

Association Mauritanienne des  
Droits de l'Homme

Membre Affilié à la  
F.I.D.H  
Observateur auprès de la  
C.A.D.H.P

Membre affilié à l'U.I.D.H



# The role of the legal profession in protecting human rights in the context of shrinking civic and democratic space in Africa

Side Event at the 62nd Ordinary Session of the African Commission on Human and Peoples' Rights

Nouakchott | Mauritania | 28 April 2018

Meeting Report



## **Organised by:**

The International Bar Association's Human Rights Institute (IBAHRI)

The American Bar Association's Center for Human Rights (ABA)

## **In collaboration with:**

Association Mauritanienne des Droits de l'Homme

International Commission of Jurists (Kenya Section)

Initiative for Social and Economic Rights

Legal and Human Rights Centre (Tanzania)

Zimbabwe Lawyers for Human Rights

## I. Introduction

1. On 28 April 2018, the International Bar Association's Human Rights Institute (IBAHRI) and the American Bar Association's Center for Human rights (ABA) held a panel discussion on the role of the legal profession in the protection of human rights in the context of closing civic and democratic space in Africa. The event, held on the margins of the 62nd Ordinary Session of the African Commission on Human and Peoples' Rights, was organised in collaboration with Association Mauritanienne des Droits de l'Homme, the International Commission of Jurists (Kenya Section), Initiative for Social and Economic Rights, the Legal and Human Rights Centre (Tanzania) and Zimbabwe Lawyers for Human Rights (ZLHR).

## II. The context

2. Several states in Africa have created legal and logistical barriers to democracy and human rights. The legal profession and non-governmental organisations (NGOs) face harassment, obstacles to registration, restrictions on the nature of programmes they can undertake and curbs on foreign funding. Across the continent, there have been attacks on the legal profession, including extrajudicial killings, assassination attempts, disappearances, trumped-up charges and arbitrary detention.
3. These assaults violate regional and international standards protecting the legal profession and human rights defenders. Article 26 of the African Charter on Human and Peoples' Rights (the 'African Charter') guarantees the independence of the judiciary. The Resolution on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights (the 'African Commission') calls on states to take necessary measures to initiate independent investigations in cases of violations of the rights of human rights defenders, and to prosecute and judge perpetrators. The African Commission has considered individual complaints related to violations of members of the legal profession.
4. At the international level, standards protecting the legal profession include the Basic Principles on the Independence of the Judiciary, Basic Principles on the Role of Lawyers, Guidelines on the Role of Prosecutors, and Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary.
5. The panel discussion was held in response to the gaps in the implementation of national, regional and international standards protecting members of the legal profession, particularly lawyers and judges, across Africa. It stemmed from the work of the IBAHRI and ABA's collaboration with the legal community to promote and protect human rights and the independence of the legal profession worldwide.
6. The event took the form of a panel discussion featuring lawyers from Kenya, Mauritania, Tanzania, Uganda and Zimbabwe.
7. The gathering was intended to:
  - i. highlight lessons and good practices from various jurisdictions on the role of the legal profession in the protection of human rights when civic and democratic space is threatened;

- ii. provide an opportunity for participants to explore solutions to identified challenges;
  - iii. enable panellists to take part in a robust debate and to establish links with attendees;
  - iv. increase communication and information-sharing among meeting participants on the role of the legal profession in protecting human rights in shrinking civic and democratic space; and
  - v. forward recommendations arising from the panel discussion to the African Commission.
8. The event brought together panellists from the following organisations:
- Association Mauritanienne des Droits de l’Homme (Mauritania), which works for the respect of human rights in Mauritania and the subregion. It fights slavery, impunity, torture and other human rights issues.
  - The International Commission of Jurists (Kenya Section), a non-governmental, non-profit and member-based organisation. It promotes human rights, justice and democracy in Kenya and around Africa through the application of legal expertise and international best practices.
  - Initiative for Social and Economic Rights (Uganda), whose mission is to promote effective understanding, monitoring, implementation and accountability of economic and social rights in Uganda and ensure their full realisation.
  - The Legal and Human Rights Centre (Tanzania), which creates legal and human rights awareness and empowerment among the public and, in particular, underprivileged sections of society through legal and civic education, advocacy, research, follow-up of human rights abuses and provision of legal aid.
  - The ZLHR, which protects and defends human rights through sustainable litigation, education and advocacy, contributing positively to a culture of tolerance and adherence to democratic values and practices.
  - The IBAHRI, which works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
  - The ABA, which promotes and protects human rights worldwide, mobilising lawyers to help threatened advocates, rallying thought leaders on vital issues and holding abusive governments to account.

### **III. Challenges and threats to the legal protection of human rights in the context of shrinking civic and democratic space**

#### *a. Attacks on lawyers and challenges faced by bar associations*

9. Panellists gave examples of assaults on the judiciary. For example, in Tanzania, attacks on lawyers and law firms were raised as worrying trends that are detrimental to the ability of lawyers to undertake their work. The bombing of the offices of IMMMA Advocates and the shooting of the then-President of Tanganyika Law Society, Tundu Antiphas Lissu, were cited as examples. In both

instances, the state had not undertaken independent investigations at the time of the writing of this report.

10. In Mauritania, the lack of independence of the bar was noted as a serious concern.

*b. Challenges faced by the judiciary*

11. Panellists highlighted challenges faced by the judiciary. In Kenya, threats to judicial officers in the context of Kenya's recent presidential elections have undermined the independence of the judiciary. The judiciary has faced a backlash from the executive and legislature in the form of budget cuts and physical and verbal abuse. Irregular transfer to duty stations is used as a means to control judges. A disregard for court orders, as well as affronts to the authority of the court and legitimacy of the judiciary by the state remain serious concerns.
12. Judicial challenges in Mauritania include the state's reluctance to implement judgments, and the lack of the judiciary's independence despite constitutional provisions guaranteeing this principle.

*c. Restrictive legislation*

13. There was a debate concerning various forms of restrictive legislation and their impact on human rights. In Tanzania, restrictive laws include the Cybercrimes Act, 2015; the Electronic and Postal Communications (Online Content) Regulations, 2018; the Access to Information Act, 2016; the Statistics Act, 2015; and the Media Services Act, 2016. In Mauritania, insult laws and attacks on press freedom have negatively influenced the legal profession's activities and freedom of expression. In Uganda, legislation employed by the state to control NGO activities includes the Public Order Management Act, 2013; the Non-Governmental Organisations Act, 2016; and the Anti-Money Laundering Act, 2013.
14. The police in Zimbabwe have used the Public Order and Security Act, 2002, to restrict civic and democratic space through the enforcement of provisions on criminal nuisance, inciting public violence and subverting a constitutionally elected government. The Cybercrime and Cybersecurity Bill, if passed into law in its present form, will infringe freedom of expression. The police have also arrested human rights defenders for views expressed online. The Access to Information and Protection of Privacy Act, 2003, and certain sections of the Criminal Law (Codification and Reform) Act, 2002, have adverse effects on the enjoyment of human rights.

*d. Abuse of power*

15. At the time of the meeting, preparations for presidential and parliamentary elections were under way in Zimbabwe. It was reported during election campaigns that traditional leaders intimidated rural populations to vote for the ruling party. In Mauritania, organisations and community groups sought permission from local authorities to take part in the African Commission's 62nd Ordinary Session. In Uganda, local authorities have instituted onerous red tape, posing challenges for lawyers and civil society organisations that wish to engage with and carry out research within local communities.

#### **IV. Responses from the legal profession and NGOs to protect human rights when the rule of law is threatened**

16. Across the region, legal professionals have been engaged in advocacy efforts to promote human rights across the continent. In Zimbabwe, the ZLHR undertook litigation on behalf of aliens who were unable to vote because of the state's refusal to issue them national identity cards. Because of the ZLHR's petition, the High Court ordered the state to grant the applicants identity cards and allow them to vote.
17. The ZLHR has filed a petition challenging traditional leaders' abuse of power over rural populations in the context of Zimbabwe's elections. The ZLHR and other stakeholders developed campaigns to urge the Zimbabwe government to put in place measures to allow the Zimbabwean diaspora to vote.
18. In Tanzania, the Legal and Human Rights Centre, Lawyers' Environmental Action Team, and National Organization for Legal Assistance have challenged the constitutionality of the National Elections Act, 2002.
19. In Uganda, restrictions on civic and democratic space have led to collaborative efforts among legal NGOs. Additionally, these organisations have undertaken strategic litigation to challenge unconstitutional laws and document human rights violations.
20. In Tanzania, the legal profession organised peaceful demonstrations in Arusha in response to Advocate Shilinde Ngalula's arrest while carrying out his duties as a court officer.
21. Panellists highlighted the important role played by the media in documenting human rights violations when civic and democratic space is threatened.

#### **V. The role that judges play to protect human rights in the context of shrinking civic and democratic space in Africa**

22. The judiciary is a place of refuge for those seeking redress for rights violations. Under the 2010 Kenyan Constitution, the judiciary has a mandate to protect human rights, and citizens can institute petitions if their human rights are violated or under threat. The public must have confidence that when they bring their cases to court, the courts will be in a position to hear and determine their cases in line with the principles of independence and impartiality, without which courts cannot be effective or efficient.
23. The judiciary has a vital role in preventing *ultra vires* actions by the executive and parliament. Other than remedying violations committed against the public, the courts also stand in defence of the public when the executive or parliament acts or threatens to act in excess of their powers as conferred under the law. For example, the Kenyan High Court declared unconstitutional the Election Laws (Amendments) Act, 2017, passed by parliament to introduce unscrupulous provisions to the Elections Act, 2011, which were favourable to the current government.
24. Through its powers of interpretation, the judiciary can expand civic and democratic space in situations where the executive and parliament have limited that space. In Kenya, the Supreme Court annulled the presidential election of 8 August 2017 because it was marred with violence.

The Court held that a free and fair election conducted in a democratic society could not take place in a climate of violence.

## VI. Post-meeting developments

25. In May 2018, the Legal and Human Rights Centre, civil society groups and media houses in Tanzania sought an omnibus interim injunction to prevent the enforcement of the provisions of the Electronic and Postal Communications (Online Content) Regulations, 2018, that limit freedom of expression.
26. In response to the application, the High Court of Tanzania granted an interim order on 4 May 2018. The order restrained the Minister of Information, Culture, Arts and Sports, and the Tanzania Communications Regulatory Authority from enforcing the 5 May deadline for the registration of bloggers, online forums, radios and televisions, pending the hearing of the petition for leave to apply for orders of *certiorari*, *mandamus* and prohibition.

## VII. Recommendations to various stakeholders from the discussions

### To states

27. States should provide the African Commission with information regarding measures carried out to foster the independence and impartiality of the judiciary in line with their obligations under the African Charter and relevant international standards.
28. The Zimbabwe government was urged to:
  - review all legislation to ensure full compliance with regional and international obligations, particularly those on freedom of expression, association and assembly, including but not limited to the Cybercrime and Cybersecurity Bill, the Public Order and Security Act, and the Access to Information and Protection of Privacy Act, and some sections of the Criminal Law (Codification and Reform) Act;
  - fully align the provisions of the Electoral Act with the Constitution and implement them before the 2018 elections; and
  - commit to ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol.
29. While the new dispensation in Zimbabwe has heralded a reduction in the number of human rights defender arrests, the involvement of the military and appointment of former army personnel to key political positions was noted as disturbing. The legal profession was urged to continue using advocacy, public interest litigation and legal education as ways of reminding the state of its obligations to respect and protect human rights in the run-up to, during and after elections.



## *Recommendations to the legal profession*

30. Bar associations should explore strategic litigation of human rights violations arising from shrinking civic and democratic space. For example, the Nigerian Bar Association has observer status with the African Commission, but it does not seem to have fully used this.
31. Stakeholders should make clear the links between business and human rights because businesses are affected when human rights are violated. An approach that shows lawyers that their interests are at stake when the rule of law is assaulted would probably ignite their interest in human rights issues.
32. Lawyers should consider being part of regional and international networks, which may be of assistance or provide support when they are threatened in the course of carrying out their professional duties.
33. To engage with states on issues related to the protection of human rights in shrinking civic and democratic space, and to yield concrete results, stakeholders including the legal profession should be trained on human rights issues.
34. Relevant stakeholders should encourage the African Commission and the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to engage with Tanzania and states within the subregion.
35. Lawyers should consider working with labour unions, medical experts and social media influencers; that is, entities that do not traditionally work on human rights issues, as they are useful allies with whom the legal profession could collaborate to protect human rights when democracy and civic rights are threatened.

## **VIII. Recommendations to the African Commission**

36. Panellists and event attendees urged the African Commission to:
  - i. place the challenges faced by the legal profession in protecting human rights in the context of shrinking civic and democratic space on its agenda;
  - ii. formulate specific recommendations to states on their positive obligations to protect human rights, in line with their obligations under regional and international human rights law;
  - iii. pay particular attention to East Africa, where human rights violations, including threats to and attacks on the legal profession in the context of shrinking civic and democratic space, are heightened;
  - iv. encourage states to respect and protect fundamental freedoms, especially in relation to political participation;
  - v. advise states to safeguard judicial independence in legislation concerning the appointment, remuneration, tenure, discipline and composition of the judicial service commission;

- vi. call on states to adhere to the rule of law and separation of powers by desisting from interfering with the independence of the judiciary;
- vii. urge states to take positive steps to promote judicial independence, including by providing sufficient funding for the judiciary;
- viii. undertake country visits to highlight states' obligations to protect judicial independence and raise issues pertaining to the role of the legal profession to protect human rights in affected countries during promotional and special mechanism visits;
- ix. together with the UN Special Rapporteur on the independence of judges and lawyers, engage with states on judicial independence;
- x. create a special mandate on the independence of judges and lawyers in the region or locate the subject of the independence of lawyers and judges within the mandate of the Special Rapporteur on the situation of human rights defenders. A distinction was made between the UN's specialised treaty bodies and special mechanisms, which focus on single thematic issues, and the African Commission's special mechanisms, which are headed by commissioners who handle multiple thematic mandates; and
- xi. encourage states to respect their positive obligations under existing regional and human rights standards to protect the legal profession.





**International Bar Association**

4th Floor, 10 St Bride Street  
London EC4A 4AD, United Kingdom

Tel: +44 (0)20 7842 0090

Fax: +44 (0)20 7842 0091

Email: [member@int-bar.org](mailto:member@int-bar.org)

[www.ibanet.org](http://www.ibanet.org)