

INAUGURAL ADDRESS

by His Excellency The President Cde Robert Gabriel Mugabe

Their Lordships Chief Justices, Honourable Ministers, Your Excellencies, Members of the Diplomatic Corps, Ladies and Gentlemen, Comrades and Friends:

It is a great pleasure for me, on behalf of my Government and the people of Zimbabwe, to welcome you all here to the second Judicial Colloquium on the Domestic Application of International Human Rights Norms.

I have heard from the Honourable Chief Justice, Judge Enock Dumbutshena, how much success attended the first Colloquium at Bangalore, India in February 1988. That meeting, I am informed, was inspired and convened by former Chief Justice Bhagwati of India. It led to the publication by the Commonwealth Secretariat of a comprehensive report on the very subject with which this present Colloquium is concerned, that of human rights.

The report contains two issues of special interest and value: the first is an enumeration of what are called "The Bangalore Principles" - a ten-point statement on the Interaction of International and Domestic Human Rights Norms. The second is a series of Annexures bringing together, in one conveniently accessible publication, basic documents such as the Universal Declarations, including the African Charter on Human and Peoples' Rights. The Universal Declaration of Human Rights is, as we know, the basic International pronouncement of the inalienable and inviolable rights of all members of the human family and it is important that its principles and provisions are as widely publicised as possible. It is, therefore, my sincere wish that this your Second Judicial Colloquium will be as fruitful and as much of a success as the first one.

The importance of human rights, both at the domestic level and internationally, can never be over-emphasised. The Declaration of human rights correctly asserts that all human beings are born free and equal in dignity and rights and that everyone has the right to life, liberty and security. It also declares that no one shall be held in slavery or solitude or be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Human rights and fundamental freedoms allow us fully to develop and use our human qualities, intelligence, talents and conscience to satisfy our spiritual and other needs. It follows, therefore, that the denial of Human Rights and Fundamental Freedoms is not only an individual and personal tragedy, but also creates conditions of social and political unrest, sowing seeds of violence and conflict within and between societies and nations.

My country's history during the long years of colonial oppression bears strong testimony to the truth of this statement. During the years of white rule in Zimbabwe, abuses against the black majority which included arbitrary arrests, detentions without trial, torture, unwarranted searches, seizures and summary killings, were the order of the day. I am happy to report that all this is now behind us and that since Independence in 1980, Human Rights conditions for the majority of Zimbabweans have greatly improved.

Prior to Independence in Zimbabwe, there existed what was known as a non-justiciable Bill of Rights. It served no useful purpose and was certainly no protection for those of us who struggled for the attainment of basic human rights for all the people of Zimbabwe.

Since Independence, however, we have had a justiciable bill of rights as part and parcel of our constitutional order. Any one who contends that his fundamental human rights are being infringed may approach even the highest courts of the country for relief. The importance attached to this provision of our constitution is demonstrated by the fact that the Supreme Court, which in all other cases is a Court of Appeal, has original jurisdiction in respect of any alleged infringements of the Bill of Rights.

Constitutionally, therefore, Zimbabwe has adopted the basic framework necessary for the protection of human rights.

Politically, I believe it is the duty of government to create an environment of peace, because it goes without saying that human rights can more easily flourish in times of peace, while in times of conflict they come under pressure.

In this connection, we in Zimbabwe are able to point with pride at two major steps we have taken in order to create that environment of peace. The first was the policy of National Reconciliation, which I enunciated in my first major public address on the attainment of Independence. That policy was a cardinal factor in the successful transition from war to peace in those potentially explosive few months at the beginning of 1980. The second was the signing by myself as leader of ZANU (PF) and Cde Joshua Nkomo as leader of PF (ZAPU) on 22nd December 1987, of a Unity Accord which brought peace to the southern and western parts of Zimbabwe.

The protection of basic human rights is the duty and responsibility, both of the executive and the legislature on the one hand, and of the judiciary on the other. We have an independent judiciary and as recent events have indicated, we are not afraid to bring whatever matters affect us in the legal sphere into the open before our judges. My Government is firmly committed to the rule of law and to the maintenance of a justiciable Bill of Rights. It respects judicial decisions and avoids confrontation with the judiciary.

It cannot be denied that the difficult task of interpreting constitutional guarantees of fundamental rights and freedoms, of giving life to them and of determining whether a statute or other state action breaches those rights, is entrusted, in democratic countries in the Commonwealth and elsewhere, to an independent judiciary. I am proud to report in this respect that our judiciary has not failed in its task. A significant example of this was the 1987 Supreme Court decision in the case of Ncube, Tshuma and Ndlovu v State. In that case, which concerned the issue of whether the imposition of a sentence of whipping (in this case six strokes of the cane) upon a male adult offender was inhuman or degrading punishment in contravention of Section 15(1) of the declaration of rights contained in the constitution, the Supreme Court held, and I quote "The whipping each appellant was ordered to receive breaches Section 15(1) of Zimbabwe as constituting a punishment which in its very nature is both inhuman and degrading ...". This decision rectified and changed a situation that had obtained in our system of justice for many years.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985 adopted twenty basic principles on the Independence of the judiciary and I would urge all members of the judiciary to uphold, respect and comply with those principles that impose a duty on, or require a certain code of conduct from them. Examples are the duty to decide all matters before them impartially and to ensure that judicial proceedings are conducted fairly and the rights of the parties respected.

Mr Chairman, the universality of human rights is the prime reason for your being gathered here and, as stated already, it is also a principle which Zimbabwe cherishes. One of your major concerns is to share experiences, because the challenges to human rights come in different forms in different parts of the world.

There is also another context in which the universality of human rights is important. Abraham Lincoln spoke of his wish "That all men everywhere could be free". Nelson Mandela said "Your freedom and mine cannot be separated". Freedom is indeed indivisible, and this is why we in Zimbabwe have upheld the efforts of those who have fought for the freedom of Namibia, and of those who are struggling to bring an end to the negation of fundamental rights which is the apartheid system in South Africa. For us in Southern Africa the universality of human rights remains limited as long as those rights are denied to our brothers and sisters in South Africa. Indeed, we in Zimbabwe, and the sub-region generally, are painfully experiencing very serious limitations to our human rights because of the gross violation of those rights caused by the Pretoria regime's destabilization policies and actions.

The Commonwealth has a special responsibility in respect of the situation in South Africa. Not only is that country a former member of the Commonwealth and a former British colony, the Commonwealth itself has since at least the early 1950s recognised the fact that the political problems of this region are inextricably bound up with the situation in South Africa.

We must all agree therefore on the imperative need for the immediate elimination of the inhumanity that is apartheid and for its replacement politically by a fully democratic order in that country.

There are those who think and say that apartheid is on its way out and reform is now under way on many fronts in South Africa. This optimism is unfortunately quite unwarranted. No meaningful reform of apartheid is to be observed. Indeed, quite the contrary. In any event, how does one go about "reforming" a system whose underlying philosophy, namely white racial superiority and white domination of the black majority, is the negation of all humane and civilised values?

Apartheid, it has repeatedly been stated, should be eradicated, not reformed. Fascism cannot be reformed. It can only, and should be, uprooted. Any wishful thinking on this score is therefore not only futile but positively harmful as it raises false hopes and deflects attention and energies away from the struggle against apartheid to the purely tactical and cosmetic "reforms" the Botha regime has been so assiduously purveying.

It is the duty of those who lead always to strive to translate ideals into practice. In Bangalore, Mr Justice Bhagwati spoke of the need to convert the rhetoric of Human Rights into reality. I hope that during the next few days you will be able to take that process measurably further forward.

I commend you to your task and wish you success in your deliberations.

Finally, may you all have a pleasant and productive stay in Zimbabwe.

Thank You.