

# HARARE DECLARATION OF HUMAN RIGHTS

Between 19 and 22 April 1989 there was convened in Harare, Zimbabwe, a high level judicial colloquium on the Domestic Application of International Human Rights Norms. The colloquium followed an earlier meeting held in Bangalore, India in February 1988 at which the Bangalore Principles were formulated. The operative parts of the Principles are an annexure to this Statement.

As with the Bangalore colloquium, the meeting in Harare was administered by the Commonwealth Secretariat on behalf of the Convenor, the Hon Chief Justice E Dumbutshena, (Chief Justice of Zimbabwe) with the approval of the Government of Zimbabwe and with assistance from The Ford Foundation and Interights.

The colloquium was honoured by the attendance at the first session of His Excellency the Hon R G Mugabe, President of Zimbabwe, who opened the colloquium with a speech in which he reaffirmed the commitment of his Government to respect for human rights, the independence of the judiciary, the rule of law and a bill of rights which is justiciable in the courts.

The participants were:

Chief Justice E Dumbutshena, Zimbabwe (Convenor)  
Justice A Ademola, Nigeria  
Chief Justice E O Ayoola, The Gambia  
Justice P N Bhagawati, India  
Chief Justice B P Cullinan, Lesotho  
Justice A R Gubbay, Zimbabwe  
Justice M D Kirby, CMG, Australia  
Justice Rajsoomer Lallah, Mauritius  
Mr Recorder Anthony Lester, QC, United Kingdom  
Chief Justice E Livesey Luke, Botswana  
Chief Justice F L Makuta, Malawi  
Chief Justice Cecil H E Miller, Kenya  
Chief Justice F L Nyalali, Tanzania  
Justice E W Sansole, Zimbabwe  
Chief Justice E A Seaton, Seychelles  
Chief Justice A M Silungwe, Zambia  
Justice J N K Taylor, Ghana  
Justice L E Unyolo, Malawi

The participants examined a number of papers which were presented for their consideration. These included papers which reviewed the development of International Human Rights Norms particularly in the years since 1945; a paper which examined the domestic application of the African Charter on Human and Peoples' Rights; a paper on personal liberty and reasons of State and a paper on ways in which judges, in domestic jurisdiction, may properly take into account in their daily work the norms of human rights contained in international instruments whether universal or regional.

The participants paid especially close attention to the provisions of the African Charter on Human and Peoples' Rights. That Charter was adopted as a regional treaty by the Organisation of African Unity in 1981 and entered into force on 21 October 1986. At the time of the Harare meeting, 35 African countries had ratified or acceded to the Charter.

Various opinions were expressed by the participants concerning ways of strengthening the implementation of the Charter including:

- the interpretation of the provisions in the light of the jurisprudence which has developed on similar provisions in other international and regional statements of human rights;
- the clarification and strict interpretation of some of the provisions which are derogating from important human rights; and
- enlargement, at an appropriate time, of the machinery provided by the Charter for the consideration of complaints and the provision of effective remedies in cases of violation.

In particular the participants noted that:

- The opening recital of the Charter of the United Nations contains a ringing re-affirmation of 'faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women';
- The Charter of the Organisation of African Unity includes reference to "freedom, equality, justice and legitimate aspirations of the African peoples";
- The Preamble to the African Charter of Human and Peoples' Rights proclaims that fundamental human rights stem from the attributes of human beings and that this justifies their international protection;
- The freedom movement in Africa has had as a central tenet the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence which dignity and independence can only be realised fully if the internationally recognised human rights norms are observed and fully protected;
- There is a close inter-linkage between civil and political rights and economic and social rights; neither category of human rights can be fully realised without the enjoyment of the other. Indeed, as President Mugabe said at the opening of the colloquium: "The denial of human rights and fundamental freedoms is not only an individual tragedy, but also creates conditions of social and political unrest, sowing seeds of violence and conflict within and between societies and nations."

The participants were encouraged in their work by the declaration of President Mugabe that the nations of Africa, having freed themselves of colonial rule and the derogations from respect for human rights involved in such rule, have a particular duty to observe and respect the fundamental human rights for which they have sacrificed so much to win, including the struggle against racial discrimination in all its aspects. The ultimate achievement of

the freedom struggle in Africa will not be complete until the attainment throughout the continent of proper respect for the human rights of everyone - as an example and inspiration to humankind everywhere. In the words of Nelson Mandela, to which President Mugabe drew attention, "Your freedom and mine cannot be separated".

The participants agreed as follows:

- 1 Fundamental human rights and freedoms are inherent in humankind. In some cases, they are expressed in the constitutions, legislation and principles of common law and customary law of each country. They are also expressed in customary international law, international instruments on human rights and in the developing international jurisprudence on human rights.
- 2 The coming into force of the African Charter on Human and Peoples' Rights is a step in the ever widening effort of humanity to promote and protect fundamental human rights declared both in universal and regional instruments. The gross violations of human rights and fundamental freedoms which have occurred around the world in living memory (and which still occur) provide the impetus in a world of diminishing distances and growing interdependence, for such effort to provide effectively for their promotion and protection.
- 3 But fine statements in domestic laws or international and regional instruments are not enough. Rather it is essential to develop a culture of respect for internationally stated human rights norms which sees these norms applied in the domestic laws of all nations and given full effect. They must not be seen as alien to domestic law in national courts. It is in this context that the Principles on the Domestic Application of International Human Rights Norms stated in Bangalore in February 1988 are warmly endorsed by the participants. In particular, they reaffirmed that, subject always to any clearly applicable domestic law to the contrary, it is within the proper nature of the judicial process for national courts to have regard to international human rights norms - whether or not incorporated into domestic law and whether or not a country is party to a particular convention where it is declaratory of customary international law - for the purpose of resolving ambiguity or uncertainty in national constitutions and legislation or filling gaps in the common law. The participants noted many recent examples in countries of the Commonwealth where this had been done by courts of the highest authority - including in Australia, India, Mauritius, the United Kingdom and Zimbabwe.
- 4 There is a particular need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms - stated in international instruments and otherwise. In this respect the participants endorsed the spirit of Article 25 of the African Charter. Under that Article, States Parties to the Charter have the duty to promote and ensure through teaching, education and publication, respect for the rights and freedoms (and corresponding duties) expressed in the Charter. The participants looked forward to the Commission established by the African Charter developing its work of promoting an awareness of human rights. The work being done in this regard by the publication of the Commonwealth Law Bulletin, the Law Reports of the Commonwealth and

the bulletin of Interights (The International Centre for the Legal Protection of Human Rights) was especially welcomed. But to facilitate the domestic application of international human rights norms more needed to be done. So much was recognised in the Principles stated after the Bangalore Colloquium which called for new initiatives in legal education, provision of material to libraries and better dissemination of information about developments in this field to judges, lawyers and law enforcement officers in particular. There is also a role for non-government organisations in these as in other regards, including the development of public interest litigation.

- 5 As a practical measure to carrying forward the objectives of the Principles stated at Bangalore, the participants requested that the Legal Division of the Commonwealth Secretariat arrange for a handbook for judges and lawyers in all parts of the Commonwealth to be produced, containing at least the following:
  - the basic texts of the most relevant international and regional human rights instruments;
  - a table for ease of reference to and comparison of applicable provisions in each instrument; and
  - up to date references to the jurisprudence of international and national courts relevant to the meaning of the provisions in such instruments.
- 6 If the judges and lawyers in Africa - and indeed of the Commonwealth and of the wider world - have ready access to reference material of this kind, opportunities will be enhanced for the principles of international human rights norms to be utilised in proper ways by judges and lawyers performing their daily work. In this way, the long journey to universal respect of basic human rights will be advanced. Judges and lawyers have a duty to familiarise themselves with the growing international jurisprudence of human rights. So far as they may lawfully do so, they have a duty to reflect the basic norms of human rights in the performance of their duties.

In this way the noble words of international instruments will be translated into legal reality for the benefit of the people we serve but also ultimately for that of people in every land.

Harare  
Zimbabwe

22 April 1989