

HUMAN RIGHTS, DEMOCRACY & THE RULE OF LAW IN THE 21ST CENTURY

INTERNATIONAL HUMAN RIGHTS NORMS AND THEIR DOMESTIC APPLICATION: JUDICIAL METHODS & MECHANISMS

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1. UNIVERSALITY

1. Twice in the first half of this century mankind has been engulfed on a universal scale in belligerent fratricide. Throughout the century the world has wrestled with racial, religious and political hostilities. Yet there is a significant difference between the first and the second halves of the century. The difference is that when mankind emerged from the bloody conflict in which the free Nations of the World vanquished Nazi aggression, racism and the evil forces of hate, the Peoples of the World established universal norms of conduct and institutionalised them in international and regional organisations. As the UN Charter indicates the foundations which were established are:

1. Respect for and observance of human rights are indispensable to peace;
2. Human rights are universal and indivisible; and
3. Recognition of the inherent dignity and equal and inalienable rights of all members of the human family.

2. The Commonwealth of Nations of which we form a part is peculiarly fitted to exemplify and extol the qualities of justice and brotherhood which create unity out of diversity, understanding out of disparity and richness out of variety. In the Commonwealth are to be found the great religions and philosophies of the world. Out of such religious and philosophical appreciations there springs a belief in a special relationship between the spiritual and the divine or a recognition of the quality of human reason and the capacity of the human being to develop moral and ethical standards. In the science and practice of law the classic doctrine of natural justice and the principles of equity presupposed the existence of a basic concept of fairness which ought to inform and direct the structure and conduct of government as well as relationships between human beings.

3. The principles of democracy and the rule of law to which we adhere in the Commonwealth are a reflection of those religious, philosophical and legal principles which have informed our evolution and outlook. It is therefore not surprising that in the Commonwealth a majority of countries have constitutional human rights norms. The Georgetown (Guyana) Conclusions at the Seventh Judicial Colloquium on the Domestic Application of International Human Rights Norms, (September 3-5, 1996) state:

The international human rights instruments and their developing jurisprudence enshrine values and principles of equality, freedom, rationality and fairness, now recognised by the common law. They should be seen as complementary to domestic law in national courts. These instruments have inspired many of the constitutional guarantees of fundamental human rights and freedoms within and beyond the Commonwealth; they should be given constitutional status in all dependent territories.

4. In the international community as well as in the Commonwealth of Nations the international human rights norms established by the Universal Declaration of Human Rights, now celebrating 50 years of existence, and by other international conventions and declarations as well as the general principles of conduct accepted by civilised nations are recognised or enforced not only by national courts but also by international tribunals, as in the case of War Crimes Tribunals or International Human Rights Courts. They are also widely observed out of a recognition that there are reciprocal benefits in preserving international cooperation and communications and avoiding moral reprobation. In our Commonwealth there is a powerful incentive to maintain the bonds of brotherhood and mutual respect. We can therefore accept that there is considerable validity in the Grotian concept that international organisation is based on an acceptance that principles, norms and institutions facilitate, peace, cooperation and mutual respect and provide disincentives to aggression and hostility.

2. JUDICIAL ATTITUDES

5. Traditional Commonwealth jurisprudence, influenced as it was by the doctrine of parliamentary supremacy and attitudes of judicial restraint, was ineffectual in quashing decisions or statutory measures because of inconsistency with human rights.¹ In the initial period of applying the human rights provisions of the new Commonwealth nations, judicial attitudes were greatly restricted by common law notions and techniques. First, great reliance was placed on the traditional principles of statutory interpretation.² Second, there was also a tendency to regard the new Bill of Rights as mere codifications of the common law and as expressing no more than the rights which had always existed.³ Third, there was a reluctance to quash executive decisions or legislative measures on the ground of inconsistency with human rights principles unless they could be categorised as irrational.

6. There had however been earlier recognition of the true nature of constitutional instruments. In a Canadian case Lord Sankey in delivering the Opinion of the Privy Council described the constituent statute of the Dominion as a "living tree capable of growth and expansion within its natural limits" and added:

The object of the Act was to grant a Constitution to Canada... Their Lordships do not conceive it to be the duty of this Board - it is certainly not their desire - to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation.⁴

In *Hinds v. The Queen*⁵ Lord Diplock, in delivering the Majority Opinion of the Privy Council, stated:

“A written constitution, like any other written instrument affecting legal rights or obligations, falls to be construed in the light of its subject-matter and of the surrounding circumstances with reference to which it was made”; but he added, “To seek to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the field of substantive criminal or civil law would, in their Lordships’ view, be misleading”.

7. For most of the Commonwealth the true seminal change emanated from Lord Wilberforces’ Opinion delivered in 1979 in *Minister of Home Affairs v. Fisher*⁶, which was concerned with the Constitution of Bermuda. His Lordship stated:

“It can be seen that this instrument has certain special characteristics.

1. It is, particularly in Chapter I, drafted in a broad and ample style which lays down principles of width and generality.
- 2.
3. Chapter I is headed “Protection of Fundamental Rights and Freedoms of the Individual”.

It is known that this chapter, as similar portions of other constitutional instruments drafted in the post-colonial period, starting with the Constitution of Nigeria (and including the Constitutions of most Caribbean territories), was greatly influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd 8969). That convention was signed and ratified by the United Kingdom and applied to dependent territories, including Bermuda. It was in turn influenced by the United Nations’ Universal Declaration of Human Rights 1948. These antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called “the austerity of tabulated legalism”, suitable to give to individuals the full measure of the fundamental rights and freedoms referred to.”

Three years after in the Indian sub-continent Bhagwati, J. said:⁷

“The constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order, and the Constitution that they have forged for us had a social purpose and a mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objectives of the Constitution.”

8. The historical and philosophical justification having been provided in favour of a liberal approach to the construction of Bill of Rights, judicial techniques were stimulated and judicial mechanisms were energised to provide true and effective protection to fundamental rights and freedoms. This development was facilitated by constitutional and statutory provisions as well as the growing judicial recognition of the importance of international human rights norms.

3. CONSTITUTIONAL APPLICATION

9. The evolving jurisprudence has impacted on Bills of Rights formulation in the Commonwealth. For example the Constitution of Malawi provides that the Government of the people of Malawi shall continue to recognise the sanctity of the personal liberties enshrined in the U.N. Declaration of Human Rights. Again in the new South African Constitution of 1996 it is provided as follows:

- 39(1) When interpreting the Bill of Rights, a court, tribunal or forum:
 - (a) must promote the values that underline an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation; and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objectives of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

In some cases statutory Bill of Rights provisions which are part of the constitutional law of Commonwealth states, although not part of fundamental law in the sense that they override ordinary legislation not passed by special amendment procedure, incorporate international human rights norms into the municipal law of states. This new British Bill of Rights expressly state that a court or tribunal determining a question which has arisen under the Act in connection with a Convention right must take into account, inter alia, any judgment, decision, declaration or advisory opinion of the European Court of Human Rights. s. 2

10. In New Zealand the long title to the Bill of Rights states that it is an Act to affirm and promote New Zealand's commitment to the International Covenant on Civil and Political Rights. In *Simpson & Anor v. Attorney-General*⁸, the Court of Appeal in New Zealand held

that although the Bill of Rights 1990 did not provide remedies, the grant of a remedy for infringement of human rights where an illegal search had been conducted was in keeping with New Zealand's commitment to the International Covenant on Civil and Political Rights. In the case of *Agbakoba v. Director, State Security Services & Anor*⁹ the Court of Appeal in Lagos, Nigeria, held that the right to freedom of movement, particularly not to be refused entry to or exit from one's country, was recognised by the African Charter and the Universal Declaration and was also buttressed by judicial pronouncements from common law jurisdictions without express constitutional guarantees. Accordingly, the impounding of the passport of a human rights activist who wished to travel abroad was a violation of that right since its effective enjoyment necessitated the possession of a passport. In India the Protection of Human Rights Act provides for the enforceability of human rights conventions which have been ratified by India.

11. Without the constitutional or statutory adoption of international human rights instruments, national courts may be rendered powerless to provide redress against infringements of the human rights of its citizens. Thus in *Dunkley and Robinson v. R*¹⁰ the Privy Council held that since Article 14(3)(d) of the International Covenant on Civil and Political Rights had not been incorporated into the law of Jamaica it could not form the basis of a claim to an absolute right to legal representation for an accused throughout the course of his trial for capital murder. On April 24, 1999 the English Court of Appeal dismissed appeals¹¹ from the conviction of the appellants of the offences of counselling and procuring another to deal in securities contrary to an Act of Parliament, despite its contravention of the principles against self-incrimination and unfairness in trials enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court of Appeal stated that the position was unsatisfactory but said it could not follow the decision of the European Court for Human Rights in *Saunders v. U.K.*¹², since this would involve the partial repeal of an English statute which permitted the admission of the self-incriminating evidence.

4. STATUTORY INCORPORATION

12. There are numerous examples within the Commonwealth of the statutory incorporation of particular international human rights conventions in domestic law. In such cases the influence of international human rights norms on the judicial capacity to safeguard human rights is considerably enhanced.

13. For example, in the Tanzania case of *Ephraim v. Pastory & Kaizilege*¹³, which was concerned with a challenge to the validity of a sale of land by a female which was not permissible by customary law, the High Court held that the Tanzania Constitution, into which had been incorporated the Tanzanian Bill of Rights and the Universal Declaration of Human Rights, prohibited discrimination on grounds of sex. Since Tanzania had also ratified many international conventions (such as the Convention on the Elimination of all Forms of Discrimination against Women and the African Charter on Human and Peoples Rights)

pertaining to human rights and the elimination of discrimination against women, it was clear, said the Court, that the customary law at issue was contrary to Tanzania's Constitution and to the international obligations of Tanzania. In India where the Protection of Human Rights Act 1993 renders enforceable the Convention on the Elimination of all Forms of Discrimination Against Women, which India has ratified, the Supreme Court in *Valsamma Paul v. Cochin University & Ors; Kerola Public Service Commission v. Dr. Kanjamma Alex & Anor*¹⁴ held that affirmative action to assist those suffering from a legacy of social and economic inequality to attain equal protection was constitutional.

14. In *C Masilamani Mudaliar & Ors. v. Idol of SRI Swaminothaswami Thirukoil & Other*¹⁵ the same court held on the basis of the same statutory and conventional provisions that the Hindu Succession Act which were designed to eliminate discrimination experienced by women due to Sastric Law had validly transformed the limited rights to property accorded to a Hindu woman into full ownership since the State had a responsibility to take positive measures to ensure that women enjoy economic, social and cultural rights on an equal footing with men.

15. In *T v. Secretary of State for the Home Dept*,¹⁶ the House of Lords applied the definition of "refugee", in the Convention Relating to the Status of Refugees, to deny the claim of a person whose terrorists activities did not amount to political crimes and thereby reinforced the rights of other persons to be protected from such activities.

16. In *Peters v. Marksman*¹⁷, Mitchell, J. in the High Court of St. Vincent and the Grenadines held that the punishment of whipping, solitary confinement and prolonged shackling of a prisoner for breach of prison discipline was inhuman and degrading and in breach of that country's Constitution and the provisions of the United Nations Declaration on Prevention of Crime and Treatment of Offenders which had been incorporated by statute in that country. The Eastern Caribbean Court of Appeal affirmed this decision and held that the plaintiff was entitled to monetary compensation against the State authorities.

5. JUDICIAL APPLICATION

17. The Bangalore Principles which comprise the concluding statement of the Commonwealth Judicial Colloquium held in Bangalore, India in 1988 stated, inter alia¹⁸:

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.

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.

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.

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.

18. Now a decade later it is possible to say with confidence that the tendency for Commonwealth judges to place reliance on international human rights jurisprudence has strengthened and become well-established. There are several early illustrations of the tendency. In *Attorney-General v. Antigua Times Ltd.*¹⁹, where a newspaper company claimed that a statute which required the posting of a bond as a pre-condition to publishing its newspaper infringed its constitutional rights to freedom of expression, the Privy Council held that the constitutional guarantee was not limited to natural persons as the Constitution was modeled upon the European Convention for the Protection of Human Rights and Fundamental Freedoms and was influenced by the Universal Declaration of Human Rights and accordingly measures which protect property and freedom of expression would generally be interpreted as extending to companies.

19. In *Van Yorkon v. Att-Gen & Anor*²⁰ the New Zealand Court held that regulations which differentiated between married males and married females in the reimbursement of removal expenses for teachers was *ultra vires*. Cooke, J. in considering the matter stated that reference to the Universal Declaration of Human Rights and the U.N. Declaration on Elimination of Discrimination against Women was appropriate as these provisions may be regarded as representing a legislative policy which might influence the courts in the interpretation of statute law.

20. In *Mabo & Anor v. The State of Queensland & Anor.*²¹ the High Court of Australia indicated that if Murray Islanders and members of the Miriam people were entitled to traditional rights and interests which constitute a right to own and inherit property they would have a claim based on the protection of those rights provided by the International Convention on the Elimination of All Forms of Racial Discrimination.

21. In *Rattigan & Ors v. Chief Immigration Officers & Ors*.²², the Supreme Court of Zimbabwe held that the refusal to grant work permits to the husband of three female citizens by birth contravened the wives right to freedom of movement because although there was no provision in the country's constitution which equated directly to Article 17 of the International Covenant on Civil and Political Right or Article 8(1) of the European Convention on Human Rights under which judicial decisions had been made affording protection to family life, the constitutional provision respecting privacy of the home should be construed generously and purposively taking into account the international human rights jurisprudence.

22. In *Case & Anor v. Minister of Safety and Security & Ors; Curtis v. Minister of Safety and Security & Ors*²³, the Constitutional Court of South Africa was concerned with the constitutional challenge to the validity of the Indecent or Obscene Photographic Material Act, 37 of 1967 which made it an offence to possess "any indecent or obscene photographic matter". The applicants claimed that the overbreadth of this provision violated their constitutional right to privacy and freedom of expression. The Court made reference to Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as other human rights instruments in holding that the overbreadth of the statutory provision was unjustifiable and unreasonable and the provision should be struck down.

6. NORMATIVE EFFECT OF INTERNATIONAL HUMAN RIGHTS JURISPRUDENCE

23. The now well-established judicial technique of resorting to the sources provided by international human rights jurisprudence and conventional law is conceding to that jurisprudence a pervasive influence and normative impact on domestic law. This development is of utmost significance in that it provides, in periods of emotional stress and political pressures, an objective point of reference, universal standards and impersonal criteria for judicial decision-making. The quality of this factor has probably been demonstrated most pointedly with respect to the emotional issues of capital and corporal punishment.

24. In the *Pratt and Morgan Case*²⁴ the Privy Council, in reversing its own decision in the *Riley Case*²⁵, placed considerable reliance on the conclusions which had been reached by the Inter-American Commission on Human Rights and the UN Human Rights Committee to the effect that the American Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol placed on State Parties an imperative duty in capital cases to observe vigorously all guarantees for a fair trial set out in the international instruments, and that the punishment should not be inflicted if the State Party had violated those guarantees. The Privy Council expressed the view that it was proper for

the state authorities to afford weight and respect to the views of the international bodies although they were not legally binding. The Privy Council also relied on the judgment of the European Court of Human Rights in the case of *Soering v. United Kingdom*²⁶ which had held that extradition to the United States of a German national would violate the guarantee of the European Convention against “inhuman or degrading treatment or punishment”, in that in the State of Virginia, to which the applicant would be extradited, he would be subject to the “death row phenomenon”.

25. The Privy Council expressed itself as preferring the interpretation of the Constitution of Jamaica that “accepts civilized standards of behaviour which will outlaw acts of inhumanity, albeit they fall short of the barbarity of genocide”. This approach to the construction of Caribbean Constitutions with respect to the carrying out of death sentences has been applied by the Privy Council to other Caribbean countries as well as to the Bahamas, although, unlike Jamaica, the latter country had not ratified the International Covenant and its Optional Protocol or the American Convention.²⁷ The *Pratt and Morgan* case therefore demonstrates that the constitutional guarantees may and should be interpreted so as to conform with international human rights norms irrespective of the absence of conventional legal obligations. This approach has been taken in other Commonwealth Countries in some cases holding the death sentence to be itself unconstitutional as being cruel and inhuman.²⁸

26. In *A Juvenile v. The State*²⁹, the Supreme Court of Zimbabwe stated that the Court possessed an added advantage in that -

The courts of Zimbabwe were free to import into the interpretation of s. 51(1) interpretations of similar provisions in international and regional human rights instruments such as the International Bill of Human Rights and the European and Inter-American Human Rights Conventions. Per Dumbutshena CJ. “In the end International Human Rights norms will become part of our domestic human rights law. In this way our domestic human rights jurisdiction is enriched”.

On the basis of this approach the Court affirmed its decision in *Ncube v. The State*³⁰ which had held that the whipping of adults was unconstitutional and held that similarly the whipping of juveniles although with a lighter cane was unconstitutional as constituting a punishment which was inherently brutal, antiquated, inhumane and cruel.

27. Commonwealth Courts have thus increasingly developed a methodology of applying international human rights norms by reference to international human rights instruments and judicial decisions. The normative-inter-action of the domestic and conventional systems by these vertical as well as horizontal linkages has created a new dimension in international human rights jurisprudence.³¹ The provisions of international human rights conventions may provide a legitimate expectation that executive and administrative decisions will take into account and will not disregard a State’s obligations under such instruments.³² The assessment

of reasonableness, irrationality or proportionality will be influenced by the provisions of international human rights instruments and similar determinations by international and other Commonwealth courts.³³ Whereas the relevant principle of statutory interpretation was expressed somewhat neutrally as a presumption that national legislation is not to be intended to be inconsistent with customary international law it may now be expressed positively as a rule of construction to the effect that it must be presumed to be intended to give effect to international human rights principles.³⁴ Constitutional and statutory human rights instruments as we have already seen are to be interpreted with due regard to the international human rights instruments which provided their genesis.³⁵

7. THE ROLE OF THE LEGAL PROFESSION

28. The Bangalore Principles referred to earlier conclude with a statement that the conclusions were “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”. This theme was developed in the Harare Declaration of Human Rights (1989) which states:

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 Report 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 organisation in these as in other regards, including the development of public interest litigation.³⁶

In this regard the efforts and achievements of Interights the London-based organisation and the Commonwealth Secretariat must be applauded. The Commonwealth Lawyers' Association must establish its own Human Rights initiative alongside that of the International Bar Association. Regional and National Bar Associations and Law Societies must be proactive in the promotion, protection and advocacy of human rights. Commonwealth lawyers

must continue the dialogue, increase the exchange of information and material, formulate strategies of mutual support in the struggle against attacks on the independence of judges, advocates and human rights activities and stimulate the cross-fertilisation of constitutionalism and human rights jurisprudence across the glob. Nothing less will assure our freedom, the preservation of democracy and civil liberties within our borders and around the world and the effective realisation of human rights for all.

FOOT NOTES

- 1 See an article "Fundamental Human Rights - A British judicial perspective, Sir
Nicholas Browne-Wilkinson, in *International Human Rights in the Commonwealth
Caribbean* (1987), 9.
- 2 *Nasralla v. D.P.P.* (1965) 9 W.I.R. 15; *Trinidad Island-Wide Cane Farmers' Assn
Inc & Attorney-General v. Prakash Seereeram* (1975) 29 W.I.R. 329; *D.P.P. v.
Nasralla* [1967] 2 A.C. 238(247-8).
- 3 See *Collymore v. Att-Gen* (1969) 15 W.I.R. 229; *Byfield v. Allen* (1970) 16 W.I.R.
1; *Banton v. Alcoa Minerals of Jamaica Inc.* (1971) 17 W.I.R. 275; *Re Darien*
(1974) 22 W.I.R. 32; *Hope and Attorney-General v. New Guyana Co. Ltd.* (1979) 26
W.I.R. 233.
- 4 *Edwards v. Att-Gen for Canada* [1930] A.C. 126(136).
- 5 [1977] A.C. 195.
- 6 [1980] A.C. 319 (328).
- 7 *Peoples Union for Democratic Rights v. Union of India* A.I.R. 1982 S.C. 1473
(1490).
- 8 [1996] 2 CHRLD 283.
- 9 [1996] 1 CHR D 89.
- 10 (1994) 45 W.I.R. 318.
- 11 *R. v. Morrissey & R. v. Stains* *The Times*, 25 April 1999.
- 12 (1997) 23 EHRR 313.
- 13 [1990] 87 I.L.R. 106,
- 14 [1996] 3 CHRLD 314.
- 15 [1996] 3 CHRLD 321.
- 16 [1996] 3 CHRLD 416.
- 17 Suit No. 246 of 1997 (July 31, 1997) (unreported).

- 18 Developing Human Rights Jurisprudence, Vol. 7 (August 1998) Interights, Annexes,
pp. 221-8.
- 19 [1975] 60 I.L.R. 135.
- 20 [1977] N.Z.L.R. 535.
- 21 [1988] C.L.R. 186.
- 22 [1996] 1 C.H.R.D. 86.
- 23 [1998] 2 CHRLD 131.
- 24 [1994] 2 A.C. 1.
- 25 [1983] 1 A.C. 719
- 26 (1989) 11 E.H.R.R. 439.
- 27 *Bradshaw v. Att-Gen* (1995) 46 W.I.R. 62 (Barbados); *Guerra v. Baptiste* [1996]
A.C. 397 (Trinidad & Tobago); *Henfield v. Att-Gen of the Commonwealth of the*
Bahamas [1997] A.C. 413 (Bahamas).
- 28 *Catholic Commission for Justice and Peace in Zimbabwe v. Att-Gen & Others* [1993]
4 L.R.C. 85 (Zimbabwe); *Republic of Mbushru and Anor.* [1994] L.R.C. 335
(Tanzania); *State v. Makwanyane & Anor.* [1995] 1 L.R.C. 269 (South Africa).
- 29 [1989] L.R.C. (Const.) 774.
- 30 [1988] L.R.C. (Const.) 442. See similarly, *The State v. Petrus & Anor.* [1985] L.R.C.
(Const.) 669 (Botswana); *Ex parte Attorney-General of Namibia, In re Corporal*
Punishment by Organs of the State [1992] L.R.C. (Const.) 515.
- 31 See an article by the writer, "The Domestic Appellate Review Process and the Inter-
American Convention System: The English speaking Caribbean Perspective" 3
Emory Journal of
International Dispute Resolution (1988) (no. 1) p. 25.
- 32 *Chu Kheng Him v. Minister for Immigration* (1992) 176 C.L.R. 1 (Australia).
- 33 *Tavita v. Minister of Immigration* (1994-1995) 183 C.L.R. 273 (New Zealand);
Nyambirai v. National Social Security Authority & Anor [1996] 2 CHRLD 274
(Zimbabwe); *Kauesa v. Minister of Home Affairs & Ors.* [1996] 2 CHRLD 209
(Namibia); *Retrofit (Private) Ltd. v. Posts and Telecommunications Corp. & Anor*
[1996] 2 CHRLD 218 (Zimbabwe); *Mingo Pao Newspapers Ltd. & Ors. v. Att-Gen*
[1996] 3 CHRLD 352 (Hong Kong); *Re J (An Infant): B & B v. Director-General*
of Social Welfare [1996] 3 CHRLD 419 (New Zealand); *State v. Smith & Ors.* [1998]
2 CHRLD 33 (Namibia); *Wajid Shaumas-ul-Hassam v. Federation of Pakistan*

[1998] 2 CHRLD 113 (Pakistan); *Association of Expatriate Civil Servants of Hong Kong v. Secretary of the Civil Service & Anor.* [1998] 2 CHRLD 117 (Hong Kong); *R. v. Khan (Sultan)* [1998] 2 CHRLD 125(U.K.); *De Freitas v. Permanent Secretary of Ministry of Agriculture, Lands and Housing & Others* [1998] 3 W.L.R. 675.

³⁴ *Chu Kheny Him v. Minister for Immigration* (1992) 176 C.L.R. 1 (Australia) (38); *Minister of Immigration & Ethnic Affairs v. Teoh* [1996] 1 CHR 67 (Australia); *The State v. Dilmamode* [1996] 1 CHR 97 (Mauritius); *McLta v. State of Tamil Nadu & Ors.* [1998] 2 CHRLD 11(India); *Vellore Citizens' Welfare Forum v. Union of India & Ors.* [1998] 2 CHRLD 19; *Fawehinmi v Abacha & Ors.* [1998] 2 CHRLD 81 (Nigeria); *Case & Anor. v. Minister of Safety* (supra) (India).

³⁵ See also *A & Anor. v. Minister for Immigration and Ethnic Affairs & Anor.* [1998] 2 CHRLD 147.

³⁶ *Developing Human Rights Jurisprudence*, Vol. 7 (August 1998) Interights, Annexes, pp. 221-2.