

14th November, 2017

PRESS RELEASE

To: H.E. The President of the Republic of South Sudan,

Gen. Salva Kiir Mayardit

Through: Chief Justice of the Judiciary of South Sudan, Justice Chan Reec Madut

Subject: **Resignation as Justice of the Supreme Court, of the Judiciary of South Sudan.**

I, Kukurlopita Marino Pitia, Justice of the Supreme Court of the Judiciary of the Republic of South Sudan, resigns from the Supreme Court and the Judiciary of South Sudan effective the date above mentioned in accordance with section 62(1) of the Judiciary Act, 2008, Laws of South Sudan.

The grounds of my resignation are as follows: -

1. **Lack of Judicial Independence.** Over the years, despite all our efforts individually and collectively, the independence of the Judiciary, in the Republic of South Sudan has become a mockery and pasquinade. The Judiciary lacks institutional independence, and the independence of Judges and Justices in performing their judicial function is interfered with and hence the guarantee of the independence of the Judiciary by the Constitution and the law is a fallacy. See articles 123(2),125(1)(4)(6) of the South Sudan Transitional Constitution,2011 and section 6(1)(2) of the Judiciary Act, 2008.

The war in South Sudan cannot be used as an excuse to interfere and silence the judiciary. If anything, judiciary must stand tall during war periods where so many rights are in jeopardy and to protect those rights.

The institutional independence of the Judiciary, as constitutional imperative, provides for administrative and financial independence, underpinned by the judicial laws, and stipulates that the Chief Justice, as the head of Judiciary shall be responsible for the administration of the Judiciary as prescribed by law in accordance with the provisions of the South Sudan Transitional Constitution, 2011. (see articles 123 (8) 125 (2) and sections: 6 (3) ,29, 30, 31(1) (2) (3) (4) (5) (6) ,33 of the Judiciary Act, 2008. However, in practice, these fundamental core values enshrined in the Transitional Constitution and the substantive laws are repeatedly violated and not observed.

2. **Lack of Independence of Individual Judges and Justices.** While Article 125(4)(6) of the South Sudan Transitional Constitution, 2011, guarantees the independence of Justices and Judges in performing their functions without interference. However, the political interference by the executive has watered down individual judicial independence.

The constitutional obligation, at all levels of the government to uphold, promote and respect the independence of the judiciary and of the individual judges to apply the law impartially and without political interference, fear or favour, culminated in the dismissal of former Deputy Chief Justice Ruben Madol Arol Kacual, for exercising his independent judicial opinion, on a recusal application to the Constitutional panel of the Supreme Court in the constitutional petition lodged against the President of the Republic of South Sudan, Salva Kiir Mayardit, for creating more states in the country.

That unconstitutional dismissal of the Deputy Chief Justice, leaves the Judiciary, Judges and Justices vulnerable in the hands and mercy of the executive. Therefore, under the current state of affairs, the Judiciary of South Sudan, can no longer render independent judgement, particularly in constitutional petitions, where it is being directed by the executive.

3. **Security of tenure of the office of Judges and Justices.** The politics of institutional destruction have rendered the judiciary a violative institution and judges and justices no longer have the security of their offices. Judges lack certainty and guarantee of their position. This is substantiated by the recent dismissal of (14) Justices and Judges, who raised the demand of the general Assembly of Justices and Judges for judicial reform, which is deemed by the executive as a political anti-government action, warranting dismissal of judges contrary to the Constitution and Judiciary Act.

It is unthinkable and only in South Sudan that 14 Judges and Justices have to be dismissed to save only a Chief Justice who has ruined the judiciary and brought it to its knees because of mismanagement.

4. **Lack of financial independence of the judiciary.** In practical terms, the judiciary lacks financial independence as enshrined in the Transitional Constitution. The guarantee of financial independence is the promulgation of specific tools, instruments and financial measures to prevent the subjection of the judicial authority to the executive and legislative organs. The absence of these prerequisites have rendered the Judiciary vulnerable to extortion and interference in judicial work, which infringes the principle of independence of the Judiciary.

The budget of the judiciary is entirely a decision of the executive organ only subject to the procedural cosmetics by the Judiciary to mislead the public that the budget in fact is made by the judiciary. In this respect the health conditions of the Judges and Justices speak for itself. The poor remuneration of judges and justices in South Sudan is a breeding ground for corruption in the judiciary and once corruption is exhibited, whatever justice is said to be done is a sham.

5. **Poor administration of the Judiciary.** Poor management of the affairs of the judiciary by the Hon. Chief Justice, has made the judiciary an institution advancing injustice and political interests of the

executive in the country. Consequently, the public have lost confidence in the judiciary as an institution of justice delivery.

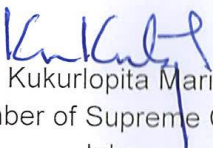
Therefore, it is difficult for the judiciary to properly administer justice and guarantee supremacy of the rule of law, respect and observation of human rights and freedoms and strengthen the system of good governance.

In this respect, the former President of USA Woodro Wilson, stated that:

“the government keeps its promises, first through its courts, whereby the individual struggle in establishing a constitutional government, becomes a struggle to promulgate new laws but essentially to establish independent and not partial courts”.

In conclusion, as a matter of moral obligation, I testify to the people of South Sudan that the judicial system in the country is no longer capable of delivering justice in accordance with the constitution and the law, as expected by our people.

Despite all the political oppression of the people of South Sudan, there is a brave hope, and I firmly believe that one day through its struggle, an independent Judiciary shall be established.


Justice Kukurlopita Marino Pitia
Member of Supreme Court
Juba