



RESPONSE TO THE RECENT THREATS AGAINST THE CHIEF JUSTICE OF KENYA

21 February 2013

We, members of Kenyans for Peace with Truth and Justice (KPTJ) strongly condemn recent acts of intimidation and harassment against the person and office of the Chief Justice of the Republic of Kenya. We consider the harassment of the Chief Justice while departing the country on official duty by an immigration official as a completely unacceptable and ominous breach of the principle of the separation of powers and of the respect due to the person and the office of the Chief Justice, head of an independent arm of government. It is ominous because of its timing, its blatancy and arrogance and the involvement of a section of the political establishment led by the Head of Public Service Francis Kimemia and the head of the National Intelligence and Security Service, Major General Gichangi. This appears to be part of a choreographed attempt by sections of the political establishment to coerce the judiciary and, by implication, other independent institutions from discharging their constitutional mandate ahead of the general elections.

The citing of a circular from the Head of Civil Service by immigration officials as the reason to bar Dr. Mutunga's travel underscores the role of Mr. Francis Kimemia as central to the intimidation tactics. Mr. Kimemia's role and recent statements suggest that he is in effective command and control of the state apparatus. This includes part of the security apparatus favoring that section of the political elite which is in a collision course with the judiciary and other independent institutions. We condemn the veiled intimidation of the Chief Justice by the head of the NSIS when he, curiously, called the CJ to "apologise" for the "minor hiccup" at the airport." Maj. Gen Gichangi should explain his involvement in this egregious breach of the constitution.

We also condemn in the strongest possible terms the death threats to the Chief Justice in a letter titled '*JUDICIARY SHOULD NOT RISK TO RULE OUT UHURU*' dated 13th February 2013, as well as the threats and criminal attacks against judges reported on by the Chief Justice in his statement yesterday. We consider this threat as well as the CJ's harassment by immigration officials to be directly linked to a section of the political establishment which views independent institutions as an impediment to their political ambitions.

The true provenance of the letter must be established through a thorough investigation. Whatever its origin, it cannot be taken lightly. Given the recent history of the 2007-2008 Post Election Violence, it is disconcerting that shadowy and outlawed groups may be continuing to operate openly and in tandem with state apparatus to harass constitutional office holders.

The judiciary, under the guidance of the Chief Justice enjoys high rates of public confidence given the reforms undertaken in the course of his administration. This is in the wake of the new constitutional dispensation, following the 2007-2008 post- election violence which was triggered partly by low public confidence in the judiciary.

We are concerned that this may be the beginning of attempts to destabilize the country in the event that one party to the elections fails to secure power through legitimate means. It seems that there is a section of the political establishment which has not learnt the lessons of 2008, and would not hesitate to drag Kenya back into the abyss for their own selfish and cynical goals.

Taken together with other developments, such as the circulation of questionable statistical analyses purporting to assign an automatic victory to one party in the coming elections, indicators are beginning to solidify of a concerted campaign with sinister ends. Dismissing those who raise concerns as “crying wolf” is not enough. Kenyans need to be credibly reassured that the stability of the country is not at risk.

Kenyans also need to be reassured that elements of the political establishment which are under scrutiny from judicial processes and perceive independent institutions as an impediment to their political ambitions are not responsible for the death threats and harassment of the Chief Justice with the support of the state apparatus.

The history of political assassinations in Kenya leads us to take the threat seriously. We call upon the government to ensure the safety of the Chief Justice and other constitutional office holders.

Finally, it is clear that the cabal that is currently running the government is too narrowly constituted , particularly in ethnic terms, and that there is very little balance in the thinking which informs public decision making. Mr. Kimemia owes Kenyans a public accounting. He must give us his assurance that he will abide by the constitution . He should publicly explain the role of the outdated circular which gave junior officials the courage to confront the Chief Justice in the context of the new constitution. On what basis and for what reason does he purport to limit the freedom of movement of civil

servants? He should publicly and unconditionally apologise to the Chief Justice and to Kenyans for this affront to the constitutional order.

It is time to reflect on how more transparency is to be injected into the oversight of the transitional process, clearly we cannot leave it to the narrow, conspiratorial cabal around the Head of the Public Service to protect the interests of Kenyans in a smooth transition which upholds the spirit of the constitution.

We demand that there be thorough and effective investigation of the issues raised by the Chief Justice. We call upon the relevant government authorities to institute disciplinary action against the immigration officials who attempted to humiliate the Chief Justice.

The government should guarantee the safety of the Chief Justice, other constitutional officers and the diplomatic community at this critical time. The vilification of the diplomatic community by senior government officials is unacceptable and exposes our partners to risk by those who may feel emboldened by such reckless rhetoric. We remind all political actors that the principle of separation of powers is clear in the constitution and that no member of the executive can interfere with the functions of an independent judiciary.

(ends 21/02/13kptj)