

**CLOSING ADDRESS AT THE
REGIONAL HUMAN RIGHTS TRAINING SEMINAR**

**DELIVERED BY: HON. ABDULAI O. CONTEH
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I am told that there is an ancient Chinese saying which has a truly Delphic quality to it because of its deliberately obscure or ambiguous intent, capable of meaning well or ill at one and the same time. It goes like this:

“May you live in interesting times”.

We certainly seem to be living in interesting times, but I hasten to add in the more wholesome meaning of the Chinese saying; for this seminar could not have come at a more auspicious time for its theme and purpose. On the very day the seminar was opened, there was animated buzz circulating around the red-hot decision of the Judicial Committee on the Privy Council in London concerning the case of **Neville Lewis and others** delivered on 12 September 2000.

The case itself is truly a Commonwealth Caribbean one in terms of its **dramatis personae**.

Although the actual appellants were from Jamaica, the Board of the Judicial Committee of the Privy Council stated that because it was being asked to review its decisions in **deFreitas v Benny (1976) A.C. 239**, and **Reckley v Minister of Public Safety and Immigration (No. 2) (1996) A.C. 527**, the Attorney-General of Trinidad and Tobago and The Bahamas were given leave to intervene in addition to five petitioners from Belize.

Of course, the **ratio decidendi** of the Board's decision in the case and the importance of the principles enunciated therein go far, far beyond the region and will no doubt reverberate around the Commonwealth and beyond especially in cases involving the death penalty and pardon or mercy and the process by which a decision is reached on it; and the commutation of sentence. Some of the architects of the victory for human rights vindicated in the **Neville Lewis** case are present with us at this seminar. I would like to congratulate and salute them for their tenacity and courage.

But it is also salutary to remind ourselves, as the Hon. Attorney General did remind us in his opening address, that elemental as the right to life is, the **corpus of human rights** does contain other pressing issues that warrant urgent attention. For example, the

debate that ensued yesterday after the presentation of Tracy Robinson's paper on **"Serious Offences, Gender and Criminal Justice: A Plea for Reason-in(g) Equality"**, amply demonstrated the need to articulate the issues and concerns presenting obstacles in the way of women to enjoy the full panoply of human rights on the same level as men. There is an evident need in this regard to articulate, disseminate and follow-through on the provisions of the **Convention on the Elimination of All Forms of Discrimination against Women**. It must always be remembered that the human rights of women form an inalienable, integral and indivisible part of human rights. To contend otherwise, would be, to paraphrase Jeremy Bertham, render human rights as nothing but nonsense on stilts!

As we come to the conclusion of what, by all accounts, has been a most interesting and useful seminar and discourse on human rights, permit me, if you will, to adapt the words of the benediction said at the Roman Catholic Mass:

"Benedictus qui venit in nomine Domini"

(Blessed is he who comes in the name of the Lord")

I hasten to add that, with all due respect, I do so in an ecumenical and inter-denominational spirit as follows:

Benedictus qui venit in nomine juris": "Blessed is he who comes in the name of the law.

On this score therefore, I would like to express my appreciation and thanks to the sponsors, organizers, presenters, participants and those who had anything to do with this seminar here in Belize. We are all, I am sure, grateful to Her Majesty's Foreign and Commonwealth Office, Penal Reform International, the firm of Solicitors of Simons Muirhead and Burton; and of course, the host government, in particular the Attorney-General's Ministry. It is perhaps worth noting in the interesting times we live in that it might not have been easy to host a seminar any where in the region such as the present where you have not only the Attorney-General of the country but the Solicitor-General also and now the Chief Justice himself to say the benediction. Even the Prime Minister was slated to have been present for the opening of this seminar but I suspect his other pressing engagements, and in particular the fact that he has been away from the country at the recent United Nations Millennium Summit, denied him the opportunity. This can only happen in Belize.

This is a measure of the maturity and confidence of Belizeans. I would like to read this seminar as an affirmation of Belize's commitment to human rights.

When the invitation was first extended to me, I was informed that the purpose of the seminar was to train and assist Commonwealth Caribbean lawyers in undertaking representation at trial and appellate levels for prisoners charged with serious offences, and to help them to initiate human rights and prison litigation cases.

I must confess that this caused me some anxiety, for I thought I saw on the horizon the spectre of the already stretched judicial resources of the countries in the region being swamped and overwhelmed by a new spate of litigation, and opening of the floodgates, as it were. This, I feared, could only lead to more delays, particularly in the sphere of the administration of criminal justice, that would tellingly underscore the problems adumbrated by the Judicial Committee of the Privy Council in its decision in the case of **Pratt and Morgan**, a decision about which so much has already been said here at this seminar.

My anxiety, I am happy to say, was however, easily dispelled by the realization that here in this sub-region, there are, within the

matrix of the Constitutions and laws of various Commonwealth Caribbean countries a large catenae of human rights provisions relating to the criminal litigation process that resonate in various international and regional human rights instruments.

The debate is therefore about the extent and applicability of some of these provisions whether in national Constitutions and laws or in what has been called the interlocking web of international and regional Conventions, Protocols, Declarations and Treaties on human rights, and then to strive to vindicate and uphold these provisions in individual countries throughout the region.

Also, I became a little more comfortable when I perused the draft agenda for the seminar that was forwarded to me. It included subjects such as legal ail and access to justice, the right to adequate legal representation, international human rights and international remedies, preventive detention and pre-trial rights, innocence and the death penalty, cruel and inhumane punishment, fair trials and international standards.

These are in a way, staple fare that address such critical issues in the criminal judicial process like due process, presumption of innocence, the right to fair trial and the

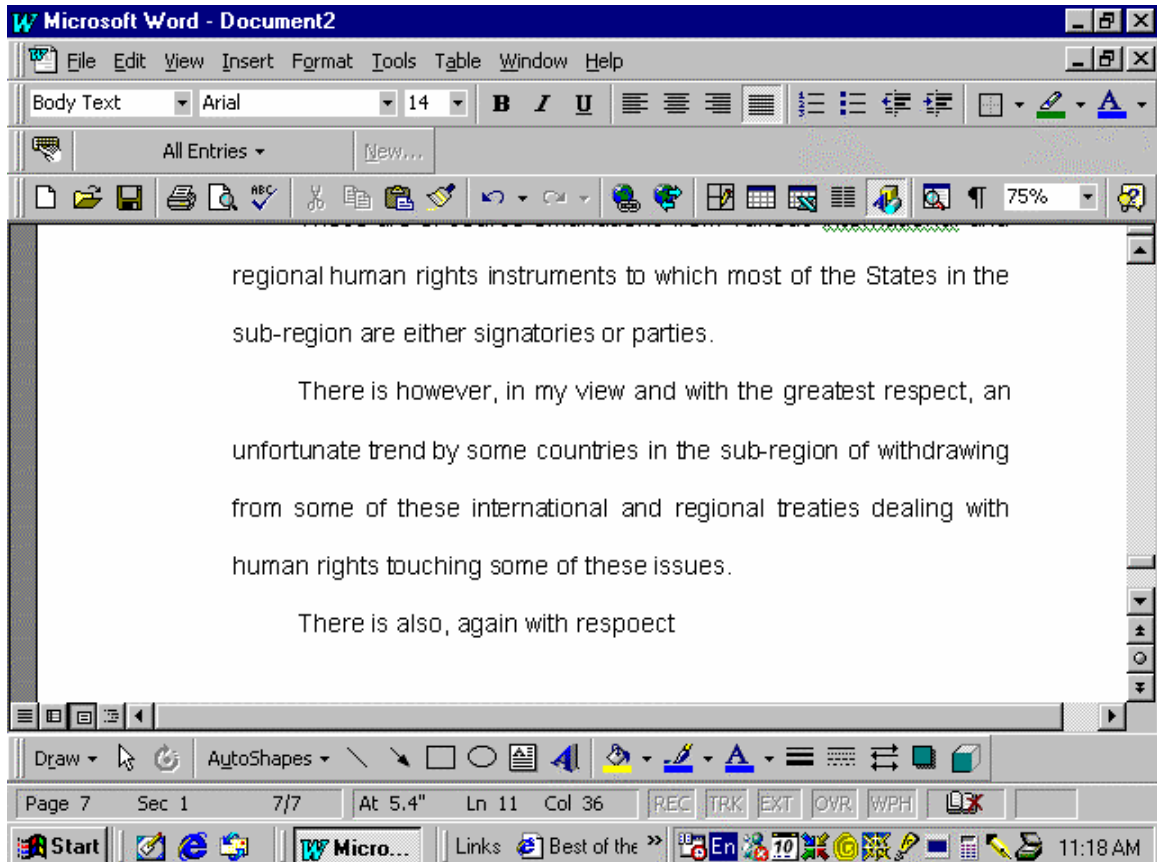
prohibition of cruel and inhuman punishment. They are, I believe, to be found, in one form or the other in the Constitutions and laws of various Commonwealth Caribbean countries.

These are of course emanations from various international and regional human rights instruments to which most of the States in the sub-region are either signatories or parties.

There is however, in my view and with the greatest respect, an unfortunate trend by some countries in the sub-region of withdrawing from some of these international and regional treaties dealing with human rights touching some of these issues.

There is also, again with respect, the unfortunate oversight or neglect by some countries to adhere to some of these instruments. It can only be hoped that this neglect or oversight is not one of deliberate policy and that the situation will soon be rectified.

In the case of the countries withdrawing from or suspending the operation of some of these human rights instruments, I dare say that the situation is regrettable and has rightly caused some perturbation not only at home but abroad as well. This action seems to me, with



respect, to be striking a posture of seeming petulance, presumably stemming from what the authorities in these countries view as the overzealousness of the human rights lobby whom they regard as soft-hearted do-gooders even in the face of alarming increase in crimes of violence, often resulting in murder. This posture is, unfortunately, further stiffened by decisions like in the **Pratt and Morgan case**,

which they regard as cramping their judicial style and autonomy, particularly in the area of executing of judgments in capital cases.

As a result, there is an increasingly clangorous beat in some quarters for the need to bring to the Caribbean the ultimate court and turn away from the Judicial Committee of the Privy Council as the Court of last resort for Commonwealth Caribbean. Laudable and perhaps eminently desirable as a final Caribbean Court of Justice is, in my humble view however, it should not be rushed in, in the wake of the swirling controversy attendant on the **death row phenomenon cases like Pratt and Morgan** and the more recent decision of **Neville Lewis and others**. Of course, as an institution for the interpretation and application of the CARICOM Treaty, the case for the Caribbean Court of Justice is almost unassailable. But if it is simply in reaction to the seeming humbug flowing from some expansive decisions of the Judicial Committee of the Privy Council in cases involving human rights issues, I beg to demur and to urge circumspection and deliberation.

The issue of whether or not to establish a Caribbean Court of Justice, whether with two streams of jurisdictions, that is, as an institution of CARICOM and the final Court of Appeal in cases from

the courts of member States of Commonwealth Caribbean or not, is, in my humble opinion, too important a subject to be discussed in any detail, let alone settled, under the stultifying shadow of such an emotive issue as the death penalty or whatever the Judicial Committee of the Privy Council in London might or might not have decided on this all too human drama.

Perhaps in the social and political fields, the greatest legacy of the Twentieth Century could be regarded as the heightened awareness and spread of human rights. This was achieved through various Treaties, Conventions, Protocols and Declarations at both the international and regional levels.

However, the dichotomy in terms of application that has for long existed between international law and domestic law, presents a certain problem for the application of human rights in all their plenitude in most Commonwealth Caribbean countries. The position that international treaty law is not readily applicable in domestic courts until it has been incorporated into the domestic legal structure such as in an Act of Parliament is seemingly on the retreat in so far as mainstream human rights standards are concerned.

There is a decidedly growing body of jurisprudence to the effect that in fleshing out fundamental human rights and freedoms declared and recognized in the Constitutions of Commonwealth Caribbean countries, international treaties and conventions are a proper and relevant source material for interpretation. This point was underscored by the Judicial Committee of the Privy Council in the Bermudan case of **Minister of Home Affairs v Fischer (1980) A.C. 319** to uphold the position that the **United Nations Declarations on the Rights of the Child** and the **International Covenant on Civil and Political Rights** guaranteed the protection of the law to every child without discrimination as to the circumstances of its birth.

In this respect, the **Bangalore Principles** on the domestic application of international human rights norms have come to inspire a number of judges in the Commonwealth to develop human rights jurisprudence in conformity with international human rights standards and norms. Indeed, as late as September 1996, the **Bangalore Principles** were reaffirmed in the sub-region at the latest judicial colloquium for Commonwealth judges in Georgetown, Guyana. These principles and colloquia stress the need for the incorporation of human rights into domestic jurisprudence. In Guyana also, there was

recently a Judicial Colloquium from April 14 to 17, 1997, on the need to **Use International Human Rights standards to promote the human rights of Women and the Girl-Child at the National Level.**

It is in this process of articulating or incorporating human rights law into domestic jurisprudence that a special duty, in my view, devolves on the judges. This necessarily involves the judge in what has come to be termed as judicial law-making. In a speech entitled **“The Judge as Lawmaker”** in 1972, Lord Reid for example, acknowledged the law-making function of the British judiciary as follows:

“There was a time when it was thought almost indecent to suggest that judges make law, they only declare it. Those with a taste for fairy tales seem to have thought that in some Aladdin’s cave there is hidden the common law in all its splendour and that on a judge’s appointment there descends on him knowledge of the magic words, “open sesame”. Bad decisions are given when judges muddle their passwords and the wrong doors open. But we do not believe in fairy tales any more”.

(1972 12 Journal of Society for Public Teachers of Law 22).

I might add that today in most parts of the world, the human rights activist, it seems, should not only continue to believe in fairy tales, he or she needs in addition to be a sorcerer or sorceress or at least the Sorcerer's Apprentice!

[A sorcerer' apprentice who through tireless exertions will help the judge to (to paraphrase Lord Holfman in the **Neville Lewis' case**) to discover the alchemy if not the philosopher's stone to utilize the ancient concept of due process of law to convert the base metal of abuse and violations of human rights into the noble and admirable gold of judicial redress.]

But by judicial innovation and courage, which I hope the judiciary in Belize and hopefully in our sub-region will emulate and not flinch from, a predecessor of mine, the late George Singh J., as he then was, was for example, able to repudiate the ouster clause contained in **sub-section (15) of section 15** of the Constitution of Belize dealing with the Belize Advisory Council. This body is under the Constitution charged with the responsibility of advising the Governor-General on the exercise of the prerogative of mercy. The subsection however provides that the question whether or not the Advisory Council has validly performed any functions entrusted to it

by the Constitution (including, of course, the issue of the exercise of the prerogative of mercy), shall not be enquired into by any court of law.

In **In re John Rivas' Application for Judicial Review**, Singh J. gave short shrift of this provision as follows:

“The Solicitor-General also submitted that such “august”, “unique” and “powerful” institution as the Belize Advisory Council, should not be liable to have its decisions subject to the supervisory jurisdiction of the Supreme Court. With respect, I disagree. Unique or not, any institution, be it inferior court or superior tribunal, which deals with the legal and human rights of any subject, in any capacity whatsoever, must conform to the time-honoured and hallowed principles of fundamental rights and natural justice. Any allegation that there has been a breach of any of these principles in relation to any person must, in my view, be subject to inquiry by the Supreme Court, irrespective of the calibre of the institution in respect of which the allegation has been made.

This position has, **ex Cathedra** as it were, recently again received the imprimatur of the Judicial Committee of the Privy Council in the **Neville Lewis case** where Singh J. was cited with approbation.

These developments must register an encouraging fillip to the cause of human rights. This more so in the area of the most vital of decisions – whether after conviction to recommend commutation or not of a death sentence. This will help throw much needed light on an otherwise opaque process that is the deliberations of mercy Committees in the region. Surely, transparency of proceedings when a person's life is on the line can only be decent.

When the Human Genome Project was finally completed this year there was simultaneous announcements from both Downing Street in London and the White House in Washington. During the announcements, President Clinton said that through science humankind was now able to understand the language in which God created man.

This, if true, which I've no evidence to doubt, means that man may now be poised to acquire the ability to play God in the creation in the creation of human life.

As science advances humankind's ability to understand and unravel the mysteries of life, it must be perplexing that some societies still want to cling to the right to snuff out that life itself through penal systems that are increasingly being shown as far from infallible. This

therefore puts a considerable burden on everyone involved in the administration of justice to ensure transparent due process with all the attendant rights and guarantees. This I would like to believe is part of the mission of the human rights movement.

Is it not therefore even more ennobling for human rights activists to strive by all legitimate means to prevent human life itself from being extinguished at the hands of a fellow mortal, albeit, within what can only be described as tabulated austere legalism and penology in those countries that still have the death penalty?

Let me however, say this: The empirical evidence tell us that a society which flagrantly abuses the human rights of its people or callously brutalizes them, is wasting away its most valuable resource: the potential of its human resources, in particular the contributions they can make towards that society's development. Such a society is therefore less wholesome and its growth would be stunted. Therefore, human rights are not simply the province, preserve or sport of the so-called "do-gooders". Human rights should, in my view, be the concern of everyone including the Bench and Bar at every turn and opportunity.

Can there be any serious doubt that the administration of justice is about human rights? Puzzling as this may sound, I believe it is evidence and elementary when it is realized that every single litigation that wends its way through the law courts of any country at whatever level, is concerned, from the individual litigant's point, with the assertion, defence or vindication of some interest or right that touches and concerns either the **liberty, property** and in some agonizing cases **the very life of that individual.**

It is therefore my submission that the administration of justice is at the end of the day, really about human rights and human development. The administration of justice should therefore in both its civil and criminal aspects, be vigilant and solicitous of human rights.

It is however in the sphere of criminal litigation that human rights present perplexing challenges. How else can one justify or plausibly argue for the right of an accused to adequate legal representation other than to show that this is a requirement of the **presumption of innocence and the right to a fair trial and as a desideratum of due process itself?** For an accused who cannot afford proper or adequate legal presentation and winds up being

convicted can hardly be said to have had a fair trial or due process, at least he would not have had the means to vindicate his constitutionally-guaranteed-and-presumed innocence. These and similar human rights abound in the field of the criminal litigation process.

In my view, no trial can be said to be fair at which the accused was not represented by counsel, or given the opportunity to be so represented, especially in the face of a professional prosecuting side. Surely, not to have an attorney in a strange and confusing environment like the criminal court, undermines the constitutional stipulations regarding fair trial and due process.

I submit nonetheless that it is the duty of both the practitioner and the bench to rise up and meet these challenges as and when the occasion requires it. But above all awareness and sensitivity are vital for the protection and enhancement of every facet of human rights. It is our collective duty to foster a culture of respect for and observance of human rights.

Before I conclude, permit me if you will, to report an apocryphal exchange that ensued between a senior lawyer and a crusty and

choleric judge late in the afternoon in Court during the address stage in a rather lengthy trial.

After the attorney had been addressing the Court for some hours, he noticed, or he thought he did, that the judge's attention was waning. He thereupon in the middle of his address inquired:

“My Lord I hope you heard what I have been saying?”

The judge looked balefully at the lawyer and replied:

“Counsel, you have been going on for so long that I have reached the stage that whatever you have said has come into one ear and promptly exited through the other.”

The lawyer in a tremulous but quiet voice replied:

“That, my Lord is the problem, for I fear that there might be nothing between one ear and the other to stop whatever I have been saying from getting out!”

The message of this seminar I am sure has been heard and I only hope that unlike our apocryphal judge, there is something in between our ears to retain the valuable exhortations, counsels and strategies we heard here these past couple of days.

This must be so in the cause of the law, in the name of our common humanity and decency, as we strive in our several ways at

our respective stations to advance and consolidate the province of human freedom and rights.

I would like to end on a note of optimism and my optimism is premised on the discussions and exchanges that have taken place here these past couple of days. I am confident that from these, there will be born a rekindled determination that will contribute towards cultivating and enhancing that culture of respect for and observance of human rights in all these manifestations throughout the region and beyond. This is the challenge of the new Millennium.