

ANNUAL JURISTS' CONFERENCE COMMUNIQUE
THEME : JURISTS' REFLECTIONS ON THE TRENDS IN JUDICIAL ACCOUNTABILITY
AND HUMAN RIGHTS IN AFRICA HELD ON 16TH TO 19TH OCTOBER 2023 MALINDI, KENYA.

Introduction

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) convened Jurists to a two-day conference on 17th and 18th October 2023 in Malindi to reflect on the trends in judicial accountability and human rights in Africa.
2. The Conference brought together experts and practitioners in the legal field drawn from the Judiciary, Civil Society Organizations, state institutions and private law practitioners.
3. Guided by the conference theme, ***“Jurists Reflections on the Trends in Judicial Accountability and Human Rights in Africa”***, the discussions interrogated the tenets of an independent and accountable judiciary, expanding the scope and mechanism for access to Justice and the emerging human rights concerns in particular, on sexual and gender minorities, data governance and sexual and reproductive Health Rights in Africa.
4. The Conference proposed interventions and best practices to enhance judicial accountability and human rights concerns in Africa.

The panellists and participants acknowledged and noted THAT:

1. Judicial Independence and Accountability are fundamental guarantors of credible Justice, and the Judiciary plays a pivotal role in upholding Justice and safeguarding the principles of democracy.
2. The participants further noted that judicial independence is a fundamental constitutional grounding and that the Judiciary should exercise independence and accountability to realise the rule of law.
3. The Constitution of Kenya 2010 established the Judicial Service Commission (JSC)¹ with a sole mandate to promote and facilitate the independence and accountability of the Judiciary and ensure efficient, effective and transparent administration of Justice.
4. The panellists implored that the JSC needs to exercise its constitutional mandates by promoting transparency, for instance, in the operation of the Office of the Judiciary Ombudsman, strengthening complaints handling processes against judicial staff, judicial officers and Judges and feedback to the public on the outcomes.
5. The Participants further noted that it is essential for the other Independent Institutions² to push for accountability through alternative reporting to treaty body mechanisms on the status of accountability and independence of the Judiciaries in the region.
6. On Sexual and Reproductive Health and Rights, the delegates interrogated the Constitution of Kenya, 2010's provisions³ on access to the highest attainable health standard, including reproductive health. The Jurists appreciated that these rights are equally guaranteed within regional and international frameworks, including the Maputo Protocol and CEDAW. In this regard, they acknowledged that SRHR is a fundamental and universal health right guaranteed to all.

¹ Article 171 of the Constitution of Kenya 2010.

² Chapter 15, Constitution of Kenya, 2010

³ Article 43 of the Constitution of Kenya

7. The panellists emphasised that despite SRHR being a fundamental human right, several restrictive laws hinder fully realising these rights. To this end, the panellists acknowledged the need to adopt a human rights-based framework in addressing concerns about access to sexual and reproductive health care.
8. On Access to Justice, the participants appreciated that it is a fundamental right enshrined in the Constitution of Kenya 2010 under Article 48. In addition, they appreciated the Chief Justice’s blueprint vision for the Judiciary dubbed *Social Transformation Through Access to Justice*, which recognises a multi-door approach to access Justice. Consequently, the panellists implored that utilising Alternative Access to Justice models, such as Arbitration, Mediation, and Alternative Justice Systems, is imperative.
9. The participants further interrogated access to Justice in the criminal trial process, specifically on the right to protect vulnerable witnesses⁴. The panellists appreciated Kenya has an elaborate Witness Protection Act 2006⁵, which provides a legislative framework to protect threatened and intimidated witnesses.
10. The participants noted that, despite the legislative framework and existence of the Witness Protection Programme and regime, this unique access to justice mechanism faces many challenges, including limited appreciation of the witness protection legal framework.
11. On the emerging human rights concerns, the Conference delved into sexual and gender minority rights and data governance.
12. The participants noted that data governance is critical in protecting privacy rights, freedom of expression, association and assembly, and failing to strengthen data governance leads to infringement.
13. The participants noted that sexual and gender minorities face numerous forms of unprecedented discrimination and serious violations of their human rights and fundamental freedoms, amounting to torture and cruel and degrading treatment owing to their real or perceived sexual orientation and gender identity.
14. It was appreciated that most African countries continue to formulate and pass legislation that further limits and claw back on the human rights and fundamental freedoms of sexual and gender minorities, thus providing a platform for abuse and further violation of their rights and freedoms.
15. The participants noted that there is a need to collectively work together in a quest to ensure that the human rights and fundamental freedoms of sexual and gender minorities, not only in Kenya but throughout the African region, are safeguarded.
16. The participants appreciated that the Conference had provided a significant opportunity and platform to reflect, nurture partnerships and share their experiences and recommendations ahead of the 75th anniversary of the Universal Declaration of Human Rights.

The Conference concluded with a commitment from the partners and Jurists to:

1. Publish regular Judiciary Watch Reports on the gaps inherent to Judicial Accountability and Independence.
2. Engage the Parliament to adequately fund the operationalisation of the independent offices and Commissions to enable them to exercise their mandate, including pushing for the Judiciary’s accountability.
3. Actively advocate for Kenya to operationalise the Data Protection legislation, allowing citizens to demand their rights and state accountability.
4. Explore Public Interest Litigation opportunities on technology and human rights concerns.
5. Push for legislative reforms, including amendments to the Penal Code and related laws to decriminalise reproductive health issues, including access to safe abortion.
6. To work with different stakeholders, including the Ministry of Health and Ministry of Education, to develop comprehensive policies on sexual and reproductive health and rights and education curricula within the

4 Article 50 (8) Constitution of Kenya, 2010

5 Witness Protection Act 2006, No.16 of 2006, date of Commencement, 1st September 2008

Ministry, respectively.

7. To work collectively to ensure that the human rights and fundamental freedoms of sexual and gender minorities are promoted and protected.
8. To foster the enactment of witness protection legislation, establishing a Witness Protection Programme nationally and promoting an Africa Regional Witness Protection Association through triggers from other regional platforms like EALS, PALU, EAC, and AU, among others.

Signed



Protas Saende
ICJ Kenya Chair

About ICJ Kenya.

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-profit, and member-based organisation. Established in 1959, ICJ Kenya is a premier Human Rights organisation whose Vision is to promote a just, free, and equitable society.

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