

ANNEXES

BANGALORE PRINCIPLES

Chairman's Concluding Statement

Between 24 and 26 February 1988 there was convened in Bangalore, India, a high level judicial colloquium on the domestic application of international human rights norms. The colloquium was administered by the Commonwealth Secretariat on behalf of the Convenor, the Hon Justice P N Bhagwati (former Chief Justice of India), with the approval of the Government of India, and with assistance from the Government of the State of Karnataka, India.

The participants were:

Australia	Justice Michael D Kirby, AC, CMG
India	Justice P N Bhagwati - Convenor Justice M P Chandrakantaraj Urs
Malaysia	Tun Mohamed Salleh Bin Abas
Mauritius	Justice Rajsoomer Lallah
Pakistan	Chief Justice Muhammad Haleem
Papua New Guinea	Deputy Chief Justice Mari Kapi
Sri Lanka	Justice P Ramanathan
United Kingdom	Recorder Anthony Lester, QC
United States of America	Judge Ruth Bader Ginsburg
Zimbabwe	Chief Justice E Dumbutshena

There was a comprehensive exchange of views and full discussion of expert papers. The Convenor summarised the discussions in the following paragraphs:

1. Fundamental human rights and freedoms are inherent in all humankind and find expression in constitutions and legal systems throughout the world and in the international human rights instruments.
2. These international human rights instruments provide important guidance in cases concerning fundamental human rights and freedoms.
3. There is an impressive body of jurisprudence, both international and national, concerning the interpretation of particular human rights and freedoms and their application. This body of jurisprudence is of practical relevance and value to judges and lawyers generally.
4. In most countries whose legal systems are based upon the common law, international conventions are not directly enforceable in national courts unless their provisions have been incorporated by legislation into domestic law. However, there is a growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where the domestic law - whether constitutional, statute or common law - is uncertain or incomplete.
5. This tendency is entirely welcome because it respects the universality of fundamental human rights and freedoms and the vital role of an independent judiciary in reconciling the competing claims of individuals and groups of persons with the general interests of the community.
6. While it is desirable for the norms contained in the international human rights instruments to be still more widely recognised and applied by national courts, this process must take fully into account local laws, traditions, circumstances and needs.
7. It is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes - whether or not they have been incorporated into domestic law - for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law.

8. However, where national law is clear and inconsistent with the international obligations of the state concerned, in common law countries the national court is obliged to give effect to national law. In such cases the court should draw such inconsistency to the attention of the appropriate authorities since the supremacy of national law in no way mitigates a breach of an international legal obligation which is undertaken by a country.

9. It is essential to redress a situation where, by reason of traditional legal training which has tended to ignore the international dimension, judges and practising lawyers are often unaware of the remarkable and comprehensive developments of statements of international human rights norms. For the practical implementation of these views it is desirable to make provision for appropriate courses in universities and colleges, and for lawyers and law enforcement officials; provision in libraries of relevant materials; promotion of expert advisory bodies knowledgeable about developments in this field; better dissemination of information to judges, lawyers and law enforcement officials; and meetings for exchanges of relevant information and experience.

10. These views are expressed in recognition of the fact that judges and lawyers have a special contribution to make in administration of justice in fostering universal respect for fundamental human rights and freedoms.

HARARE DECLARATION OF HUMAN RIGHTS

1 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.

2 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 International Centre for the Legal Protection of Human Rights).

3 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.

4 The participants were:

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

5 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.

6 The participants paid especially close attention to the provision 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.

7 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;
- 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.

8 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 on 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."

9 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 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."

10 The participants agreed as follows:

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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 *Interights Bulletin* 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.
- (e) 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 a 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.
- (f) 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

THE BANJUL AFFIRMATION

1 A high level judicial colloquium on the domestic application of international human rights norms was held in Banjul, The Gambia, from 7 - 9 November 1990. It was the third in a series of judicial colloquia begun in Bangalore, India in February 1988, followed in Harare, Zimbabwe in April 1989. The Bangalore Principles formulated at the first colloquium, and the Harare Declaration of Human Rights produced at the second are annexed to this Statement.

2 The Banjul colloquium was administered jointly by the Commonwealth Secretariat and Interights (the International Centre for the Legal Protection of Human Rights) on behalf of the Convenor, the Hon E O Ayoola, Chief Justice of The Gambia, with the approval of the Government of The Gambia and with assistance from the Ford Foundation, the Danish International Development Agency and the British Overseas Development Agency.

3 Following an opening address by Chief Justice Ayoola the colloquium was formally opened on behalf of His Excellency Alhaji Sir Dawda Kairaba Jawara, President of The Gambia, by the Hon Hassan B Jallow, Attorney-General and Minister of Justice.

4 The participants were:

Australia	Justice Michael D Kirby, AC, CMG
The Gambia	Chief Justice E O Ayoola - Convenor Justice P D Anin Justice M E Agidee
Ghana	Acting Chief Justice N Y B Adade Justice G L Lamptey Justice M Abakah
India	Justice Y V Chandrachud
Nigeria	Justice Kayode Eso, CON Justice P Nnaemeka-Agu Justice A B Wali, OFR Justice S U Onu Justice A O Ejiwunmi Professor U O Umozurike
United Kingdom	Recorder Anthony Lester, QC
Zimbabwe	Justice Enoch Dumbutshena

Representatives of the African Commission on Human and Peoples' Rights, the Commonwealth Secretariat, the Ford Foundation, Interights and the International Commission of Jurists were also present.

5 There was a searching exchange of views on the wide range of subjects covered by the various papers. There were papers on the development of international human rights norms, including a survey of the practice and jurisprudence of international and regional supervisory organs; the domestic application of international human rights norms in Nigeria; and the African Charter on Human and Peoples' Rights and the work of the African Commission. In addition there was an account from the International Commission of Jurists on international developments on human rights, as well as papers on the role of the judge in advancing human rights presenting the viewpoints and experience of several Commonwealth jurisdictions. Interights presented a study on personal liberty and reasons of state which examined the relationship between international human rights norms and domestic law; and there was an essay which considered fundamental rights in their economic, social and cultural context in India.

6 The participants welcomed the opportunity to address the issues in a practical way and to carry forward the Bangalore Principles and the Harare Declaration . Both documents stood at the core of the important judicial endeavour inaugurated in Bangalore and were kept clearly in mind throughout the discussions.

7 The Banjul colloquium was seen as having the particular objective of affording Commonwealth judges in the West Africa region the opportunity to study the domestic application of international human rights norms to constitutional and administrative law. It was important to do this on the basis of a comparative study and a free exchange of views in seeking practical ways to realise the ideals of the international human rights standards. The participants were concerned to develop for Commonwealth Africa a system of justice having common application in every country based on their common heritage of democracy and the rule of law. The participants were also concerned to include non-Commonwealth countries in Africa in the process. They recognised the pressing need to include human rights in legal education, in formal professional teaching and other training activities and to have wide and popular dissemination of information about basic human rights and freedoms.

8 Accepting in their entirety the Bangalore Principles and the Harare Declaration , the participants acknowledged that fundamental human rights and freedoms are inherent in humankind. They were convinced that any truly enlightened social order must be based firmly on respect for individual human rights and freedoms, peoples' rights and economic and social equity. They pledged their commitment and dedication to these goals and principles and decided to issue this Statement of Affirmation of the Bangalore Principles and the Harare Declaration on Human Rights .

9 They called attention to the need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms as stated in international instruments and national constitutions and laws. For the purposes of Articles 25 and 26 of the African Charter on Human and Peoples' Rights the participants suggested that the African Commission on Human Rights should consider establishing local associations in each member state to facilitate the process of education and training and dissemination of human rights information.

10 The importance of complete judicial independence was underlined, as well as the complete independence of the legal profession. The colloquium also emphasised that it is essential for there to be real and effective access to the ordinary courts for the determination of criminal charges and civil rights and obligations by due process of law. These safeguards are necessary if the rule of the law is to be meaningful, and if the law is to be of practical value to ordinary men and women.

11 The participants urged closer links and cooperation across national frontiers by the judiciary of Commonwealth Africa on the interpretation and application of human rights law. In particular they called for effective arrangements for the publication and exchange of judgments, articles and other information and where appropriate the use of special expertise. They believed also that these links and cooperation should include non-Commonwealth African jurisdictions, many of which are also concerned with upholding and promoting human rights and with attaining the objectives of the African Charter.

12 Adequate resources of way of library stocks and other material should urgently be made available for all judges for their information and assistance and by way of dissemination and teaching of international human rights law. They noted in this respect and fully endorsed the proposals made in the Harare Declaration for the preparation and dissemination of human rights material.

13 The participants recognised the need to adopt a generous approach to the matter of legal standing in public law cases, while ensuring that the courts are not overwhelmed with frivolous or hopeless cases. They also considered that the courts would be assisted by well focussed *amicus curiae* submissions from independent non-governmental organisations, such as Interights, in novel and important cases where international comparative law and practice might be relevant.

14 National laws should enable non-governmental organisations and expert advocates (whether local or otherwise) to provide specialist legal advice, assistance and representation in important cases of public interest.

15 It was agreed that it is essential for the exceptions and derogations contained in the African Charter to be strictly construed, including an interpretation of “law” which rejects arbitrary or unreasonable “laws” in Chapter 1 of the Charter. Otherwise these exceptions and derogations would destroy the very principles guaranteeing fundamental human rights and freedoms.

16 They expressed their belief that the time may have come for an independent African Court on Human Rights, whose decisions would be binding.

Banjul

The Gambia

9 November 1990

ABUJA CONFIRMATION of the Domestic Application of Human Rights Norms

1 Between 9 and 12 December 1991 there was convened in Abuja, Nigeria, a high level judicial colloquium on the domestic application of international human rights norms. The colloquium followed earlier meetings held in Bangalore, India in February 1988, Harare, Zimbabwe in April 1989 and Banjul, The Gambia in November 1990. The operative parts of the principles accepted in Bangalore (the Bangalore Principles), affirmed and reaffirmed in Harare and Banjul are annexed to this Statement. Once again, they were confirmed by all the participants in Abuja.

2 The Abuja colloquium was, alike with the Bangalore, Harare and Banjul meetings, administered jointly by the Commonwealth Secretariat and Interights (the International Centre for the Legal Protection of Human Rights) on behalf of the Convenor, the Hon Justice Mohammed Bello, CON, Chief Justice of Nigeria, with the approval of the Government of Nigeria and with assistance from the Ford Foundation.

3 Following opening addresses by Chief Justice Bello and on behalf of Prince the Hon Bola Ajibola, SAN, KBE, and an address of welcome by the Hon the Minister of the Federal Capital Territory, Abuja, Major-General Muhammadu Gardo Nasko, FSS, PSC, MNI, the colloquium was opened in the name of the Vice President of the Federal Republic of Nigeria, His Excellency Admiral Augustus Akhomu (rtd), PSC, FSS, MNI. A message of greeting and encouragement was read from the Commonwealth Secretary-General, Chief Emeka Anyaoku, CON.

4 The participants in the Abuja colloquium were:

Australia Justice Michael D Kirby, AC, CMG

Brazil Justice Celio Borja

European Court of Human Rights

President Rolv Ryssdal

The Gambia Chief Justice E O Ayoola

Ghana Chief Justice P E Archer

India Justice P N Bhagwati

Nigeria Chief Justice Mohammed Bello, CON - Convenor

Justice A G Karibi-Whyte, Justice of the Supreme Court

Justice P Nnaemeka-Agu, Justice of the Supreme Court

Justice Aloma Mukhtar, Justice of the Court of Appeal

Justice Niki Tobi, Justice of the Court of Appeal

Chief Judge M B Belgore, Federal High Court

Acting Chief Judge E A Ojuolape, Ondo State

Chief Judge M U Usoro, Akwa-Ibom State

Chief Judge L A Ayorinde, Lagos State

Chief Judge T A Oyeyipo, Kwara State

Chief Judge K M Kolo, Borno State

Chief Judge G I Uloko, Plateau State

Chief Judge I B Delano, Ogun State

Chief Judge S U Minjibir, Kano State

Chief Judge S E J Ecoma, Cross-River State
 Judge R H Cudjoe, High Court of Justice, Kaduna State
 Chief Judge A Idoko, Benue State
 Acting Chief Judge T A A Ayorinde, Oyo State
 Judge A N Maidoh, Delta State
 Chief Judge F I E Ukattah, Abia State
 Judge M O Nweje, Anambra State
 Chief Judge S S Darazo, Bauchi State
 Judge A C Orah, High Court of Justice, Enugu State
 Chief Judge A O Aparu, Osun State
 Acting Chief Judge Tijjani Abubakar, Jigawa State
 Acting Chief Judge Mahmud Mohammed, Taraba State
 Chief Judge Ibrahim Umar, Kebbi State
 Chief Judge M D Saleh, Federal Capital Territory
 Abdulkadir Orire, Grand Kadi of Kwara State
 President Y Yakubu, Customary Court of Appeal, Plateau State
 Judge R N Ukeje, Federal High Court, Jos
 Judge A O Ige, High Court of Justice, Oyo
 Judge E E Arikpo, High Court of Justice, Cross-River State
 Justice Kayode Eso, CON, Supreme Court (rtd)
 Professor U O Umozurike, Member, African Commission on Human and Peoples' Rights

Sierra Leone Chief Justice S M F Kutubu

United Kingdom Recorder Anthony Lester, QC

United States of America

Judge Nathaniel R Jones

Zimbabwe Justice Enoch Dumbutshena

5 The participants had before them a number of papers which were presented for their study and critical attention. These papers examined the developing body of international human rights jurisprudence, with particular emphasis on the application of the International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, the European Convention on Human Rights, and the African Charter on Human and Peoples' Rights. They noted that the principles contained in these instruments enshrine general principles of customary international law of universal application.

6 The participants also heard oral presentations on the operation of the African Charter on Human and Peoples' Rights and the European Convention on Human Rights. The review of the operation of the Charter was led by Professor U O Umozurike (Nigeria), immediate past Chairman of the African Commission on Human and Peoples' Rights. The review of the jurisprudence which has been developed by and under the European Court of Human Rights was led by the Court's President, the Hon Justice Rolv Ryssdal. This was the first occasion in the series of judicial colloquia that the participants have had the benefit of the participation of a member of the European Court of Human Rights, the jurisprudential influence of which now extends far beyond Europe. Also participating for the first time in the Abuja colloquium was a Judge from the civil law tradition, The Hon Justice Celio Borja (Brazil).

7 The remaining sessions were spent discussing papers presented as well as contributions made by judges from Australia, The Gambia, India, Nigeria, Sierra Leone, the United Kingdom, the United States of America and Zimbabwe.

The international and national contexts

8 The participants were keenly aware of the remarkable international and national contexts in which their deliberations were taking place, affecting the international community, the Commonwealth of Nations, Africa and specifically the host country, Nigeria.

9 In the world community the processes of globalisation, stimulated by technology, continues apace. But it is now taking place in a rapidly changing international political context, reflected most visibly in the end of the Cold War, the rapid political and legal changes in Central and Eastern Europe, and the Soviet Union, accompanied by the decline of totalitarianism, and moves to strengthen the United Nations Organisation and its commitment to the furtherance of human rights protection.

10 In the Commonwealth of Nations, the gradual dismantling of the apartheid regime in South Africa and the inevitable moves towards freedom and democracy in that country, and popular pressures across Africa, have stimulated renewed attention by Commonwealth Heads of Government to the issues of human rights in the Commonwealth more generally. This was reflected in the closing statement of the Commonwealth Heads of Government Meeting in Harare in October 1991, with its particular emphasis on democracy, human rights, accountable government, independence of the judiciary and the rule of law.

11 In Africa, recent political and legal changes provided an encouraging context for the Abuja colloquium. The peaceful change of government in Zambia, the abandonment of the single party state announced in Kenya, and the changes in South Africa creating the prospect of majority rule, all reflect the movement in Africa today towards democracy and respect for human rights and the primacy of the rule of law.

12 In Nigeria, the participants carefully noted the steps being taken towards the restoration of civilian democratic government by the end of 1992.

13 Judges have a key role to play in the renewal in countries in all parts of the world of principles of democracy, human rights and the rule of law - to do justice to everyone within their jurisdiction by due process of law. It was with this consciousness of the importance of the role of the independent judiciary, especially at this point of time in history, that the participants in this colloquium approached the subject matter of their work.

The legitimacy of judicial interpretation

14 The participants reaffirmed the principles stated in Bangalore, amplified in Harare, and affirmed in Banjul. These principles reflect the universality of human rights - inherent in humankind - and the vital duties of the independent judiciary in interpreting and applying national constitutions and laws in the light of those principles. This process involves the application of well-established principles of judicial interpretation. Where the common law is developing, or where a constitutional or statutory provision leaves scope for judicial interpretation, the courts traditionally have had regard to international human rights norms, as aids to interpretation and widely accepted sources of moral standards. This process is all the more necessary where a national Bill of Rights is inspired by international human rights instruments (as in the case in many Commonwealth African countries, including Nigeria). Obviously the judiciary cannot make an illegitimate intrusion into purely legislative or executive functions; but the use of international human rights norms as an aid to construction and a source of accepted moral standards involves no such intrusion.

15 The participants recognised that, as befits a community of individuals answering only to the law and their conscience, different judges may perceive in different ways the choice available to them in particular cases - whether in interpreting constitutional or legislative provisions, or in developing the common law. What to one judge may seem clear and unambiguous may to another seem unclear or ambiguous and such as to require a choice between competing interpretations. It is in such a situation that the international human rights norms provide useful guidance in making the choice. The Bangalore Principles do no more than call to the judge's notice the need to make relevant choices in a principled way.

Personal liberty, access to justice, and the rule of law

16 During the course of discussion, the participants called particular attention to the paramount importance of preserving *habeas corpus*, and effective access to counsel and to bail; of ensuring fair and public trials within a reasonable time by independent and impartial courts and tribunals established by law; of respecting the presumption of innocence; of prohibiting arbitrary detention or imprisonment without trial, and all forms of torture and inhuman or degrading treatment or punishment; and of implementing the humane treatment of prisoners in accordance with United Nations minimum standards.

Confirmation of Bangalore Principles

17 Having regard to the central place and importance of the Bangalore Principles, the Harare Declaration and the Banjul Affirmation, the participants in the Abuja colloquium issued this Statement in confirmation of the Bangalore Principles, as developed in the Harare Declaration and the Banjul Affirmation, and noted as follows:

- (i) in the legal systems of the Commonwealth, international human rights norms appearing in international treaties are not, as such, part of the domestic law, unless and until they are specifically incorporated by national legislation; for example, the African Charter of Human and Peoples' Rights is not yet part of the national laws of Nigeria because the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983 has not been brought into force;
- (ii) the general principles of international human rights instruments are relevant to the interpretation of national Bills of Rights and laws, where choices have to be made between competing interests in the discharge of the judicial function;
- (iii) there is an impressive body of case law which affords useful guidance to the national courts - notably, the judgments and decisions of the European Court and Commission of Human Rights, the judgments and advisory opinions of the Inter-American Court of Human Rights, and decisions and general comments of the United Nations Human Rights Committee. There is also an important body of comparative constitutional law, for example, from the Supreme Courts of Commonwealth jurisdictions. This is also an area in which resort can be had to the writings of eminent scholars and jurists.

Practical measures of implementation

18 The participants, as in earlier colloquia, acknowledged practical needs for the effective implementation of the Bangalore Principles in the day to day discharge of their judicial function, which include the following:

- (a) the need to protect and strengthen the independence, impartiality and authority of the judiciary, both collectively and individually; noting with satisfaction the establishment by the International Commission of Jurists in Geneva of the Centre for the Independence of Judges and Lawyers (CIJL), and the establishment by the General Assembly of the United Nations of the Basic Principles on the Independence of the Judiciary 1985;
- (b) the need to protect and strengthen the independence of the legal profession, and the highest standards of integrity and professionalism in the practice of law;
- (c) the need to avoid any undue delay in the adjudication of human rights cases;
- (d) the need to provide judges and lawyers with the basic texts of the main international and regional human rights instruments;
- (e) the need to provide judges and lawyers with up-to-date information about the jurisprudence of the major international, regional and national courts, tribunals and decision-making and standard-setting authorities;
- (f) the need for programmes of continuing judicial studies and professional legal training in international and comparative human rights jurisprudence;
- (g) the need for courses in law schools and other institutions of learning to educate the next generation of judges, legislators, administrators and lawyers in human rights jurisprudence;
- (h) the need to ensure effective access to justice by providing adequate funds for the proper functioning of the courts, and adequate legal aid, advice and assistance for people who cannot otherwise obtain legal services;

- (i) the need to enable independent non-governmental organisations to provide *amicus curiae* briefs, and other specialist legal advice, assistance and representation in important cases involving human rights issues;
- (j) the need to establish an independent African Court of Human Rights with jurisdiction over inter-state and individual cases, and with the power to give binding judgments; and
- (k) the need for further Commonwealth initiatives and support for the effective implementation of the Bangalore Principles in each of these respects.

Commonwealth Judicial Human Rights Association

19 The participants resolved to establish, as a further practical step in communicating information about international and comparative human rights law to judges and lawyers and non-governmental organisations, an informal body - to be known as the Commonwealth Judicial Human Rights Association (CJHRA). The Association will include, if they so wish, all judges who have participated in the series of colloquia in Bangalore, Harare, Banjul and Abuja (including judges from outside the Commonwealth). It will be open to other judges to join the Association.

20 Members will send to Interights in London published judgments in which they or their colleagues have applied or otherwise made use of international and comparative human rights norms. The participants request Interights, in co-operation with the Commonwealth Secretariat, to obtain the necessary resources to act as a clearing-house of information on these subjects for the Association, and to publish practical digests of human rights decisions for use by judges, lawyers, public authorities and non-governmental organisations.

BALLIOL STATEMENT OF 1992

- 1 During the past five years an important series of judicial colloquia have taken place concerned with the application within national legal systems of international human rights norms. The meetings have been held under the auspices of the Commonwealth Secretariat and Interights (the International Centre for the Legal Protection of Human Rights). The participants have included judges from various countries of the Commonwealth, together with participants from common law countries outside the Commonwealth, from countries of the civil law tradition, and from international courts and other fora concerned with the legal protection of human rights.
- 2 The fifth meeting in the series took place at Balliol College, Oxford University, between 21 and 23 September 1992. It was convened by the Lord Chancellor (the Rt. Hon. the Lord Mackay of Clashfern). The Lord Chancellor and Lord Browne-Wilkinson chaired the proceedings. As in earlier colloquia, the Commonwealth Secretariat and Interights organised the gathering with the generous assistance of the Ford Foundation. The participants expressed their appreciation for the efficient preparation and administration of the conference. The participants were:

Australia	Hon Justice Michael Kirby, AC, CMG, President, Court of Appeal of New South Wales
Bangladesh	Hon Justice M H Rahman, Justice of the Supreme Court
European Court of Human Rights	Hon Rolv Ryssdal, President**
Hong Kong	Hon Justice Patrick Chan, Justice of the Supreme Court
Republic of Hungary	Hon Justice Dr Laszlo Solyom, President, Constitutional Court
Republic of Ireland	Hon Justice Niall McCarthy, Justice of the Supreme Court
Jamaica	Hon Justice Edward Zacca, OJ, Chief Justice
Mauritius	Hon Justice Rajsoomer Lallah, Senior Puisne Judge of the Supreme Court and Member of the United Nations Human Rights Committee
New Zealand	The Rt Hon Sir Robin Cooke, KBE, President, Court of Appeal
Nigeria	Hon Justice Mohammed Bello, CON, Chief Justice of Nigeria Hon Justice P Nnaemeka-Agu, Justice of the Supreme Court
Pakistan	Hon Justice Muhammad Afzal Zullah, Chief Justice
Papua New Guinea	Hon Justice Kubulan Los, Justice of the Supreme Court
South Africa	Hon Justice Ismail Mahomed, Justice of the Supreme Court of South Africa and of Namibia, President of the Court of Appeal of Lesotho
Sri Lanka	Hon Justice Mark Fernando, Justice of the Supreme Court
Tanzania	Hon Justice Augustino S L Ramadhani, Justice of Appeal

United Kingdom	The Rt Hon The Lord Mackay of Clashfern, The Lord Chancellor**
	The Rt Hon The Lord Templeman, Lord of Appeal in Ordinary**
	The Rt Hon The Lord Browne-Wilkinson, Lord of Appeal in Ordinary
	The Rt Hon Lord Justice Balcombe, Lord Justice of Appeal
	The Hon Lord MacLean, Judge of the High Court of Scotland
	The Hon Mr Justice Campbell, Judge of the High Court of Justice, Northern Ireland
	The Hon Mr Justice Otton, Judge of the High Court of Justice
United States of America	Hon Judge Louis H Pollak, Judge of the United States District Court (3rd circuit)
Zambia	Hon Justice A R Lawrence, Justice of the Supreme Court
Zimbabwe	Hon Justice A Gubbay, Chief Justice
Others	Hon Justice P N Bhagwati, Former Chief Justice of India
	Hon Justice Enoch Dumbutshena, Former Chief Justice of Zimbabwe and Justice of Appeal for Namibia
	The Rt Hon Justice Telford Georges, PC, Member, Judicial Committee of the Privy Council and former Chief Justice of The Bahamas, Tanzania and Zimbabwe
	Mr Recorder Anthony Lester, QC
	Professor Rosalyn Higgins, QC, Member of the United Nations Human Rights Committee

- 3 The participants reaffirmed the general principles stated at the conclusion of the Commonwealth judicial colloquium in Bangalore, India, in 1988, as developed by subsequent colloquia in Harare, Zimbabwe, in 1989, in Banjul, The Gambia, in 1990, and in Abuja, Nigeria, in 1991.
- 4 The general principles enunciated in the colloquia reflect the universality of human rights - inherent in humankind - and the vital duty of an independent and impartial judiciary in interpreting and applying national constitutions, ordinary legislation, and the common law in the light of those principles. These general principles are applicable in all countries but the means by which they become applicable may differ.
- 5 The international human rights instruments and their developing jurisprudence enshrine values and principles long recognised by the common law. These international instruments have inspired many of the constitutional guarantees of fundamental rights and freedoms within and beyond the Commonwealth. They should be interpreted with the generosity appropriate to charters of freedom. They reflect international law and principle and are of particular importance as aids to interpretation and in helping courts to make choices between competing interests. Whilst not all rights are justiciable in themselves, both civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights. They serve as vital points of reference for judges as they develop the common law and make the choices which it is their responsibility to make in a free and democratic society.

- 6 In democratic societies fundamental human rights and freedoms are more than paper aspirations. They form part of the law. And it is the special province of judges to see to it that the law's undertakings are realised in the daily life of the people. In a society ruled by law, all public institutions and officials must act in accordance with the law. The judges bear particular responsibility for ensuring that all branches of government - the legislature and the executive, as well as the judiciary itself - conform to the legal principles of a free society. Judicial review and effective access to courts are indispensable, not only in normal times, but also during periods of public emergency threatening the life of the nation. It is at such times that fundamental human rights are most at risk and when courts must be especially vigilant in their protection. It is vital that the courts should ensure that emergency powers be exercised, if at all, only to the extent, and for the limited time, demonstrated to be necessary.
- 7 The Balliol conference was the first of these colloquia in which judges from the Republic of Ireland and from Northern Ireland participated. It is hoped that the commitments to human rights embodied in the domestic laws and international instruments binding upon the United Kingdom and the Republic of Ireland, which rights are protected by the courts of both countries, may contribute to promoting a swift and enduring resolution of current problems.
- 8 The Chief Justice of Pakistan drew attention to the statement made in the Bangalore Principles that it is necessary to take fully into account local laws, traditions, circumstances and needs. He emphasised that international human rights norms could not, in his view, override national constitutional standards.
- 9 The participants expressed the hope that the Commonwealth Secretariat will provide within its human rights programmes the resources necessary to service the Commonwealth Judicial Human Rights Association, in collaboration with Interights, as recommended by the colloquium held in Abuja, Nigeria. The participants attach the highest importance to disseminating to the judiciary and other lawyers, both within the Commonwealth and beyond, knowledge about the human rights norms of international law, the jurisprudence of international and regional human rights bodies, and the decisions of courts throughout the Commonwealth. The urgent necessity remains today, as it was expressed to be at Bangalore and at the colloquia held since, to bring the fine principles of fundamental human rights expressed in the foregoing sources into the daily consciousness and activity of courts and public officials alike. In this way a global culture of respect for human rights can be fostered, with the Commonwealth properly at the forefront, as befits its high ideals.

*Balliol College
Oxford
23 September 1992*

- ** The Lord Chancellor and The Lord Templeman were present only on 21 September 1992; President Ryssdal only on 21 and 22 September 1992.



In Memory of Justice Walter Tarnopolsky

by Michael Kirby

For the second time the participants in a judicial colloquium in the Bangalore Series had no sooner returned home but they learned of the death of one of their number.

Justice Walter Tarnopolsky was a leading participant in the Bloemfontein meeting. He died on 15 September 1993, just ten days after the Bloemfontein Statement was adopted.

Justice Tarnopolsky had been a member of the Ontario Court of Appeal since 1983. He was a leading jurist of his own country, Canada. His proud association with his ethnic origins in The Ukraine had recently been called upon as, unexpectedly, that country gained independence from the Soviet Union, and moved to establish a constitutional and rule of law society for itself.

Walter Tarnopolsky was born of Ukrainian immigrant parents, in a small farming community in Saskatchewan. He grew up on a wheat farm. His father spoke little English. However, he was ambitious for the education of his son, who earned his primary degrees at the University of Saskatchewan, with post-graduate degrees from Columbia University, New York and the London School of Economics.

Justice Tarnopolsky was a leader of the Canadian development of human rights law. After gaining his qualifications he went on to teach law at the University of Saskatchewan, the famous Osgoode Hall Law School in Toronto, and the University of Windsor. In 1980 he was appointed Director of the Human Rights Centre of the University of Ottawa. He held that post until his judicial appointment. In that post, he wrote commentaries on the new, and developing, Canadian law of human rights. These interests took him to the United Nations Human Rights Committee, between 1977 and 1983.

He had many other appointments and distinctions. But these are the externalities. I had known him for seven years. We met at conferences, in human rights circles, and in activities of the International Commission of Jurists, which we both supported. I was looking forward to his visit to Australia, where he was to come at the invitation of the Ukrainian-Australian Lawyers' Association. He was an intense man, deeply committed to the cause of equal opportunity. For him, this was no laughing matter.

The participants at Bloemfontein felt the deep wells of conviction, and the years of dedication, behind his intervention in their session. He was able to draw upon decades of reflection, and he gave a lot of his experience, generously and willingly, to his new South African friends. When I left him to return home he was looking forward to seeing briefly the beauties of nature in South Africa. I sat with him often during the lunches and dinners of the Colloquium for we were kindred spirits.

Walter Tarnopolsky was a dedicated champion of human rights. I can still see him, serious and intelligent, studying his papers, and listening attentively to his colleagues for some new insight. We will miss him. But his work and example live on.