

Bangalore Principles on the Domestic Application of International Human Rights Norms

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Conference Report

The evolution of international human rights law (IHRL) in the UN era has seen a paradigm shift away from a view of international law as applying solely to states and their relations with other states, to a focus on the rights of individuals and the duties states owe to citizens. As articulated in the Universal Declaration of Human Rights, certain rights are so fundamental as to be universal in scope based on our common humanity. As Reisman notes 'no serious scholar still supports the contention that internal human rights are "essentially within the domestic jurisdiction of any state" and hence insulated from international law.'

The question is how these inalienable rights, expressed so forcefully on the international level, can be transposed into domestic law. One way is through the process of judicial interpretation. However, this poses a challenge in dualist systems where, traditionally, courts do not take international law into account, unless implemented by national legislation. This reluctance to engage with unincorporated IHRL is what the 1988 Bangalore Judicial Colloquium—a group including such luminaries as Michael Kirby, Ruth Bader Ginsburg, Anthony Lester and P.N. Bhagwati—sought to address. The resulting [Bangalore Principles](#), concluded that:

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.

The Colloquium proposed a range of measures to disseminate knowledge of IHRL within the legal profession, in order to increase its use as an interpretive tool. In 1988, the Colloquium was already able to see:

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.

As 2018 marked the 30th anniversary of the Principles, the time was right to consider whether this trend towards greater use of IHRL has continued. On 20 November, the Bingham Centre for the Rule of Law and the International Bar Association's Human Rights Institute held a high-level conference. The conference not only considered the role of judicial interpretation in the domestication of IHRL, but also the role of parliaments, National Human Rights Institutions and other actors.

Videos of the conference can be found [here](#). The present post will highlight key messages from the proceedings.

1) The gold standard for human rights protection is for states to incorporate IHRL into their domestic

constitutional law.

The Honourable Michael Kirby, former Justice of the High Court of Australia and a member of the original judicial colloquium at Bangalore, highlighted that the absence of a bill of rights in countries like Australia makes it difficult to apply IHRL because there is no footing in domestic law that allows courts to consider the jurisprudence of international bodies and the courts of other states, in relation to equivalent provisions. Lady Arden, Justice of the UK Supreme Court, praised the constitutional adoption of human rights norms in Kenya and the fact that the constitution states that international law forms part of domestic law. She gave the example of how Kenyan courts have been able to uphold the constitutional right to housing in line with definitions adopted by the UN and the South African courts. She also underlined the critical importance of the incorporation of the European Convention on Human Rights in the UK. Not only does this make Convention rights enforceable domestically, but the Strasbourg Court interprets Convention rights in line with a range of international law sources, meaning that UK courts are indirectly applying unincorporated international treaty obligations.

2) 'The ultimate protection for people is the rule of law, an independent judiciary and a separation of powers.'

Lady Arden made this statement while reflecting on atrocities perpetrated in Rwanda and Burundi. She speculated that if these three conditions had existed much bloodshed might have been avoided.

3) The Bangalore principles apply to all states not just dualist systems.

Professor André Nollkaemper explained that even in monist states, where international law automatically forms part of domestic law, there are still significant hurdles to effective application in practice: courts often hold that private parties do not have standing to invoke international treaties or that treaties do not have direct effect. Thus, courts in monist countries may still need to have regard to the Bangalore Principles to give effect to IHRL.

4) Parliaments have an essential role in producing laws that are in accordance with international human rights norms and in pressuring governments to uphold human rights.

Dr Matthew Saul and Professor Leiv Marsteintredet stressed the importance of entrenching human rights within society through democratic debate in parliament. They argued that international courts should give states a significant margin of appreciation to develop domestic rights protection schemes through their own democratic processes.

5) National Human Rights Institutions and Civil Society must be given greater support.

Professor Bongani Majola, Chairman of the South African Human Rights Commission, spoke of the pivotal role played by NHRIs in pushing states to ratify treaties and bring national law into line with international standards. Unfortunately, NHRIs often do not receive sufficient funding from government and, in some states, the powers conferred upon NHRIs are limited.

A key role played by civil society organisations is taking strategic litigation cases to court. However, George Kegoro, Executive Director of the Kenya Human Rights Commission, explained that taking high-value litigants to court can be extremely difficult. In particular, organisations may be dissuaded by the risk of the court awarding costs against them.

The conference concluded with recommendations for the future. Justice Kirby proposed a new judicial colloquium to reinvigorate the Bangalore Principles. He also suggested including the Principles in judicial training programmes, and creating databases to collect data on human rights implementation. He reflected on how the judges at the original colloquium were bold internationalists, ready to promote the Principles with confidence. As the mood in many countries turns against international standards, Justice Kirby said it was important for judges to remain committed to IHRL and stand strong in the face of attack.

Dr Philippa Webb gave an overview of the OHCHR's [draft principles on parliaments and human rights](#). The draft principles

recommend that national parliaments should establish human rights committees. On the national level, the committee could encourage ratification of international treaties and provide advice to parliament on human rights compliance. Much more novel, is the idea that such parliamentary committees could have an autonomous role on the international level, engaging directly with the Universal Periodic Review and UN treaty bodies. Finally, Bingham Centre Director Murray Hunt concluded by underlining that the implementation of IHRL depends on multiple institutions complementing each other. If we are to accelerate the domestic implementation of international human rights norms, it will be necessary to build international consensus on what roles different institutions—judiciary, parliaments, NHRIs, civil society, and others—will play in working together to achieve this goal.

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