confidence in the system of justice.

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 Court is the guardian of justice and the cornerstone of a democratic system based on the rule of law. 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 seen as eroding the authority, integrity and independence of the judiciary, is a matter of serious concern.

Latimer House Principle 7 states:

> "*Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.*"

The CLA is concerned that the LSK regards the present situation as being so serious it requires action by way of targeted court boycotts. While a careful balance must be struck between practitioners as Officers of the Court ensuring they play their part in the administration of justice, a balanced and proportionate response to serious concerns is the right of any legal profession and the LSK has made clear it wishes some serious issues to be addressed and remains willing to continue its collaboration with the Judiciary.

The CLA in supporting the LSK, therefore urges all parties:

- to uphold the highest principles of integrity and dignity in supporting the administration of justice;
- to uphold at all times the fundamental principles and guidance in the above referenced publications;
- to continue effective collaboration and dialogue with a view to resolving all legitimate concerns; and
- to uphold the rule of law.

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