

Speech by Dr. Willy Mutunga, D. Jur, SC, EGH, Chief Justice/President of the Supreme Court of Kenya at the launch of the publication of ICJ Kenya's Judicial Watch Report Series Vol. 10 at Serena Hotel, Nairobi/Kenya on 22nd March 2012.

Fellow Kenyans and Friends

I am honored to launch the Tenth Volume of the **Judiciary Watch Report (JWR) series**. Each year ICJ Kenya publishes this Annual Judiciary Watch Report to monitor and evaluate the pace, depth and breadth of on-going judicial reforms. This is, indeed, a great and worthy project as the Judiciary convent opens its doors to the authority of the Kenyan people. This volume, **Judicial Enforcement of Economic, Social and Cultural Rights: Challenges and Opportunities for Kenya** seeks to contextualize Article 43 of the *Constitution of Kenya [2010]* which is the foundation for anchoring the courts' interpretation and enforcement of Economic and Social Rights as well as providing proposals on opportunities and tools for judicial enforcement of these rights. As we begin our long journey to making Kenya a human rights state and society the initial steps highlighted by this publication are critical.

We at the Judiciary have decided to make the Judiciary Training Institute (JTI) the nerve centre of a robust, indigenous and patriotic jurisprudence. JTI is the Judiciary's institution of higher learning. Though judges used to sarcastically wonder who would train them now this is no longer an issue because we have all agreed we must undergo training, not just legal, but one that is multi-disciplinary. The Supreme Court and the JTI are establishing networks of "friends" of JTI and SC. These networks include academicians, other judiciaries, civil society groups, think-tanks. The constitution gives the Judiciary great opportunity to participate boldly in the democratic development of this country. It gives an opportunity for innovation, activism and consideration of what Professor Hart called non-legal phenomena. Our constitution has decreed against staunch positivism.

We are gathered here today on an occasion that reflects in a small way how these networks operate. ICJ Kenya is helping the Judiciary establish a reliable scholarly database that would close an existing gap on the scarce literature on enforcement tools for socio-economic rights within Eastern Africa. Legal practice of every justice system is positively influenced by a well-balanced and critical academic literature which focuses on historical, socio-economic, political and cultural concerns that anchor the administration of justice. ICJ has helped us achieve this aim by publishing this volume of the Judiciary Watch Report. It is written and edited by some of the most accomplished legal writers and editors in Sub-Sahara Africa. The authors in the compendium are legal academics who have either written, are writing doctoral dissertations, published or have engaged intimately with these issues through litigation. I thank all the authors and the two editors, namely, Dr. Godfrey Musila and Mr. Japheth Biegon. I will be inviting all of you to become “friends” of JTI and SC.

There is not much Kenyan-specific scholarly or jurisprudential material to inform the enforcement of socio-economic rights. Coupled with the book on the same subject by Professors Yash Ghai and Jill Ghai, ICJ-Kenya has similarly made a contribution to bridging up the gap. The Judiciary intends to utilize and put into good use such materials so that they will help steer reform measures and spur efficiency in the administration of justice in Kenya.

Some jurisprudence has already begun to emerge from the High Court relating to the right to housing and education. Such contributions like the one made by ICJ Kenya will continue to enrich this emerging jurisprudence. Although these pioneering cases have introduced to the Courts some of the complex issues involved in enforcing socio-economic rights, the Judiciary is yet to thoroughly engage with these rights. Eventually, it is hoped that jurisprudence will translate socio-economic rights into tangible gains for the citizenry. Kenyan Courts must consider the full transformative potential these rights should have in eliminating structural inequality and disadvantage. Our jurisprudence cannot be described the way I have if it is not a jurisprudence of basic needs for all our people. Movements around the implementation of Article 43 will be great entry points to

the creation of such jurisprudence. As Upendra Baxi urged of the Indian Judiciary such jurisprudence must take the suffering of the people seriously.

I need not emphasize that our legal education institutions and legal practitioners, too, must be part of the creation of this jurisprudence. The entire assembly line for the creation of this patriotic jurisprudence must be in motion and be constantly and consistently enriched. I am convinced that this jurisprudence of basic needs for all, emphasized through relatively small changes in the Court's interpretive paradigm, can lead to big changes in outcomes in all sectors of our societal endeavors. I must hasten to add, however, that one should not overestimate the impact of litigation and judicial decisions on fundamental transformation of our country. It is our political system that is required to directly address issues of social exclusion and create positive public policy to address them. Such system will undeniably make any judicial reforms undertaken permanent, irreversible and irrevocable.

This is therefore an important book for those of us who serve in judicial function or practice law. We are most indebted to ICJ Kenya for their remarkable contribution to the administration of justice in Kenya. I am, grateful, and no doubt my brother and sister judges and many other practitioners are deeply grateful too for this new publication.

I want to emphasize that the publication of the Judicial Watch Report, Volume 10 would not have been possible without the generous support of Konrad Adenauer Foundation (KAS). I am sure that the civil society, the legal community, scholars and students alike, all appreciate this and are grateful for this support. I would further like to praise the editors, writers and program staff at ICJ Kenya for their individual and collective efforts that has now borne fruit in this publication.

The Judiciary and many jurists look to the **Judicial Watch Series** for guidance and instruction. We look forward to the publication of the Judicial Watch Reports being continued. It is a great investment to the building of the jurisprudence we all need. I am glad KAS is funding measures aimed at strengthening social democracy in Kenya.

I recommend the tenth volume to everyone interested in realizing socio-economic rights, what they are, how they will work and what they ought to be.

Thank you for your attention, and please join me in congratulating ICJ Kenya on producing another edition of this classic work.

It gives great pleasure now to launch this publication.

Thank you and good night.

May God Bless you