

**SUMMARY REPORT OF THE ANNUAL JURISTS CONFERENCE
HELD IN CAPE TOWN, SOUTH AFRICA
20TH – 24TH NOVEMBER 2018**



THEME: THE STATE OF JUDICIAL INDEPENDENCE IN AFRICA: THREATS, CHALLENGES AND OPPORTUNITIES

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) in partnership with the Konrad Adenauer Stiftung under aegis of its Rule of Law Program for Sub Saharan Africa convened the 2018 Annual Jurists Conference (AJC) on the theme “The State of Judicial Independence in Africa: threats, challenges and opportunities” in Cape Town, South Africa between 20th and 24th November 2018.

The conference sought to provide a platform for jurists drawn from the Bar, Bench and the civil society to contribute to the discourse about the current state of the independence of the judiciary in Africa by inter alia, identifying the existing threats and challenges; as well

as identifying and tapping into the available opportunities towards the realization of independent judiciaries on the continent.

It was noted from the onset that the independence of the judiciary is predisposed to interference from the other arms of the government by virtue of the perceived ranking and treatment as the third arm of government. It is hardly recognized as one of the three arms of government with constitutional mandate to operate independently as an impartial arbiter in the resolution of disputes.

For the above reason, the state of judicial independence in Africa is generally weak. While acknowledging the prevalence of the situation, key emerging areas of concern that the conference sought to interrogate included:

- The application of judicial independence based on the Bangalore principles and the Latimer House Principles as well as the regional initiatives that have taken place towards the development of regional standards on judicial independence including the Monomotapa initiatives and the plan of action plan;
- The challenges and the opportunities that exist in the implementation of judicial code of conduct especially in the use of social media as a tool for judicial activism;
- The disregard of law by the executive and the *judicialization* of politics, their impacts on the public perception of the judiciary and their impact on the authority of the judiciary;
- Chocking of judiciary funding as a strategy to bottle the judicial independence;
- How the shrinking of civic and the democratic space, threats to the legal profession and attacks on the 4th estate affects judicial independence and the connection between the regional mechanisms and the national independence of the judiciary;
- What African human rights standards are, their importance and the guiding principles in the development of the regional standards for judicial independence;
- The regional mechanisms and the opportunity that is there in the creation of a special rapporteur at the AU including the alternative opportunities in the existing mandates at the AU.

The question of enforcement of judicial decisions and remedies especially against the political elite, state and state organs, remain another major challenge in the actualization of

rights in Africa. The blatant disregard for the rule of law without consequences for those in breach was noted as critically worrying.

To guide the discourse, the conference was executed under the following themes:

- The Journey of Judicial Reforms in Safeguarding Judicial Independence and Gains Achieved;
- Application of Principles and Standards on Judicial Independence;
- Experiences from Judges in the Region on Challenges and Emerging Threats to Judicial Independence;
- Threats to Legal Profession and Stakeholders that Support Judicial Independence;
- Regional Standards for Judicial Independence;
- Anchoring regional standards for effective monitoring of judicial independence.

Some of the key recommendations made in a bid to address areas of concern include:

- African Heads of State to uphold constitutionality and ensure that each branch of government acts within its constitutionally defined mandate;
- The three arms of government to interact on the basis of cooperative governance, ensure effective communication, and require high standards of accountability and transparency in handling public affairs;
- African governments to ensure the institutional autonomy of the judiciary including financial and administrative independence;
- African governments to comply with all recommendations from regional bodies including the African Commission on Human and Peoples Rights, the African Court and the African Committee on the Rights and welfare of the Child, especially those that pertain to the independence of judges;
- African governments and continental bodies to work towards the development of regional standards for the design, composition and mandate of national Judicial Service Commissions to ensure judicial independence;

- African Union to establish special procedures on independence of judges and lawyers at the African Union. Further, AU to ensure that standards on judicial independence are put to practice.

Among the key presenters at the conference included Hon. Justice Charles Mkandawire, the President of Commonwealth Magistrates and Judicial Association; Hon. Justice Paddington Shadrack Garwe, Judge of the Supreme Court of Zimbabwe; Hon. Justice Robert Makaramba, Judge of the High Court of Tanzania; Hon. Justice Amraphael Msagha Mbogholi, Judge of the High Court of Kenya; Hon. Justice Kathurima M’Inoti, Judge of the Court of Appeal-Kenya; Prof. Hugh Coder, Professor of Public Law, University of Cape Town and Rtd. Justice Albie Sachs, Former Judge of the Constitutional Court of South Africa.

Others were Ms, Kaajal Ramjathan Keogh, Director, South African Litigation Centre; Dr. Vanja Karth, Director, Democratic Governance and Rights Unit- University of Cape Town; Mr. Martin Masiga, Secretary General of the African Judges and Jurists Forum; Rtd. Ms. Judy Oder of the International Bar Association’s Human Rights Institute; Mr. Davis Malombe, Deputy Executive Director Kenya Human Rights Commission; Mr. Kwamchetsi Makokha of the Journalist for Justice; Mr. Brian Kagoro, a Human Rights Advocate and Constitutional Law Expert; Mr. Arnold Tsunga, Director, Africa Regional Program of the International Commission of Jurists; Dr. Elvis Fokala, senior Research Associate, Institute for Human Rights and Dr. Japheth Biegon, Africa Regional Advocacy Coordinator, Amnesty International.