

STAKEHOLDERS' WORKSHOP ON THE INDEPENDENCE OF THE JUDICIARY IN SUB SAHARAN AFRICA



The independence of the judiciary lies at the heart of a well-functioning justice system and is the cornerstone of a democratic, market-based society that is guided by the tenets of the rule of law. In any democratic society, the judiciary is relied upon to decide cases impartially and independently free of any undue internal or external pressures and influence.

Principle 2 of the U.N. Basic Principles on the Independence of the Judiciary defines judicial impartiality *as judges deciding matters before them 'on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason'*.

The importance of an independent judiciary cannot be over-emphasised as it,

- contributes directly to equitable and stable balance of power within government;
- protects individual rights and preserves the security of person and property;
- resolves commercial disputes in a predictable and transparent fashion that

- encourages fair competition and economic growth; and
- counters public and private corruption; reduces political manipulation and increases public confidence in the integrity of government.

Conversely, the lack of an independent judiciary leads to a distorted and low public confidence in government and governance institutions thereby breeding fertile ground for instability and violent conflicts.

It is against this backdrop that KAS' Rule of Law Program convened a stakeholders' workshop in Arusha, Tanzania between 21st and 24th February 2018 to reflect, dialogue and exchange views and experiences geared towards rallying a common understanding on the need for independent judiciaries and the minimum required standards thereof.

The workshop brought together some of the leading players on the continent including judges, lawyers, representatives of regional Bar and Bench Associations and representatives of select civil society organisations working in the area of access to justice and administration of justice in general.

Some of the keynote speakers included Hon. Justice David Maraga, Chief Justice and President of the Supreme Court of Kenya and Hon. Chief Justice (Rtd) Ernest Sakala of the Republic of Zambia.

The panelists included Hon. Justice Prof. Lillian Tibatemwa of the Supreme Court of Uganda; Prof. Charles Manga Fombad, of the University of Pretoria; Mr. Don Deya, C.E.O of Pan African Lawyers Union (PALU); Mr. Martin Masiga, Secretary General of African Judges and Jurists Forum (AJJF); Adv. Ruth Sebatindira, Member of the Judicial Service Commission of the Republic of Uganda; Dr. Luis Franceschi, Dean, of the Strathmore Law School and Mr. Arnold Tsunga, Director of ICJ Africa.

There were special presentations by Dr. Christian Steiner, Former Director of KAS' Rule of Law Program for Latin America and Dr. Franziske Rinke, Legal Coordinator of the Rule of Law Program Worldwide on the status of the independence of the judiciary in Latin America and Europe respectively.

POST-WORKSHOP COMMUNIQUE

The Konrad Adenauer Stiftung under the aegis of its Rule of Law Program for Sub-Saharan Africa convened a Stakeholders Workshop on the Independence of the Judiciary in Africa in Arusha, Tanzania from 21st to 24th February 2018.

The Workshop brought together judges, representatives of national, regional and continental Bar Associations, representatives of the African Union, academia, non-governmental organisations and civil society groups from Africa.

The workshop sought to offer a platform to reflect, dialogue and exchange views and

experiences geared towards rallying a common understanding on the need for independent judiciaries and the minimum standards thereof. This will ultimately contribute towards crafting of appropriate strategies aimed at fostering the existing strengths and overcoming some of the intransigent challenges as far as safeguarding of judicial independence on the continent is concerned.

ACKNOWLEDGING the rule of law and constitutionalism as the foundational minimum for judicial independence, and on the basis of extensive and highly interactive deliberations guided by moderators and thematic experts for each panel, the participants recommended as follows:

A. To the States

1. To strengthen and secure the pillar of judicial financial autonomy to international best practice levels by *inter alia*, establishing a Judiciary Fund;
2. The Fund should be placed under the control and administration of the Judiciary with adequate budgetary fidelity and accountability mechanisms;
3. To guarantee the independence of the Judicial Service Commissions;
4. To put in place and promote transparent appointment and removal criteria that ensures attainment of,
 - a) objective and merit-based appointment of judicial officers at all levels;
 - b) inclusivity of the diverse segments of the society.
5. To provide adequate security and guarantee security of tenure to all judicial officers including those serving on the lower Benches.

B. To the Judiciary and Judicial Service Commissions

1. To eradicate internal interference by ensuring appointment of competent and persons of high moral character who honour the judicial oath of office and promote judicial accountability at all levels;
2. To institutionalise and strengthen judicial Associations at national, regional and continental level under the management of professionals as a means to promoting and protecting the welfare of judicial officers in particular, as well as advancing the tenets of the independence of the judiciary and impartial administration of justice in general;
3. To strengthen the continental fora, such as continental forum for heads of the judiciaries as an avenue for handling emerging issues on judicial independence;
4. To simplify the legal language and procedures so as to enhance understanding and earn the confidence and support of ordinary citizenry;
5. To ensure full implementation of Codes of Conduct for judicial officers and adoption of the Codes where they do not exist;
6. Institutionalise mechanisms for civic education and citizen engagement by *inter alia* creating robust Public Relations and Communication units that will enhance the engagement with the public;
7. Institutionalise performance evaluation mechanisms for judicial officers.

C. To the African Union and its Organs

1. To design and adopt African best practice guidelines on judicial financial autonomy, judicial appointments, removal and mechanisms against internal and external threats;
2. Create an effective mechanism at the continental level for monitoring and evaluation of judicial independence, for example, special rapporteur or individual monitors.

D. To Legal Practitioners, Bar Associations and the Civil Society

1. To protect the judiciaries from political and other external interference by *inter alia* publishing researched information about judicial independence for early remedial action, consistently pushing for upholding and implementation of court orders and engaging in Public interest litigation among others;
2. Harness mechanisms for civic education and citizen engagement on judicial independence by *inter alia*, use of social media, art, music, drama, moot courts, road shows, open days, and other communication avenues;
3. Train journalists for specialized Court reporting;
4. Contribute towards simplification of legal language, court processes and procedures as a means of empowering the citizenry for quality public engagement.

E. To the Citizens

Continuously demand for transparent, accountable and independent judiciaries.

RECOGNISING that most of the initiatives and recommendations herein are inter-linked, the participants call upon judicial and political leadership, policy makers, mandate holders, state and non-state actors and the public at large to respect the Courts, abide by and implement their decisions while demanding for accountability and transparency in all judicial processes for the full realization of human rights, freedoms and liberties.

DONE AT THE KIBO PALACE HOTEL IN ARUSHA, TANZANIA ON FEBRUARY 23, 2018

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