

STATEMENT BY H.E. MR. SALIM AHMED SALIM,  
SECRETARY GENERAL OF THE OAU  
TO THE SOUTHERN AFRICAN MOOT COURT COMPETITION

HARARE, 11 SEPTEMBER, 1992

Mr. Chairman  
Your Lord Chief Justices  
Ladies and Gentlemen

As a layman finding myself amongst distinguished members of the "learned profession", let me from the very outset record my profound appreciation for the opportunity afforded me to open what promises to be the exciting proceedings of the first ever Southern African moot court competition here in Harare, Zimbabwe. "Exciting" may, indeed, be the operative word, Mr. Chairman, for the organization of this moot court competition, which seeks to find common jurisprudential ground as a basis for the development of a human rights culture in the Southern African region, could not have come at a far from dull, though critical point, in the history of the Southern African region, and indeed, in that of the African continent as a whole. In fact, the theme of the competition, "Southern Africa, from Human Wrongs to Human Rights" is very appropriate in the light of current developments in Africa.

Mr. Chairman, Africa, which finds itself in the throes of a difficult and delicate period of transition to democracy, including transition to a post-apartheid society, is witnessing an era comprising changes of great historical moment.

On the one hand, there is the promise that that anachronism which is "apartheid", and which resisted the first wind of change that swept Africa in the anti-colonial struggle will eventually succumb to its inevitable fate and be replaced by a post-apartheid system based on democracy, justice and human rights. On the other hand, there is also the hope that the second wind of change, heralding the second political liberation of the continent, and consolidating the first phase of African political independence, will continue to be given concrete manifestation through the process of democratic transition which is being witnessed all over the continent.

The struggle of our countries in Africa against colonialism and apartheid was given legal expression through such concepts as the right to self-determination. Indeed, in the particular case of apartheid, so strong was our perception, as well as that of the international community, that it was an evil in need of destruction, that it came to be termed a "crime against humanity" - it became, in fact, more than just a civil breach of the rights of our brethren in South Africa. It became a phenomenon that was not to be tolerated, and the apartheid state which was perpetrating all those wrongs against humanity, became in consequence an outlaw state against which the international community imposed sanctions. The justification for the use of law against a recalcitrant South Africa was not only that its violent methods of oppression violated the basic human rights of the majority of its own populace, but also that its attempts to perpetuate itself by destabilising its neighbours, caused much havoc and misery to whole peoples and destroyed the very economic and social

fabric of whole states as a consequence of long-term wars, while the developmental potential of the region as a whole was held back. Indeed, no state in the region remained unscathed either in terms of its right to self-determination or its right to development.

On the other hand, in other states of post-colonial Africa, including some in Southern Africa itself, a new process of democratic transition has been set in motion. The absence of the full maturing of democracy or the lack of "further democratization" has generated very acute tensions, and even in some cases acute armed conflicts. These conflicts and situations of lack of peace and stability, have led to similar consequences in terms of effectively hampering the exercise of the respective rights of self-determination and development by these countries.

Yet these are rights which have always been held sacred by African countries. The OAU Charter, for example, provides that the organization shall defend the sovereignty, territorial integrity and independence of its members and eradicate all forms of colonialism from Africa. The African Charter for Human Rights on its part provides for example, that all peoples "shall have the unquestionable and inalienable right to self-determination." In more recent times, 1990 to be exact, the OAU Heads of State adopted a Declaration which quite arguably may be regarded as a binding text from which may be drawn or implied principles that have some impact on international law as it applies in the African region, and that in fact clearly establish precedents in some cases.

I have in mind the pathbreaking "Declaration of The Assembly of Heads of State and Government of the Organization of African Unity On The Political and Socio-Economic Situation in Africa and The Fundamental Changes Taking Place in the World". Thus for



example, in that Declaration, the Heads of State declare their full awareness of the fact that in order to facilitate socio-economic transformation "it is necessary to promote popular participation of our peoples in the process of government and development. A political environment which guarantees human rights and the observance of the rule of law, would assure high standards of probity and accountability particularly on the part of those who hold public office... We accordingly recommit ourselves to the further democratisation of our societies and to the consolidation of democratic institutions in our countries... We, .... assert that democracy and development should go together and should be mutually reinforcing." This cannot but strengthen the right to participate freely in government provided for in the African Charter on Human and Peoples' Rights.

Similarly, the Heads of State in stating the realization that the possibility of achieving their developmental objectives will be "constrained as long as an atmosphere of lasting peace and stability does not prevail in Africa," proceed to "renew" their "determination to work together towards the peaceful and speedy resolution of all the conflicts on our Continent." It is only through "the creation of stable conditions that Africa can fully harness its human and material resources and direct them to development."

It seems to me, therefore, that the national and international right to peace and security of peoples, as well as the right of all peoples to a general satisfactory environment favourable to their development, both of them provided for in the African Charter on

Human and Peoples' Rights, deserve our special attention in the context of our theme "from Human Wrongs to Human Rights". This is not only because of the linkage between the right of peace and of security to the notion of development, but even more important to our very survival as a continent. Perhaps it is even arguable that a right to survival should be developed, though it could also arguably be regarded as a facet of the right to life which is already an established right.

I wish to stress, however, that over and above the right to self-determination, the right to development and the right to peace and security, we should also place deserving emphasis on such traditional or classical civil and political rights as freedom of speech, freedom of association, the right to freedom of assembly, freedom of conscience, profession and free practice of religion, if we are to build and preserve hardy democratic cultures and institutions devoid of lack of tolerance, which constitutes in itself an eroding influence on democratic practice.

The foregoing should demonstrate to you, Mr. Chairman, my abiding and unwavering faith in the employment of law, and human rights in particular, as a force for good. With the gradual dissipation of the vital forces of apartheid, leading in fact to the establishment of new relations of co-operation between a future non-racial South Africa and the rest of the countries of the sub-region, more and more initiatives of this kind which encourage the exploitation of the intellectual resources of the sub-region should be welcomed as yet another aspect of Sub-Regional integration which should be defined not only in pulling together material resources for material development but also in terms

of the cross-fertilization of ideas which ought to bring in its wake, a more perfect flowering of our civilisation.

Mr. Chairman,

At the very beginning of my remarks I referred to the promise of change in South Africa. It is a promise which the people of South Africa and Africa as well as the international community at large are committed to see fulfilled. Clearly however enormous obstacles still lie on the way. One evident major obstacle to the process of change is the pandemic violence that has engulfed the townships and other areas of South Africa. The Government of President De Klerk as the government of the day has a clear responsibility to put an end to that violence. <sup>THE AFRICAN LEADERS MUST ALSO ASSUME THEIR RESPONSIBILITIES.</sup> The massacre at Boipatong followed by the Wanton cold blooded killings of unarmed peaceful ANC Protesters by Ciskei security forces threaten to derail even further the prospects of a negotiated transition to a democratic, non-racial and united South Africa. But if the process of change in South Africa is not to be aborted or hijacked, it is imperative that the forces of retrogression as symbolised by the killers of Boipatong and Ciskei must not be allowed to triumph. The Organization of African Unity which has consistently declared its support for the process of change that was under way in South Africa is very concerned at these recent developments. We in concert with the rest of the international community would like to see the speedy removal of all obstacles to the resumption of the negotiation process and especially the immediate end to the violence which has brought so much deaths, destruction and suffering to the people of South Africa. And the OAU remains ready to make what ever contribution that is necessary and possible. To this end and in accordance with the decision



taken by the OAU Council of Ministers and endorsed by the Assembly of Heads of State and Government in Dakar, Senegal in July this year, we are sending to South Africa an OAU Team. The team is expected to arrive in Johannesburg next Monday. I believe that it is incumbent on African states through their continental Organization as well as the International Community as a whole to do their utmost to assist the people of South Africa in ensuring that the sad chapter of apartheid and its concomitant consequences is definitely put to an end expeditiously.

While the evolution of the situation in South Africa require of us to devote our considerable efforts to that situation, we must at the same time devote great attention to the scourge of conflict which has afflicted many parts of our continent. These conflicts besides causing unacceptable human casualties have also wrecked havoc and destruction in many of our societies. Human Rights have clearly been among the principal victims of these mostly internal conflicts. In this respect we welcome the recent agreement between President Chissano and the Renamo leader Mr. Dlakhama and hope that soon a ceasefire and Peace Agreement will come into force. We are also looking forward to the holding of elections in Angola at the end of this month and in this context we welcome the recent trends towards national rapprochement in that country. The end of the conflicts in Angola and Mozambique and the establishment of normalcy in these countries through the elections of governments by their respective peoples, will usher in a new era. It will enhance the prospects of human rights in the wider sense - social, civic, political and economic.

Mr. Chairman,

I would like to conclude by expressing my confidence that the countries of Southern Africa which have experienced so much abuse of human rights as a result of the historical twinevil of colonialism and racism will be in the forefront in ensuring that our people do fully enjoy these rights. To make a complete departure from Human Wrongs to an era of human rights in this region as indeed in the whole of the continent will require the commitment of all our governments to that effect. But since Governments must be accountable to our peoples and in the societies which we are now hoping to see erected in our continent, governments must respond to public opinion, the sensitisation of our people in Southern Africa, and elsewhere in the continent of their rights and duties as citizens, becomes imperative. The Universal Declaration of Human Rights and the OAU Charter on Human and Peoples' Rights must not be documents placed in libraries for occasional perusal by scholars and students alike. They must be known by the ordinary man and woman. Such an education will be a great pillar of strength towards ensuring the scrupulous respect of these rights. It will also constitute a form of prevention against those in authority who may wish to take lightly these rights. I firmly believe that if our continent is to move decisively from human wrongs to human rights, the involvement of our people in Righting these wrongs is a condition sine qua non. Their involvement must be an all encompassing one. The learned and the not so learned members of our communities must play a role. The holding of this First ever Southern African Moot Court Competition which I have the honour to officially open this evening and which has brought together supreme Court Justices, Law Professors and young men and women aspiring to be in the legal profession, is in its own way an important contribution in this direction.

I thank you.