



Press Release

(June 19, 2018)

LESOTHO GOVERNMENT’S RESPONSE TO CERTAIN INTERNATIONAL BODIES’ PRONOUNCEMENTS ON THE STATE OF THE JUDICIARY IN THE COUNTRY

The Government’s efforts to clean the image of the judicial system, restore confidence of the public in the courts, and the dignity of the citizen who deserves unconditional protection from arbitrary violation of basic human rights, has attracted negative attention of some quarters of international legal profession – probably thanks to some among those among the nationals who stand to be adversely affected or become casualties of this process. The Commonwealth Lawyers Association (CLA), the Commonwealth Legal Education Association (CLEA), and the Commonwealth Magistrates’ and Judges’ Association (CMJA) have, without deigning to make any inquiries from the Government and all affected and interested parties, jointly issued a statement (dated 22 May, 2018) of concern about what they call “moves to remove Chief Justice Nthomeng Majara from her position as Head of the High Court and Chairperson of the Judicial Services Commission”. This statement pretends to be made in support of the Southern African Chief Justices’ Forum (SACJF), which similarly fired a knee-jerk shot in the dark without making any requisite enquiries. For avoidance of any ambiguity, these two organisations made no effort whatsoever to contact the Government, or even serve their statements on its representatives, yet they pretend to address, and in a way forewarn the same Government against the perils of a foreseeable mishandling the honourable judge’s case.

Contrary to these statements, presently there are no “plans” to remove Justice Nthomeng Majara from the said positions, but the said judge has been presented with questions to answer in respect of her competence and qualification to continue in office. This has come to pass only in accordance with the provisions of the Constitution of Lesotho and supporting laws, and the initiation of proceedings leading to the speculated removal could only depend on the responses received. While we respect the right of every potential victim and their sympathizers to canvass their case and trump up support and solidarity, and accept that such a campaign will have differential outreach and impact depending on the actors, we find it piquantly odd that the case of Justice Majara has suddenly found priority attention in these quarters, whereas the country’s justice system has been passing through testing currents involving three impeachment proceedings for occupants of the Office of Chief Justice and President of the Appeal Court through the three coalition governments since 2012.

These two statements see the Government's constitutional handling of the Chief Justice as portending danger to independence of the courts and separation of powers as globally understood. This slant wrongly elevates [the fate of a single human person to that of an institution](#), and the values that undergird its subsistence. While it is true that the position carries hefty responsibility, and can easily undo any good spelt by any number of national covenants if occupied by an errant personality, it is however not logical to pretend that touching a strand of hair of such a person spells doom for the institution. On the contrary, that might just save it. Indeed that is exactly the type of pontifical proposition which has been interminably preached by the chief advocates of moral puritanism in the judiciary, who have been vociferously fighting the appointment of the President of the Court of Appeal, and are now bitterly protesting similar scrutiny of Chief Justice Majara. This much-craved independence of the judiciary is a troubled terrain, which has been strained by weird decisions and practices of the judges in recent years, including those that pandered to affectations of waves of partisan opinions that fly in the face of internationally accepted norms. These include self-contradicting decisions by the High Court with serious implications for the rule of law and good governance, to wit, the handing over of army abductees to their to their unlawful captors and torturers who brought them into court chained, hooded, and bleeding and further assaulted their next of kin in full view of the media and public in court; and accepting their experienced lawyers' pretension of not comprehending court orders directing stoppage of such heinous acts and their likes; and designation of Official Leader of Opposition, among others.

At the time of the issuance of this statement, the High Court has just granted an interim order interdicting the Rt. Honourable the Prime Minister from advising His Majesty the King towards impeachment of any judge. The order was granted in a strange fashion by one of the members of the judiciary, who by definition stands to personally benefit from this determination, even as he was explicitly requested and stubbornly refused to recuse himself for clear conflict of interest. Yet it is a Constitutional provision that the Judiciary shall be so shepherded by the Executive, in order to keep it within its clearly defined line of march. The country is rapidly descending into an abyss of chaos where the courts as the ultimate umpire of public morality of upholding the dignity of every man and woman seek to answer only to themselves and to the winds of opinion that undermine the core of our civilization. The Executive doesn't seek to control and absorb the courts into its avowedly fickle outlook, that is open to volatility of its social support base, yet it cannot abandon its constitutionally given duty of stepping in with corrective measures where the judiciary presumes upon its constitutionally conferred independence to prosecute mischief undermining the very foundation of good community, and bend to equally fickle storms of opinions that benefit from a degenerate judiciary.

We wish to positively state that the case of Chief Justice Nthomeng Majara, whatever its course, will be handled only in accordance with the Constitution and known principles of natural justice; and in going about the same, the universally embraced precepts of separation of powers and judicial independence will be observed. The Government has thus far respected even the most nakedly self-serving rulings of courts as observed above, and needs no lecturing from ivory towers of those who do not see need to acquaint themselves with conditions that inform the state of our judiciary and general governance today.

As Justice Semapo Peete, the Chairman of the Chief Justice's Judicial Reforms Committee, has been amply quoted as saying on public forums addressing the reforms, the judiciary as arguably the strongest arm of government, shouldn't seek to place itself on autopilot and travel on an ethos defined only by itself, outside the incline of majority of society as defined by the people's elected representatives. How we consummate the eventuation of this vision will be chiseled out by the upcoming Comprehensive National Reforms. In this vein the Government commends the statement of the joint fact-finding mission of the International Commission of Jurists (ICJ) and the African Judges and Jurists Forum (AJJF), which after a week of interaction with a spectrum of stakeholders in Maseru (7 to 12 May, 2018), has correctly mapped out the now widely acknowledged institutional constraints which have necessitated the contemplated judicial reforms, and calls for

reopening of the Court of Appeal which has been in limbo for two seasons now. The statement aptly observes the deep societal polarization, and urges constant dialogue between the deeply divided legal profession and the bench to heal these wounds. Commendably, this is the ICJ's second mission seized with these issues since 2013, pointing to national failure to break out of this mould through three consecutive coalition governments which are supposed to be consensus building. While this joint statement unavoidably also opines on the prospect of impeachment of Chief Justice Majara, it fittingly says this should be prosecuted within the confines of the existing constitutional and legal frameworks of Lesotho, and lead to strengthening rather than weakening the judiciary – all the values and convictions which the pronouncements and practice of the Government have borne out thus far. As we enter the ambience of comprehensive, inclusive, transparent and open judicial reforms, the Government will continue to respect its commitments to international covenants and use discretely the national frameworks in going about addressing the immediate hurdles that cannot await that complex process.

Khotso!!! Pula!!! Nala!!!
