

**OPENING REMARKS BY GUEST OF HONOUR,  
HON. OMAR O. MAKUNGU, CHIEF JUSTICE OF  
ZANZIBAR AT THE OPENING OF 4 th  
TRAINING WORKSHOP ON RESPONDING TO  
TERRORISM, INTERNATIONAL AND  
TRANSNATIONAL CRIMES, 22 TO 26  
SEPTEMBER, 2014 ZANZIBAR, TANZANIA**

**Your Lordship, the Hon. Chief Justice of South Sudan.**

**Hon. Justices of Supr. Court and Court of appeal**

**The Hon. President of EAMJA**

**Hon. Judges of The HC.**

**Mr. Ken Nyaundi, Chairperson, ICJ Kenya**

**Ms. Cheryl Frank, Division Head, ISS**

**Ms. Jemim Karir - ISS**

**Your Worships, the Registrars and Magistrates**

**Distinguished Guests**

**Ladies and Gentlemen**

**All protocol observed**

## **ASSALAM ALLEIKUM.**

First of all praised be to Allah, who gives us this opportunity to be together in this Training Workshop.

Secondly, it is my real pleasure to welcome you all today to Zanzibar on behalf of the Government of Zanzibar, and indeed, on my own behalf on the occasion of this opening of the 4th Training Workshop here in Zanzibar. I extend to you the warmest possible welcome, and I trust that this Workshop will be as fruitful and as enjoyable as its predecessors.

May I assure you that we Zanzibaris feel a very deep sense of gratitude and, if I may put this way, of propriety that this workshop should be held here in Zanzibar, often referred to as the Spice Island and one of the largest Island in our region.

On a light-note, I do hope that you shall find some time away from your hectic schedule and put aside your robes in order to sample the beauty and cuisine that Zanzibar has to offer.

### ***Distinguished Participants.***

I would like to thank the organisers of this Training Workshop for their right decision to propose Zanzibar as the venue for this workshop and a group of Judges and Magistrates of widely different ranks and from throughout the East African Community and SADC Region to meet here in Zanzibar. I would like to say how particularly pleased we are to have this first opportunity to host this kind of workshop. This is a golden opportunity for us. As you know that the opportunity never come twice but we hope that we will always have the chance of hosting another training workshop such as this. I am sure that I

Speak for us all and that we are all grateful to be given time on this beautiful Island to focus our thoughts together on the difficult and sensitive topics chosen for this training. May I respectfully suggest too that we are all as informal as possible in our discussions this week.

Many of us are friends already, I hope that by Friday we may all be friends; but from the outset we can be confident of the mutual respect that we hold for one another and brother and sister Judicial officers, whatever our judicial rank or title.

### ***Distinguished participants.***

I understand that this kind of training that are organised by our organizers have been crucial in imparting continuing education to judicial officers of our region not only on legal issues but also on other related social and economical issues. The theme for this workshop, is Responding to Terrorism, International and Transnational Crimes is very appropriate at this time for the development of our countries. Undoubtedly, the discussion is going to be very interesting and beneficial to us all taking into consideration of the world wide diversity of perception and legal position on these selected topics. The theme becomes more delicate as in the course of your discussions it might be hard for you to avoid touching people's ideologies and spiritual beliefs. Let us wait and see, and ultimately learn from your extensive expertise in different field of law.

### ***Distinguished participants.***

I would like to say a word or two on Responding to Terrorism. I cannot claim to be an expert in this area of fighting Terrorism. For this reason I do not intend to turn this into a

lecture on banishing this kind of crimes. I invite you to regard it as an opportunity for us all to exchange views on the subject.

I have examined the topics for the training as reflected in the timetable and the list of resource persons involved in the training and I am confident that the participants will come out with the sufficient knowledge on those topics.

### ***Distinguished participants.***

In the light of the increasingly international character of terrorism as evident by events such as the 1998 United States Embassy bombings in Kenya and Tanzania, the September 11 aircraft attacks in the United States, the Bali bombings in 2002 and 2005, the Australian embassy bombing in Jarkarta and the July 2005 London bombings, to name only a few significant ones, the issue of bringing terrorists to trial in general, and in particular the question of where and by which tribunal the perpetrators of acts of International terrorism should be tried, is likely to evoke so many passions and heated debates. I wondered what would happen when one sought to introuduce into the equation the equally controversial issue of citizenship or nationality, be that of the perpetrators or the victims of such indiscriminate acts of terrorism, which tends to transcend all borders.

I thought the best way to scale down this open field of discourse would be to approach the two concepts of terrorism and citizenship from the perspective of the relevance, or otherwise, of citizenship in resolving any desputes relating to the rival claims for jurisdiction to adjudicate crimes emanating or linked with terrorism, not only among competing domestic courts of various states but also between domestic courts and international tribunals.

Because of the complexity of the problem deriving from the citizenship of the perpetrators and/or victims of terrorism, in deciding on the appropriate forum of the perpetrators and their accomplices, I decided to pose a question here; terrorism: Is it a matter for the municipal courts or the international courts? The question above has gained added significance due to the growing importance of the distinction between domestic terrorism and international terrorism. For our present purposes, the main distinction is that whereas domestic terrorism occurs within the territorial jurisdiction of a particular state, e.g. Westgate attack in Nairobi, and therefore is usually a matter to be handled solely by the municipal courts of such a state, in the case of international terrorism the answer is not so simple. This is because not only may it take place both within and outside the territorial jurisdiction of the target state, as for example hijacking in mid air of a national airline or the taking of hostages in international waters, but it is generally characterized by an indiscriminate disregard for human life, including frequently that of the perpetrators themselves and irrespective of the nationality, age, sex, social, political or religious background of the victims, thus rendering the act a crime against humanity.

### ***Distinguished participants.***

The second issue linked with the exercise of jurisdiction by municipal courts to adjudicate on terrorists crime is the absence of uniformity in defining what conduct may constitute a terrorist crime. The tendency in recent times has been for states which have been the target of international terrorism to widen the net to trap potential offenders. The role of domestic courts in enforcing some of these measures becomes critical where, even though such domestic legislation and measures undertaken may be intended to tighten security in the national interest, they may

be tantamount to an abuse of power or violation of the human rights of innocent citizens and even suspects of terrorism. One such measure is that which enable a state to detain a suspect incommunicado for an indefinite or prolonged period of time without the possibility of judicial review. Countries like the U.S.A and Pakistan continue to hold suspect of various citizenship in indefinite detainment in violation of all international norms and even of their own national constitutional standards.

Despite all these domestic measures taken by individual states the countries in the forefront of the war against terrorism recognize the need for cooperation at the international level. Therefore we need very close cooperation to fight against these crimes.

As I said earlier, the question that arises, in the light of the problems that are likely to occur where states compete for jurisdiction to try perpetrators of terrorism and their accomplices in their domestic forum, is whether it would be more beneficial for states, in appropriate circumstances to surrender jurisdiction to an international tribunal, whether a permanent one such as ICC or an adhoc tribunal set up specifically for such purpose such as the Special Court for Sierra Leon.

In conclusion, I must say that based on present trends all the indications are that states, particularly those in the fore front of the fight against terrorism such U.S.A, Russia, Britain, Australia and Canada, to name only a few, will continue for the time being to depend on their municipal courts to try cases both domestic and international terrorism. But they would love to see those from Africa and developing countries are tried by **ICC** and not otherwise.

The world of humanity is possessed of two wings: the male and the female. So long as these two wings are not equivalent in strength the bird will not fly. Until woman kind reaches the same degree as man, until she enjoys the same arena of activity, extraordinary attainment of humanity will not be realised; humanity can not wing its way to heights of real attainment.

***Distinguished participants.***

Allow me to end my remarks by thanking all delegates for finding time to attend this very important training workshop. I want to thank **EAMJA, ISS, ICJ**, Kenya and others partners for their financial support which make this workshop possible.

I am also sincerely grateful to my staff at the Zanzibar Judiciary and various committees who have always worked tirelessly to ensure the success of this workshop. I apologize in advance on their behalf if anything goes wrong. It was not intended.

Similarly, I thank the Management of **LA GEMMA** Hotel for agreeing to host this training. I am confident that given the experience of the Hotel, participants will enjoy their stay and cherish the moment and hopefully long to visit us again.

After that short remarks, it is now my great honour to declare the 4th Training Workshop on Responding to Terrorism, International and transnational Crimes' Officially open.

**I THANK YOU ALL FOR YOUR KIND ATTENTION !**