

## ANNUAL JURISTS CONFERENCE, 2017



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STATE OF HUMAN RIGHTS IN AFRICA: BRIDGING THE GAP BETWEEN ASPIRATIONS, IMPLEMENTATION & ENFORCEMENT  
21st-25th NOV 2017 AT SERENA BEACH RESORT & SPA, MOMBASA.

### **“STATE OF HUMAN RIGHTS IN AFRICA: BRIDGING THE GAP BETWEEN ASPIRATIONS, IMPLEMENTATION AND ENFORCEMENT”**

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) in partnership with the Konrad Adenauer Stiftung under aegis of its Rule of Law Program for Sub Saharan Africa convened the 2017 Annual Jurists Conference (AJC) on the theme “The State of Human Rights in Africa: bridging the gap between aspirations, implementation and enforcement” in Mombasa, Kenya between 21<sup>st</sup> and 25<sup>th</sup> November 2017. The main objective of this annual event is to offer jurists a platform to deliberate and contribute to the discourse on emerging rule of law, human rights and justice trends affecting Africa.

In Africa, the contestation between States on their obligations to fulfill, uphold and respect human rights and non-state duty to monitor compliance is riddled with contradictions and divergent conceptual understanding challenges. Yet, if full realization of human rights in the continent is to be achieved, effective implementation of normative frameworks is a necessary precursor in order to guarantee the right to development, peace and security in the continent.

Generally, the state of human rights in Africa and the commitment of States to translate the rights contained in the African Charter and the various national constitutions into tangibles remain weak.

A report released by Amnesty International in 2016 indicates that human rights defenders, journalists and political opponents face persecution and assault; civilians continue to bear the brunt of armed conflict, which are marked by persistent and large-scale violations of international law and impunity in addressing international crimes. Further, serious human rights violations remain largely unaddressed; discrimination and marginalization of the most vulnerable including women, children and lesbian, gay, bisexual, transgender and intersex (LGBTI) people persist; and repression of peaceful protests is rampant. Similar findings are documented by the Human Rights Watch Report 2016 which indicates that most alarming attacks on human rights protections stem from strongmen who, refusing to transfer power peacefully, curb criticism through violence and enactment of draconian laws and policies.

While acknowledging that widespread corruption, impunity and lack of good governance continue to hinder the full realization of human rights in Africa, key emerging areas of concern that the conference sought to interrogate included:

- Failed electoral processes and inability to access the right to vote. In order to contribute to the discourse on the uncertainties that have characterized the electoral processes in Africa, the conference sought to interrogate the twin but interrelated concepts of the right to vote and the duty to vote within the broader context of civil and political rights.
- Excessive use of force including lethal force by police and other security agencies. The security services in different parts of Africa have consistently been accused of excessive use of force in the course of their duties.
- The shrinking of civic space. Civil society organizations in Africa have come under significant pressure as restrictions on foreign funding, barriers to registration, governments' interference in CSOs' internal affairs, and other forms of harassment have proliferated.
- Failed realization of social economic rights. The African governments' failure to enthrone enforceable socio-economic rights compromises the achievement of the highest standard of living of their people.
- Challenges of trans-national and international crimes.
- Prosecution and judicial enforcement of the rights. The question of enforcement of judicial decisions and remedies remains a challenge in the actualization of rights in Africa. There is a growing trend whereby Court orders and decisions are continually defied. There is a blatant disregard for the rule of law and there seems to be no consequences to these actions.

The three-day conference was executed under the following themes,

- Understanding human rights protection frameworks in Africa: An institutional approach
- Level of implementation and enforcement of human rights in Africa
- Judicial enforcement of human rights standards at the National level
- Promotion and protection of human rights through regional economic communities: Focus on Sub-regional courts
- The African human rights system and atrocity/transnational crimes
- The African human rights system and electoral governance in Africa
- Emerging issues and consensus building

It was evident from the deliberations that there were challenges of translating commitments to practical realization of human rights both at the continental level and national level.

Some of the key recommendations made in a bid to address areas of concern include,

- The need for collaboration among different institutions to facilitate complimentary enforcement of human rights and promote institutional synergy among various bodies within the continent;
- The need to improve on the effectiveness of state reporting mechanisms by *inter alia*, developing guidelines to assist in areas such as timelines, data on the implementation of human rights and the kinds of steps state parties are supposed to take to foster compliance with the various human rights instruments;
- The need for jurists to identify areas and engage in robust public interest litigation;
- The need to strengthen national, sub-regional and the African Court on Human and Peoples' Rights through adequate funding and other forms of support;
- The need for continued sensitization of citizens on the African human rights system;
- The need to hold governments and state agencies such as the police, accountable and transparent at all times;
- The need to encourage governments to abide by treaty obligations that they have ratified;

- The need for courts at all levels to grant effective and creative remedies that enhance the promotion of human rights on the continent;
- The need for jurists and other no-state actors to impress upon governments to respect the independence of constitutional bodies such as the judiciaries and push for adequate resourcing to enable them carry out their mandates in an efficient and effective manner;
- The need improve access to justice including establishing sub-registries to allow easy filing of suits, simplifying procedures, provision of *pro bono* and legal aid services;
- The need for courts at all levels (regional, sub-regional and national) to develop and harmonize the jurisprudence around human rights;
- The need to establish a robust continental network of partners to enable information sharing among various countries and encourage cooperation and coordination in the fight against cross boundary crimes such as terrorism, money laundering among others;
- The need to identify appropriate legal and administrative measures that will ensure every eligible voter exercises their right and their choice is respected.

Among the key presenters at the conference included Hon. Justice Oagile Bethuel Dingake (Botswana); Lady Justice Prof. Lillian Tibatemwa, SC (Uganda); Ms. Kagwiria Mbogori, Chairperson of Kenya National Commission on Human Rights; Prof. Dr. Markus Böckenförde, Executive Director, Käte Hamburger Kolleg/ Centre for Global Cooperation Research Schifferstr; Ms Janah Ncube, Global Campaign Director, Crisis Action; Dr. Japhet Biegon, African Regional Advocacy Coordinator, Amnesty International; Mr. Donald Deya, Executive Director, Pan African Lawyers Union; Mr. Martin Masiga, Secretary General, African Judges and Jurists Forum; Mr. Arnold Tsunga, Executive Director, International Commission of Jurists – Africa; Mr. George Kegoro, Executive Director of Kenya Human Rights Commission; Mr. Beny Mabor, Chairperson, South Sudan Human Rights Commission and Ms. Muthoni Kimani, Director, Asset Recovery Centre, Kenya.