



THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

REMARKS BY THE HON. CHIEF JUSTICE DURING THE LAUNCH OF THE NATIONAL COHESION AND INTEGRATION COMMISSION'S NATIONAL ACTION PLAN AGAINST HATE SPEECH, RADISSON BLU HOTEL, 15TH JUNE 2022

**Commissioner Rev. Dr. Samuel Kobia, Chairperson,
National Cohesion, and Integration Commission,**

Honourable Commissioners,

Distinguished Guests,

Ladies and Gentlemen,

Good Morning!



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1. It is my pleasure to join you all today for the launch of the National Action Plan to overcome Hate Speech. This Action Plan is not only necessary but timely seeing as we are going into a General Election period.
2. It is during this period that the ugly heads of tribalism and ethnic hatred always raise themselves and rogue persons target and capitalize on them. We must not allow this to happen. If it does, we have the constitutional obligation to decapitate these heads.
3. While there is no universal definition of Hate Speech, pointers as to what it constitutes do exist. For instance, using threatening, abusive, or insulting words or behaviour, or displaying this in any written material; producing a programme,



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which is threatening, abusive, or insulting where, taking into account all the circumstances, the intent is to stir ethnic hatred and contempt.

4. Hate speech temporarily eases self-doubt and powerlessness by providing a surge of energy and confidence. However, this is short-lived because Hate Speech's attendant anger and resentment always drop you down lower than the point at which they picked you up. In other words, **hate speech is ultimately self-defeating**. It is a threat to social cohesion and nation-building. For this and numerous other reasons, hate speech must be shunned by all.
5. Political players, in particular, are major culprits in spiking emotions. This happens when they



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themselves are flooded with emotion or when they seek to prey on the emotions of others. It is a leader's duty and responsibility to know how to self-regulate in these instances.

6. We in leadership positions must always remember that we are privileged to be in these positions. It is not a right. We have the obligation and tremendous opportunity to influence many people's lives positively.

7. We have the responsibility to direct, shape, and focus people's thoughts and behaviors on what is best for the greater good. This is a responsibility that we cannot afford to take for granted. As such, our speech must always aim to empower and repair as opposed to harm, hurt, and tear down.



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8. When grappling with what to say in any given situation, a leader should use the simple but effective formula or guide: “*Is it inflammatory? Is it discriminatory? Is it divisive?*” If the answer to all three is in the affirmative, the speech is likely to be hateful.

Ladies and Gentlemen,

9. It is noteworthy that the law is unforgiving to perpetrators of Hate Speech. Our Constitution, under Article 33, grants the freedom of expression. However, this freedom does not extend to propaganda for war, incitement to violence, ***Hate Speech***, or advocacy of hatred that constitutes ethnic incitement, vilification of others, or incitement to cause harm.



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10. Section 13 of the National Cohesion and Integration Act (NCIC Act) also outlaws hate speech and prescribes a penalty of not less than one million shillings or imprisonment for a term not exceeding three years or to both.

11. Use of hate speech and other forms of negative stereotyping assumes a central role in Kenya's politics leading to periodic electoral cycles of violence. Hate Speech often finds fertile ground in our election campaign period and sometimes after. We cannot forget that the violence that followed the 2007 General Elections was largely instigated by Hate Speech and political incitement.

12. We must never regress to that state. For this reason, the Judiciary has been working on a



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plan to operationalise special election offenses Courts focusing on Hate Speech in areas identified by NCIC as constituting hate speech hot spots. This will ensure immediate and expeditious resolution of such matters.

13. In this regard, the Special Magistrates to handle Election Offenses were gazetted in February 2022. I committed to extend special jurisdiction to additional Magistrates covering Nairobi (Milimani), Meru (Nkubu), Mombasa, Kisumu, Kakamega, Nyeri, Eldoret, and recently, Nakuru. The public is being sensitized that offenses related to hate speech can be filed and fast-tracked in these Courts.



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14. The status of Hate Speech cases under the NCIC Act in Magistrate's Courts in May 2022 is as follows:

- There are 21 cases in total;
- 9 cases have been concluded;
- 9 cases are pending - and all have early mention dates not later than June 2022;
- 2 files are being investigated by the office of the Judiciary Ombudsman as they were reported missing and
- 1 case which was wrongly referenced.

15. Rest assured that the Judiciary is putting its best foot forward. However, we cannot fight this vice alone. The National Cohesion and Integration Commission (NCIC), the Office of the Director of Public Prosecutions (ODPP), the Directorate of



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Criminal Investigation, and the Police must partner and collaborate with us.

Ladies and Gentlemen,

16.As we move into the election period, it is critical that we are all reading from the same script given that we are all pursuing a shared constitutional vision of having an electoral system and cycle that is transparent, free, and fair: pre-elections, during elections, and post-elections.

17.I implore all our political actors to put national interest above self-interest. Do not ethnically polarize Kenyans. The old-age adage goes that *'prevention is better than cure.'* Prevent hate speech.



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18. I urge us all to be bold enough to advocate for a hate-free Kenya. Let us love one another and build on our National values which serve all our interests.

19. If we capitalize on national unity, social justice, human dignity, inclusiveness, non-discrimination, integrity, and accountability, there can be so space for hate speech. We can succeed in making Kenya a hate-free zone, one of the key aims of the Action Plan.

20. As I conclude, I must applaud and commend the NCIC for this Action Plan. It is indeed a step further in promoting equality, harmony, good relations, and peaceful co-existence between persons of different ethnic, racial, and religious backgrounds in Kenya. Let us all commit and



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play our part in enabling and actualizing this
Action Plan.

Thank you and God bless you all.

**Hon. Justice Martha Koome, EGH
Chief Justice, and President of the Supreme
Court of Kenya**