

## 2017 ANNUAL JURISTS CONFERENCE COMMUNIQUE

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) in partnership with Konrad Adenauer Stiftung (KAS), ICJ Africa, International Centre for Transitional Justice (ICTJ), Kenya National Commission on Human Rights (KNCHR), Kenyans for Peace with Truth and Justice (KPTJ) and the Kenya Human Rights Commission (KHRC) held its 19<sup>th</sup> Annual Jurists Conference (AJC) in Mombasa, Kenya from 21<sup>st</sup> -25<sup>th</sup>, November 2017.
2. The Conference brought together participants from across the societal divide, including representatives of State agencies, civil society organisations and professionals within and without the Republic of Kenya. The main objective of the conference was to deliberate and contribute to the discourse on emerging rule of law, human rights and justice trends affecting the Continent.
3. As such, the theme of the Conference “State of Human Rights in Africa: Bridging the Gap between Aspirations, Implementation and Enforcement” reflected the Jurists’ continuing efforts geared towards transforming the various fundamental human rights, freedoms and liberties contained in legal instruments into liveable realities for the African people. The theme was explored from different perspectives and this gave rise to a range of recommendations, which are expected to inform the action points going forward into the coming year.
4. The areas covered included:
  - An Institutional Approach to understanding the Human Rights Protection Frameworks in Africa;
  - 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 Courts;
  - The African Human Rights System and Atrocity/Transnational Crimes; and
  - The African Human Rights System and Electoral Governance in Africa.
5. On the basis of extensive and highly interactive deliberations guided by moderators and thematic experts for each panel, the participants adopted the following resolutions:

### **A. To African Heads of States**

The Jurists note with great concern the rampant and systemic non-compliance with state reporting obligations and compliance with recommendations and decisions of the African Commission and the African Court. The jurists are also concerned that few African States have deposited Article 34(6) declarations allowing NGOs and individuals to present communications before the African Court and acknowledging the need to strengthen the follow up mechanisms of these bodies and the pivotal complementary role that the regional mechanism plays in securing human rights in Africa. It was further noted that the culture of non-conformity is a practice also reflected in the decisions of the sub-regional and national judicial and non-judicial mechanisms. In this regard:

- i. We call on State parties to domesticate and operationalize international and regional legal frameworks nationally by establishing national institutions and processes to provide specific channels of responsibility and facilitate internalization by changing conduct based on acceptance of international norms.

- ii. We call on State parties that have not already done so, to deposit declarations under article 34(6) of the Protocol of the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights, to allow individuals and NGOs with Observer Status to lodge communications before the Court should do the same.
- iii. We call on State parties to comply with treaty obligations and resolutions and as such, fully implement measures necessary for realisation of the fundamental human rights, freedoms and liberties. This involves committing to adequate resources to the human rights institutions, respecting their independence, strengthening their mandate, enhancing effective coordination and cooperation among regional and municipal bodies to enable implementation and enforcement of human rights decisions and exploring strategies to overcome negative cultural practices and taboos that hinder the realization of human rights, freedoms and liberties.
- iv. We call on African governments to establish measures aimed at alleviating poverty in order to realise the social economic rights of their citizens.

#### **B. To the African Union/African Commission**

- i. We call upon the African Union/African Commission to streamline state reporting procedures given the heavy burden on States to write reports on compliance with African Charter, Maputo Protocol and the African Charter on the Rights and Welfare of the Child every two/three years.
- ii. We call on the African Union to explore avenues for collaboration with different institutions to facilitate complimentary enforcement of human rights and promote institutional synergy among various bodies within the continent. This can be achieved by upholding court orders, respecting judicial independence, developing guidelines to make State reporting effective and according political support to the national and regional courts

#### **C. Regional and National Courts**

We recognize the fundamental importance of judicial independence in safeguarding rights and sustaining democracy and rule of law in the continent. As such we are alarmed at the persistent executive interference/or attempted undermining of such independence in some judiciaries.

- i. We therefore call on the regional and national courts to:
  - Furnish effective and creative remedies that are meaningful and enforceable in order to enhance the promotion of human rights;
  - Put in place measures to fast track case management;
  - Harmonize emerging jurisprudence around human rights in the continent;
  - Hold public officers personally liable for disobedience of court orders;
  - Invoke universal jurisdiction in cases where such is appropriate; and
  - Establish into partnerships with other institutions to assist in the implementation and enforcement of human rights.

#### **D. As Jurists and Civil Society**

As jurists and Civil Society Organisations, we are deeply concerned about the growing trends of police brutality, torture and extrajudicial killing and regime policing. State machinery (police) has increasingly been used to intimidate and harass citizens and to silencing dissident voices, resulting into grave human rights violations. We also note the centrality of free and fair elections in securing good governance of the African people, we are concerned about the electoral violence and malpractices across the region. In this regard:

- i. We shall join efforts with Civil Society Organisations across the region to monitor, document and audit level of compliance and implementation of decisions/recommendations of Treaty Body Mechanisms.

- ii. We shall strengthen our engagement with Parliamentary committees on state compliance i.e. implementation of decision of African Court on Human and Peoples Rights, the African Commission, African Committee of Experts on Rights and Welfare of the Child as well as Concluding Observations and letters of appeal.
- iii. Together with Civil Society Organisations, we shall continue to sensitize the African people on the African Charter and other regional human rights instruments, the importance of respecting human rights and the need to hold the government accountable.
- iv. We shall explore areas for public interest litigation in human rights and take up cases in the field of transnational crimes such as terrorism, money laundering, transfer pricing and other forms of illicit financial transfers.
- v. We shall strengthen our utilization of inquest/inquiries and private prosecutions as a means to seek accountability for extra-judicial executions, use of excessive force.
- vi. We shall continue to explore and advocate for new areas in human rights such as the right to clean air, water et cetera in line with global agreements, and Sustainable Development Goals.
- vii. We shall continue to impress upon governments to respect the independence of the Judiciary as well as other constitutional bodies as a measure of inculcating confidence between the citizens and government institutions.
- viii. We shall lead a structured dialogues on electoral reforms in a manner that is open, truthful and gainful to African citizens. In Kenya, we shall revisit the Kriegler Report to help shape ongoing discussions on the root cause of the failure to conduct free, fair and credible elections among other election issues identified in the report. We shall also analyse the current judgments and emerging jurisprudence on election petitions, and use them as a platform for identifying emerging issues and making appropriate recommendations for future reference.
- ix. We shall draw lessons from best practices and the experiences of other countries on how to deal with elections in terms of civic education, resolving conflicts and carrying out peaceful demonstrations.

#### **E. To Africa's Citizens**

As jurists, we recognize the centrality of a vibrant citizenry and public participation in ensuring accountability and bolstering good governance across nations; we implore on the citizenry to:

- i. Continuously demand for transparent, accountable and responsible leadership by African governments.
- ii. Actively take part in decision-making processes to ensure effective public oversight, social inclusivity and respect for diversity.
- iii. Champion equitable distribution of State resources and repudiate intolerance, discrimination and misuse of these resources.

*Developed at the Serena Beach Hotel in Mombasa, Kenya on November 24, 2017*