

**STATEMENT ON THE INDEPENDENCE OF JUDGES AND LAWYERS IN  
AFRICA**  
**61<sup>st</sup> Session of the African Commission on Human and Peoples  
Rights**  
**1<sup>st</sup>-15<sup>th</sup> November 2017 Banjul, The Gambia.**

**Chairperson and Honourable Commissioners** of the African Commission on Human and Peoples Rights (African Commission).

**The International Commission of Jurists (ICJ)** recognises that Article 26 of the Charter imposes on state parties the duty to guarantee the independence of the Courts. Article 7 imposes a duty to ensure that trials in Africa are conducted within a reasonable time by impartial courts or tribunals. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission in 2003, set out an excellent and comprehensive framework. Indeed, the ICJ often cites the African Principles and Guidelines in other regions of the world, as an exemplary set of standards that all regions should follow.

An independent, impartial, competent and accountable judiciary is a pre-requisite for effective protection of human rights and entrenchment of the rule of law in Africa. Without an independent and functioning judiciary, it is impossible to effectively protect human rights, hold perpetrators to account and ensure effective remedies to victims.

The ICJ regrets to note with concern that in many African countries the independence of judges and lawyers is under threat.

It is essential that judges, lawyers and all involved in the justice delivery system are protected from threats. Once judges and lawyers are threatened and their independence is lost, it creates an environment that is fertile for general impunity and violations of all other rights contained in the Charter. A judiciary that is not independent and impartial breaks down peoples trust in justice delivery and reinforces impunity.

Regrettably this session is taking place against a backdrop of widespread attacks on judges and lawyers in Africa. A few examples will suffice;

**Kenya**

After the 1 September Supreme Court ruling nullifying of the Presidential election President Kenyatta blamed the judges for attempting to “overturn the will of the people”, and subsequently asserted that the country had a problem with the judiciary that ought to be “fixed”

Such was the scale of interference with the judiciary in Kenya that the Supreme Court was unable to sit in an important elections case on 25 October as it could not constitute a quorum;

### **Botswana**

While the ICJ welcomes the ending of the case against the four (4) judges (Dingake and 3 others) in Botswana, it has expressed serious concern that the manner in which the impeachment proceedings were established and conducted had adversely affected the independence and impartiality of the judiciary in Botswana;

### **Egypt**

There have been sustained attacks against judges including the flawed disciplinary processes against 56 judges for exercising the right to freedom of expression and association and harassment, arrests and intimidation of lawyers for exercising their professional duties.

### **Swaziland**

The impeachment of two (2) judges and the former Chief Justice in Swaziland were unconstitutional and procedurally irregular. This is compounded by the Chief Justice’s unwillingness or inability to define the role of the Principal Judge in administration of justice which has undermined her effectiveness as head of the High Court.

The situation remains the same in many African countries such as Burundi where many lawyers and judges are now exiled; Libya where judges and lawyers are under constant threat of attacks including arbitrary killings and courthouse bombings; Cameroon where there are frequent arbitrary detentions of lawyers for doing their work.

**Madam Chairperson**, besides respectfully requesting the **African Commission** to call upon African States and Governments to respect and uphold the independence of judges and lawyers, we call upon you to consider establishing a special mechanism for the protection and promotion of judicial independence, including the appointment of a **Special Rapporteur on the Independence of Judges and Lawyers**, and establishing a **Working Group on the Independence of Judges and Lawyers**. You have already set out an excellent framework of standards in the 2003 Principles and Guidelines; now the need has never been greater to put in place machinery for their implementation.