



OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF
JUSTICE

KEYNOTE ADDRESS

BY

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ATTORNEY GENERAL

DURING

THE REGIONAL CONFERENCE FOR EAST AFRICA HUMAN
RIGHTS INSTITUTIONS ON SECURITY AND
DEMOCRATIZATION,

AT

HILTON HOTEL, NAIROBI
ON 7-9 DECEMBER, 2015

The Resident and Humanitarian Coordinator and UNDP Resident representative, Ms. Nardos Bekele-Thomas,

The Ambassador of the Royal Netherlands Embassy, Excellency Frans Makken,

Representative of the Chair of the International Coordinating Committee of National Human Rights Institutions, Ms. Vivian Nasaka Makunda

The Chairperson of the Network of African National Human Rights Institutions,

The Chairperson and Commissioners, KNCHR,

Chairpersons and representatives of NHRIs of Burundi, Rwanda, Tanzania, Sudan, South Sudan, South Africa and Uganda,

Chairperson of the National Commission on Human Right and Freedoms of Cameroon,

Distinguished participants,

Ladies and Gentlemen,

We are honoured to host you here and welcome you to Kenya.

This conference aligns itself with the aspirations of the continent. I note with pleasure that over the period of the next three days you will be focussing on various sub themes that converge into your major theme of promoting good governance in East Africa

The continent is focused on building solid democratic states that will provide a conducive environment for sustainable development and peace. The centrality of good governance in the achievement of these goals cannot be overemphasised. The challenges that we face as a

continent are numerous but not insurmountable. It is my conviction that we all have a consensus that we must move beyond challenges and instead work on defining solutions that will propel the continent to its rightful position in the community of nations.

The role of National Human Rights Institutions in this regard is well articulated in the UN Guiding principles on the establishment of National Human Rights Institutions. We are also cognizant of the important role that NHRIs play in engaging with governments to ensure that their actions conform to national and international human rights standards, providing democratic forums for empowering citizens, and ensuring that justice is done to the victims of human rights violations. In this regard, it should be appreciated that NHRIs, which conform to the Paris Principles, are also creatures of democratic states. In addition, the United Nations High Commission for Human Rights has stated that there are six "effectiveness factors" generally applicable to all national human rights institutions: independence, defined jurisdiction, and adequate powers, accessibility, cooperation, operational efficiency, and accountability.

Ladies and Gentlemen,

In the past decade, we have witnessed the creation of numerous national human rights institutions – national human rights commissions, ombudsman offices, or hybrids of both. National human rights institutions are uniquely structured. They have a statutory legal basis and particular legal responsibilities as part of the state apparatus. On the other hand, national human rights institutions are not NGOs. The main example that differentiates NGOs and NHRIs that is most pronounced is

with regard to the capacity to undertake investigation of complaints. National human rights institutions are neutral fact finders, not advocates for one side or another. A national human rights institution must therefore not only be, but be seen to be, independent of the NGO sector, just as it must be independent of the Government.

National human rights institutions are a bridge between civil society and Governments. To be effective they must gain a degree of trust from those working within government, as well as in civil society. It means understanding the constraints within which government operates and helping to design solutions to protect human rights within the constrained contexts. They must support governments put in place practical operational guidelines to support human rights targets, optimizing upon their understanding of government bureaucracy and operation.

This is a most strategic use of the unique character of national human rights institutions. By adopting an enduring militant approach with governments, some of our NHRIs fail to optimise upon an opportunity to sustainably entrench human rights principles in daily government operations and programmes.

These are some of factors that I hope you will interrogate and ponder upon as you reflect on how, in fulfilment of your respective mandates and in collaboration with states, regional organisations and civil society, you as National Human Rights Institutions can make your contribution towards promoting good governance in the region.

Ladies and Gentlemen,

The nexus between security and human rights continues to generate considerable debate in local, regional and international platforms.

Terrorism poses a major threat to our peace and security. In addition to the devastating human cost of terrorism, in terms of lives lost or permanently altered, terrorist acts aim to destabilize governments and undermine economic and social order. Addressing the threat of terrorism is made more difficult by the complex and constantly evolving nature of terrorist activity. Its motivations, financing, methods of attack and choice of target are constantly changing.

There has been a proliferation of security and counter-terrorism policy and legislation throughout the world. The measures have also not been restricted to the core security sector, but have also embarked on regulating the banking and financial services sector, immigration and registration of persons, data management, telephony and communication sectors, property sector, social structures and organizations.

International and regional human rights law recognizes that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, including terrorists. Consequently, in order to fulfil their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist

attacks and to prosecute those that are responsible for carrying out such acts. This has been the basis for the policy and legislative actions taken thus far.

Yet, as part of States' duty to protect individuals within their jurisdiction, all measures taken to combat terrorism must themselves also comply with States' obligations under international law, in particular international human rights, refugee and humanitarian law. This quagmire forms the current challenge in the practical implementation of counter terrorism efforts.

The main recommendation therefore lies in encouraging the initiation and sustained dialogue on the balance between rule of law, peace and security within the context of global terrorism and further elaborate a need for international, regional and in-country dialogues establishing new standards applicable in this nexus area.

I encourage you to lead this dialogue, and to steer the objective debate to resolve this challenge. Such dialogue may contribute to emergent jurisprudence that is supportive of the dual objectives of effective security, and protection of human rights.

Ladies and Gentlemen

The success of this meeting shall be measured by its outcomes and your implementation of the various commitments that you shall make here. Looking at the conference themes and the eminence of the different

panellists, I am sure that this conference will achieve its intended objectives.

I look forward to receiving a brief from the KNCHR on what we should learn from the outcome of your deliberations. With these words let me wish you all fruitful deliberations.

I thank you for your attention.