

THE JUDICIARY AND THE RULE OF LAW IN KENYA

AN ICJ KENYA PRESENTATION

AT THE 35TH PRE-SESSION OF THE UPR IN GENEVA

PRESENTED BY:

Teresa Mutua- Programme Manager- Access To Justice

10th December 2019

PROGRESS HAILED IN THE 3RD UPR CYCLE



The constitution of Kenya 2010 is progressive as far as positive impact on socio-political life of Kenyans is concerned:

- An expansive Bill of Rights and protection from violations (and threats of violations) of human rights through the courts.
- Establishment of independent institutions tasked with promoting human rights, good governance and democracy.
- A fairly independent judiciary that has made bold and progressive decisions.

However, Kenya still struggles with adherence to the rule of law. 3 areas of concern highlighted.

LACK OF IMPLEMENTATION OF COURT DECISIONS



Good progress: Kenya has endeavored to submit state reports and present itself for review

Issue: Kenya has not shown good will as far as implementation of the recommendations is concerned

Specific example: African Commission and African Court decisions on Ogiek and Endorois communities

General Recommendation: Respect court decisions and adhere to court orders, nationally, regionally and internationally

Specific Recommendation: Implement decision of the African Commission and African Court decisions on Ogiek and Endorois communities

CONTINUOUS AND DISCRIMINATE BUDGET CUTS TO THE JUDICIARY



Good progress: Despite budget cuts, the judiciary has been able to implement its mandate and maintain a good level of independence

Issue: In the last 4 years, there has been a decline in the budget given to the judiciary, mostly synonymous with decisions made by the judiciary against the State.

Specific example: 75% cut after supreme Court decision to nullify presidential elections in August 2017; September 2019 Treasury decision to slash 50% of judiciary budget after decision to suspend from office all governors having corruption related cases

Recommendation: Operationalize the judiciary fund and give a fixed percentage of 2.5% from the national budget to the judiciary fund to guarantee financial independence

DELIBERATE UNDERMINING OF THE INDEPENDENCE OF THE JUDICIARY



Good progress: The judiciary has asserted itself through decisions through making bold decisions even against the government.

Issues:

- Institution of malicious accusations against them, whether complaints at the JSC or through instituting criminal proceedings against them- meant to intimidate the judges.
- Attempts to make amendments to provisions that support judicial independence.
- Delay or refusal by the President to appointment judges and members of independent commissions.

General Recommendation: Utilize presidential appointing powers to further human rights and access to justice rather than to undermine human rights and access to justice.

Specific Recommendation: Appoint the 41 judges to the respective courts as per JSC recommendations.



icj

**International
Commission
of Jurists**

KENYAN SECTION | Since 1959

Asante Sana!

For more information, kindly contact Ms. Mutua on teresa.mutua@icj-kenya.org or
+254738494527