



New book helps judiciary & legal practitioners understand role of “friend of the court”, *amicus curiae*

(Nairobi, Kenya) August 25, 2017 – In preparation for potential electoral disputes in Kenya resulting from the 2017 elections, and to expand Kenya’s jurisprudence under the 2010 Constitution, a new tool on non-party participation in litigation to ensure fair, consistent and efficient rulings by the Judiciary was launched at an event today.

The legal concept of ‘friend of the court’, or ‘*amicus curiae*’, refers to the participation in litigation of individuals or organizations who are not party to a case but have a strong interest in its subject matter.

In Kenya, both constitutional petitions relating to fundamental rights, and election disputes garner the majority of *amicus* participation. The role of both types of cases makes it especially important that the courts have a clear and shared understanding of *amicus curiae*.

“Admission of *amicus curiae* in election disputes by courts is one concrete way of ensuring that voices of the politically weak and those that lack the capacity to navigate the complicated political terrain are heard. The value of this book reflecting international standards and approaches will be felt beyond the borders of Kenya,” said Dr. Christopher Mbazira, co-editor of the publication.

The book, “*Friend of the Court & the 2010 Constitution: The Kenyan Experience and Comparative State Practice on Amicus Curiae*”, provides the courts with guidance when determining when to admit *amicus* petitioners and when to seek out *amicus* participation of their own initiative.

“Since in Kenya *amicus curiae* participation is a constitutional right in many cases, the court cannot rely on traditional common law rules to determine who can be admitted. Instead, admittance is a constitutional question and must be considered under constitutionally mandated criteria. This will require the court to fundamentally reassess who can participate as a friend of the court and how it will regulate that participation,” said co-editor Chris Kerkering.

The 2010 Constitution of Kenya fully embraces the friend of the court as a key participant in complex legal disputes, and expressly provides for *amicus* participation in litigation. However, the Constitution leaves it to the courts to interpret the scope of that participation.

In the past, this has caused confusion about how to apply the rules in a consistent manner while remaining faithful to the constitutional mandate for public participation in the judicial process. It has been especially challenging for the courts given the limited role that *amicus* participation has historically played in Kenya and the broad and often inconsistent definitions applied in other jurisdictions.

For instance, the friend of the court was a prominent feature of the 2013 presidential election petition case brought by Raila Odinga, in which the court dismissed two out of three *amicus* applications. The court’s decision and reasoning led to heated debate in Kenya and raised important issues on the nature of election petitions and the distinction between private and public litigation.

The publication is a solid resource that adds value to the work of legal practitioners. It brings forth an open and transparent exchange of ideas - one whose impact is likely to be felt beyond the corridors of courts or laws schools to the general public to deepen a culture of justice.

Read and download the book at [DOWNLOAD BOOK](#)

For more information, please contact Kimberly Brown, kmbrown@idlo.int, +254711469962; Moses Okinyi, +254726989713 moses.okinyi@icj-kenya.org.

You can also follow the launch on Twitter - #FriendoftheCourtKE, @IDLO, @ICJKenya

Notes for Editors

The book was jointly developed by the International Development Law Organization (IDLO), the Kenya Judiciary Training Institute (JTI), the National Council on the Administration of Justice (NCAJ), the Public International Law & Policy Group (PILPG), Equality Now, the Solidarity for African Women's Rights (SOAWR) Coalition, Kenyans for Peace with Truth and Justice, the Kenyan Section of the International Commission of Jurists (ICJ), and the Katiba Institute.

The co-editors of the publication are Christopher Kerkering and Dr. Christopher Mbazira.

Judiciary Training Institute

The Judiciary Training Institute (JTI) is the organ of the Kenyan Judiciary responsible for meeting the training, research and capacity development needs of Judges, Judicial Officers and Judiciary Staff. JTI performs this mandate in part through various training programs and seminars, public lectures, research and other forms of discourses targeting all cadres of Judges, Judicial Officers and Judiciary Staff, and, where appropriate, members of academia, other organs of the state and public at large. As the Judiciary's institute of higher learning, the JTI is leading the Judiciary, in line with Judiciary Transformation Framework and the blueprint for Sustaining Judiciary Transformation, in facilitating the growth of jurisprudence and judicial practice as the lifeblood of the institution. The JTI is the judicial think tank: an institute of global excellence and the nerve centre of rich intellectual exchange. It interfaces between the Judiciary and contemporary developments in society, on the one hand, and learning interaction between the Judiciary and other agencies, on the other. The JTI provides the intellectual anchor in making Kenya's courts the hearth and home of a robust and functional jurisprudence that meets the aspirations of Kenyans.

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The National Council on the Administration of Justice (NCAJ)

The NCAJ is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high-level policy making, implementation and oversight coordinating mechanism as reflected in its membership that is composed of State and Non-State Actors from the justice sector. The mandate as stipulated in the Act is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system. Specific functions of the NCAJ are to: formulate policies relating to the administration of justice; implement, monitor, evaluate and review strategies for the administration of justice; facilitate the establishment of Court Users Committees at the county level; and mobilize resources for purposes of the efficient administration of justice.

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International Development Law Organization

The International Development Law Organization (IDLO) is the only intergovernmental organization exclusively devoted to promoting the rule of law. IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. Its programs, research and policy advocacy cover the spectrum of rule of law from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy.

Kenya has been a Member Party of IDLO since 2009. Since 2010, IDLO has been active in Kenya, helping to build the capacity of the justice sector and the legal profession. It supported the design of the 2010 Constitution and has been providing technical support to institutions mandated to implement or monitor the constitutional implementation process. More recently, IDLO has supported the government to mainstream gender at the national and country levels, including through legislative reforms to promote gender equality.

Web: www.idlo.int | Email: idlo@idlo.int | Twitter: @IDLO

Public International Law & Policy Group

The Public International Law & Policy Group, a 2005 Nobel Peace Prize nominee, operates as a non-profit, global *pro bono* law firm providing free legal assistance to its clients, which include governments, sub-state entities, and civil society groups worldwide. Through its work, PILPG promotes the use of international law as an alternative to violent conflict for resolving international disputes. PILPG provides legal counsel to *pro bono* clients during peace negotiations, advises on the creation and operation of transitional justice mechanisms, provides expertise during the drafting of post-conflict constitutions, and advises on ways to strengthen the rule of law and effective institutions. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. In January 2005, a number of PILPG's *pro bono* clients nominated PILPG for the Nobel Peace Prize for "significantly contributing to the promotion of peace throughout the globe by providing crucial *pro bono* legal

assistance to states and non-state entities involved in peace negotiations and in bringing war criminals to justice.” PILPG's Kenya program focuses on strengthening domestic accountability for election-related and politically-motivated human rights abuses. PILPG's Kenya program focuses on strengthening domestic accountability for election-related and politically-motivated human rights abuses.

Web: www.publicinternationallawandpolicygroup.org | Email: info@pilpg.org | Twitter: @PILPG

Equality Now

Equality Now is an international human rights organization that works to protect the rights of women and girls around the world by raising international visibility of individual cases of abuse, mobilizing public support through our global memberships and wielding strategic political pressure to ensure that Governments enact and enforce laws and policies that uphold the rights of women and girls. Founded in 1992, Equality Now works to create lasting change to make equality a reality for girls and women around the world. Equality Now advocates against legal inequality, sex trafficking, sexual violence and harmful practices such as child marriage, and female genital mutilation (FGM). One of its major areas of focus is on legal reforms, with the law being used as a tool for social transformation and the changing of traditional social attitudes to guarantee the protection of the rights of women and girls.

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Solidarity for African Women's Rights (SOAWR) Coalition

The Solidarity for African Women's Rights (SOAWR) Coalition is a regional network comprised of 50 national, regional and international civil society organizations based in 25 African countries, working towards the promotion and protection of women's human rights in Africa. Since its inauguration in 2004, SOAWR's main area of focus has been to advocate for African states to urgently sign, ratify, domesticate and implement the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter referred to as 'the Protocol').

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Kenyans for Peace with Truth and Justice (KPTJ)

KPTJ is a coalition of over 30 legal, human rights, and governance organizations, together with ordinary Kenyans, convened after the disputed 2007 presidential election with the purpose of seeking truth and justice for the election and the widespread violence that followed. KPTJ maintains that there can be no sustainable peace without truth and justice, which in turn requires that Kenya addresses its history of human rights violations and historical injustices, and addresses the deep chasms and inequalities in Kenyan society. KPTJ plays a key role through providing research, technical support and advocacy on issues of accountability, transparency and constitutional implementation. It is convened by a secretariat hosted at Africa Centre for Open Governance (AfriCOG) which is one of its founding partner organizations.

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The Kenyan Section of the International Commission of Jurists (ICJ Kenya)

ICJ Kenya is a jurists based membership, non-governmental, non-partisan and not-for-profit organization registered society. It is the only autonomous national section of the International Commission of Jurists based in Geneva and has been working in Kenya and around the African continent since 1959 promoting human rights, the rule of law and democracy in Kenya and the region. Its membership comprises of judicial officers (judges and magistrates), legal scholars and lawyers who are committed to promoting the ideals for which the organization was established. ICJ Kenya has observer status with the African Commission on Human and Peoples' rights. It is governed under a constitution through an elected Council of 7 members that serves for two-year fixed terms.

Web: www.icj-kenya.org | Email: communications@icj-kenya.org | Twitter: @ICJKenya

Katiba Institute

The Katiba Institute is a non-profit non-governmental body in 2011. The principal objective of the Katiba Institute is to achieve social transformation through the Constitution, by promoting the implementation of the Constitution. The Katiba Institute does this through a number of activities relating to: education, outreach, mobilisation, scrutiny of laws and policies, and using institutions for the enforcement of the constitution (such as the judiciary and independent commissions). The substantive areas of Katiba Institute's work include leadership and integrity, human rights, devolution, facilitating public participation, gender and minority rights, elections, misappropriation of land and evictions of indigenous people and other long term settlers.

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