



REMARKS BY HON JUSTIN. B. N. MUTURI, EGH, THE ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA, DURING THE OPENING OF THE JUDICIAL YEAR OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

The Honourable Lady Justice Imani D. Aboud, President of the African Court on Human and Peoples' Rights

The Honourable Dr. Khatibu Malimi Kazungu, Deputy Permanent Secretary-Ministry of Constitutional and Legal Affairs representing Hon.

Amb. Pindi Hazara Chana, Minister of Constitutional and Legal Affairs of the United Republic of Tanzania

The Honourable Justice Joachim Tiganga, Presiding Judge of the High Court, Arusha representing Honourable Justice Professor Ibrahim H. Juma, Chief Justice of the United Republic of Tanzania

Honourable Chief Justices and Presidents of Constitutional Courts in virtual attendance

The Honourable Justice Khamis Ramadhan Shaaban, Chief Justice of Zanzibar

Honourable Ambassador Professor Kennedy Gastorn, Deputy Attorney General, representing Honourable Justice Dr. Eliezer Mbuki Feleshi, Attorney General of the United Republic of Tanzania

Honourable John V. K. Mongella, The Regional Commissioner of Arusha Excellencies: Ambassadors and High Commissioners accredited to the United Republic of Tanzania

The Honourable Justice Modibo Sacko, Vice President of the African Court

Honourable Judges of the African Court

Honourable Judges and Magistrates of National Jurisdictions here present and attending virtually

Excellencies Heads of Organs and Institutions of the African Union here present as well as those in virtual attendance

Honourable Presidents of International and Regional Courts here present and in virtual attendance Judge President of the East African Court of Justice

Honourable Members of Regional and International Court here present and in virtual attendance

Distinguished National Focal Points of the African Court from Members States of the African Union here present and those in virtual attendance

Distinguished Chairpersons and Members of National Human Rights Institutions of Members States of the African Union here present and those in virtual attendance

Honourable Registrars and Deputy Registrars here present and those in virtual attendance

Honourable Presidents of Bar Associations here present and those in virtual attendance

Distinguished Members of Bar Associations

Members of Civil Society

Distinguished Members of the Academia

Members of the Media & Press Fraternity

Ladies and Gentlemen

Good Morning!

I am deeply honoured to join you at this important event of the opening of the 2024 Judicial Year of the African Court on Human and People's Rights, which also marks the beginning of the 72nd Ordinary Session of the court.

I also wish to thank the Government and the people of Tanzania, and the African Court on Human and Peoples' Rights for the warm welcome accorded to me and my delegation since our arrival in Arusha. On a personal note, I am delighted to be here following the invitation by Honourable Lady Justice Imani Aboud during our meeting in Nairobi last July. At the time, the officials of the court were in Kenya on a sensitisation visit.

Excellencies, Distinguished Guests

Please allow me to convey the assurances of support from His Excellency William Ruto, President of the Republic of Kenya, in recognition of the significant role the African Court on Human and People's Rights plays in Africa. His Excellency the President would have wished to join you today, but he could not do so on account of national responsibilities.

I am singularly honoured to deliver this keynote address on his behalf as you launch the Opening of the Judicial Year of the African Court on Human and Peoples' Rights, 2024. I want to thank the organisers for inviting His Excellency William Ruto, President of the Republic of Kenya, to address this esteemed gathering of judges of the African Court, judges of other regional human rights courts from the African Union, Europe and Latin America.

I also recognise the presence of judges of domestic courts, representatives of the African Union and its organs, representatives of the Government of the United Republic of Tanzania, national human rights institutions, members of the diplomatic corps, the legal profession, civil society, academia, the media and development partners.

Excellencies, Ladies and Gentlemen

I am pleased to note that the theme of the court's activities this year is "*Enhancing the Justiciability of Economic, Social and Cultural Rights with an emphasis on the Right to Education*". It is also crucial that this theme is linked to the African Union for 2024: Educate an African Fit for the 21st Century: Building Resilient Education Systems for Increased Access to Inclusive, Life-Long, Quality and Relevant Learning in Africa. This is the first time that the African Union has adopted education as a theme.

African Union Member States codified their conviction of the essential role of human rights in the development and stability of the continent under the African Charter on Human and Peoples' Rights. Whereas it is important to pay particular attention to the right to development, this cannot be divorced from the universality of civil, political, social, economic and cultural rights. In fact, the fulfilment of economic and cultural rights

guarantees the enjoyment of civil and political rights. The court's theme this year is, therefore, a quest for the realisation of these aspirations.

The United Nations has cited Africa as the youngest continent globally. In Sub-Saharan Africa specifically, 70 per cent of the population is under the age of 30. It thus behoves the continent to make education accessible to all in an effort to produce the necessary human capital and workforce to power Africa's growth, development and transformation. For Africa to achieve this standard, education should not only be accessible to every child, but should also be relevant and qualitative. Schooling should also promote innovation and enable the graduates to harness our abundant resources in an effort to lift our continent out of poverty.

Excellencies, Distinguished Guests

As a continent, we recognise that education is fundamental for the realisation of other rights. Our founding fathers were so unwavering in their commitment to the significance of education that they enacted the right of every individual to access education in Article 17 of the African Charter for Human and Peoples' Rights. The African Charter on Rights and Welfare of the Child also provides for every child to have the right to education under Article 11.

It is for this reason, therefore, that the leadership of our continent came up with Agenda 2063 which seeks to deliver on seven aspirations that, when achieved, will make the continent the 'Africa We Want'. The first aspiration is for a *prosperous Africa based on inclusive growth and sustainable development*. It is our goal as a continent to develop our human and social capital through a well-educated, well-trained and well-skilled

workforce. For us to achieve this goal, we must revolutionise education curricula in Africa and make it skills-based, leveraging on science, technology and innovation.

Excellencies, Ladies and Gentlemen,

We must commend the leadership of the African Union for taking up the challenge of the United Nations Secretary-General to renew collective commitment and joint action to address the global education crisis. Consequently, the African Union has adopted an education theme for this year.

Africa's objectives and goals in education are reflected in the Continental Education Strategy (CESA). These include transforming the continent's education and training systems as we aim to achieve the Africa We Want goal. Importantly, these objectives were adopted by the African Union

Heads of State and Government during the 26th Ordinary Session in Addis Ababa on January 31, 2016.

However, as member States of the African Union, we are acutely aware that Africa faces more challenges than any other continent in achieving the Sustainable Development Goal on education. In an effort to reverse this state of affairs, Member States at the 2018 Pan-African High-level Conference on Education (PACE) urged the African Union and Unesco to prepare regular reports that track the progress African countries are making towards achieving CESA 16-25 and Sustainable Development Goal 4. This resolution was further reinforced by the 2018 Nairobi Declaration and call for Action on Education to leave no child behind.

I note with pleasure that many AU Member States now have a legal framework on education, with the right to schooling entrenched in national constitutions. This has been complemented by positive education

policies aimed at improving access to quality, equitable, accessible and affordable education.

Excellencies, Distinguished Guests

We must also appreciate that the mere existence of a right is not sufficient in itself. There is need to provide for remedies to address violations of the rights and to give them meaning. Justiciability is one of the key mechanisms for enforcement of a right.

Indeed, the African Commission on Human and Peoples' Rights has reaffirmed that economic, social and cultural rights are capable of judicial enforcement in *Social and Economic Rights Action Centre & the Centre for Economic and Social Rights v. Nigeria Communication*. The Commission held: "***Clearly, collective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. The African***

Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.”

Justiciability of the right to education will guarantee access to education for all as courts hold States accountable in their commitment to international, regional and domestic human rights obligations. The provision for the right to education in the African Charter on Human and Peoples' Rights, and the African Charter on Rights and Welfare of the Child, therefore, confer justiciability of the right to education. Where an individual's right to education has been violated or is likely to be violated, citizens of the continent now have the ability to claim for before the domestic and regional courts, or administrative tribunals.

Excellences, Ladies and Gentlemen,

I am firmly convinced that the legal profession has a crucial role to play in advancing more access to education by campaigning against discrimination and barriers to schooling. This can be achieved by defining and interpreting what the right to education entails, and helping States to solidify the obligations. Indeed, there is no better demonstrable indicator of the role of the legal sector in the promotion of the right to education than the pronouncements made by our regional administrative institutions.

Several examples will suffice to prove that continental institutions have been standing guard to ensure that the right to education is protected. The case of *Free Legal Assistance Group and Others vs Zaire* that was filed at the African Commission on Human and People's Rights. The authorities in Zaire closed universities and secondary schools in the early 1990s. A number of NGOs filed a complaint with the African Commission, alleging

gross mismanagement of public financial resources. The Commission concluded that the closure of universities and secondary schools for two years was a violation of the right to education in Article 17 of the African Charter on Human Rights and Peoples Rights.

In Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of girls in Tanzanian) v United Republic of Tanzania, the African Committee of Experts on the Rights and Welfare of the Child confirmed that the right to education is an inherent right of all children as recognised in Article 11 of the African Charter on the Rights and Welfare of the Child and other regional instruments. The Committee of Experts held that the expulsion of pregnant girls from school contradicts the protection in Article 11 of the African Children's Charter. The Committee of Experts also held that forced or mandatory pregnancy tests for schoolgirls is a precondition that does not foster the realisation of the right to education.

In Institute for Human Rights and Development in Africa and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v Kenya, the African Committee of Experts on the Rights and Welfare of the Child found a violation of the children’s right to education and pronounced itself thus: “The affected children had less access to educational facilities for the fulfilment of their right to free and compulsory primary education than comparable communities who did not comprise children of Nubian descent. There is *de facto* inequality in their access to available educational services and resources, and this can be attributed to their lack of confirmed status as nationals of the Republic of Kenya. Their communities have been provided with fewer schools and a disproportionately lower share of available resources in education. The *de facto* discriminatory system of resource distribution in education has resulted in their educational needs being systematically overlooked over an extended period of time. Their right to education has not been effectively

recognised and adequately provided for even in the context of the resources available for the fulfillment of this right.”

I will, however, hasten to add that I recognise that there is no jurisprudence on the right to education at the African Court on Human and People’s Rights, with jurisprudence being only on economic, social and cultural rights. However, I call upon the court to always rise to the occasion when called upon to safeguard and promote the right to education. The court is mandated to safeguard these fundamental rights and has a premier role in contributing towards the achievement of Goal 2 under the Agenda 2063.

Distinguished Guests, Ladies and Gentlemen,

In Kenya, the Government has given education priority and recognises that it is the ultimate means of achieving an equitable society under our Bottom Up Economic Transformation Agenda. Kenya, as a signatory to various

United Nations treaties and conventions, is thus bound to safeguard the right to education. Article 2(5) and (6) of our Constitution make the general rules of international law and any treaty or convention that Kenya has ratified part of the laws of Kenya.

Articles 2 and 20 of the Constitution, including the Bill of Rights, impose an obligation on all persons and State agencies to respect and abide by all the provisions of the Constitution. Article 53 (1) (b) of the Constitution states that every child has a right to free and compulsory basic education. Under Article 55 (a), the State is obligated to implement transformative measures, including affirmative action programmes, to ensure that the youth access relevant education and training. Minorities and marginalised groups have a right to be provided with special opportunities in education.

Article 43 of the Constitution provides for right to education as part of social and economic rights. It imposes on the State an obligation to ensure

citizens have access to social and economic rights in a progressively incremental manner.

Two weeks after assuming office, His Excellency William Ruto, President of the Republic of Kenya, appointed a Presidential Working Party on Education Reform. The team was tasked with addressing concerns raised by the citizenry on the implementation of a new Competency-Based Curriculum, and specifically on governance, financing, equity and inclusion at all levels of education. The Working Party was also required to propose mechanisms to better align Kenya's education system to the UN Sustainable Development Goals, the AU Agenda 2063, the Kenya Vision 2030 and the Constitution of Kenya.

In its report, the Working Party appreciated the main focus of Kenya's education and the essence of reform as follows:

“The main focus of Kenya’s education is in improving access, retention, equity, quality, relevance and overall efficiency of the education sector. The reforms in education aim to develop critical human capital to transform the country on a sustainable basis...”

As a nation, we appreciate that equitable education gives every child a chance to fulfill their potential and rise to the highest level of accomplishment irrespective of their social background. In the long run, we aspire to leverage on education as the foundation through which every citizen shall be guaranteed the opportunity to excel to the best of their abilities.

Excellencies, Ladies and Gentlemen,

Finally, I take this opportunity to thank the organisers for inviting His Excellency William Ruto, President of the Republic of Kenya, to share his

thoughts at this gathering. I wish the African Court continued success as it implements its mandate of protecting human rights in Africa.

It is now my honour and duty to declare the African Court on Human and Peoples' Rights Judicial Year 2024 open.

God bless Africa
God bless the African Union

I thank you.

12 February, 2024
Arusha, United Republic of Tanzania