

Introduction and Editor's note

Welcome to the *Haki Journal of Human Rights (hakijhr)*. The journal is a collaborative effort between The Centre for Human Rights (CHRP) at the University of Nairobi and the Kenya National Commission on Human Rights (KNCHR). This journal seeks to engage issues in human rights including historical philosophical, controversial, racial, politico-ideological, economic, social, environmental and cultural. Current issues in Africa's human rights landscape are of particular interest as scholarship and interest in the region expands. The journal will endeavour to deliver to the reader new theories, new discoveries and an Afrocentric perspective on human rights.

Successive historical phases beginning with precolonial Africa, the colonial period, the struggle for independence and post independent Africa all provide a rich backdrop within which scholarly engagement and debate can inform progressive reasoning and articulation relevant to specialized and interdisciplinary focus on human rights. African history of the pre-colonial era markedly correspond to a near state of nature with the social structure of the San, Khokhoi, Pygmies and Maasai presenting the near prototype.¹ This parallels Hobbes' state of nature in which the essential natural human was to use their natural power as they will themselves for the preservation of their nature. This runs contrary to John Locke who believed that reasoning can determine what rights people would have in a state of nature. For Locke, life, liberty (freedom), and property are natural rights, which everyone should have just because they are human beings. Since the literature on precolonial Africa questioned Africa's ability to reason rationally, this limits the Lockean sense of human rights in Africa, thus, allowing the Hobbesian view to prevail. Would this imply there were no human rights in Africa before the coming of Europeans? Proponents of the concept of human rights in pre-colonial African societies are accused by their opponents of confusing human dignity with human rights. That the African concept of justice, unlike human rights, is rooted not in individual's claims against the state, but in the physical and psychic security of group membership. Of course, empirical evidence shows that Africans placed a premium on group as opposed to individual rights. However the fact that Europeans emphasized individual rights, is not enough reason to claim that Africans did not know or even

have a conception of individual rights at all. Thus, the Europeans in their attempt to suppress emphasis on individual rights tended to misconstrue human rights in Africa.

During Africa's colonial period, the idea of human rights was advanced as a non-universal evidence of which is seen in the treatment of Africa and her peoples and natural resources. There was wanton economic exploitation; degradation of natural resources; introduction of exploitative and inhuman capitalism; introduction of foreign diseases to livestock and humans, and cultural subjugation in which African culture was seen as inferior to European culture. Literature abound on how not only did colonialism make Africans dependent through the introduction of mono-cultural economies, but also dehumanized the African labour force and traders by forcing Africans into long labour hours on colonial plantations for inhumanly low wages. This was after colonialists forcibly displaced Africans from their lands. The direct impact of this includes but is not limited to environmental degradation, the spread of disease, economic instability, ethnic rivalries, and human rights violations, issues that have outlasted colonial rule.

To understand the post-independence African human rights regime, there is need to appreciate the nature and impact of colonialism on the continent and her peoples. To begin with, pre-colonial Africa was composed of several social-cultural units, which operated largely independently. The process of colonization collapsed these into the colonial scheme to suit the colonial objectives but serving no African cause. Thus, the colonial system created a new political order and institutions converging several ethno-political systems under one ruler-ship as subjects. Meanwhile, several ethno-political units continued to maintain their institutions and identities creating dual polity. This dual polity had a direct effect on the understanding and practice of human rights. These issues and others deserve clear understanding, exposition and analysis.

This journal is based on an examination of existing approaches to human rights from an Afrocentric perspective. To this end, the journal seeks to canvas and bring discourse on the African condition and experience to the fore since there is little doubt today that Africa's survival is seriously threatened by corrupt and inept political elites, unbridled militaries, ethnic rivalries and economic misery. The

protracted problems of the post-colonial African state have raised a fresh the meaning of state legitimacy ensuring that questions touching on the relationship between human rights and state sovereignty are brought to the fore. Evidently, there are new forms of human rights violations that need to be exposed. Arguments have been presented proposing that the problems of the post-colonial state seem to indicate that, the juridical statehood attained with the decolonization of the colonial state has in the past four decades proven inadequate. It is becoming increasingly apparent therefore that sovereignty and statehood are concepts that may have trapped Africa in a detrimental time capsule; they now seem to be straight-jackets with time bombs ready to explode. This has a direct impact on the meaning, nature and conception of human rights in Africa.²

It is our hope that this journal will raise all these historical, and ethico-political in the process spur further research and facilitate debate into ways of knowing, understanding and improving the perception of human rights in Africa. Towards this end, we welcome articles for consideration in future issues of this annual journal.

This premiere issue of *Haki Journal of Human Rights* begins with a statement from the Vice- Chancellor of the University of Nairobi Prof. Kiama. The Vice Chancellor observes that the journal is both timely and prestigious because it acknowledges to academia the importance of partnerships between the University of Nairobi, industry, practitioners and stakeholders. This, Prof. Kiama says will 'allow for visibility, mentorship and the setting of tone for contemporary debate through the present and future collection of papers from staff, students and all our partners.'

The Kenya National Commission on Human Rights (KNCHR) through the CEO, Dr. Bernard Mogesa notes that the journal 'will provide critical and strategic professionals such as; law enforcement personnel, judicial officials, civil society organizations, non-governmental organizations and human rights defenders with useful content that raises awareness in their organizations and government agencies, on human rights issues.' This will go a long way in promoting both the spirit and letter of entrenching the human rights principles and standards in society.

The article by Andreassen focuses on water. He observes that currently water as a basic right is limited to quality, quantity and access. His argument is that in the context of international human rights law, the right to water should be interpreted in a broader sense to include an adequate standard of living and the right to food, since this right is multidimensional and entails both consumption and production needs.

Reginald Oduor is about persons with disabilities in. He contends that for centuries, persons with disabilities (PWDs) around the world have been largely viewed as objects of charity requiring medical intervention. However, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides an opportunity for a shift towards the conception of PWDs as bearers of rights. Oduor's argument is that there is need to transition from what he calls the medical model to the social model when conceptualizing disability policies. The article in particular focuses on implication on research and policy for persons with disabilities in Kenya.

Antony Mugambi and Kathleen Anangwe's article is about sexual minorities specifically gay men in Africa. The two argue that the discord between law and practice emerges from a bias towards heteronormative behaviour steeped in cultural epistemologies. They argue that gay men have consistently experienced difficulty in expressing their right to love, and enjoy freedom to live visibly in places and spaces of their choice. This and the lack of overt institutional socio-structural support for gay rights has done little to alleviate their situation despite protective legal provisions entrenched in Kenya's constitution.

Finally, Francis Owakah while praising the progressive nature of the Constitution of Kenya 2010 argues that legal and social benefits have not been felt by all in society. The LGBTQI community remains a question concern since there exist laws which when applied clearly violate the rights of the members of this community. The Penal Code, Sections 162, 163 & 165 are such laws that are having a negative impact on the human rights of the LGBTQI community in Kenya. The article argues that this part of the penal code should be repealed to enable the LGBTQI community enjoy their human rights freely and in totality.

Francis E A Owakah,
Editor

¹Busia, Nana K.A., 1994. The Status of Human Rights in Pre-Colonial Africa: Implications for Contemporary Practices. In *Annual Journal of African History*. No 2 July pp. 43-67.

²Makau w. Mutua, *Conflicting Conceptions of Human Rights: Rethinking the African Post-Colonial State*, 89 Proceedings of the ASIL Ann.

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