

JUDICIAL COLLOQUIUM ON THE DOMESTIC APPLICATION  
OF INTERNATIONAL HUMAN RIGHTS NORMS BANGALORE, INDIA,  
24-26 FEBRUARY 1988.

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 Honourable 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:

Justice P N Bhagwati (India) (Convenor)  
Chief Justice E Dumbutshena (Zimbabwe)  
Judge Ruth Bader Ginsburg (USA)  
Chief Justice Muhammad Haleem (Pakistan)  
Deputy Chief Justice Mari Kapi (Papua New Guinea)  
Justice Michael D Kirby (Australia)  
Justice Rajsoomer Lallah (Mauritius)  
Mr Anthony Lester, QC (Britain)  
Justice P Ramanathan (Sri Lanka)  
Lord President Mohamed Salleh (Malaysia)  
Justice Chanrakantaraj Urs (India)

There was a comprehensive exchange of views and full discussion of expert papers. The Convener summarised the discussion 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 to 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 development 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 the administration of justice in fostering universal respect for fundamental human rights and freedoms.

Bangalore, Karnataka State, India  
26 February 1988