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By Facsimile: 011-254-020-2436
H.E. Uhuru Kenyatta
President of the Republic of Kenya
State House Road
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Your Excellency:

I write on behalf of the New York City Bar Association (“the Association”) to express deep concern about recent attacks against the Kenyan judiciary following the landmark Supreme Court decision¹ voiding the August 8 election. The decision is truly historic and will have positive long-term implications for the rule of law in Kenya and in other jurisdictions around the world. However, intimidation of the judiciary subverts the democratic gains consolidated by the decision. We urge the Government of Kenya to continue to respect the independence of the judiciary as provided by the Constitution of Kenya, the African Charter on Democracy, Elections and Governance,² and the United Nations (UN) Basic Principles on the Independence of the Judiciary.³ We strongly support the Law Society of Kenya and the Magistrate and Judges Association in cautioning against attacks on the Kenyan judiciary.

The Association is an independent, non-governmental organization with more than 24,000 members. These members include lawyers, judges, law professors, and government officials from the United States and over 50 countries. Founded in 1870, the Association has a long history of dedication to promoting human rights and the rule of law, particularly through the International Human Rights Committee that investigates and reports on human rights conditions around the world. This history includes engagement with Africa notably through the Committee

¹ *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR, available at <http://kenyalaw.org/caselaw/cases/view/140478/>.

² African Charter on Democracy, Elections and Governance (adopted January 30, 2007), available at https://au.int/sites/default/files/treaties/7790-file-african_charter_on_democracy_elections_and_governance.pdf.

³ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, *Basic Principles on the Independence of the Judiciary* (adopted August 26 to September 6, 1985), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

on African Affairs, which closely monitors, reports on, and responds to legal developments in Africa. Our Task Force on the Independence of Lawyers and Judges speaks out against the harassment and intimidation of lawyers and judges. In addition, the Association's Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and international human rights bodies.

We positively noted your September 1 remarks⁴ calling on Kenyans to “[respect] the rule of law.”⁵ Although you expressed your disagreement with the Supreme Court decision, you stated: “The Court has made its decision; we respect it”⁶ and urged Kenyans to remain peaceful. We have since been troubled by reports suggesting that the Executive Branch later made disparaging remarks about Supreme Court judges,⁷ and uttered veiled threats toward the judiciary.⁸

The Kenya Magistrates and Judges Association and the Law Society of Kenya (LSK) have condemned such language.⁹ However, in response, Senate Majority Leader Kipchumba Murkomen referred to LSK as “a tyrannical monolith” that was working for the political opposition.¹⁰

Intimidation of, and attacks on, the judiciary by government officials undermine judicial independence and threaten the culture of constitutionalism in Kenya. Article 160 of the Constitution of Kenya guarantees the independence of the judiciary.¹¹ The African Charter on Democracy, Elections and Governance, which Kenya signed on June 28, 2008,¹² also seeks to “promote and protect the independence of the judiciary.”¹³ The obligation of States to ensure judicial autonomy is further reinforced by the UN Basic Principles on the Independence of the

⁴ President Uhuru Kenyatta, Statement on the Supreme Court decision (Sept. 1, 2017), *transcript available at* <http://www.president.go.ke/2017/09/01/transcript-of-president-uhuru-kenyattas-statement-on-the-supreme-court-decision/>.

⁵ *Id.*

⁶ *Id.*

⁷ AL JAZEERA, *Kenyan judges criticise Kenyatta over 'veiled threats,'* Sept. 3, 2017, <http://www.aljazeera.com/news/2017/09/kenyan-judges-criticise-kenyatta-veiled-threats-170903081232522.html> (reporting that the President referred to Supreme Court judges as “crooks”); DAILY NATION, *Stop the insults, Judiciary tells President Kenyatta*, Sept. 3, 2017, available at <http://www.nation.co.ke/news/Stop-the-insults--Judiciary-tells-President-Kenyatta/1056-4080730-vgfawez/index.html> (Senate Majority Leader Kipchumba Murkomen indicates that Supreme Court will be disbanded).

⁸ BBC News, *Kenya election: Kenyatta blasts court after vote annulled*, Sept. 1, 2017, <http://www.bbc.com/news/world-africa-41132559> (President states that the government is “keeping an eye” on judges); Maggie Fick and George Obulutsa, *Kenyan court scraps presidential vote, Kenyatta calls for calm*, REUTERS, Sept. 1, 2017, available at <https://www.reuters.com/article/us-kenya-election-court/kenyan-court-scraps-presidential-vote-kenyatta-calls-for-calm-idUSKCN1BC4A5> (President states that Chief Justice should “know he is dealing with the incumbent president”).

⁹ *Id.*; Al Jazeera, *supra* note 7.

¹⁰ Daily Nation, *supra* note 7.

¹¹ The Constitution of Kenya 2010, Chapter 10, Part 1, Art. 160(1), available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>.

¹² African Union, Status List, available at https://au.int/sites/default/files/treaties/7790-sl-african_charter_on_democracy_elections_and_governance_8.pdf.

¹³ African Charter on Democracy, Elections and Governance, Article 2(5) (adopted January 30, 2007), available at https://au.int/sites/default/files/treaties/7790-file-african_charter_on_democracy_elections_and_governance.pdf.

Judiciary which recognize the “duty of all governmental and other institutions to respect and observe the independence of the judiciary.”¹⁴

We urge you and other government officials to refrain from rhetoric and actions that question or undermine the independence and authority of the judiciary and to maintain respect for the Supreme Court decision. We believe that by conducting free and fair elections as ordered by the Supreme Court, Kenya will serve as a strong, positive example of the maintenance of rule of law, both within Africa and globally.

Respectfully,



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¹⁴ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, *Basic Principles on the Independence of the Judiciary*, Article 1 (adopted August 26 to September 6, 1985), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

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