

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 26/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **threats against the Chief Justice and the Supreme Court of Kenya** after they issued a decision invalidating the recent presidential elections.

Context

On 8 August 2017, general elections were held in Kenya to elect the President, members of Parliament and local governments. President Kenyatta was a candidate for re-election. On 1st September 2017, the Supreme Court of Kenya held that Kenya's Independent Electoral and Boundaries Commission had "failed, neglected or refused to conduct the presidential election in a manner consistent with the dictates of the constitution." On that basis, the Court invalidated the results of the presidential election and ordered that a new presidential election be held within 60 days.

According to the information received:

On 1st September, the President declared in a press statement that he would respect the ruling of the Supreme Court. However, speaking at a public rally later on the same day, he criticised the Supreme Court judges for overturning the people's decision, reportedly calling the Chief Justice and other judges of the Supreme Court "thugs" or "crooks" (wakora) and saying they were being closely watched and that they would be dealt with after the new elections. In a rally held on 2nd September, the President again criticized the decision and the judges, in particular the Chief Justice, allegedly accusing the Court's decision of having been influenced by political connections.

In a statement dated 19 September, the Judicial Service Commission denounced the increasing incidence of attacks on the work of the judiciary, which it had already addressed in a press conference in mid-August 2017. Allegedly, the attacks had become more aggressive after the judgement delivered on 1st September and were intended to intimidate the judiciary and individual judges. The statement also underscored that individual judges, in particular judges of the

Supreme Court, had been attacked, threatened and negatively profiled on social media and that senior political leaders had threatened the judiciary.

On 20 September, the Supreme Court issued its written judgment in which it detailed the grounds for its decision.

On 21 September, the President reportedly instructed Parliament to make the necessary legal changes to limit the judiciary's powers.

I wish to express serious concern regarding the reported attacks against the Chief Justice, other judges of the Supreme Court and the independence of the judiciary in general. I am particularly concerned about those attacks reportedly formulated by senior political leaders. It is essential to recall that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, as enshrined in the Basic Principles on the Independence of the Judiciary and the International Covenant on Civil and Political Rights. Personal attacks against judges and their reputation and threats alluding to future restrictions to the independence of the judiciary, especially from the highest spheres of the executive branch, are simply not acceptable in a democracy built on the rule of law and the separation of powers.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful to receive any additional information and any comment you may have on the above-mentioned allegations.

While awaiting a reply, I urge your Excellency's Government to take all necessary measures to safeguard the rights of the Chief Justice and other judges of the Supreme Court and to protect the independence of the judiciary in Kenya in compliance with international instruments.

I also seize this opportunity to inform your Excellency's Government that I may publicly express my concerns on the matter in the near future. If that is the case, I would indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers