

Abuja Confirmation of The Domestic Application of International 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 Aparara, 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.