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## PRESS RELEASE

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### ICJ KENYA STATEMENT ON THE PETITION FOR THE REMOVAL OF THE HONOURABLE THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA TO THE JUDICIAL SERVICE COMMISSION

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is extremely alarmed and shocked by reports in both electronic and print media attributed to a petition against the President of the Supreme Court and the Chief Justice of the Republic of Kenya Hon. Justice David Maraga filed by one Mr. Martin Ngunjiri Wambugu, the Member of Parliament for Nyeri Town, dated 14<sup>th</sup> September 2017.

Following the unsubstantiated, unfounded and malevolent allegations set out by Mr. Martin Ngunjiri Wambugu in his petition to the Judicial Service Commission against the Chief Justice of Kenya Hon. Justice David Maraga, ICJ Kenya is highly perturbed by the undeviating and vicious attack on the person of the Chief Justice of Kenya, the independence of the Judiciary and civil society organizations that promote Human Rights and the Rule of Law.

Article 1 (3) of the Constitution of Kenya provides that the sovereign power under the Constitution is delegated to the judiciary and the independent tribunals, which shall perform their functions in accordance with the Constitution. Further to this, in the exercise of judicial authority, the judiciary, as constituted by Article 161, shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person or authority. The Independence of the Judiciary as secured under the Constitution of Kenya cannot and should never be the subject of any attack. An attack to the Independence of the Judiciary constitutes a direct attack to our very own democracy and the rule of law.

The allegations by the complainant under paragraph 5(b) (iii) which reads in part that “...*the judicial arm of the government was manipulated and influenced to overturn the democratic will of the people through a judicial action that upset the manifestly evident outcome of a presidential election processes that did not favor local civil society actors or preferences that were central actors thereof...*” constitutes an attack to the dignity, integrity and independence of the judiciary and further disregards the judicial tenets set out under Article 159 (1a) and (1e) of the Constitution of Kenya, 2010 which states that...” *Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution....In exercising judicial authority, the courts and tribunals shall be guided by the following principles— (a) justice shall be done to all, irrespective of status and .... (e) the purpose and principles of this Constitution shall be protected and promoted.*”

All the rights secured to the citizens under the Constitution are worth nothing, and are a mere bubble, except guaranteed to them by an independent and virtuous Judiciary who can make decisions independent of the political winds and any intimidation or attack to the very independence of the judiciary undermines the rule of law which is the bedrock of democracy.

The crowning feature of any government is the supremacy of the judiciary over all other branches of government in matters relating to the rights of all persons and a judicial system in which the rights of some are not secured by the denial of rights to others.

It is saddening that the efforts of civil society organizations who consistently seek to promote and enhance justice for all through advocacy, research and collaboration with State actors are termed as ‘*Judicial Radicalism*’. The vicious attacks by Mr. Ngunjiri on the work that Non – governmental organizations undertake in collaboration with the judiciary towards promoting a society that is just, free and observes the rule of law are a deviation from the values of democracy and good governance.

The interrelated nature of these frontal attacks on the Judiciary as a whole and veiled threats on individual judges with regards to electoral dispute resolution sends a dangerous and chilling message: that the Executive shall not respect electoral dispute resolution by the courts and flagrantly negates public trust and confidence in the rule of law, which

unfortunately falls way below the leadership standard expected of a government and its leaders. This has the potential to expose the country as a whole to grave insecurity where electoral dispute(s) arise.

The allegations set forth by the complainant not only undercut the democratic values and ideas, to which non-governmental organizations are devoted to but also taint the relentless efforts that the Non- governmental organizations have carried on to promote accountability, transparency , integrity and the democratic development of Kenya.

ICJ Kenya notes the following concerns relating to and in response to this petition;

- a) The JSC delegated its role of preparing and implementing programmes for the continuing education and training of judges and judicial officers to the Judiciary Training Institute (JTI) which has nothing to do with the person of the Hon. the Chief Justice.<sup>1</sup>
- b) The Comingling of matters relating to the consideration and/or determination of Petition No. 1 of 2017, is a juvenile and pedestal attempt at further attacking the independence of the Supreme Court of Kenya and manifestly constitutes contempt of Court by the Petitioner and members of Jubilee Party including the President and his deputy.
- c) The Engagement and/participation of members of the judiciary in regional and/or global forums and conferences is only subject to the judiciary itself and any innuendos on the merit of any such participation or engagement(s) constitutes groundless and slanderous attacks on the Hon. Chief Justice.
- d) That Article 168(1) of the Constitution of Kenya Provides “gross misconduct and misbehavior” as one of the grounds for removal and not “gross misconduct and abuse office” as misdirected by the Petitioner.
- e) The determination of gross misconduct and its threshold had been elaborated to mean a “glaringly inexcusable act’ or one in violation of the Constitution .<sup>2</sup>

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<sup>1</sup> See <http://judicialservicecommission.go.ke/index.php?id=39> (Accessed on 13 September 2017).

<sup>2</sup> Tribunal to Investigate the Conduct of Hon Mr Justice Joseph Mbalu Mutava Judge of the High Court of Kenya, Report and Recommendation into the Conduct of Hon Mr Justice Joseph Mbalu Mutava, Judge of The High Court of Kenya (Government Printer, 2016), para. 31.

- f) That the convoluted and miserable attempt in formulation of allegation(s) if any constituting gross misconduct on the part of the Hon Chief Justice cumulatively constitutes generalized, scurrilous and baseless attacks lacking merit and wading into an arena of administration and management of case files which is not subject to external scrutiny.
- g) That the same is vexatious as it extensively relies on unsubstantiated claims, political innuendo and baseless rumors.
- h) That notwithstanding the purported order by H.E the president to the petitioner to withdraw and subsequent purported Tweet by the Petitioner to the effect that he shall cease to pursue the Petition, it remains a petition subject to consideration by the Judicial Service Commission.

ICJ Kenya further notes that the purported the petition “prima facie” lack merit, remains conspiratorial in nature, its timing and correlation to the just Determined Supreme Court Election Petition No. 1 of 2017<sup>3</sup>, unashamedly furthers the Continued consistent attack and intimidation of the entire judiciary and specific judges by the Jubilee Party and all its senior leaders including President Uhuru Kenyatta and his Deputy President William Ruto and amounts to the most flagrant contempt of historic proportion committed to the Supreme Court.

The Reckless and hopeless attempt at dragging over twenty (20) named individual in a bizarre conspiratorial creation is pedestal at best, lack substance, slanderous to all the individuals named warranting ventilation of rights by the said individuals.

In view of the foregoing, ICJ Kenya urges and demands;

- a) The Judicial Service Committee admits this petition and constitutes a committee to determine its merits.
- b) The Judicial Committee upon receipt of the report from the committee proceeds to dismiss in a summary fashion this petition for being hollow, pedestal, scandalous, frivolous, and vexatious and an abuse of the law as it lacks any merit whatsoever.

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<sup>3</sup> Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 3 others [2017] eKLR

c) The Supreme Court urgently considers summoning all individuals, including H.E President Uhuru Kenyatta that have in a contemptuous manner made utterances relating to its decision in the aforesaid petition such that they may expound their grievances before the Court and get an opportunity to purge such contempt if remorseful or suffer any consequences as by law provided.

d) The persons mentioned in the petition to urgently consider exercising their right to seek redress against the unfounded and unsubstantiated claims set forth by the complainant which constitute defamatory statements against them.

ICJ-Kenya reiterates that the Rule of Law remains a cornerstone of our constitutional democracy and reminds all political leaders that no one is above the law in Kenya and every one can be subject to legal consequences for undermining the core Constitutional order.

Signed

A handwritten signature in black ink, appearing to read 'Samwel Mohochi', is written over a light blue rectangular background.

**Samwel Mohochi**  
Executive Director