

Bonavero  
Institute  
of Human  
Rights



## **“Law and Politics in Three Courts”**

### **Conference**

**Friday 8<sup>th</sup> November 2019**

**Sir Joseph Hotung Auditorium**

**Bonavero Institute of Human Rights, University of Oxford**

This workshop brings together scholars studying the courts in Kenya, the United Kingdom, and the International Criminal Court. The seminars will focus on three cases in which law and politics have sharply intersected, and will consider the ways in which the judges have sought to meet the challenges that have been raised.

From the International Criminal Court, the seminar will focus on the Decision of the ICC Appeals Chamber in Jordan’s appeal against the decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir (ICC-02/05-01/09 OA2) decided on 6 May 2019. The appeal is one of a series of ICC decisions concerning the immunity of sitting heads of state from arrest and surrender under the Rome Statute.

Turning to the Kenyan system, the 2017 presidential elections case (*Raila Odinga and Another v IEBC and Others*) will be analysed. This case offers one of the rare examples of a supreme court overturning the results of a presidential election and requiring fresh elections, within the narrow timeline required by the constitution. It raises questions about the role courts play in democracies, and particularly, their role in supervising elections.

Finally, from the UK system, *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22 will provide the focus for discussion. In *Privacy International* the Supreme Court was faced with a statutory ouster clause that appeared to prevent the court from judicially reviewing the decisions of a tribunal. In their judgments, the Supreme Court was compelled to consider the competing values of democracy and the rule of law, and the constitutional relationship of the courts and the legislature.

These three contrasting cases drawn from contrasting systems will allow us to examine and assess the strategies and devices used by judges to navigate politically loaded disputes. Not only will the seminars provide a close analysis of these important cases, we hope that they will also lead to broader reflection about the purpose and possibilities of courts within constitutional orders.

## Programme

- 10.15 Welcome
- 10.30-12.00: International Criminal Court
- Appeal against the decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir (ICC-02/05-01/09 OA2) 6 May 2019*
- Chair: Professor Catherine O'Regan
- Panelists: Professor Dapo Akande, Dr Evelyne Asaala and Professor Dire Tladi
- 12:00 – 13:00 Sandwich lunch in Bonavero
- 13.00-14.30: Kenyan Supreme Court
- Raila Odinga and Another v IEBC and Others, 2017*
- Chair: Dr Anne Makena
- Panelists: Professor John Ambani, Professor Nic Cheeseman and Professor Luis Franceschi
- 14.30 – 14.45 Tea/Coffee
- 14.45 -- 16.15 UK Supreme Court
- R (Privacy International) v Investigatory Powers Tribunal [2019] UKSC 22*
- Chair: Professor Nick Barber
- Panelists: Professor Richard Ekins, Professor Jeff King and Helen Mountfield QC